CODE OF FEDERAL REGULATIONS

Title 19
Customs Duties

Parts 0 to 140

Revised as of April 1, 2023

Containing a codification of documents
of general applicability and future effect

As of April 1, 2023

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The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
Title 42 through Title 50.....as of October 1

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The Paperwork Reduction Act of 1980 (Pub. L. 96–511) requires Federal agencies to display an OMB control number with their information collection request.

Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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Provisions of the Code that are no longer in force and effect as of the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on any given date in the past by using the appropriate List of CFR Sections Affected (LSA). For the convenience of the reader, a ''List of CFR Sections Affected'' is published at the end of each CFR volume. For changes to the Code prior to the LSA listings at the end of the volume, consult previous annual editions of the LSA. For changes to the Code prior to 2001, consult the List of CFR Sections Affected compilations, published for 1949-1963, 1964-1972, 1973-1985, and 1986-2000.

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The term ''[Reserved]'' is used as a place holder within the Code of Federal Regulations. An agency may add regulatory information at a ''[Reserved]'' location at any time. Occasionally ''[Reserved]'' is used editorially to indicate that a portion of the CFR was left vacant and not dropped in error.

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An index to the text of ''Title 3—The President'' is carried within that volume.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the ''Contents'' entries in the daily Federal Register.

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OLIVER A. POTTS,
Director,
Office of the Federal Register
April 1, 2023

THIS TITLE

Title 19—CUSTOMS DUTIES is composed of three volumes. The first two volumes, parts 0—140 and parts 141—199 contain the regulations in Chapter I—U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury. The third volume, part 200 to end, contains the regulations in Chapter II—United States International Trade Commission; Chapter III—International Trade Administration, Department of Commerce; and Chapter IV—U.S. Immigration and Customs Enforcement, Department of Homeland Security. The contents of these volumes represent all current regulations issued under this title of the CFR as of April 1, 2023.

A Subject Index to Chapter I—U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury appears in the Finding Aids section of the first two volumes.

For this volume, Ann Worley was Chief Editor. The Code of Federal Regulations publication program is under the direction of John Hyrum Martinez, assisted by Stephen J. Frattini.

Title 19—Customs Duties

(This book contains parts 0 to 140)

CHAPTER I—U.S. CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY; DEPARTMENT OF THE TREASURY

EDITORIAL NOTE: Nomenclature changes to chapter I appear by CBP Dec. 07–82, 72 FR 59167, Oct. 19, 2007.

PART 0—TRANSFERRED OR DELEGATED AUTHORITY

Sec.

AUTHORITY: 5 U.S.C. 301, 6 U.S.C. 101 *et seq.*, 19 U.S.C. 66, 19 U.S.C. 1624, 31 U.S.C. 321.

SOURCE: CBP Dec. 03–24, 68 FR 51869, Aug. 28, 2003, unless otherwise noted.

§ 0.1 Customs revenue function regulations issued under the authority of the Departments of the Treasury and Homeland Security.

(a) *Regulations requiring signatures of Treasury and Homeland Security.* (1) By Treasury Department Order No. 100–16, set forth in the appendix to this part, the Secretary of the Treasury has delegated to the Secretary of Homeland Security the authority to prescribe all CBP regulations relating to customs revenue functions, except that the Secretary of the Treasury retains the sole authority to approve such CBP regulations concerning subject matters listed in paragraph 1(a)(i) of the order. Regulations for which the Secretary of the Treasury retains the sole authority to approve will be signed by the Secretary of Homeland Security (or his or her DHS delegate), and by the Secretary of the Treasury (or his or her Treasury delegate) to indicate approval.

(2) When a regulation described in paragraph (a)(1) of this section is published in the FEDERAL REGISTER, the preamble of the document accompanying the regulation will clearly indicate that it is being issued in accordance with paragraph (a)(1) of this section.

(b) *Regulations with respect to which the Department of Homeland Security is authorized to sign for the Department of the Treasury.* (1) By Treasury Department Order No. 100–16, set forth in the appendix to this part, the Secretary of the Treasury delegated to the Secretary of Homeland Security the authority to prescribe and approve regulations relating to customs revenue functions on behalf of the Secretary of the Treasury when the subject matter of the regulations is not listed in paragraph 1(a)(i) of the order. Such regulations are the official regulations of both Departments notwithstanding that they are not signed by an official of the Department of the Treasury. These regulations will be signed by the Secretary of Homeland Security (or his or her DHS delegate).

(2) When a regulation described in paragraph (b)(1) of this section is published in the FEDERAL REGISTER, the preamble of the document accompanying the regulation will clearly indicate that it is being issued in accordance with paragraph (b)(1) of this section.

(c) *Sole signature by Secretary of the Treasury.* (1) Pursuant to Treasury Department Order No. 100–16, set forth in the appendix to this part, the Secretary of the Treasury reserves the right to promulgate regulations related to the customs revenue functions. Such regulations are signed by the Secretary of the Treasury (or his or her delegate) after consultation with the Secretary of Homeland Security (or his or her delegate), and are the official regulations of both Departments.

(2) When a regulation described in paragraph (c)(1) of this section is published in the FEDERAL REGISTER, the preamble of the document accompanying the regulation will clearly indicate that the regulation is being issued in accordance with paragraph (c)(1) of this section.

[CBP Dec. 03–24, 68 FR 51869, Aug. 28, 2003, as amended at CBP Dec. 08–25, 73 FR 40724, July 16, 2008]

§ 0.2 All other CBP regulations issued under the authority of the Department of Homeland Security.

(a) The authority of the Secretary of the Treasury with respect to CBP regulations that are not related to customs revenue functions was transferred to the Secretary of Homeland Security pursuant to section 403(1) of the Homeland Security Act of 2002. Such regulations are signed by the Secretary of Homeland Security (or his or her delegate) and are the official regulations of the Department of Homeland Security.

(b) When a regulation described in paragraph (a) of this section is published in the FEDERAL REGISTER, the preamble accompanying the regulation shall clearly indicate that it is being issued in accordance with paragraph (a) of this section.

[CBP Dec. 03–24, 68 FR 51869, Aug. 28, 2003, as amended at CBP Dec. 08–25, 73 FR 40724, July 16, 2008]

APPENDIX TO 19 CFR PART 0—TREASURY DEPARTMENT ORDER NO. 100–16

Delegation from the Secretary of the Treasury to the Secretary of Homeland Security of general authority over Customs revenue functions vested in the Secretary of the Treasury as set forth in the Homeland Security Act of 2002.

Treasury Department, Washington, DC, May 15, 2003.

By virtue of the authority vested in me as the Secretary of the Treasury, including the authority vested by 31 U.S.C. 321(b) and section 412 of the Homeland Security Act of 2002 (Pub. L. 107–296) (Act), it is hereby ordered:

1. Consistent with the transfer of the functions, personnel, assets, and liabilities of the United States Customs Service to the Department of Homeland Security as set forth in section 403(1) of the Act, there is hereby delegated to the Secretary of Homeland Security the authority related to the Customs revenue functions vested in the Secretary of the Treasury as set forth in sections 412 and 415 of the Act, subject to the following exceptions and to paragraph 6 of this Delegation of Authority:

(a)(i) The Secretary of the Treasury retains the sole authority to approve any regulations concerning import quotas or trade bans, user fees, marking, labeling, copyright and trademark enforcement, and the completion of entry or substance of entry summary including duty assessment and collection, classification, valuation, application of the U.S. Harmonized Tariff Schedules, eligibility or requirements for preferential trade programs, and the establishment of recordkeeping requirements relating thereto. The Secretary of Homeland Security shall provide a copy of all regulations so approved to the Chairman and Ranking Member of the Committee on Ways and Means and the Chairman and Ranking Member of the Committee on Finance every six months.

(ii) The Secretary of the Treasury shall retain the authority to review, modify, or revoke any determination or ruling that falls within the criteria set forth in paragraph 1(a)(i), and that is under consideration pursuant to the procedures set forth in sections 516 and 625(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1516 and 1625(c)). The Secretary of Homeland Security periodically shall identify and describe for the Secretary of the Treasury such determinations and rulings that are under consideration under sections 516 and 625(c) of the Tariff Act of 1930, as amended, in an appropriate and timely manner, with consultation as necessary, prior to the Secretary of Homeland Security's exercise of such authority. The Secretary of Homeland Security shall provide a copy of these identifications and descriptions so made to the Chairman and Ranking Member of the Committee on Ways and Means and the Chairman and Ranking Member of the Committee on Finance every six months. The Secretary of the Treasury shall list any case where Treasury modified or revoked such a determination or ruling.

(b) Paragraph 1(a) notwithstanding, if the Secretary of Homeland Security finds an overriding, immediate, and extraordinary security threat to public health and safety, the Secretary of Homeland Security may take action described in paragraph 1(a) without the prior approval of the Secretary of the Treasury. However, immediately after taking any such action, the Secretary of Homeland Security shall certify in writing to the Secretary of the Treasury and to the Chairman and Ranking Member of the Committee on Ways and Means and the Chairman and Ranking Member of the Committee on Finance the specific reasons therefor. The action shall terminate within 14 days or as long as the overriding, immediate, and extraordinary security threat exists, whichever is shorter, unless the Secretary of the Treasury approves the continued action and provides notice of such approval to the Secretary of Homeland Security.

(c) The Advisory Committee on Commercial Operations of the Customs Service (COAC) shall be jointly appointed by the Secretary of the Treasury and the Secretary of Homeland Security. Meetings of COAC shall be presided over jointly by the Secretary of the Treasury and the Secretary of Homeland Security. The COAC shall advise the Secretary of the Treasury and the Secretary of Homeland Security jointly.

2. Any references in this Delegation of Authority to the Secretary of the Treasury or the Secretary of Homeland Security are deemed to include their respective delegees, if any.

3. This Delegation of Authority is not intended to create or confer any right, privilege, or benefit on any private person, including any person in litigation with the United States.

4. Treasury Order No. 165–09, ''Maintenance of delegation in respect to general authority over Customs Revenue functions vested in the Secretary of the Treasury, as set forth and defined in the Homeland Security Act of 2002,'' dated February 28, 2003, is rescinded. To the extent this Delegation of Authority

requires any revocation of any other prior Order or Directive of the Secretary of the Treasury, such prior Order or Directive is hereby revoked.

5. This Delegation of Authority is effective May 15, 2003. This Delegation is subject to review on May 14, 2004. By March 15, 2004, the Secretary of the Treasury and the Secretary of Homeland Security shall consult with the Chairman and Ranking Member of the Committee on Ways and Means and the Chairman and Ranking Member of the Committee on Finance to discuss the upcoming review of this Delegation.

6. The Secretary of the Treasury reserves the right to rescind or modify this Delegation of Authority, promulgate regulations, or exercise authority at any time based upon the statutory authority reserved to the Secretary by the Act.

John W. Snow, *Secretary of the Treasury*.

PARTS 1–3 [RESERVED]

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

ARRIVAL AND ENTRY OF VESSELS

Sec.

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LANDING AND DELIVERY OF CARGO

PASSENGERS ON VESSELS

FOREIGN CLEARANCES

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GENERAL

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1415, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. 501, 60105.

Section 4.1 also issued under 19 U.S.C. 1581(a); 46 U.S.C. 60101; 46 U.S.C. 70105.

Section 4.2 also issued under 19 U.S.C. 1441, 1486;

Section 4.3 also issued under 19 U.S.C. 288, 1441;

Section 4.3a also issued under 19 U.S.C. 1433, 1436;

Section 4.5 also issued under 19 U.S.C. 1441;

Section 4.7 also issued under 19 U.S.C. 1581(a);

Section 4.7a also issued under 19 U.S.C. 1498, 1584;

Section 4.7b also issued under 8 U.S.C. 1101, 1221;

Sections 4.7c and 4.7d also issued under 6 U.S.C. 943.

Section 4.8 also issued under 19 U.S.C. 1448, 1486;

Section 4.9 also issued under 42 U.S.C. 269;

Section 4.10 also issued under 19 U.S.C. 1448, 1451;

Section 4.12 also issued under 19 U.S.C. 1584;

Section 4.14 also issued under 19 U.S.C. 1466, 1498; 31 U.S.C. 9701.

Section 4.20 also issued under 46 U.S.C. 2107(b), 8103, 14306, 14502, 14511–14513, 14701, 14702, 60301–60306, 60312;

Section 4.21 also issued under 19 U.S.C. 1441; 46 U.S.C. 60301–60310, 60312;

Section 4.22 also issued under 46 U.S.C. 60301, 60302, 60303, 60304, 60305, 60306, 60312, 60503;

Section 4.24 also issued under 46 U.S.C. 2108;

Section 4.30 also issued under 19 U.S.C. 288, 1446, 1448, 1450–1454, 1490;

Section 4.31 also issued under 19 U.S.C. 1453, 1586;

Section 4.32 also issued under 19 U.S.C. 1449;

Section 4.35 also issued under 19 U.S.C. 1447;

Section 4.36 also issued under 19 U.S.C. 1431, 1457, 1458; 46 U.S.C. 60107;

Section 4.37 also issued under 19 U.S.C. 1448, 1457, 1490;

Section 4.38 also issued under 19 U.S.C. 1448, 1505;

Section 4.39 also issued under 19 U.S.C. 1446;

Section 4.40 also issued under 19 U.S.C. 1446;

Section 4.50 also issued under 19 U.S.C. 1431; 46 U.S.C. 3502;

Section 4.51 also issued under 19 U.S.C. 1433;

Section 4.52 also issued under 19 U.S.C. 1433;

Section 4.61 also issued under 46 U.S.C. 12101, 12120, 12132, 55102, 55105–55108, 55110, 55115–55117, 55119;

Section 4.64 also issued under 8 U.S.C. 1221;

Section 4.65a also issued under 46 U.S.C. 5101–5102, 5106–5109, 5112–5114, 5116;

Section 4.66 also issued under 46 U.S.C. 60105;

Section 4.66a also issued under 33 U.S.C. 1321; 46 U.S.C. 60105;

Section 4.66b also issued under 33 U.S.C. 407, 1321;

Section 4.68 also issued under 46 U.S.C. 44101–44106;

Section 4.69 also issued under 46 U.S.C. 10301, 10302, 10314, and 10315.

Section 4.74 also issued under 46 U.S.C. 60105;

Section 4.75 also issued under 46 U.S.C. 60105;

Sections 4.80, 4.80a, and 4.80b also issued under 19 U.S.C. 1706a; 28 U.S.C. 2461 note; 46 U.S.C. 12112, 12117, 12118, 50501–55106, 55107, 55108, 55110, 55114, 55115, 55116, 55117, 55119, 56101, 55121, 56101, 57109; Pub. L. 108–7, Division B, Title II,§211;

Section 4.81 also issued under 19 U.S.C. 1442, 1486; 46 U.S.C. 12101, 12120, 12132, 55102, 55105–55108, 55110, 55114–55117, 55119;

Section 4.81a also issued under 46 U.S.C. 12101, 12120, 12132, 55102, 55105–55108, 55110, 55114–55117, 55119;

Section 4.82 also issued under 19 U.S.C. 293, 294; 46 U.S.C. 60308;

Section 4.83 also issued under 46 U.S.C. 60105, 60308;

Section 4.84 also issued under 46 U.S.C. 12118;

Section 4.85 also issued under 19 U.S.C. 1442, 1623;

Section 4.86 also issued under 19 U.S.C. 1442;

Section 4.88 also issued under 19 U.S.C. 1442, 1622, 1623;

Section 4.92 also issued under 28 U.S.C. 2461 note; 46 U.S.C. 55111;

Section 4.93 also issued under 19 U.S.C. 1322(a); 46 U.S.C. 12101, 12120, 12132, 55102, 55105–55108, 55110, 55114–55117, 55119;

Section 4.94 also issued under 19 U.S.C. 1441; 46 U.S.C. 60504;

Section 4.94a also issued under 19 U.S.C. 1484b;

Section 4.96 also issued under 46 U.S.C. 12101(a)(1), 12108, 55114;

Section 4.98 also issued under 31 U.S.C. 9701;

Section 4.100 also issued under 19 U.S.C. 1706.

SOURCE: 28 FR 14596, Dec. 31, 1963, unless otherwise noted.

ARRIVAL AND ENTRY OF VESSELS

§ 4.0 General definitions.

For the purposes of this part:

(a) *Vessel*. The word *vessel* includes every description of water craft or other contrivance used or capable of being used as a means of transportation on water, but does not include aircraft. (19 U.S.C. 1401.)

(b) *Vessel of the United States*. The term *vessel of the United States* means any vessel documented under the laws of the United States.

(c) *Documented*. The term *documented* vessel means a vessel for which a valid Certificate of Documentation, form CG 1270, issued by the U.S. Coast Guard is outstanding. Upon qualification and proper application to the appropriate Coast Guard office, the Certificate of Documentation may be endorsed with a: (1) Registry endorsement (generally, available to a vessel to be employed in foreign trade, trade with Guam, American Samoa, Wake, Midway, or Kingman Reef, and other employments for which another endorsement is not required), (2) coastwise endorsement (generally, entitles a vessel to employment in the coastwise trade, and other employments for which another endorsement is not required), (3) fishery endorsement (generally, subject to federal and state laws regulating the fisheries, entitles a vessel to fish within the Exclusive Economic Zone (16 U.S.C. 1811) and landward of that zone and to land its catch) or (4) recreational endorsement (entitles a vessel to recreational use only). Any other terminology used elsewhere in this part to describe the particular documentation of a vessel shall be read as synonymous with the applicable terminology contained in this paragraph. Generally, any vessel of at least 5 net tons and wholly owned by a United States citizen or citizens is eligible for documentation except that for a coastwise, or fisheries endorsement a vessel must also be built in the United States. Detailed Coast Guard regulations on documentation are set forth in Title 46, Code of Federal Regulations, §67.01–67.45.

(d) *Noncontiguous territory of the United States*. The term *noncontiguous territory of the United States* includes all the island territories and possessions of the United States, but does not include the Canal Zone.

(e) *Citizen*. The word *citizen* is as defined by the U.S. Coast Guard for purposes of vessel documentation (see subpart 67.03 of title 46, Code of Federal Regulations.)

(f) *Arrival of a vessel*. The phrase ''arrival of a vessel'' means that time when the vessel first comes to rest, whether at anchor or at a dock, in any harbor within the Customs territory of the U.S.

(g) *Departure of a vessel*. The phrase ''departure of a vessel'' means that time when the vessel gets under way on its outward voyage and proceeds on the voyage without thereafter coming to

rest in the harbor from which it is going.

[T.D. 69–266, 34 FR 20422, Dec. 31, 1969, as amended by T.D. 83–214, 48 FR 46511, Oct. 13, 1983; T.D. 93–78, 58 FR 50256, Sept. 27, 1993; T.D. 93–96, 58 FR 67315, Dec. 21, 1993; CBP Dec. 08–25, 73 FR 40725, July 16, 2008]

§ 4.1 Boarding of vessels.

(a) Every vessel arriving at a CBP port will be subject to such supervision while in port as the port director considers necessary. The port director may detail CBP officers to remain on board a vessel to secure enforcement of the requirements set forth in this part. CBP may determine to board as many vessels as considered necessary to ensure compliance with the laws it enforces.

(b)(1) No person, with or without the consent of the master, except a pilot in connection with the navigation of the vessel, personnel from another vessel in connection with the navigation of an unmanned barge, an officer of CBP or the Coast Guard, an immigration or health officer, an inspector of the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture, or an agent of the vessel or consular officer exclusively for purposes relating to customs formalities, shall go on board any vessel arriving from outside the customs territory of the United States without permission of the port director or the CBP officer in charge until the vessel has been taken in charge by a CBP officer.

(2) A person may leave the vessel for the purpose of reporting its arrival as required by law (see § 4.2), but no other person, except those designated in paragraph (b)(1) of this section, shall leave any vessel arriving from outside the customs territory of the United States, with or without the consent of the master, without the permission of the port director or the CBP officer in charge until the vessel has been properly inspected by CBP and brought into the dock or anchorage at which cargo is to be unladen and until all passengers have been landed from the vessel (19 U.S.C. 1433).

(3) Every person permitted to go on board or to leave without the consent of a CBP officer under the provisions of this paragraph shall be subject to CBP and quarantine regulations.

(4) The master of any vessel shall not authorize the boarding or leaving of his vessel by any person in violation of this paragraph.

(c) Persons seeking to board an incoming vessel after it has been inspected by the quarantine authorities and taken in charge by a CBP officer must comply with any applicable Coast Guard regulations regarding the Transportation Worker Identification Credential (TWIC)/personal identification requirements as prescribed in 33 CFR 101.105 and 101.514–515.

(d) No person in charge of a tugboat, rowboat, or other vessel shall bring such conveyance alongside an incoming vessel heretofore described and put on board thereof any person, except as authorized by law or regulations.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 78–141, 43 FR 22174, May 24, 1978; T.D. 82–224, 47 FR 35475, Aug. 16, 1982; T.D. 92–74, 57 FR 35751, Aug. 11, 1992; T.D. 95–77, 60 FR 50010, Sept. 27, 1995; T.D. 00–4, 65 FR 2872, Jan. 19, 2000; CBP Dec. 14–11, 79 FR 70464, Nov. 26, 2014]

§ 4.2 Reports of arrival of vessels.

(a) Upon arrival in any port or place within the U.S., including, for purposes of this section, the U.S. Virgin Islands, of any vessel from a foreign port or place, any foreign vessel from a port or place within the U.S., or any vessel of the U.S. carrying foreign merchandise for which entry has not been made, the master of the vessel must immediately report that arrival to the nearest CBP facility or other location designated by the port director. The report of arrival, except as supplemented in local instructions issued by the port director and made available to interested parties by posting in CBP offices, publication in a newspaper of general circulation, and other appropriate means, may be made by any means of communication to the port director or to a CBP officer assigned to board the vessel. The CBP officer may require the production of any documents or papers deemed necessary for the proper inspection/examination of the vessel, cargo, passenger, or crew.

[1–27] [Reserved]

(b) For purposes of this part, ''foreign port or place'' includes a hovering vessel, as defined in 19 U.S.C. 1401(k), and any point in customs waters beyond the territorial sea or on the high seas at which a vessel arriving in a port or place in the U.S. has received merchandise.

(c) In the case of certain vessels arriving either in distress or for the limited purpose of taking on certain supplies and departing within a 24-hour time period without having landed or taken on any passengers or other merchandise (see section 441(4), Tariff Act of 1930, as amended), the report must be filed by either the master, owner, or agent, and must be in the form and give the information required by that statute, except that the report need not be under oath. A derelict vessel will be considered one in distress and any person bringing it into port must report its arrival.

(d) The report of baggage and merchandise required to be made by certain passenger vessels making three or more trips a week between U.S. and foreign ports and vessels used exclusively as ferryboats carrying passengers, baggage, or merchandise (see section 441(2), Tariff Act of 1930, as amended), is in addition to the required report of arrival, and must be made within 24 hours of arrival.

[T.D. 93–96, 58 FR 67315, Dec. 21, 1993, as amended by T.D. 94–44, 59 FR 23795, May 9, 1994; CBP Dec. 10–33, 75 FR 69585, Nov. 15, 2010]

§ 4.3 Vessels required to enter; place of entry.

(a) *Formal entry required.* Unless specifically excepted by law, within 48 hours after the arrival at any port or place in the United States, the following vessels are required to make formal entry:

(1) Any vessel from a foreign port or place;

(2) Any foreign vessel from a domestic port;

(3) Any vessel of the United States having foreign merchandise on board for which entry has not been made; or

(4) Any vessel which has visited a hovering vessel as defined in 19 U.S.C. 1401(k), or has delivered or received merchandise or passengers while outside the territorial sea.

(b) *Completion of entry.* (1) When vessel entry is to be made at the customhouse, either the master, licensed deck officer, or purser may appear in person during regular working hours to complete preliminary or formal vessel entry; or necessary documents properly executed by the master or other authorized officer may be delivered at the customhouse by the vessel agent or other personal representative of the master.

(2) The appropriate CBP port director may permit the entry of vessels to be accomplished at locations other than the customhouse, and services may be requested outside of normal business hours. CBP may take local resources into consideration in allowing formal entry to be transacted on board vessels or at other mutually convenient approved sites and times within or outside of port limits. When services are requested to be provided outside the limits of a CBP port, the appropriate port director to whom an application must be submitted is the director of the port located nearest to the point where the proposed services would be provided. That port director must be satisfied that the place designated for formal entry will be sufficiently under CBP control at the time of entry, and that the expenses incurred by CBP will be reimbursed as authorized. It may be required that advance notice of vessel arrival be given as a condition for granting requests for optional entry locations. A master, owner, or agent of a vessel who desires that entry be made at an optional location will file with the appropriate port director an application on CBP Form 3171 and a single entry or continuous bond on CBP Form 301 containing the bond conditions set forth in § 113.64 of this chapter, in such amount as that port director deems appropriate but not less than $1,000. If the application is approved, the port director or a designated CBP officer will formally enter the vessel. Nothing in this paragraph relieves any person or vessel from any requirement as to how, when and where they are to report, be inspected or receive clearance from other

Federal agencies upon arrival in the United States.

[T.D. 00–4, 65 FR 2872, Jan. 19, 2000, as amended at CBP Dec. 10–33, 75 FR 69585, Nov. 15, 2010]

§ 4.3a Penalties for violation of vessel reporting and entry requirements.

Violation of the arrival or entry reporting requirements provided for in this part may result in the master being liable for certain civil and criminal penalties, as provided under 19 U.S.C. 1436, in addition to other penalties applicable under other provisions of law. The penalties include civil monetary penalties for failure to report arrival or make entry, and any conveyance used in connection with any such violation is subject to seizure and forfeiture. Further, if any merchandise (other than sea stores or the equivalent for conveyances other than a vessel) is involved in the failure to report arrival or entry, additional penalties equal to the value of merchandise may be imposed, and the merchandise may be seized and forfeited unless properly entered by the importer or consignee. The criminal penalties, applicable upon conviction, include fines and imprisonment if the master intentionally commits any violation of these reporting and entry requirements or if prohibited merchandise is involved in the failure to report arrival or make entry.

[T.D. 93–96, 58 FR 67316, Dec. 21, 1993]

§ 4.4 Panama Canal; report of arrival required.

Vessels which merely transit the Panama Canal without transacting any business there shall be required to report their arrival because of such transit. The report of arrival shall be made in accordance with § 4.2(a).

[T.D. 79–276, 44 FR 61956, Oct. 29, 1979]

§ 4.5 Government vessels.

(a) No report of arrival or entry shall be required of any vessel owned by, or under the complete control and management of the United States or any of its agencies, if such vessel is manned wholly by members of the uniformed services of the United States, by personnel in the civil service of the United States, or by both, and is transporting only property of the United States or passengers traveling on official business of the United States, or it is ballast. In addition, any vessel chartered by, and transporting only cargo that is the property of, the U.S. Department of Defense (DoD) will be treated as a Government vessel for the purpose of being exempt from entry, where the DoD-chartered vessel is manned entirely by the civilian crew of the vessel carrier under contract to DoD. Notwithstanding § 4.60(b)(3) of this part, such DoD-chartered vessel is not exempt from vessel clearance requirements. However, if any cargo is on board, the master or commander of each such vessel arriving from abroad shall file a Cargo Declaration, Customs Form 1302, or an equivalent form issued by the Department of Defense, in duplicate. The original of each Cargo Declaration or equivalent form required under this paragraph shall be filed with the port director within 48 hours after the arrival of the vessel. The other copy shall be made available for use by the discharging inspector at the pier. See § 148.73 of this chapter with respect to baggage on carriers operated by the Department of Defense.

(b) The arrival of every vessel owned or controlled and manned as described in paragraph (a) of this section but transporting other property or passengers, and every vessel so owned or controlled but not so manned, whether in ballast or transporting cargo or passengers, shall be reported in accordance with § 4.2 and the vessel shall be entered in accordance with § 4.9.

(c) Every vessel owned by, or under the complete control and management of, any foreign nation shall be exempt from or subject to the laws relating to report of arrival and entry under the same conditions as a vessel owned or controlled by the United States.

[28 FR 14596, Dec. 31, 1963, as amended by 39 FR 10897, Mar. 22, 1974; T.D. 83–213, 48 FR 46978, Oct. 17, 1983; CBP Dec. 03–32, 68 FR 68168, Dec. 5, 2003]

§ 4.6 Departure or unlading before report or entry.

(a) No vessel which has arrived within the limits of any Customs port from a foreign port or place shall depart or attempt to depart, except from stress

of weather or other necessity, without reporting and making entry as required in this part. These requirements shall not apply to vessels merely passing through waters within the limits of a Customs port in the ordinary course of a voyage.

(b) The ''limits of any Customs port'' as used herein are those described in § 101.3(b) of this chapter, including the marginal waters to the 3-mile limit on the seaboard and the waters to the boundary line on the northern and southern boundaries.

(c) Violation of this provision may result in the master being liable for certain civil penalties and the vessel to arrest and forfeiture, as provided under 19 U.S.C. 1436, in addition to other penalties applicable under other provisions of law.

[T.D. 93–96, 58 FR 67316, Dec. 21, 1993, as amended by T.D. 98–74, 63 FR 51287, Sept. 25, 1998]

§ 4.7 Inward foreign manifest; production on demand; contents and form; advance filing of cargo declaration.

(a) The master of every vessel arriving in the United States and required to make entry must have on board the vessel a manifest, as required by section 431, Tariff Act of 1930 (19 U.S.C. 1431), and by this section. The manifest must be legible and complete. If it is in a foreign language, an English translation must be furnished with the original and with any required copies. The required manifest consists of a Vessel Entrance or Clearance Statement, CBP Form 1300, and the following documents: (1) Cargo Declaration, CBP Form 1302, (2) Ship's Stores Declaration, CBP Form 1303, and (3) Crew's Effects Declaration, CBP Form 1304, to which are attached crewmembers' declarations on CBP Form 5129, if the articles will be landed in the United States. Unless the exception at 8 CFR 251.1(a)(6) applies and a paper form is submitted, the master must also electronically submit the data elements required on CBP Form I–418 via an electronic data interchange system approved by CBP, which will be considered part of the manifest. Any document which is not required may be omitted from the manifest provided the word ''None'' is inserted in items 16, 18, and/or 19 of the Vessel Entrance or Clearance Statement, as appropriate. If a vessel arrives in ballast and therefore the Cargo Declaration is omitted, the legend ''No merchandise on board'' must be inserted in item 16 of the Vessel Entrance or Clearance Statement.

(b)(1) With the exception of any Cargo Declaration that has been filed in advance as prescribed in paragraph (b)(2) of this section, the original and one copy of the manifest must be ready for production on demand. The master shall deliver the original and one copy of the manifest to the CBP officer who shall first demand it. If the vessel is to proceed from the port of arrival to other United States ports with residue foreign cargo or passengers, an additional copy of the manifest shall be available for certification as a traveling manifest (see § 4.85). The port director may require an additional copy or additional copies of the manifest, but a reasonable time shall be allowed for the preparation of any copy which may be required in addition to the original and one copy.

(2) In addition to the vessel stow plan requirements pursuant to § 4.7c of this part and the container status message requirements pursuant to § 4.7d of this part, and with the exception of any bulk or authorized break bulk cargo as prescribed in paragraph (b)(4) of this section, Customs and Border Protection (CBP) must receive from the incoming carrier, for any vessel covered under paragraph (a) of this section, the CBP-approved electronic equivalent of the vessel's Cargo Declaration (CBP Form 1302), 24 hours before the cargo is laden aboard the vessel at the foreign port (*see* § 4.30(n)). The electronic cargo declaration information must be transmitted through the CBP Automated Manifest System (AMS) or any electronic data interchange system approved by CBP to replace the AMS system for this purpose. Any such system change will be announced by notice in the FEDERAL REGISTER.

(3)(i) Where a non-vessel operating common carrier (NVOCC), as defined in paragraph (b)(3)(ii) of this section, delivers cargo to the vessel carrier for lading aboard the vessel at the foreign

port, the NVOCC, if licensed by or registered with the Federal Maritime Commission and in possession of an International Carrier Bond containing the provisions of § 113.64 of this chapter, may electronically transmit the corresponding required cargo declaration information directly to CBP through the vessel AMS system (or other system approved by CBP for this purpose). The information must be received 24 or more hours before the related cargo is laden aboard the vessel at the foreign port (see § 113.64(c) of this chapter), as provided in paragraph (b)(2) of this section, or in accordance with paragraph (b)(4) of this section applicable to exempted bulk and break bulk cargo. In the alternative, the NVOCC must fully disclose and present the required cargo declaration information for the related cargo to the vessel carrier which is required to present this information to CBP, in accordance with this section, via the vessel AMS system (or other CBP-approved system).

(ii) A non-vessel operating common carrier (NVOCC) means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier. The term ''non-vessel operating common carrier'' does not include freight forwarders as defined in part 112 of this chapter.

(iii) Where the party electronically presenting to CBP the cargo information required in § 4.7a(c)(4) receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the presenting party acquired such information, and whether and how the presenting party is able to verify this information. Where the presenting party is not reasonably able to verify such information, CBP will permit the party to electronically present the information on the basis of what the party reasonably believes to be true.

(4) Carriers of bulk cargo as specified in paragraph (b)(4)(i) of this section and carriers of break bulk cargo to the extent provided in paragraph (b)(4)(ii) of this section are exempt, with respect only to the bulk or break bulk cargo being transported, from the requirement set forth in paragraph (b)(2) of this section that an electronic cargo declaration be received by CBP 24 hours before such cargo is laden aboard the vessel at the foreign port. With respect to exempted carriers of bulk or break bulk cargo operating voyages to the United States, CBP must receive the electronic cargo declaration covering the bulk or break bulk cargo they are transporting 24 hours prior to the vessel's arrival in the United States (see § 4.30(n)). However, for any containerized or non-qualifying break bulk cargo these exempted carriers will be transporting, CBP must receive the electronic cargo declaration 24 hours in advance of loading.

(i) Bulk cargo is defined for purposes of this section as homogeneous cargo that is stowed loose in the hold and is not enclosed in any container such as a box, bale, bag, cask, or the like. Such cargo is also described as bulk freight. Specifically, bulk cargo is composed of either:

(A) Free flowing articles such as oil, grain, coal, ore, and the like, which can be pumped or run through a chute or handled by dumping; or

(B) Articles that require mechanical handling such as bricks, pig iron, lumber, steel beams, and the like.

(ii) A carrier of break bulk cargo may apply for an exemption from the filing requirement of paragraph (b)(2) of this section with respect to the break bulk cargo it will be transporting. For purposes of this section, break bulk cargo is cargo that is not containerized, but which is otherwise packaged or bundled.

(A) To apply for an exemption, the carrier must submit a written request for exemption to the U.S. Customs and Border Protection, National Targeting Center, 1300 Pennsylvania Ave., NW., Washington, DC 20229. Until an application for an exemption is granted, the carrier must comply with the 24 hour advance cargo declaration requirement set out in paragraph (b)(2) of this section. The written request for exemption must clearly set forth information such that CBP may assess whether any security concerns exist, such as: The carrier's IRS number; the source, identity and means of the packaging or

bundling of the commodities being shipped; the ports of call, both foreign and domestic; the number of vessels the carrier uses to transport break bulk cargo, along with the names of these vessels and their International Maritime Organization numbers; and the list of the carrier's importers and shippers, identifying any who are members of C-TPAT (The Customs-Trade Partnership Against Terrorism).

(B) CBP will evaluate each application for an exemption on a case by case basis. If CBP, by written response, provides an exemption to a break bulk carrier, the exemption is only applicable under the circumstances clearly set forth in the application for exemption. If circumstances set forth in the approved application change, it will be necessary to submit a new application.

(C) CBP may rescind an exemption granted to a carrier at any time.

(c) No Passenger List or Crew List shall be required in the case of a vessel arriving from Canada, otherwise than by sea, at a port on the Great Lakes or their connecting or tributary waters.

(d)(1) The master or owner of—

(i) A vessel documented under the laws of the United States with a registry, coastwise license, or a vessel not so documented but intended to be employed in the foreign, or coastwise trade, or

(ii) A documented vessel with a fishery license endorsement which has a permit to touch and trade (see §4.15) or a vessel with a fishery license endorsement lacking a permit to touch and trade but intended to engage in trade—

at the port of first arrival from a foreign country shall declare on CBP Form 226 any equipment, repair parts, or materials purchased for the vessel, or any expense for repairs incurred, outside the United States, within the purview of section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466). If no equipment, repair parts, or materials have been purchased, or repairs made, a declaration to that effect shall be made on CBP Form 226.

(2) If the vessel is at least 500 gross tons, the declaration shall include a statement that no work in the nature of a rebuilding or alteration which might give rise to a reasonable belief that the vessel may have been rebuilt within the meaning of the second proviso to section 27, Merchant Marine Act, 1920, as amended (46 U.S.C. 883), has been effected which has not been either previously reported or separately reported simultaneously with the filing of such declaration. The port director shall notify the U.S. Coast Guard vessel documentation officer at the home port of the vessel of any work in the nature of a rebuilding or alteration, including the construction of any major component of the hull or superstructure of the vessel, which comes to his attention unless the port director is satisfied that the owner of the vessel has filed an application for rebuilt determination as required by 46 CFR 67.27–3.

(3) The declaration shall be ready for production on demand for inspection and shall be presented as part of the original manifest when formal entry of the vessel is made.

(e) *Failure to provide manifest information; penalties/liquidated damages.* Any master who fails to provide manifest information as required by this section, or who presents or transmits electronically any document required by this section that is forged, altered or false, or who fails to present or transmit the information required by this section in a timely manner, may be liable for civil penalties as provided under 19 U.S.C. 1436, in addition to damages under the international carrier bond of $5,000 for each violation discovered. In addition, if any non-vessel operating common carrier (NVOCC) as defined in paragraph (b)(3)(ii) of this section elects to transmit cargo declaration information to CBP electronically and fails to do so in the manner and in the time period required by paragraph (b)(3)(i) of this section, or electronically transmits any false, forged or altered document, paper, cargo declaration information to CBP, such NVOCC may be liable for the payment of liquidated damages as provided in §113.64(c) of this chapter, of $5,000 for each violation discovered.

(f) *Inbound international mail shipments.* This section does not apply to the United States Postal Service's transmission of advance electronic information for inbound international

mail shipments by vessel, see § 145.74 of this chapter.

[T.D. 71–169, 36 FR 12602, July 2, 1971]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 4.7, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 4.7a Inward manifest; information required; alternative forms.

The forms designated by § 4.7(a) as comprising the inward manifest shall be completed as follows:

(a) *Ship's Stores Declaration.* Articles to be retained aboard as sea or ship's stores shall be listed on the Ship's Stores Declaration, CBP Form 1303. Less than whole packages of sea or ship's stores may be described as ''sundry small and broken stores.''

(b) *Crew's Effects Declaration. (CBP Form 1304).* (1) The declaration number of the Crew Member's Declaration, CBP Form 5129, prepared and signed by any officer or crewmember who intends to land articles in the United States, or the word ''None,'' shall be shown in item No. 7 on the Crew's Effects Declaration, CBP Form 1304 opposite the respective crewmember's name.

(2) For requirements concerning the preparation of CBP Form 5129, see subpart G of part 148 of this chapter.

(3) Any articles which are required to be manifested and are not manifested shall be subject to forfeiture and the master shall be subjected to a penalty equal to the value thereof, as provided in section 584, Tariff Act of 1930, as amended.

(c) *Cargo Declaration.* (1) The Cargo Declaration (CBP Form 1302 submitted in accordance with paragraph (b)(2) or (b)(4) of this section) must list all the inward foreign cargo on board the vessel regardless of the U.S. port of discharge, and must separately list any other foreign cargo remaining on board (''FROB''). For the purposes of this part, ''FROB'' means cargo which is laden in a foreign port, is intended for discharge in a foreign port, and remains aboard a vessel during either direct or indirect stops at one or more intervening United States ports. The block designated ''Arrival'' at the top of the form shall be checked. The name of the shipper shall be set forth in the column calling for such information and on the same line where the bill of lading is listed for that shipper's merchandise. When more than one bill of lading is listed for merchandise from the same shipper, ditto marks or the word ''ditto'' may be used to indicate the same shipper. The cargo described in column Nos. 6 and 7, and either column No. 8 *or* 9, shall refer to the respective bills of lading. Either column No. 8 *or* column No. 9 shall be used, as appropriate. The gross weight in column No. 8 shall be expressed in either pounds or kilograms. The measurement in column No. 9 shall be expressed according to the unit of measure specified in the Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202).

(2)(i) When inward foreign cargo is being shipped by container, each bill of lading shall be listed in the column headed ''B/L Nr.'' in numerical sequence according to the bill of lading number. The number of the container which contains the cargo covered by that bill of lading and the number of the container seal shall be listed in column No. 6 opposite the bill of lading number. The number of any other bill of lading for cargo in that container also shall be listed in column No. 6 immediately under the container and seal numbers. A description of the cargo shall be set forth in column No. 7 only if the covering bill of lading is listed in the column headed ''B/L Nr.''

(ii) As an alternative to the procedure described in paragraph (i), a separate list of the bills of lading covering each container on the vessel may be submitted on CBP Form 1302 or on a separate sheet. If this procedure is used:

(A) Each container number shall be listed in alphanumeric sequence by port of discharge in column No. 6 of CBP Form 1302, or on the separate sheet; and

(B) The number of each bill of lading covering cargo in a particular container, identifying the port of lading, shall be listed opposite the number of the container with that cargo in the column headed ''B/L Nr.'' if CBP Form 1302 is used, or either opposite or under the number of the container if a separate sheet is used.

(iii) All bills of lading, whether issued by a carrier, freight forwarder, or other issuer, shall contain a unique identifier consisting of up to 16 characters in length. The unique bill of lading number will be composed of two elements. The first element will be the first four characters consisting of the carrier or issuer's four digit Standard Carrier Alpha Code (SCAC) assigned to the carrier in the National Motor Freight Traffic Association, Inc., Directory of Standard Multi-Modal Carrier and Tariff Agent Codes, applicable supplements thereto and reissues thereof. The second element may be up to 12 characters in length and may be either alpha and/or numeric. The unique identifier shall not be used by the carrier, freight forwarder or issuer for another bill of lading for a period of 3 years after issuance. CBP processing of the unique identifier will be limited to checking the validity of the Standard Carrier Alpha Codes (SCAC) and ensuring that the identifier has not been duplicated within a 3-year period. Carriers and broker/importers will be responsible for reconciliation of discrepancies between cargo declarations and entries. CBP will not perform any reconciliation except in a post-audit process.

(3) For shipment of containerized or palletized cargo, CBP officers shall accept a Cargo Declaration which indicates that it has been prepared on the basis of information furnished by the shipper. The use of words of qualification shall not limit the responsibility of a master to submit accurate Cargo Declarations or qualify the oath taken by the master as to the accuracy of his declaration.

(i) If Cargo Declaration covers only containerized or palletized cargo, the following statement may be placed on the declaration:

> The information appearing on the declaration relating to the quantity and description of the cargo is in each instance based on the shipper's load and count. I have no knowledge or information which would lead me to believe or to suspect that the information furnished by the shipper is incomplete, inaccurate, or false in any way.

(ii) If the Cargo Declaration covers conventional cargo and containerized or palletized cargo, or both, the use of the abbreviation ''SLAC'' for ''shipper's load and count,'' or an appropriate abbreviation if similar words are used, is approved: *Provided*, That abbreviation is placed next to each containerized or palletized shipment on the declaration and the following statement is placed on the delaration:

> The information appearing on this declaration relating to the quantity and description of cargo preceded by the abbreviation ''SLAC'' is in each instance based on the shipper's load and count. I have no information which would lead me to believe or to suspect that the information furnished by the shipper is incomplete, inaccurate, or false in any way.

(iii) The statements specified in paragraphs (c)(3) (i) and (ii) of this section shall be placed on the last page of the Cargo Declaration. Words similar to ''the shipper's load and count'' may be substituted for those words in the statements. Vague expressions such as ''said to contain'' or ''accepted as containing'' are not acceptable. The use of an asterisk or other character instead of appropriate abbreviations, such as ''SLAC'', is not acceptable.

(4) In addition to the cargo declaration information required in paragraphs (c)(1)–(c)(3) of this section, for all inward foreign cargo, the Cargo Declaration, must state the following:

(i) The last foreign port before the vessel departs for the United States;

(ii) The carrier SCAC code (the unique Standard Carrier Alpha Code assigned for each carrier; see paragraph (c)(2)(iii) of this section);

(iii) The carrier-assigned voyage number;

(iv) The date the vessel is scheduled to arrive at the first U.S. port in CBP territory;

(v) The numbers and quantities from the carrier's ocean bills of lading, either master or house, as applicable (this means that the carrier must transmit the quantity of the lowest external packaging unit; containers and pallets are not acceptable manifested quantities; for example, a container containing 10 pallets with 200 cartons should be manifested as 200 cartons);

(vi) The first foreign port where the carrier takes possession of the cargo destined to the United States;

(vii) A precise description (or the Harmonized Tariff Schedule (HTS) numbers to the 6-digit level under which the cargo is classified if that information is received from the shipper) and weight of the cargo or, for a sealed container, the shipper's declared description and weight of the cargo. Generic descriptions, specifically those such as ''FAK'' (''freight of all kinds''), ''general cargo'', and ''STC'' (''said to contain'') are not acceptable;

(viii) The shipper's complete name and address, or identification number, from all bills of lading. (At the master bill level, for consolidated shipments, the identity of the Non Vessel Operating Common Carrier (NVOCC), freight forwarder, container station or other carrier is sufficient; for non-consolidated shipments, and for each house bill in a consolidated shipment, the identity of the foreign vendor, supplier, manufacturer, or other similar party is acceptable (and the address of the foreign vendor, etc., must be a foreign address); by contrast, the identity of the carrier, NVOCC, freight forwarder or consolidator is not acceptable; the identification number will be a unique number assigned by CBP upon the implementation of the Automated Commercial Environment);

(ix) The complete name and address of the consignee, or identification number, from all bills of lading. (For consolidated shipments, at the master bill level, the NVOCC, freight forwarder, container station or other carrier may be listed as the consignee. For non-consolidated shipments, and for each house bill in a consolidated shipment, the consignee is the party to whom the cargo will be delivered in the United States, with the exception of ''FROB'' (foreign cargo remaining on board). However, in the case of cargo shipped ''to order of [a named party],'' the carrier must report this named ''to order'' party as the consignee; and, if there is any other commercial party listed in the bill of lading for delivery or contact purposes, the carrier must also report this other commercial party's identity and contact information (address) in the ''Notify Party'' field of the advance electronic data transmission to CBP, to the extent that the CBP-approved electronic data interchange system is capable of receiving this data. The identification number will be a unique number assigned by CBP upon implementation of the Automated Commercial Environment);

(x) The vessel name, country of documentation, and official vessel number. (The vessel number is the International Maritime Organization number assigned to the vessel);

(xi) The foreign port where the cargo is laden on board;

(xii) Internationally recognized hazardous material code when such materials are being shipped;

(xiii) Container numbers (for containerized shipments);

(xiv) The seal numbers for all seals affixed to containers; and

(xv) Date of departure from foreign, as reflected in the vessel log (this element relates to the departure of the vessel from the foreign port with respect to which the advance cargo declaration is filed (see § 4.7(b)(2) or § 4.7(b)(4)); the time frame for reporting this data element will be either:

(A) No later than 24 hours after departure from the foreign port of lading, for those vessels that will arrive in the United States more than 24 hours after sailing from that foreign port; or

(B) No later than the presentation of the permit to unlade (CBP Form 3171, or electronic equivalent), for those vessels that will arrive less than 24 hours after sailing from the foreign port of lading); and

(xvi) Time of departure from foreign, as reflected in the vessel log (see § 4.7a(c)(4)(xv) for the applicable foreign port and the time frame within which this data element must be reported to CBP).

(5) Unaccompanied baggage must be listed on CBP Form 1302, or transmitted via an electronic data interchange system approved by CBP.

(d) *Crew List.* The Crew List shall be completed in accordance with § 4.7b and with the requirements of applicable Department of Homeland Security (DHS) regulations administered by CBP (8 CFR part 251).

(e) *Passenger List.* (1) The Passenger List must be completed in accordance with §§ 4.7b, 4.50, and with the requirements of applicable DHS regulations administered by CBP (8 CFR part 231).

(2) [Reserved]

(f) *Failure to provide manifest information; penalties/liquidated damages.* Any master who fails to provide manifest information as required by this section, or who presents or transmits electronically any document required by this section that is forged, altered or false, may be liable for civil penalties as provided under 19 U.S.C. 1436, in addition to damages under the international carrier bond of $5,000 for each violation discovered. In addition, if any non-vessel operating common carrier (NVOCC) as defined in §4.7(b)(3)(ii) elects to transmit cargo declaration information to CBP electronically, and fails to do so as required by this section, or transmits electronically any document required by this section that is forged, altered or false, such NVOCC may be liable for liquidated damages as provided in §113.64(c) of this chapter of $5,000 for each violation discovered.

[T.D. 71–169, 36 FR 12602, July 2, 1971]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §4.7a, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§4.7b Electronic passenger and crew arrival manifests.

(a) *Definitions.* The following definitions apply for purposes of this section:

Appropriate official. ''Appropriate official'' means the master or commanding officer, or authorized agent, owner, or consignee, of a commercial vessel; this term and the term ''carrier'' are sometimes used interchangeably.

Carrier. See ''Appropriate official.''

Commercial vessel. ''Commercial vessel'' means any civilian vessel being used to transport persons or property for compensation or hire.

Crew member. ''Crew member'' means a person serving on board a vessel in good faith in any capacity required for normal operation and service of the voyage. In addition, the definition of ''crew member'' applicable to this section should not be applied in the context of other customs laws, to the extent this definition differs from the meaning of ''crew member'' contemplated in such other customs laws.

Emergency. ''Emergency'' means, with respect to a vessel arriving at a U.S. port due to an emergency, an urgent situation due to a mechanical, medical, or security problem affecting the voyage, or to an urgent situation affecting the non-U.S. port of destination that necessitates a detour to a U.S. port.

Ferry. ''Ferry'' means any vessel which is being used to provide transportation only between places that are no more than 300 miles apart and which is being used to transport only passengers and/or vehicles, or railroad cars, which are being used, or have been used, in transporting passengers or goods.

Passenger. ''Passenger'' means any person being transported on a commercial vessel who is not a crew member.

United States. ''United States'' means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands (beginning November 28, 2009).

(b) *Electronic arrival manifest*—(1) *General requirement.* Except as provided in paragraph (c) of this section, an appropriate official of each commercial vessel arriving in the United States from any place outside the United States must transmit to Customs and Border Protection (CBP) an electronic passenger arrival manifest and an electronic crew member arrival manifest. Each electronic arrival manifest:

(i) Must be transmitted to CPB at the place and time specified in paragraph (b)(2) of this section by means of an electronic data interchange system approved by CBP. If the transmission is in US EDIFACT format, the passenger manifest and the crew member manifest must be transmitted separately; and

(ii) Must set forth the information specified in paragraph (b)(3) of this section.

(2) *Place and time for submission*—(i) *General requirement.* The appropriate official must transmit each electronic arrival manifest required under paragraph (b)(1) of this section to the CBP Data Center, CBP Headquarters:

(A) In the case of a voyage of 96 hours or more, at least 96 hours before entering the first United States port or place of destination;

(B) In the case of a voyage of less than 96 hours but at least 24 hours, prior to departure of the vessel;

(C) In the case of a voyage of less than 24 hours, at least 24 hours before entering the first U.S. port or place of destination; and

(D) In the case of a vessel that was not destined to the United States but was diverted to a U.S. port due to an emergency, before the vessel enters the U.S. port or place to which diverted; in cases of non-compliance, CBP will take into consideration that the carrier was not equipped to make the transmission and the circumstances of the emergency situation.

(ii) *Amendment of crew member manifests.* In any instance where a crew member boards the vessel after initial submission of the manifest under paragraph (b)(2)(i) of this section, the appropriate official must transmit amended manifest information to CBP reflecting the data required under paragraph (b)(3) of this section for the additional crew member. The amended manifest information must be transmitted to the CBP data Center, CBP Headquarters:

(A) If the remaining voyage time after initial submission of the manifest is 24 hours or more, at least 24 hours before entering the first U.S. port or place of destination; or

(B) In any other case, at least 12 hours before the vessel enters the first U.S. port or place of destination.

(3) *Information required.* Each electronic arrival manifest required under paragraph (b)(1) of this section must contain the following information for all passengers and crew members, except that for commercial passenger vessels, the information specified in paragraphs (b)(3)(iv), (v), (x), (xii), (xiii), (xiv), (xvi), (xviii), and (xix) of this section must be included on the manifest only on or after October 4, 2005:

(i) Full name (last, first, and, if available, middle);

(ii) Date of birth;

(iii) Gender (F = female; M = male);

(iv) Citizenship;

(v) Country of residence;

(vi) Status on board the vessel;

(vii) Travel document type (*e.g.,* P = passport, A = alien registration);

(viii) Passport number, if a passport is required;

(ix) Passport country of issuance, if a passport is required;

(x) Passport expiration date, if a passport is required;

(xi) Alien registration number, where applicable;

(xii) Address while in the United States (number and street, city, state, and zip code), except that this information is not required for U.S. citizens, lawful permanent residents, crew members, or persons who are in transit to a location outside the United States;

(xiii) Passenger Name Record locator, if available;

(xiv) Foreign port/place where transportation to the United States began (foreign port code);

(xv) Port/place of first arrival (CBP port code);

(xvi) Final foreign port/place of destination for in-transit passenger and crew member (foreign port code);

(xvii) Vessel name;

(xviii) Vessel country of registry/flag;

(xix) International Maritime Organization number or other official number of the vessel;

(xx) Voyage number (applicable only for multiple arrivals on the same calendar day); and

(xxi) Date of vessel arrival.

(c) *Exceptions.* The electronic arrival manifest requirement specified in paragraph (b) of this section is subject to the following conditions:

(1) No passenger or crew member manifest is required if the arriving commercial vessel is operating as a ferry;

(2) If the arriving commercial vessel is not transporting passengers, only a crew member manifest is required; and

(3) No passenger manifest is required for active duty U.S. military personnel onboard an arriving Department of Defense commercial chartered vessel.

(d) *Carrier responsibility for comparing information collected with travel document.* The carrier collecting the information described in paragraph (b)(3) of this section is responsible for comparing the travel document presented by the passenger or crew member with the travel document information it is transmitting to CBP in accordance with this section in order to ensure

that the information transmitted is correct, the document appears to be valid for travel to the United States, and the passenger or crew member is the person to whom the travel document was issued.

(e) *Sharing of manifest information.* Information contained in passenger and crew member manifests that is received by CBP electronically may, upon request, be shared with other Federal agencies for the purpose of protecting national security. CBP may also share such information as otherwise authorized by law.

[CBP Dec. 05–12, 70 FR 17850, Apr. 7, 2005, as amended by CBP Dec.09–02, 74 FR 2836, Jan. 16, 2009; CBP Dec. 09–14, 74 FR 25388, May 28, 2009]

§ 4.7c Vessel stow plan.

Vessel stow plan required. In addition to the advance filing requirements pursuant to §§ 4.7 and 4.7a of this part and the container status message requirements pursuant to § 4.7d of this part, for all vessels subject to § 4.7(a) of this part, except for any vessel exclusively carrying break bulk cargo or bulk cargo as prescribed in § 4.7(b)(4) of this part, the incoming carrier must submit a vessel stow plan consisting of vessel and container information as specified in paragraphs (b) and (c) of this section within the time prescribed in paragraph (a) of this section via the CBP-approved electronic data interchange system.

(a) *Time of transmission.* Customs and Border Protection (CBP) must receive the stow plan no later than 48 hours after the vessel departs from the last foreign port. For voyages less than 48 hours in duration, CBP must receive the stow plan prior to arrival at the first U.S. port.

(b) *Vessel information required to be reported.* The following information must be reported for each vessel:

(1) Vessel name (including international maritime organization (IMO) number);

(2) Vessel operator; and

(3) Voyage number.

(c) *Container information required to be reported.* The following information must be reported for each container carried on each vessel:

(1) Container operator;

(2) Equipment number;

(3) Equipment size and type;

(4) Stow position;

(5) Hazmat code (if applicable);

(6) Port of lading; and

(7) Port of discharge.

(d) *Compliance date of this section*—(1) *General.* Subject to paragraph (d)(2) of this section, all affected ocean carriers must comply with the requirements of this section on and after January 26, 2010.

(2) *Delay in compliance date of section.* CBP may, at its sole discretion, delay the general compliance date set forth in paragraph (d)(1) of this section in the event that any necessary modifications to the approved electronic data interchange system are not yet in place or for any other reason. Notice of any such delay will be provided in the FEDERAL REGISTER.

[CBP Dec. 08–46, 73 FR 71779, Nov. 25, 2008]

§ 4.7d Container status messages.

(a) *Container status messages required.* In addition to the advance filing requirements pursuant to §§ 4.7 and 4.7a of this part and the vessel stow plan requirements pursuant to § 4.7c of this part, for all containers destined to arrive within the limits of a port in the United States from a foreign port by vessel, the incoming carrier must submit messages regarding the status of the events as specified in paragraph (b) of this section if the carrier creates or collects a container status message (CSM) in its equipment tracking system reporting that event. CSMs must be transmitted to Customs and Border Protection (CBP) within the time prescribed in paragraph (c) of this section via a CBP-approved electronic data interchange system. There is no requirement that a carrier create or collect any CSMs under this paragraph that the carrier does not otherwise create or collect on its own and maintain in its electronic equipment tracking system.

(b) *Events required to be reported.* The following events must be reported if the carrier creates or collects a container status message in its equipment tracking system reporting that event:

(1) When the booking relating to a container which is destined to arrive

within the limits of a port in the United States by vessel is confirmed;

(2) When a container which is destined to arrive within the limits of a port in the United States by vessel undergoes a terminal gate inspection;

(3) When a container, which is destined to arrive within the limits of a port in the United States by vessel, arrives or departs a facility (These events take place when a container enters or exits a port, container yard, or other facility. Generally, these CSMs are referred to as ''gate-in'' and ''gate-out'' messages.);

(4) When a container, which is destined to arrive within the limits of a port in the United States by vessel, is loaded on or unloaded from a conveyance (This includes vessel, feeder vessel, barge, rail and truck movements. Generally, these CSMs are referred to as ''loaded on'' and ''unloaded from'' messages);

(5) When a vessel transporting a container, which is destined to arrive within the limits of a port in the United States by vessel, departs from or arrives at a port (These events are commonly referred to as ''vessel departure'' and ''vessel arrival'' notices);

(6) When a container which is destined to arrive within the limits of a port in the United States by vessel undergoes an intra-terminal movement;

(7) When a container which is destined to arrive within the limits of a port in the United States by vessel is ordered stuffed or stripped;

(8) When a container which is destined to arrive within the limits of a port in the United States by vessel is confirmed stuffed or stripped; and

(9) When a container which is destined to arrive within the limits of a port in the United States by vessel is stopped for heavy repair.

(c) *Time of transmission.* For each event specified in paragraph (b) of this section that has occurred, and for which the carrier creates or collects a container status message (CSM) in its equipment tracking system reporting that event, the carrier must transmit the CSM to CBP no later than 24 hours after the CSM is entered into the equipment tracking system.

(d) *Contents of report.* The report of each event must include the following:

(1) Event code being reported, as defined in the ANSI X.12 or UN EDIFACT standards;

(2) Container number;

(3) Date and time of the event being reported;

(4) Status of the container (empty or full);

(5) Location where the event took place; and

(6) Vessel identification associated with the message if the container is associated with a specific vessel.

(e) A carrier may transmit other container status messages in addition to those required pursuant to paragraph (b) of this section. By transmitting additional container status messages, the carrier authorizes Customs and Border Protection (CBP) to access and use those data.

(f) *Compliance date of this section*—(1) *General.* Subject to paragraph (f)(2) of this section, all affected ocean carriers must comply with the requirements of this section on and after January 26, 2010.

(2) *Delay in compliance date of section.* CBP may, at its sole discretion, delay the general compliance date set forth in paragraph (f)(1) of this section in the event that any necessary modifications to the approved electronic data interchange system are not yet in place or for any other reason. Notice of any such delay will be provided in the FEDERAL REGISTER.

[CBP Dec. 08–46, 73 FR 71779, Nov. 25, 2008]

§ 4.8 Preliminary entry.

(a) *Generally.* Preliminary entry allows a U.S. or foreign vessel arriving under circumstances that require it to formally enter, to commence lading and unlading operations prior to making formal entry. Preliminary entry may be accomplished electronically pursuant to an authorized electronic data interchange system, or by any other means of communication approved by the Customs and Border Protection (CBP).

(b) *Requirements and conditions.* Preliminary entry must be made in compliance with § 4.30, and may be granted prior to, at, or subsequent to arrival of the vessel. The granting of preliminary

vessel entry by Customs at or subsequent to arrival of the vessel, is conditioned upon the presentation to and acceptance by Customs of all forms, electronically or otherwise, comprising a complete manifest as provided in § 4.7, except that the Cargo Declaration, CBP Form 1302, must be presented to Customs electronically in the manner provided in § 4.7(b)(2) or (4). Vessels seeking preliminary entry in advance of arrival must do so: By presenting to Customs the electronic equivalent of a complete CBP Form 1302 (Cargo Declaration), in the manner provided in § 4.7(b)(2) or (4), showing all cargo on board the vessel; and by presenting CBP Form 3171 electronically no less than 48 hours prior to vessel arrival. The CBP Form 3171 will also serve as notice of intended date of arrival. The port director may allow for the presentation of the CBP Form 1302 and CBP Form 3171 less than 48 hours prior to arrival in order to grant advanced preliminary entry if a vessel voyage takes less than 48 hours to complete from the last foreign port to the first U.S. port, or if other reasonable circumstances warrant. Preliminary entry granted in advance of arrival will become effective upon arrival at the port granting preliminary entry. Additionally, Customs must receive confirmation of a vessel's estimated time of arrival in a manner acceptable to the port director.

[T.D. 00–4, 65 FR 2872, Jan. 19, 2000, as amended by T.D. 02–62, 67 FR 66332, Oct. 31, 2002; CBP Dec. 11–10, 76 FR 27609, May 12, 2011]

§ 4.9 Formal entry.

(a) *General.* Section 4.3 provides which vessels are subject to formal entry and where and when entry must be made. The formal entry of an American vessel is governed by section 434, Tariff Act of 1930 (19 U.S.C. 1434). The term ''American vessel'' means a vessel of the United States (see § 4.0(b)) as well as, when arriving by sea, a vessel entitled to be documented except for its size (see § 4.0(c)). The formal entry of a foreign vessel arriving within the limits of any CBP port is also governed by section 434, Tariff Act of 1930 (19 U.S.C. 1434). Alternatively, information necessary for formal entry may be transmitted electronically pursuant to a system authorized by CBP.

(b) *Procedures for American vessels.* Under certain circumstances, American vessels arriving in ports of the United States directly from other United States ports must make entry. Entry of such vessels is required when they have unentered foreign merchandise aboard. Report of arrival as provided in § 4.2 of this part, together with presenting a completed CBP Form 1300 (Vessel Entrance or Clearance Statement), satisfies all entry requirements for the subject vessels.

(c) *Delivery of foreign vessel document.* The master of any foreign vessel will exhibit the vessel's document to the port director on or before the entry of the vessel. After the net tonnage has been noted, the document may be delivered to the consul of the nation to which such vessel belongs, in which event the vessel master will certify to the port director the fact of such delivery (see section 434, Tariff Act of 1930, as amended (19 U.S.C. 1434), as applied through section 438, Tariff Act of 1930, as amended (19 U.S.C. 1438)). If not delivered to the consul, the document will be deposited in the customhouse. Whether delivered to the foreign consul or deposited at the customhouse, the document will not be delivered to the master of the foreign vessel until clearance is granted under § 4.61. It will not be lawful for any foreign consul to deliver to the master of any foreign vessel the register, or document in lieu thereof, deposited with him in accordance with the provisions of 19 U.S.C. 1434 until such master will produce to him a clearance in due form from the director of the port where such vessel has been entered. Any consul violating the provisions of this section is liable to a fine of not more than $5,000 (section 438, Tariff Act of 1930, as amended; 19 U.S.C. 1438).

(d) *Failure to make required entry; penalties.* Any master who fails to make entry as required by this section or who presents or transmits electronically any document required by this section that is forged, altered, or false, may be liable for certain civil penalties as provided under 19 U.S.C. 1436, in addition to penalties applicable under other provisions of law. Further, any vessel used in connection with any

such violation is subject to seizure and forfeiture.

[T.D. 00–4, 65 FR 2873, Jan. 19, 2000; T.D. 00–22, 65 FR 16515, Mar. 29, 2000; CBP Dec. 10–33, 75 FR 69585, Nov. 15, 2010]

§ 4.10 Request for overtime services.

Request for overtime services in connection with entry or clearance of a vessel, including the boarding of a vessel in accordance with § 4.1 shall be made on Customs Form 3171. (See § 24.16 of this chapter regarding pleasure vessels.) Such request for overtime services must specify the nature of the services desired and the exact times when they will be needed, unless a term special license (unlimited or limited to the service requested) has been issued (see § 4.30(g)) and arrangements are made locally so that the proper Customs officer will be notified during official hours in advance of the rendering of the services as to the nature of the services desired and the exact times they will be needed. Such request shall not be approved (previously issued term special licenses shall be revoked) unless the carrier complies with the provisions of paragraphs (l) and (m) of § 4.30 regarding terminal facilities and employee lists, respectively, and the required cash deposit or bond, on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter, has been received. Separate bonds shall be required if overtime services are requested by different principals.

[T.D. 72–189, 37 FR 13975, July 15, 1972, as amended by T.D. 84–213, 49 FR 41163, Oct. 19, 1984; T.D. 92–74, 57 FR 35751, Aug. 11, 1992]

§ 4.11 Sealing of stores.

Upon the arrival of a vessel from a foreign port, or a vessel engaged in the foreign trade from a domestic port, sea stores and ship's stores not required for immediate use or consumption on board while the vessel is in port and articles acquired abroad by officers and members of the crew, for which no permit to land has been issued, shall be placed under seal, unless the Customs officer is of the opinion that the circumstances do not require such action. Customs inspectors in charge of the vessel, from time to time, as in their judgment the necessity of the case requires, may issue stores from under seal for consumption on board the vessel by its passengers and crew. (See § 4.39.)

§ 4.12 Explanation of manifest discrepancy.

(a)(1) Vessel masters or agents shall notify the port director on Customs Form 5931 of shortages (merchandise manifested, but not found) or overages (merchandise found, but not manifested) of merchandise.

(2) Shortages shall be reported to the port direct by the master or agent of the vessel by endorsement on the importer's claim for shortage on Customs Form 5931 as provided for in § 158.3 of this chapter, or within 60 days after the date of entry of the vessel, whichever is later. Satisfactory evidence to support the claim of nonimportation or of proper disposition or other corrective action (see § 4.34) shall be obtained by the master or agent and shall be retained in the carrier's file for one year.

(3) Overages shall be reported to the port director within 60 days after the date of entry of the vessel by completion of a post entry or suitable explanation of corrective action (see § 4.34) on the Customs Form 5931.

(4) The port director shall immediately advise the master or agent of those discrepancies which are not reported by the master or agent. Notification may be in any appropriate manner, including the furnishing of a copy of Customs Form 5931 to the master or agent. The master or agent shall satisfactorily resolve the matter within 30 days after the date of such notification, or within 60 days after entry of the vessel, whichever is later.

(5) Unless the required notification and explanation is made timely and the port director is satisfied that the discrepancies resulted from clerical error or other mistake and that there has been no loss of revenue (and in the case of a discrepancy not initially reported by the master or agent that there was a valid reason for failing to so report), applicable penalties under section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), shall be assessed (see § 162.31 of this chapter). For purposes of this section, the term ''clerical error''

is defined as a non-negligent, inadvertent, or typographical mistake in the preparation, assembly, or submission (electronically or otherwise) of the manifest. However, repeated similar manifest discrepancies by the same parties may be deemed the result of negligence and not clerical error or other mistake. For the purpose of assessing applicable penalties, the value of the merchandise shall be determined as prescribed in §162.43 of this chapter. The fact that the master or owner had no knowledge of a discrepancy shall not relieve him from the penalty.

(b) Except as provided in paragraph (c) of this section, a correction in the manifest shall not be required in the case of bulk merchandise if the port director is satisfied that the difference between the manifested quantity and the quantity unladen, whether the difference constitutes an overage or a shortage, is an ordinary and usual difference properly attributable to absorption of moisture, temperature, faulty weighing at the port of lading, or other similar reason. A correction in the manifest shall not be required because of discrepancies between marks or numbers on packages of merchandise and the marks or numbers for the same packages as shown on the manifest of the importing vessel when the quantity and description of the merchandise in such packages are correctly given.

(c) Manifest discrepancies (shortages and overages) of petroleum and petroleum products imported in bulk shall be reported on Customs Form 5931, if the discrepancy exceeds one percent.

[T.D. 80–142, 45 FR 36383, May 30, 1980, as amended by T.D. 99–64, 64 FR 43265, Aug. 10, 1999; CBP Dec. 10–29, 75 FR 52450, Aug. 26, 2010]

§4.13 [Reserved]

§4.14 Equipment purchases for, and repairs to, American vessels.

(a) *General provisions and applicability*—(1) *General.* Under section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466), purchases for or repairs made to certain vessels while they are outside the United States are subject to declaration, entry, and payment of ad valorem duty. These requirements are effective upon the first arrival of affected vessels in the United States or Puerto Rico. The vessels subject to these requirements include those documented under the U.S. law for the foreign or coastwise trades, as well as those which were previously documented under the laws of some foreign nation or are undocumented at the time that foreign shipyard repairs are performed, but which exhibit an intent to engage in those trades under CBP interpretations. Duty is based on actual foreign cost. This includes the original foreign purchase price of articles that have been imported into the United States and are later sent abroad for use.

(2) *Expenditures not subject to declaration, entry, or duty.* The following vessel repair expenditures are not subject to declaration, entry, or duty:

(i) Expenditures made in American Samoa, the Guantanamo Bay Naval Station, Guam, Puerto Rico, or the U.S. Virgin Islands because they are considered to have been made in the United States;

(ii) Reimbursements paid to members of the regular crew of a vessel for labor expended in making repairs to vessels; and

(iii) The cost of equipment, repair parts, and materials that are installed on a vessel documented under the laws of the United States and engaged in the foreign or coasting trade, if the installation is done by members of the regular crew of such vessel while the vessel is on the high seas, in foreign waters, or in a foreign port, and does not involve foreign shipyard repairs by foreign labor.

(3) *Expenditures subject to declaration and entry but not duty.* Under separate provisions of law, the cost of labor performed, and of parts and materials produced and purchased in Israel are not subject to duty under the vessel repair statute. Additionally, expenditures made in Canada or in Mexico are not subject to any vessel repair duties. Furthermore, certain free trade agreements between the United States and other countries also may reduce the duties on vessel repair expenditures made in foreign countries that are parties to those agreements, although the final duty amount may depend on each

agreement's schedule for phasing in those reductions. In these situations and others where there is no liability for duty, it is still required, except as otherwise required by law, that all repairs and purchases be declared and entered.

(b) *Applicability to specific types of vessels*—(1) *Fishing vessels.* As provided in § 4.15, vessels documented under U.S. law with a fishery endorsement are subject to vessel repair duties for covered foreign expenditures. Undocumented American fishing vessels which are repaired, or for which parts, nets or equipment are purchased outside the U.S. are also liable for duty.

(2) *Government-owned or chartered vessels.* Vessels normally subject to the vessel repair statute because of documentation or intended use are not excused from duty liability merely because they are either owned or chartered by the U.S. Government.

(3) *Vessels continuously away for two years or longer*—(i) *Liability for expenditures throughout entire absence from U.S.* Vessels that continuously remain outside the United States for two years or longer are liable for duty on any fish nets and netting purchased at any time during the entire absence. Vessels designed and used primarily for transporting passengers or merchandise, which depart the United States for the sole purpose of obtaining equipment, parts, materials or repairs remain fully liable for duty regardless of the duration of their absence from the United States.

(ii) *Liability for expenditures made during first six months of absence.* Except as provided in paragraph (b)(3)(i) of this section, vessels that continuously remain outside the United States for two years or longer are liable for duty only on those expenditures which are made during the first six months of their absence. See paragraph (h)(3) of this section. However, even though some costs might not be dutiable because of the six-month rule, all repairs, materials, parts and equipment-related expenditures must be declared and entered.

(c) *Estimated duty deposit and bond requirements.* Generally, the person authorized to submit a vessel repair declaration and entry must either deposit or transmit estimated duties or produce evidence of a bond on CBP Form 301 at the first United States port of arrival before the vessel will be permitted to depart from that port. A continuous or single entry bond of sufficient value to cover all potential duty on the foreign repairs and purchases must be identified by surety, number and amount on the vessel repair declaration which is submitted at the port of first arrival. At the time the vessel repair entry is submitted by the vessel operator to the Vessel Repair Unit (VRU) as defined in paragraph (g) of this section, that same identifying information must be included on the entry form. Sufficiency of the amount of the bond is within the discretion of CBP at the arrival port with claims for reduction in duty liability necessarily being subject to full consideration of evidence by CBP. CBP officials at the port of arrival may consult the VRU as identified in paragraph (g) of this section or the staff of the Cargo Security, Carriers & Restricted Merchandise Branch, Office of Trade in CBP Headquarters in setting sufficient bond amounts. These duty, deposit, and bond requirements do not apply to vessels which are owned or chartered by the United States Government and are actually being operated by employees of an agency of the Government. If operated by a private party for a Federal agency under terms whereby that private party is liable under the contract for payment of the duty, there must be a deposit or a bond filed in an amount adequate to cover the estimated duty.

(d) *Declaration required.* When a vessel subject to this section first arrives in the United States following a foreign voyage, the owner, master, or authorized agent must submit a vessel repair declaration on CBP Form 226, a dual-use form used both for declaration and entry purposes, or must transmit its electronic equivalent. The declaration must be ready for presentation in the event that a CBP officer boards the vessel. If no foreign repair-related expenses were incurred, that fact must be reported either on the declaration form or by approved electronic means. The CBP port of arrival receiving either a positive or negative vessel repair declaration or electronic equivalent will immediately forward it to the VRU as

identified in paragraph (g) of this section.

(e) *Entry required.* The owner, master, or authorized representative of the owner of any vessel subject to this section for which a positive declaration has been filed must submit a vessel repair entry on CBP Form 226 or transmit its electronic equivalent. The entry must show all foreign voyage expenditures for equipment, parts of equipment, repair parts, materials and labor. The entry submission must indicate whether it provides a complete or incomplete account of covered expenditures. The entry must be presented or electronically transmitted by the vessel operator to the VRU as identified in paragraph (g) of this section, so that it is received within ten calendar days after arrival of the vessel. Claims for relief from duty should be made generally as part of the initial submission, and evidence must later be provided to support those claims. Failure to submit full supporting evidence of cost within stated time limits, including any extensions granted under this section, is considered to be a failure to enter.

(f) *Time limit for submitting evidence of cost.* A complete vessel repair entry must be supported by evidence showing the cost of each item entered. If the entry is incomplete when submitted, evidence to make it complete must be received by the VRU as identified in paragraph (g) of this section within 150 calendar days from the date of vessel arrival. That evidence must include the final cost of repairs. In the event that all final cost evidence is not furnished within 150 days, or is of doubtful authenticity, the VRU may refer the matter to U.S. Immigration and Customs Enforcement to begin procedures to obtain the needed evidence. That agency may also investigate the reason for a failure to file or for an untimely submission. Unexplained or unjustified delays in providing CBP with sufficient information to properly determine duty may result in penalty action as specified in paragraph (j) of this section.

(g) *Location and jurisdiction of vessel repair unit port of entry.* The VRU, located in New Orleans, Louisiana, processes vessel repair entries received from all United States ports of arrival.

(h) *Justifications for relief from duty.* Claims for relief from the assessment of vessel repair duties may be submitted to CBP. Relief may be sought under paragraphs (a), (d), (e), or (h) of the vessel repair statute (19 U.S.C. 1466(a), (d), (e), or (h)), each paragraph of which relates to a different type of claim as further specified in paragraphs (h)(1)–(h)(4) of this section.

(1) *Relief under 19 U.S.C. 1466(a).* Requests for relief from duty under 19 U.S.C. 1466(a) consist of claims that a foreign shipyard operation or expenditure is not considered to be a repair or purchase within the terms of the vessel repair statute or as determined under judicial or administrative interpretations. Example: a claim that the shipyard operation is a vessel modification.

(2) *Relief from duty under 19 U.S.C. 1466(d).* Requests for relief from duty under 19 U.S.C. 1466(d) consist of claims that a foreign shipyard operation or expenditure involves any of the following:

(i) *Stress of weather or other casualty.* Relief will be granted if good and sufficient evidence supports a finding that the vessel, while in the regular course of its voyage, was forced by stress of weather or other casualty, while outside the United States, to purchase such equipment or make those repairs as are necessary to secure the safety and seaworthiness of the vessel in order to enable it to reach its port of destination in the United States. For the purposes of this paragraph, a ''casualty'' does not include any purchase or repair made necessary by ordinary wear and tear, but does include the failure of a part to function if it is proven that the specific part was repaired, serviced, or replaced in the United States immediately before the start of the voyage in question, and then failed within six months of that date.

(ii) *U.S. parts installed by regular crew or residents.* Relief will be granted if equipment, parts of equipment, repair parts, or materials used on a vessel were manufactured or produced in the United States and were purchased in the United States by the owner of the vessel. It is required under the statute

that residents of the United States or members of the regular crew of the vessel perform any necessary labor in connection with such installations.

(iii) *Dunnage.* Relief will be granted if any equipment, equipment parts, materials, or labor were used for the purpose of providing dunnage for the packing or shoring of cargo, for erecting temporary bulkheads or other similar devices for the control of bulk cargo, or for temporarily preparing tanks for carrying liquid cargoes.

(3) *Relief under 19 U.S.C. 1466(e).* Requests for relief from duty under 19 U.S.C. 1466(e) relate in pertinent part to matters involving vessels normally subject to the vessel repair statute, but that continuously remain outside the United States for two years or longer. Vessels that continuously remain outside the United States for two years or longer may qualify for relief from duty on expenditures made later than the first six months of their absence. See paragraph (b)(3)(ii) of this section.

(4) *Relief under 19 U.S.C. 1466(h).* Requests for relief from duty under 19 U.S.C. 1466(h) consist of claims that a foreign shipyard operation or expenditure involves any of the following:

(i) *Expenditures on LASH barges.* Relief will be granted with respect to the cost of equipment, parts, materials, or repair labor for Lighter Aboard Ship (LASH) operations accomplished abroad.

(ii) *Certain spare repair parts or materials.* Relief will be granted with respect to the cost of spare repair parts or materials which are certified by the vessel owner or master to be for use on a cargo vessel, but only if duty was previously paid under the appropriate commodity classification(s) as found in the Harmonized Tariff Schedule of the United States when the article first entered the United States.

(iii) *Certain spare parts necessarily installed on a vessel prior to their first entry into the United States.* Relief will be granted with respect to the cost of spare parts only, which have been necessarily installed prior to their first entry into the United States with duty payment under the appropriate commodity classification(s) as found in the Harmonized Tariff Schedule of the United States.

(i) *General procedures for seeking relief*—(1) *Applications for Relief.* Relief from the assessment of vessel repair duty will not be granted unless an Application for Relief is filed with CBP. Relief will not be granted based merely upon a claim for relief made at the time of entry under paragraph (e) of this section. If relief is sought, an Application is not required to be presented in any particular format, but it must clearly present the legal basis for granting relief, as specified in paragraph (h) of this section. An Application must also state that all repair operations performed aboard a vessel during the one-year period prior to the current submission have been declared and entered. A valid Application is required to be supported by complete evidence as detailed in paragraphs (i)(1)(i) through (vi) and (i)(2) of this section. Except as further provided in this paragraph, the deadline for receipt of an Application and supporting evidence is 150 calendar days from the date that the vessel first arrived in the United States following foreign operations. Applications must be addressed and submitted by the vessel operator to the VRU and will be decided in that unit. The VRU may seek the advice of the Cargo Security, Carriers & Restricted Merchandise Branch, Office of Trade, in CBP Headquarters with regard to any specific item or issue which has not been addressed by clear precedent. If no Application is filed or if a submission which does not meet the minimal standards of an Application for Relief is received, the duty amount will be determined without regard to any potential claims for relief from duty assessment (see paragraph (h) of this section). Each Application for Relief must include copies of:

(i) Itemized bills, receipts, and invoices for items shown in paragraph (e) of this section. The cost of items for which a request for relief is made must be segregated from the cost of the other items listed in the vessel repair entry;

(ii) Photocopies of relevant parts of vessel logs, as well as of any classification society reports which detail damage and remedies;

(iii) A certification by the senior officer with personal knowledge of all relevant circumstances relating to casualty damage (time, place, cause, and nature of damage);

(iv) A certification by the senior officer with personal knowledge of all relevant circumstances relating to foreign repair expenditures (time, place, and nature of purchases and work performed);

(v) A certification by the master that casualty-related expenditures were necessary to ensure the safety and seaworthiness of the vessel in reaching its United States port of destination; and

(vi) Any permits or other documents filed with or issued by any United States Government agency other than CBP regarding the operation of the vessel that are relevant to the request for relief.

(2) *Additional evidence.* In addition, copies of any other evidence and documents the applicant may wish to provide as evidentiary support may be submitted. Elements of applications which are not supported by required evidentiary elements will be considered fully dutiable. All documents submitted must be certified by the master, owner, or authorized corporate officer to be originals or copies of originals, and if in a foreign language, they must be accompanied by an English translation, certified by the translator to be accurate. Upon receipt of an Application for Relief by the VRU within the prescribed time limits, a determination of duties owed will be made. After a decision is made on an Application for Relief by the VRU, the applicant will be notified of the right to protest any adverse decision.

(3) *Application for Relief; failure to file or denial in whole or in part.* If no Application for Relief is filed, or if a timely filed Application for Relief is denied in whole or in part, the VRU will determine the amount of duty due and issue a bill to the party who filed the vessel repair entry. If the bill is not timely paid, interest will accrue as provided in §24.3a(b)(1) of this chapter.

(4) *Administrative protest.* Following the determination of duty owing on a vessel repair entry, a protest may be filed under 19 U.S.C. 1514(a)(2) as the only and final administrative appeal. The procedures and time limits applicable to protests filed in connection with vessel repair entries are the same as those provided in part 174 of this chapter. In particular, the applicable protest period will begin on the date of the issuance of the decision giving rise to the protest as reflected on the relevant correspondence from the VRU.

(j) *Penalties*—(1) *Failure to report, enter, or pay duty.* It is a violation of the vessel repair statute if the owner or master of a vessel subject to this section willfully or knowingly neglects or fails to report, make entry, and pay duties as required; makes any false statements regarding purchases or repairs described in this section without reasonable cause to believe the truth of the statements; or aids or procures any false statements regarding any material matter without reasonable cause to believe the truth of the statement. If a violation occurs, the vessel, its tackle, apparel, and furniture, or a monetary amount up to their value as determined by CBP, is subject to seizure and forfeiture and is recoverable from the owner (see §162.72 of this chapter). The owner or master of the vessel who fails to timely pay the duty determined to be due is liable for interest as provided in §24.3a(b)(1) of this chapter.

(2) *False declaration.* If any person required to file a vessel repair declaration or entry under this section, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious or fraudulent statement, that person will be subject to the criminal penalties provided for in 18 U.S.C. 1001.

[66 FR 16397, Mar. 26, 2001, as amended at 74 FR 53651, Oct. 20, 2009; 77 FR 17332, Mar. 26, 2012; 83 FR 61320, Nov. 29, 2018; CBP Dec. 22-14, 87 FR 45648, July 29, 2022; CBP Dec. 22-19, 87 FR 50935, Aug. 19, 2022]

§4.15 Fishing vessels touching and trading at foreign places.

(a) Before any vessel documented with a fishery license endorsement shall touch and trade at a foreign port

or place, the master shall obtain from the port director a permit on Customs Form 1379 to touch and trade.

When a fishing vessel departs from the United States and there is an intent to stop at a foreign port (1) to lade vessel equipment which was preordered, (2) to purchase and lade vessel equipment, or (3) to purchase and lade vessel equipment to replace existing vessel equipment, the master of the vessel must either clear for that foreign port or obtain a permit to touch and trade, whether or not the vessel will engage in fishing on that voyage.[28] Purchases of such equipment, whether intended at the time of departure or not, are subject to declaration, entry, and payment of duty pursuant to section 466 of the Tariff Act of 1930, as amended (19 U.S.C. 1466). The duty may be remitted if it is established that the purchases resulted from stress of weather or other casualty.

(b) Upon the arrival of a documented vessel with a fishery endorsement which has put into a foreign port or place, the master shall report its arrival, make entry, and conform in all respects to the regulations applicable in the case of a vessel arriving from a foreign port.

(c) If a vessel which has been granted a permit to touch and trade arrives at a port in the United States, whether or not the vessel has touched at a foreign port or place, such permit shall forthwith be surrendered to the port director.

(d) No permit to touch and trade shall be issued to a vessel which does not have a Certificate of Documentation with a fishery license endorsement.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 77–28, 42 FR 3161, Jan. 17, 1977; T.D. 83–214, 48 FR 46512, Oct. 13, 1983; T.D. 94–24, 59 FR 13200, Mar. 21, 1994; T.D. 95–77, 60 FR 50010, Sept. 27, 1995]

[28] If such a vessel puts into a foreign port or place and only obtains bunkers, stores, or supplies suitable for a fishing voyage, it is not considered to have touched and traded there. Fish nets and netting are considered vessel equipment and not vessel supplies.

[29–61] [Reserved]

§ 4.16 [Reserved]

§ 4.17 Vessels from discriminating countries.

The prohibition against imports in, and the penalty of forfeiture of, certain vessels from countries which discriminate against American vessels provided for in subsections 2 and 3 of paragraph J, section IV, Tariff Act of 1913, as amended by the act of March 4, 1915 (19 U.S.C. 130, 131), shall be enforced only in pursuance of specific instructions issued and published from time to time by the Secretary of the Treasury or such other officer as the Secretary may designate. (See also §§ 4.20(c) and 159.42 of this chapter.)

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 73–175, 38 FR 17444, July 2, 1973]

TONNAGE TAX AND LIGHT MONEY

§ 4.20 Tonnage taxes.

(a) Except as specified in § 4.21, a regular tonnage tax or duty of 2 cents per net ton, not to exceed in the aggregate 10 cents per net ton in any 1 year, shall be imposed at each entry on all vessels which shall be entered in any port of the United States from any foreign port or place in North America, Central America, the West Indies, the Bahama Islands, the Bermuda Islands, the coast of South America bordering on the Caribbean Sea (considered to include the mouth of the Orinoco River), or the high seas adjacent to the U.S. or the above listed foreign locations, and on all vessels (except vessels of the U.S., recreational vessels, and barges, as defined in § 2101 of Title 46) that depart a U.S. port or place and return to the same port or place without being entered in the United States from another port or place, and regular tonnage tax of 6 cents per net ton, not to exceed 30 cents per net ton per annum, shall be imposed at each entry on all vessels which shall be entered in any port of the United States from any other foreign port. In determining the port of origin of a voyage to the United States and the rate of tonnage tax, the following shall be used as a guide:

(1) When the vessel has proceeded in ballast from a port to which the 6-cent rate is applicable to a port to which the 2-cent rate applies and there has

laden cargo or taken passengers, tonnage tax upon entry in the United States shall be assessed at the 2-cent rate.

(2) The same rate shall be applied in a case in which the vessel has transported cargo or passengers from a 6-cent port to a 2-cent port when all such cargo or passengers have been unladen or discharged at the 2-cent port, without regard to whether the vessel thereafter has proceeded to the United States in ballast or with cargo or passengers laden or taken on board at the 2-cent port.

(3) The 6-cent rate shall be applied when the vessel proceeds from a 2-cent port to a 6-cent port en route to the United States under circumstances similar to paragraph (a) (1) or (2) of this section.

(4) If the vessel arrives in the United States with cargo or passengers taken at two or more ports to which different rates are applicable, tonnage tax shall be collected at the higher rate.

(b) The tonnage year shall be computed from the date of the first entry of the vessel concerned, without regard to the rate of the payment made at that entry, and shall expire on the day preceding the corresponding date of the following year. There may be 5 payments at the maximum (6 cent) and 5 at the minimum (2-cent) rate during a tonnage year, so that the maximum assessment of tonnage duty may amount to 40 cent per net ton for the tonnage year of a vessel engaged in alternating trade.

(c) A vessel shall also be subject on every entry from a foreign port or place, whether or not regular tonnage tax is payable on the particular entry, to the payment of a special tonnage tax and to the payment of light money at the rates and under the circumstances specified in the following table:

Classes of vessels	Rate per net ton		
	Regular tax	Special tax	Light money
Vessels of the United States:			
1. Under provisional register, without regard to citizenship of officers	$.02 or $.06		
2. All others:			
(i) If all the officers are citizens	.02 or .06		
(ii) If any officer is not a citizen	.02 or .06	[1] 0.50	[1] .50
Undocumented vessels which are owned by citizens [2]	.02 or .06	.50	[3] .50
Foreign vessels:			
1. Of nations whose vessels are exempted from special tax or light money	.02 or .06		
2. All others:			
(i) Built in the U.S	.02 or .06	.30	.50
(ii) Not built in the U.S	.02 or .06	.50	.50
(iii) In addition to (i) or (ii) of 2., Foreign Vessels, when entering from a foreign port or place where vessels of the U.S. are not ordinarily permitted to enter and trade [3a]	.02 or .06	[4] 2.00	[4] .50

[1] This does not apply on the first arrival of a vessel in a port of the United States from a foreign or intercoastal voyage if all the officers who are not citizens are below the grade of master and are filling vacancies which occurred on the voyage.

[2] This special tax and light money do not apply if the vessel is documented as a vessel of the United States before leaving the port.

[3] This does not apply if the vessel is under a certificate of protection and the owner or master files with the port director the oath required by 46 U.S.C. App. 129. An unrecorded bill of sale is not such a document as will exempt a vessel from the payment of light money under 46 U.S.C. App. 128, and the recording of such bill of sale after the arrival of the vessel is not sufficient to relieve it from the payment of the tax.

[3a] The Democratic People's Republic of Korea (North Korea), does not ordinarily permit vessels of the United States to enter and trade.

[4] This is to be collected on each entry of a vessel from such a port or place.

(d) Tonnage tax shall be imposed upon a vessel even though she enters a port of the United States only for orders.

(e) The fact that a vessel passes through the Panama Canal does not affect the rate of tonnage tax otherwise applicable to the vessel.

(f) For the purpose of computing tonnage tax, the net tonnage of a vessel stated in the vessel's marine document shall be accepted unless (1) such statement is manifestly wrong, in which case the net tonnage shall be estimated, pending admeasurement of the vessel, or the tonnage reported for her

by any recognized classification society may be accepted, or (2) an appendix is attached to the marine document showing a net tonnage ascertained under the so-called ''British rules'' or the rules of any foreign country which have been accepted as substantially in accord with the rules of the United States, in which case the tonnage so shown may be accepted and the date the appendix was issued shall be noted on the tonnage tax certificate, Customs Form 1002, and on the Vessel Entrance or Clearance Statement, Customs Form 1300. For the purpose of computing tonnage tax on a vessel with a tonnage mark and dual tonnages, the higher of the net tonnages stated in the vessel's marine document or tonnage certificate shall be used unless the Customs officer concerned is satisfied by report of the boarding officer, statement or certificate of the master, or otherwise that the tonnage mark was not submerged at the time of arrival. Whether the vessel has a tonnage mark, and if so, whether the mark was submerged on arrival, shall be noted on Customs Form 1300 by the boarding officer.

(g) The decision of the Commissioner of Customs is the final administrative decision on any question of interpretation relating to the collection of tonnage tax or to the refund of such tax when collected erroneously or illegally, and any question of doubt shall be referred to him for instructions.

(h) Any person adversely affected by a decision of the Commissioner of Customs relating to the collection of tonnage tax, or to the refund of such tax when collected erroneously or illegally, may appeal the decision in the Court of International Trade provided that the appeal action is commenced in accordance with the rules of the Court within 2 years after the cause of action first accrues.

[28 FR 14596, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 4.20, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 4.21 Exemptions from tonnage taxes.

(a) Tonnage taxes and light money shall be suspended in whole or in part whenever the President by proclamation shall so direct.

(b) The following vessels, or vessels arriving in the circumstances as defined below, shall be exempt from tonnage tax and light money:

(1) It comes into port for bunkers (including water), sea stores, or ship's stores; transacts no other business in the port; and departs within 24 hours after its arrival.

(2) It arrives in distress, even though required to enter.

(3) It is brought into port by orders of United States naval authorities and transacts no business while in port other than the taking on of bunkers, sea stores, or ship's stores.

(4) It is a vessel of war or other vessel which is owned by, or under the complete control and management of the United States or the government of a foreign country, and which is not carrying passengers or merchandise in trade or, if in ballast, which is not arriving from a foreign port during the usual course of its employment as a vessel engaged in trade.

(5) It is a yacht or other pleasure vessel not carrying passengers or merchandise in trade.

(6) It is engaged exclusively in scientific activities.

(7) It is engaged exclusively in laying or repairing cables.

(8) It is engaged in whaling or other fisheries, even though it may have entered a foreign port for fuel or supplies, if it did not carry passengers or merchandise in trade.

(9) It is a passenger vessel making three trips or more a week between a port of the United States and a foreign port.

(10) It is used exclusively as a ferry boat, including a car ferry.

(11) It enters otherwise than by sea from a foreign port at which tonnage or lighthouse duties or equivalent taxes are not imposed on vessels of the United States (applicable only where the vessel arrives from a port in the province of Ontario, Canada).

(12) It is a coastwise-qualified vessel solely engaged in the coastwise trade (although arriving from a foreign port or place, it is engaged in the transportation of merchandise or passengers, or

the towing of a vessel other than a vessel in distress, between points in the U.S. via a foreign point) (see §§ 4.80, 4.80a, 4.80b, and 4.92).

(13) It is a vessel entering directly from the Virgin Islands (U.S.), American Samoa, the islands of Guam, Wake, Midway, Canton, or Kingman Reef, or Guantanamo Bay Naval Station.

(14) It is a vessel making regular daily trips between any port of the United States and any port in Canada wholly upon interior waters not navigable to the ocean, except that such a vessel shall pay tonnage taxes upon her first arrival in each calendar year.

(15) It is a vessel arriving at a port in the United States which, while proceeding between ports in the United States, touched at a foreign port under circumstances which would have exempted it from making entry under section 441(4), Tariff Act of 1930, as amended (19 U.S.C. 1441(4)), had it touched at a United States port.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 72–264, 37 FR 20317, Sept. 29, 1972; T.D. 75–110, 40 FR 21027, May 15, 1975; T.D. 75–206, 40 FR 34586, Aug. 18, 1975; T.D. 79–276, 44 FR 61956, Oct. 29, 1979; T.D. 83–214, 48 FR 46512, Oct. 13, 1983; T.D. 93–12, 58 FR 13197, Mar. 10, 1993; CBP Dec. 12–21, 77 FR 73308, Dec. 10, 2012]

§ 4.22 Exemptions from special tonnage taxes.

Vessels of the following nations are exempted by treaties, Presidential proclamations, or orders of the Secretary of the Treasury from the payment of any higher tonnage duties than are applicable to vessels of the United States and are exempted from the payment of light money:

Algeria
Antigua and Barbuda
Arab Republic of Egypt
Argentina
Australia
Austria
Bahamas, The
Bahrain
Bangladesh
Barbados
Belgium
Belize
Bermuda
Bolivia
Brazil
Bulgaria
Burma
Canada
Chile
Colombia
Cook Islands
Costa Rica
Cuba
Cyprus
Czechoslovakia
Denmark (including the Faeroe Islands)
Dominica
Dominican Republic
Ecuador
El Salvador
Estonia
Ethiopia
Fiji
Finland
France
Gambia, The
German Democratic Republic
German Federal Republic
Ghana
Great Britain (including the Cayman Islands)
Greece
Greenland
Guatemala
Guinea, Republic of
Guyana
Haiti
Honduras
Hong Kong
Hungarian People's Republic
Iceland
India
Indonesia
Iran
Iraq
Ireland (Eire)
Israel
Italy
Ivory Coast, Republic of
Jamaica
Japan
Kenya
Korea
Kuwait
Latvia
Lebanon
Liberia
Libya
Lithuania
Luxembourg
Malaysia
Malta
Marshall Islands, Republic of
Mauritius
Mexico
Monaco
Morocco
Nauru, Republic of
Netherlands
Netherlands Antilles
New Zealand
Nicaragua
Nigeria

Norway
Oman
Pakistan
Panama
Papua New Guinea
Paraguay
People's Republic of China
Peru
Philippines
Poland
Portugal
Qatar
Rumania
Saudi Arabia
Senegal
Singapore, Republic
Somali, Republic
Spain
Sri Lanka
St. Vincent and The Grenadines
Surinam, Republic of
Sweden
Switzerland
Syrian Arab Republic
Taiwan
Thailand
Togo
Tonga
Tunisia
Turkey
Tuvalu
Union of South Africa
Union of Soviet Socialist Republics
United Arab Emirates (Abu Dhabi, Ajman, Dubai, Fujairah, Ras Al Khaimah, Sharjah, and Umm Al Qaiwain)
Uruguay
Vanuatu, Republic of
Venezuela
Yugoslavia
Zaire

[28 FR 14596, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 4.22, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 4.23 Certificate of payment and cash receipt.

Upon each payment of tonnage tax or light money, the master of the vessel shall be given a certificate on Customs Form 1002 on which the control number of the cash receipt (Customs Form 368 or 368A) upon which payment was recorded shall be written. This certificate shall constitute the official evidence of such payment and shall be presented upon each entry during the tonnage year to establish the date of commencement of the tonnage year and to insure against overpayment. In the absence of the certificate, evidence of payment of tonnage tax shall be obtained from the port director to whom the payment was made.

[T.D. 85–71, 50 FR 15415, Apr. 18, 1985, as amended by T.D. 92–56, 57 FR 24943, June 12, 1992]

§ 4.24 Application for refund of tonnage tax.

(a) The authority to make refunds in accordance with section 26 of the Act of June 26, 1884 (46 U.S.C. 8) of regular tonnage taxes described in § 4.20(a) is delegated to the Directors of the ports where the collections were made. If any doubt exists, the case shall first be referred to Headquarters, U.S. Customs Service for advice.

(b) Each application for refund of regular or special tonnage tax or light money prepared in accordance with this section shall be filed with the Customs officer to whom payment was made. After verification of the pertinent facts asserted in the claim, the application shall be forwarded with any necessary report or recommendation to the appropriate port director. Applications for refund of special tonnage tax and light money (see § 4.20(c)) with the reports and recommendations submitted therewith shall be forwarded by the port director to the Commissioner of Customs for decision. Any refund authorized by the Port Director under paragraph (a) of this section or any refund of special tonnae tax or light money authorized by the Commissioner of Customs shall be made by the appropriate Customs officer. The records of tonnage tax shall be clearly noted to show each refund authorized.

(c) The application shall be a direct request for the refund of a definite sum, showing concisely the reasons therefor, the nationality and name of the vessel, and the date, place, and amount of each payment for which refund is requested. The application shall be made within 1 year from date of the payment. A protest against a payment shall not be accepted as an application for its refund.

(d) When the application is based upon a claim that more than five payments of regular tax at either the 2-cent or the 6-cent rate have been made during a tonnage year, the application shall be supported by a statement from

the appropriate Customs officer at the port where the application is submitted and from the appropriate Customs officer at each port at which any claimed payment was made verifying the facts and showing in each case whether refunds have been authorized.

(e) The application shall include a certificate by the owner or by the owner's agent that payment of tonnage tax at the applicable rate has been or will be made for each entry of the vessel on a voyage on which that rate is applicable before the end of the current tonnage year, exclusive of any payment which has been refunded or which may be refunded as a result of such application.

(f) The owner or operator of the vessel involved, or other party in interest, may file with the port Director a petition addressed to the Commissioner of Customs for a review of the port director's decision on an application for refund of regular tonnage tax. Such petition shall be filed in duplicate within 30 days from the date of notice of the initial decision, shall completely identify the case, and shall set forth in detail the exceptions to the decision.

[T.D. 71–274, 36 FR 21025, Nov. 3, 1971, as amended by T.D. 95–77, 60 FR 50010, Sept. 27, 1995]

LANDING AND DELIVERY OF CARGO

§4.30 Permits and special licenses for unlading and lading.

(a) Except as prescribed in paragraph (f), (g), or (k) of this section or in §123.8 of this chapter, and except in the case of a vessel exempt from entry or clearance fees under 19 U.S.C. 288, no passengers, cargo, baggage, or other article shall be unladen from a vessel which arrives directly or indirectly from any port or place outside the Customs territory of the U.S., including the adjacent waters (see §4.6 of this part), or from a vessel which transits the Panama Canal and no cargo, baggage, or other article shall be laden on a vessel destined to a port or place outside the Customs territory of the U.S., including the adjacent waters (see §4.6 of this part) if Customs supervision of such lading is required, until the port director shall have issued a permit or special license therefore on Customs Form 3171 or electronically pursuant to an authorized electronic data interchange system or other means of communication approved by the Customs Service.

(1) U.S. and foreign vessels arriving at a U.S. port directly from a foreign port or place are required to make entry, whether it be formal or, as provided in §4.8, preliminary, before the port director may issue a permit or special license to lade or unlade.

(2) U.S. vessels arriving at a U.S. port from another U.S. port at which formal entry was made may be issued a permit or special license to lade or unlade without having to make either preliminary or formal entry at the second and subsequent ports. Foreign vessels arriving at a U.S. port from another U.S. port at which formal entry was made may be issued a permit or special license to lade or unlade at the second and subsequent ports prior to formal entry without the necessity of making preliminary entry. In these circumstances, after the master has reported arrival of the vessel, the port director may issue the permit or special license or may, in his discretion, require the vessel to be boarded, the master to make an oath or affirmation to the truth of the statements contained in the vessel's manifest to the Customs officer who boards the vessel, and require delivery of the manifest prior to issuing the permit.

(b) Application for a permit or special license will be made by the master, owner, or agent of the vessel on Customs Form 3171, or electronically pursuant to an authorized electronic data interchange system or other means of communication approved by the Customs Service, and will specifically indicate the type of service desired at that time, unless a term permit or term special license has been issued. Vessels that arrive in a Customs port with more than one vessel carrier sharing or leasing space on board the vessel (such as under a vessel sharing or slot charter arrangement) are required to indicate on the CF 3171 all carriers on board the vessel and indicate whether each carrier is transmitting its cargo declaration electronically or is presenting it on the Customs Form 1302. In

the case of a term permit or term special license, upon entry of each vessel, a copy of the term permit or special license must be submitted to Customs during official hours in advance of the rendering of services so as to update the nature of the services desired and the exact times they will be needed. Permits must also be updated to reflect any other needed changes including those in the name of the vessel as well as the slot charter or vessel sharing parties. An agent of a vessel may limit his application to operations involved in the entry and unlading of the vessel or to operations involved in its lading and clearance. Such limitation will be specifically noted on the application.

(c) The request for a permit or a special license shall not be approved (previously issued term permits or special licenses shall be revoked) unless the carrier complies with the provisions of paragraphs (l) and (m) of this section regarding terminal facilities and employee lists, and the required cash deposit or bond has been filed on Customs Form 301, containing the bond conditions set forth in §113.64 of this chapter relating to international carriers.[62] When a carrier has on file a bond on Customs Form 301, containing the bond conditions set forth in §113.63 of this chapter relating to basic custodial bond conditions, no further bond shall be required solely by reason of the unlading or lading at night or on a Sunday or holiday of merchandise or baggage covered by bonded transportation entries. Separate bonds shall be required if overtime services are requested by different principals.

(d) Except as prescribed in paragraph (f) or (g) of this section, a separate application for a permit or special license shall be filed in the case of each arrival.

(e) Stevedoring companies and others concerned in lading or unlading merchandise, or in removing or otherwise securing it, shall ascertain that the applicable preliminary Customs requirements have been complied with before commencing such operation, since performance in the absence of such compliance render them severally liable to the penalties prescribed in section 453, Tariff Act of 1930, even though they may not be responsible for taking the action necessary to secure compliance.

(f) The port director may issue a term permit on Customs Form 3171, which will remain in effect until revoked by the port director, terminated by the carrier, or automatically cancelled by termination of the supporting continuous bond, to unlade merchandise, passengers, or baggage, or to lade merchandise or baggage during official hours.

(g) The port director may issue a term special license on Customs Form 3171, which will remain in effect until revoked by the port director, terminated by the carrier, or automatically cancelled by termination of the supporting continuous bond, to unlade merchandise, passengers, or baggage, or to lade merchandise or baggage during overtime hours or on a Sunday or holiday when Customs supervision is required. (See §24.16 of this chapter regarding pleasure vessels.)

(h) A special license for the unlading or lading of a vessel at night or on a Sunday or holiday shall be refused by the port director if the character of the merchandise or the conditions or facilities at the place of unlading or lading render the issuance of such special license dangerous to the revenue. In no case shall a special license for unlading or lading at night or on a Sunday or holiday be granted except on the ground of commercial necessity.

(i) The port director shall not issue a permit or special license to unlade

[62] ''Before any such special license to unlade shall be granted, the master, owner, or agent of such vessel or vehicle, or the person in charge of such vehicle, shall be required to deposit sufficient money to pay, or to give a bond in an amount to be fixed by the Secretary conditioned to pay, the compensation and expenses of the customs officers and employees assigned to duty in connection with such unlading at night or on Sunday or a holiday, in accordance with the provisions of section 5 of the act of February 13, 1911, as amended (U.S.C. 1952 edition, title 19 sec. 267). In lieu of such deposit or bond the owner or agent of any vessel or vehicle or line of vessels or vehicles may execute a bond in an amount to be fixed by the Secretary of the Treasury to cover and include the issuance of special licenses for the unlading of such vessels or vehicles for a period not to exceed one year. * * *'' (Tariff Act of 1930, section 451, as amended, 19 U.S.C. 1451)

[63–66] [Reserved]

cargo or equipment of vessels arriving directly or indirectly from any port or place outside the United States, except on compliance with one or more of the following conditions:

(1) The merchandise shall have been duly entered and permits issued; or

(2) A bond on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter relating to international carriers, or cash deposit shall have been given; or

(3) The merchandise is to be discharged into the custody of the port director as provided for in section 490(b), Tariff Act of 1930.

(j) Bonds are not required under this section for vessels owned by the United States and operated for its account.

(k) In the case of vessels of 5 net tons or over which are used exclusively as pleasure vessels and which arrive from any country, the port director in his discretion and under such conditions as he deems advisable may allow the required application for unlading passengers and baggage to be made orally, and may authorize his inspectors to grant oral permission for unlading at any time, and to grant requests on Customs Form 3171 for overtime services.

(l) A permit to unlade pursuant to this part 4 or part 122 of this chapter shall not be granted unless the port director determines that the applicant provides or the terminal at which the applicant will unlade the cargo provides (1) sufficient space, capable of being locked, sealed, or otherwise secured, for the storage immediately upon unlading of cargo whose weight-to-value ratio renders it susceptible to theft or pilferage and of packages which have been broken prior to or in the course of unlading; and (2) an adequate number of vehicles, capable of being locked, sealed, or otherwise secured, for the transportation of such cargo or packages between the point of unlading and the point of storage. A term permit to unlade shall be revoked if the port director determines subsequent to such issuance that the requirements of this paragraph have not been met.

(m) A permit to unlade pursuant to this part 4 or part 122 of this chapter shall not be granted to an importing carrier, and a term permit to unlade previously granted to such a carrier shall be revoked, (1) if such carrier, within 30 days after the date of receipt of a written demand by the port director, does not furnish a written list of the names, addresses, social security numbers, and dates and places of birth of persons it employs in connection with the unlading, storage and delivery of imported merchandise; or (2) if, having furnished such a list, the carrier does not advise the port director in writing of the names, addresses, social security numbers, and dates and places of birth of any new personnel employed in connection with the unlading, storage and delivery of imported merchandise within 10 days after such employment. If the employment of any such person is terminated, the carrier shall promptly advise the port director. For the purposes of this part, a person shall not be deemed to be employed by a carrier if he is an officer or employee of an independent contractor engaged by a carrier to load, unload, transport or otherwise handle cargo.

(n) CBP will not issue a permit to unlade before it has received the cargo declaration information pursuant to § 4.7(b)(2) or (4) of this part. In cases in which CBP does not receive complete cargo declaration information from the carrier or a NVOCC in the manner, format, and time frame required by § 4.7(b)(2) or (4), as appropriate, CBP may delay issuance of the permit to unlade the entire vessel until all required information is received. CBP may also decline to issue a permit to unlade the specific cargo for which a cargo declaration is not received in a timely manner under § 4.7(b)(2) or (4). Further, where a carrier does not transmit a cargo declaration in the manner required by § 4.7(b)(2) or (4), preliminary entry pursuant to § 4.8(b) will be denied.

[28 FR 14596, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 4.30, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 4.31 Unlading or transshipment due to casualty.

(a) When any cargo or stores of a vessel have been unladen or transshipped

at any place in the United States or its Customs waters other than a port of entry because of accident, stress of weather, or other necessity, no penalty shall be imposed under section 453 or 586(a), Tariff Act of 1930, if due notice is given to the director of the port at which the vessel thereafter first arrives and satisfactory proof is submitted to him as provided for in section 586(f), Tariff Act of 1930, as amended, regarding such accident, stress of weather, or other necessity. The port director may accept the certificates of the master and two or more officers or members of the crew of the vessel, of whom the person next to the master in command shall be one, as proof that the unlading or transshipment was necessary by reason of unavoidable cause.

(b) The port director may then permit entry of the vessel and its cargo and permit the unlading of the cargo in such place at the port as he may deem proper. Unless its transportation has been in violation of the coastwise laws, the cargo may be cleared through Customs at the port where it is discharged or forwarded to the port of original destination under an entry for immediate transportation or for transportation and exportation, as the case may be. All regulations shall apply in such cases as if the unlading and delivery took place at the port of original destination.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 95–77, 60 FR 50010, Sept. 27, 1995]

§ 4.32 Vessels in distress; landing of cargo.

(a) When a vessel from a foreign port arrives in distress at a port other than that to which it is destined, a permit to land merchandise or baggage may be issued if such action is necessary. Merchandise and baggage so unladen shall be taken into Customs custody and, if it has not been transported in violation of the coastwise laws, may be entered and disposed of in the same manner as any other imported merchandise or may be reladen without entry to be carried to its destination on the vessel from which it was unladen, subject only to charges for storage and safekeeping.

(b) A bond on Customs Form 301, containing the bond conditions set forth in §113.64 of this chapter relating to international carriers shall be given in an amount to be determined by the port director to insure the proper disposition of the cargo, whether such cargo be dutiable or free.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 84–213, 49 FR 41164, Oct. 19, 1984]

§ 4.33 Diversion of cargo.

(a) *Unlading at other than original port of destination.* A vessel may unlade cargo or baggage at an alternative port of entry to the port of original destination if:

(1) It is compelled by any cause to put into the alternative port and the director of that port issues a permit for the unlading of cargo or baggage; or

(2) As a result of an emergency existing at the port of destination, the port director authorizes the vessel to proceed in accordance with the residue cargo bond procedure to the alternative port. The owner or agent of the vessel shall apply for such authorization in writing, stating the reasons and agreeing to hold the port director and the Government harmless for the diversion.

(b) *Disposition of cargo or baggage at emergency port.* Cargo and baggage unladen at the alternative port under the circumstances set forth in paragraph (a) of this section may be:

(1) Entered in the same manner as other imported cargo or baggage;

(2) Treated as unclaimed and stored at the risk and expense of its owner; or

(3) Reladen upon the same vessel without entry, for transportation to its original destination.

(c) *Substitution of ports of discharge on manifest.* After entry, the Cargo Declaration, Customs Form 1302, of a vessel may be changed at any time to permit discharge of manifested cargo at any domestic port in lieu of any other port shown on the Cargo Declaration, if:

(1) A written application for the diversion is made on the amended Cargo Declaration by the master, owner, or agent of the vessel to the director of the port where the vessel is located, after entry of the vessel at that port;

(2) An amended Cargo Declaration, under oath, covering the cargo, which it is desired to divert, is furnished in

support of the application and is filed in such number of copies as the port director shall require for local Customs purposes; and

(3) The certified traveling manifest is not altered or added to in any way by the master, owner, or agent of the vessel. When an application under paragraph (c)(1) of this section is approved, the port director shall securely attach an approved copy of the amended manifest to the traveling manifest and shall send one copy of the amended Cargo Declaration to the director of the port where the vessel's bond was filed.

(d) *Retention of cargo on board for later return to the United States.* If, as the result of a strike or other emergency at a United States port for which inward foreign cargo is manifested, it is desired to retain the cargo on board the vessel for discharge at a foreign port but with the purpose of having the cargo returned to the United States, an application may be made by the master, owner, or agent of the vessel to amend the vessel's Cargo Declaration, Customs Form 1302, under a procedure similar to that described in paragraph (c) of this section, except that a foreign port shall be substituted for the domestic port of discharge. If the application is approved, it shall be handled in the same manner as an application filed under paragraph (c) of this section. However, before approving the application, the port director is authorized to require such bond as he deems necessary to insure that export control laws and regulations are not circumvented.

[T.D. 77–255, 42 FR 56320, Oct. 25, 1977]

§ 4.34 Prematurely discharged, overcarried, and undelivered cargo.

(a) *Prematurely landed cargo.* Upon receipt of a satisfactory written application from the owner or agent of a vessel establishing that cargo was prematurely landed and left behind by the importing vessel through error or emergency, the port director may permit inward foreign cargo remaining on the dock to be reladen on the next available vessel owned or chartered by the owner of the importing vessel for transportation to the destination shown on the Cargo Declaration, Customs Form 1302, of the first vessel, provided the importing vessel actually entered the port of destination of the prematurely landed cargo. Unless so forwarded within 30 days from the date of landing, the cargo shall be appropriately entered for Customs clearance or for forwarding in bond; otherwise, it shall be sent to general order as unclaimed. If the merchandise is so entered for Customs clearance at the port of unlading, or if it is so forwarded in bond, other than by the importing vessel or by another vessel owned or chartered by the owner of the importing vessel, representatives of the importing vessel shall file at the port of unlading a Cargo Declaration in duplicate listing the cargo. The port director shall retain the original and forward the duplicate to the director of the originally intended port of discharge.

(b) *Overcarried cargo.* Upon receipt of a satisfactory written application by the owner or agent of a vessel establishing that cargo was not landed at its destination and was overcarried to another domestic port through error or emergency, the port director may permit the cargo to be returned in the importing vessel, or in another vessel owned or chartered by the owner of the importing vessel, to the destination shown on the Cargo Declaration, Customs Form 1302, of the importing vessel, provided the importing vessel actually entered the port of destination.[67]

(c) *Inaccessibly stowed cargo.* Cargo so stowed as to be inaccessible upon arrival at destination may be retained on board, carried forward to another domestic port or ports, and returned to the port of destination in the importing vessel or in another vessel owned or chartered by the owner of the importing vessel in the same manner as other overcarried cargo.

(d) *Application for forwarding cargo.* When it is desired that prematurely landed cargo, overcarried cargo, or cargo so stowed as to be inaccessible,

[67] See § 141.69(c) of this chapter for the conditions under which such merchandise and goods removed from a port of intended entry under these or certain other circumstances may subsequently be cleared under a consumption entry which had been filed therefore before the merchandise was removed from the port of intended entry.

[68–69] [Reserved]

be forwarded to its destination by the importing vessel or by another vessel owned or chartered by the owner of the importing vessel in accordance with paragraph (a), (b), or (c) of this section, the required application shall be filed with the local director of the port of premature landing or overcarriage by the owner or agent of the vessel. The application shall be supported by a Cargo Declaration, Customs Form 1302, in such number of copies as the port director may require. Whenever practicable, the application shall be made on the face of the Cargo Declaration below the description of the merchandise. The application shall specify the vessel on which the cargo was imported, even though the forwarding to destination is by another vessel owned or chartered by the owner of the importing vessel, and all ports of departure and dates of sailing of the importing vessel. The application shall be stamped and signed to show that it has been approved.

(e) *Manifesting prematurely landed or overcarried cargo*. One copy of the Cargo Declaration, Customs Form 1302, shall be certified by Customs for use as a substitute traveling manifest for the prematurely landed or overcarried cargo being forwarded as residue cargo, whether or not the forwarding vessel is also carrying other residue cargo. If the application for forwarding is made on the Cargo Declaration, the new substitute traveling manifest shall be stamped to show the approval of the application. If the application is on a separate document, a copy thereof, stamped to show its approval, shall be attached to the substitute traveling manifest. An appropriate cross-reference shall be placed on the original traveling manifest to show that the vessel has one or more substitute traveling manifests. A permit to proceed endorsed on a Vessel Entrance or Clearance Statement, Customs Form 1300, issued to the vessel transporting the prematurely landed or overcarried cargo to its destination shall make reference to the nature of such cargo, identifying it with the importing vessel.

(f) *Residue cargo procedure*. A vessel with prematurely landed or overcarried cargo on board shall comply upon arrival at all domestic ports of call with all the requirements of part 4 relating to foreign residue cargo for domestic ports. The substitute traveling manifest, carried forward from port to port by the oncarrying vessel, shall be finally surrendered at the port where the last portion of the prematurely landed or overcarried cargo is discharged.

(g) *Cargo undelivered at foreign port and returned to the U.S.* Merchandise shipped from a domestic port, but undelivered at the foreign destination and returned, shall be manifested as ''Undelivered-to be returned to original foreign destination,'' if such a return is intended. The port director may issue a permit to retain the merchandise on board, or he may, upon written application of the steamship company, issue a permit on a Delivery Ticket, Customs Form 6043, allowing the merchandise to be transferred to another vessel for return to the original foreign destination. No charge shall be made against the bond on Customs Form 301, containing the bond conditions relating to international carriers set forth in §113.64 of this chapter. The items shall be remanifested outward and an explanatory reference of the attending circumstances and compliance with export requirements noted.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 77–255, 42 FR 56321, Oct. 25, 1977; T.D. 85–123, 50 FR 29952, July 23, 1985; T.D. 95–77, 60 FR 50010, Sept. 27, 1995; T.D. 00–22, 65 FR 16515, Mar. 29, 2000]

§ 4.35 Unlading outside port of entry.

(a) Upon written application from the interested party, the port director concerned, if he considers it necessary, may permit any vessel laden with merchandise in bulk to proceed, after entry, to any place outside the port where the vessel entered which such port director may designate for the purpose of unlading such cargo.

(b) In such case a deposit of a sum sufficient to reimburse the Government for the compensation, travel, and subsistence expenses of the officers detailed to supervise the unlading and delivery of the cargo may be required by the port director.

[28 FR 14596, Dec. 31, 1963, as amended at T.D. 95–77, 60 FR 50010, Sept. 27, 1995]

§ 4.36 Delayed discharge of cargo.

(a) When pursuant to section 457, Tariff Act of 1930, customs officers are placed on a vessel which has retained merchandise on board more than 25 days after the date of the vessel's arrival, their compensation and subsistence expenses shall be reimbursed to the Government by the owner or master.

(b) The compensation of all Customs officers and employees assigned to supervise the discharge of a cargo within the purview of section 458, Tariff Act of 1930,[70] after the expiration of 25 days after the date of the vessel's entry shall be reimbursed to the Government by the owner or master of the vessel.

(c) When cargo is manifested ''for orders'' upon the arrival of the vessel, no amendment of the manifest to show another port of discharge shall be permitted after 15 days after the date of the vessel's arrival, except as provided for in § 4.33.

(d) All reimbursements payable in accordance with this section shall be paid or secured to the port director before clearance is granted to the vessel.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 95–77, 60 FR 50010, Sept. 27, 1995; T.D. 98–74, 63 FR 51287, Sept. 25, 1998]

§ 4.37 General order.

(a) Any merchandise or baggage regularly landed but not covered by a permit for its release shall be allowed to remain at the place of unlading until the fifteenth calendar day after landing. No later than 20 calendar days after landing, the master or owner of the vessel or the agent thereof shall notify Customs of any such merchandise or baggage for which entry has not been made. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system. Failure to provide such notification may result in assessment of a monetary penalty of up to $1,000 per bill of lading against the master or owner of the vessel or the agent thereof. If the value of the merchandise on the bill is less than $1,000, the penalty shall be equal to the value of such merchandise.

(b) Any merchandise or baggage that is taken into custody from an arriving carrier by any party under a Customs-authorized permit to transfer or in-bond entry may remain in the custody of that party for 15 calendar days after receipt under such permit to transfer or 15 calendar days after arrival at the port of destination. No later than 20 calendar days after receipt under the permit to transfer or 20 calendar days after arrival under bond at the port of destination, the party shall notify Customs of any such merchandise or baggage for which entry has not been made. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system. If the party fails to notify Customs of the unentered merchandise or baggage in the allotted time, he may be liable for the payment of liquidated damages under the terms and conditions of his custodial bond (see § 113.63(c)(4) of this chapter).

(c) In addition to the notification to Customs required under paragraphs (a) and (b) of this section, the carrier (or any other party to whom custody of the unentered merchandise has been transferred by a Customs authorized permit to transfer or in-bond entry) shall provide notification of the presence of such unreleased and unentered merchandise or baggage to a bonded warehouse certified by the port director as qualified to receive general order merchandise. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system and shall be provided within the applicable 20-day period specified in paragraph (a) or (b) of this section. It shall then be the responsibility of the bonded warehouse proprietor to arrange for the transportation and storage of the merchandise

[70] ''The limitation of time for unlading shall not extend to vessels laden exclusively with merchandise in bulk consigned to one consignee and arriving at a port for orders, but if the master of such vessel requests a longer time to discharge its cargo, the compensation of the inspectors or other customs officers whose services are required in connection with the unlading shall, for every day consumed in unlading in excess of twenty-five (25) days from the date of the vessel's entry, be reimbursed by the master or owner of such vessel.'' (Tariff Act of 1930, sec. 458; 19 U.S.C. 1458)

[71–75] [Reserved]

or baggage at the risk and expense of the consignee. The arriving carrier (or other party to whom custody of the merchandise was transferred by the arriving carrier under a Customs-authorized permit to transfer or in-bond entry) is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receiptof the merchandise and its transport to the warehouse from the custody of the arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (*see* § 19.9 of this chapter). Any unentered merchandise or baggage shall remain the responsibility of the carrier, master, or person in charge of the importing vessel or the agent thereof or party to whom the merchandise has been transferred under a Customs authorized permit to transfer or in-bond entry, until it is properly transferred from his control in accordance with this paragraph. If the party to whom custody of the unentered merchandise or baggage has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to notify a Customs-approved bonded warehouse of such merchandise or baggage within the applicable 20-calendar-day period, he may be liable for the payment of liquidated damages of $1,000 per bill of lading under the terms and conditions of his international carrier or custodial bond (see §§ 113.63(b), 113.63(c) and 113.64(b) of this chapter).

(d) If a carrier or any other party to whom custody of the unentered merchandise has been transferred by means of a Customs-authorized permit to transfer or in-bond entry fails to timely relinquish custody of the merchandise to a Customs-approved bonded General Order warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) If the bonded warehouse operator fails to take possession of unentered and unreleased merchandise or baggage within five calendar days after receipt of notification of the presence of such merchandise or baggage under this section, he may be liable for the payment of liquidated damages under the terms and conditions of his custodial bond (see § 113.63(a)(1) of this chapter). If the port director finds that the warehouse operator cannot accept the goods because they are required by law to be exported or destroyed (*see* § 127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In this event, the carrier or other party will be responsible under bond for exporting or destroying the goods, as necessary (*see* §§ 113.63(c)(3) and 113.64(b) of this chapter).

(f) In ports where there is no bonded warehouse authorized to accept general order merchandise or if merchandise requires specialized storage facilities which are unavailable in a bonded facility, the port director, after having received notice of the presence of unentered merchandise or baggage in accordance with the provisions of this section, shall direct the storage of the merchandise by the carrier or by any other appropriate means.

(g) Whenever merchandise remains on board any vessel from a foreign port more than 25 days after the date on which report of arrival of such vessel was made, the port director, as prescribed in section 457, Tariff Act of 1930, as amended (19 U.S.C. 1457), may take possession of such merchandise and cause it to be unladen at the expense and risk of the owners of the merchandise. Any merchandise so unladen shall be sent forthwith by the port director to a general order warehouse and stored at the risk and expense of the owners of the merchandise.

(h) Merchandise taken into the custody of the port director pursuant to section 490(b), Tariff Act of 1930, as amended (19 U.S.C. 1490(b)), shall be sent to a general order warehouse after

1 day after the day the vessel was entered, to be held there at the risk and expense of the consignee.

[T.D. 98–74, 63 FR 51287, Sept. 25, 1998, as amended by T.D. 02–65, 67 FR 68032, Nov. 8, 2002]

§ 4.38 Release of cargo.

(a) No imported merchandise shall be released from Customs custody until a permit to release such merchandise has been granted. Such permit shall be issued by the port director only after the merchandise has been entered and, except as provided for in § 141.102(d) or part 142 of this chapter, the duties thereon, if any, have been estimated and paid. Generally, the permit shall consist of a document authorizing delivery of a particular shipment or an electronic equivalent. Alternatively, the permit may consist of a report which lists those shipments which have been authorized for release. This alternative cargo release notification may be used when the manifest is not filed by the carrier through the Automated Manifest System, the entry has been filed through the Automated Broker Interface, and Customs has approved the cargo for release without submission of paper documents after reviewing the entry data submitted electronically through ABI and its selectivity criteria (see § 143.34). The report shall be posted in a conspicuous area to which the public has access in the customhouse at the port of entry where the cargo was imported.

(1) Where the cargo arrives by vessel, the report shall consist of the following data elements:

(i) Vessel name or code, if transmitted by the entry filer;

(ii) Carrier code;

(iii) Voyage number, if transmitted by the entry filer;

(iv) Bill of lading number;

(v) Quantity released; and

(vi) Entry number (including filer code).

(2) Where the cargo arrives by air, the report shall consist of the following data elements:

(i) Air waybill number;

(ii) Quantity released;

(iii) Entry number (including filer code);

(iv) Carrier code; and

(v) Flight number, if transmitted by the entry filer.

(3) In the case of merchandise traveling via in-bond movement, the report will contain the following data elements:

(i) Immediate transportation bond number;

(ii) Carrier code;

(iii) Quantity released; and

(iv) Entry number (including filer code).

When merchandise is released without proper permit before entry has been made, the port director shall issue a written demand for redelivery. The carrier or facility operator shall redeliver the merchandise to Customs within 30 days after the demand is made. The port director may authorize unentered merchandise brought in by one carrier for the account of another carrier to be transferred within the port to the latter carrier's facility. Upon receipt of the merchandise the latter carrier assumes liability for the merchandise to the same extent as though the merchandise had arrived on its own vessel.

(b) When packages of merchandise bear marks or numbers which differ from those appearing on the Cargo Declaration, Customs Form 1302, of the importing vessel for the same packages and the importer or a receiving bonded carrier, with the concurrence of the importing carrier, makes application for their release under such marks or numbers, either for consumption or for transportation in bond under an entry filed therefor at the port of discharge from the importing vessel, the port director may approve the application upon condition that (1) the contents of the packages be identified with an invoice or transportation entry as set forth below and (2) the applicant furnish at his own expense any bonded cartage or lighterage service which the granting of the application may require. The application shall be in writing in such number of copies as may be required for local Customs purposes. Before permitting delivery of packages under such an application, the port director shall cause such examination thereof to be made as will reasonably identify the contents with the invoice filed with the consumption entry. If

the merchandise is entered for transportation in bond without the filing of an invoice, such examination shall be made as will reasonably identify the contents of the packages with the transportation entry.

(c) If the port director determines that, in a port or portion of a port, the volume of cargo handled, the incidence of theft or pilferage, or any other factor related to the protection of merchandise in Customs custody requires such measures, he shall require as a condition to the granting of a permit to release imported merchandise that the importer or his agent present to the carrier or his agent a fully executed pickup order in substantially the following format, in triplicate, to obtain delivery of any imported merchandise:

PICKUP ORDER

(Trucker name)

is authorized to pick up the merchandise indicated below.

COD ☐ Bank release ☐ Collect ☐

Broker Name and Authorized Signature (if applicable)

Marks and numbers	Pcs.	Description of goods	Entry No.	Importing carrier and AWB Number or B/L Number	Signature and date of receiving carrier	Remarks

Delivered quantities verified

Customs officer badge No.

Date

The pickup order shall contain a duly authenticated customhouse broker's signature, unless it is presented by a person properly identified as an employee or agent of the ultimate consignee. When delivered quantities are verified by a Customs officer, he shall certify all copies of the pickup order, returning one to the importer or his agent and two to the carrier making delivery.

(d) When the provisions of paragraph (c) of this section are invoked by the port director and verification of delivered quantities by Customs is required, a permit to release merchandise shall be effective as a release from Customs custody at the time that the delivery of the merchandise covered by the pickup order into the physical possession of a subsequent carrier or an importer or the agent of either is completed under the supervision of a Customs officer, and only to the extent of the actual delivery of merchandise described in such pickup order as verified by such Customs officer.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 71–39, 36 FR 1892, Feb. 3, 1971; T.D. 77–255, 42 FR 56321, Oct. 25, 1977; T.D. 91–46, 56 FR 22330, May 15, 1991; 56 FR 27559, June 14, 1991]

§ 4.39 Stores and equipment of vessels and crews' effects; unlading or lading and retention on board.

(a) The provisions of § 4.30 relating to unlading under a permit on Customs Form 3171 are applicable to the unlading of articles, other than cargo or baggage, which have been laden on a vessel outside the Customs territory of the

United States, regardless of the trade in which the vessel may be engaged at the time of unlading, except that such provisions do not apply to such articles which have already been entered.

(b) Any articles other than cargo or baggage landed for delivery for consumption in the United States shall be treated in the same manner as other imported articles. A notation as to the landing of such articles, together with the number of the entry made therefor, shall be made on the vessel's store list, but such notation shall not subject the articles to the requirement of being included in a post entry to the manifest.

(c) Bags or dunnage constituting equipment of a vessel may be landed temporarily and reladen on such vessel under Customs supervision without entry.

(d) Articles claimed to be sea or ships' stores which are in excess of the reasonable requirements of the vessel on which they are found shall be treated as cargo of such vessel.

(e) Under section 446, Tariff Act of 1930, port directors may permit narcotic drugs, except smoking opium, in reasonable quantities and properly listed as medical stores to remain on board vessels if satisfied that such drugs are adequately safeguarded and used only as medical supplies.

(f) Application for permission to transfer bunkers, stores or equipment as provided for in the proviso to section 446, Tariff Act of 1930, shall be made and the permit therefor granted on Customs Form 3171.

(g) Equipment of a vessel arriving either directly or indirectly from a foreign port or place, if in need of repairs in the United States, may be unladen from and reladen upon the same vessel under the procedures set forth in § 4.30 relating to the granting of permits and special licenses on Customs Form 3171 (CF 3171). Adequate protection of the revenue is insured under the appropriate International Carrier Bond during the period that equipment is temporarily landed for repairs (see § 113.64(b) of this chapter), and so resort to the procedures established for the temporary importation of merchandise under bond is unnecessary. Once equipment which has been unladen under the terms of a CF 3171 has been reladen on the same vessel, potential liability for that transaction existing under the bond will be extinguished.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 93–66, 58 FR 44130, Aug. 19, 1993; T.D. 00–61, 65 FR 56790, Sept. 20, 2000]

§ 4.40 Equipment, etc., from wrecked or dismantled vessels.

Ship's or sea stores, supplies, and equipment of a vessel wrecked either in the waters of the United States or outside such waters, on being recovered and brought into a United States port, and like articles landed from a vessel dismantled in a United States port shall be subject to the same Customs treatment as would apply if the articles were landed from a vessel arriving in the ordinary course of trade. Parts of the hull and fittings recovered from a vessel which arrived in the United States in the course of navigation and was wrecked in the waters of the United States or was dismantled in this country are free of duties and import taxes, but if such articles are recovered from vessels outside the waters of the United States and brought into a United States port, they shall be treated as imported merchandise.

§ 4.41 Cargo of wrecked vessel.

(a) Any cargo landed from a vessel wrecked in the waters of the United States or on the high seas shall be subject at the port of entry to the same entry requirements and privileges as the cargo of a vessel regularly arriving in the foreign trade. In lieu of a Cargo Declaration, Customs Form 1302, to cover such cargo, the owner, underwriter (if the merchandise has been abandoned to him), or the salvor of the merchandise shall make entry on Customs Form 7501, or its electronic equivalent, and any such applicant shall be regarded as the consignee of the merchandise for Customs purposes.[76]

(b) All such merchandise shall be taken into possession by the director of the port where it shall first arrive and

[76] "* * * The underwriters of abandoned merchandise and the salvors of merchandise saved from a wreck at sea or on or along a coast of the United States may be regarded as the consignees."* * * (Tariff Act of 1930, sec. 483; 19 U.S.C. 1483)

be retained in his custody pending entry. If it is not entered by the person entitled to make entry, or is not disposed of pursuant to court order, it shall be subject to sale as unclaimed merchandise.

(c) If such merchandise is from a vessel which has been sunk in waters of the United States for 2 years or more and has been abandoned by the owner, any person who has salvaged the cargo shall be permitted to enter the merchandise at the port where the vessel was wrecked free of duty upon the facts being established to the satisfaction of the director of the port of entry.[77] Any other such merchandise is subject to the same tariff classification as like merchandise regularly imported in the ordinary course of trade.

(d) If the merchandise is libeled for salvage,[78] the port director shall notify the United States attorney of the claim of the United States for duties, and request him to intervene for such duties.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 77–255, 42 FR 56321, Oct. 25, 1977; T.D. 87–75, 52 FR 20066, May 29, 1987; T.D. 95–77, 60 FR 50010, Sept. 27, 1995; T.D. 99–27, 64 FR 13675, Mar. 22, 1999; CBP Dec. 15–14, 80 FR 61283, Oct. 13, 2015]

[77] ''Whenever any vessel laden with merchandise, in whole or in part subject to duty, has been sunk in any river, harbor, bay, or waters subject to the jurisdiction of the United States, and within its limits, for the period of two years and is abandoned by the owner thereof, any person who may raise such vessel shall be permitted to bring any merchandise recovered therefrom into the port nearest to the place where such vessel was so raised free from the payment of any duty thereupon, but under such regulations as the Secretary of the Treasury may prescribe.'' (Tariff Act of 1930, sec. 310; 19 U.S.C. 1310)

[78] Salvors have an uncertain interest in the goods salved, dependent upon the decree of a competent tribunal, and have a presumptive right without such decree to possession of merchandise salved by them from abandoned wrecks. The salvors are entitled in either case to make entry of derelict or wrecked goods.

[79–103] [Reserved]

PASSENGERS ON VESSELS

§ 4.50 Passenger lists.

(a) The master of every vessel arriving at a port of the United States from a port or place outside the Customs territory (see § 4.6 of this part) and required to make entry, except a vessel arriving from Canada, otherwise than by sea, at a port on the Great Lakes, or their connections or tributary waters, shall submit passenger and crew lists, as required by § 4.7(a) of this part.

(b) A passenger within the meaning of this part is any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, or business.

(c) By the act of submitting the data elements required on CBP Form I–418 via an electronic data interchange system approved by CBP, the master certifies that CBP baggage declaration requirements have been made known to incoming passengers; that any required CBP baggage declarations have been or will simultaneously be filed as required by law and regulation with the proper CBP officer; that the responsibilities of the vessel operator have been or will be done as required by law or regulation before the proper CBP officer; and that there are no steerage passengers on board the vessel.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 71–169, 36 FR 12603, July 2, 1971; T.D. 82–145, 47 FR 35475, Aug. 16, 1982; T.D. 93–96, 58 FR 67316, Dec. 21, 1993; CBP Dec. No. 21-19, 86 FR 73631, Dec. 28, 2021]

§ 4.51 Reporting requirements for individuals arriving by vessel.

(a) *Arrival of vessel reported.* Individuals on vessels, which have reported their arrival to Customs in accordance with19 U.S.C. 1433 and § 4.2 of this part, shall remain on board until authorized by Customs to depart. Upon departing the vessel, such individuals shall immediately report to a designated Customs location together with all of their accompanying articles.

(b) *Arrival of vessel not reported.* Individuals on vessels, which have not reported their arrival to Customs in accordance with 19 U.S.C. 1433 and § 4.2 of this part, shall immediately notify Customs and report their arrival together with appropriate information

regarding the vessel, and shall present themselves and their accompanying articles at a designated Customs location.

(c) *Departure from designated Customs location.* Individuals required to report to designated Customs locations under this section shall not depart from such locations until authorized to do so by any appropriate Customs officer.

[T.D. 93–96, 58 FR 67316, Dec. 21, 1993]

§ 4.52 Penalties applicable to individuals.

Individuals violating any of the reporting requirements of § 4.51 of this part or who present any forged, altered, or false document or paper to Customs in connection with this section, may be liable for certain civil penalties, as provided under 19 U.S.C. 1459, in addition to other penalties applicable under other provisions of law. Further, if the violation of these reporting requirements is intentional, upon conviction, additional criminal penalties may be applicable, as provided by under 19 U.S.C. 1459, in addition to other penalties applicable under other provisions of law.

[T.D. 93–96, 58 FR 67317, Dec. 21, 1993; 59 FR 1918, Jan. 13, 1994]

Foreign Clearances

§ 4.60 Vessels required to clear.

(a) Unless specifically excepted by law, the following vessels must obtain clearance from CBP before departing from a port or place in the United States:

(1) All vessels departing for a foreign port or place;

(2) All foreign vessels departing for another port or place in the United States;

(3) All American vessels departing for another port or place in the United States that have foreign merchandise for which entry has not been made; and

(4) All vessels departing for points outside the territorial sea to visit a hovering vessel or to receive merchandise or passengers while outside the territorial sea, as well as foreign vessels delivering merchandise or passengers while outside the territorial sea.

(b) The following vessels are not required to clear:

(1) A documented vessel with a pleasure license endorsement or an undocumented American pleasure vessel (i.e., an undocumented vessel wholly owned by a United States citizen or citizens, whether or not it has a certificate of number issued by the State in which the vessel is principally used under 46 U.S.C. 1466–1467 and not engaged in trade nor violating the customs or navigation laws of the United States and not having visited any hovering vessel (see 19 U.S.C. 1709(d)).

(2) A vessel exempted from entry by section 441, Tariff Act of 1930. (See § 4.5.)

(3) A vessel of less than 5 net tons which departs from the United States to proceed to a contiguous country otherwise than by sea.

(c) Vessels which will merely transit the Panama Canal without transacting any business there will not be required to be cleared because of such transit.

(d) In the event that departure is delayed beyond the second day after clearance, the delay must be reported within 72 hours after clearance to the port director who will note the fact of detention on the certificate of clearance and on the official record of clearance. When the proposed voyage is canceled after clearance, the reason therefor must be reported in writing within 24 hours after such cancellation and the certificate of clearance and related papers must be surrendered.

(e) No vessel will be cleared for the high seas *except*, a vessel bound to another vessel on the high seas to—

(1) Transship export merchandise which it has transported from the U.S. to the vessel on the high seas; or

(2) Receive import merchandise from the vessel on the high seas and transport the merchandise to the U.S.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 79–276, 44 FR 61956, Oct. 29, 1979; T.D. 83–214, 48 FR 46512, Oct. 13, 1983; T.D. 85–91, 50 FR 21429, May 24, 1985; T.D. 94–24, 59 FR 13200, Mar. 21, 1994; T.D. 95–77, 60 FR 50010, Sept. 27, 1995; T.D. 00–4, 65 FR 2873, Jan. 19, 2000; CBP Dec. 08–25, 73 FR 40725, July 16, 2008; CBP Dec. 10–33, 75 FR 69585, Nov. 15, 2010]

§ 4.61 Requirements for clearance.

(a) *Application for clearance.* A clearance application for a vessel intending to depart for a foreign port must be made by filing CBP Form 1300 (Vessel Entrance or Clearance Statement) executed by the vessel master or other proper officer. The master, licensed deck officer, or purser may appear in person to clear the vessel, or the properly executed CBP Form 1300 may be delivered to the customhouse by the vessel agent or other personal representative of the master. Necessary information may also be transmitted electronically pursuant to a system authorized by CBP. Clearance will be granted by CBP either on the CBP Form 1300 or by approved electronic means. CBP port directors may permit the clearance of vessels at locations other than the customhouse, and at times outside of normal business hours. CBP may take local resources into consideration in allowing clearance to be transacted on board vessels themselves or at other mutually convenient sites and times either within or outside of port limits. CBP must be satisfied that the place designated for clearance is sufficiently under CBP control at the time of clearance, and that the expenses incurred by CBP will be reimbursed as authorized. CBP may require that advance notice of vessel departure be given prior to granting requests for optional clearance locations.

(b) *When clearance required.* Under certain circumstances, American vessels departing from ports of the United States directly for other United States ports must obtain CBP clearance. The clearance of such vessels is required when they have merchandise aboard which is being transported in-bond, or when they have unentered foreign merchandise aboard. For the purposes of the vessel clearance requirements, merchandise transported in-bond does not include bonded ship's stores or supplies. While American vessels transporting unentered foreign merchandise must fully comply with usual clearance procedures, American vessels carrying no unentered foreign merchandise but that have in-bond merchandise aboard may satisfy vessel clearance requirements by reporting intended departure within 72 hours prior thereto by any means of communication that is satisfactory to the local CBP port director, and by presenting a completed CBP Form 1300 (Vessel Entrance or Clearance Statement). Also, the CBP officer may require the production of any documents or papers deemed necessary for the proper inspection/examination of the vessel, cargo, passenger, or crew. Report of departure together with providing information to CBP as specified in this paragraph satisfies all clearance requirements for the subject vessels.

(c) *Verification of compliance.* Before clearance is granted to a vessel bound to a foreign port as provided in § 4.60 and this section, the port director will verify compliance with respect to the following matters:

(1) Accounting for inward cargo (see § 4.62).

(2) Outward Cargo Declarations; Electronic Export Information (EEI) (see § 4.63).

(3) Documentation (see § 4.0(c)).

(4) Verification of nationality and tonnage (see § 4.65).

(5) Verification of inspection (see § 4.66).

(6) Inspection under State laws (46 U.S.C. 60106).

(7) Closed ports or places (see § 4.67).

(8) Passengers (see § 4.68).

(9) Shipping articles and enforcement of Seamen's Act (see § 4.69).

(10) Medicine and slop chests.

(11) Load line regulations (see § 4.65a).

(12) Carriage of United States securities, etc. (46 U.S.C. 60109).

(13) Carriage of mail.

(14) Public Health regulations (see § 4.70).

(15) Inspection of vessels carrying livestock (see § 4.71).

(16) Inspection of meat, meat-food products, and inedible fats (see § 4.72).

(17) Neutrality exportation of arms and munitions (see § 4.73).

(18) Payment of all legal fees that have accrued on the vessel (46 U.S.C. 60107).

(19) Orders restricting shipping (see § 4.74).

(20) Estimated duties deposited or a bond given to cover duties on foreign repairs and equipment for vessels of the United States (see § 4.14).

(21) Illegal discharge of oil (see § 4.66a).

(22) Attached or arrested vessel.

(23) Immigration laws.

(24) Electronic receipt of required vessel cargo information (see § 192.14(c) of this chapter).

(d) *Vessel built for foreign account.* A new vessel built in the United States for foreign account will be cleared under a certificate of record, Coast Guard Form 1316, in lieu of a marine document.

(e) *Clearance not granted.* Clearance will not be granted to any foreign vessel using the flag of the United States or any distinctive signs or markings indicating that the vessel is an American vessel (22 U.S.C. 454(a)).

(f) *Clearance in order of itinerary.* Unless otherwise provided in this section, every vessel bound for a foreign port or ports will be cleared for a definite port or ports in the order of its itinerary, but an application to clear for a port or place for orders, that is, for instructions to masters as to destination of the vessel, may be accepted if the vessel is in ballast or if any cargo on board is to be discharged in a port of the same country as the port for which clearance is sought.

[T.D. 00–4, 65 FR 2874, Jan. 19, 2000; T.D. 00–22, 65 FR 16515, Mar. 29, 2000; CBP Dec. 03–32, 68 FR 68169, Dec. 5, 2003; CBP Dec. 17-06, 82 FR 32236, July 13, 2017]

§ 4.62 Accounting for inward cargo.

Inward cargo discrepancies shall be accounted for and adjusted by correction of the Cargo Declaration Outward With Commercial Forms, Customs Form 1302–A, but the vessel may be cleared and the adjustment deferred if the discharging officer's report has not been received. (See § 4.12.)

[T.D. 77–255, 42 FR 56322, Oct. 25, 1977, as amended by T.D. 84–193, 49 FR 35485, Sept. 10, 1984]

§ 4.63 Outward cargo declaration; Electronic Export Information (EEI).

(a) No vessel will be cleared directly for a foreign port, or for a foreign port by way of another domestic port or other domestic ports (see § 4.87(b)), unless there has been filed with the appropriate CBP officer at the port from which clearance is being sought:

(1) A Cargo Declaration Outward With Commercial Forms, CBP Form 1302A. Copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest must be attached in such manner as to constitute one document, together with a Vessel Entrance or Clearance Statement, CBP Form 1300, and EEI as are required by pertinent regulations of the Bureau of the Census, Department of Commerce; or

(2) An incomplete Cargo Declaration as provided for in § 4.75.

(b) Except as hereafter stated, the Internal Transaction Number (ITN) of the Electronic Export Information (EEI) covering each shipment for which EEI is required must be shown on the Cargo Declaration Outward With Commercial Forms, CBP Form 1302A, in the marginal column headed ''B/L No.'' If EEI is not required for a shipment, a notation must be made on the Cargo Declaration Outward With Commercial Forms (CBP Form 1302A) describing the basis for the exemption or exclusion using the reference number found in the Census Bureau's Foreign Trade Regulations (see 15 CFR part 30, appendix B) where the particular exemption or exclusion is provided.

(c) The following minimal information must be included on the Cargo Declaration Outward With Commercial Forms, CBP Form 1302A (other information required to be on a CBP Form 1302A as shown on the form itself must also be included thereon) or on attached copies of bills of lading or equivalent commercial documents:

(1) Name and address of shipper;

(2) Description of the cargo (see paragraph (d) of this section);

(3) Number of packages and gross weight (see paragraph (d) of this section);

(4) Name of vessel or carrier;

(5) Port of exit (this shall be the port where the merchandise is loaded on the vessel); and

(6) Port of destination (this shall be the foreign port of discharge of the merchandise).

(d) If the bills of lading or equivalent commercial documents attached to the CBP Form 1302A show on their face the cargo information required by columns 6, 7, and either column 8 or 9, of the

CBP Form 1302A, that information need not be shown again on the CBP Form 1302A. However, in that case, the cargo information must be incorporated by a suitable reference on the face of the CBP Form 1302A such as ''Cargo as per attached commercial documents.''

(e) For each shipment to be exported under an entry or withdrawal for exportation or for transportation and exportation, the Cargo Declaration Outward With Commercial Forms, CBP Form 1302A, or commercial document attached to the Cargo Declaration and made a part thereof in accordance with paragraph (a)(1) of this section, must clearly show for such shipment the number, date, and class of such customs entry or withdrawal (i.e., T. & E., Wd. T. & E., I. E., Wd. Ex., or Wd. T., as applicable) and the name of the port where the merchandise is laden for exportation.

(f) CBP officers will accept a Cargo Declaration Outward With Commercial Forms, CBP Form 1302A, covering containerized or palletized cargo which indicates by the use of appropriate words of qualification (see § 4.7a(c)(3)) that the declaration has been prepared on the basis of information furnished by the shipper.

[T.D. 84–193, 49 FR 35484, Sept. 10, 1984; T.D. 00–22, 65 FR 16515, Mar. 29, 2000, as amended by CBP Dec. 17-06, 82 FR 32236, July 13, 2017]

§ 4.64 Electronic passenger and crew member departure manifests.

(a) *Definitions*. The definitions contained in § 4.7b(a) also apply for purposes of this section.

(b) *Electronic departure manifest*—(1) *General requirement*. Except as provided in paragraph (c) of this section, an appropriate official of each commercial vessel departing from the United States to any port or place outside the United States must transmit to Customs and Border Protection (CBP) an electronic passenger departure manifest and an electronic crew member departure manifest. Each electronic departure manifest:

(i) Must be transmitted to CPB at the place and time specified in paragraph (b)(2) of this section by means of an electronic data interchange system approved by CBP. If the transmission is in US EDIFACT format, the passenger manifest and the crew member manifest must be transmitted separately; and

(ii) Must set forth the information specified in paragraph (b)(3) of this section.

(2) *Place and time for submission*—(i) *General requirement*. The appropriate official must transmit each electronic departure manifest required under paragraph (b)(1) of this section to the CBP Data Center, CBP Headquarters, no later than 60 minutes before the vessel departs from the United States.

(ii) *Amended crew member manifests*. If a crew member boards the vessel after submission of the manifest under paragraph (b)(2)(i) of this section, the appropriate official must transmit amended manifest information to CBP reflecting the data required under paragraph (b)(3) of this section for the additional crew member. The amended manifest information must be transmitted to the CBP Data Center, CBP Headquarters, no later than 12 hours after the vessel has departed from the United States.

(3) *Information required*. Each electronic departure manifest required under paragraph (b)(1) of this section must contain the following information for all passengers and crew members, except that the information specified in paragraphs (b)(3)(iv), (ix), (xi), (xv), and (xvi), of this section must be included on the manifest only on or after October 4, 2005:

(i) Full name (last, first, and, if available, middle);

(ii) Date of birth;

(iii) Gender (F = female; M = male);

(iv) Citizenship;

(v) Status on board the vessel;

(vi) Travel document type (*e.g.*, P = passport; A = alien registration card);

(vii) Passport number, if a passport is required;

(viii) Passport country of issuance, if a passport is required;

(ix) Passport expiration date, if a passport is required;

(x) Alien registration number, where applicable;

(xi) Passenger Name Record locator, if available;

(xii) Departure port code (CBP port code);

(xiii) Port/place of final arrival (foreign port code);

(xiv) Vessel name;

(xv) Vessel country of registry/flag;

(xvi) International Maritime Organization number or other official number of the vessel;

(xvii) Voyage number (applicable only for multiple departures on the same calendar day); and

(xviii) Date of vessel departure.

(c) *Exceptions.* The electronic departure manifest requirement specified in paragraph (b) of this section is subject to the following conditions:

(1) No passenger or crew member departure manifest is required if the departing commercial vessel is operating as a ferry;

(2) If the departing commercial vessel is not transporting passengers, only a crew member departure manifest is required;

(3) No passenger departure manifest is required for active duty U.S. military personnel on board a departing Department of Defense commercial chartered vessel.

(d) *Carrier responsibility for comparing information collected with travel document.* The carrier collecting the information described in paragraph (b)(3) of this section is responsible for comparing the travel document presented by the passenger or crew member with the travel document information it is transmitting to CBP in accordance with this section in order to ensure that the information is correct, the document appears to be valid for travel purposes, and the passenger or crew member is the person to whom the travel document was issued.

(e) *Sharing of manifest information.* Information contained in passenger and crew member manifests that is received by CBP electronically may, upon request, be shared with other Federal agencies for the purpose of protecting national security. CBP may also share such information as otherwise authorized by law.

[CBP Dec. 05–12, 70 FR 17851, Apr. 7, 2005, as amended by CBP Dec. 07–64, 72 FR 48342, Aug. 23, 2007]

§ 4.65 Verification of nationality and tonnage.

The nationality and tonnage of a vessel shall be verified by examination of its marine document. If such examination discloses that insufficient tonnage tax was collected on entry of the vessel, no clearance shall be granted until the deficiency is paid.

§ 4.65a Load lines.

(a) If a port director is notified by an officer of the United States Coast Guard that a detention order has been issued against a vessel engaged in the foreign trade under the International Voyage Load Line Act of 1973, clearance shall not be granted until the order is withdrawn.

(b) If a port director issues a detention order under the Coastwise Load Line Act, 1935, as amended, or is notified by an officer of the United States Coast Guard that a detention order has been issued against a vessel under the aforesaid Act, clearance shall not be granted until the order is withdrawn.

[T.D. 75–133, 40 FR 24518, June 9, 1975]

§ 4.66 Verification of inspection.

(a) No clearance shall be granted unless the port director is satisfied that a proper certificate of inspection is in force and the vessel is in compliance with such certificate, if the vessel is:

(1) A vessel of the United States required to be inspected as specified in Title 46, Code of Federal Regulations.

(2) A foreign vessel carrying passengers from the United States.

(b) In the case of vessels of foreign nations which are signatories of the International Convention for the Safety of Life at Sea, 1948, carrying passengers from the United States, an unexpired Certificate of Examination for Foreign Passenger Vessel, Form CG–989, or an unexpired Certificate for Foreign Vessel to Carry Persons in Addition to Crew, Form CG–3463, issued by the United States Coast Guard, may be accepted as evidence that a proper certificate of inspection is in force and the vessel is in compliance with such certificate.

(c) In the case of vessels of the United States subject to inspection proceeding to another port for repairs,

a valid Permit to Proceed to Another Port for Repairs, Form CG–948, issued by the United States Coast Guard, shall be accepted in lieu of the certificate of inspection required by this section.

[T.D. 56173, 29 FR 6681, May 22, 1964, as amended by T.D. 69–266, 34 FR 20422, Dec. 31, 1969]

§ 4.66a Illegal discharge of oil and hazardous substances.

If a port director receives a request from an officer of the U.S. Coast Guard to withhold clearance of a vessel whose owner or operator is subject to a civil penalty for discharging oil or a hazardous substance into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone in quantities determined to be harmful by appropriate authorities, such clearance shall not be granted until the port director is informed that a bond or other surety satisfactory to the Coast Guard has been filed.

[T.D. 82–28, 47 FR 5226, Feb. 4, 1982]

§ 4.66b Pollution of coastal and navigable waters.

(a) If any Customs officer has reason to believe that any refuse matter is being or has been deposited in navigable waters or any tributary of any navigable waters in violation of section 13 of the Act of March 3, 1899 (30 Stat. 1152; 33 U.S.C. 407), or oil or a hazardous substance is being or has been discharged into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone in violation of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, 1321), he shall promptly furnish to the port director a full report of the incident, together with the names of witnesses and, when practicable, a sample of the material discharged from the vessel in question.

(b) The port director shall forward this report immediately, without recommendation, to the district commander of the Coast Guard district concerned and a copy of such report shall be furnished to Headquarters, U.S. Customs Service.

[T.D. 73–18, 38 FR 1587, Jan. 16, 1973, as amended by T.D. 82–28, 47 FR 5226, Feb. 4, 1982]

§ 4.66c Oil pollution by oceangoing vessels.

(a) If a port director receives a request from a Coast Guard officer to refuse or revoke the clearance or permit to proceed of a vessel because the vessel, its owner, operator, or person in charge, is liable for a fine or civil penalty, or reasonable cause exists to believe that they may be subject to a fine or civil penalty under the provisions of 33 U.S.C. 1908 for violating the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL Protocol), the Act to Prevent Pollution from Ships, 1980 (33 U.S.C. 1901–1911), or regulations issued thereunder, such clearance or a permit to proceed shall be refused or revoked. Clearance or a permit to proceed may be granted when the port director is informed that a bond or other security satisfactory to the Coast Guard has been filed.

(b) If a port director receives a notification from a Coast Guard officer that an order has been issued to detain a vessel required to have an International Oil Pollution Prevention (IOPP) Certificate which does not have a valid certificate on board, or whose condition or whose equipment's condition does not substantially agree with the particulars of the certificate on board, or which presents an unreasonable threat of harm to the marine environment, the port director shall refuse or revoke the clearance or permit to proceed of the vessel if requested to do so by a Coast Guard officer. The port director shall not grant clearance or issue a permit to proceed to the vessel until notified by a Coast Guard officer that detention of the vessel is no longer required.

(c) If a port director receives a notification from a Coast Guard officer to detain a vessel operated under the authority of a country not a party to the MARPOL Protocol which does not have a valid certificate on board showing that the vessel has been surveyed in accordance with and complies with the

requirements of the MARPOL Protocol, or whose condition or whose equipment's condition does not substantially agree with the particulars of the certificate on board, or which presents an unreasonable threat of harm to the marine environment, the port director shall refuse or revoke the clearance or permit to proceed of the vessel if requested to do so by a Coast Guard officer. The port director shall not grant clearance or issue a permit to proceed to the vessel until notified by a Coast Guard officer that detention of the vessel is no longer required.

[T.D. 81–148, 49 FR 28695, July 16, 1984]

§ 4.67 Closed ports or places.

No foreign vessel shall be granted a clearance or permit to proceed to any port or place from which such vessels are excluded by orders or regulations of the United States Navy Department except with the prior approval of that Department.

§ 4.68 Federal Maritime Commission certificates for certain passenger vessels.

No vessel having berth or stateroom accommodations for 50 or more passengers and embarking passengers at U.S. ports will be granted a clearance at the port or place of departure from the United States unless it is established that the vessel has valid certificates issued by the Federal Maritime Commission.

[T.D. 00–4, 65 FR 2874, Jan. 19, 2000]

§ 4.69 Shipping articles.

No vessel of the U.S. on a voyage between a U.S. port and a foreign port (except a port in Canada, Mexico, or the West Indies), or if of at least 75 gross tons, on a voyage between a U.S. port on the Atlantic Ocean and a U.S. port on the Pacific Ocean, shall be granted clearance before presentation, to the appropriate Customs officer, of the shipping articles agreements, including any seaman's allotment agreement, required by 46 U.S.C. chapter 103, in the form provided for in 46 CFR 14.05–1.

[T.D. 92–52, 57 FR 23945, June 5, 1992]

§ 4.70 Public Health Service requirements.

No clearance will be granted to a vessel subject to the foreign quarantine regulations of the Public Health Service.

[T.D. 00–4, 65 FR 2874, Jan. 19, 2000]

§ 4.71 Inspection of livestock.

A proper export inspection certificate issued by the Veterinary Services, Animal and Plant Health Inspection Service, Department of Agriculture, shall be filed before the clearance of a vessel carrying horses, mules, asses, cattle, sheep, swine, or goats (9 CFR part 91)

[T.D. 79–32, 44 FR 5650, Jan. 29, 1979]

§ 4.72 Inspection of meat, meat-food products, and inedible fats.

(a) No clearance shall be granted to any vessel carrying meat or meat-food products, as defined and classified by the U.S. Department of Agriculture, Food Safety and Inspection Service, Meat and Poultry Inspection until there have been filed with the port director such copies of export certificates concerning such meat or meat-food products as are required by the pertinent regulations of the U.S. Department of Agriculture, Food Safety and Inspection Service, Meat and Poultry Inspection (9 CFR part 322). If such certificate has been obtained but is unavailable at the scheduled time of a vessel's departure, the vessel may be cleared on the basis of the receipt of a statement, under the shipper's or shipper's agent's letterhead, certifying the number of boxes, the number of pounds, the product name and the U.S. Department of Agriculture export certificate number that covers the shipment of the product. If such statement has been used as the basis for obtaining vessel clearance, the duplicate of the certificate must be filed with Customs within the time period prescribed by § 4.75.

(b) No clearance shall be granted to any vessel carrying tallow, stearin, oleo oil, or other rendered fat derived from cattle, sheep, swine, or goats for export from the United States, which has not been inspected, passed, and

marked by the United States Department of Agriculture, unless the port director is furnished with a certificate by the exporter that the article is inedible.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 78–99, 43 FR 13059, Mar. 29, 1978; T.D. 91–77, 56 FR 46114, Sept. 10, 1991;T.D. 95–54, 60 FR 35838, July 12, 1995]

§ 4.73 Neutrality; exportation of arms and munitions.

(a) Clearance shall not be granted to any vessel if the port director has reason to believe that her departure or intended voyage would be in violation of any provision of the Neutrality Act of 1939 or other neutrality law of the United States,[104] or of any regulation or instruction issued pursuant to any such law.

(b) The port director shall refuse clearance for and detain any vessel manifestly built for warlike purposes and about to depart from the United States with a cargo consisting principally of arms and munitions of war[105] when the number of men intending to sail or other circumstances render it probable that the vessel is intended to commit hostilities against the subjects, citizens, or property or any foreign country, with which the United States is at peace, until the decision of the President thereon is received, or until the owners shall have given bond or security in double the value of the vessel and its cargo that she will not be so employed.

(c) A port director shall promptly communicate all the facts to Headquarters, U.S. Customs Service, if he learns while the United States is at peace that any vessel of a belligerent power which has arrived as a merchant vessel is altering, or will attempt to alter, her status as a merchant vessel so as to become an armed vessel or an auxiliary to armed vessels of a foreign power.

(d) If a port director has reason to believe during the existence of a war to which the United States is not a party that any vessel at his port is about to carry arms, munitions, supplies, dispatches, information, or men to any warship or tender or supply ship of a belligerent nation, he shall withhold the clearance of such vessel and report the facts promptly to Headquarters, U.S. Customs Service.

§ 4.74 Transportation orders.

Clearance shall not be granted to any vessel if the port director has reason to believe that her departure or intended voyage would be in violation of any provision of any transportation order, regulation, or restriction issued under authority of the Defense Production Act of 1950 (50 U.S.C. App. 2061–2066).

§ 4.75 Incomplete manifest; incomplete or missing Electronic Export Information (EEI); bond.

(a) *Pro forma manifest.* Except as provided for in § 4.75(c), if a master desiring to clear his vessel for a foreign port does not have available for filing with the CBP port director a complete Cargo Declaration Outward with Commercial Forms, CBP Form 1302A (see § 4.63) in accordance with 46 U.S.C. 60105, or all required EEI filing citations, exclusions, and/or exemption legends (see 15 CFR 30.47), the CBP port director may accept in lieu thereof an incomplete manifest (referred to as a pro forma manifest) on the Vessel Entrance or Clearance Statement, CBP Form 1300, if there is on file in his office a bond on CBP Form 301, containing the bond conditions set forth in § 113.64 of this chapter relating to international carriers, executed by the vessel owner or other person as attorney in fact of the vessel owner. The ''Incomplete Manifest for Export'' box in item 17 of the Vessel Entrance or Clearance Statement form must be checked.

(b) *Time in which to file complete manifest and EEI.* Not later than the fourth business day after clearance from each port of lading in the vessel's itinerary, the master, or the vessel's agent on behalf of the master, must submit to the director of each port a complete Cargo Declaration Outward with Commercial Forms, CBP Form 1302A, in accordance with § 4.63, of the cargo laden at such

[104] See 18 U.S.C. 961 through 967 and 22 U.S.C. 441 through 457.

[105] Clearance for vessel shall not be denied for the sole reason that her cargo contains contraband of war.

[106–110] [Reserved]

port together with all required EEI filing citations, exclusions, and/or exemption legends for such cargo and a Vessel Entrance or Clearance Statement, CBP Form 1300. The statutory grace period of four (4) days for filing the complete manifest and missing EEI begins to run on the first day (exclusive of any day on which the U.S. port of lading is not open for marine business) following the date on which clearance is granted.

(c) *Countries for which vessels may not be cleared until complete manifests and EEI are filed.* To aid CBP in the enforcement of export laws and regulations, no vessel will be cleared for any port in the following countries until a complete outward foreign manifest and all required EEI filing citations, exclusions, and/or exemption legends have been filed with the port director:

Albania
Bulgaria
Cambodia
China, People's Republic of
Cuba
Czechoslovakia
Estonia
German Democratic Republic (Soviet Zone of Germany and Soviet Zone sector of Berlin)
Hungary
Iran
Iraq
Laos
Latvia
Libya
Lithuania
Mongolian People's Republic
North Korea
Polish People's Republic (Including Danzig)
Rumania
South Yemen
Union of Soviet Socialist Republics
Viet Nam

[T.D. 87–1, 52 FR 255, Jan. 5, 1987, as amended by T.D. 91–60, 56 FR 32085, July 15, 1991; T.D. 00–22, 65 FR 16515, Mar. 29, 2000; CBP Dec. 17-06, 82 FR 32237, July 13, 2017]

§4.76 Procedures and responsibilities of carriers filing outbound vessel manifest information via the AES.

(a) *The sea carrier's module.* The Sea Carrier's Module is a component of the Automated Export System (AES) (*see*, part 192, subpart B, of this chapter) that allows for the filing of outbound vessel manifest information electronically (*see*, 15 CFR part 30). All sea carriers are eligible to apply for participation in the Sea Carrier's Module. Application and certification procedures for AES are found at 15 CFR 30.5. A sea carrier certified to use the module that adheres to the procedures set forth in this section and the Census Bureau's Foreign Trade Regulations (15 CFR part 30) concerning the electronic submission of an outbound vessel manifest information meets the outward cargo declaration filing requirements (CF 1302–A) of §§4.63 and 4.75, except as otherwise provided in §§4.75 and 4.84.

(b) *Responsibilities.* The performance requirements and operational standards and procedures for electronic submission of outbound vessel manifest information are detailed in the AES Trade Interface Requirements (AESTIR) available on the CBP Web site, *http://www.cbp.gov*. Carriers and their agents are responsible for reporting accurate and timely information and for responding to all notifications concerning the status of their transmissions and the detention and release of freight in accordance with the procedures set forth in the AESTIR. CBP will send messages to participant carriers regarding the accuracy of their transmissions. Carriers and their agents are required to comply with the recordkeeping requirements contained at §30.10 of the Census Bureau's Foreign Trade Regulations (15 CFR 30.10) and any other applicable recordkeeping requirements. When the exporter submits Electronic Export Information (EEI) prior to departure, carriers will be responsible for annotating the manifest with the Internal Transaction Number (ITN) without change and submitting the manifest to CBP within four (4) business days after the departure of the vessel from each port unless a different time requirement is specified in §4.75 or §4.84.

(c) *Messages required to be filed within the sea carrier's module.* Participant carriers will be responsible for transmitting and responding to the following messages:

(1) *Booking.* Booking information identifies all the freight that is scheduled for export. Booking information will be transmitted to Customs via AES for each shipment as far in advance of departure as practical, but no later than seventy-two hours prior to

departure for all information available at that time. Bookings received within seventy-two hours of departure will be transmitted to Customs via AES as received;

(2) *Receipt of booking*. When the carrier receives the cargo or portion of the cargo that was booked, the carrier will inform Customs so that Customs can determine if an examination of the cargo is necessary. Customs will notify the carrier of shipments designated for examination. Customs will also notify the carrier when the shipment designated for inspection is released and may be loaded on the vessel;

(3) *Departure*. No later than the first calendar day following the actual departure of the vessel, the carrier will notify Customs of the date and time of departure; and

(4) *Manifest*. Within ten (10) calendar days after the departure of the vessel from each port, the carrier will submit the manifest information to Customs via AES for each booking loaded on the departed vessel. However, if the destination of the vessel is a foreign port listed in § 4.75(c), the carrier must transmit complete manifest information before vessel departure. Time requirements for transmission of complete manifest information for carriers destined to Puerto Rico and U.S. possessions are the same as the requirement for the submission of the complete manifest as found in § 4.84.

(d) All penalties and liquidated damages that apply to the submission of paper manifests (*see*, applicable provisions in this part) apply to the electronic submission of outbound vessel manifest information through the Sea Carrier's Module.

[T.D. 99–57, 64 FR 40986, July 28, 1999, as amended by CBP Dec. 17-06, 82 FR 32237, July 13, 2017]

COASTWISE PROCEDURE

§ 4.80 Vessels entitled to engage in coastwise trade.

(a) No vessel shall transport, either directly or by way of a foreign port, any passenger or merchandise between points in the United States embraced within the coastwise laws, including points within a harbor, or merchandise for any part of the transportation between such points, unless it is:

(1) Owned by a citizen and is so documented under the laws of the United States as to permit it to engage in the coastwise trade;

(2) Owned by a citizen, is exempt from documentation, and is entitled to or, except for its tonnage, would be entitled to be documented with a coastwise endorsement.

(3) Owned by a partnership or association in which at least a 75 percent interest is owned by such a citizen, is exempt from documentation and is entitled to or, except for its tonnage, or citizenship of its owner, or both, would be entitled to be documented for the coastwise trade. The term ''citizen'' for vessel documentation purposes, whether for an individual, partnership, or corporation owner, is defined in 46 CFR 67.3.

(b)(1) The penalty imposed for the illegal transportation of merchandise between coastwise points is forfeiture of the merchandise or, in the discretion of the port director, forfeiture of a monetary amount up to the value of the merchandise to be recovered from the consignor, seller, owner, importer, consignee, agent, or other person or persons so transporting or causing the merchandise to be transported (46 U.S.C. 55102).

(2) The penalty imposed for the unlawful transportation of passengers between coastwise points is $300 for each passenger so transported and landed on or before November 2, 2015, and $941 for each passenger so transported and landed after November 2, 2015 (46 U.S.C. 55103, as adjusted by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015).

(c) Any vessel of the United States, whether or not entitled under paragraph (a) of this section to engage in the coastwise trade, and any foreign vessel may proceed between points in the United States embraced within the coastwise laws to discharge cargo or passengers laden at a foreign port, to lade cargo or passengers for a foreign port, in ballast, or to transport certain articles in accordance with § 4.93. Cargo laden at a foreign port may be retained onboard during such movements. Furthermore, certain barges of United

States or foreign flag may transport transferred merchandise between points in the United States embraced within the coastwise laws, excluding transportation between the continental United States and a noncontiguous point in the United States embraced within the coastwise laws, in accordance with § 4.81a.

(d) No vessel owned by a corporation which is a citizen of the United States under the Act of September 2, 1958 (46 U.S.C. 12118), shall be used in any trade other than the coastwise and shall not be used in that trade unless it is properly documented for such use or is exempt from documentation and is entitled to or, except for its tonnage, would be entitled to a coastwise license. Such a vessel shall not be documented for nor engage in the foreign trade or the fisheries and shall not transport merchandise or passengers coastwise for hire except as a service for a parent or a subsidiary corporation as defined in the aforesaid Act or while under demise or bareboat charter at prevailing rates for use otherwise than in trade with noncontiguous territory of the United States to a common or contract carrier subject to part III of the Interstate Commerce Act, as amended (49 U.S.C. 901 through 923), which otherwise qualifies as a citizen of the United States under section 2 of the Shipping Act, 1916, as amended (46 U.S.C. 50501), and which is not connected, directly or indirectly, by way of ownership or control with such owning corporation.

(e) No vessel which has acquired the lawful right to engage in the coastwise trade, by virtue of having been built or documented under the laws of the United States, will have the right to engage in such trade if it:

(1) Thereafter has been sold foreign in whole or in part or placed under foreign registry, unless such vessel is 200 gross tons or less (as measured under chapter 143 of title 46, United States Code); or

(2) Has been rebuilt, unless the entire rebuilding, including the construction of any major components of the hull or superstructure of the vessel, was effected within the United States.

(f) No foreign-built vessel owned and documented as a vessel of the United States prior to February 1, 1920, by a citizen nor one owned by the United States on June 5, 1920, and sold to and owned by a citizen, shall engage in the American fisheries, but it is otherwise unlimited as to trade so long as it continues in such ownership (section 22, Merchant Marine Act, of June 5, 1920; 46 U.S.C. 13). No foreign-built vessel which is owned by a citizen, but which was not so owned and documented on February 1, 1920, or which was not owned by the United States on June 5, 1920, shall engage in the coastwise trade or the American fisheries. No foreign-built vessel which has been sold, leased, or chartered by the Secretary of Commerce to any citizen, shall engage in the American fisheries, but it is otherwise unlimited as to trade so long as it continues in such ownership, lease, or charter (section 9 of the Act of Sept. 7, 1916, as amended, 46 U.S.C. 56101 and 57109). A vessel engaged in taking out fishing parties for hire, unless it intends to proceed to a foreign port, is considered to be engaged in the coastwise trade and not the fisheries.

(g) Certain vessels not documented under the laws of the United States which are acquired by or made available to the Secretary of Commerce may be documented under section 3 of the Act of August 9, 1954 (50 U.S.C. 198). Such vessels shall not engage in the coastwise trade unless in possession of a valid unexpired permit to engage in that trade issued by the Secretary of Commerce under authority of section 3(c) of the said Act.

(h) A vessel which is at least 50 percent owned by a citizen as defined in 46 CFR subpart 68.05, and which, except for citizenship requirements, is otherwise entitled to be documented with a coastwise endorsement, may be documented with a limited coastwise endorsement, provided the vessel is owned by a not-for-profit oil spill response cooperative or by one or more members of such a cooperative who dedicate the vessel to the use of the cooperative (46 U.S.C. 12117). Notwithstanding 46 U.S.C. 55102, a vessel may be documented with such a limited endorsement even if formerly owned by a not-for-profit oil spill response cooperative or by one or more members thereof, as long as the citizenship criteria of 46 CFR subpart 68.05 are met. A vessel

so documented may operate on the navigable waters of the United States or in the Exclusive Economic Zone only for the purpose of training for oil spill cleanup operations; deploying equipment, supplies and personnel for cleanup operations; and recovering and/or transporting oil discharged in a spill. Such vessel may also engage in any other employment for which a registry or fishing endorsement is not required, and may qualify to operate for other purposes by meeting the applicable requirements of 46 CFR part 67.

(i) Any vessel, entitled to be documented and not so documented, employed in a trade for which a Certificate of Documentation is issued under the vessel documentation laws (see § 4.0(c)), other than a trade covered by a registry, is liable to a civil penalty of $500 for each port at which it arrives without the proper Certificate of Documentation on or before November 2, 2015, and $1,566 for each port at which it arrives without the proper Certificate of Documentation after November 2, 2015 (19 U.S.C. 1706a, as adjusted by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015). If such a vessel has on board any foreign merchandise (sea stores excepted), or any domestic taxable alcoholic beverages, on which the duty and taxes have not been paid or secured to be paid, the vessel and its cargo are subject to seizure and forfeiture.

[T.D. 69–266, 34 FR 20422, Dec. 31, 1969, as amended by T.D. 79–160, 44 FR 31956, June 4, 1979; T.D. 83–214, 48 FR 46512, Oct. 13, 1983; T.D. 93–78, 58 FR 50257, Sept. 27, 1993; T.D. 97–82, 62 FR 51769, Oct. 3, 1997; T.D. 03–11, 68 FR 13820, Mar. 21, 2003; CBP Dec. 08–25, 73 FR 40725, July 16, 2008; CBP Dec. 12–21, 77 FR 73308, Dec. 10, 2012; 85 FR 36479, June 17, 2020; 88 FR 2184, Jan. 13, 2023]

§ 4.80a Coastwise transportation of passengers.

(a) For the purposes of this section, the following terms will have the meaning set forth below:

(1) *Coastwise port* means a port in the U.S., its territories, or possessions embraced within the coastwise laws.

(2) *Nearby foreign port* means any foreign port in North America, Central America, the Bermuda Islands, or the West Indies (including the Bahama Islands, but not including the Leeward Islands of the Netherlands Antilles, i.e., Aruba, Bonaire, and Curacao). A port in the U.S. Virgin Islands shall be treated as a nearby foreign port.

(3) *Distant foreign port* means any foreign port that is not a nearby port.

(4) *Embark* means a passenger boarding a vessel for the duration of a specific voyage and *disembark* means a passenger leaving a vessel at the conclusion of a specific voyage. The terms *embark* and *disembark* are not applicable to a passenger going ashore temporarily at a coastwise port who reboards the vessel and departs with it on sailing from the port.

(5) *Passenger* has the meaning defined in § 4.50(b).

(b) The applicability of the coastwise law (46 U.S.C. 55103) to a vessel not qualified to engage in the coastwise trade (i.e., either a foreign-flag vessel or a U.S.-flag vessel that is foreign-built or at one time has been under foreign-flag) which embarks a passenger at a coastwise port is as follows:

(1) If the passenger is on a voyage solely to one or more coastwise ports and the passenger disembarks or goes ashore temporarily at a coastwise port, there is a violation of the coastwise law.

(2) If the passenger is on a voyage to one or more coastwise ports and a nearby foreign port or ports (but at no other foreign port) and the passenger disembarks at a coastwise port other than the port of embarkation, there is a violation of the coastwise law.

(3) If the passenger is on a voyage to one or more coastwise ports and a distant foreign port or ports (whether or not the voyage includes a nearby foreign port or ports) and the passenger disembarks at a coastwise port, there is no violation of the coastwise law provided the passenger has proceeded with the vessel to a distant foreign port.

(c) An exception to the prohibition in this section is the transportation of passengers between ports in Puerto Rico and other ports in the U.S. on passenger vessels not qualified to engage in the coastwise trade. Such transportation is permitted until there is a finding under 46 U.S.C. 55104 that a qualified U.S.-flag passenger vessel is available for such service.

(d) The owner or charterer of a foreign vessel or any other interested person may request from Headquarters, U.S. Customs and Border Protection, Attention: Cargo Security, Carriers & Immigration Branch, Office of International Trade, an advisory ruling as to whether a contemplated voyage would be considered to be coastwise transportation in violation of 46 U.S.C. 55103. Such a request shall be filed in accordance with the provisions of part 177, CBP Regulations (19 CFR part 177).

[T.D. 85–109, 50 FR 26984, July 1, 1985, as amended by T.D. 85–109, 50 FR 37519, Sept. 16, 1985; T.D. 99–27, 64 FR 13675, Mar. 22, 1999; CBP Dec. 12–21, 77 FR 73308, Dec. 10, 2012]

§ 4.80b Coastwise transportation of merchandise.

(a) *Effect of manufacturing or processing at intermediate port or place.* A coastwise transportation of merchandise takes place, within the meaning of the coastwise laws, when merchandise laden at a point embraced within the coastwise laws (''coastwise point'') is unladen at another coastwise point, regardless of the origin or ultimate destination of the merchandise. However, merchandise is not transported coastwise if at an intermediate port or place other than a coastwise point (that is at a foreign port or place, or at a port or place in a territory or possession of the United States not subject to the coastwise laws), it is manufactured or processed into a new and different product, and the new and different product thereafter is transported to a coastwise point.

(b) *Request for ruling.* Interested parties may request an advisory ruling from Headquarters, U.S. Customs and Border Protection, Attention: Cargo Security, Carriers & Immigration Branch, Office of International Trade, as to whether a specific action taken or to be taken with respect to merchandise at the intermediate port or place will result in its becoming a new and different product for purposes of this section. The request shall be filed in accordance with the provisions of part 177 of this chapter.

[T.D. 79–193, 44 FR 42178, July 19, 1979, as amended by T.D. 91–77, 56 FR 46114, Sept. 10, 1991; 56 FR 47268, Sept. 18, 1991; T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 4.81 Reports of arrivals and departures in coastwise trade.

(a) No vessel which is documented with a coastwise license or registry endorsement or is owned by a citizen and exempt from documentation, and which is in ballast or laden only with domestic products or passengers being carried only between points in the United States shall be required to report arrival or to enter when coming into one port of the United States from any other such port, except as provided for in sections 4.83 and 4.84, nor to obtain a clearance, permit to proceed, or permission to depart when going from one port in the United States to any other such port except when transporting merchandise to a port in noncontinguous territory.[111]

(b) When the facts are as above stated except that the vessel is carrying bonded merchandise, the master shall report its arrival as provided for in § 4.2.

(c) [Reserved]

(d) The traveling Crew's Effects Declaration, Customs Form 1304 referred to in § 4.85 (b), (c), and (e) shall be deposited with the port director upon arrival at each port in the United States and finally surrendered to the appropriate Customs officer or director of the port where the vessel first departs directly for a foreign port.

(e) Before any foreign vessel departs in ballast, or solely with articles to be transported in accordance with § 4.93, from any port in the United States for any other such port, the master must apply to the port director for a permit to proceed by filing a Vessel Entrance or Clearance Statement, Customs Form 1300, in duplicate. If a vessel is proceeding in ballast and therefore the Cargo Declaration (Customs Form 1302) is omitted, the words ''No merchandise on board'' shall be inserted in item 16 of the Vessel Entrance or Clearance Statement. However, articles to be transported in accordance with § 4.93 must be manifested on the Cargo Declaration, as required by § 4.93(c). Three copies of the Cargo Declaration must be filed with the port director. When the port director grants the permit by

[111] See § 4.84.

[112–114] [Reserved]

making an appropriate endorsement on the Vessel Entrance or Clearance Statement (see § 4.85(b)), the duplicate copy, together with two copies of the Cargo Declaration covering articles to be transported in accordance with § 4.93, must be returned to the master. The traveling Crew's Effects Declaration, Customs Form 1304, and all unused crewmembers' declarations on Customs Form 5129 will be placed in a sealed envelope addressed to the appropriate Customs officer at the next intended domestic port and returned to the master for delivery. The master must execute a receipt for all unused crewmembers' declarations which are returned to him. Immediately upon arrival at the next United States port the master must report his arrival to the port director. He must make entry within 48 hours by filing with the port director the permit to proceed on the Vessel Entrance or Clearance Statement received at the previous port, a newly executed Vessel Entrance or Clearance Statement, a Crew's Effects Declaration of all unentered articles acquired abroad by crewmembers which are still on board, a Ship's Stores Declaration, Customs Form 1303, in duplicate of the stores remaining on board, both copies of the Cargo Declaration covering articles transported in accordance with § 4.93, and the document of the vessel. The traveling Crew's Effects Declaration and all unused crewmembers' declarations on Customs Form 5129 returned at the prior port to the master must be delivered by him to the appropriate Customs officer.

(f) The master, licensed deck officer, or purser who enters or clears a vessel, or who obtains permission for a vessel to depart, when required under the provisions of this section or of § 4.82, § 4.84, § 4.85, § 4.87, § 4.89, or § 4.91 of the regulations of this part, may appear in person at the customhouse for that purpose, or any required oaths, related documents, and other papers properly executed by the master or other proper officer may be delivered at the customhouse by the vessel agent or other personal representative of the master.

(g) In lieu of the procedures stated in §§ 4.85 and 4.87 and at the option of the owner or operator, unmanned non-self-propelled barges specifically designed for carriage aboard a vessel and regularly carried aboard a vessel in the foreign trade, hereinafter referred to as LASH-type barges, may move under a simplified permit-to-proceed procedure as follows:

(1) At the port where a LASH-type barge begins a coastwise movement with inward foreign cargo, a permit to proceed on the Vessel Entrance or Clearance Statement, Customs Form 1300, must be obtained. A single permit to proceed may be used for all the barges proceeding to the same port of unlading in the same town. An inward foreign manifest of the cargo in each barge, destined to the port of unlading shown on the permit to proceed, must be attached to each permit. At the port of unlading of the barge, report of arrival and entry must be made immediately upon arrival to the appropriate Customs officer by presentation of the permit to proceed, manifests, and a new Vessel Entrance or Clearance Statement, Customs Form 1300. If only part of the inward foreign cargo is unladen, a new permit to proceed must be obtained and the inward foreign manifests must be attached to it.

(2) At the port where a LASH-type barge begins a coastwise movement with export cargo, a permit to proceed on the Vessel Entrance or Clearance Statement, CBP Form 1300, must be presented to the appropriate CBP officer. A single permit to proceed may be presented for all the barges proceeding from the same port of lading in the same tow. Required Electronic Export Information (EEI) for LASH-type barges must be filed at the port where the barges will be taken aboard a barge-carrying vessel. At the next port, a report of arrival must be made immediately upon arrival and entry must be made within 48 hours by presentation of the permit to proceed received upon departure from the prior port and a newly executed Vessel Entrance or Clearance Statement, CBP Form 1300.

(3) When foreign LASH-type barges are proceeding between ports of the United States under paragraph (e) of this section, a single permit to proceed may be used for all the barges proceeding to the same port in the same tow.

(4) In lieu of the master of the towing vessel executing and delivering documents required under permit-to-proceed procedures (see § 4.81(f)) at the port where a LASH-type barge begins a coastwise movement, the master of the towing vessel may designate in writing the owner or operator of the barges as his representative with authority to execute and deliver such documents at the customhouse. The owner or operator of the barges may designate representatives to perform such functions at ports or places where permit-to-proceed documents must be delivered. Documents obtained from Customs officers at one place by such a representative may be forwarded by any suitable means to the representative who must present them to Customs officers at another place, the only requirement being that the forms are properly completed and are presented within the prescribed time periods. Moreover, instead of a written designation from each master of a towing vessel, a blanket designation in writing from the owner or operator of one or more towing vessels on behalf of masters of their towing vessels, designating the owner or operator of the barges to be the representative of the master for purposes of executing and delivering permit-to-proceed documents, is authorized.

(5) [Reserved]

(6) When a LASH-type barge is proceeding to a place in the United States that is not a port of entry, § 101.4(a) and (b) of this chapter are applicable. No merchandise shall be unladen from a LASH-type barge until a permit or special license therefor is obtained in accordance with § 4.30 except that a single permit to unlade may be used for all barges that arrived at the port of unlading in the same tow.

[28 FR 14596, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 4.81, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 4.81a Certain barges carrying merchandise transferred from another barge.

(a) A LASH-type barge (as defined in § 4.81(g)) documented as a vessel of the United States but not qualified to engage in the coastwise trade or a LASH-type barge of a nation found to grant reciprocal privileges to United States-flag LASH-type barges may transport inward foreign and export cargo between points embraced within the coastwise laws of the United States after the merchandise has been transferred to it from another LASH-type barge owned or leased by the same owner or operator. This section is not applicable to transportation between the continental United States and noncontiguous States, districts, territories, and possessions embraced within the coastwise laws. The permit to proceed shall include a statement that the unqualified LASH-type barge is owned or leased by the owner or operator of the LASH-type barge from which the merchandise was transferred.

(b) The following nations have been found to extend privileges reciprocal to those provided in paragraph (a) of this section to LASH-type barges of the United States:

Federal Republic of Germany.
Netherlands.
Sweden.
Union of Soviet Socialist Republics.

[T.D. 74–63, 39 FR 6108, Feb. 19, 1974, as amended by T.D. 74–292, 39 FR 41360, Nov. 27, 1974; T.D. 75–7, 39 FR 44660, Dec. 26, 1974; T.D. 75–315, 40 FR 58852, Dec. 19, 1975; T.D. 78–492, 43 FR 58814, Dec. 18, 1978]

§ 4.82 Touching at foreign port while in coastwise trade.

(a) A United States documented vessel with a registry or, coastwise endorsement, or both which, during a voyage between ports in the United States, touches at one or more foreign ports and there discharges or takes on merchandise, passengers, baggages, or mail shall obtain a permit to proceed or clearance at each port of lading in the United States for the foreign port or ports at which it is intended to touch. The Cargo Declaration Outward With Commercial Forms, Customs Form 1302–A (see § 4.63), shall show only the cargo for foreign destination. (See §§ 4.61 and 4.87.)

(b) The master must also present to the port director a coastwise Cargo

Declaration in triplicate of the merchandise to be transported via the foreign port or ports to the subsequent ports in the United States. It must describe the merchandise and show the marks and numbers of the packages, the names of the shippers and consignees, and the destinations. The port director will certify the two copies and return them to the master. Merchandise carried by the vessel in bond under a transportation entry pursuant to part 18 of this chapter is not to be shown on the coastwise Cargo Declaration.

(c) Upon arrival from the foreign port or ports at the subsequent port in the United States, a report of arrival and entry of the vessel shall be made, and tonnage taxes shall be paid. The master shall present Cargo Declaration in accordance with § 4.7 and the certified copies of the coastwise Cargo Declaration, Customs Form 1302.

(d) All merchandise on the vessel upon its arrival at the subsequent port in the United States is subject to such Customs examination and treatment as may be necessary to protect the revenue. Any article on board which is not identified to the satisfaction of the port director, by the coastwise Cargo Declaration, Customs Form 1302, or otherwise, as part of the coastwise cargo, shall be treated as imported merchandise.

[T.D. 77–255, 42 FR 56322, Oct. 25, 1977, as amended by T.D. 83–214, 48 FR 46513, Oct. 13, 1983; T.D. 84–193, 49 FR 35485, Sept. 10, 1984; T.D. 99–64, 64 FR 43265, Aug. 10, 1999; CBP Dec. 08–25, 73 FR 40725, July 16, 2008; CBP Dec. 17–13, 82 FR 45393, Sept. 28, 2017]

§ 4.83 Trade between United States ports on the Great Lakes and other ports of the United States.

If a vessel proceeding from or to a port of the United States on the Great Lakes to or from any other port of the United States via the St. Lawrence River is intended to touch at any foreign port and does so touch, it will be subject to the usual requirements for manifesting, clearing, report of arrival, entry, payment of fees for entry and clearance, and tonnage taxes. Vessels which are boarded on the St. Lawrence River by Canadian authorities for the purposes of inspecting the vessel and taking a passing report are not deemed to have touched at a foreign port, provided that no ship's stores are landed or taken aboard and no other business is transacted at the port or place of boarding.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 69–266, 34 FR 20423, Dec. 31, 1969; T.D. 83–214, 48 FR 46513, Oct. 13, 1983; CBP Dec. 12–21, 77 FR 73308, Dec. 10, 2012]

§ 4.84 Trade with noncontiguous territory.

(a) No foreign vessel will depart from a port in noncontiguous territory of the United States for any other port in noncontiguous territory or for any port in any State or the District of Columbia, nor from any port in any State or the District of Columbia for any port in noncontiguous territory, until a clearance for the vessel has been granted. Such a clearance will be granted in accordance with the applicable provisions of § 4.61 of the regulations of this part, including clearance of a vessel simultaneously engaged in one or more of the transactions listed in § 4.90(a)(4), (5), or (6) of this part. When merchandise is laden on a foreign vessel in noncontiguous territory other than Puerto Rico, for transportation on that vessel to a port in any State, the District of Columbia, or noncontiguous territory, and when this transportation is not forbidden by the coastwise laws, the merchandise may be laden and shipped without the filing of Electronic Export Information (EEI).

(b) The master of every foreign vessel arriving at a port in any State or the District of Columbia or in noncontiguous territory of the United States from a port in noncontiguous territory to which the coastwise laws do not apply (e.g., Virgin Islands and American Samoa), or arriving at any port in noncontiguous territory to which the coastwise laws do not apply from any place embraced within the coastwise laws, shall immediately report its arrival and make entry for the vessel within 48 hours after its arrival.

(c)(1) A vessel which is not required to clear but which is transporting merchandise from a port in any State or the District of Columbia to any noncontiguous territory of the United States (excluding Puerto Rico), or from

Puerto Rico to any State or the District of Columbia, or any other noncontiguous territory, will not be permitted to depart without filing a complete manifest, when required by the Census Bureau's Foreign Trade Regulations (15 CFR part 30), and all required EEI, unless before the vessel departs an approved bond is filed for the timely production of the required documents, as specified in 15 CFR 30.47. Requests for permission to depart may be written or oral and permission to depart will be granted orally by the appropriate CBP officer. However, if the request is to depart prior to the filing of the required manifest and EEI, permission will not be granted unless the appropriate bond is on file. In the latter case, the CBP officer will keep a simplified record of the necessary information in order to assure that the manifest and EEI are filed within the required time period. The Vessel Entrance or Clearance Statement, CBP Form 1300 (see § 4.63(a)), required at the time of clearance is not required to be taken to obtain permission to depart.

(2) A vessel which is not required to clear but which is transporting merchandise from a port in any State or the District of Columbia to Puerto Rico must file a complete manifest, when required by the the Census Bureau's Foreign Trade Regulations (15 CFR part 30), and all required EEI within one business day after arrival, as defined in § 4.2(b) of this part, with the appropriate CBP officer in Puerto Rico. If the complete manifest and all required EEI are not filed with the appropriate CBP officer within that time frame, an appropriate bond must be filed with the CBP officer for the timely production of the required documents as specified in 15 CFR 30.47. In these instances when a bond is filed, the CBP officer will keep a simplified record of the necessary information in order to ensure that the manifest and EEI are filed not later than the seventh business day after arrival in Puerto Rico.

(d) Upon arrival of a vessel of the United States at a port in any State, the District of Columbia, or Puerto Rico from a port in noncontiguous territory other than Puerto Rico, the master must immediately report its arrival and must prepare, produce, and file a Cargo Declaration in the form and manner and at the times specified in §§ 4.7 and 4.9 but will not be required to make entry. If the vessel proceeds directly to another port in any State, the District of Columbia, or Puerto Rico, the master must prepare, produce, and file a Cargo Declaration in the form and manner and at the times specified in § 4.85 but no permit to proceed on the Vessel Entrance or Clearance Statement, CBP Form 1300, will be required for the purposes of this paragraph. No cargo shall be unladen from any such vessel until Cargo Declarations have been filed and a permit to unlade has been issued in accordance with the procedure specified in § 4.30.

(e) No vessel shall bring guano to the United States from a guano island appertaining to the United States (see 48 U.S.C. 1411) unless such a vessel is entitled to engage in the coastwide trade.

(f) No vessel owned by a corporation which qualifies as a citizen under the Act of September 2, 1958 (46 U.S.C. 883–1) shall, while under demise or bareboat charter from such corporation, be granted clearance or permitted to depart in trade with noncontiguous territory.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 69–266, 34 FR 20423, Dec. 31, 1969: T.D. 71–169, 36 FR 12604, July 2, 1971; T.D. 77–255, 42 FR 56323, Oct. 25, 1977; T.D. 79–276, 44 FR 61956, Oct. 29, 1979; T.D. 93–61, 58 FR 41425, Aug. 4, 1993; T.D. 93–96, 58 FR 67317, Dec. 21, 1993; T.D. 00–22, 65 FR 16516, Mar. 29, 2000; CBP Dec. 17-06, 82 FR 32237, July 13, 2017]

§ 4.85 Vessels with residue cargo for domestic ports.

(a) Any foreign vessel or documented vessel with a registry endorsement, arriving from a foreign port with cargo or passengers manifested for ports in the United States other than the port of first arrival, may proceed with such cargo or passengers from port to port, provided a bond on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter relating to international carriers in a suitable amount is on file with the director of the port of first entry.[115] No additional

[115] "* * * Any vessel arriving from a foreign port or place having on board merchandise

Continued

bond shall be required at subsequent ports of entry. Before the vessel departs from the port of first arrival, the master shall obtain from the port director a certified copy of the complete inward foreign manifest (hereinafter referred to as the traveling manifest). The certified copy shall have a legend similar to the following endorsed on the Vessel Entrance or Clearance Statement, Customs Form 1300:

Port Date

Certified to be a true copy of the original inward foreign manifest.

Signature and title

(b)(1) Before a vessel proceeds from one domestic port to another with cargo or passengers on board as described in paragraph (a) of this section, the master must present to the director of such port of departure an application in triplicate on Customs Form 1300 for a permit to proceed to the next port. When a port director grants the permit on Customs Form 1300, the following legend must be endorsed on the form:

Port
Date

Permission is granted to proceed to the port named in item 12.

Signature and title

(2) The duplicate must be attached to the traveling manifest and the triplicate (the permit to proceed to be delivered at the next port) must be returned to the master, together with the traveling manifest and the vessel's document, if on deposit. If no inward foreign cargo or passengers are to be discharged at the next port, that fact must be indicated on Customs Form 1300 by inserting ''To load only'' in parentheses after the name of the port to which the vessel is to proceed. The traveling Crew's Effects Declaration covering articles acquired abroad by officers and members of the crew, together with the unused crewmembers' declarations prepared for such articles, will be placed in a sealed envelope addressed to the appropriate Customs officer at the next port and given to the master for delivery.

(c)(1) Upon the arrival of a vessel at the next and each succeeding domestic port with inward foreign cargo or passengers still on board, the master must immediately report its arrival and make entry within 48 hours. To make such entry, he must deliver to the port director the vessel's document, the permit to proceed (Customs Form 1300 endorsed in accordance with paragraph (b) of this section), the traveling manifest, and the traveling Crew's Effects Declaration (Customs Form 1304), together with the crewmembers' declarations received on departure from the previous port. The master must also present an abstract manifest consisting of a newly executed Vessel Entrance or Clearance Statement, Customs Form 1300, a Cargo Declaration, Customs Form 1302, and a Crew's Effects Declaration in duplicate of all unentered articles acquired abroad by officers and crewmembers which are still on board, a Ship's Stores Declaration, Customs Form 1303, in duplicate of the sea or ship's stores remaining on board, and if applicable, the Cargo Declaration required by § 4.86. The master must also update the data elements required on CBP Form I–418 that were electronically submitted via an electronic data interchange system approved by CBP for any passengers on board that are manifested for discharge at that port. If no inward foreign cargo or passengers are to be discharged, the Cargo Declaration or Passenger List may be omitted from the abstract manifest, and the following legend must be placed in item 15 of the Vessel Entrance or Clearance Statement:

Vessel on an inward foreign voyage with residue cargo/passengers for _____. No cargo or passengers for discharge at this port.

(2) The traveling manifest, together with a copy of the newly executed Vessel Entrance or Clearance Statement, will serve the purpose of a copy of an abstract manifest at the port where it is finally surrendered.

shown by the manifest to be destined to a port or ports in the United States other than the port of entry at which such vessel first arrived and made entry may proceed with such merchandise from port to lading thereof.'' (Tariff Act of 1930, sec. 442; 19 U.S.C. 1442)

116–118 [Reserved]

(d) If boarding is required before the port director will issue a permit or special license to lade or unlade, the abstract manifest described in paragraph (c) of this section shall be ready for presentation to the boarding officer.

(e) The traveling manifest shall be surrendered to the director of the final domestic port of discharge of the cargo, except that if residue foreign cargo remains on board for discharge at a foreign port or ports, the traveling manifest shall be surrendered at the final port of departure from the United States. However, it shall not be surrendered at the port from which the vessel departs for another United States port, via an intermediate foreign port, under § 4.89 if residue foreign cargo remains on board for discharge at a subsequent U.S. port. The traveling Crew's Effects Declaration shall be finally surrendered to the director of any port from which the vessel will depart directly for a foreign port.

[T.D. 71–169, 36 FR 12604, July 2, 1971, as amended by T.D. 77–255, 42 FR 56323, Oct. 25, 1977; T.D. 83–214, 48 FR 46513, Oct. 13, 1983; T.D. 84–213, 49 FR 41164, Oct. 19, 1984; T.D. 92–74, 57 FR 35752, Aug. 11, 1992; T.D. 93–96, 58 FR 67317, Dec. 21, 1993; T.D. 94–24, 59 FR 13200, Mar. 21, 1994; T.D. 00–22, 65 FR 16516, Mar. 29, 2000; CBP Dec. 12–21, 77 FR 73308, Dec. 10, 2012; CBP Dec. No. 21-19, 86 FR 73631, Dec. 28, 2021]

§ 4.86 Intercoastal residue—cargo procedure; optional ports.

(a) When a vessel arrives at an Atlantic or Pacific coast port from a foreign port or ports with residue cargo for delivery at a port or ports on the opposite coast or on the Great Lakes, or where such arrival is at a port on the Great Lakes, with residue cargo for delivery at a port or ports on the Atlantic or Pacific coasts, or both, and the master, owner, or agent is unable at that time to designate the specific port or ports of discharge of that residue cargo, the Cargo Declaration, Customs Form 1302, filed on entry in accordance with § 4.7(b) shall show such cargo as destined for ''optional ports, Atlantic coast,'' or ''optional ports, Pacific coast,'' or ''optional ports, Great Lakes coast,'' as the case may be. The traveling manifest shall be similarly noted. Upon arrival of the vessel at the first port on the next coast, the master, owner, or agent must designate the port or ports of discharge of residue cargo as required by section 431, Tariff Act of 1930.

(b) For this purpose, the master shall furnish with the other papers required upon entry a Cargo Declaration, Customs Form 1302 in original only of inward foreign cargo remaining on board for discharge at optional ports on that coast, and the Cargo Declaration, must designate the specific ports of intended discharge for that cargo. The traveling manifest shall be amended to agree with that Cargo Declaration so as to show the newly designated ports of discharge on that coast and shall be used to verify the abstract Cargo Declarations surrendered at subsequent ports on that coast.

[T.D. 77–255, 42 FR 56323, Oct. 25, 1977]

§ 4.87 Vessels proceeding foreign via domestic ports.

(a) Any foreign vessel or documented vessel with a registry may proceed from port to port in the United States to lade cargo or passengers for foreign ports.

(b) When applying for a clearance from the first and each succeeding port of lading, the master must present to the port director a Vessel Entrance or Clearance Statement, CBP Form 1300, in duplicate and a Cargo Declaration Outward With Commercial Forms, CBP Form 1302A, in accordance with § 4.63(a), of all the cargo laden for export at that port. The Vessel Entrance or Clearance Statement must clearly indicate all previous ports of lading.

(c) Upon compliance with the applicable provisions of § 4.61, the port director will grant the permit to proceed by making the endorsement prescribed by § 4.85(b) on the Vessel Entrance or Clearance Statement, CBP Form 1300. One copy will be returned to the master, together with the vessel's document if on deposit. The traveling Crew's Effects Declaration, CBP Form 1304, together with any unused crewmembers' declarations, will be placed in a sealed envelope addressed to the appropriate CBP officer at the next domestic port and returned to the master.

(d) On arrival at the next and each succeeding domestic port, the master

must immediately report arrival. He must also make entry within 48 hours by presenting the vessel's document, the permit to proceed on the Vessel Entrance or Clearance Statement, CBP Form 1300, received by him upon departure from the last port, a Crew's Effects Declaration, CBP Form 1304, in duplicate listing all unentered articles acquired aboard by officers and crew of the vessel which are still retained on board, and a Ship's Stores Declaration, CBP Form 1303, in duplicate of the stores remaining aboard. The master must also execute a Vessel Entrance or Clearance Statement. The traveling Crew's Effects Declaration, together with any unused crewmembers' declarations returned to the master at the prior port, will be delivered by him to the port director.

(e) Clearance shall be granted at the final port of departure from the United States in accordance with § 4.61.

(f) If a complete Cargo Declaration Outward With Commercial Forms, CBP Form 1302A (see § 4.63), and all required Electronic Export Information (EEI) filing citations, exclusions, and/or exemption legends are not available for filing before departure of a vessel from any port, clearance on the Vessel Entrance or Clearance Statement, CBP Form 1300, may be granted in accordance with § 4.75, subject to the limitation specified in § 4.75(c).

(g) When the procedure outlined in paragraph (f) of this section is followed at any port, the owner or agent of the vessel must deliver to the director of that port within 4 business days after the vessel's clearance a Cargo Declaration Outward With Commercial Forms, CBP Form 1302A (see § 4.63), and the EEI to cover the cargo laden for export at that port.

[T.D. 77–255, 42 FR 56324, Oct. 25, 1977, as amended by T.D. 83–214, 48 FR 46513, Oct. 13, 1983; T.D. 84–193, 49 FR 35485, Sept. 10, 1984; T.D. 92–74, 57 FR 35752, Aug. 11, 1992; T.D. 93–96, 58 FR 67317, Dec. 21, 1993; T.D. 00–22, 65 FR 16517, Mar. 29, 2000; CBP Dec. 08–25, 73 FR 40725, July 16, 2008; CBP Dec. 17-06, 82 FR 32237, July 13, 2017]

§ 4.88 Vessels with residue cargo for foreign ports.

(a) Any foreign vessel or documented vessel with a registry endorsement which arrives at a port in the United States from a foreign port shall not be required to unlade any merchandise manifested for a foreign destination provided a bond on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter relating to international carriers in a suitable amount is on file with the director of the port of first entry.[119]

(b) The port director shall designate the items of such merchandise, if any, for which foreign landing certificates[120] will be required.

(c) If the vessel clears directly foreign from the first port of arrival, cargo brought in from foreign ports and retained on board may be declared on the Cargo Declaration Outward With Commercial Forms, Customs Form 1302–A (see § 4.63), by the insertion of the following statement:

> All cargo declared on entry in this port as cargo for discharge at foreign ports and so shown on the Cargo Declaration filed upon entry has been and is retained on board.

If any such cargo has been landed, the Cargo Declaration shall describe each item of the cargo from a foreign port which has been retained on board (see § 4.63(a).

(d) If the vessel is proceeding to other ports in the United States with foreign residue cargo on board manifested for discharge at a foreign port or ports, a procedure like that set forth in § 4.85 shall be followed with respect thereto.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 77–255, 42 FR 56324, Oct. 25, 1977; T.D. 83–214, 48 FR 46513, Oct. 13, 1983; T.D. 84–193, 49 FR 35485, Sept. 10, 1984; 49 FR 41164, Oct. 19, 1984; CBP Dec. 08–25, 73 FR 40725, July 16, 2008]

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[119] "Any vessel having on board merchandise shown by the manifest to be destined to a foreign port or place may, after the report and entry of such vessel under the provisions of this Act, proceed to such foreign port of destination with the cargo so destined therefor, without unlading the same and without the payment of duty thereon. * * *" (Tariff Act of 1930, sec. 442; 19 U.S.C. 1442)

[120] "The Secretary of the Treasury may by regulations require the production of landing certificates in respect of merchandise exported from the United States, or in respect of residue cargo, in cases in which he deems it necessary for the protection of the revenue." (Tariff Act of 1930, sec. 622; 19 U.S.C. 1622)

§ 4.89 Vessels in foreign trade proceeding via domestic ports and touching at intermediate foreign ports.

(a) A vessel proceeding from port to port in the United States in accordance with § 4.85, § 4.86, or § 4.87 may touch at an intermediate foreign port or ports to lade or discharge cargo or passengers. In such a case the vessel shall obtain clearance from the last port of departure in the United States before proceeding to the intermediate foreign port or ports at which it is intended to touch. The Cargo Declaration Outward With Commercial Forms, Customs Form 1302–A (see § 4.63), shall show the cargo for such foreign destination in the manner provided in § 4.88(c).

(b) The master shall also present to the port director the Cargo Declaration or Cargo Declarations required by § 4.85, § 4.86, or § 4.87, and obtain a permit to proceed on the Vessel Entrance or Clearance Statement, Customs Form 1300, to the next port in the United States at which the vessel will touch.

(c) Upon arrival at the next port in the United States after touching at a foreign port or ports a report of arrival and entry shall be made. The Cargo Declaration, Customs Form 1302, filed at time of entry shall list the cargo laden at the intermediate foreign port or ports.

(d) The master shall also present to the port director the permit to proceed on the Vessel Entrance or Clearance Statement, Customs Form 1300, and the Cargo Declaration from the last previous port in the United States as provided for in § 4.85, § 4.86, or § 4.87.

[T.D. 77–255, 42 FR 56324, Oct. 25, 1977, as amended by T.D. 84–193, 49 FR 35485, Sept. 10, 1984; T.D. 00–22, 65 FR 16517, Mar. 29, 2000]

§ 4.90 Simultaneous vessel transactions.

(a) A vessel may proceed from port to port in the United States for the purpose of engaging in two or more of the following transactions simultaneously,[121] subject to the limitations hereafter mentioned in this section and the conditions stated in the sections indicated in the list:

(1) Coastwise trade (§ 4.80).

(2) Touching at a foreign port while in coastwise trade (§ 4.82).

(3) Trade with noncontiguous territory of the United States (§ 4.84).

(4) Carriage of residue cargo or passengers from foreign ports (§§ 4.85–4.86).

(5) Carriage of cargo or passengers laden for foreign ports (§ 4.87).

(6) Carriage of residue cargo for foreign ports (§ 4.88).

(b) When a vessel is engaged simultaneously in two or more such transactions, the master shall indicate each type of transaction in which the vessel is engaged in his application for clearance on Customs Form 1300. The master shall conform simultaneously to all requirements of these regulations with respect to each transaction in which the vessel is engaged.

(c) A foreign vessel is not authorized by this section to engage in the coastwise trade, including trade with noncontiguous territory embraced within the coastwise laws.

(d) A documented vessel may engage in transactions (2), (4), (5), or (6) only if the vessel's document has a registry. Such a vessel shall not engage in transactions (1) or (3) unless permitted by the endorsement on its Certificate of Documentation to do so.

(e) When a single entry bond, containing the bond conditions set forth in § 113.64, relating to international carriers, is filed at any port and it is applicable to the current voyage of the vessel, it shall cover all other transactions engaged in on that voyage of a like nature and another bond containing the international carrier bond conditions need not be filed.

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 71–169, 36 FR 12605, July 2, 1971; T.D. 83–214, 48 FR 46513, Oct. 13, 1983; T.D. 84–213, 49 FR 41164, Oct. 19, 1984; T.D. 00–22, 65 FR 16517, Mar. 29, 2000; CBP Dec. 08–25, 73 FR 40725, July 16, 2008]

[121] For the purposes of this part, an inward foreign voyage is completed at the port of final discharge of inbound passengers or cargo, and an outward foreign voyage begins at the port where cargo or passengers are first laden for carriage to a foreign destination.

§ 4.91 Diversion of vessel; transshipment of cargo.

(a) If any vessel granted a permit to proceed from one port in the United States for another such port as provided for in§ 4.81(e), § 4.85, § 4.87, or § 4.88, is, while en route, diverted to a port in the United States other than the one specified in the permit to proceed (Customs Form 1300),[122] the owner or agent of the vessel immediately shall give notice of the diversion to the port director who granted the permit, informing him of the new destination of the vessel and requesting him to notify the director of the latter port. Such notification by the port director shall constitute an amendment of the permit previously granted, shall authorize the vessel to proceed to the new destination, and shall be filed by the director of the latter port with the Form 1300 submitted on entry of the vessel.

(b) If any vessel cleared from a port in the United States for a foreign port as provided for in § 4.60 is diverted, while en route, to a port in the United States other than that from which it was cleared, the owner or agent of the vessel immediately shall give notice of the diversion to the port director who granted the clearance, informing him of the new destination of the vessel and requesting him to notify the director of the latter port. Such notification by the port director shall constitute a permit to proceed coastwise, and shall authorize the vessel to proceed to the new destination. On arrival at the new destination, the master shall immediately report arrival. He shall also make entry within 48 hours by presenting (1) the vessel's document, (2) the foreign clearance on Form 1300 granted by the director of the port of departure, (3) a certificate that when the vessel was cleared from the last previous port in the United States there were on board cargo and/or passengers for the ports named in the foreign clearance certificate only and that additional cargo or passengers (have) (have not) been taken on board or discharged since such clearance was granted (specifying the particulars if any passengers or cargo were taken on board or discharged), (4) a Crew's Effects Declaration in duplicate of all unentered articles acquired abroad by the officers and crew of the vessel which are still retained on board, and (5) a Ship's Stores Declaration in duplicate of the stores on board.

(c) In a case of necessity, a port director may grant an application on Customs Form 3171 of the owner or agent of an established line for permission to transship[123] all cargo and passengers from one vessel of the United States to another such vessel under Customs supervision, if the first vessel is transporting residue cargo for domestic or foreign ports or is on an outward foreign voyage or a voyage to noncontiguous territory of the United States, and is following the procedure prescribed in § 4.85, § 4.87, or § 4.88. When inward foreign cargo or passengers are so transshipped to another vessel, a separate traveling manifest (Cargo Declaration, Customs Form 1302, or updated data elements required on CBP Form I–418 that were submitted electronically via an electronic data interchange system approved by CBP) shall be used for the transshipped cargo or passengers, whether or not the forwarding vessel is also carrying other residue cargo or passengers. An appropriate cross-reference shall be made on the separate traveling manifest to show whether any other traveling manifest is being carried forward on the same vessel.

[T.D. 71–169, 36 FR 12605, July 2, 1971, as amended by T.D. 77–255, 42 FR 56324, Oct. 25, 1977; T.D. 93–96, 58 FR 67317, Dec. 21, 1993; T.D. 00–22, 65 FR 16517, Mar. 29, 2000; CBP Dec. No. 21-19, 86 FR 73631, Dec. 28, 2021]

§ 4.92 Towing.

No vessel other than a vessel documented for the coastwise trade, or which would be entitled to be so documented except for its tonnage (see § 4.80), may tow a vessel other than a vessel in distress between points in the U.S. embraced within the coastwise laws, or for any part of such towing (46 U.S.C. 55111). The penalties for violation of this provision occurring on or before November 2, 2015, are a fine of from $350 to $1,100 against the owner or

[122] See § 4.33.

[123] See § 4.31.

[124] [Reserved]

master of the towing vessel and a further penalty against the towing vessel of $60 per ton of the towed vessel. The penalties for violation of this section occurring after November 2, 2015, are a fine of from $1,096 to $3,446 against the owner or master of the towing vessel and a further penalty against the towing vessel of $187 per ton of the towed vessel (46 U.S.C. 55111, as adjusted by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015).

[CBP Dec. 17-20, 82 FR 57824, Dec. 8, 2017, as amended at 83 FR 13836, Apr. 2, 2018; 84 FR 13510, Apr. 5, 2019; 85 FR 36480, June 17, 2020; 87 FR 1327, Jan. 11, 2022; 88 FR 2184, Jan. 13, 2023]

§ 4.93 Coastwise transportation by certain vessels of empty vans, tanks, and barges, equipment for use with vans and tanks; empty instruments of international traffic; stevedoring equipment and material; procedures.

(a) Vessels of the United States prohibited from engaging in the coastwise trade and vessels of nations found to grant reciprocal privileges to vessels of the United States may transport the following articles between points embraced within the coastwise laws of the United States:

(1) Empty cargo vans, empty lift vans, and empty shipping tanks; equipment for use with cargo vans, lift vans, or shipping tanks; empty barges specifically designed for carriage aboard a vessel and equipment, excluding propulsion equipment, for use with such barges; and empty instruments of international traffic exempted from application of the Customs laws by the Secretary of the Treasury pursuant to the provisions of section 322(a), Tariff Act of 1930 (19 U.S.C. 1322(a)), if such articles are owned or leased by the owner or operator of the transporting vessel and are transported for his use in handling his cargo in foreign trade.

(2) Stevedoring equipment and material, if such equipment and material is owned or leased by the owner or operator of the transporting vessel, or is owned or leased by the stevedoring company contracting for the lading or unlading of that vessel, and is transported without charge for use in the handling of cargo in foreign trade.[125]

(b)(1) The following nations have been found to extend privileges reciprocal to those provided in paragraph (a) of this section for empty cargo vans, empty lift vans, and empty shipping tanks to vessels of the United States:

Antigua and Barbuda
AustraliaAustria
Bahamas, The
Bahrain
Belgium
Bermuda
Brazil
Canada
Chile
China*
Colombia
Cyprus
Denmark
Ecuador
Finland
France
Guatemala
Germany, Federal Republic of
Greece

[125] ''* * * *Provided further*, That upon such terms and conditions as the Secretary of the Treasury by regulation may prescribe, and, if the transporting vessel is of foreign registry, upon a finding by the Secretary of the Treasury, pursuant to information obtained and furnished by the Secretary of State, that the government of the nation of registry extends reciprocal privileges to vessels of the United States, this section shall not apply to the transportation by vessels of the United States not qualified to engage in the coastwise trade, or by vessels of foreign registry, of (a) empty cargo vans, empty lift vans, and empty shipping tanks, (b) equipment for use with cargo vans, lift vans, or shipping tanks, (c) empty barges specifically designed for carriage aboard a vessel, and (d) any empty instrument for international traffic exempted from application of the customs laws by the Secretary of the Treasury pursuant to the provisions of section 322(a), Tariff Act of 1930 (19 U.S.C. 1322(a)), if the articles described in clauses (a) through (d) are owned or leased by the owner or operator of the transporting vessel and are transported for his use in handling his cargo in foreign trade; and (e) stevedoring equipment and material, if such equipment and material is owned or leased by the owner or operator of the transported vessel, or is owned or leased by the stevedoring company contracting for the lading or unlading of that vessel, and is transported without charge for use in the handling of cargo in foreign trade.'' (46 U.S.C. 883).

[126–130] [Reserved]

Iceland
India
Iran
Ireland
Israel
Italy
Ivory Coast
Japan
Kuwait
Liberia
Luxembourg
Malta
Marshall Islands, Republic of the
Mexico
Netherlands
Netherlands Antilles
Norway
Pakistan
Philippines
Polish People's Republic
Portugal
Republic of Korea
Republic of Panama
Republic of Singapore
Republic of Zaire
St. Vincent and the Grenadines
Saudi Arabia
South Africa
Spain
Sweden
Taiwan
Union of Soviet Socialist Republics
United Arab Emirates
United Kingdom (including The Cayman Islands and Hong Kong)
Vanuatu, Republic of
Yugoslavia, Socialist Federal Republic of
*See also Taiwan

(2) The following nations have been found to extend similar reciprocal privileges in respect to the other articles mentioned in paragraph (a) of this section:

Antigua and Barbuda
Australia
Austria
Bahamas, The
Bahrain
Belgium
Bermuda
Brazil
Chile
Colombia
Denmark
Federal Republic of Germany
Finland
France
Greece
Guatemala
Iceland
India
Ireland
Israel
Italy
Ivory Coast
Kuwait
Liberia
Luxembourg
Malta
Mexico
Netherlands
Netherlands Antilles
Norway
Polish People's Republic
Portugal
Republic of Korea
Republic of Panama
Republic of Singapore
Republic of Zaire
St. Vincent and the Grenadines
South Africa
Spain
Sweden
Taiwan
Union of Soviet Socialist Republics
United Arab Emirates
United Kingdom (including The Cayman Islands and Hong Kong)
Vanuatu, Republic of

(c) Any Cargo Declaration, Customs Form 1302, required to be filed under this part by any foreign vessel shall describe any article mentioned in paragraph (a) of this section laden aboard and transported from one United States port to another, giving its identifying number or symbol, if any, or such other identifying data as may be appropriate, the names of the shipper and consignee, and the destination. The Cargo Declaration shall also include a statement (1) that the articles specified in paragraph (a)(1) of this section are owned or leased by the owner or operator of the transporting vessel and are transported for his use in handing his cargo in foreign trade; or (2) that the stevedoring equipment and material specified in paragraph (a)(2) of this section is owned or leased by the owner or operator of the transporting vessel, or is owned or leased by the stevedoring company contracting for the lading or unlading of that vessel, and is transported without charge for his use in handling his cargo in foreign trade. If the director of the port of lading is satisfied that there will be sufficient control over the coastwise transportation of the article without identifying it by number or symbol or such other identifying data on the Cargo Declaration, he may permit the use of a Cargo Declaration that does not include such information provided the Cargo Declaration includes a statement, that the director of the port of

unlading will be presented with a statement at the time of entry of the vessel that will list the identifying number or symbol or other appropriate identifying data for the article to be unladen at that port. Applicable penalties under section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), shall be assessed for violation of this paragraph.

[T.D. 68–302, 33 FR 18436, Dec. 12, 1968]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 4.93, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

GENERAL

§ 4.94 Yacht privileges and obligations.

(a) Any documented vessel with a pleasure license endorsement, as well as any undocumented American pleasure vessel, shall be used exclusively for pleasure and shall not transport merchandise nor carry passengers for pay. Such a vessel which is not engaged in any trade nor in any way violating the Customs or navigation laws of the U.S. may proceed from port to port in the U.S. or to foreign ports without clearing and is not subject to entry upon its arrival in a port of the U.S., provided it has not visited a hovering vessel, received merchandise while in the customs waters beyond the territorial sea, or received merchandise while on the high seas. Such a vessel shall immediately report arrival to Customs when arriving in any port or place within the U.S., including the U.S. Virgin Islands, from a foreign port or place.

(b) A cruising license may be issued to a yacht of a foreign country only if it has been made to appear to the satisfaction of the Secretary of the Treasury that yachts of the United States are allowed to arrive at and depart from ports in such foreign country and to cruise in the waters of such ports without entering or clearing at the customhouse thereof and without the payment of any charges for entering or clearing, dues, duty per ton, tonnage, taxes, or charges for cruising licenses. It has been made to appear to the satisfaction of the Secretary of the Treasury that yachts of the United States are granted such privileges in the following countries:

Argentina
Australia
Austria
Bahama Islands
Belgium
Bermuda
Canada
Denmark
Finland
France
Germany, Federal Republic of
Greece
Honduras
Ireland
Italy
Jamaica
Liberia
Marshall Islands
Netherlands
New Zealand
Norway
Saint Kitts and Nevis
Saint Vincent and the Grenadines
Sweden
Switzerland
Turkey
United Kingdom and the Dependencies: the Anguilla Islands, the Isle of Man, the British Virgin Islands, the Cayman Islands, and the Turks and Caicos Islands

(c) In order to obtain a cruising license for a yacht of any country listed in paragraph (b) of this section, there shall be filed with the port director an application therefor executed by either the yacht owner or the master which shall set forth the owner's name and address and identify the vessel by flag, rig, name, and such other matters as are usually descriptive of a vessel. The application shall also include a description of the waters in which the yacht will cruise, and a statement of the probable time it will remain in such waters. Upon approval of the application, the port director will issue a cruising license in the form prescribed by paragraph (d) of this section permitting the yacht, for a stated period not to exceed one year, to arrive and depart from the United States and to cruise in specified waters of the United States without entering and clearing, without filing manifests and obtaining or delivering permits to proceed, and without the payment of entrance and clearance fees, or fees for receiving manifests and granting permits to proceed, duty on tonnage, tonnage tax, or light money. The license shall be granted subject to the condition that the vessel shall not engage in trade or

violate the laws of the United States in any respect. Upon the vessel's arrival at any port or place within the U.S. or the U.S. Virgin Islands, the master shall comply with 19 U.S.C. 1433 by immediately reporting arrival at the nearest Customs facility or other place designated by the port director. Individuals shall remain on board until directed otherwise by the appropriate Customs officer, as provided in 19 U.S.C. 1459.

(d) Cruising licenses shall be in the following form:

LICENSE TO CRUISE IN THE WATERS OF THE UNITED STATES

To Port Directors:

For a period of _____ from _____(Date) the _____(Flag) _____ (Rig) yacht _____(Name) belonging to _____ of (Owner's name) _____(Address) shall be permitted to arrive at and depart from the United States and to cruise in the waters of the Customs port of

_____
(Name of port or ports)

without entering and clearing, without filing manifests and obtaining or delivering permits to proceed, and without the payment of entry and clearance fees, or fees for receiving manifests and granting permits to proceed, duty on tonnage, tonnage tax, or light money.

This license is granted subject to the condition that the yacht named herein shall not engage in trade or violate the laws of the United States in any respect. Upon arrival at each port or place in the United States, the master shall report the fact of arrival to the Customs officer at the nearest customhouse. Such report shall be immediately made.

Issued this _____ day of _____, 19___

_____
(Port Director of Customs)

WARNING: This vessel is dutiable:

(1) If owned by a resident of the United States (including Puerto Rico), or brought into the United States (including Puerto Rico), for sale or charter to a resident thereof, or

(2) If brought into the United States (including Puerto Rico) by a nonresident free of duty as part of personal effects and sold or chartered within one year from date of entry.

Any offer to sell or charter (for example, a listing with yacht brokers or agents) is considered evidence that the vessel was brought in for sale or charter to a resident or, if made within one year of entry of a vessel brought in free of duty as personal effects, that the vessel no longer is for the personal use of the non-resident.

If the vessel is sold or chartered, or offered for sale or charter, in the circumstances described, without the owner first having filed a consumption entry and having paid duty, the vessel may be subject to seizure or to a monetary claim equal to the value of the vessel. See Chapter 89, Additional U.S. Note 1, HTSUS, and subheadings 8903.10, 8903.91, 8903.92, 8903.99.10, 8903.99.20, and 8903.99.90, HTSUS.

(e) A foreign-flag yacht which is not in possession of a cruising license shall be required to comply with the laws applicable to foreign vessels arriving at, departing from, and proceeding between ports of the United States.

[T.D. 69–266, 34 FR 20423, Dec. 31, 1969]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 4.94, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 4.94a Large yachts imported for sale.

(a) *General.* An otherwise dutiable vessel used primarily for recreation or pleasure and exceeding 79 feet in length that has been previously sold by a manufacturer or dealer to a retail consumer and that is imported with the intention to offer for sale at a boat show in the United States may qualify at the time of importation for a deferral of entry completion and deposit of duty. The following requirements and conditions will apply in connection with a deferral of entry completion and duty deposit under this section:

(1) The importer of record must certify to Customs in writing that the vessel is being imported pursuant to 19 U.S.C. 1484b for sale at a boat show in the United States;

(2) The certification referred to in paragraph (a)(1) of this section must be accompanied by the posting of a single entry bond containing the terms and conditions set forth in appendix C of part 113 of this chapter. The bond will have a duration of 6 months after the date of importation of the vessel, and no extensions of the bond period will be allowed;

(3) The filing of the certification and the posting of the bond in accordance with this section will permit Customs to determine whether the vessel may be released;

(4) All subsequent transactions with Customs involving the vessel in question, including any transaction referred to in paragraphs (b) through (d) of this section, must be carried out in the same port of entry in which the certification was filed and the bond was posted under this section; and

(5) The vessel in question will not be eligible for issuance of a cruising license under § 4.94 and must comply with the laws respecting vessel entry and clearance when moving between ports of entry during the 6-month bond period prescribed under this section.

(b) *Exportation within 6-month period.* If a vessel for which entry completion and duty payment are deferred under paragraph (a) of this section is not sold but is exported within the 6-month bond period specified in paragraph (a)(2) of this section, the importer of record must inform Customs in writing of that fact within 30 calendar days after the date of exportation. The bond posted with Customs will be returned to the importer of record and no entry completion and duty payment will be required. The exported vessel will be precluded from reentry under the terms of paragraph (a) of this section for a period of 3 months after the date of exportation.

(c) *Sale within 6-month period.* If the sale of a vessel for which entry completion and duty payment are deferred under paragraph (a) of this section is completed within the 6-month bond period specified in paragraph (a)(2) of this section, the importer of record within 15 calendar days after completion of the sale must complete the entry by filing an Entry Summary (Customs Form 7501, or its electronic equivalent) and must deposit the appropriate duty (calculated at the applicable rates provided for under subheading 8903.91.00 or 8903.92.00 of the Harmonized Tariff Schedule of the United States and based upon the value of the vessel at the time of importation). Upon entry completion and deposit of duty under this paragraph, the bond posted with Customs will be returned to the importer of record.

(d) *Expiration of bond period.* If the 6-month bond period specified in paragraph (a)(2) of this section expires without either the completed sale or the exportation of a vessel for which entry completion and duty payment are deferred under paragraph (a) of this section, the importer of record within 15 calendar days after expiration of that 6-month period must complete the entry by filing an Entry Summary (Customs Form 7501, or its electronic equivalent) and must deposit the appropriate duty (calculated at the applicable rates provided for under subheading 8903.91.00 or 8903.92.00 of the Harmonized Tariff Schedule of the United States and based upon the value of the vessel at the time of importation). Upon entry completion and deposit of duty under this paragraph, the bond posted with Customs will be returned to the importer of record, and a new bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, may be required by the Center director.

[68 FR 13625, Mar. 20, 2003, as amended by CBP Dec. 15–14, 80 FR 61283, Oct. 13, 2015; CBP Dec. 16–26, 81 FR 93009, Dec. 20, 2016]

§ 4.95 Records of entry and clearance of vessels.

Permanent records shall be prepared at each customhouse of all entries of vessels on Customs Form 1400 and of all clearances and permits to proceed on Customs Form 1401. Whenever a vessel is diverted, as provided for in § 4.91 (a) or (b), Customs Form 1401 shall be amended to show the new destination. These records shall be open to public inspection.

[T.D. 82–224, 47 FR 53727, Nov. 29, 1982]

§ 4.96 Fisheries.

(a) As used in this section:

(1) The term ''convention vessel'' means a Canadian fishing vessel which, at the time of its arrival in the United States, is engaged only in the North Pacific halibut fishery and which is therefore entitled to the privileges provided for by the Halibut Fishing Vessels Convention between the United States and Canada signed at Ottawa, Canada, on March 24, 1950 (T.D. 52862);

(2) The term ''nonconvention fishing vessel'' means any vessel other than a convention vessel which is employed in whole or in part in fishing at the time of its arrival in the United States and

(i) Which is documented under the laws of a foreign county,

(ii) Which is undocumented, of 5 net tons or over, and owned in whole or in part by a person other than a citizen of the United States, or

(iii) Which is undocumented, of less than 5 net tons, and owned in whole or in part by a person who is neither a citizen nor a resident of the United States;

(3) The term ''nonconvention cargo vessel'' means any vessel which is not employed in fishing at the time of its arrival in the United States, but which is engaged in whole or in part in the transportation of fish or fish products [131a] and

(i) Which is documented under the laws of a foreign country or

(ii) Which is undocumented and owned by a person other than a citizen of the United States;

(4) The term ''treaty vessel'' means a Canadian fishing vessel which at the time of its arrival in the United States is engaged in the albacore tuna fishery and which is therefore entitled to the privileges provided for by the treaty with Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges, entered into force at Ottawa, Canada, on July 29, 1981 (T.D. 81–227); and

(5) The term ''fishing'' means the planting, cultivation, or taking of fish, shell fish, marine animals, pearls, shells, or marine vegetation, or the transportation of any of those marine products to the United States by the taking vessel or another vessel under the complete control and management of a common owner or bareboat charterer.

(b) Except as otherwise provided by treaty or convention to which the United States is a party (see paragraphs (d) and (g) of this section), no foreign-flag vessel shall, whether documented as a cargo vessel or otherwise, land in a port of the United States its catch of fish taken on board such vessel on the high seas or fish products processed therefrom, or any fish or fish products taken on board such vessel on the high seas from a vessel engaged in fishing operations or in the processing of fish or fish products. (46 U.S.C. 251). This prohibition applies regardless of the intended ultimate disposition of the fish or fish products (e.g., it applies to transshipments from the foreign vessel to another vessel in United States territorial waters; it applies to landing for transshipment in bond to Canada or Mexico; it applies to landing for exportation under bond; and it applies to landing in a Foreign Trade Zone). However, the prohibition is limited to fish, or fish products processed therefrom, taken on board the foreign vessel on the high seas.

(c) A vessel of the United States to be employed in the fisheries must have a Certificate of Documentation endorsed with a fishery license. ''Fisheries'' includes processing, storing, transporting (except in foreign commerce), planting, cultivating, catching, taking, or harvesting fish, shellfish, marine animals, pearls, shells, or marine vegetation in the navigable waters of the United States or the exclusive economic zone.

(d) A convention vessel may come into a port of entry on the Pacific coast of the United States, including Alaska, to land its catch of halibut and incidentally-caught sable fish, or to secure supplies, equipment, or repairs. Such a vessel may come into any other port of entry or, if properly authorized to do so under §101.4(b) of this chapter, into any place other than a port of entry, for the purpose of securing supplies, equipment, or repairs only, but shall not land its catch. A convention vessel which comes into the United States as provided for in this paragraph shall comply with the usual requirements applicable to foreign vessels arriving at and departing from ports of the United States.

(e) A nonconvention fishing vessel, other than a treaty vessel, may come into a port of entry in the United States or, if granted permission under §101.4(b) of this chapter, into a place

[131a] Except as otherwise provided by treaty or convention to which the United States is a party, no foreign-flag vessel shall, whether documented as a cargo vessel or otherwise, land in a port of the United States its catch of fish taken on board such vessels on the high seas or fish products processed therefrom, or any fish or fish products taken on board such vessel on the high seas from a vessel engaged in fishing operations or in the processing of fish or fish products.'' (46 U.S.C. 251)

[132] [Reserved]

other than a port of entry for the purpose of securing supplies, equipment, or repairs, but shall not land its catch. A nonconvention fishing vessel which comes into the United States as provided for in this paragraph shall comply with the usual requirements applicable to foreign vessels arriving at and departing from ports of the United States.

(f) A nonconvention cargo vessel, although not prohibited by law from coming into the United States, shall not be permitted to land in the United States its catch of fish taken on the high seas or any fish or fish products taken on board on the high seas from a vessel employed in fishing or in the processing of fish or fish products, but may land fish taken on board at any place other than the high seas upon compliance with the usual requirements. Before any such fish may be landed the master shall satisfy the port director that the fish were not taken on board on the high seas by presenting declarations of the master and two or more officers or members of the crew of the vessel, of whom the person next in authority to the master shall be one, or other evidence acceptable to the port director which establishes the place of lading to his satisfaction.

(g) A treaty vessel may come into a port or place of the United States named in Annex B of the Treaty with Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges to land its catch of albacore tuna, or to secure fuel, supplies, equipment and repairs. Such a vessel may come into any other port of entry or, if properly authorized to do so under §101.4(b) of this chapter, into any place other than a port of entry, for the purpose of securing supplies, equipment, or repairs only, but shall not land its catch. A treaty vessel which comes into the United States as provided for in this paragraph shall comply with the usual requirements applicable to foreign vessels arriving at and departing from ports of the United States.

(h) A convention vessel, a nonconvention fishing vessel, a nonconvention cargo vessel, or a treaty vessel, which arrives in the United States in distress shall be subject to the usual requirements applicable to foreign vessels arriving in distress. While in the United States, supplies, equipment, or repairs may be secured, but, except as specified in the next sentence, fish shall not be landed unless the vessel's master, or other authorized representative of the owner, shows to the satisfaction of the port director that it will not be possible, by the exercise of due diligence, for the vessel to transport its catch to a foreign port without spoilage, in which event the port director may allow the vessel upon compliance with all applicable requirements, to land, transship, or otherwise dispose of its catch. Nothing herein shall prevent, upon compliance with normal Customs procedures, a convention vessel arriving in distress from landing its catch of halibut and incidentally-caught sable fish at a port of entry on the Pacific coast, including Alaska; a foreign cargo vessel arriving in distress from landing its cargo of fish taken on board at any place not on the high seas; or a treaty vessel arriving in distress from landing its catch of albacore tuna at a port of entry on the Pacific coast, including Alaska.

[T.D. 82–144, 47 FR 35182, Aug. 13, 1982, as amended by T.D. 83–214, 48 FR 46513, Oct. 13, 1983; T.D. 83–214, 48 FR 50075, Oct. 31, 1983; T.D. 93–12, 58 FR 13197, Mar. 10, 1993]

§ 4.97 Salvage vessels.

(a) Only a vessel of the United States, a numbered motorboat owned by a citizen, or a vessel operating within the purview of paragraph (d) or (e) of this section, shall engage in any salvage operation in territorial waters of the United States unless an application addressed to the Commissioner of Customs to use another specified vessel in a completely described operation has been granted.[133]

[133] "No foreign vessel shall, under penalty of forfeiture, engage in salvaging operations on the Atlantic or Pacific coast of the United States, in any portion of the Great Lakes or their connecting or tributary waters, including any portion of the Saint Lawrence River through which the international boundary line extends, or in territorial waters of the United States on the Gulf of Mexico, except when authorized by a treaty or in accordance with the provisions of section 725 of this title: *Provided, however,*

Continued

(b) Upon receipt of such an application, the Commissioner of Customs will cause an investigation to be made immediately to determine whether a suitable vessel of the United States or a suitable numbered motorboat owned by a citizen is available for the operation. If he finds that no such vessel is available and that the facts otherwise warrant favorable action, he will grant the application.

(c) If the application is granted, the applicant shall make a full report of the operation as soon as possible to the director of the port nearest the place where the operation was conducted.

(d) A Canadian vessel may engage in salvage operations on any vessel in any territorial waters of the United States in which Canadian vessels are permitted to conduct such operations by article II of the treaty between the United States and Great Britain signed on May 18, 1908,[134] or by section 725, title 46, United States Code.[135] If any such vessel engages in a salvage operation in territorial waters of the United States, the owner or master of the vessel shall make a full report of the operation as soon as possible to the director of the port nearest the place where the operation was conducted.

(e) A Mexican vessel may engage in a salvage operation on a Mexican vessel in any territorial waters of the United States in which Mexican vessels are permitted to conduct such operations by the treaty between the United States and Mexico signed on June 13, 1935.[136]

[28 FR 14596, Dec. 31, 1963, as amended by T.D. 69–266, 34 FR 20423, Dec. 31, 1969]

That if, on investigation, the Secretary of the Treasury is satisfied that no suitable vessel wholly owned by a person who is a citizen of the United States and documented under the laws of the United States or numbered pursuant to section 288 of this title, is available in any particular locality he may authorize the use of a foreign vessel or vessels in salvaging operations in that locality and no penalty shall be incurred for such authorized use.'' (46 U.S.C. 316(d))

''Nothing in this section shall be held or construed to prohibit or restrict any assistance to vessels or salvage operations authorized by Article II of the treaty between the United States and Great Britain 'concerning reciprocal rights for United States and Canada in the conveyance of prisoners and wrecking and salvage' signed at Washington, May 18, 1908 (35 Stat. 2036), or by the treaty between the United States and Mexico 'to facilitate assistance to and salvage of vessels in territorial waters,' signed at Mexico City, June 13, 1935 (49 Stat. 3359).'' (46 U.S.C. 316(e))

[134] ''The High Contracting Parties agree that vessels and wrecking appliances, either from the United States or from the Dominion of Canada, may salve any property wrecked and may render aid and assistance to any vessels wrecked, disabled or in distress in the waters or on the shores of the other country in that portion of the St. Lawrence River through which the International Boundary line extends, and, in Lake Ontario, Lake Erie, Lake St. Clair, Lake Huron, and Lake Superior, and in the Rivers Niagara, Detroit, St. Clair, and Ste. Marie, and the Canals at Sault Ste. Marie, and on the shores and in the waters of the other country along the Atlantic and Pacific Coasts within a distance of thirty miles from the International Boundary on such Coasts.

''It is further agreed that such reciprocal wrecking and salvage privileges shall include all necessary towing incident thereto, and that nothing in the Customs, Coasting or other laws or regulations of either country shall restrict in any manner the salving operations of such vessels or wrecking appliances.

''Vessels from either country employed in salving in the waters of the other shall, as soon as practicable afterwards, make full report at the nearest custom house of the country in whose waters such salving takes place.'' (35 Stat. 2036)

[135] ''Canadian vessels and wrecking appurtenance may render aid and assistance to Canadian or other vessels and property wrecked, disabled, or in distress in the waters of the United States contiguous to the Dominion of Canada.

''This section shall be construed to apply to the canal and improvement of the waters between Lake Erie and Lake Huron, and to the waters of the Saint Mary's River and Canal: * * *.'' (46 U.S.C. 725)

The waters of Lake Michigan are not contiguous to the Dominion of Canada within the meaning of this statute.

[136] ''The High Contracting Parties agree that vessels and rescue apparatus, public or private, of either country, may aid or assist vessels of their own nationality, including the passengers and crews thereof, which may be disabled or in distress on the shores or within the territorial waters of the other country within a radius of seven hundred and twenty nautical miles of the intersection of the International Boundary Line and the coast of the Pacific Ocean, or within a radius of two hundred nautical miles of the intersection of the International Boundary Line

§ 4.98 Navigation fees.

(a)(1) The Customs Service shall publish a General Notice in the FEDERAL REGISTER and Customs Bulletin periodically, setting forth a revised schedule of navigation fees for the following services:

Fee No. and description of services

1 Entry of vessel, including American, from foreign port:
(a) Less than 100 net tons.
(b) 100 net tons and over.
2 Clearance of vessel, including American, to foreign port:
(a) Less than 100 net tons.
(b) 100 net tons or over.
3 Issuing permit to foreign vessel to proceed from port to port, and receiving manifest.
4 Receiving manifest of foreign vessel on arrival from another port, and granting a permit to unlade.
5 Receiving post entry.
6 [Reserved]
7 Certifying payment of tonnage tax for foreign vessels only.
8 Furnishing copy of official document, including certified outward foreign manifest, and others not elsewhere enumerated.

The published revised fee schedule shall remain in effect until changed.

(2) The fees shall be calculated in accordance with § 24.17(d) Customs Regulations (19 CFR 24.17(d)), and be based upon the amount of time the average service requires of a Customs officer in the fifth step of GS–9.

(3) The party requesting a vessel service described in paragraph (a)(1) of this section for which reimbursable overtime compensation is payable under 19 U.S.C. 267 or 19 U.S.C. 1451 and § 24.16 of this chapter shall pay only the applicable overtime charge, and not both the overtime charge and the fee specified in the fee schedule.

(4) The revised fee schedule shall be made available to the public in Customs offices.

(5) The respective fees shall be designated in correspondence and reports by the applicable fee number.

(b) Fee 1 shall be collected at the first port of entry only. It shall not be collected from a vessel entering directly from a port in noncontiguous territory of the United States nor from one entering at a port on a northern, northeastern, or northwestern frontier otherwise than by sea.

(c) Fee 2 shall be collected at the final port of departure from the United States. It shall be collected from a yacht or public vessel which obtains a clearance, but shall not be collected from a vessel clearing directly for a port in noncontiguous territory of the United States nor from one clearing from a port on the northern, northeastern, or northwestern frontier otherwise than by sea. It shall be collected only upon the first clearance each year of a vessel making regular daily trips between a port of the United States and a port in Canada wholly upon interior waters not navigable to the ocean.

(d) Fee 3 shall be collected for granting a permit to a foreign vessel to proceed to another Customs port. It shall be collected from a foreign vessel clearing directly for a port in noncontiguous territory of the United States outside its Customs territory. This fee shall not be collected in the case of a foreign vessel proceeding on a voyage by sea from one port in the United States to another port via a foreign port. Only one fee shall be collected in case of simultaneous vessel transactions.

(e) Fee 4 shall be collected for receiving the manifest of a foreign vessel arriving from another Customs port. It shall be collected from a foreign vessel entering directly from a port in noncontiguous territory of the United States outside its Customs territory. This fee shall not be collected in the case of a foreign vessel which arrives at one port in the United States from another port on a voyage by sea via a foreign port. Only one fee shall be collected in the case of simultaneous vessel transactions.

(e–1) Fee 5 shall be collected from a foreign or American vessel at each port where the vessel is required to file a post entry in accordance with the provisions of § 4.12(a)(3). An original post entry may be supplemented by additional post entries in instances where items were omitted from the original post entry. A separate fee shall be collected for each supplemental post entry made to the original post entry.

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and the coast of the Gulf of Mexico.'' (49 Stat. 3360)

(f) [Reserved]

(g) Fee 7 shall be collected from foreign vessels only.

(h) Fee 8 shall be collected for each copy of any official document, whether certified or not, furnished to any person other than a Government officer.

(i) Private and commercial vessels, and passengers aboard commercial vessels, may be subject to the payment of fees for services provided in connection with their arrival as set forth in § 24.22 of this chapter.

(j) The loading or unloading of merchandise or passengers from a commercial vessel at a U.S. port may cause the harbor maintenance fee set forth in § 24.24 of this chapter to be assessed.

[T.D. 69–266, 34 FR 20423, Dec. 31, 1969, as amended by T.D. 74–194, 39 FR 26153, July 17, 1974; T.D. 80–25, 45 FR 3572, Jan. 18, 1980; T.D. 82–224, 47 FR 53727, Nov. 29, 1982; T.D. 84–149, 49 FR 28698, July 16, 1984; T.D. 86–109, 51 FR 21155, June 11, 1986; T.D. 87–44, 52 FR 10211, Mar. 30, 1987; T.D. 93–85, 58 FR 54282, Oct. 21, 1993]

§ 4.99 Forms; substitution.

(a) Customs Forms 1300, 1302, 1302–A, 1303, and 1304 printed by private parties or foreign governments shall be accepted provided the forms so printed:

(1) Conform to the official Customs forms in wording arrangement, style, size of type, and paper specifications;

(2) Conform to the official Customs forms in size, except that:

(i) Each form may be printed on metric A4 size paper, 210 by 297 millimeters (approximately 8¼ by 11⅔ inches).

(ii) The vertical format of Customs Forms 1300, 1302–A, 1303, and 1304 may be increased in size up to a maximum of 14 inches.

(iii) Customs Form 1302 may be reduced in size to not less than either 8½ by 11 inches or 210 by 297 millimeters (metric A4 size). If Customs Form 1302 is reduced in size, the size of type used may be reduced proportionately.

(b) If instructions are printed on the reverse side of the official Customs form, the instructions may be omitted from the privately printed forms, but the instructions shall be followed.

(c) The port director, in his discretion, may accept a computer printout instead of Customs Form 1302 for use at a specific port. However, to ensure that computer printouts may be used at all ports, the private party or foreign government first must obtain specific approval from Headquarters, U.S. Customs Service.

(d) Forms which do not comply with the requirements of this section are not acceptable without the specific approval of the Commissioner of Customs.

[T.D. 79–255, 44 FR 57088, Oct. 4, 1979; T.D. 00–22, 65 FR 16517, Mar. 29, 2000]

§ 4.100 Licensing of vessels of less than 30 net tons.

(a) The application for a license to import merchandise in a vessel of less than 30 net tons in accordance with section 6, Anti-Smuggling Act of August 5, 1935, shall be addressed to the Secretary of the Treasury and delivered to the directors of the ports where foreign merchandise is to be imported in such vessel.

(b) The application shall contain the following information:

(1) Name of the vessel, rig, motive power, and home port.

(2) Name and address of the owner.

(3) Name and address of the master.

(4) Net tonnage of the vessel.

(5) Kind of merchandise to be imported.

(6) Country or countries of exportation.

(7) Ports of the United States where the merchandise will be imported.

(8) Whether the vessel will be used to transport and import merchandise from a hovering vessel.

(9) Kind of document under which the vessel is operating.

(c) If the port director finds that the applicant is a reputable person and that the revenue would not be jeopardized by the issuance of a license, he may issue the license for a period not to exceed 12 months, incorporating therein any special conditions he believes to be necessary or desirable, and deliver it to the licensee.

(d) The master or owner shall keep the license on board the vessel at all times and exhibit it upon demand of any duly authorized officer of the United States. This license is personal to the licensee and is not transferable.

(e) The Secretary of the Treasury or the port director at whose office the license was issued may revoke the license if any of its terms have been willfully or intentionally violated or for any other cause which may be considered prejudicial to the revenue or otherwise against the interest of the United States.

[T.D. 72–211, 37 FR 16486, Aug. 15, 1972]

§ 4.101 Prohibitions against Customs officers and employees.

No Customs officer or employee shall:

(a) Own, in whole or in part, any vessel except a yacht or other pleasure boat;

(b) Act as agent, attorney, or consignee for the owner or owners of any vessel, or of any cargo or lading on board the vessel; or

(c) Import or be concerned directly or indirectly in the importation of any merchandise for sale into the United States

[T.D. 78–394, 43 FR 49787, Oct. 25, 1978]

PART 7—CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANAMO BAY NAVAL STATION

Sec.

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624; 48 U.S.C. 1406i.

§ 7.1 Puerto Rico; spirits and wines withdrawn from warehouse for shipment to; duty on foreign-grown coffee.

(a) When spirits and wines are withdrawn from a bonded manufacturing warehouse for shipment in bond to Puerto Rico pursuant to section 311, Tariff Act of 1930, as amended,[1] [2] the warehouse withdrawal shall contain on the face thereof a statement of the kind and quantity of all imported merchandise (in its condition as imported) and imported containers used in the manufacture and putting up of such spirits and wines. The duty assessed on the imported merchandise and containers so used, and their classification and value, shall be shown on the withdrawal in accordance with § 144.41 of this chapter. If no imported merchandise or containers have been used, the warehouse withdrawal shall bear an endorsement to that effect. (See §§ 191.105 and 191.106 of this chapter.)

(b) The spirits and wines shall be forwarded in accordance with the general provisions of the regulations governing the transportation of merchandise in bond, part 18 of this chapter.

(c) A regular entry shall be made for all foreign-grown coffee shipped to Puerto Rico from the United States,

[1] [Reserved]

[2] ''* * * Distilled spirits and wines which are rectified in bonded manufacturing warehouses, class six, and distilled spirits which are reduced in proof and bottled in such warehouses, shall be deemed to have been manufactured within the meaning of this section and may be withdrawn as hereinbefore provided, and likewise for shipment in bond to Puerto Rico, subject to the provisions of this section, and under such regulations as the Secretary of the Treasury may prescribe, there to be withdrawn for consumption or be rewarehoused and subsequently withdrawn for consumption: *Provided,* That upon withdrawal in Puerto Rico for consumption, the duties imposed by the customs laws of the United States shall be collected on all imported merchandise (in its condition as imported) and imported containers used in the manufacture and putting up of such spirits and wines in such warehouses: *Provided further,* That no internal-revenue tax shall be imposed on distilled spirits and wines rectified in class six warehouses if such distilled spirits and wines are exported or shipped in accordance with the provisions of this section, * * *.'' (Tariff Act of 1930, sec. 311, as amended; 19 U.S.C. 1311)

but special Customs invoices shall not be required for such shipments.[3]

(Secs. 311, 319, 484(a), 46 Stat. 691, as amended, 696, 722, as amended; 19 U.S.C. 1311, 1319, 1484(a); R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

[28 FR 14636, Dec. 31, 1963, as amended by T.D. 73–175, 38 FR 17445, July 2, 1973; T.D. 83–212, 48 FR 46770, Oct. 14, 1983; T.D. 98–16, 63 FR 11004, Mar. 5, 1998]

§ 7.2 Insular possessions of the United States other than Puerto Rico.

(a) Insular possessions of the United States other than Puerto Rico are also American territory but, because those insular possessions are outside the customs territory of the United States, goods imported therefrom are subject to the rates of duty set forth in column 1 of the Harmonized Tariff Schedule of the United States (HTSUS) except as otherwise provided in §7.3 or in part 148 of this chapter. The principal such insular possessions are the U.S. Virgin Islands, Guam, American Samoa, Wake Island, Midway Islands, and Johnston Atoll. Pursuant to section 603(c) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America, Public Law 94–241, 90 Stat. 263, 270, goods imported from the Commonwealth of the Northern Mariana Islands are entitled to the same tariff treatment as imports from Guam and thus are also subject to the provisions of §7.3 and of part 148 of this chapter.

(b) Importations into Guam, American Samoa, Wake Island, Midway Islands, Johnston Atoll, and the Commonwealth of the Northern Mariana Islands are not governed by the Tariff Act of 1930, as amended, or the regulations contained in this chapter. The customs administration of Guam is under the Government of Guam. The customs administration of American Samoa is under the Government of American Samoa. The customs administration of Wake Island is under the jurisdiction of the Department of the Air Force (General Counsel). The customs administration of Midway Islands is under the jurisdiction of the Department of the Navy. There is no customs authority on Johnston Atoll, which is under the operational control of the Defense Nuclear Agency. The customs administration of the Commonwealth of the Northern Mariana Islands is under the Government of the Commonwealth.

(c) The Secretary of the Treasury administers the customs laws of the U.S. Virgin Islands through the U.S. Customs and Border Protection. The importation of goods into the U.S. Virgin Islands is governed by Virgin Islands law; however, in situations where there is no applicable Virgin Islands law or no U.S. law specifically made applicable to the Virgin Islands, U.S. laws and regulations shall be used as a guide and be complied with as nearly as possible. Tariff classification of, and rates of duty applicable to, goods imported into the U.S. Virgin Islands are established by the Virgin Islands legislature.

[T.D. 97–75, 62 FR 46439, Sept. 3, 1997, as amended by CBP Dec. 08–25, 73 FR 40725, July 16, 2008]

§ 7.3 Duty-free treatment of goods imported from insular possessions of the United States other than Puerto Rico.

(a) *General.* Under the provisions of General Note 3(a)(iv), Harmonized Tariff Schedule of the United States (HTSUS), the following goods may be eligible for duty-free treatment when imported into the customs territory of the United States from an insular possession of the United States:

(1) Except as provided in Additional U.S. Note 5 to Chapter 91, HTSUS, and except as provided in Additional U.S. Note 2 to Chapter 96, HTSUS, and except as provided in section 423 of the Tax Reform Act of 1986, as amended (19 U.S.C. 2703 note), goods which are the growth or product of any such insular possession, and goods which were manufactured or produced in any such insular possession from materials that were the growth, product or manufacture of any such insular possession or of the customs territory of the United States, or of both, provided that such goods:

[3] Section 319, Tariff Act of 1930, authorizes the Legislature of Puerto Rico to impose a duty on coffee imported into Puerto Rico, including coffee grown in a foreign country coming into Puerto Rico from the United States, and the Legislature of Puerto Rico has imposed such a duty.

(i) Do not contain foreign materials valued at either more than 70 percent of the total value of the goods or, in the case of goods described in section 213(b) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)), more than 50 percent of the total value of the goods; and

(ii) Come to the customs territory of the United States directly from any such insular possession; and

(2) Goods previously imported into the customs territory of the United States with payment of all applicable duties and taxes imposed upon or by reason of importation, provided that:

(i) The goods were shipped from the United States directly to the insular possession and are returned from the insular possession to the United States by direct shipment; and

(ii) There was no remission, refund or drawback of such duties or taxes in connection with the shipment of the goods from the United States to the insular possession.

(b) *Origin of goods.* For purposes of this section, goods will be considered to be the growth or product of, or manufactured or produced in, an insular possession if:

(1) The goods are wholly the growth or product of the insular possession; or

(2) The goods became a new and different article of commerce as a result of production or manufacture performed in the insular possession.

(c) *Foreign materials.* For purposes of this section, the term ''foreign materials'' covers any material incorporated in goods described in paragraph (b)(2) of this section other than:

(1) A material which was wholly the growth or product of an insular possession or of the customs territory of the United States;

(2) A material which was substantially transformed in an insular possession or in the customs territory of the United States into a new and different article of commerce which was then used in an insular possession in the production or manufacture of a new and different article which is shipped directly to the United States; or

(3) A material which may be imported into the customs territory of the United States from a foreign country and entered free of duty either:

(i) At the time the goods which incorporate the material are entered; or

(ii) At the time the material is imported into the insular possession, provided that the material was incorporated into the goods during the 18-month period after the date on which the material was imported into the insular possession.

(d) *Foreign materials value limitation.* For purposes of this section, the determination of whether goods contain foreign materials valued at more than 70 or 50 percent of the total value of the goods will be made based on a comparison between:

(1) The landed cost of the foreign materials, consisting of:

(i) The manufacturer's actual cost for the materials or, where a material is provided to the manufacturer without charge or at less than fair market value, the sum of all expenses incurred in the growth, production, or manufacture of the material, including general expenses, plus an amount for profit; and

(ii) The cost of transporting those materials to the insular possession, but excluding any duties or taxes assessed on the materials by the insular possession and any charges which may accrue after landing; and

(2) The final appraised value of the goods imported into the customs territory of the United States, as determined in accordance with section 402 of the Tariff Act of 1930, as amended (19 U.S.C. 1401a).

(e) *Direct shipment*—(1) *General.* For purposes of this section, goods will be considered to come to the United States directly from an insular possession, or to be shipped from the United States directly to an insular possession and returned from the insular possession to the United States by direct shipment, only if:

(i) The goods proceed directly to or from the insular possession without passing through any foreign territory or country;

(ii) The goods proceed to or from the insular possession through a foreign territory or country, the goods do not enter into the commerce of the foreign territory or country while en route to the insular possession or the United States, and the invoices, bills of lading,

and other shipping documents show the insular possession or the United States as the final destination; or

(iii) The goods proceed to or from the insular possession through a foreign territory or country, the invoices and other shipping documents do not show the insular possession or the United States as the final destination, and the goods:

(A) Remained under the control of the customs authority of the foreign territory or country;

(B) Did not enter into the commerce of the foreign territory or country except for the purpose of sale other than at retail, and the Center director is satisfied that the importation into the insular possession or the United States results from the original commercial transaction between the importer and the producer or the latter's sales agent; and

(C) Were not subjected to operations in the foreign territory or country other than loading and unloading and other activities necessary to preserve the goods in good condition.

(2) *Evidence of direct shipment.* The Center director may require that appropriate shipping papers, invoices, or other documents be submitted within 60 days of the date of entry as evidence that the goods were shipped to the United States directly from an insular possession or shipped from the United States directly to an insular possession and returned from the insular possession to the United States by direct shipment within the meaning of paragraph (e)(1) of this section, and such evidence of direct shipment will be subject to such verification as deemed necessary by the Center director. Evidence of direct shipment will not be required when the Center director is otherwise satisfied, taking into consideration the kind and value of the merchandise, that the goods qualify for duty-free treatment under General Note 3(a)(iv), HTSUS, and paragraph (a) of this section.

(f) *Documentation.* (1) When goods are sought to be admitted free of duty as provided in paragraph (a)(1) of this section, an importer must have in his possession at the time of entry or entry summary a completed certificate of origin on CBP Form 3229, or its electronic equivalent, showing that the goods comply with the requirements for duty-free entry set forth in paragraph (a)(1) of this section. The importer must provide CBP Form 3229, or its electronic equivalent, upon request by the Center director or his delegate. Except in the case of goods which incorporate a material described in paragraph (c)(3)(ii) of this section, a certificate of origin will not be required for any shipment eligible for informal entry under §143.21 of this chapter or in any case where the Center director is otherwise satisfied that the goods qualify for duty-free treatment under paragraph (a)(1) of this section.

(2) When goods in a shipment not eligible for informal entry under §143.21 of this chapter are sought to be admitted free of duty as provided in paragraph (a)(2) of this section, the following declarations must be filed with the entry/entry summary unless the Center director is satisfied by reason of the nature of the goods or otherwise that the goods qualify for such duty-free entry:

(i) A declaration by the shipper in the insular possession in substantially the following form:

I, _____ (name) of _____ (organization) do hereby declare that to the best of my knowledge and belief the goods identified below were sent directly from the United States on _____, 20___, to _____ (name) of _____ (organization) on _____ (insular possession) via the _____ (name of carrier) and that the goods remained in said insular possession until shipped by me directly to the United States via the _____ (name of carrier) on _____, 20___.

Marks	Numbers	Quantity	Description	Value

Dated at _____, this _____ day of _____, 20___.
Signature: _____

(ii) A declaration by the importer in the United States in substantially the following form:

I, _____ (name), of _____ (organization) declare that the (above) (attached) declaration by the shipper in the insular possession is true and correct to the best of my knowledge and belief, that the goods in question were previously imported into the customs territory of the United States and were shipped to the insular possession from the United States without remission, refund or drawback of any duties or taxes paid in connection with that prior importation, and that the goods arrived in the United States directly from the insular possession via the _____ (name of carrier) on _____, 20___.

_____
(Date)

_____
(Signature)

(g) *Warehouse withdrawals; drawback.* Merchandise may be withdrawn from a bonded warehouse under section 557 of the Tariff Act of 1930, as amended (19 U.S.C. 1557), for shipment to any insular possession of the United States other than Puerto Rico without payment of duty, or with a refund of duty if the duties have been paid, in like manner as for exportation to foreign countries. No drawback may be allowed under section 313 of the Tariff Act of 1930, as amended (19 U.S.C. 1313), on goods manufactured or produced in the United States and shipped to any insular possession. No drawback of internal-revenue tax is allowable under 19 U.S.C. 1313 on goods manufactured or produced in the United States with the use of domestic tax-paid alcohol and shipped to Wake Island, Midway Islands or Johnston Atoll.

[T.D. 97–75, 62 FR 46439, Sept. 3, 1997, as amended by CBP Dec. 08–25, 73 FR 40725, July 16, 2008; CBP Dec. 15–04, 80 FR 7539, Feb. 11, 2015; CBP Dec. 15–14, 80 FR 61283, Oct. 13, 2015; CBP Dec. 16–26, 81 FR 93009, Dec. 20, 2016]

§ 7.4 Watches and watch movements from U.S. insular possessions.

(a) The issuance of an International Trade Administration Form ITA–360, Certificate of Entitlement to Secure the Refund of Duties on Watches and Watch Movements, by the Department of Commerce, authorizes a producer of watches in the U.S. insular possessions to file requests with CBP for the refund of duties paid on imports of watches, watch movements (including solid state watches and watch movements), and watch parts (excepting separate watch cases and any articles containing any materials to which rates of duty set forth in Column 2, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) apply). The amount of the refund requested may be up to the value specified in the certificate, provided that the articles for which refunds are requested were entered during a 3-year period beginning 2 years before the date of issuance of the Form ITA–360 certificate from the Department of Commerce.

(b) The Form ITA–360 may not be used to secure refunds. To secure a refund, the party requesting the refund of duties (claimant) must present to CBP Form ITA–361, Request for Refund of Duties on Watches and Watch Movements, properly executed, and authenticated by the Department of Commerce.

(c) By completing Form ITA–361, the insular producer may either:

(1) Transfer its entitlement, in whole or in part, to any other party for any consideration agreed to by the insular producer and the transferee, or

(2) Request the refund of duties to itself.

(d) A claimant must file Form ITA–361 with CBP at the same port where the watch import entry was originally filed and duties paid. The documentation accompanying Form ITA–361 shall include a copy of the import entry, providing proof that duty was paid on the watches and watch movements.

(e) When requesting the refund of duties on Form ITA–361, the claimant also must complete and submit to CBP the declaration on the form which reads as follows:

I declare that the information given above is true and correct to the best of my knowledge and belief; that no notices of exportation of articles with benefit of drawback were filed upon exportation of this merchandise from the United States; that no liquidated refunds on the articles relating to the present claim have been paid; and that no protest or request for litigation for refund

of duties paid and herewith claimed has been made.

(f) A fee of 1 percent will be deducted from each refund request as reimbursement to salaries and expenses of those CBP personnel processing the request.

(g) Form ITA–360 expires 1 year from its date of issuance. Any refund request on Form ITA–361 made by either the insular producer itself or any transferee named on Form ITA–360 must be filed within this 1-year period. This expiration date applies equally to all refund requests, whether a single request for the entire amount specified in the Form ITA–361 certificate or multiple requests for partial amounts. Refund requests will be accepted until either the amount specified in the certificate is depleted or until the certificate expires 1 year from its date of issuance.

(h) CBP will process only those refund requests made in accordance with the joint rules of the Departments of Commerce and the Interior governing the issuance and handling of certificates and the transfer of entitlements as contained in 15 CFR part 303.

[T.D. 84–16, 49 FR 1481, Jan. 12, 1984, as amended by T.D. 84–211, 49 FR 39044, Oct. 3, 1984; T.D. 89–1, 53 FR 51252, Dec. 21, 1988. Redesignated and amended by T.D. 97–75, 62 FR 46441, Sept. 3, 1997 ; CBP Dec. 08–25, 73 FR 40725, July 16, 2008]

§ 7.11 Guantanamo Bay Naval Station.

Articles of foreign origin may enter the area (both land and water) of the Guantanamo Bay Naval Station free of duty, but such articles shall be subject to duty upon their subsequent entry into the United States.

[28 FR 14636, Dec. 31, 1963]

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

Subpart A—General Provisions

ARTICLES EXPORTED AND RETURNED

Sec.

ARTICLES ASSEMBLED ABROAD WITH UNITED STATES COMPONENTS

FREE ENTRY—ARTICLES FOR THE USE OF FOREIGN MILITARY PERSONNEL

TEMPORARY IMPORTATIONS UNDER BOND

INTERNATIONAL TRAFFIC

ARTICLES FOR INSTITUTIONS

Subpart M—United States-Morocco Free Trade Agreement

Subpart N—United States-Bahrain Free Trade Agreement

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 4513.

Section 10.17 also issued under 19 U.S.C. 1401a, 1402;

Sections 10.25 and 10.26 also issued under 19 U.S.C. 3592;

Sections 10.41, 10.41a, 10.107 also issued under 19 U.S.C. 1322;

Section 10.41b also issued under 19 U.S.C. 1202 (Chapter 98, Subchapter III, U.S. Note 3, HTSUS);

Section 10.53 also issued under 16 U.S.C. 1521, *et seq.;*

Section 10.59 also issued under 19 U.S.C. 1309, 1317;

Sections 10.61, 10.62, 10.63, 10.64, 10.64a also issued under 19 U.S.C. 1309;

Sections 10.62a, 10.65 also issued under 19 U.S.C. 1309, 1317, 1555, 1556, 1557, 1646a;

§ 10.62b also issued under 19 U.S.C. 1557;

Sections 10.70, 10.71 also issued under 19 U.S.C. 1486;

Sections 10.80, 10.81, 10.82, 10.83 also issued under 19 U.S.C. 1313 (e) and (i);

Section 10.91 also issued under Pub. L. 106–476 (114 Stat. 2101), sections 1434, 1435;

Section 10.121 also issued under 19 U.S.C. 2501.

Sections 10.171 through 10.178a also issued under 19 U.S.C. 2461 *et seq.;*

Section 10.183 also issued under 19 U.S.C. 1202 (General Note 6, HTSUS);

Sections 10.191 through 10.199 also issued under 19 U.S.C. 2701 *et seq.;*

Sections 10.201 through 10.207 also issued under 19 U.S.C. 3203;

Sections 10.211 through 10.217 also issued under 19 U.S.C. 3721;

Sections 10.221 through 10.228 and §§ 10.231 through 10.237 also issued under 19 U.S.C. 2701 *et seq.*

Sections 10.241 through 10.248 and §§ 10.251 through 10.257 also issued under 19 U.S.C. 3203.

Sections 10.401 through 10.490 also issued under Pub. L. 108–77, 117 Stat. 909 (19 U.S.C. 3805 note).

Sections 10.501 through 10.570 also issued under 19 U.S.C. 1202 (General Note 25, HTSUS) and Pub. L. 108–78, 117 Stat. 948 (19 U.S.C. 3805 note).

Sections 10.581 through 10.625 also issued under 19 U.S.C. 1202 (General Note 29, HTSUS), 19 U.S.C. 1520(d), and Pub. L. 109–53, 119 Stat. 462 (19 U.S.C. 4001 note).

Section 10.699 also issued under Pub. L. 109–53, 119 Stat. 462.

Sections 10.701 through 10.712 also issued under 19 U.S.C. 1202 (General Note 18, HTSUS) and Pub. L. 107–43, 115 Stat. 243 (19 U.S.C. 2112 note).

Sections 10.721 through 10.748 also issued under 19 U.S.C. 1202 (General Note 28, HTSUS) and Pub. L. 108–286, 118 Stat. 919 (19 U.S.C. 3805 note).

Sections 10.761 through 10.789 also issued under Pub. L. 108–302, 118 Stat. 1103 (19 U.S.C. 3805 note).

Sections 10.801 through 10.829 also issued under 19 U.S.C. 1202 (General Note 30, HTSUS) and Pub. L. 109–169, 119 Stat. 3581 (19 U.S.C. 3805 note).

Sections 10.841 through 10.850 also issued under 19 U.S.C. 2703A.

Sections 10.861 through 10.890 also issued under 19 U.S.C. 1202 (General Note 31, HTSUS) and Pub. L. 109–283, 120 Stat. 1191 (19 U.S.C. 3805 note).

Sections 10.901 through 10.934 also issued under 19 U.S.C. 1202 (General Note 32, HTSUS), 19 U.S.C. 1520(d), and Pub. L. 110–138, 121 Stat. 1455 (19 U.S.C. 3805 note).

Sections 10.1001 through 10.1034 also issued under 19 U.S.C. 1202 (General Note 33, HTSUS), 19 U.S.C. 1520(d), and Pub. L. 112–41, 125 Stat. 428 (19 U.S.C. 3805 note).

Sections 10.2001 through 10.2034 also issued under 19 U.S.C. 1202 (General Note 35, HTSUS), 19 U.S.C. 1520(d), and Pub. L. 112–43, 125 Stat. 497 (19 U.S.C. 3805 note).

Sections 10.3001 through 10.3034 also issued under 19 U.S.C. 1202 (General Note 34, HTSUS), 19 U.S.C. 1520(d), and Pub. L. 112–42, 125 Stat. 462 (19 U.S.C. 3805 note).

SOURCE: 28 FR 14663, Dec. 31, 1963, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 10 appear by CBP Dec. 16–26, 81 FR 93010, Dec. 20, 2016.

Subpart A—General Provisions

ARTICLES EXPORTED AND RETURNED

§ 10.1 Domestic products; requirements on entry.

(a) Except as otherwise provided for in paragraph (g), (h), (i) or (j) of this section or elsewhere in this part or in § 145.35 of this chapter, the following documents must be filed in connection with the entry of articles in a shipment valued over $2,500 and claimed to be free of duty under subheading 9801.00.10 or 9802.00.20, Harmonized Tariff Schedule of the United States (HTSUS):

(1) A declaration by the foreign shipper in substantially the following form:

I, _____,

declare that to the best of my knowledge and belief the articles herein specified were exported from the United States, from the port of _____ on or about _____, 20___, and that they are returned without having been advanced in value or improved in condition by any process of manufacture or other means.

Marks	Number	Quantity	Description	Value, in U.S. coin
	.....	.....	.....	.....
	.....	.....	.....	.....
	.....	.....	.....	.....
	.....	.....	.....	.....
	.....	.....		.....
	(Date)			(Signature)

Marks	Number	Quantity	Description	Value, in U.S. coin
	..... (Address)	.....		..... (Capacity)

(2) A declaration by the owner, importer, consignee, or agent having knowledge of the facts regarding the claim for free entry. If the owner or ultimate consignee is a corporation, such declaration may be signed by the president, vice president, secretary, or treasurer of the corporation, or may be signed by any employee or agent of the corporation who holds a power of attorney executed under the conditions outlined in subpart C, part 141 of this chapter and a certification by the corporation that such employee or other agent has or will have knowledge of the pertinent facts. This declaration must be in substantially the following form:

I, _____,
declare that the (above) (attached) declaration by the foreign shipper is true and correct to the best of my knowledge and belief, that the articles were manufactured by _____ (name of manufacturer) located in _____ (city and state), that the articles were not manufactured or produced in the United States under subheading 9813.00.05, HTSUS, and that the articles were exported from the United States without benefit of drawback.

_____
(Date)

_____
(Address)

_____
(Signature)

_____
(Capacity)

(b) In any case in which the value of the returned articles exceeds $2,500 and the articles are not clearly marked with the name and address of the U.S. manufacturer, the Center director may require, in addition to the declarations required in paragraph (a) of this section, such other documentation or evidence as may be necessary to substantiate the claim for duty-free treatment. Such other documentation or evidence may include a statement from the U.S. manufacturer verifying that the articles were made in the United States, or a U.S. export invoice, bill of lading or airway bill evidencing the U.S. origin of the articles and/or the reason for the exportation of the articles.

(c) A certificate from the master of a vessel stating that products of the United States are returned without having been unladen from the exporting vessel may be accepted in lieu of the declaration of the foreign shipper required by paragraph (a)(1) of this section.

(d) If the Center director is reasonably satisfied, because of the nature of the articles or production of other evidence, that the articles are imported in circumstances meeting the requirements of subheading 9801.00.10 or 9802.00.20, HTSUS, and related section and additional U.S. notes, he may waive the requirements for producing the documents specified in paragraph (a) of this section.

(e) No evidence relative to the conditions of subheading 9801.00.10, HTSUS, will be required in the case of articles the product of the U.S. in use at the time of importation as the usual coverings or containers of merchandise not subject to an ad valorem rate of duty unless such articles would be dutiable if not products of the U.S. under General Rule of Interpretation 5, HTSUS.

(f) In the case of photographic films and dry plates manufactured in the United States (except motion picture films to be used for commercial purposes) exposed abroad and entered under subheading 9802.00.20, HTSUS, the requirements of paragraphs (a) and (c) of this section are applicable except that the declaration by the foreign shipper provided for in paragraph (a)(1) to the effect that the articles ''are returned without having been advanced in value or improved in condition by any process of manufacture or other means'' must be crossed out, and the entrant must show on the declaration provided for in paragraph (a)(2) that the subject articles when exported were of U.S. manufacture and are returned after having been exposed, or exposed

and developed, and, in the case of motion picture films, that they will not be used for commercial purposes.

(g) *Aircraft and aircraft parts and equipment.* (1) In the case of aircraft and aircraft parts and equipment returned to the United States under subheading 9801.00.10, HTSUS, by or for the account of an aircraft owner or operator and intended for use in his own aircraft operations, within or outside the United States, the entry summary may be made on CBP Form 3311, or its electronic equivalent. The entry summary on CBP Form 3311, or its electronic equivalent, must be executed by the entrant and supported by the entry documentation required by §142.3 of this chapter. If the CBP officer is satisfied that the articles are products of the United States, that they have not been improved in condition or advanced in value while abroad, and that no drawback has been or will be paid, the other documents described in this section will not be required, and no bond need be filed for their production.

(2) The entrant must show on CBP Form 3311, or its electronic equivalent:

(i) The name and address of the aircraft owner or operator by whom or for whose account the articles are returned to the United States, in the block headed ''Articles Returned To (Name and Address)'',

(ii) The name of the importing vessel or conveyance,

(iii) The date of its arrival,

(iv) A description of the articles,

(v) The value of the articles, and

(vi) That the articles are intended for use by the aircraft owner or operator in his own aircraft operations.

(3) If CBP Form 3311, or its electronic equivalent, is filed at time of entry, it will serve as both the entry and the entry summary.

(h) *Nonconsumable vessel stores and equipment.* (1) In the case of nonconsumable vessel stores and equipment returned to the United States under subheading 9801.00.10, HTSUS, the entry summary may be made on CBP Form 3311, or its electronic equivalent. The entry summary on CBP Form 3311, or its electronic equivalent, must be executed in duplicate by the entrant and supported by the entry documentation required by §142.3 of this chapter. Before an entry summary on CBP Form 3311, or its electronic equivalent, may be accepted for nonconsumable vessel stores and equipment, the CBP officer must be satisfied that:

(i) The articles are products of the United States.

(ii) The articles have not been improved in condition or advanced in value while abroad.

(iii) No drawback has been or will be paid, and

(iv) No duty equal to an internal revenue tax is payable under subheading 9801.00.80, HTSUS.

(2) The documentation described in paragraph (a) of this section will not be required in connection with an entry for nonconsumable vessel stores and equipment on CBP Form 3311, or its electronic equivalent.

(3) To satisfy the CBP officer that no drawback has been or will be paid on the articles in connection with their removal from the United States, the master of the vessel or other person having knowledge of the facts must furnish a written declaration which may be made on the reverse side of CBP Form 3311, or its electronic equivalent, showing that the articles were:

(i) Exported as stores or equipment on a United States vessel or a vessel operated by the United States Government,

(ii) Not landed in a foreign country, except for any needed repairs, adjustments, or refilling and return to the vessel from which landed or,

(iii) For transshipment as stores or equipment to another vessel.

(4) The entrant also must show:

(i) The name of the importing vessel,

(ii) The date of its arrival,

(iii) A description of the articles, and

(iv) The value of the articles.

(5) If CBP Form 3311, or its electronic equivalent, is filed at time of entry, it will serve as both the entry and the entry summary.

(i) When the total value of articles of claimed American origin contained in any shipment does not exceed $250 and such articles are found to be unquestionably products of the United States

and do not appear to have been advanced in value or improved in condition while abroad and no quota is involved, free entry thereof may be made under subheading 9801.00.10 on CBP Form 3311, or its electronic equivalent, executed by the owner, importer, consignee, or agent and filed in duplicate, without regard to the requirement of filing the documentation provided for in paragraph (a) of this section, unless the CBP officer has reason to believe that Customs drawback or exemption from internal revenue tax, or both, were probably allowed on exportation of the articles or that they are otherwise subject to duty. The entrant must show on Customs Form 3311, or its electronic equivalent, the name of the importing conveyance, the date of its arrival, the name of the country from which the articles were returned to the United States, and the value of the articles. The entrant must also produce evidence of his right to make entry (except as provided in §141.11(b) of this chapter). If the Customs officer is not entirely certain that the articles to be entered under this paragraph by a nominal consignee are products of the United States, the actual owner or ultimate consignee thereof may be required to execute a Customs Form 3311, or its electronic equivalent.

(j) In the case of products of the United States, when the aggregate value of the shipment does not exceed $10,000 and the products are imported—

(1) For the purposes of repair or alteration, prior to reexportation, or

(2) After having been either rejected or returned by the foreign purchaser to the United States for credit, free entry thereof may be made under subheading 9801.00.10, HTSUS, on CBP Form 3311, or its electronic equivalent, (a CBP Form 7501, or its electronic equivalent, must be submitted as well for such articles as provided in §143.23(h) of this chapter), executed by the owner, importer, consignee, or agent and filed in duplicate, without regard to the requirement of filing the documentation provided for in paragraph (a) of this section, unless the CBP officer has reason to believe that CBP drawback or exemption from internal revenue tax, or both, were probably allowed on exportation of the articles or that they are otherwise subject to duty. The person making entry must show on CBP Form 3311, or its electronic equivalent, the name of the importing conveyance, the date of its arrival, the name of the country from which the articles were returned to the United States, and the value of the articles. The person making entry must also produce evidence of his right to make entry (except as provided in §141.11(b) of this chapter). If the CBP officer is not entirely certain that the articles to be entered under this paragraph by a nominal consignee are products of the United States, the actual owner or ultimate consignee thereof may be required to execute a CBP Form 3311, or its electronic equivalent.

[T.D. 72–119, 37 FR 8867, May 2, 1972, as amended by T.D. 78–99, 43 FR 13060, Mar. 29, 1978; 43 FR 20003, May 10, 1978; T.D. 79–221, 44 FR 46812, Aug. 9, 1979; T.D. 83–82, 48 FR 14596, Apr. 5, 1983; T.D. 89–1, 53 FR 51246, Dec. 21, 1988; T.D. 94–47, 59 FR 25566, May 17, 1994; T.D. 97–82, 62 FR 51769, Oct. 3, 1997; T.D. 98–28, 63 FR 16416, Apr. 3, 1998; 77 FR 72718, Dec. 6, 2012; CBP Dec. 15–14, 80 FR 61284, Oct. 13, 2015]

§ 10.3 Drawback; internal-revenue tax.

(a) Except as prescribed in §10.1(f) or in paragraphs (c) and (f) of this section, no free entry shall be allowed under Chapter 98, Subchapter 1, Harmonized Tariff Schedule of the United States (HTSUS), in the final liquidation of an entry unless the Center director is satisfied by the certificate of exportation or other evidence or information that no drawback was allowed in connection with the exportation from the United States, and unless no internal-revenue tax is imposed on the importation of like articles not previously exported from the United States or, if such tax is being imposed at the time of entry for consumption or withdrawal from warehouse for consumption, the Center director is satisfied that an internal-revenue tax on production or importation was paid in respect of the imported article before it was exported from the United States and was not refunded. Except as provided for in §10.1(f), when it is impracticable, because of the destruction of Customs

records or other circumstances, to determine whether drawback was allowed, or the amount of drawback allowed, with respect to an article established to be a returned product of the United States which has not been advanced in value or improved in condition while abroad, there shall be assessed on the returned article an amount of duty determined as follows:

(1) If there is any likelihood that drawback was allowable on the exportation of like articles at any time when the imported article may have been exported from the United States, the estimated amount of any drawback which would have been allowable if duty had been paid on any foreign merchandise likely to have been used in the manufacture of the returned article at the rate or rates applicable to such foreign merchandise on the date of importation of the returned article (see paragraph (b) of this section), and

(2) If there is any likelihood that a refund or remission of tax was allowed on the exportation of the returned article, the amount of any internal-revenue tax which would be payable at the time of importation if the returned article were wholly of foreign origin, but in no such case shall there be assessed more than an amount equal to the duty and tax that would apply if the returned article were wholly of foreign origin and originally imported. (See §10.7(a).) Except as provided for in §10.1(f), if the imported article is of a kind which would be subject to an internal-revenue tax if of foreign origin and payment of an internal-revenue tax before exportation without refund thereof is not established, duty shall be assessed on the imported article in an amount equal to the internal-revenue tax imposed at the time of entry for consumption or withdrawal from warehouse for consumption on like articles of foreign origin, plus the amount of any drawback allowed on the exportation of the article from the United States; but if no drawback was allowed, the duty equal to internal-revenue tax shall be the total duty to be assessed. If an allowance of drawback on the exportation from the United States of the imported article is established, duty shall be assessed in an amount equal to such drawback, plus an amount equal to any internal-revenue tax which may be assessable in accordance with this paragraph; but in no case shall duty equal to drawback, or to drawback and internal-revenue tax, be assessed in an amount in excess of the ordinary Customs duty and internal-revenue tax applicable to like articles of foreign origin. In any case, where payment of internal-revenue tax before exportation without refund thereof is established, no duty equal to an internal-revenue tax currently in force shall be assessed.

(b) In the absence of satisfactory evidence as to the nonallowance of drawback or the amount thereof allowed on the following articles of American manufacture or production, duty shall be assessed thereon in the amounts respectively indicated, the amount shown in each case being considered the fair average amount of drawback allowed on such articles:

Article	Duty assessment
Drums, metal (when not exempted from duty in accordance with sec. 10.3(c)).	24 cents each.
Hosiery, nylon	45 cents per dozen.
Lead compound, tetraethyl	$0.003 per kilogram.
Lithopone	$0.00065 per kilogram.
Oxide, zinc	$0.0029 per kilogram.
Piece goods, cotton:	
Bleached	$0.03199 per square meter.
Dyed	$0.03454 per square meter.
Printed	$0.03226 per square meter.
Piece goods, nylon: Dyed	$0.29086 per square meter.
Piece goods, rayon:	
Printed	$0.04867 per square meter.
Other than printed (white, piece dyed or yarn dyed).	$0.08478 per square meter.
Tallow, refined, inedible	$0.003 per kilogram.

(c) The following articles shall be admitted free of duty, even though exported from the United States with benefit of drawback:

(1) Any article of a kind which would be admitted free of duty otherwise than under Chapter 98, Subchapter 1, HTSUS, if of foreign origin;

(2) Substantial containers or holders of domestic manufacture, including shooks and staves when returned as boxes or barrels, when in use at the time of importation as the usual containers of merchandise;

(3) Any article provided for in subheadings 9801.00.70 or 9801.00.80, HTSUS,

with respect to which the Center director has determined that the collection of duty under such subheadings 9801.00.70 or 9801.00.80, HTSUS, would involve an expense and inconvenience to the Government disproportionate to the probable amount of such duty; and

(4) Other articles of domestic manufacture which are in use at the time of importation as the usual coverings or containers of merchandise not subject to an ad valorem rate of duty, and which have not been advanced in value or improved in condition while abroad by any process of manufacture or other means.

(d) Articles manufactured or produced in the United States in a Customs bonded warehouse and exported shall be subject on reimportation to a duty equal to the total duty and internal-revenue tax, if any, imposed at the time of entry for consumption or withdrawal from warehouse for consumption with respect to the importation of like articles not previously exported from the United States.

(e) Animals straying across the border or driven across the border for pasturage purposes or for feeding to improve them for the market and not returned within 8 months are excluded from free entry as domestic products returned.

(f) Tobacco products and cigarette papers and tubes classifiable under subheading 9801.00.80, HTSUS, may be released from customs custody without the payment of that part of the duty attributable to the internal-revenue tax for return to internal-revenue bond as provided by section 5704(d) of the Internal Revenue Code of 1954.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 68–104, 33 FR 5616, Apr. 11, 1968; T.D. 83–240, 48 FR 53098, Nov. 25, 1983; T.D. 89–1, 53 FR 51246, Dec. 21, 1988; T.D. 93–66, 58 FR 44130, Aug. 19, 1993]

§ 10.4 Internal-revenue marks; erasure.

Internal-revenue brands or marks on casks or other containers previously exported from the United States must be erased at the importer's expense under Customs supervision before their delivery from Customs custody.

§ 10.5 Shooks and staves; cloth boards; port director's account.

(a) Shooks and staves produced in the United States and returned in the form of complete boxes or barrels in use as the usual containers of merchandise are exempt from any duties imposed by the tariff laws upon similar containers made of foreign shooks or staves, provided their identity is established under the regulations in this part.

(b) The term ''shook'' embraces only shooks which at the time of exportation from this country are ready to be assembled into boxes or barrels without further cutting to size; except that box shooks may be exported in double lengths and cut abroad. The number of boxes made from such shooks which may be imported into this country free of duty cannot exceed the number of complete sets of shooks exported.

(c) [Reserved]

(d) An exporter of shooks or staves in respect of which free entry is to be claimed when returned as boxes or barrels shall file in triplicate with the director of the port of exportation, at least 6 hours before the landing of the articles on the exporting vessel, a Certificate of Registration, Customs Form 4455, or its electronic equivalent.

(e) The Certificate of Registration, CF 4455, or its electronic equivalent, shall be completed in triplicate by the port director after verification from the manifest of the exporting vessel and the return of the lading officer. The original shall be forwarded by the port director to the consignee. The duplicate copy shall be given to the exporter and the triplicate copy shall be retained.

(f) Whenever boxes or barrels alleged to have been manufactured from American shooks or staves are shipped to the United States from a person abroad other than the one to whom they were exported from the United States, the importer shall be required to obtain from the foreign consignee to whom the shooks or staves were originally exported from this country the certificate or certificates, Customs Form 4455, or its electronic equivalent, covering the exportation of the shooks or staves from the United States, or an

extract therefrom signed by such consignee, showing the number of shooks or staves covered by such certificate or certificates, together with the number of superficial feet of such shooks or staves. Such Form 4455, or its electronic equivalent, or extract therefrom, shall be filed by the importer in connection with the entry of the boxes or barrels.

(g) Accounts shall be kept by the director of the port of exportation of the shooks and staves as to each exportation thereof and as to the returns thereof in boxes, barrels, etc. Notifications of such returns shall be given to the port of exportation by the director of the port of importation. When returns in the form of boxes, barrels, etc., entirely account for the shooks and staves exported as shown on the appropriate Customs Form 4455, or its electronic equivalent, the port director maintaining the account shall so inform the port director making inquiry about the merchandise being imported and alleged to contain shooks or staves covered by the particular exportation.

(h) A record of cloth boards of domestic manufacture exported to be wrapped with foreign textiles shall be kept by the port director in a similar manner as for shooks and staves. Cloth boards of domestic manufacture are conditionally free of duty under Chapter 98, subchapter 1, Harmonized Tariff Schedule of the United States (HTSUS). If such boards are advanced in value or improved in condition while abroad, free entry shall be denied on importation.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 78–99, 43 FR 13060, Mar. 29, 1978; T.D. 89–1, 53 FR 51247, Dec. 21, 1988; T.D. 98–52, 63 FR 29954, June 2, 1998; CBP Dec. 15–14, 80 FR 61284, Oct. 13, 2015]

§ 10.6 Shooks and staves; claim for duty exemption.

An importer, seeking an exemption from duty on account of boxes or barrels made from American shooks or staves, must make such a claim on Customs Form 4455, or its electronic equivalent, at the time of filing the entry. Upon receipt, from the director of the port of exportation of the shooks and staves, of corroboration that the records of exportation do not conflict materially with such a claim, the exemption may be allowed. If the claim for an exemption is disallowed in full or in part, the importer may file a request within 15 days of the date of the port director's notice to him of any disallowance, for referral of the question to the Commissioner of Customs for review.

[T.D. 87–75, 52 FR 20066, May 29, 1987, as amended by T.D. 98–52, 63 FR 29954, June 2, 1998; CBP Dec. 15–14, 80 FR 61284, Oct. 13, 2015]

§ 10.7 Substantial containers or holders.

(a) Substantial containers or holders, which are products of the United States, which are of the usual and ordinary types used in the shipment or transportation of goods, which are reusable for such purposes, and which are imported containing or holding merchandise, shall be entered under the general regulations governing the free entry of domestic products exported and returned. When such containers or holders are imported not containing or holding merchandise they may be admitted without entry if readily identifiable as products of the United States.

(b) Substantial containers or holders, which are of foreign production and previously imported duty paid, which are of the usual or ordinary types used in the shipment or transportation of goods, which are reusable for such purpose, and which are imported containing or holding merchandise, shall be exempt from duty if (1) exported in accordance with the regulations contained in § 10.5 (d) and (e), and (2) there is filed in connection with the entry a certificate of the foreign shipper in the form prescribed by paragraph (c) of this section.

(c) The certificate to be furnished by the foreign shipper for the use of the director of the port of entry shall be in the following form:

I, _____, of _____, do hereby certify that to the best of my knowledge and belief the substantial containers and holders mentioned in (the annexed invoice) (invoice No. _____ of _____, 19___) * are of the manufacture of _____ and were exported from the United States at the port of _____, per S.S. _____ on _____, 19___, and that the same are being returned to the United

States (empty) filled with _____) (holdings _____).*

_____

Shipper

(d) The port director, after verification of the foreign shipper's certificate with the records of the director of the port of exportation in this country, shall allow free entry to the extent the basis for such allowance is verified. The procedure in the last two sentences of § 10.6 shall be applicable.

(e) If claim for exemption from duty for such containers or holders of foreign production previously imported duty paid is made at the time of entry, the certificate of the foreign shipper may be accepted if produced at any time prior to the liquidation of the entry.

(f) When such containers or holders of foreign production previously imported duty paid are reimported empty, they may be admitted without entry if readily identifiable as having been previously imported duty paid.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 82–145, 47 FR 35475, Aug. 16, 1982; T.D. 86–118, 51 FR 22515, June 20, 1986; T.D. 97–82, 62 FR 51769, Oct. 3, 1997]

§ 10.8 Articles exported for repairs or alterations.

(a) Except as otherwise provided for in this section and except in the case of goods covered by § 181.64 of this chapter, the following documents shall be filed in connection with the entry of articles which are returned after having been exported for repairs or alterations and which are claimed to be subject to duty only on the value of the repairs or alterations performed abroad under subheading 9802.00.40 or 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS):

(1) A declaration from the person who performed such repairs or alterations, in substantially the following form:

I,_____, declare that the articles herein specified are the articles which, in the condition in which they were exported from the United States, were received by me (us) on _____, 19___, from_____ (name and address of owner or exporter in the United States); that they were received by me (us) for the sole purpose of being repaired or altered; that only the repairs or alterations described below were performed by me (us); that the full cost or (when no charge is made) value of such repairs or alterations are correctly stated below; and that no substitution whatever has been made to replace any of the articles originally received by me (us) from the owner or exporter thereof mentioned above.

Marks and numbers	Description of articles and of repairs or alterations	Full cost or (when no charge is made) value of repairs or alterations (see subchapter II, chapter 98, HTSUS)	Total value of articles after repairs or alterations

_____

(Date)

_____

(Address)

_____

(Signature)

_____

(Capacity)

(2) A declaration by the owner, importer, consignee, or agent having knowledge of the pertinent facts in substantially the following form:

I, _____, declare that the (above) (attached) declaration by the person who performed the repairs or alterations abroad is true and correct to the best of my knowledge and belief; that the articles were not manufactured or produced in the United States under subheading 9813.00.05, HTSUS; that such articles were exported from the United States for repairs or alterations and without benefit of drawback (unless subject to USMCA drawback) from _____ (port) on _____, 19___; and that the articles entered in their repaired or altered condition are the same articles that were exported on the above date and that are identified in the (above) (attached) declaration.

*Cross out inapplicable words.

(Date)

(Address)

(Signature)

(Capacity)

(b) The Center director may require such additional documentation as is deemed necessary to prove actual exportation of the articles from the United States for repairs or alterations, such as a foreign customs entry, foreign customs invoice, foreign landing certificate, bill of lading, or an airway bill.

(c) If the Center director concerned is satisfied, because of the nature of the articles or production of other evidence, that the articles are imported under circumstances meeting the requirements of subheading 9802.00.40 or 9802.00.50, HTSUS, and related section and additional U.S. notes, he may waive submission of the declarations provided for in paragraph (a) of this section.

(d) The port director or Center director shall require at the time of entry a deposit of estimated duties based upon the full cost or value of the repairs or alterations. The cost or value of the repairs or alterations outside the United States, which is to be set forth in the invoice and entry papers as the basis for the assessment of duty under subheading 9802.00.40 or 9802.00.50, HTSUS, shall be limited to the cost or value of the repairs or alterations actually performed abroad, which will include all domestic and foreign articles furnished for the repairs or alterations but shall not include any of the expenses incurred in this country whether by way of engineering costs, preparation of plans or specifications, furnishing of tools or equipment for doing the repairs or alterations abroad, or otherwise.

[T.D. 94–47, 59 FR 25567, May 17, 1994, as amended by T.D. 95–68, 60 FR 46361, Sept. 6, 1995; CBP Dec. 21-10, 86 FR 35581, July 6, 2021]

§ 10.8a Imported articles exported and reimported.

(a) In addition to regular entry procedures, supplementary documentation is required in connection with duty-free entries under subheading 9801.00.25, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), of articles which were originally entered duty paid, removed from Customs custody, and subsequently exported, if:

(1) The articles were exported within 3 years after the date of the previous importation.

(2) The articles were not advanced in value or improved in condition by any process of manufacture or other means while abroad.

(3) The articles did not conform to sample or specifications abroad.

(4) The articles are reimported by or for the account of the person who imported them into and exported them from the United States.

(b) The following supplementary documents shall be filed in connection with the entry of articles claimed to be free of duty under subheading 9801.00.25, Harmonized Tariff Schedule of the United States:

(1) A declaration by the person abroad who received and is returning the merchandise to the United States, in substantially the following form:

I declare that the _____ (Description of articles) were received by me from _____ (Name and address of U.S. exporter), that they have not been advanced in value or improved in condition by any process of manufacture or other means and are being returned to _____(Name and address of consignee in the United States) because they do not conform to sample or specifications for the following reasons:

_____

_____

_____

_____

(Date) (Signature)

_____

(Address) (Title)

(2) A declaration by the owner, importer, consignee, or agent, in substantially the following form:

I declare that the _____ (Description of articles) were previously imported into the United States at the Port of _____ (Name of port), Entry No._____, on _____ (Date of entry) by _____ (Name and address of importer) at which time duty was paid; that they were exported from the United States at the Port of _____ (Name of port) on _____ (Date of exportation) by _____ (Name and address

of exporter) without benefit of drawback; that the articles are being reimported by or for the account of _____, and, that the attached declaration from _____ (Name of foreign shipper) is correct in every respect.

(Date) (Signature)

(Address) (Title)

(c) If the Center director concerned is reasonably satisfied because of the nature of the articles or production of other evidence that the requirements of subheading 9801.00.25, Harmonized Tariff Schedule of the United States, and the related section and additional U.S. notes have been met, he may waive the production of the documents provided for in paragraph (b) of this section.

[T.D. 72–221, 37 FR 17469, Aug. 29, 1972, as amended by T.D. 89–1, 53 FR 51247, Dec. 21, 1988]

§ 10.9 Articles exported for processing.

(a) Except as otherwise provided for in this section, the following documents shall be filed in connection with the entry of articles which are returned after having been exported for further processing and which are claimed to be subject to duty only on the value of the processing performed abroad under subheading 9802.00.60, Harmonized Tariff Schedule of the United States (HTSUS):

(1) A declaration by the person who performed the processing abroad, in substantially the following form:

I, _____, declare that the articles herein specified are the articles which, in the condition in which they were exported from the United States, were received by me (us) on _____, 19 _____, from _____ (name and address of owner or exporter in the United States); that they were received by me (us) for the sole purpose of being processed; that only the processing described below was effected by me (us); that the full cost or (when no charge is made) value of such processing and the value of the articles after processing are correctly stated below; and that no substitution whatever has been made to replace any of the articles originally received by me (us) from the owner or exporter thereof mentioned above.

Marks and numbers	Description of articles and of processing	Full cost or (when no charge is made) value of processing (see subchapter II, chapter 98, HTSUS)	Total value of articles after processing

(Date)

(Address)

(Signature)

(Capacity)

(2) A declaration by the owner, importer, consignee, or agent having knowledge of the pertinent facts in substantially the following form:

I, _____, declare that the (above) (attached) declaration by the person who performed the processing abroad is true and correct to the best of my knowledge and belief; that the articles were manufactured in the United States by _____ (name and address) or, if of foreign origin, were subjected to _____ (show processes of manufacture, such as molding, casting, machining) in the United States by _____ (name and address); that the articles were not manufactured or produced in the United States under subheading 9813.00.05, HTSUS; that the articles were exported for processing and without benefit of drawback from _____ (port) on _____, 19 _____; that the articles entered in their processed condition are otherwise the same articles that were exported on the above date and that are identified in the (above) (attached) declaration; and that the returned articles will be subjected to _____ (describe processing to be performed in the United States) by _____ (name and address of U.S. processor).

(Date)

(Address)

(Signature)

(Capacity)

(b) The Center director may require such additional documentation as is deemed necessary to prove actual exportation of the articles from the United States for processing, such as a foreign customs entry, foreign customs invoice, foreign landing certificate, bill of lading, or an airway bill.

(c) If the Center director concerned is satisfied, because of the nature of the articles or production of other evidence, that the articles are imported under circumstances meeting the requirements of subheading 9802.00.60, HTSUS, and related section and additional U.S. notes, he may waive submission of the declarations provided for in paragraph (a) of this section.

(d) The port director or Center director shall require at the time of entry a deposit of estimated duties based upon the full cost or value of the processing. The cost or value of the processing outside the United States, which is to be set forth in the invoice and entry papers as the basis for the assessment of duty under subheading 9802.00.60, HTSUS, shall be limited to the cost or value of the processing actually performed abroad, which will include all domestic and foreign articles used in the processing but shall not include the exported United States metal article or any of the expenses incurred in this country whether by way of engineering costs, preparation of plans or specifications, furnishing of tools or equipment for doing the processing abroad, or otherwise.

[T.D. 94–47, 59 FR 25568, May 17, 1994]

§ 10.10 [Reserved]

ARTICLES ASSEMBLED ABROAD WITH UNITED STATES COMPONENTS

§ 10.11 General.

(a) Sections 10.12 through 10.23 set forth definitions and interpretative regulations adopted by the Commissioner of Customs pertaining to the construction of subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) and related provisions of law. These provisions concern claims for the exemption from duty provided by subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), for American-made fabricated components which are returned to the United States as parts of articles assembled abroad. The examples included in these sections describe specific situations in which the exemption may or may not be applicable. The definitions and regulations that follow are promulgated to inform the public of the constructions and interpretations that the United States Customs Service shall give to relevant statutory terms and to assure the impartial and uniform assessment of duties upon merchandise claimed to be partially exempt from duty under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), at the various ports of entry. Nothing in these regulations purports or is intended to restrict the legal right of importers or others to a judicial review of the matters contained therein.

(b) Section 10.24 sets forth the documentary requirements applicable to the entry of assembled articles claimed to be subject to the exemption provided under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202). Allowance of an importer's claim is dependent upon meeting the statutory requirements for the exemption under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) and his complying with the documentary requirements set forth in § 10.24.

[T.D. 75–230, 40 FR 43021, Sept. 18, 1975, as amended by T.D. 89–1, 53 FR 51247, Dec. 21, 1988; T.D. 97–82, 62 FR 51769, Oct. 3, 1997]

§ 10.12 Definitions.

As used in §§ 10.11 through 10.24, the following terms shall have the meanings indicated:

(a) *American-made*. The term ''American-made'' is used to refer to a product of the United States as defined in paragraph (e) of this section.

(b) *Assembly*. ''Assembly'' means the fitting or joining together of fabricated components.

(c) *Exemption*. ''Exemption'' means the deduction of the cost or value of products of the United States which were assembled abroad in accordance with the requirements of subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202),

from the full value of the assembled article.

(d) *Fabricated component.* ''Fabricated component'' means a manufactured article ready for assembly in the condition as exported except for operations incidental to the assembly.

(e) *Product of the United States.* A ''product of the United States'' is an article manufactured within the Customs territory of the United States and may consist wholly of United States components or materials, of United States and foreign components or materials, or wholly of foreign components or materials. If the article consists wholly or partially of foreign components or materials, the manufacturing process must be such that the foreign components or materials have been substantially transformed into a new and different article, or have been merged into a new and different article.

[T.D. 75–230, 40 FR 43021, Sept. 18, 1975, as amended by T.D. 89–1, 53 FR 51247, Dec. 21, 1988]

§ 10.13 Statutory provision: Subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

Subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS), (19 U.S.C. 1202), provides that articles assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape, or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting, are subject to a duty upon the full value of the imported article, less the cost or, if no charge is made, the value of such products of the United States. The rate of duty which is assessed upon the dutiable portion of the imported article is that which is applicable to the imported article as a whole under the appropriate provision of the HTSUS (19 U.S.C. 1202) for such article. If that provision requires a specific or compound rate of duty, the total duties assessed on the imported article are reduced in such proportion as the cost or value of the returned United States components which qualify for the exemption bears to the full value of the assembled article.

Example 1. A transistor radio is assembled abroad from foreign-made components and American-made transistors. Upon importation, the transistor radio is subject to the ad valorem rate of duty applicable to transistor radios upon the value of the radio less the cost or value of the American-made transistors assembled therein.

Example 2. A solid-state watch movement is assembled abroad from foreign-made components and an American-made integrated circuit. If the movement in question is subject to the specific rate of duty of 75 cents if the value of the assembled movement is $30, and if the value of the American-made integrated circuit is $10, then the value of the integrated circuit represents one third of the total value of the assembled article and the duty on the assembled article will be reduced by one third ($.25). Therefore, the duty on the assembled movement is 50 cents.

[T.D. 75–230, 40 FR 43021, Sept. 18, 1975, as amended by T.D. 89–1, 53 FR 51247, Dec. 21, 1988]

§ 10.14 Fabricated components subject to the exemption.

(a) *Fabricated components, the product of the United States.* Except as provided in § 10.15, the exemption provided under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), applies to fabricated components, the product of the United States. The components must be in condition ready for assembly without further fabrication at the time of their exportation from the United States to qualify for the exemption. Components will not lose their entitlement to the exemption by being subjected to operations incidental to the assembly either before, during, or after their assembly with other components. Materials undefined in final dimensions and shapes, which are cut into specific shapes or patterns abroad are not considered fabricated components.

Example 1. Articles identifiable in their exported condition as components or parts of the article into which they will be assembled, such as transistors, diodes, integrated circuits, machinery parts, or precut parts of

wearing apparel, are regarded as fabricated components.

Example 2. Prestamped metal lead frames for semiconductor devices exported in multiple unit strips in which the individual frame units are connected to each other, or integrated circuit wafers containing individual integrated circuit dice which have been scribed or scored in the United States, are regarded as fabricated components. The separation of the individual frames by cutting, or the segmentation of the wafer into individual dice by flexing and breaking along scribed or scored lines, is regarded as an operation incidental to the assembly process.

Example 3. Wires of various type, electrical conductors, metal foils, insulating tapes, ribbons, findings used in dressmaking, and similar products, which are in a finished state when exported from the United States, and are ready for use in the assembly of the imported article, are regarded as fabricated components if they are only cut to length or subjected to operations incidental to the assembly process while abroad.

Example 4. Uncut textile fabrics exported in bolts from which wearing apparel components will be cut according to a pattern are not regarded as fabricated components. Similarly, other materials, such as lumber, leather, sheet metal, plastic sheeting, exported in basic shapes and forms to be fabricated into components for assembly, are not eligible for treatment as fabricated components.

(b) *Substantial transformation of foreign-made articles or materials.* Foreign-made articles or materials may become products of the United States if they undergo a process of manufacture in the United States which results in their substantial transformation. Substantial transformation occurs when, as a result of manufacturing processes, a new and different article emerges, having a distinctive name, character, or use, which is different from that originally possessed by the article or material before being subject to the manufacturing process. The mere finishing or modification of a partially or nearly complete foreign product in the United States will not result in the substantial transformation of such product and it remains the product of a foreign country.

Example 1. A cast metal housing for a valve is made in the United States from imported copper ingots, the product of a foreign country. The housing is a product of the United States because the manufacturing operations performed in the United States to produce the housing resulted in a substantial transformation of the foreign copper ingots.

Example 2. An integrated circuit device is assembled in a foreign country and imported into the United States where its leads are formed by bending them to a specified angle. It is then tested and marked. The imported article does not become a product of the United States because the operations performed in the United States do not result in a substantial transformation of the foreign integrated circuit device.

Example 3. A circuit board assembly for a computer is assembled in the United States by soldering American-made and foreign-made components onto an American-made printed circuit board. The finished circuit board assembly has a distinct electronic function and is ready for incorporation into the computer. The foreign-made components have undergone a substantial transformation by becoming permanent parts of the circuit board assembly. The circuit board assembly, including all of its parts is regarded as a fabricated component, the product of the United States, for purposes of subheading 9802.00.80, HTSUS (19 U.S.C. 1202).

[T.D. 75–230, 40 FR 43022, Sept. 18, 1975, as amended by T.D. 89–1, 53 FR 51247, Dec. 21, 1988]

§ 10.15 Fabricated components not subject to the exemption.

Fabricated components which are not products of the United States are excluded from the exemption. In addition, the exemption is not applicable to any component exported from the Customs territory of the United States:

(a) From continuous Customs custody with remission, abatement, or refund of duty;

(b) With benefit of drawback;

(c) To comply with any law of the United States or regulation of any Federal agency requiring exportation; or

(d) After manufacture or production in the United States under subheading 9813.00.05, HTSUS (19 U.S.C. 1202).

Example. Partially completed components of an electric motor are imported in several separate shipments and are entered under a temporary importation bond to be manufactured into finished motors under the provisions of subheading 9813.00.05, HTSUS (19 U.S.C. 1202). The components are completed and assembled into finished electric motors. The finished motors are exported and are assembled abroad into electric fans which are subsequently imported into the United States. Irrespective of the fact that the assembly of the motors might involve such a substantial change that the motor could be

considered a product of the United States, no exemption may be given for the value of the electric motors, since they were exported after manufacture or production in the United States under the provision of subheading 9813.00.05, HTSUS (19 U.S.C. 1202).

[T.D. 75–230, 40 FR 43023, Sept. 18, 1975, as amended by T.D. 89–1, 53 FR 51247, Dec. 21, 1988]

§ 10.16 Assembly abroad.

(a) *Assembly operations.* The assembly operations performed abroad may consist of any method used to join or fit together solid components, such as welding, soldering, riveting, force fitting, gluing, laminating, sewing, or the use of fasteners, and may be preceded, accompanied, or followed by operations incidental to the assembly as illustrated in paragraph (b) of this section. The mixing or combining of liquids, gases, chemicals, food ingredients, and amorphous solids with each other or with solid components is not regarded as an assembly.

Example 1. A television yoke is assembled abroad from American-made magnet wire. In the foreign assembly plant the wire is despooled and wound into a coil, the wire cut from the spool, and the coil united with other components, including a terminal panel and housing which are also American-made. The completed article upon importation would be subject to the ad valorem rate of duty applicable to television parts upon the value of the yoke less the cost or value of the American-made wire, terminal panel and housing, assembled therein. The winding and cutting of the wire are either assembly steps or steps incidental to assembly.

Example 2. An aluminum electrolytic capacitor is assembled abroad from American-made aluminum foil, paper, tape, and Mylar film. In the foreign assembly plant the aluminum foil is trimmed to the desired width, cut to the desired length, interleaved with paper, which may or may not be cut to length or despooled from a continuous length, and rolled into a cylinder wherein the foil and paper are cut and a section of sealing tape fastened to the surface to prevent these components from unwinding. Wire or other electric connectors are bonded at appropriate intervals to the aluminum foil of the cylinder which is then inserted into a metal can, and the ends closed with a protective washer. As imported, the capacitor is subject to the ad valorem rate of duty applicable to capacitors upon the value less the cost or value of the American-made foil, paper, tape, and Mylar film. The operations performed on these components are all either assembly steps or steps incidental to assembly.

Example 3. The manufacture abroad of cloth on a loom using thread or yarn exported from the United States on spools, cops, or pirns is not considered an assembly but a weaving operation, and the thread or yarn does not qualify for the exemption. However, American-made thread used to sew buttons or garment components is qualified for the exemption because it is used in an operation involving the assembly of solid components.

(b) *Operations incidental to the assembly process.* Operations incidental to the assembly process whether performed before, during, or after assembly, do not constitute further fabrication, and will not preclude the application of the exemption. The following are examples of operations which are incidental to the assembly process:

(1) Cleaning;

(2) Removal of rust, grease, paint, or other preservative coating;

(3) Application of paint or preservative coating, including preservative metallic coating, lubricants, or protective encapsulation;

(4) Trimming, filing, or cutting off of small amounts of excess materials;

(5) Adjustments in the shape or form of a component to the extent required by the assembly being performed abroad;

(6) Cutting to length of wire, thread, tape, foil, and similar products exported in continuous length; separation by cutting of finished components, such as prestamped integrated circuit lead frames exported in multiple unit strips; and

(7) Final calibration, testing, marking, sorting, pressing, and folding of assembled articles.

(c) *Operations not incidental to the assembly process.* Any significant process, operation, or treatment other than assembly whose primary purpose is the fabrication, completion, physical or chemical improvement of a component, or which is not related to the assembly process, whether or not it effects a substantial transformation of the article, will not be regarded as incidental to the assembly and will preclude the application of the exemption to such article. The following are examples of operations not considered incidental to

the assembly as provided under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202):

(1) Melting of exported ingots and pouring of the metal into molds to produce cast metal parts;

(2) Cutting of garment parts according to pattern from exported material;

(3) Chemical treatment of components or assembled articles to impart new characteristics, such as showerproofing, permapressing, sanforizing, dying or bleaching of textiles;

(4) Machining, polishing, burnishing, peening, plating (other than plating incidental to the assembly), embossing, pressing, stamping, extruding, drawing, annealing, tempering, case hardening, and any other operation, treatment or process which imparts significant new characteristics or qualities to the article affected.

(d) *Joining of American-made and foreign-made components.* An assembly operation may involve the use of American-made components and foreign-made components. The various requirements for establishing entitlement to the exemption apply only to the American-made components of the assembly.

Example. Diodes are assembled abroad from American-made components. The process includes the encapsulation of the assembled components in a plastic shell. The plastic used for the encapsulation is in the form of a pellet, and is of foreign origin. After the prefabricated diode components are assembled, the assembled unit is placed in a transfer molding machine, where, by use of the pellet, molten epoxy is caused to flow around the perimeters of the assembled components, forming upon solidification a plastic body for the diode. Upon importation, exemption may be granted for the value of the American-made components, but not for the value of the plastic pellet. If the plastic pellet used for encapsulation was of United States origin, its value would still be a part of the dutiable value of the diode, because the plastic pellet is not a fabricated component of a type designed to be fitted together by assembly, but merely a premeasured quantity of material which was applied to the assembled unit by a process not constituting an assembly.

(e) *Subassembly.* An assembly operation may involve the joining or fitting of American-made components into a part or subassembly of an article, followed by the installation of the part or subassembly into the complete article.

Example. Rolls of foil and rolls of paper are exported and cut to specific length abroad and interleaved and rolled to form the electrodes and dielectric of a capacitor. Following this procedure, the rolls are assembled with cans and other parts to form a complete capacitor. The foil and paper are entitled to the exemption.

(f) *Packing.* The packing abroad of merchandise into containers does not in itself qualify either the containers or their contents for the exemption. However, assembled articles which otherwise qualify for the exemption and which are packaged abroad following their assembly will not be disqualified from the exemption by reason of their having been so packaged, whether for retail sale or for bulk shipment. The tariff status of the packing materials or containers will be determined in accordance with General Rule of Interpretation 5, HTSUS (19 U.S.C. 1202).

[T.D. 75–230, 40 FR 43023, Sept. 18, 1975, as amended by T.D. 89–1, 53 FR 51248, Dec. 21, 1988; CBP Dec. 08–21, 73 FR 33300, June 12, 2008]

§ 10.17 Valuation of exempted components.

The value of fabricated components to be subtracted from the full value of the assembled article is the cost of the components when last purchased, f.o.b. United States port of exportation or point of border crossing as set out in the invoice and entry papers, or, if no purchase was made, the value of the components at the time of their shipment for exportation, f.o.b. United States port of exportation or point of border crossing, as set out in the invoice and entry papers. However, if the appraising officer concludes that the cost or value of the fabricated components so ascertained does not represent a reasonable cost or value, then the value of the components shall be determined in accordance with section 402 or section 402a, Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402).

[T.D. 75–230, 40 FR 43024, Sept. 18, 1975]

§ 10.18 Valuation of assembled articles.

As in the case of the appraisement of any other import merchandise (see subpart C of part 152 of this chapter), the full value of assembled articles imported under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), is determined in accordance with 19 CFR 152.100 *et seq*.

[T.D. 87–89, 52 FR 24445, July 1, 1987, as amended by T.D. 89–1, 53 FR 51248, Dec. 21, 1988]

§§ 10.19–10.20 [Reserved]

§ 10.21 Updating cost data and other information.

When a claim for the exemption is predicated on estimated cost data furnished either in advance of or at the time of entry, this fact should be clearly stated in writing at the time of entry, and suspension of liquidation may be requested by the importer or his agent pending the furnishing of actual cost data. Actual cost data must be submitted as soon as accounting procedures permit. To insure that information used for Customs purposes is reasonably current, the importer shall ordinarily be required to furnish updated cost and assembly data at least every six months, regardless of whether he considers that significant changes have occurred. The 6-month period for the submission of updated cost or other data may be extended by the Center director if such extension is appropriate for the type of merchandise involved, or because of the accounting period normally used in the trade, or because of other relevant circumstances.

[T.D. 75–230, 40 FR 43025, Sept. 18, 1975]

§ 10.23 Standards, quotas, and visas.

All requirements and restrictions applicable to imported merchandise, such as labeling, radiation standards, flame-retarding properties, quotas, and visas, apply to assembled articles eligible for the exemption in the same manner as they would apply to all other imported merchandise.

[T.D. 75–230, 40 FR 43025, Sept. 18, 1975]

§ 10.24 Documentation.

(a) *Documents required*. The following documents shall be filed in connection with the entry of assembled articles claimed to be subject to the exemption under subheading 9802.00.80, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202).

(1) *Declaration by the assembler*. A declaration by the person who performed the assembly operations abroad shall be filed in substantially the following form:

I, _____, declare that to the best of my knowledge and belief the _____ were assembled in whole or in part from fabricated components listed and described below, which are products of the United States:

[1] In accordance with U.S. Note 4 to Subchapter II of Chapter 98, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

Description of the operations performed abroad on the exported components (in sufficient detail to enable Customs officers to determine whether the operations performed are within the preview of subheading 9802.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) (attach supplemental sheet if more space is required)):

Date	Signature
Address	Capacity

(2) *Endorsement by the importer*. An endorsement, in substantially the following form, shall be signed by the importer:

I declare that to the best of my knowledge and belief the (above), (attached) declaration, and any other information submitted herewith, or otherwise supplied or referred to, is correct in every respect and there has been compliance with all pertinent legal notes to the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

Date	Signature
Address	Capacity

(b) *Revision of format*. In specific cases, the Center director may revise the format of either of the documents

specified in paragraph (a) of this section and may make such changes as conditions warrant, provided the data and information required to be supplied in these documents are presented. For example, if the components were furnished by the importer, the information on components may be supplied as part of the importer's endorsement, rather than as part of the assembler's declaration.

(c) *Reference to previously filed documents.* In lieu of filing duplicate lists of components and descriptions of assembly operations with each entry, the documents specified in paragraph (a) of this section may refer to assembly descriptions and lists of components previously filed with and approved by the Center director, or to records showing costs, names of manufacturers, and other necessary data on components, provided the importer has arranged with the Center director to maintain such records and keep them available for examination by authorized Customs officers.

(d) *Waiver of specific details for each entry.* There are cases where large quantities of United States components are purchased from various sources or exported at various ports and dates on a continuing basis, so that it is impractical to identify the exact source, port and date of export for each particular component included in an entry of merchandise claimed to be subject to the exemption under subheading 9802.00.80, HTSUS (19 U.S.C. 1202). In these cases, specific details such as the port and date of export and the name of the manufacturer of the United States components may be waived if the Center director is satisfied that the importer and assembler have established reliable controls to insure that all components for which the exemption is claimed are in fact products of the United States. These controls shall include strict physical segregation of United States and foreign components, as well as records of United States components showing quantities, sources, costs, dates shipped abroad, and other necessary information. These records shall be maintained by the importer and assembler for 5 years from the date of the released entry in a manner so that they are readily available for audit, inspection, copying, reproduction or other official use by authorized Customs officers.

(e) *Waiver of documents.* When the Center director is satisfied that unusual circumstances make the production of either or both of the documents specified in paragraph (a) of this section, or of any of the information set forth therein, impractical and is further satisfied that the requirements of subheading 9802.00.80, HTSUS, and related legal notes have been met, he may waive the production of such document(s) or information.

(f) *Unavailability of documents at time of entry.* If either or both of the documents specified in paragraph (a) of this section are not available at the time of entry, a bond on Customs Form 301 containing the bond conditions set forth in §113.62 of this chapter for the production of the document(s) may be given pursuant to §§113.41–113.46 and 141.66 of this chapter.

(g) *Responsibility of correctness.* Subject to the civil and criminal sanctions provided by law for false or fraudulent entries, the importer has the ultimate responsibility for supplying all information needed by the Customs Service to process an entry, and for the completeness and truthfulness of such information. If certain information cannot be supplied by the assembler, it must be provided by the importer.

[T.D. 75–230, 40 FR 43025, Sept. 18, 1975, as amended by T.D. 79–159, 44 FR 31967, June 4, 1979; T.D. 84–213, 49 FR 41165, Oct. 19, 1984; T.D. 89–1, 53 FR 51248, Dec. 21, 1988]

§ 10.25 Textile components cut to shape in the United States and assembled abroad.

Where a textile component is cut to shape (but not to length, width, or both) in the United States from foreign fabric and exported to another country, territory, or insular possession for assembly into an article that is then returned to the United States and entered, or withdrawn from warehouse, for consumption on or after July 1, 1996, the value of the textile component shall not be included in the dutiable value of the article. For purposes of determining whether a reduction in the

dutiable value of an imported article may be allowed under this section:

(a) The terms ''textile component'' and ''fabric'' have reference only to goods covered by the definition of ''textile or apparel product'' set forth in §102.21(b)(5) of this chapter;

(b) The operations performed abroad on the textile component shall conform to the requirements and examples set forth in §10.16 insofar as they may be applicable to a textile component; and

(c) The valuation and documentation provisions of §§10.17, 10.18, 10.21 and 10.24 shall apply.

[T.D. 95–69, 60 FR 46196, Sept. 5, 1995; T.D. 95–69, 60 FR 55995, Nov. 6, 1995]

§10.26 Articles assembled or processed in a beneficiary country in whole of U.S. components or ingredients; articles assembled in a beneficiary country from textile components cut to shape in the United States.

(a) No article (except a textile article, apparel article, or petroleum, or any product derived from petroleum, provided for in heading 2709 or 2710, Harmonized Tariff Schedule of the United States (HTSUS)) shall be treated as a foreign article or as subject to duty:

(1) If the article is assembled or processed in a beneficiary country in whole of fabricated components that are a product of the United States; or

(2) If the article is processed in a beneficiary country in whole of ingredients (other than water) that are a product of the United States; and

(3) Neither the fabricated components, materials or ingredients after their exportation from the United States, nor the article before its importation into the United States, enters into the commerce of any foreign country other than a beneficiary country.

(b) No article (except a textile or apparel product) entered, or withdrawn from warehouse, for consumption on or after July 1, 1996, shall be treated as a foreign article or as subject to duty:

(1) If the article is assembled in a beneficiary country in whole of textile components cut to shape (but not to length, width, or both) in the United States from foreign fabric; or

(2) If the article is assembled in a beneficiary country in whole of both textile components described in paragraph (b)(1) of this section and components that are products of the United States; and

(3) Neither the components after their exportation from the United States, nor the article before its importation into the United States, enters into the commerce of any foreign country other than a beneficiary country.

(c) For purposes of this section:

(1) The terms ''textile article'', ''apparel article'', and ''textile or apparel product'' cover all articles, other than footwear and parts of footwear, that are classifiable in an HTSUS subheading which carries a textile and apparel category number designation;

(2) The term ''beneficiary country'' has the meaning set forth in §10.191(b)(1); and

(3) A component, material, ingredient, or article shall be deemed to have not entered into the commerce of any foreign country other than a beneficiary country if:

(i) The component, material, or ingredient was shipped directly from the United States to a beneficiary country, or the article was shipped directly to the United States from a beneficiary country, without passing through the territory of any non-beneficiary country; or

(ii) Where the component, material, ingredient, or article passed through the territory of a non-beneficiary country while en route to a beneficiary country or the United States:

(A) The invoices, bills of lading, and other shipping documents pertaining to the component, material, ingredient, or article show a beneficiary country or the United States as the final destination and the component, material, ingredient, or article was neither sold at wholesale or retail nor subjected to any processing or other operation in the non-beneficiary country; or

(B) The component, material, ingredient, or article remained under the control of the customs authority of the non-beneficiary country and was not subjected to operations in that non-beneficiary country other than loading and unloading and activities necessary to preserve the component, material, ingredient, or article in good condition.

[T.D. 95–69, 60 FR 46197, Sept. 5, 1995]

FREE ENTRY—ARTICLES FOR THE USE OF FOREIGN MILITARY PERSONNEL

§ 10.30c [Reserved]

TEMPORARY IMPORTATIONS UNDER BOND

§ 10.31 Entry; bond.

(a)(1) Entry of articles brought into the United States temporarily and claimed to be exempt from duty under Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States (HTSUS), unless covered by an A.T.A. carnet or a TECRO/AIT carnet as provided in part 114 of this chapter, shall be made on Customs Form 3461 or 7533, supported by the documentation required by §142.3 of this chapter. However, when §10.36 or §10.36a is applicable, or the aggregate value of the article is not over $250, the form prescribed for the informal entry of importations by mail, in baggage, or by other means, may be used. When entry is made on Customs Form 3461 or 7533, an entry summary, Customs Form 7501, shall be filed within 10 days after time of entry, in accordance with subpart B, part 142 of this chapter.

(2) If Customs Form 7501, or its electronic equivalent, is filed at time of entry, it shall serve as both the entry and entry summary, and Customs Form 3461, or its electronic equivalent, or 7533 shall not be required. Customs Form 7501, or its electronic equivalent, shall be in original only, except for entries under subheading 9813.00.05, HTSUS, which require a duplicate copy for statistical purposes. When articles are entered under an A.T.A. carnet or a TECRO/AIT carnet, the importation voucher of the carnet shall serve as the entry.

(3) In addition to the data usually shown on a regular consumption entry summary, each temporary importation bond entry summary shall include:

(i) The HTSUS subheading number under which entry is claimed.

(ii) A statement of the use to be made of the articles in sufficient detail to enable the Center director to determine whether they are entitled to entry as claimed, and

(iii) A declaration that the articles are not to be put to any other use and that they are not imported for sale or sale on approval.

(b) The port director, if he is satisfied as to the importer's identity and good faith, may admit a vehicle or craft brought in by a nonresident to take part in a race or other specific contest for which no money purse is awarded, under the provisions of subheading 9813.00.35, HTSUS, without formal entry or security for exportation. If at the time of arrival it appears that the article is likely to remain in the United States beyond 90 days, formal entry and bond shall be taken.

(c) When any article has been admitted without formal entry or security for exportation and the importer thereafter desires to prolong his stay beyond 90 days, an entry covering the article and security for its exportation shall be accepted at any port where the article may be presented for entry. The time during which the imported article may remain in the United States under the entry shall be computed from the date of its original arrival in the United States. The estimated duties for the purpose of fixing the amount of any bond required by paragraph (f) of this section shall be the estimated duties which would have been required to be deposited had the article been entered under an ordinary consumption entry on the date of the original arrival.

(d) [Reserved]

(e) The entry or invoice shall: (1) Describe each article in detail; (2) set forth the value of each article; and (3) set forth any marks or numbers thereon or other distinguishing features thereof. In the case of a vehicle, aircraft, or pleasure boat entered under subheading 9813.00.05, HTSUS and §10.36a, the registration number, and engine or motor number, and the body number (if available) shall also be shown on the entry. Examination of the imported articles shall be made whenever the circumstances warrant, and occasionally in any event to an extent which will enable the Customs officer to determine that the importation is in agreement with the invoice or entry as to identity and quantity and for the purpose of accepting the entry under the applicable provisions of Chapter 98, Subchapter XIII, HTSUS. No examination for the purpose of appraisement and no appraisement of the articles shall be made.

(f) With the exceptions stated herein, a bond shall be given on CBP Form 301, containing the bond conditions set forth in §113.62 of this chapter, in an amount equal to double the duties, including fees, which it is estimated would accrue (or such larger amount as the Center director shall state in writing or by the electronic equivalent to the entrant is necessary to protect the revenue) had all the articles covered by the entry been entered under an ordinary consumption entry. In the case of samples solely for use in taking orders entered under subheading 9813.00.20, HTSUS, motion-picture advertising films entered under subheading 9813.00.25, HTSUS, and professional equipment, tools of trade and repair components for such equipment or tools entered under subheading 9813.00.50, HTSUS, the bond required to be given shall be in an amount equal to 110 percent of the estimated duties, including fees, determined at the time of entry. If appropriate a carnet, under the provisions of part 114 of this chapter, may be filed in lieu of a bond on CBP Form 301 (containing the bond conditions set forth in §113.62 of this chapter). Cash deposits in the amount of the bond may be accepted in lieu of sureties. When the articles are entered under subheading 9813.00.05, 9813.00.20, or 9813.00.50, HTSUS without formal entry, as provided for in §§10.36 and 10.36a, or the amount of the bond taken under any subheading of Chapter 98, Subchapter XIII, HTSUS, is less than $25, the bond shall be without surety or cash deposit, and the bond shall be modified to so indicate. In addition, notwithstanding any other provision of this paragraph, in the case of professional equipment necessary for carrying out the business activity, trade or profession of a business person, equipment for the press or for sound or television broadcasting, cinematographic equipment, articles imported for sports purposes and articles intended for display or demonstration, if brought into the United States by a resident of Canada, Mexico, Singapore, Chile, Morocco, Australia, El Salvador, Guatemala, Honduras, Nicaragua, the Dominican Republic, Costa Rica, Bahrain, Oman, Peru, the Republic of Korea, Colombia, or Panama and entered under Chapter 98, Subchapter XIII, HTSUS, no bond or other security will be required if the entered article is a good originating, within the meaning of General Notes 12, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, and 35, HTSUS, in the country of which the importer is a resident.

(g) Claim for free entry under Chapter 98, Subchapter XIII, HTSUS may be made for articles of any character described therein which have been previously entered under any other provision of law and the entry amended accordingly upon compliance with the requirements of this section, provided the articles have not been released from CBP custody, or even though released from CBP custody if it is established that the original entry was made on the basis of a clerical error, mistake of fact, or other inadvertence within the meaning of section 514(a), Tariff Act of 1930, as amended, and was brought to the attention of CBP within the time limits of that section. If an entry is so amended, the period of time during which the merchandise may remain in the customs territory of the United States under bond shall be computed from the date of importation. In the case of articles covered by an informal mail entry, such a claim may be made within a reasonable time either before or after the articles have been released from CBP custody.

(h) After the entry and bond have been accepted, the articles may be released to the importer. The entry shall not be liquidated as the transaction does not involve liquidated duties. However, a TIB importer may be required to file an entry for consumption and pay duties, or pay liquidated damages under its bond for a failure to do so, in the case of merchandise imported under subheading 9813.00.05, HTSUS, and subsequently exported to Canada or Mexico (see §181.53 of this chapter).

[28 FR 14663, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §10.31, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 10.33 Theatrical effects.

For purposes of the entry of theatrical scenery, properties and apparel

under subheading 9817.00.98, Harmonized Tariff Schedule of the United States:

(a) Animals imported for use or exhibition in theaters or menageries may be classified as theatrical properties; and

(b) The term ''theatrical scenery, properties and apparel'' shall not be construed to include motion-picture films.

For provisions relating to the return without formal entry of theatrical effects taken from the United States, see §10.68 of this part.

[T.D. 92–85, 57 FR 40605, Sept. 4, 1992, as amended by CBP Dec. 04–28, 69 FR 52599, Aug. 27, 2004]

§10.35 Models of women's wearing apparel.

(a) Models of women's wearing apparel admitted under subheading 9813.00.10, Harmonized Tariff Schedule of the United States (HTSUS), shall not be removed from the importer's establishment for reproducing, copying, painting, sketching, or for any other use by others, nor be used in the importer's establishment for such purposes except by the importer or his employees.

(b) Invoices covering models of women's wearing apparel entered under subheading 9813.00.10 or 9813.00.25, HTSUS shall state the kind and color of the principal material from which the apparel is made, and shall contain a description of the lining and the trimming, stating whether composed of fur, lace, embroidery, or other material. Invoices shall also contain a statement as to how the trimming is applied, that is, whether on the cuffs, collar, sleeves, or elsewhere, and the total value of each completed garment or article.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 87–75, 52 FR 20066, May 29, 1987; T.D. 89–1, 53 FR 51248, Dec. 21, 1988]

§10.36 Commercial travelers' samples; professional equipment and tools of trade; theatrical effects and other articles.

(a) Samples accompanying a commercial traveler who presents an adequate descriptive list or a special CBP invoice, and professional equipment, tools of trade, and repair components for such equipment or tools imported in his baggage for his own use by a nonresident sojourning temporarily in the United States may be entered on the importer's baggage declaration in lieu of formal entry and examination and may be passed under subheadings 9813.00.20 or 9813.00.50, Harmonized Tariff Schedule of the United States, (HTSUS), at the place of arrival in the same manner as other passengers' baggage. The examination may be made by an inspector who is qualified, in the opinion of the port director, to determine the amount of the bond required by §10.31(c) to be filed in support of the entry. If the articles are a commercial traveler's samples and exceed $500 in value, a special Customs invoice or a descriptive list shall be furnished.

(b) When the proprietor or manager of a theatrical exhibition arriving from abroad who has entered his scenery, properties, and apparel under subheading 9817.00.98, HTSUS, contemplates side trips to a contiguous country with the exhibition within the period of time during which the merchandise may remain in the customs territory of the United States under bond, including any lawful extension, a copy of the entry covering the effects and a copy of a descriptive list of such effects or invoice furnished by him may be certified by the examining officer and returned to the proprietor or manager for use in registering the effects with the CBP officers at the port of exit, and in clearing them through CBP on his return. Cancellation of the bond shall be effected by exportation in accordance with the provisions of §10.38 at the time the theatrical effects are finally taken out of the United States before the expiration of the period of time during which the merchandise may remain in the customs territory of the United States under bond, including any lawful extension. Similar treatment may be accorded articles entered under other subheadings in chapter 98, subchapter XIII, HTSUS, upon approval by Headquarters, U.S. Customs and Border Protection.

(c) When a commercial traveler contemplates side trips to a contiguous country within the period of time during which the merchandise may remain in the customs territory of the United

States under bond, including any lawful extension, a copy of his baggage declaration and a copy of the descriptive list or special CBP invoice furnished by him may be certified by the examining officer and returned to the traveler for use in registering the samples with CBP officers at the port of exit, and in clearing them through CBP upon his return. Cancellation of the bond shall be effected by exportation in accordance with the provisions of §10.38 at the time the samples are finally taken out of the United States before the expiration of the period of time during which the merchandise may remain in the customs territory of the United States under bond, including any lawful extension.

(d) The privilege of clearance of commercial travelers' samples or professional equipment, tools of trade, and repair components for such equipment or tools imported for his own use by a nonresident sojourning temporarily in the United States on a baggage declaration under bond without surety or cash deposit shall not be accorded to a commercial traveler or such nonresident who, through fraud or culpable negligence, has failed to comply with the provisions of such a bond in connection with a prior arrival.

Such a commercial traveler or nonresident shall be required to file a formal entry under subheading 9813.00.20 or subheading 9813.00.50, HTSUS with a bond supported by a surety or cash deposit in lieu of surety.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 69–146, 34 FR 9799, June 25, 1969; T.D. 84–213, 49 FR 41165, Oct. 19, 1984; T.D. 89–1, 53 FR 51248, Dec. 21, 1988; CBP Dec. 10–29, 75 FR 52450, Aug. 26, 2010]

§10.36a Vehicles, pleasure boats and aircraft brought in for repair or alteration.

(a) A vehicle (such as an automobile, truck, bus, motorcycle, tractor, trailer), pleasure boat, or aircraft brought into the United States by an operator of such vehicle, pleasure boat, or aircraft for repair or alteration (as defined in §§10.8, 10.490, 10.570, and 181.64 of this chapter) may be entered on the operator's baggage declaration, in lieu of formal entry and examination, and may be passed under subheading 9813.00.05, Harmonized Tariff Schedule of the United States (HTSUS), at the place of arrival in the same manner as passengers' baggage. When the vehicle, aircraft, or pleasure boat to be entered is being towed by or transported on another vehicle, the operator of the towing or transporting vehicle may make entry for the vehicle, aircraft or pleasure boat to be repaired or altered. The bond, prescribed by §10.31(f), filed to support entry under this section shall be without surety or cash deposit except as provided by this paragraph and paragraph (d) of this section. The examination may be made by an inspector who is qualified to determine the amount of such bond to be filed in support of the entry. The privilege accorded by this paragraph shall not apply when two or more vehicles, pleasure boats, or aircraft are to be entered by the same importer under subheading 9813.00.05, HTSUS, at the same time. In that event, the importer must file a formal entry supported by bond with surety or cash deposit in lieu of surety.

(b) Each vehicle, pleasure boat, or aircraft to which paragraph (a) of this section is applicable shall be identified on the operator's baggage declaration, which must include the data prescribed in paragraphs (a) and (e) of §10.31.

(c) Exportation shall be effected in accordance with the provisions of §10.38.

(d) The privilege of clearance of a vehicle, pleasure boat, or aircraft brought in by the operator of such vehicle, pleasure boat, or aircraft, for repair or alteration on his baggage declaration under bond without surety or cash deposit shall not be granted to an individual who has failed to comply with the provisions of such a bond in connection with any prior arrival. Such individual shall be required to file a formal entry under subheading 9813.00.05, HTSUS, with a bond supported by a surety or cash deposit in lieu of surety.

[T.D. 66–39, 31 FR 2817, Feb. 17, 1966, as amended by T.D. 84–213, 49 FR 41165, Oct. 19, 1984; T.D. 89–1, 53 FR 51248, Dec. 21, 1988; T.D. 94–1, 58 FR 69470, Dec. 30, 1993; CBP Dec. 05–07, 70 FR 10872, Mar. 7, 2005; CBP Dec. 07–28, 72 FR 31995, June 11, 2007]

§ 10.37 Extension of time for exportation.

The period of time during which merchandise entered under bond under chapter 98, subchapter XIII, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), may remain in the customs territory of the United States, may be extended for not more than two further periods of 1 year each, or such shorter period as may be appropriate. Extensions may be granted by the Center director upon written application on CBP form 3173, which may be submitted to CBP, either at the port of entry or electronically provided the articles have not been exported or destroyed before the receipt of the application, and liquidated damages have not been assessed under the bond before receipt of the application. Any untimely request for an extension of time for exportation shall be referred to the Director, Commercial and Trade Facilitation Division, Office of International Trade, CBP Headquarters, for disposition. Any request for relief from a liquidated damage assessment in excess of a Fines, Penalties, and Forfeitures Officer's delegated authority shall be referred to the Director, Border Security and Trade Compliance Division, Office of International Trade, CBP Headquarters, for disposition. No extension of the period for which a carnet is valid shall be granted.

[T.D. 69–146, 34 FR 9799, June 25, 1969, as amended by T.D. 84–213, 49 FR 41165, Oct. 19, 1984; T.D. 89–1, 53 FR 51249, Dec. 21, 1988; T.D. 91–77, 56 FR 46114, Sept. 10, 1991; T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 10.38 Exportation.

(a) Articles entered under chapter 98, subchapter XIII, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202) may be exported at the port of entry or at another port. An application on Customs Form 3495 shall be filed in duplicate with the port director a sufficient length of time in advance of exportation to permit the examination and identification of the articles if circumstances warrant such action and, in such event, the applicant shall be notified on a copy of Customs Form 3495 where the articles are to be sent for identification. If a carnet was used for entry purposes, the reexportation voucher of the carnet shall be filed, in addition to Customs Form 3495, and the carnet shall be presented for certification.

(b) All expenses in connection with the delivery of the articles for examination, the cording and sealing of such articles, and their transfer for exportation shall be paid by the parties in interest.

(c) If exportation is to be made at a port other than the one at which the merchandise was entered, the application on Customs Form 3495 shall be filed in triplicate. There shall also be filed with the application a certified copy of the import entry or a certified copy of the invoice used on entry.

(d) If the goods are examined at one port and are to be exported from another port, they shall be forwarded to the port of exportation under a transportation and exportation entry. In such cases Customs Form 3495 shall be filed in triplicate. Articles entered under a carnet shall not be examined elsewhere than at the port from which they are to be exported.

(e) If the articles are to be exported by mail or parcel post, the package containing the articles must be mailed under Customs supervision after examination. Waiver of the right to withdraw the package from the mails shall be endorsed on each package to be so exported and signed by the exporter.

(f) Whenever the circumstances warrant, and occasionally in any event, port directors shall cause the fact of exportation to be verified by the Office of Enforcement in harmony with the procedures provided for in §§ 18.7 and 191.61 of this chapter.

(g) Upon the presentation of satisfactory evidence to the director of the port at which samples were entered under subheading 9813.00.20, HTSUS, or professional equipment or tools of trade were entered under subheading 9813.00.50, HTSUS, that such articles cannot be exported for the reason that they have been seized (other than by seizure at the suit of private persons), the requirement of exportation shall be

suspended for the duration of the seizure. The articles shall be exported promptly after release from seizure.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 69–146, 34 FR 9799, June 25, 1969; T.D. 83–212, 48 FR 46771, Oct. 14, 1983; T.D. 84–213, 49 FR 41165, Oct. 19, 1984; T.D. 89–1, 53 FR 51249, Dec. 21, 1988; T.D. 91–77, 56 FR 46114, Sept. 10, 1991; T.D. 98–16, 63 FR 11004, Mar. 5, 1998]

§ 10.39 Cancellation of bond charges.

(a) Charges against bonds taken pursuant to Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States, (HTSUS), may be canceled in the manner prescribed in §113.55 of this chapter. A completed reexportation counterfoil on a carnet establishes that the articles covered by the carnet have been exported, and no claim shall be brought against the guaranteeing association under the carnet for failure to export, except under the provisions of §114.26 of this chapter. In the case of articles entered under subheading 9813.00.30, HTSUS, which are destroyed because of their use for the purposes of importation, the bond charge shall not be canceled unless there is submitted to the Center director a certificate of the importer that the articles were destroyed during the course of a specifically described use, and the Center director is satisfied that the articles were so destroyed as articles of commerce within the period of time during which the articles may remain in the Customs territory of the United States under bond (including any lawful extension). Bonds covering articles entered under other provisions of law shall not be canceled upon proof of destruction, except as provided for in paragraph (c) of this section, unless the articles are destroyed under Customs supervision in accordance with section 557, Tariff Act of 1930, as amended, and §158.43 of this chapter.

(b) Where exportation has been made at a port other than the port of entry, the bond may be canceled upon the certificate of lading received from the port of exportation, showing that such exportation was made within the period of time during which the articles may remain in the Customs territory of the United States under bond. In addition, the Center director may require the production of a landing certificate signed by a revenue officer of the country to which the merchandise is exported.

(c) When articles entered temporarily free of duty under bond are destroyed within the bond period by death, accidental fire, or other casualty, petition for relief from liability under the bond shall be made to the United States Customs Service. The petition shall be accompanied by a statement of the importer, or other person having knowledge of the facts, setting forth the circumstances of the destruction of the articles.

(d)(1) If any article entered under Chapter 98, subchapter XIII, HTSUS, except those entered under a carnet, has not been exported or destroyed in accordance with the regulations in this part within the period of time during which the articles may remain in the Customs territory of the United States under bond (including any lawful extension), the Fines, Penalties, and Forfeitures Officer shall make a demand in writing under the bond for the payment of liquidated damages equal to double the estimated duties applicable to such entry, unless a different amount is prescribed by §10.31(f). The demand shall include a statement that a written petition for relief from the payment of the full liquidated damages may be filed with the Fines, Penalties, and Forfeitures Officer within 60 days after the date of the demand. For purposes of this section, the term estimated duties shall include any merchandise processing fees applicable to such entry.

(2) If articles entered under a carnet have not been exported or destroyed in accordance with the regulations in this part within the carnet period, the port director shall promptly after expiration of that period make demand in writing upon the importer and guaranteeing association for the payment of liquidated damages in the amount of 110 percent of the estimated duties on the articles not exported or destroyed. The guaranteeing association shall have a period of 6 months from the date of claim in which to furnish proof of the exportation or destruction of the articles under conditions set forth in the Convention or Agreement under which the carnet is issued. If such

proof is not furnished within the 6–month period, the guaranteeing association shall forthwith pay the liquidated damages provided for above. The payment shall be refunded if the guaranteeing association within 3 months from the date of payment furnishes the proof referred to above. No claim for payment under a carnet covering a temporary importation may be made against the guaranteeing association more than 1 year after the expiration of the period for which the carnet was valid.

(3) Demand for return to Customs custody. When the demand for return to Customs custody is made in the case of merchandise entered under Chapter 98, subchapter XIII, HTSUS (19 U.S.C. 1202), liquidated damages in an amount equal to double the estimated duties on the merchandise not returned shall be demanded, except that in the case of samples solely for use in taking orders, motion-picture advertising films, professional equipment, tools of trade, and repair components for professional equipment and tools of trade, the liquidated damages demanded shall be in an amount equal to 110 percent of the estimated duties.

(e) If there has been a default with respect to any or all of the articles covered by the bond and a written petition for relief is filed as provided in part 172 of this chapter, it will be reviewed by the Fines, Penalties, and Forfeitures Officer having jurisdiction in the port where the entry was filed. If the Fines, Penalties, and Forfeitures Officer is satisfied that the importation was properly entered under Chapter 98, subchapter XIII, and that there was no intent to defraud the revenue or delay the payment of duty, the Fines, Penalties, and Forfeitures Officer may cancel the liability for the payment of liquidated damages in any case in his or her delegated authority as follows:

(1) If evidence is furnished which satisfies the Fines, Penalties, and Forfeitures Officer that the article would have been entitled to free entry as domestic products exported and returned had the evidence been furnished at the time of entry, without the collection of liquidated damages.

(2) If the article has been exported or destroyed under Customs supervision but not within the period of time during which the articles may remain in the Customs territory of the United States under bond, upon the payment of such lesser amount as the port director may deem appropriate under the law and in view of the circumstances, or without the collection of liquidated damages if the Fines, Penalties, and Forfeitures Officer is satisfied that the delay in exportation or destruction was for the benefit of the United States or was occasioned wholly by circumstances reasonably beyond the control of the parties concerned and which could not have been anticipated by a reasonably prudent person.

(3) If the article was exported or destroyed within the period of time during which the articles may remain in the Customs territory of the United States under bond but not under Customs supervision and satisfactory documentary evidence of actual exportation, such as a foreign landing certificate, or of death or other complete destruction, such as a veterinarian's certificate or certificates of two disinterested witnesses, are furnished together with a complete explanation by the applicant of the failure to obtain Customs supervision, upon the payment of such lesser amount as the Fines, Penalties, and Forfeitures Officer may deem appropriate under the law and in view of the circumstances, or without the collection of liquidated damages if the port director is satisfied that the merchandise was destroyed under circumstances which precluded any arrangement to obtain Customs supervision. Satisfactory documentary evidence of exportation, in the case of carnets, would include the particulars regarding importation or reimportation entered in the carnet by the Customs authorities of another contracting party, or a certificate with respect to importation or reimportation issued by those authorities, based on the particulars shown on a voucher which was detached from the carnet on importation or reimportation into their territory, provided it is shown that the importation or reimportation took place after the exportation which it is intended to establish.

(4) Upon the payment of an amount equal to double the duty which would

have accrued on the articles had they been entered under an ordinary consumption entry, or equal to 110 percent of such duties where that percentage is prescribed in §10.31(f), if such amount is determined to be less than the full amount of the bond.

(f) *Anticipatory breach.* If an importer anticipates that the merchandise entered under a Temporary Importation Bond will not be exported or destroyed in accordance with the terms of the bond, the importer may indicate to Customs in writing before the bond period has expired of the anticipatory breach. At the time of written notification of the breach, the importer shall pay to Customs the full amount of liquidated damages that would be assessed at the time of breach of the bond, and the entry will be closed. The importer shall notify the surety in writing of the breach and payment. By this payment, the importer waives his right to receive a notice of claim for liquidated damages as required by §172.1(a) of this chapter.

(g) If the petitioner is not satisfied with the port director's action under this section and submits a supplemental petition, both the original and the supplemental petitions shall be transmitted to the designated Headquarters official with a full report on the case.

[28 FR 14663, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §10.39, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§10.40 Refund of cash deposits.

(a) When a cash deposit is made in lieu of surety, it shall be refunded to the person in whose name the entry is made upon exportation in compliance with §10.38.

(b) If any article entered under Chapter 98, subchapter XIII, Harmonized Tariff Schedule of the United States, is not exported or destroyed within the period of time during which articles may remain in the customs territory of the United States under bond (including any lawful extension), the Center director shall notify the importer in writing that the entire cash deposit will be transferred to the regular account as liquidated damages unless a written application for relief from the payment of the full liquidated damages is filed with the Center director within 60 days after the date of the notice. If such an application is timely filed, the transfer of the cash deposit to the regular account as liquidated damages shall be deferred pending the decision of the Headquarters, U.S. Customs and Border Protection or, in appropriate cases, the Center director on the application.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 84–213, 49 FR 41165, Oct. 19, 1984; T.D. 89–1, 53 FR 41249, Dec. 21, 1988; CBP Dec. 16–26, 81 FR 93013, Dec. 20, 2016]

INTERNATIONAL TRAFFIC

§10.41 Instruments; exceptions.

(a) Locomotives and other railroad equipment, trucks, buses, taxicabs, and other vehicles used in international traffic shall be subject to the treatment provided for in part 123 of this chapter.

(b) [Reserved]

(c) Foreign-owned aircraft arriving in the United States shall be subject to the treatment provided for in part 122 of this chapter, unless entered under the provisions of §§10.31, 10.183, or paragraph (d) of this section.

(d) Any foreign-owned locomotive or other railroad equipment, truck, bus, taxicab, or other vehicle, aircraft, or undocumented boat brought into the United States for the purpose of carrying merchandise or passengers between points in the United States for hire or as an element of a commercial transaction, except as provided at §§123.12 (a) and (b), 123.14(c), and 141.4(b)(4), is subject to treatment as an importation of merchandise from a foreign country and a regular entry for such vehicle, aircraft or boat will be made. The use of any such vehicle, aircraft, or boat without a proper entry having been made may result in liabilities being incurred under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).

(e) [Reserved]

(f) Material for the maintenance or repair of international cables under the high seas, if requiring storage in special tanks for preservation, may be

placed in tanks specially bonded for the purpose and withdrawn therefrom for high-seas installation without the payment of duty and without limitation of the storage period to the usual 3-year warehousing period. International cables laid under the territorial waters of the United States but not brought on shore in the United States shall be admitted without entry or the payment of duty. With respect to international cables laid under the territorial waters of the United States but brought on shore in the United States, only that part of the cable in the United States between the point of entry into the territorial waters of the United States and the first point of support on land in the United States shall be admitted without the payment of duty.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 70–121, 35 FR 8222, May 26, 1970; T.D. 79–160, 44 FR 31956, June 4, 1979; T.D. 84–109, 49 FR 19450, May 8, 1984; T.D. 88–12, 53 FR 9315, Mar. 22, 1988; T.D. 93–66, 58 FR 44130, Aug. 19, 1993; T.D. 99–79, 64 FR 61205, Nov. 10, 1999]

§ 10.41a Lift vans, cargo vans, shipping tanks, skids, pallets, and similar instruments of international traffic; repair components.

(a)(1) Lift vans, cargo vans, shipping tanks, skids, pallets, caul boards, and cores for textile fabrics, arriving (whether loaded or empty) in use or to be used in the shipment of merchandise in international traffic are hereby designated as ''instruments of international traffic'' within the meaning of section 322(a), Tariff Act of 1930, as amended. The Commissioner of Customs is authorized to designate as instruments of international traffic, in decisions to be published in the weekly Customs Bulletin, such additional articles or classes of articles as he shall find should be so designated. Such instruments may be released without entry or the payment of duty, subject to the provisions of this section.

(2) Repair components, accessories, and equipment for any container of foreign production which is an instrument of international traffic may be entered or withdrawn from warehouse for consumption without the deposit of duty if the person making the entry or withdrawal from warehouse files a declaration that the repair component was imported to be used in the repair of a container of foreign production which is an instrument of international traffic, or that the accessory or equipment is for a container of foreign production which is an instrument of international traffic. The Center director must be satisfied that the importer of the repair component, accessory, or equipment had the declared intention at the time of importation.

(3) As used in this section, ''instruments of international traffic'' includes the normal accessories and equipment imported with any such instrument which is a ''container'' as defined in Article 1 of the Customs Convention on Containers.

(b) The reexportation of a container, as defined in Article 1 of the Customs Convention on Containers, which has become badly damaged, shall not be required in the case of a duly authenticated accident if the container (1) is subjected to applicable import duties and import taxes, or (2) is abandoned free of all expense to the Government or destroyed under Customs supervision at the expense of the parties concerned, following the procedure outlined in §158.43(c) of this chapter. Any salvaged parts and materials shall be subjected to applicable import duties and import taxes. Replaced parts which are not reexported shall be subjected to import duties and import taxes except where abandoned free of expense to the Government or destroyed under Customs supervision at the expense of the parties concerned.

(c) The instruments of international traffic designated in paragraph (a) of this section may be released in accordance with the provisions of that paragraph only after the applicant for such release has filed a bond on Customs Form 301, containing the bond conditions set forth in §113.66 of this chapter. The required application may be filed at the port of arrival or at a subsequent port to which an instrument shall have been transported in bond or to which a container shall have been moved under cover of a TIR carnet (see part 114 of this chapter) showing the characteristics and value of the container on the Goods Manifest of the carnet. If the container is listed on the

Goods Manifest of the carnet, the application may be filed at the port of arrival or at the subsequent port. If the container is not listed on the Goods Manifest, the application shall be filed at the port of arrival. When the application is filed at a port other than the port at which the bond is on file, the following procedure applies:

(1) When the application is filed before the fact of approval of the applicant's bond has been established, the applicant must submit with the application, or the Customs officer to whom the application is made must obtain, evidence that a current bond is on file at another port. That evidence may consist of a certified copy of the bond, or any other evidence which will satisfy the Customs officer to whom the application is made that a current bond is on file at another port.

(2) If the application is filed after the fact of approval of the applicant's bond has been established, a certified copy of that bond need not be filed at the port of release. Upon determination by the appropriate Customs officer that the fact of approval of the applicant's bond has been established, and the bond has not been subsequently discontinued, the instruments of international traffic will be released as provided for in paragraph (a) of this section.

(3) Upon the request of the applicant, the appropriate Customs officer at the port at which the instruments of international traffic are to be released will determine whether or not the fact of approval of the applicant's bond has been established. If the approval has not been established, the Customs officer with whom the application has been filed will advise the applicant of the nature of the evidence required to establish the fact that a current bond is on file at another port.

(d) If an instrument of foreign origin, or of United States origin which has been increased in value or improved in condition by a process of manufacture or other means while abroad, is released under this section and is subsequently diverted to point-to-point local traffic within the United States, or is otherwise withdrawn in the United States from its use as an instrument of international traffic, it becomes subject to entry and the payment of any applicable duties. An instrument of United States origin which has not been increased in value or improved in condition by a process of manufacture or other means while abroad and which is released under this section shall not be subject to entry or the payment of duty if it is so diverted or otherwise withdrawn.

(e) The person who filed the application for release under paragraph (a)(1) of this section shall promptly notify a director of a port of entry in the United States as defined in Section 401(k), Tariff Act of 1930, as amended, (1) that the container is to be abandoned or destroyed, as described in paragraph (b) of this section, or (2) that the instrument is the subject of a diversion or withdrawal as described in paragraph (d) of this section, in which event he shall file with CBP, either at the port of entry or electronically a consumption entry for the instrument and pay all import duties and import taxes due on the container or instrument at the rate or rates in effect and in its condition on the date of such diversion or withdrawal.

(f)(1) Except as provided in paragraph (j) of this section, an instrument of international traffic (other than a container as defined in Article 1 of the Customs Convention on Containers that is governed by paragraphs (g) (1)–(3) of this section) may be used as follows in point-to-point traffic, provided such traffic is incidental to the efficient and economical utilization of the instrument in the course of its use in international traffic:

(i) Picking up and delivering loads at intervening points in the United States while en route between the port of arrival and the point of destination of its imported cargo; or

(ii) Picking up and delivering loads at intervening points in the United States while en route from the point of destination of imported cargo to a point where export cargo is to be loaded or to an exterior port of departure by a reasonably direct route to, or nearer to, the place of such loading or departure.

(2) Neither use as enumerated in paragraph (f)(1)(i) or (ii) of this section constitutes a diversion to unpermitted

point-to-point local traffic within the United States or a withdrawal of an instrument in the United States from its use as an instrument of international traffic under this section.

(g)(1) Except as provided in paragraph (j) of this section, a container (as defined in Article 1 of the Customs Convention on Containers) that is designated as an instrument of international traffic is deemed to remain in international traffic provided that the container exits the U.S. within 365 days of the date on that it was admitted under this section. An exit from the U.S. in this context means a movement across the border of the United States into a foreign country where either:

(i) All merchandise is unladen from the container; or

(ii) Merchandise is laden aboard the container (if the container is empty).

(2) The person who filed the application for release under paragraph (a)(1) of this section is responsible for keeping and maintaining such records, otherwise generated and retained in the ordinary course of business, as may be necessary to establish the international movements of the containers. Such records shall be made available for inspection by Customs officials upon reasonable notice.

(3) If the container does not exit the U.S. within 365 days of the date on which it is admitted under this section, such container shall be considered to have been removed from international traffic, and entry for consumption must be made within 10 business days after the end of the month in which the container is deemed removed from international traffic. When entry is required under this section, any containers considered removed from international traffic in the same month may be listed on one entry. Such entry may be made at any port of entry. Under 19 U.S.C. 1484(a)(1)(B), the importer of record is required, using reasonable care, to complete the entry by filing with Customs the declared value, classification and rate of duty applicable to the merchandise. The importer of record must use the value of the container as determined in accordance with section 402, Tariff Act of 1930 (19 U.S.C. 1401a), as amended by the Trade Agreements Act of 1979 (TAA).

(h) For failure promptly to report the diversion or withdrawal or promptly to make the required entry and pay the duties due, the applicant shall be liable for the payment of liquidated damages equal to the domestic value of the instrument established in accordance with Section 606, Tariff Act of 1930.

(i) When an instrument of international traffic, as provided in paragraph (a) of this section, is returned to the United States and released in accordance with the provisions of that paragraph, any repairs which may have been made to the instrument while it was abroad are not subject to entry or the payment of duty whether the instrument is of foreign or domestic manufacture, whether it left the United States empty or loaded, and whether or not the repairs made abroad were in contemplation when the instrument left the United States.

(j) Containers and other articles designated as instruments of international traffic in accordance with this section are nevertheless subject to the application of the coastwise laws of the United States, with particular reference to Section 883, Title 46, United States Code (see § 4.93 of this chapter).

[28 FR 14663, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 10.41a, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 10.41b Clearance of serially numbered substantial holders or outer containers.

(a) The holders and containers described in this section may be released without entry or the payment of duty, subject to the provisions of this section.

(b) Subject to the approval of a port director pursuant to the procedures described in this paragraph, certain foreign- or U.S.-made shipping devices arriving from Canada or Mexico, including racks, holders, pallets, totes, boxes and cans, need not be serially numbered or marked if they are always transported on or within either intermodal and similar containers or containers which are themselves vehicles or vehicle appurtenances and accessories such as twenty and forty foot

containers of general use and ''igloo'' air freight containers. The following or similar notation shall appear on the vehicle or vessel manifest in relation to such shipping devices which are exempt from serial numbering or marking requirements pursuant to this paragraph: ''The shipping devices transported herein, which are not serially numbered or marked, have been exempted from such requirement pursuant to an application approved under 19 CFR 10.41b(b).'' Also, pallets and other solid wood shipping devices must be accompanied by an importer document, to the extent that this is required by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, attesting to the admissibility of such devices as regards plant pest risk, as provided for in 7 CFR 319.40–3.

(1) An importer or his agent, regardless of whether the importer is the owner of the foreign- or U.S.-manufactured shipping devices, may apply to a port director of Customs at one of the importer's chiefly utilized Customs ports or the port within which the importer's or agent's recordkeeping center is located for permission to have such shipping devices arriving from Canada or Mexico released without entry and payment of duty at the time of arrival and without the devices being serially numbered or marked. Application may be filed in only one port. Although no particular format is specified for the application, it must contain the information enumerated in paragraph (b)(2) of this section. Any duty which may be due on these shipping devices shall be tendered and paid cumulatively at the time specified in an approved application, which may be either before or after the arrival of the shipping devices in the U.S. (such as, at the time a contract, purchase order or lease agreement is issued).

(2) The application shall:

(i) Describe the types of shipping devices covered, their classification under the Harmonized Tariff Schedule of the U.S. (HTSUS), their countries of origin, and whether and to whom required duty was paid for them or when it will be paid for them, including duties for repair and modifications to such shipping devices while outside the U.S.;

(ii) Identify the intended ports where it is anticipated the shipping devices will be arriving and departing the U.S., as well as the particular movements and conveyances in which they are intended to be utilized;

(iii) Describe the applicant's proposed program for accounting for and reporting these shipping devices;

(iv) Identify the reporting period (which shall in no event be less frequent than annual), as well as the payment period within which applicable duty and fees must be tendered (which shall in no event exceed 90 days following the close of the related reporting period);

(v) Describe the type of inventory control and recordkeeping, including the specific records, to be maintained to support the reports of the shipping devices; and

(vi) Provide the location in the United States, including the name and address, where the records supporting the reports will be retained by law and will be made available for inspection and audit upon reasonable notice. (The records supporting the reports of the shipping devices must be kept for a period of at least 3 years from the date such reports are filed with the port director.)

(3) The application shall be filed along with a continuous bond containing the conditions set forth in §113.66(c) of this chapter. If the application is approved by the port director and the conditions set forth in the application or of the bond are violated, the port director may issue a claim for liquidated damages equal to the domestic value of the container. If the domestic value exceeds the amount of the bond, the claim for liquidated damages will be equal to the amount of the bond.

(4) The port director receiving the application shall evaluate the program proposed to account for, report and maintain records of the shipping devices. The port director may suggest amendments to the applicant's proposal. The port director shall notify the applicant in writing of his decision on the application within 90 days of its receipt, unless this period is extended

for good cause and the applicant is so informed in writing. Approval of the application by the port director with whom it is filed shall be binding on all Customs ports nationwide.

(5) If the decision is to deny the application, in whole or in part, the port director shall specify the reason for the denial in a written reply, and inform the applicant that such denial may be appealed to the Assistant Commissioner, Office of Field Operations, Customs Headquarters, within 21 days of its date. The Assistant Commissioner's decision shall be issued, in writing, within 30 days of the receipt of the appeal, and shall constitute the final Customs determination concerning the application.

(6) If the application is approved, an importer may later apply to amend his application to add or delete particular types of shipping devices listed in the application in which the procedures set forth in the application may be utilized. If a requested amendment to an approved application should be denied, or if an approved application should be revoked, in whole or in part, by the port director, the procedures described in paragraph (b)(5) of this section shall apply.

(7) Application for and approval of a reporting program shall not limit or restrict the use of other alternative means for obtaining the release of holders, containers and shipping devices.

(c) In the case of serially numbered holders or containers of United States manufacture for which free clearance under subheading 9801.00.10, Harmonized Tariff Schedule of the United States, is claimed, the owner shall place thereon the following markings:

(1) 9801.00.10, unless the holder or container has permanently attached thereto the manufacturer's metal tag or plate showing, among other things, the name and address of the manufacturer who is located in the United States.

(2) The name of the owner, either positioned as indicated in the example below, or elsewhere conspicuously shown on the holder or container.

(3) The serial number assigned by the owner, which shall be one of consecutive numbers and not to be duplicated. For example: 9801.00.10 * * * Zenda * * * 2468.

(d)(1) In the case of serially numbered holders or containers of foreign manufacture, other than those provided for in paragraph (d)(2) of this section, for which free clearance under the second provision in subheading 9803.00.50, HTSUS (19 U.S.C. 1202), is claimed, the owner shall place thereon the following markings:

(i) 9803.00.50.

(ii) The district and port code numbers of the port of entry, the entry number, and the last two digits of the fiscal year of entry covering the importation of the holders and containers on which duty was paid.

(iii) The name of the owner, either positioned as indicated in the example below, or elsewhere conspicuously shown on the holder or container.

(iv) The serial number assigned by the owner, which shall be one of consecutive numbers and not to be duplicated. For example: 9803.00.50 * * * 10–1–366–63 * * * Zenda * * * 2468.

(2) In the case of substantial holders or containers of either U.S. or foreign manufacture, specially designed and equipped to facilitate the carriage of goods by one or more modes of transport without intermediate reloading, each having a gross mass rating of at least 18,120 kilograms, for which duty-free entry is requested under either the first or the second proviso in subheading 9803.00.50, HTSUS (19 U.S.C. 1202), is claimed, only the following clear, conspicuous and durable markings are required to be on the container:

(i) The identity of the owner or operator of the container.

(ii) The serial number assigned by the owner or operator of the container, which shall be one of consecutive numbers and shall not be duplicated.

(e) The prescribed markings shall be clear and conspicuous, that is, they shall appear on an exposed side of the holder or container in letters and figures of such size as to be readily discernible. The markings will be stricken out or removed when the holders or containers are taken out of service or when ownership is transferred, except that appropriate changes may be made

if a new owner wishes to use the holders and containers under this procedure.

(f) The owner shall keep adequate records open to inspection by Customs officers, which shall show the current status of the serially numbered holders and containers in service and the disposition made of such holders and containers taken out of service.

(g) Nothing in this procedure shall be deemed to affect:

(1) The requirements for outward or inward manifesting of such holders or containers. The manifests will show for each holder or container its markings as provided for herein.

(2) The requirements of the Department of Commerce on exportation with respect to the filing of Electronic Export Information (EEI).

(3) The treatment of articles covered herein under the coastwise laws of the United States, with particular reference to section 883, Title 46, United States Code.

(h) If the holder or container and its contents are to move in bond or under cover of a TIR carnet (see part 114 of this chapter) from the port of arrival intact, the holder or container shall appear on the inward foreign manifest so as to be related to the cargo contained therein and will be released under this procedure at a subsequent port. If the holder or container is to move in bond or under cover of a TIR carnet from the port of arrival not intact with its contents, the holder or container may appear on the inward foreign manifest separate from and not related to the cargo contained therein and will be released under this procedure at the port of arrival before it moves forward and will not appear on the in-bond document.

(i) A continuous bond containing the conditions set forth in §113.66 of this chapter shall be filed with the port director. If the conditions are violated the port director shall issue a claim for liquidated damages equal to the domestic value of the holder or container established in accordance with section 606, Tariff Act of 1930, as amended (19 U.S.C. 1606). If the domestic value exceeds the amount of the bond the claim for liquidated damages will be equal to the amount of the bond.

[T.D. 56542, 30 FR 15143, Dec. 8, 1965, as amended by T.D. 71–70, 36 FR 4485, Mar. 6, 1971; T.D. 84–213, 49 FR 41165, Oct. 19, 1984; T.D. 86–13, 51 FR 4164, Feb. 3, 1986; T.D. 89–1, 53 FR 51249, Dec. 21, 1988; T.D. 96–20, 61 FR 7989, Mar. 1, 1996; T.D. 97–82, 62 FR 51769, Oct. 3, 1997; T.D. 99–64, 64 FR 43265, Aug. 10, 1999; CBP Dec. 17-06, 82 FR 32238, July 13, 2017]

ARTICLES FOR INSTITUTIONS

§ 10.43 Duty-free status.

(a) The Center director may, at his discretion, require appropriate proof of duty-free status for articles for institutions claimed to be exempt from duty under subheadings 9810.00.05, 9810.00.15, 9810.00.25, 9810.00.30, 9810.00.40, 9810.00.45, 9810.00.50, 9810.00.55, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(b) Appropriate proof may be a copy of the charter or other evidence of the character of the institution for the use of which the articles are imported.

[T.D. 85–123, 50 FR 29953, July 23, 1985, as amended by T.D. 89–1, 53 FR 51249, Dec. 21, 1988]

§ 10.46 Articles for the United States.

Pursuant to subheadings 9808.00.10 and 9808.00.20, books, engravings, and other articles therein enumerated, which are imported by authority or for the use of the United States or for the use of the Library of Congress, shall be admitted free of duty upon the written request of the head of the bureau or executive department concerned.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 67–108, 32 FR 6392, Apr. 25, 1967; T.D. 89–1, 53 FR 51249, Dec. 21, 1988; T.D. 97–82, 62 FR 51769, Oct. 3, 1997]

§ 10.47 [Reserved]

WORKS OF ART

§ 10.48 Engravings, sculptures, etc.

(a) Invoices covering works of art claimed to be free of duty under subheadings 9702.00.00 and 9703.00.00, HTSUS, shall show whether they are originals, replicas, reproductions, or copies, and also the name of the artist who produced them, unless upon examination the Customs officer is satisfied

that such statement is not necessary to a proper determination of the facts.

(b) The following evidence shall be filed in connection with the entry: A declaration, or its electronic equivalent, in the following form by the artist who produced the article, or by the seller, shipper or importer, showing whether it is original, or in the case of sculpture, the original work or model, or one of the first twelve castings, replicas, or reproductions made from the original work or model; and in the case of etchings, engravings, woodcuts, lithographs, or prints made by other hand-transfer processes, that they were printed by hand from hand-etched, hand-drawn, or hand-engraved plates, stones, or blocks:

I, _____, do hereby declare that I am the producer, seller, shipper or importer of certain works of art, namely _____ covered by the annexed invoice dated _____; that any sculptures or statuary included in that invoice are the original works or models or one of the first twelve castings, replicas, or reproductions made from the sculptor's original work or model; and that any etchings, engravings, woodcuts, lithographs, or prints made by other hand-transfer processes included in that invoice were printed by hand from hand-etched, hand-drawn, or hand-engraved plates, stones, or blocks.

(c) The Center director may waive the declaration requirement set forth in paragraph (b) of this section.

(d) Artists' proof etchings, engravings, woodcuts, lithographs, or prints made by other hand-transfer processes should bear the genuine signature or mark of the artist as evidence of their authenticity. In the absence of such a signature or mark, other evidence shall be required which will establish the authenticity of the work to the satisfaction of the Center director.

[T.D. 94–3, 58 FR 68742, Dec. 29, 1993, as amended by CBP Dec. 15–14, 80 FR 61284, Oct. 13, 2015]

§ 10.49 Articles for exhibition; requirements on entry.

(a) There shall be filed in connection with the entry of works of art and other articles claimed to be free of duty under Chapter 98, Subchapter XII, Harmonized Tariff Schedule of the United States (HTSUS), a declaration, or its electronic equivalent, by a qualified officer of the institution in sufficient detail to demonstrate entitlement to entry as claimed, and a bond on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter. Claim for free entry under Chapter 98, Subchapter XII may be made for articles of the character described therein which have been previously entered under any other provision of law and the entry amended accordingly upon compliance with the requirements of this section, provided the articles have not been released from Customs custody.

(b) The Center director may require a copy of the charter or other evidence of the character of the institution for which the articles are imported, and may also require the production of the original of any order given by such society or institution to any importing agent or dealer for such articles. The society or institution shall file, within 6 months after the date of filing the entry, any document or proof demanded by the Center director in connection with the entry.

(c) Articles entered under subheading 9812.00.20, HTSUS, may be transferred from one institution to another upon an application in writing in the case of each transfer describing the articles and stating the name of the institution to which transfer is to be made, provided the sureties to the bond assent in writing under seal or a new bond is filed. No entry or withdrawal shall be required for such a transfer.

(d) If any of the articles accorded free entry under Chapter 98, Subchapter XII shall be sold, offered or exposed for sale, transferred, or used in any manner contrary to the provisions of the regulations in this part, within 5 years after the date of entry under such part, the amount of the duties shall be collected immediately by the CBP, either at the port of entry or electronically and deposited as duties. If the articles are exported or destroyed under Customs supervision within such 5-year period, the liability under the bond shall be treated as terminated.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 84–213, 49 FR 41166, Oct. 19, 1984; T.D. 89–1, 53 FR 51249, Dec. 21, 1988; T.D. 92–85, 57 FR 40605, Sept. 4, 1992; CBP Dec. 15–14, 80 FR 61284, Oct. 13, 2015]

§ 10.50 [Reserved]

§ 10.52 Painted, colored or stained glass windows for religious institutions.

When painted, colored, or stained glass windows or parts thereof, are claimed free of duty under subheading 9810.00.10, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), the Center director may, at his discretion, require appropriate proof that the importation was designed by, and produced by or under the direction of, a professional artist, and that it is for the use of an institution established solely for religious purposes.

[T.D. 85–123, 50 FR 29953, July 23, 1985, as amended by T.D. 89–1, 53 FR 51250, Dec. 21, 1988]

§ 10.53 Antiques.

(a) Articles accompanying a passenger and entitled to entry under the passenger's declaration and entry, or articles entered under an informal entry which are claimed to be free of duty under subheading 9706.00.00, Harmonized Tariff Schedule of the United States (HTSUS), may be admitted free of duty upon the execution of a declaration on the face of the entry, or its electronic equivalent, provided that the passenger or person filing the informal entry is the owner of the articles and that they are for his personal use and not for sale or other commercial use and provided the Customs officer concerned is satisfied that the articles are of the requisite age.

(b) Antiques of the age prescribed by subheading 9706.00.00, HTSUS, or admitted under the provisions of paragraph (e) of this section, shall be admitted free of duty though repaired or renovated. If, however, an antique has been repaired with a substantial amount of additional material, without changing the original form or shape, the original and added portions shall be appraised and reported as separate entities and the basis for such report shall be plainly indicated on the invoice by the appraiser. In such cases duty shall be assessed on the portion added. If the repairs consist of an addition to an article of a feature which changes it substantially from the article originally produced, or if the antique portion has otherwise been so changed as to lose its identity as the article which was in existence prior to the time prescribed in subheading 9706.00.00, HTSUS, the entire article shall be excluded from free entry under subheading 9706.00.00, HTSUS.

(c) Except for furniture admitted under the provisions of paragraph (e) of this section, furniture claimed to be free of duty under subheading 9706.00.00, Harmonized Tariff Schedule of the United States (HTSUS) may be entered for consumption at any port of entry within the customs territory of the United States. Furniture as used in this section of the regulations is defined as 'movable articles of convenience or decoration for use in furnishing a house, apartment, place of business or accommodation'. This definition embraces most articles claimed to be free of duty as antiques.

(d) A claim for the free entry of an article under subheading 9706.00.00, HTSUS on the basis of antiquity may be made on the entry, or filed after entry at any time prior to liquidation of the entry, provided the article has not been released from Customs custody or it has been found upon examination before such release to be described in subheading 9706.00.00, HTSUS.

(e) Antique articles otherwise prohibited entry by the Endangered Species Act of 1973 (16 U.S.C. 1521, *et seq.*) may be entered if:

(1) The article is composed in whole or in part of any endangered or threatened species listed in 50 CFR 17.11 or 17.12,

(2) The article is not less than 100 years of age,

(3) The article has not been repaired or modified with any part of any such endangered or threatened species, on or after December 28, 1973,

(4) The article is entered at a port designated in § 12.26 of this chapter,

(5) A Declaration for Importation or Exportation of Fish or Wildlife (USFWS Form 3–177, or its electronic equivalent) is filed at the time of entry with the port director who will forward the form to the U.S. Fish and Wildlife Service, and

(6) The importer meets the requirements of paragraph (a) of this section.

(f) The additional duty imposed by additional U.S. Note 2, Chapter 97, HTSUS, shall apply to any article which is imported for sale and claimed, either at the time of entry or at a later date, to be free of duty under subheading 9706.00.00, HTSUS, if such article is later found to be unauthentic in respect of the antiquity claimed as a basis for such free entry, unless the claim under subheading 9706.00.00, HTSUS, is withdrawn in writing before the examination of the article for the purpose of appraisement or classification has begun.

(g) The additional duty provided for in additional U.S. Note 2, Chapter 97, HTSUS shall not be assessed if the importer established by evidence satisfactory to the Center director that the article was not imported for sale. In the case of any article imported in a passenger's baggage or entered under an informal entry, the Customs officer concerned may accept the statement of the owner that the article was not imported for sale if he is satisfied of the truth of such statement.

[28 FR 14663, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 10.53, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 10.54 Gobelin and other hand-woven tapestries.

Pursuant to subheading 5805.00.10, Harmonized Tariff Schedule of the United States, Gobelin tapestries produced in the Manufacture Nationale des Gobelins factories at Paris and Beauvais under the direction and control of the French Government, and other hand-woven tapestries, shall be accorded free entry if of a kind fit only for use as wall hangings, and valued over $215 per square meter.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 87–75, 52 FR 20066, May 29, 1987; T.D. 89–1, 53 FR 51250, Dec. 21, 1988]

VEGETABLE OILS

§ 10.56 Vegetable oils, denaturing; release.

(a) Olive, palm-kernel, rapeseed, sunflower, and sesame oil shall be classifiable under subheadings 1509.10.20, 1509.10.40, 1509.90.20, 1509.90.40, 1510.00.20, 1512.19.20, 1513.29.00, 1514.90.10, 1514.90.50, 1515.50.00, Harmonized Tariff Schedule of the United States, if denatured abroad or under Customs supervision after importation but before release from Customs custody, at the request and expense of the importer, by a formula prescribed by Headquarters, U.S. Customs Service, or if by their method of production abroad they are rendered unfit for use as food or for any but mechanical or manufacturing purposes.

(b) Each cask or package of oil claimed to have been before importation denatured or otherwise rendered unfit for use as food or for any but mechanical or manufacturing purposes shall be sampled and tested by an appraising officer.

(c) Formulas prescribed by Headquarters, U.S. Customs Service, except proprietary mixtures, will be circulated to all Customs officers and will appear as abstracts of United States Customs Service decisions published in the weekly Customs Bulletins. Proprietary mixtures approved by the Commissioner of Customs will not be published but appropriate notice of their approval will be given to all Customs officers.

(d) The Headquarters, U.S. Customs Service, will from time to time prescribe additional formulas, and will consider any formula for special denaturing that may be submitted.

(e) The Center director may, if he deems it advisable, require an importer requesting permission to use any authorized denaturant to submit to the appraiser an adequate sample of such denaturant, in order that the appraiser may report to the Center director whether or not such denaturant is suitable for rendering the oil unfit for use as food or for any but mechanical or manufacturing purposes.

(f) No such oil shall be released free of duty until the appraiser shall have made a special report that it has been properly denatured.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 66–182, 31 FR 11416, Aug. 30, 1966; T.D. 87–75, 52 FR 20066, May 29, 1987; T.D. 89–1, 53 FR 51250, Dec. 21, 1988]

POTATOES, CORN, OR MAIZE

§ 10.57 Certified seed potatoes, and seed corn or maize.

Claim for classification as seed potatoes under subheading 0701.10.00, as seed corn (maize) under subheading 1005.10., HTSUS, shall be made at the time of entry. Such classification shall be allowed only if the articles are white or Irish potatoes, or maize or corn, imported in containers and if, at the time of importation, there is firmly affixed to each container an official tag supplied by the government of the country in which the contents were grown, or an agency of such government. The tag shall bear a certificate to the effect that the specified contents of the container were grown, and have been approved, especially for use as seed. The tag shall also bear a number or other symbol identifying the potatoes or corn in the container with an inspection record of the foreign government or its agency on the basis of which the certificate was issued.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 89–1, 53 FR 51250, Dec. 21, 1988]

BOLTING CLOTHS

§ 10.58 Bolting cloths; marking.

(a) As a prerequisite to the free entry of bolting cloth for milling purposes under subheading 5911.20.20, Harmonized Tariff Schedule of the United States, the cloth shall be indelibly marked from selvage to selvage at intervals of not more then 10.16 centimeters with ''bolting cloth expressly for milling purposes'' in block letters 7.62 centimeters in height. Bolting cloths composed of silk imported expressly for milling purposes shall be considered only such cloths as are suitable for and are used in the act or process of grading, screening, bolting, separating, classifying, or sifting dry materials, or dry materials mixed with water, if the water is merely a carrying medium.

(b) Bolting cloths not marked in the manner above indicated at the time of importation may be so marked by the importers in public stores under the supervision of customs officers.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 87–75, 52 FR 20066, May 29, 1987; T.D. 89–1, 53 FR 51250, Dec. 21, 1988]

WITHDRAWAL OF SUPPLIES AND EQUIPMENT FOR VESSELS

§ 10.59 Exemption from customs duties and internal-revenue tax.

(a) A vessel shall not be considered to be actually engaged in the foreign trade, or in trade between the Atlantic and Pacific ports of the United States, or between the United States and its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States, as the case may be, for the purpose of withdrawing supplies free of duty and internal-revenue tax pursuant to section 309(a), Tariff Act of 1930, as amended, unless it is—

(1) Operating on a regular schedule in a class of trade which entitles it to the privilege;

(2) Actually transporting passengers or merchandise to or from a foreign port, a port on the opposite coast of the United States, or between a port in a possession of the United States and a port in the United States or in another of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States;

(3) Departing in ballast (without cargo or passengers) from one port for another, domestic or foreign, for the purpose of lading passengers or cargo at the port of destination for carriage in a class of trade specified in section 309(a), Tariff Act of 1930, as amended, for which class of trade the vessel is suitable and substantially ready for service with necessary fittings, outfit, and equipment already installed on its departure in ballast, and from which it is not diverted prior to carriage of passengers or cargo in such trade. A written declaration of the owner or agent of the vessel may be required in connection with the withdrawal, certifying to the vessel's suitableness and substantial readiness with necessary fittings, outfit, and equipment already installed on its departure in ballast for service in a class of trade specified in

section 309 and agreeing to notify the port director if it is laid up or diverted from such class of trade prior to the carriage of cargo or passengers in such trade.

(b) A withdrawal of articles may not be made under section 309, Tariff Act of 1930, as amended, for use on a trial or test trip of a vessel preparatory to its actually engaging in trades.

(c) The classes of articles which may be withdrawn as provided for by section 309, Tariff Act of 1930, as amended, include the containers in which the articles are withdrawn and laden even though for tariff purposes the containers are classifiable separately from their contents, except unusual containers within the purview of General Rule of Interpretation 5, Harmonized Tariff Schedule of the United States (HTSUS).

(d) For the purpose of allowing the privileges of section 309, Tariff Act of 1930, as amended, to aircraft as provided for therein, an aircraft shall be deemed to be a vessel within the meaning of each provision of this section and of §§ 10.60 through 10.64 which may be applied to aircraft.

(e) A documented vessel with a fisheries license endorsement and foreign fishing vessels of 5 net tons or over may be allowed to withdraw distilled spirits (including alcohol), wines, and beer conditionally free under section 309, Tariff Act of 1930, as amended (19 U.S.C. 1309), if the port director is satisfied from the quantity requested, in the light of (1) whether the vessel is employed in substantially continuous fishing activities, and (2) the vessel's complement, that none of the withdrawn articles is intended to be removed from the vessel in, or otherwise returned to, the United States without the payment of duty or tax. Such withdrawal shall be permitted only after the approval by the port director of a special written application, in triplicate, on Customs Form 5125, of the withdrawer, supported by a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter executed by the withdrawer. Such application shall be filed with Customs Form 7501, or its electronic equivalent, or 7512, as the case may be. The original and the triplicate copy of the application, after approval, shall be stamped with the withdrawal number and date thereof and shall be returned to the withdrawer for use as prescribed below. Approval of each such application shall be subject to the condition that the original and the triplicate copy shall be presented thereafter by the withdrawer or the vessel's master to the port director within 24 hours (excluding Saturday, Sunday, and holidays) after each subsequent arrival of the vessel at a Customs port or station and that an accounting shall be made at the time of such presentation of the disposition of the articles until the port director is satisfied that all of them have been consumed on board, or landed under Custom's supervision, and takes up the original application. (The withdrawer shall retain the triplicate copy as evidence of consumption on board or landing under Customs supervision.) The approval shall be subject to the further conditions that any such withdrawn article remaining on board while the vessel is in port shall be safeguarded in the manner and to such extent as the district director for the port or place of arrival shall deem necessary and that failure to comply with the conditions upon which a conditionally free withdrawal is approved shall subject the total quantity of withdrawn articles to the assessment and collection of an amount equal to the duties and taxes that would have been assessed on the entire quantity of supplies withdrawn had such supplies been regularly entered, or withdrawn, for consumption.

Exemption from internal-revenue tax on distilled spirits, alcohol, wines, and beer removed from any internal-revenue bonded warehouse, industrial alcohol premises, bonded wine cellar, or brewery; and drawback on taxpaid distilled spirits or wines removed from an export storage room, or on taxpaid beer removed from a brewery (or place of storage elsewhere), for use as supplies on vessels under section 309, Tariff Act of 1930, as amended, are governed by regulations of the Internal Revenue Service.

(f) Pursuant to section 309(d) of the Tariff Act of 1930, as amended, the Department of Commerce has found and advised the Secretary of the Treasury

of the foreign countries which allow privileges to aircraft registered in the United States substantially reciprocal to those described in sections 309 and 317 of the Tariff Act of 1930, as amended. Advices also have been received of changes and limitations of privileges allowed. In accordance with these advices, Treasury decisions are issued extending to the aircraft of foreign countries free withdrawal privileges reciprocal to those found by the Secretary of Commerce to be extended by those countries to aircraft registered in the United States or making changes in such privileges on the basis of new findings. Listed below by countries are the Treasury decisions issued pursuant to such findings which are currently in effect:

Country	Treasury Decision(s)	Exceptions if any, as noted—
Abu Dhabi	95–45	
Argentina	54925 (1) 92–20	Applicable only as to aircraft equipment, spare parts, and supplies.
Australia	54747 (1)	Not applicable to ground equipment.
Austria	80–68	
Bahamas	52798 (3)	
Bahrain	95–45	
Belgium	52846 (2)	
Benin	71–215,93-	
Bermuda	49944 (4)	
Brazil	53281 (2)	
Canada	69–149 69–245	Not applicable to ground equipment during period May 1 to September 16, 1969, inclusive.
Chile	66–128 (2)	
China*	82–91	
Colombia	70–107 (1)	
Costa Rica	53658 (1)	
Cuba	81–198	Applicable only as to aircraft supplies.
Czechoslovakia	70–107 (1)	
Denmark	51966 (3)	
Dominican Republic.	54522 (1)	
Ecuador	52510 (4)	
Egypt	74–3 85–141	
El Salvador	54675 (1)	
Finland	69–120 (2)	
France	67–96 (1)	Not applicable to tobacco products under section 317 of the tariff act. Not applicable to ground equipment.
Federal Republic of Germany.	69–150	Not applicable to ground equipment.
Greece	54847 (1)	
Guyana	78–28	
Honduras	71–154	
Iceland	67–265 (1)	
India	55155 (1)	
Indonesia	90–61	Applicable only as to aviation fuels and lubricants.
Iran	75–254	
Ireland	55291 (1)	
Israel	52831 (3)	
Italy	69–223	Not applicable to ground equipment.
Ivory Coast	71–215	
Jamaica	70–250	
Japan	53550 (1), 88–45	Not applicable to ground support equipment as of August 1, 1986
Jordan	74–102	
Kenya	71–102	Applicable only as to aircraft fuels and lubricants.
Lebanon	53902 (1)	
Luxembourg	89–77	Applicable only as to aviation fuels.
Mexico	54506 (5)	
Morocco	75–254	
Netherlands	52494 (2)	
Netherlands Antilles.	71–211	
New Zealand	73–52	Not applicable to ground equipment.
Nicaragua	54640 (1)	
Norway	51966 (3)	
Oman	95–45	
Pakistan	55416 (1)	
Panama	55453 (1)	
Peru	52911 (2)	
Poland	72–153	
Portugal	68–107 (1)	Not applicable to ground equipment.
Qatar	95–45	
Republic of Korea	71–140	
Republic of the Philippines.	71–197	
Romania	75–35	
Saudi Arabia	73–307, 92–68	
Senegal	71–215	
Singapore	93–25	
South Africa	69–162	Not applicable to ground equipment.
Spain	54522 (2)	
Sweden	51966 (3)	
Switzerland	56047	
Taiwan	70–107 (1), 82–91	Not applicable to ground equipment.
Tanzania	71–102	Applicable only as to aircraft fuels and lubricants.
Thailand	71–138, 89–6	
Trinidad and Tobago.	56441 (1)	
Turkey	89–7	
Uganda	71–102	Applicable only as to aircraft fuels and lubricants.
Union of Soviet Socialist Republics.	67–123 (1)	
United Kingdom	69–176	Not applicable to ground equipment.
Venezuela	55425 (1)	
Yugoslavia	71–138	
Zambia	89–5	

*See also Taiwan

[28 FR 14663, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §10.59, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 10.60 Forms of withdrawals; bond.

(a) Withdrawals from warehouse shall be made on CBP Form 7501. Each withdrawal must contain the statement prescribed for withdrawals in § 144.32 of this chapter and all of the statistical information as provided in § 141.61(e) of this chapter. Withdrawals from continuous CBP custody elsewhere than in a bonded warehouse must be made by filing an in-bond application pursuant to part 18 of this chapter, except as provided for by paragraph (h) of this section. When a withdrawal of supplies or other articles is made which may be used on a vessel while it is proceeding in ballast to another port as provided for by § 10.59(a)(3), a notation of this fact shall be made on the withdrawal and the name of the other port given if known.

(b) If the withdrawal is made by other than the principal on the warehouse or rewarehouse entry, as the case may be, the assent of such principal shall be endorsed on the withdrawal, unless the principal has otherwise authorized such withdrawal in writing.

(c) A bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter shall be taken when the withdrawal from warehouse is made by a person other than the principal on the warehouse or rewarehouse entry, as provided for in paragraph (b) of this section.

(d) Except as otherwise provided in § 10.62b, relating to withdrawals from warehouse of aircraft turbine fuel to be used within 30 days of such withdrawal as supplies on aircraft under section 309, Tariff Act of 1930, as amended, when the supplies are to be laden at a port other than the port of withdrawal from warehouse, they shall be withdrawn for transportation in bond to the port of lading by filing an in-bond application pursuant to part 18 of this chapter. The procedure shall be the same as that prescribed in 144.37 of this chapter.

(e) No bond shall be required in the case of war vessels.

(f) Unless transfer is permitted under the provisions of paragraph (h) of this section, when articles are withdrawn from continuous Customs custody elsewhere than in a bonded warehouse for lading at the port of withdrawal, the procedure provided for in § 18.25 of this chapter shall be followed. Unless transfer is permitted under the provisions of paragraph (h) of this section, when articles are withdrawn from continuous Customs custody elsewhere than in a bonded warehouse for lading at another port, the procedure set forth in § 18.26 of this chapter shall be followed. There shall be such examination of the articles as may be necessary to satisfy the port director that they are subject to the privileges of section 309, Tariff Act of 1930, as amended, and that the value and quantity declared for them are correct.

(g) A withdrawal under § 10.59(e) shall be supported by a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter.

(h) If a request is made for permission to transfer supplies or stores from one vessel to another which would be entitled to withdraw them free of duty and tax under section 309 or 317, Tariff Act of 1930, as amended, the port director in his discretion may permit the articles to be so transferred under Customs supervision under a permit on Customs Form 3171 in lieu of a formal withdrawal under the pertinent statute. In such a case, the pertinent statute shall be indicated by an endorsement made on the permit by the port director.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 73–175, 38 FR 17445, July 2, 1973; T.D. 73–312, 38 FR 30882, Nov. 8, 1973; T.D. 84–213, 49 FR 41166, Oct. 19, 1984; T.D. 95–81, 60 FR 52295, Oct. 6, 1995; T.D. 96–18, 61 FR 6777, Feb. 22, 1996; CBP Dec. 15–14, 80 FR 61284, Oct. 13, 2015; CBP Dec. 17–13, 82 FR 45393, Sept. 28, 2017]

§ 10.61 Withdrawal permit.

Upon the filing of the withdrawal and the execution of the bond, when required, the port director shall issue a permit on CBP Form 7501 or in-bond application.

[CBP Dec. 17–13, 82 FR 45394, Sept. 28, 2017]

§ 10.62 Bunker fuel oil.

(a) *Withdrawal under section 309, Tariff Act of 1930, as amended (19 U.S.C. 1309).* Except as otherwise provided in § 10.62b, relating to withdrawals from warehouse of aircraft turbine fuel to be

used within 30 days of such withdrawal as supplies on aircraft under section 309, Tariff Act of 1930, as amended (19 U.S.C. 1309), when all the bunker fuel oil in a Customs bonded tank is intended only for lading duty free as supplies on vessels under section 309 at the port where the tank is located, delivery of the oil, by Customs bonded carrier, cartman, or lighterman (including bonded pipelines), under withdrawals on Customs Form 7501, or its electronic equivalent, either single or blanket, may be made without the presence of a Customs officer. When a blanket withdrawal is filed and a partial release takes place, the partial release procedure set forth in §19.6(d) of this chapter shall be followed for each partial release. However, each abstract copy of Customs Form 7501, or its electronic equivalent, shall include the following additional information:

(1) Type of oil withdrawn.

(2) Number or other identification of sales order therefor.

(3) Name of bonded carrier, date it received oil.

(4) Receipt signed by master or other person in charge of delivering conveyance identified by number, or name, and if Customs bonded lighterman or cartman, by the carrier's license number.

(5) Name and location of vessel obtaining oil.

(6) Quantity and identification of each type of oil received with date, and signature and title of receiving officer. If all the oil is laden on the receiving vessel at the port of withdrawal via pipeline from the bonded storage tank, paragraphs (a) (3) and (4) of this section shall be deemed to be inapplicable.

(b) If a blanket free withdrawal of bunker fuel oil is filed, to comply with Bureau of the Census requirements the withdrawal on Customs Form 7501, or its electronic equivalent, shall be endorsed ''Estimated Withdrawals'' and limited to the aggregate quantity and value of fuel oil which it is estimated will be physically removed from Customs bond during the calendar month in which the withdrawal is filed for lading on vessels entitled to duty-free vessel supplies under section 309 of the Tariff Act of 1930, as amended.

(c)(1) As an incident of the delivery of fuel oils classifiable at different rates of duty to a vessel or vessels under section 309 of the tariff act, the port director may, when necessary to enable a supplier to meet fuel specifications, permit the blending of the oils in the delivering conveyance or in other suitable facilities after withdrawal from the bonded tanks, upon the condition that, to the extent of the amount of oil withdrawn classifiable at the higher rate, duty at the higher rate will be paid on any portion of the blended fuel oil not delivered within a reasonable time to a qualified vessel. The withdrawer shall be required to file a withdrawal for consumption for the excess quantity withdrawn. For example, if the quantity withdrawn consists of 1,500 barrels of bunker C fuel oil classifiable at the rate of one-eighth cent per gallon and 500 barrels of diesel oil classifiable at the rate of one-fourth cent per gallon but only 1,400 barrels of the blended oil are actually laden as fuel supplies on qualified vessels, withdrawals for consumption are required for 500 barrels of diesel oil at the higher rate and for 100 barrels of bunker C fuel oil at the lower rate.

(2) *Delivering transferer receipt*. The receipt of the delivering carrier on a copy of Customs Form 7501, or its electronic equivalent, for fuel oil which has been blended under paragraph (c)(1) of this section with components classifiable at different rates of duty shall show, for each warehouse entry number and withdrawal number involved, the types and quantity of oil received.

(d) Fuel oil withdrawn as vessel supplies at one port may be laden at another port on a vessel or vessels entitled to the free withdrawal privileges of section 309 of the tariff act, under procedures prescribed in this section, provided the movement to the receiving vessel or vessels is under the bond of a qualified carrier as described in §18.1(a) of this chapter. In such cases, the provisions of §10.60(d) of this chapter shall be deemed inapplicable.

(e) If a vessel not entitled to duty-free withdrawal of supplies from Customs bonded warehouses under section 309 of the Tariff Act of 1930, as amended, should be supplied with fuel oil from a Customs bonded tank described

in paragraph (a) of this section because of an emergency, a duty paid withdrawal therefor shall be filed on the first day that the customhouse is open for the general transaction of business after the day on which the oil is laden on the using vessel. If there should be willful or repeated instances of late filing of a duty-paid withdrawal in such cases, the port director shall require a duty-paid withdrawal to be filed prior to the removal of fuel oil from the bonded tank.

(f) When the procedures prescribed in this section are followed, representatives of the port director will from time to time verify various withdrawals against all pertinent records, including financial records, of the withdrawers, deliverers, and receivers of the oil. The withdrawer shall maintain all pertinent records relating to the withdrawal, delivery, or receipt of the fuel oil for 5 years from the date of liquidation of the related fuel oil entry.

[T.D. 69–99, 34 FR 6520, Apr. 16, 1969, as amended by T.D. 79–159, 44 FR 31967, June 4, 1979; T.D. 82–204, 47 FR 49367, Nov. 1, 1982; T.D. 95–81, 60 FR 52295, Oct. 6, 1995; T.D. 96–18, 61 FR 6777, Feb. 22, 1996; T.D. 96–51, 61 FR 31395, June 20, 1996; T.D. 99–33, 64 FR 16347, Apr. 5, 1999; CBP Dec. 15–14, 80 FR 61284, Oct. 13, 2015]

§ 10.62a Blanket withdrawals for certain merchandise.

(a) *Generally.* Under this section, a blanket withdrawal on Customs Form 7501, or its electronic equivalent, may be filed for all or part of any merchandise withdrawn from warehouse except fuel oil covered under § 10.62, for use on qualified vessels. Such a withdrawal shall be made only for lading on board vessels at the port where the warehouse is located. The procedure for the blanket withdrawal and partial releases after the initial release are the same as those provided in § 19.6(d) of this chapter, except as noted in paragraph (b).

(b) *Partial release.* A partial release on Customs Form 7501, or its electronic equivalent, in duplicate, or in triplicate if an extra copy is required by the port director, shall be presented to the warehouse proprietor and placed in the proprietor's permit file folder under the partial release procedure set forth in § 19.6(d) of this chapter, as merchandise is needed for delivery to a using vessel. The original of the partial release document shall accompany the merchandise for delivery to the Customs officer who will supervise lading, or if a Customs officer does not physically supervise lading, to the master of the vessel. The original shall be returned to the proprietor for record purposes after the Customs officer or master of the vessel, as appropriate, has certified lading of the goods described in the document.

[T.D. 82–204, 47 FR 49367, Nov. 1, 1982, as amended by T.D. 95–81, 60 FR 52295, Oct. 6, 1995; CBP Dec. 15–14, 80 FR 61284, Oct. 13, 2015]

§ 10.62b Aircraft turbine fuel.

(a) *General.* Unless otherwise provided, aircraft turbine fuel withdrawn from a Customs bonded warehouse for use under section 309, Tariff Act of 1930, as amended (19 U.S.C. 1309), may be commingled with domestic or other aircraft turbine fuel after such withdrawal only if such commingling is approved by the appropriate Customs official for the port where the commingling occurs. The appropriate Customs official may approve such commingling if the fueling system in which the commingling will occur contains adequate physical safeguards to prevent the possible unauthorized entry into the Customs territory of the bonded fuel. Such commingled fuel must be accounted for in the same 24-hour period in which it was commingled and must be—

(1) Exported within that 24-hour period;

(2) Used under section 309 within that 24-hour period; or

(3) Entered or withdrawn for consumption, with duty deposited, as required under the applicable regulations (see part 144 of this chapter).

(b) *Duty-free withdrawal from warehouse of aircraft turbine fuel under section 557(a), Tariff Act of 1930, as amended (19 U.S.C. 1557(a)).* Turbine fuel intended for use as supplies on aircraft under section 309, Tariff Act of 1930, as amended, and withdrawn from a Customs bonded warehouse shall be entitled to the privileges provided for in

section 309 if an amount equal to or exceeding the quantity of such fuel is established, as provided for in paragraph (c) of this section, to have been used on aircraft qualifying for the privileges provided for in section 309 within 30 days after the withdrawal of the fuel from the Customs bonded warehouse. Withdrawal of aircraft turbine fuel under this paragraph shall be in accordance with the procedures in §§ 10.59 through 10.64, unless otherwise provided in this section. Withdrawals under this paragraph shall be annotated with the term ''Withdrawal under 19 CFR 10.62b(b)''.

(c) *Establishment of use of fuel by qualifying aircraft.* (1) The person withdrawing aircraft turbine fuel under paragraph (b) of this section must establish that an aircraft qualifying for the privileges provided for in section 309, Tariff Act of 1930, as amended, used fuel in an amount equal to or exceeding the quantity of the fuel withdrawn that is not entered and upon which duties are not paid by submitting to Customs, at the port where the bonded warehouse entry was filed, within the time provided in paragraph (d) of this section, either—

(i) Records prepared in the normal course of business effecting the transfer to identified (*e.g.,* by aircraft company name, flight number, flight origin and destination, and date of flight) aircraft of fuel in an amount equal to or exceeding the quantity of the fuel withdrawn which is not entered and on which duties are not paid and objective evidence that the aircraft to which the fuel was transferred were actually used in trade qualifying for the privileges provided in section 309, Tariff Act of 1930, as amended; or

(ii) A certification (documentary or electronic) that:

(A) All of the fuel withdrawn was intended for use on aircraft entitled to the privileges provided for in section 309;

(B) Within 30 days of the date of withdrawal from warehouse, an amount of fuel equal to or exceeding the quantity of the fuel withdrawn which is not entered and on which duties are not paid was transferred as supplies to aircraft entitled to the privileges provided for in section 309;

(C) All of the aircraft into which fuel is loaded hereunder were used in a trade provided for in section 309; and

(D) The person making the certification possesses evidence (documentary or electronic) available for Customs inspection at a named place which supports each of the above statements.

(2) Upon request by Customs, the person who submits the certification provided for in paragraph (c)(1) of this section shall promptly provide the evidence required to support the claim for treatment under this section (including the records described in § 10.62b(c)(1)(i)) and §§ 10.62 and 19.6(d) and each of the statements in the certification.

(d) *Time for establishment of use of fuel by qualifying aircraft.* The person withdrawing aircraft turbine fuel under paragraph (b) of this section shall submit the records or certification provided for in paragraph (c) of this section by the 40th day after the date of withdrawal of the fuel unless the fuel was withdrawn under a blanket withdrawal under paragraph (g) of this section. If the fuel was withdrawn under a blanket withdrawal, the person withdrawing aircraft turbine fuel under this section shall submit the records or certification provided for in paragraph (c) of this section by the 40th day after all of the fuel covered by the blanket permit to withdraw has been withdrawn.

(e) *Treatment of turbine fuel withdrawn but not used on qualifying aircraft within 30 days.* If turbine fuel is withdrawn from a Customs bonded warehouse under paragraph (b) of this section but fuel in an amount less than the quantity withdrawn is established to have been used within 30 days of the date of withdrawal from warehouse on aircraft qualifying for the privileges provided for in section 309, Tariff Act of 1930, as amended, a withdrawal for consumption shall be filed and duties shall be deposited for the excess of fuel so withdrawn over that used on aircraft so qualifying. Such withdrawal shall be filed and such duties shall be deposited by the 40th day after the date of withdrawal of the fuel in accordance with the procedures in § 144.38 of this chapter. Interest shall be payable and deposited with such duties, calculated from the date of withdrawal at the rate

of interest established under 26 U.S.C. 6621.

(f) *Liquidated damages.* Failure to account for turbine fuel withdrawn under paragraphs (b) through (h) of this section shall result in liquidated damages against the person withdrawing the turbine fuel, as provided for under §113.62 of this chapter. Such failure to account for turbine fuel includes:

(1) The failure to timely file the withdrawal for consumption and payment of duty, with interest, on the quantity of fuel so withdrawn in excess of the quantity of fuel established to have been used on qualifying aircraft within 30 days of withdrawal, as provided for in paragraph (e) of this section;

(2) The failure to timely file the evidence or certification establishing such use of the fuel which is not entered and on which duties are not paid, as provided for in paragraph (c) of this section; or

(3) The failure to promptly provide the evidence required to support the claim for treatment under paragraph (b) of this section, upon request by Customs, as provided for in paragraph (c)(2) of this section.

(g) *Blanket withdrawals.* Blanket withdrawals, as provided for in §§10.62 and 19.6(d), may be used for withdrawals from warehouse under section 557(a), Tariff Act of 1930, as amended, and paragraphs (b) through (h) of this section, under the procedures provided in §§10.62 and 19.6(d) except that—

(1) Application by the withdrawer for a blanket permit to withdraw shall be on the warehouse entry, or on the warehouse entry/entry summary when used as an entry, annotated with the words ''Some or all of the merchandise will be withdrawn under blanket permit per §§10.62, 10.62b, and 19.6(d).'';

(2) Turbine fuel withdrawn under a blanket permit as authorized in this paragraph may be delivered at a port other than the port of withdrawal;

(3) Customs acceptance of a properly completed application for a blanket permit to withdraw, on the warehouse entry or warehouse entry/entry summary, will constitute approval of the blanket permit to withdraw;

(4) A copy of the approved blanket permit to withdraw will be delivered to the warehouse proprietor, whereupon fuel may be withdrawn under the terms of the blanket permit;

(5) The withdrawal document to be placed in the proprietor's permit file folder (see §19.6(d)(2)) will be a commercially acceptable document of receipt (such as a ''withdrawal ticket'') issued by the warehouse proprietor, identified with a unique alpha-numeric code and containing the following information:

(i) Identity of withdrawer;

(ii) Identity of warehouse and tank from which fuel is withdrawn;

(iii) Date of withdrawal;

(iv) Type of merchandise withdrawn; and

(v) Quantity of merchandise withdrawn.

(6) The date of withdrawal, for purposes of calculating the 30-day period in which fuel must be used on qualifying aircraft under this section, shall be the date on which physical removal of the fuel from the warehouse commences;

(7) The blanket permit summary prepared by the proprietor as provided for in §19.6(d)(4) shall be prepared when all of the fuel covered by the blanket permit has been withdrawn and shall account for all merchandise withdrawn under the blanket permit, as required by §19.6(d)(4), by stating, in summary form, the unique alpha-numeric codes and information required in paragraph (g)(5) of this section, as well as the identity of the warehouse entry to which the withdrawal is attributed;

(8) The certification on the blanket permit summary (see §19.6(d)(4)) shall be that the merchandise listed thereunder was withdrawn in compliance with §§10.62, 10.62b, and 19.6(d); and

(9) The person withdrawing aircraft turbine fuel under these blanket procedures shall submit the records or certification provided for in §10.62b(c) by the 40th day after all of the fuel covered by the blanket permit has been withdrawn (see §10.62b(d)). At the discretion of the port director for the port where blanket withdrawal was approved, submission of the records and evidence required to establish use of the fuel on qualifying aircraft may be

required to be submitted electronically, in a format compatible with Customs electronic record-keeping systems.

(h) *Recordkeeping*. The person withdrawing aircraft turbine fuel from warehouse under this section is subject to the recordkeeping requirements in 19 U.S.C. 1508 and 1509, as provided for in part 162 of this chapter.

[T.D. 96–18, 61 FR 6778, Feb. 22, 1996, as amended by T.D. 99–33, 64 FR 16347, Apr. 5, 1999]

§ 10.63 Landing of supplies and stores from receiving vessel in the United States.

Supplies or stores laden on a vessel duty and tax free under section 309, Tariff Act of 1930, as amended, may be landed under Customs supervision under proper permit, the same as if they had been laden in a foreign country. See § 4.39 of this chapter. Except when transfer to another vessel entitled to the free withdrawal privilege is permitted under the original withdrawal under section 309, Tariff Act of 1930, as amended, the landed articles shall be treated as an importation from a foreign country.

[28 FR 14663, Dec. 31, 12963, as amended by T.D. 89–1, 53 FR 51250, Dec. 21, 1988; T.D. 97–82, 62 FR 51769, Oct. 3, 1997]

§ 10.64 Crediting or cancellation of bonds.

(a) Except as stated below, a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter may be credited or canceled in respect of such articles upon the vessel's departure from the port of lading in a class of trade or business entitling the articles to exemption from duty and tax under the statute. The withdrawer shall cause the merchandise to be delivered to the lading vessel, and shall provide such evidence of lading as required by the port director within 30 days after lading, except as provided in this section. If the vessel is not operated by the United States and proceeds in ballast from the port where the articles are laden to another port to lade passengers or cargo for carriage in a class of trade specified in section 309, Tariff Act of 1930, as amended, the bond may be credited or canceled upon the filing with the director of the port of withdrawal within 3 months after the date of withdrawal of a proper declaration as prescribed below. The declaration shall be executed by one of the following who has knowledge of the facts:

(1) The operations manager or port captain for the vessel on which the articles are laden but not a representative of the supplier.

(2) The master or other officer of the vessel on which the articles are laden. The declaration shall be in substantially the following form:

I, _____

(Operations manager, port captain, master, or other officer) of the vessel _____ declare that I have knowledge of the facts set forth herein, and that upon the lading of the articles described below covered by withdrawal No. _____, filed at _____(Name of port), the vessel then proceeded in ballast to _____(Name of port) to lade cargo or passengers; that the vessel was suitable for service in the class of trade checked below with fittings, outfit, and equipment for such trade already installed when it so departed in ballast; and that upon arrival it proceeded to engage in the carriage of cargo or passengers in such trade, except as stated below:

_____

(If no exception, note ''None'')

1. Foreign Trade.
2. Trade between Atlantic and Pacific ports of the United States, when such trade is not prohibited by coastwise laws.
3. Trade between the United States and any of its possessions, when such trade is not prohibited by coastwise laws.
4. Trade between Alaska or Hawaii and any other part of the United States, when such trade is not prohibited by coastwise laws.

Description of articles:

_____

_____

_____

_____

_____

(Name and title)

(b) A declaration as to the intended business or trade of a vessel may, in the discretion of the port director, be accepted in lieu of a declaration prescribed in paragraph (a) of this section when the amount of duty or tax, or

both, involved in a single lading is less than $100.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 84–213, 49 FR 41166, Oct. 19, 1984]

§ 10.64a [Reserved]

§ 10.65 Cigars and cigarettes.

(a) Imported cigars and cigarettes in bonded warehouse or otherwise in Customs custody, and such articles manufactured with the use of imported materials in a bonded manufacturing warehouse of class 6, may be withdrawn under section 317, Tariff Act of 1930, as amended, for consumption beginning beyond the 3-mile limit or international boundary, as the case may be, (1) on vessels actually engaged in the foreign, intercoastal, or noncontiguous territory trade within the purview of § 10.59(a); (2) on vessels departing from the port where the withdrawal is made directly for a foreign port, a port on the opposite coast, or a port in one of the possessions of the United States; or (3) on vessels of war or other governmental activity.

(b) The privilege shall not be granted to vessels stationed in American waters for an indefinite period without sailing schedules, nor shall it be granted to aircraft of foreign registry of a country for which there is not in effect a finding and advice by the Department of Commerce under section 309(d), Tariff Act of 1930, as amended, that such country allows privileges to aircraft registered in the United States substantially reciprocal to those described in section 317, Tariff Act of 1930, as amended. See section 10.59(f).

(c) With the following additions and exceptions, the same procedure shall be followed as in the case of withdrawals under section 309(a), Tariff Act of 1930, as amended.

(1) No bond shall be required in the case of vessels operated by the United States Government.

(2) When a shipping case containing cigars and cigarettes is made up of a number of units, each in a separate package, such units may be withdrawn separately, provided each unit is marked and numbered for identification and contains not less than 250 cigars or 1,000 cigarettes. In the case of imported cigars and cigarettes so packed, only one unit from each shipping case shall be opened for examination, unless the port director shall deem it necessary for the protection of the revenue to examine a greater quantity. Imported tobacco products on which the duty or internal-revenue tax has been paid may not be withdrawn under section 317, Tariff Act of 1930, as amended, with a drawback of such duty or internal-revenue tax.

(3) When all the units in such shipping case are not to be withdrawn at the same time or for use on the same vessel, a blanket withdrawal may be filed for the entire case in lieu of a separate withdrawal for each unit. In such event, the withdrawal shall be retained by the warehouse proprietor until delivery receipts are obtained for the entire quantity covered by the withdrawal, provided the total period of time prior to delivery to the using vessel or aircraft does not exceed 5 years. A bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, when required, shall be filed at the time of or prior to the removal of any of the merchandise from the warehouse for delivery to the vessel on which it is to be used.

(4) Merchandise for which blanket withdrawals are filed shall be stored in a separate room or enclosure in a bonded warehouse under separate locks, and the merchandise clearly marked to show that it has been withdrawn. If, at the time of any such inventory, any merchandise is missing and not properly accounted for, duties shall be paid thereon before any further withdrawals are permitted.

(5) The declaration of use, when required, shall include a statement that consumption of the articles covered by the withdrawal did not begin until the withdrawing vessel or aircraft had proceeded beyond the 3 mile limit or the international boundary.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 67–193, 32 FR 11764, Aug. 16, 1967; T.D. 70–73, 35 FR 5400, Apr. 1, 1970; T.D. 82–204, 47 FR 49368, Nov. 1, 1982; T.D. 84–213, 49 FR 41166, Oct. 19, 1984; T.D. 89–1, 53 FR 51250, Dec. 21, 1988]

ARTICLES EXPORTED FOR EXHIBITION, ETC.

§ 10.66 Articles exported for temporary exhibition and returned; horses exported for horse racing and returned; procedure on entry.

(a) In connection with the entry of articles, including livestock or other animals, exported for temporary exhibition and returned and claimed to be exempt from duty under subheading 9801.00.50 or 9801.00.60, Harmonized Tariff Schedule of the United States (HTSUS), there shall be filed:

(1) A certificate of exportation on Customs Form 3311, or its electronic equivalent;

(2) A declaration of the importer on Customs Form 4455, or its electronic equivalent, for articles of either domestic or foreign origin; and

(3) In the case of animals of foreign origin taken abroad for exhibition in connection with a circus or menagerie, a copy of an inventory of these animals filed prior to their leaving the country with the director of the port of their departure.

(b) If it is shown to be impracticable to produce the certificate of exportation required under paragraph (a)(1) of this section, the port director may accept other satisfactory evidence of exportation, or may take a bond on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter to secure the production of such certificate or other evidence.

(c) Articles claimed to be exempt from duty under subheading 9801.00.50 or 9801.00.60, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), may be returned free of duty without formal entry and without regard to the requirements of paragraph (a) or (b) of this section if:

(1) Prior to the exportation of such articles, an application on Customs Form 4455, or its electronic equivalent, (accompanied by an appropriate inventory, when required by law or by the port director) is filed with a declaration thereon that:

(i) Any right to drawback of Customs duties with respect to that shipment was waived;

(ii) Any internal revenue tax due has been paid and no refund thereof will be sought; and

(iii) The merchandise was identified, registered, and exported in accordance with the regulations set forth in §§10.8(e), (g), (h), and (i), governing the exportation of articles sent abroad for repairs, and

(2) Upon return, a duplicate Customs Form 4455, or its electronic equivalent, (with accompanying inventory where one was required) is filed.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 74–242, 39 FR 33794, Sept. 20, 1974; T.D. 75–235, 40 FR 44319, Sept. 26, 1975; T.D. 78–153, 43 FR 23709, June 1, 1978; T.D. 82–224, 47 FR 53727, Nov. 29, 1982; T.D. 84–213, 49 FR 41166, Oct. 19, 1984; T.D. 87–75, 52 FR 20066, May 29, 1987; T.D. 89–1, 53 FR 51250, Dec. 21, 1988; T.D. 94–1, 58 FR 69470, Dec. 30, 1993; CBP Dec. 15–14, 80 FR 61284, Oct. 13, 2015]

§ 10.67 Articles exported for scientific or educational purposes and returned; procedure on entry.

(a) In connection with each entry of articles exported for scientific or educational purposes and returned under subheading 9801.00.40, Harmonized Tariff Schedule of the United States (HTSUS), the following shall be required, irrespective of the value of the shipment:

(1) A certificate of exportation on Customs Form 3311, or its electronic equivalent;

(2) A declaration, or its electronic equivalent, by the foreign shipper in the same form as that prescribed in §10.66(a)(2) but stating that such articles were sent from the United States solely for temporary scientific or educational use and describing the specific use to which they were put while abroad.

(3) A declaration of the ultimate consignee, or its electronic equivalent, in substantially the following form:

Port of _____, Port Director's Office, _____, 19___.

I, _____, declare that the several articles described in the annexed entry are, to the best of my knowledge and belief, the identical articles exported from the United States on the _____ day of _____, 19___, by _____ (Actual shipper) address _____, for the account of _____, address _____that they are returned to _____, address _____, for

the account of _____, address _____ that the said articles were exported solely for temporary scientific or educational purposes and for no other use abroad than for exhibition, examination, or experimentation; that they are being returned without having been changed in condition in any manner, except by reason of their bona fide use as follows:

_____

(Describe change in condition)

_____

_____

(Ultimate consignee)

(b) If it is shown to be impracticable to produce the certificate of exportation required by paragraph (a)(1) of this section, the port director may accept other satisfactory evidence of exportation. The port director may take a bond on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter to secure the subsequent production of any of the evidence or documents required by paragraph (a) of this section which are not available at the time of entry.

(c) If, prior to the exportation of articles claimed to be exempt from duty under subheading 9801.00.40, Harmonized Tariff Schedule of the United States (HTSUS), an application on Customs Form 4455, or its electronic equivalent, (accompanied by an appropriate inventory when, in the discretion of the port director, such inventory is deemed necessary) was filed, such articles may be returned for the account of the exporter free of duty without formal entry, without regard to the requirements of paragraphs (a) and (b) of this section, upon the filing of the duplicate Customs Form 4455, or its electronic equivalent, (with accompanying inventory, if one was required), and a declaration of the ultimate consignee in substantially the form set forth in paragraph (a)(3) of this section.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 74–242, 39 FR 33794, Sept. 20, 1974; T.D. 84–213, 49 FR 41166, Oct. 19, 1984; T.D. 89–1, 53 FR 51250, Dec. 21, 1988; T.D. 94–1, 58 FR 69470, Dec. 30, 1993; T.D. 97–82, 62 FR 51769, Oct. 3, 1997; CBP Dec. 15–14, 80 FR 61284, Oct. 13, 2015]

THEATRICAL EFFECTS, MOTION-PICTURE FILMS, COMMERCIAL TRAVELERS' SAMPLES, AND TOOLS OF TRADE

§10.68 Procedure.

(a) Theatrical scenery, properties, and effects, motion-picture films (including motion-picture films taken aboard a vessel for exhibition only during an outward voyage and returned for the same purpose during an inward voyage on the same or another vessel), commercial travelers' samples, and professional books, implements, instruments, and tools of trade, occupation, or employment (see §148.53 of this chapter), of domestic or foreign origin, taken abroad may be returned without formal entry and without payment of duty if an exportation voucher from a carnet, when applicable, or an application on Customs Form 4455, or its electronic equivalent, was filed, and the merchandise was identified as set forth in §10.8, before exportation of the articles. Articles exported under cover of an A.T.A. carnet (where the carnet serves as the control document) may, in accordance with this paragraph, be returned without entry or the payment of duty. If Customs Form 4455, or its electronic equivalent, is utilized, commercial travelers' samples, professional books, implements, instruments, and tools of trade, occupation, or employment may be returned with either an informal entry or a declaration on Customs Form 3299, or its electronic equivalent; theatrical scenery, properties, and effects and motion-picture films may be returned only with an informal entry. When articles other than those exported by mail or parcel post are examined and registered at one port and exported through another port, the port director may require proof of exportation in those cases where the carnet or Customs Form 4455, or its electronic equivalent, does not reflect that these articles were exported under Customs supervision. In the case of commercial travelers' samples taken abroad for temporary use, except where exportation involves certification of a carnet, port directors may waive examination of the samples at the time of exportation. When motion-picture films are to be taken

aboard a vessel for exhibition only during an outward voyage and are to be returned for the same purpose during an inward voyage on the same or another vessel, port directors may waive examination and supervision at the time of exportation. When theatrical scenery, properties, and effects are taken abroad in sealed carload lots by rail for temporary use, the cars must be sealed by U.S. Customs officers for entry at any Canadian or Mexican port where U.S. Customs officers are stationed. Application and examination before the time of exportation is waived if a Customs Form 4455, or its electronic equivalent, is filed with the U.S. Customs officer in the appropriate Canadian or Mexican port, and that officer examines the articles before they are released from foreign customs custody by the foreign customs officer.

(b) When any such articles are to be returned to the United States from a contiguous foreign country in which a United States Customs officer is stationed, the articles may be presented to such officer with the duplicate copy of the application for examination and comparison with the descriptive list. Upon completion of such examination, the packages containing the articles shall be corded and sealed or forwarded in cars sealed by Customs officers and shall be manifested in the same manner as personal baggage. Articles so treated shall be released upon arrival in the United States and removal of the seals by Customs officers.

(c) When commercial travelers' samples consisting of raw cotton are taken to and returned from Canada, the application on Customs Form 4455, or its electronic equivalent, shall be executed in triplicate, two copies thereof to be returned to the traveler for surrender to the Customs officer on the return of the samples from Canada.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 69–146, 34 FR 9801, June 25, 1969; T.D. 75–41, 40 FR 6646, Feb. 13, 1975; T.D. 82–49, 47 FR 12160, Mar. 22, 1980; T.D. 82–116, 47 FR 27261, June 24, 1982; CBP Dec. 15–14, 80 FR 61284, Oct. 13, 2015]

§ 10.69 Samples to Great Britain and Ireland under reciprocal agreement.

Descriptive lists, or their electronic equivalents, of samples taken to Great Britain and Ireland by commercial travelers of the United States under the joint declarations of December 3 and 8, 1910 (State Department treaty series 552), shall be required in triplicate, verified by the affidavit of the commercial traveler before a Customs officer, and shall show that the samples are for use as models or patterns for the purpose of obtaining orders and not for sale and that the lists contain a full description of the articles. One copy shall be retained and the others shall be delivered to the commercial traveler—one for the identification of the samples on their return to the United States and one for the use of the foreign customs authorities. The latter copy must have been attested by a consular officer of the country concerned in the United States.

[28 FR 14663, Dec. 31, 1963, as amended by CBP Dec. 15–14, 80 FR 61284, Oct. 13, 2015]

ANIMALS AND BIRDS

CROSS REFERENCE: For regulations with respect to recognition of breeds and purebred animals, see 9 CFR part 151.

§ 10.70 Purebred animals for breeding purposes; certificate.

(a) In connection with the entry of purebred animals for breeding purposes under subheading 0101.11.00, Harmonized Tariff Schedule of the United States (HTSUS), no claim for free entry shall be allowed in liquidation of the entry until the Center director has received from the Department of Agriculture a certificate, or its electronic equivalent, that the animal is purebred of a recognized breed and duly registered in a book of record recognized by the Secretary of Agriculture for that breed. Importers are required by regulation of the Department of Agriculture to make application for a certificate of pure breeding to the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, on ANH Form 17–338 before the animal will be examined as required by 9 CFR 151.7. Application for

the certificate must be executed by the owner agent, or importer and filed at a port of entry designated in the regulations of the Department of Agriculture for the importation of animals (9 CFR 92.3). However, applications for certificates for dogs (other than dogs for handling livestock regulated under 9 CFR 92.18) and cats may be filed either at a designated port of entry or at any other port where Customs entry is made. The regulations of the Department of Agriculture prescribing the requirements for the issuance of certificates of pure breeding provide that all animals imported under such regulations must be accompanied to the port at which examination is to be made by certificates of pedigree and transfer of ownership, or their electronic equivalents, in order that identification may be accomplished, and that, if such animals are moved from such port prior to the presentation of such certificates and transfers, or their electronic equivalents, such action shall constitute a waiver of any further claim to certification under such regulations.

(b) In the cases of cats and dogs arriving at Canadian border ports, Customs officers and employees are hereby authorized and directed to make the examination required by such regulations of the Department of Agriculture. Customs officers and employees are also authorized and directed to make such examinations at the ports of New York and Boston, provided the dog or cat is brought into the United States by a passenger. At all airports, Customs officers shall make the examination of dogs and cats, whether or not accompanied by the owners, if there is no inspector of the Department of Agriculture stationed there or on duty at the time of arrival.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 68–154, 33 FR 8730, June 14, 1968; T.D. 78–99, 43 FR 13060, Mar. 29, 1978; T.D. 87–75, 52 FR 20066, May 29, 1987; T.D. 89–1, 53 FR 51250, Dec. 21, 1988; CBP Dec. 15–14, 80 FR 61284, Oct. 13, 2015]

§ 10.71 Purebred animals; bond for production of evidence; deposit of estimated duties; stipulation.

(a) The animal may be released from Customs custody upon the furnishing by the importer of a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter for the production within 6 months of (1) a certificate of pure breeding, or its electronic equivalent, issued by the Department of Agriculture, and (2) the declaration required by § 10.70(a) submitted in letter form if such declaration was not filed at the time of entry. The release of the animal from customs custody requires the presentation of the pedigree certificate and evidence of transfer of ownership in accordance with the regulations of the Department of Agriculture mentioned in § 10.70(b).

(b) Charges against the bond shall be canceled only upon the production of the required evidence or on payment of duties.

(c) In cases where the pedigree certificate and evidence of transfer of ownership have been presented in accordance with the regulations of the Department of Agriculture, the importer, if he so elects, may, in lieu of giving a bond, deposit estimated duties and file a stipulation with CBP, either at the port of entry or electronically within 10 days after the date of entry to produce the declaration and certificate of pure breeding within 6 months from the date of entry, whereupon the liquidation of the entry shall be suspended. (See § 113.42 of this chapter.)

(d) If the pedigree certificate and evidence of transfer of ownership were not presented in accordance with such regulations of the Department of Agriculture, a deposit of estimated duties, in addition to the regular entry bond, shall be required.

(e) When a passenger arriving in the United States with one or more dogs or cats and with the required certificates of pedigree and transfers of ownership in his possession furnishes a properly executed declaration as required by § 10.70(a) along with an application to the Department of Agriculture on ANH Form 17–338 for a certificate of pure breeding, the entry of the animal(s) as duty-free under subheading 0106.00.50, Harmonized Tariff Schedule of the United States (HTSUS), may be made on the passenger's baggage declaration if the value of the animals does not exceed $500. In such case the entry shall be supported by a bond on Customs

Form 301, containing the bond conditions set forth in §113.62 of this chapter for the production within 6 months of a certificate of pure breeding. The bond shall be without surety or cash deposit unless the port director on the basis of information before him finds that a bond with surety or a cash deposit is necessary to protect the revenue.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 68–79, 33 FR 4461, Mar. 13, 1968; T.D. 68–154, 33 FR 8731, June 14, 1968; T.D. 74–227, 39 FR 32015, Sept. 4, 1974; T.D. 78–99 43 FR 13060, Mar. 29, 1978; T.D. 84–213, 49 FR 41166, Oct. 19, 1984; T.D. 87–75, 52 FR 26142, July 13, 1987; T.D. 89–1, 53 FR 51250, Dec. 21, 1988; T.D. 93–66, 58 FR 44130, Aug. 19, 1993; CBP Dec. 15–14, 80 FR 61284, Oct. 13, 2015]

§§ 10.72–10.73 [Reserved]

§ 10.74 Animals straying across boundary for pasturage; offspring.

When domestic animals for which free entry is to be claimed under subheading 9801.00.90, Harmonized Tariff Schedule of the United States, have strayed across the boundary line, they may be returned, together with their offspring, without entry if brought back within 30 days; otherwise entry shall be required. The owner of any such animal shall report its return to the nearest Customs office and hold it for such inspection and treatment as may be deemed necessary by a representative of the Animal and Plant Health Inspection Service of the Department of Agriculture. Any such arrival found not to have been so reported or held shall be subject to seizure and forfeiture pursuant to 18 U.S.C. 545.

[T.D. 87–75, 52 FR 20067, May 29, 1987, as amended by T.D. 89–1, 53 FR 51250, Dec. 21, 1988]

§ 10.75 Wild animals and birds; zoological collections.

When wild animals or birds are claimed to be free of duty under subheading 9810.00.70, Harmonized Tariff Schedule of the United States (HTSUS), (19 U.S.C. 1202), the port director may, at his discretion, require appropriate proof that the animals or birds were specially imported pursuant to negotiations conducted prior to importation for the delivery of animals or birds of a named species meeting agreed specifications of reasonable particularity and that they are intended at the time of importation for public exhibition in a collection maintained for scientific or educational purposes and not for sale or for use in connection with any enterprise conducted for profit. The fact that an animal or bird may have been sent on approval shall not preclude free entry under subheading 9810.00.70, HTSUS, when it is actually accepted as a part of the zoological collection and so exhibited.

[T.D. 85–123, 50 FR 29953, July 23, 1985, as amended by T.D. 89–1, 53 FR 51250, Dec. 21, 1988; T.D. 97–82, 62 FR 51769, Oct. 3, 1997]

§ 10.76 Game animals and birds.

(a) The following classes of live game animals and birds may be admitted free of duty for stocking purposes under the provisions of subheading 9817.00.70 without reference to the United States Customs Service, if the requirements of the Fish and Wildlife Service, Department of the Interior, have been complied with.

ANIMALS

1. Cervidae, commonly known as deer and elk.
2. Leporidae, commonly known as rabbits.
3. Sciuridae, commonly known as squirrels.

BIRDS

1. Anatidae, commonly known as ducks and geese.
2. Gallinae, commonly known as turkeys, grouse, pheasants, partridges, and quail.
3. Otididae, commonly known as bustards.
4. Tinamidae, commonly known as tinamous.

(b) Application for the free entry of other live animals or birds under subheading 9817.00.70, Harmonized Tariff Schedule of the United States shall be referred to the United States Customs Service for consideration. Animals imported for fur-farming purposes shall not be admitted free of duty under that paragraph.

(c) [Reserved]

(d) Game animals and birds killed in foreign countries by residents of the United States, if not imported for sale or other commercial purposes, may be admitted free of duty without entry, if the person has no merchandise requiring a written declaration upon the filing of a declaration on U.S. Fish and

Wildlife Service Form 3–177, Declaration for Importation or Exportation of Fish or Wildlife. No bond or cash deposit to insure the destruction or exportation of the plumage of such birds shall be required.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 82–145, 47 FR 35475, Aug. 16, 1982; T.D. 86–118, 51 FR 22515, June 20, 1986; T.D. 89–1, 53 FR 51250, Dec. 21, 1988; T.D. 90–78, 55 FR 40166, Oct. 2, 1990]

§ 10.77 [Reserved]

PRODUCTS OF AMERICAN FISHERIES

§ 10.78 Entry.

(a) No entry shall be required for fish or other marine products taken on the high seas by vessels of the U.S. or by residents of the U.S. in undocumented vessels owned in the U.S. when such fish or other products are brought into port by the taking vessel or are transferred at sea to another fishing vessel of the same fleet and brought into port.

(b) An American fishery, within the meaning of Subchapter XV of Chapter 98, Harmonized Tariff Schedule of the United States, is defined as a fishing enterprise conducted under the American flag by vessels of the United States on the high seas or in foreign waters in which such vessels have the right by treaty or otherwise, to take fish or other marine products and may include a shore station operated in conjunction with such vessels by the owner or master thereof.

(c) The employment of citizens of a foreign country by an American fishery is permissible but the purchase by an American fishery of fish or other marine products taken by citizens of a foreign country on the high seas or in foreign waters will subject such fish or other marine products to treatment as foreign merchandise.

(d) Products of an American fishery shall be entitled to free entry although prepared, preserved, or otherwise changed in condition, provided the work is done at sea by the master or crew of the fishery or by persons employed by and under the supervision of the master or owner of the fishery. Fish (except cod, haddock, hake, pollock, cusk, mackerel, and swordfish) the product of an American fishery landed in a foreign country and there not further advanced than beheaded, eviscerated, packed in ice, frozen and with fins removed, shall be entitled to free entry, whether or not such processing is done by the American fishery. Products of an American fishery prepared or preserved on the treaty coasts of Newfoundland, Magdalen Islands, or Labrador, as such coasts are defined in the Convention of 1818 between the United States and Great Britain, shall be entitled to free entry only if the preparation or preservation is done by an American fishery.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 87–75, 52 FR 20067, May 29, 1987; T.D. 89–1, 53 FR 51250, Dec. 21, 1988]

§ 10.79 [Reserved]

SALT FOR CURING FISH

§ 10.80 Remission of duty; withdrawal; bond.

Imported salt in bond may be used in curing fish taken by vessels licensed to engage in the fisheries, and in curing fish in the shores of the navigable waters of the U.S., whether such fish are taken by licensed or unlicensed vessels, and upon proof that the sale has been used for either of such purposes, the duties on the same shall be remitted. (Section 313(e), Tariff Act of 1930, 19 U.S.C. 1313(e)). Imported salt entered for warehouse may be withdrawn under bond for use in curing fish. Upon proof that the salt has been so used, the duties thereon shall be remitted. In no case shall the quantity of salt withdrawn exceed the reasonable requirements of the case. Withdrawal shall be made on Customs Form 7501, or its electronic equivalent. Each withdrawal shall contain the statement prescribed for withdrawals in § 144.32 of this chapter. When the withdrawal is made by a person other than the importer of record, a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter for the production of proof of proper use shall be filed. Upon acceptance of the bond, a withdrawal permit shall be

issued on Customs Form 7501, or its electronic equivalent.

[T.D. 89–1, 53 FR 51251, Dec. 21, 1988, as amended by T.D. 95–81, 60 FR 52295, Oct. 6, 1995; CBP Dec. 15–14, 80 FR 61284, Oct. 13, 2015]

§ 10.81 Use in any port.

(a) Salt withdrawn under bond for use in curing fish on the shores of navigable waters may be used for such purpose at any port, but the evidence of use in such cases shall be submitted through the director of the port where the salt was used.

(b) If desired, salt to be used in curing fish on shore at another port than that in which it is warehoused in bond may be withdrawn under a transportation entry and shipped in bond to the other port at which it is to be used, where it may be entered on Customs Form 7501, or its electronic equivalent, which shall show withdrawal of the salt for use in curing fish. Thereupon, and upon the filing of a bond on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter, such salt may be used without being sent to a bonded warehouse or public store. In such a case the proof of use shall be filed at the latter port.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 84–213, 49 FR 41166, Oct. 19, 1984; T.D. 87–75, 52 FR 20067, May 29, 1987; T.D. 95–81, 60 FR 52295, Oct. 6, 1995; CBP Dec. 15–14, 80 FR 61284, Oct. 13, 2015]

§ 10.82 [Reserved]

§ 10.83 Bond; cancellation; extension.

(a) If it shall appear to the satisfaction of the Center director holding the bond referred to in §10.80, that the entire quantity of salt covered by the bond has been duly accounted for, either by having been used in curing fish or by the payment of duty, the Center director may cancel the charges against the bond. The Center director may require additional evidence in corroboration of the proof of use produced.

(b) On application of the person making the withdrawal, the period of the bond may be extended 1 year so as to allow the salt to be used during the time of extension in curing fish with the same privileges as if used during the original period.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 87–75, 52 FR 20067, May 29, 1987]

AUTOMOTIVE PRODUCTS

§ 10.84 Automotive vehicles and articles for use as original equipment in the manufacture of automotive vehicles.

(a)(1) Certain motor vehicles and motor vehicle equipment are eligible for duty-free entry as proclaimed by the President under the Automotive Products Trade Act of 1965. The articles designated for such duty-free treatment are defined in General Note 3(c)(iii), HTSUS (19 U.S.C. 1202). Specifically, such articles are those designated [as ''Free (B)''] in the ''Special'' subcolumn in Chapter 87, HTSUS, and must qualify as ''Canadian articles'' as defined in General Note 3(c)(iii)(A)(1), HTSUS. To claim exemption from duty under the Automotive Products Trade Act of 1965, an importer must establish, to the satisfaction of the appropriate Customs officer, that the article in question qualifies as a ''Canadian article'' for purposes of General Note 3(c)(iii)A)(1), HTSUS. The Customs officer may accept as satisfactory evidence a certificate executed by the exporter as set forth in paragraph (b) of this section, subject to any verification he may deem necessary. Alternatively, the Customs officer may determine that under the circumstances of the importation a certificate is unnecessary.

(2) Under the United States-Canada Free-Trade Agreement and implementing legislation (Pub. L. 100–449, 102 Stat. 1851) a manufacturer of motor vehicles may elect to average, over its 12-month financial year, its calculation of the value-content requirement for vehicles in establishing its eligibility for tariff preference. Requirements for averaging are set forth in §§10.310 and 10.311.

(b)(1) When all materials used at any stage in the production of the imported article are wholly obtained or produced in Canada or the United States, or both, a certificate, or its electronic equivalent, in the following form may

be accepted as evidence that the commodity is a ''Canadian article'':

All materials contained in the product covered by the _____ (Describe the invoice, bill of lading, or other document or statement identifying the shipment) annexed or appended to this certificate of Canadian origin at the time it was subscribed were wholly obtained or produced in Canada or the United States, or both. No materials other than those which were wholly obtained or produced in Canada or the United States, or both, were incorporated into this product or any of its components at any stage of production or in the production of any intermediate product used at any stage in the chain of production in Canada or the United States, or both.

(2) When any material used at any stage in the production of an imported article or any of its components is not wholly obtained or produced in Canada or the United States, or both, a certificate, or its electronic equivalent, in the following form may be accepted as evidence that the commodity is nevertheless a ''Canadian article'':

The product covered by the _____ (Describe the invoice, bill of lading, or other document or statement identifying the shipment) annexed or appended to this certificate of Canadian origin at the time it was subscribed is an originating good so as to be a Canadian article. There were used in its production in Canada _____ (Description sufficient for tariff classification of the materials, and number of units) of third country materials of which the price paid was _____ per unit of quantity, plus _____ which represents all costs incurred in transporting the materials to the location of the producer and the duties, taxes, and brokerage fees on the materials, if such costs were not included in the price paid.

(3) If such Customs officer is satisfied that the revenue will be protected adequately thereby, he may accept in lieu of the certificate specified in paragraph (b)(2) of this section a certificate, or its electronic equivalent, in the following form when the merchandise covered thereby has been produced with third country material but is an originating good under a specific rule of origin for the merchandise:

The product covered by the _____ (Describe the invoice, bill of lading, or other document or statement identifying the shipment) annexed or appended to this certificate of Canadian origin at the time it was subscribed is an originating good so as to be a Canadian article. There were or may have been used in its production in Canada or the United States, or both, materials of a third country.

It is impractical to ascertain the exact number of units of third country material, if any, used in its production or the price paid (and other costs required to be included in the price paid) of such materials but to the best of (my) (our) (its) knowledge the materials are described (sufficient for tariff classification purposes) as follows: _____.

(4) The certificates described in paragraphs (b)(2) and (b)(3) of this section, or their electronic equivalents, shall not be accepted if the statements therein make it evident that the importation is not a ''Canadian article'' within the meaning of General Note 3(c), HTSUS.

(5) If more than one kind of article is covered by a certificate provided for in paragraph (b) (1), (2), or (3) of this section, the information required by the certificate shall be shown with respect to each kind. When more than one kind of material, other than originating material, is used in the production of an article covered by such a certificate, the certificate shall state the number of units, a description sufficient for tariff classification purposes, the price paid, and, if not included in the price paid, the costs incurred in transporting the materials to the location of the producer and duties, taxes and brokerage fees paid in Canada and/or the United States on the material, per unit of each kind of materials.

(6) A certificate conforming to paragraph (b) (1), (2), or (3) of this section shall be accepted as evidence of the facts alleged therein only if:

(i) There is annexed thereto a copy of the commercial invoice or bill of lading, or the electronic equivalent, covering the articles or other documentary evidence which identifies the article to which the certificate pertains,

(ii) The certificate, or its electronic equivalent, is signed by the manufacturer or producer of the article to which it pertains, or by the person who exported the articles from Canada, and

(iii) It clearly appears that such copy or other documentary evidence was annexed to the certificate when it was signed.

(c) In lieu of the certification in paragraph (b) (1), (2), or (3) of this section, a manufacturer of motor vehicles who claims a preference under the United States-Canada Free-Trade Agreement and elects to average pursuant to §10.310(a), shall be subject to the requirements of §§10.301 to 10.311 of this part.

(d) When an importer makes an entry, or withdrawal from warehouse, for consumption of articles for use as ''original motor-vehicle equipment'' as that term is defined in General Note 3(c)(iii), HTSUS, he shall file in connection therewith his declaration that the articles are being imported for use as original equipment in the manufacture in the United States of the kinds of motor vehicles specified in the General Note and furnish the name and address of the motor vehicle manufacturer. A copy of the written order, contract, or letter of intent shall be attached to the importer's declaration except that if the Center director is satisfied that a copy of the written order, contract, or letter of intent will be made available by the importer or ultimate consignee for inspection by customs officials upon request during a period of 3 years from the date of such entry or withdrawal from warehouse, the production of such documents will not be required. Proof of use need not be furnished.

(e) If, after a Canadian article has been accorded the status of original motor-vehicle equipment, it is decided to divert the article from its intended use in the manufacture in the United States of motor vehicles, the importer or other person deciding to divert the article from such intended use shall give notice in writing of the decision to the CBP, either at the port of entry or electronically or where the offices of the importer are located and either make arrangements for its destruction or exportation under Customs supervision or pay duties in accordance with General Note 3(c)(iii)(B)(2), HTSUS. If such article is not destroyed or exported under Customs supervision or the duties paid, the article, or its value, shall be subject to forfeiture.

[T.D. 89–3, 53 FR 51765, Dec. 23, 1988, as amended by T.D. 92–8, 57 FR 2453, Jan. 22, 1992; T.D. 93–66, 58 FR 44130, Aug. 19, 1993; CBP Dec. 15–14, 80 FR 61284, Oct. 13, 2015]

MASTER RECORDS, AND METAL MATRICES

§10.90 Master records and metal matrices.

(a) Consumption entries covering importations under subheading 8524.99.20, HTSUS, shall be filed at a port in the Customs district in which the factory where the articles will be used is located.

(b) The invoice, or its electronic equivalent, filed with the entry shall contain or be supported by a detailed statement of the cost of production, or its electronic equivalent, in the country where made, of each master record or metal matrix covered thereby.

(c) A bond on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter shall be filed for importations under this section.

(d) Entries already filed and future entries shall be liquidated in due course without the assessment of duty, but liability on bonds given with the entries shall be discontinued with respect to any article covered thereby only upon payment of liquidated damages in an amount equal to the duties which would have accrued had the master records or metal matrices been imported for use otherwise than in the manufacture of sound records for export purposes, or upon satisfactory proof that the master records or metal matrices obtained therefrom have been exported or destroyed under Customs supervision, and that all sound records made with the use of such articles have been exported.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 84–213, 49 FR 41166, Oct. 19, 1984; T.D. 87–75, 52 FR 20067, May 29, 1987; T.D. 89–1, 53 FR 51251, Dec. 21, 1988; T.D. 90–78, 55 FR 40166, Oct. 2, 1990; T.D. 97–82, 62 FR 51769, Oct. 3, 1997; CBP Dec. 15–14, 80 FR 61284, Oct. 13, 2015]

PROTOTYPES

§ 10.91 Prototypes used exclusively for product development and testing.

(a) *Duty-free entry; declaration of use; extension of liquidation*—(1) *Entry or withdrawal for consumption.* Articles defined as ''prototypes'' and meeting the other requirements prescribed in paragraph (b) of this section may be entered or withdrawn from warehouse for consumption, duty-free, under subheading 9817.85.01, Harmonized Tariff Schedule of the United States (HTSUS), on CBP Form 7501 or an electronic equivalent. A separate entry or withdrawal must be made for a qualifying prototype article each time the article is imported/reimported to the United States.

(2) *Importer declaration*—(i) *Entry accepted as declaration.* Entry or withdrawal from warehouse for consumption under HTSUS subheading 9817.85.01 may be accepted by the Center director as an effective declaration that the articles will be used solely for the purposes stated in the subheading.

(ii) *Proof (declaration) of actual use.* If it is believed the circumstances so warrant, the Center director may request the submission of proof of actual use, executed and dated by the importer. The title of the party executing the proof of actual use must be set forth. If proof of actual use is requested, the importer must provide it within three years after the date the article is entered or withdrawn from warehouse for consumption. Liquidation of the related entry may be extended until the requested proof or declaration of actual use is received or until the three-year period from the date of entry allowed for the receipt of such proof has expired. While requested proof of use must be given to CBP within three years of the date of entry, the prototype may continue to be used thereafter for the purposes enumerated in HTSUS subheading 9817.85.01. If requested proof of use is not timely received, the entry will be liquidated as dutiable under the tariff provision that would otherwise apply to the imported article. While there is no particular form for this declaration, it may either be submitted in writing, or electronically as authorized by CBP, and must include the following:

(A) A description of the use that is being and/or that has been made of the articles set forth in sufficient detail so as to enable the Center director to determine whether the articles have been entitled to entry as claimed;

(B) A statement that the articles have not and are not to be put to any other use after the articles have been entered or withdrawn from warehouse for consumption and prior to the completion of their use under HTSUS 9817.85.01 (also see paragraphs (c) and (d) of this section concerning the disposition(s) to which the articles may be put following their use under HTSUS subheading 9817.85.01); and

(C) A statement that the articles or any parts of the articles have not been and are not intended to be sold, or incorporated into other products that are sold, after the articles have been entered or withdrawn from warehouse for consumption and prior to the completion of their use as provided in HTSUS subheading 9817.85.01 (*see* paragraph (b)(2)(ii) of this section).

(b) *Articles classifiable as prototypes*—(1) *Prototypes defined.* In accordance with U.S. Note 6(a) to subchapter XVII of chapter 98, HTSUS, applicable to subheading 9817.85.01, the term ''prototypes'' means originals or models of articles pertaining to any industry that:

(i) Are either in the preproduction, production or postproduction stage and are to be used exclusively for development, testing, product evaluation, or quality control purposes (not including automobile racing for purse, prize or commercial competition); and

(ii) In the case of originals or models of articles that are either in the production or postproduction stage, are associated with a design change from current production (including a refinement, advancement, improvement, development or quality control in either the product itself or the means of producing the product).

(2) *Additional requirements.* In accordance with U.S. Note 6(b) and (c) to subchapter XVII of chapter 98, HTSUS, applicable to subheading 9817.85.01, the following additional restrictions apply to articles that may be classified as prototypes:

(i) *Importations limited.* Prototypes may be imported pursuant to this section only in limited noncommercial quantities in accordance with industry practice.

(ii) *Sale prohibited after entry and prior to use.* Prototypes or parts of prototypes may not be sold, or be incorporated into other products that are sold into the commerce of the United States, after the prototypes have been entered or withdrawn from warehouse for consumption under HTSUS subheading 9817.85.01, except that, after having been used for the purposes for which they were entered or withdrawn from warehouse under HTSUS subheading 9817.85.01, such prototypes or any part(s) of the prototypes may be sold as scrap, waste, or for recycling, as prescribed in paragraph (c) of this section.

(iii) *Articles subject to laws of another agency.* Articles that are subject to licensing requirements, or that must comply with laws, rules or regulations administered by an agency other than CBP before being imported, may be entered as prototypes pursuant to this section if they meet all applicable provisions of law and otherwise meet the definition of prototypes in paragraph (b)(1) of this section.

(iv) *Articles excluded from being prototypes.* Articles that are in fact subject at the time of entry to quantitative restrictions, antidumping orders or countervailing duty orders are excluded from being classified as prototypes under this section.

(c) *Sale of prototype following use*—(1) *Sale.* Prototypes or any part(s) of prototypes, after having been used for the purposes for which they were entered or withdrawn under HTSUS subheading 9817.85.01, may only be sold as scrap, waste, or for recycling. This includes a prototype or any part thereof that is incorporated into another product, as scrap, waste, or recycled material. If sold as scrap, waste, or for recycling, applicable duty must be paid on the prototypes or parts as provided in paragraph (c)(3) of this section, at the rate of duty in effect for such scrap, waste, or recycled materials at the time the prototypes were entered or withdrawn for consumption.

(2) *Notice of sale required.* If, after a prototype has been used for the purposes contemplated in HTSUS subheading 9817.85.01, the prototype or any part(s) of the prototype (including a prototype or any part that is incorporated into another product) is sold as scrap, waste, or for recycling, the importer must provide notice of such sale to CBP, either at the port of entry or electronically. A notice, in the manner authorized in paragraph (c)(3) of this section, must be submitted in connection with the sale, whether or not duty is payable. The notice should not be submitted prior to the submission of proof of actual use, should such proof of actual use be requested by the Center director (*see* paragraph (a)(2)(ii) of this section).

(3) *Form and content of notice; tender of duty.* While no particular form is required for the notice of sale, a consumption entry (CBP Form 7501), appropriately modified, or an electronic equivalent as authorized by CBP, may be used for this purpose. The notice may be a blanket notice covering all those sales described in paragraph (c)(2) of this section that occur over a quarterly (3-month) calendar period. Such notice must be filed within 10 business days of the end of the related quarterly period in which the sale(s) occurred. If an article sold is dutiable, the payment of any duty due must be forwarded together with the notice (*see* paragraph (c)(1) of this section). If the notice is filed electronically, payment of any duty owed will be handled through the Automated Clearinghouse (*see* § 24.25 of this chapter). The notice of sale must be executed by the importer, or other person having knowledge of the facts surrounding the sale, and must include the following:

(i) The identity of the prototype; the consumption entry number under which it was imported; a copy of the declaration of actual use, if proof of actual use was requested under paragraph (a)(2)(ii) of this section; and a detailed description of the condition of the prototype following use for the intended permissible purposes, including any damage, degradation or deterioration to the article resulting from such use

and/or otherwise resulting to the article from any other cause prior to its sale for scrap, waste, or recycling;

(ii) The name and address of the party to whom the article was sold, and (if known) the use to which the party intends to put the article;

(iii) The HTSUS subheading number for scrap, waste, or recycled material, as applicable, claimed in connection with the sale of the prototype, together with the corresponding rate of duty in effect at the time the prototype was originally imported for consumption;

(iv) The value of the prototype article (if dutiable and the duty owed is based upon value) (*see* paragraph (e)(2) of this section); and

(v) The title of the party executing the declaration and the date of execution.

(d) *Prototypes not sold following use.* As to those prototypes or parts of prototypes that, after having been used as prescribed under HTSUS subheading 9817.85.01, are disposed of otherwise than by sale (*see* paragraph (c)(1) of this section), there is no requirement that the importer notify CBP of any such alternative disposition. Nor are there any dutiable consequences that ensue from any disposition of the merchandise after the merchandise's use under HTSUS subheading 9817.85.01 other than sale to the extent authorized under paragraph (c)(1) of this section.

(e) *Recordkeeping; retention and production*—(1) *Recordkeeping.* The importer must be prepared to submit to the CBP officer, if requested, any information, including any supporting documents, reports and records, as was necessary for the preparation of the declaration of use, if the declaration of use was requested under paragraph (a)(2)(ii) of this section, and the notice of sale, if applicable under paragraph (c)(3) of this section. The notices, together with any related supporting evidence, may be subject to such verification as the Center director reasonably deems necessary. Supporting documentary evidence must be made available to the CBP officer, upon request, for a period of five years (*see* §163.4(a) of this chapter) from the date of filing in complete and proper form, the declaration of use, if requested, and, if applicable, the notice of sale. The supporting records must be made available to the CBP officer upon request in accordance with §163.6 of this chapter.

(i) Documents supporting the proof (declaration) of actual use must:

(A) Establish that the identity and description of the prototype article is the same article that the consumption entry was made for under subheading 9817.85.01, HTSUS; and

(B) Describe the circumstances of the use of the article; the operations, testing, review, manipulation, experimentation, and/or other exercises that are being and/or that have been conducted in connection with the prototype; and the location, such as the plant or production facility, where these activities occurred, sufficient to demonstrate that the purposes enumerated in HTSUS subheading 9817.85.01 are taking and/or have actually taken place.

(ii) Documents supporting the notice of sale must establish that:

(A) The identity of the prototype sold is the same article for which a consumption entry was made under subheading 9817.85.01 HTSUS when it was imported, and that the article was in the condition described in the notice of sale;

(B) The article was sold to the party identified in the notice of sale;

(C) The HTSUS subheading number for scrap, waste, or recycled material, as applicable, claimed in connection with the sale of the prototype is accurate;

(D) The date that the prototype was originally imported for consumption, and the corresponding rate of duty in effect at the time for the applicable HTSUS subheading; and

(E) The value of the prototype article (if dutiable and the duty owed is based upon value) (*see* paragraph (e)(2) of this section) as claimed in the notice of sale is accurate.

(2) *Relevant value for used prototype or parts sold.* For purposes of this section, with respect to any duty owed on prototypes or parts of prototypes that are sold as scrap, or waste, or for recycling, where the duty owed is based upon value, the relevant value is the market value of the prototypes or parts, based upon their character and

condition following use for the purposes prescribed in HTSUS subheading 9817.85.01. The relevant value should take into consideration any damage, degradation or deterioration to the prototypes or parts resulting from their use as a prototype and/or otherwise resulting to the articles from any other cause prior to their sale as scrap, waste, or for recycling. The market value will generally be measured by the selling price. Should a prototype or part of a prototype become a component of another product that is sold as scrap, waste, or recycled material, the relevant market value would be that portion of the selling price attributable to the component (prototype or part) as provided in this paragraph.

(f) *Articles admitted under TIB*—(1) *Duty-free entry available.* Under the procedure presented in paragraph (f)(2) of this section, an entry of an article made under a temporary importation bond (TIB) solely for testing, experimental or review purposes under HTSUS subheading 9813.00.30 may be converted into a duty-free entry under HTSUS subheading 9817.85.01, if the following conditions exist:

(i) The article meets the definition for ''prototypes'' in paragraph (b) of this section (U.S. Note 6(a) to subchapter XVII, chapter 98, HTSUS); and

(ii) The TIB entry for the article was in effect and had not been closed, and the TIB period for the article had not expired, as of November 9, 2000.

(2) *Procedure for converting TIB entry to duty-free entry*—(i) *Importer request.* The importer must submit a written request, or an electronic equivalent as authorized by CBP, that a TIB entry made under HTSUS subheading 9813.00.30, which was in effect and had not been closed, and for which the TIB period had not expired, as of November 9, 2000, be converted instead into a duty-free consumption entry under HTSUS subheading 9817.85.01.

(ii) *Action by CBP.* CBP will convert the TIB entry under HTSUS subheading 9813.00.30 to a duty-free entry under HTSUS subheading 9817.85.01, provided that the Center director is satisfied that the conditions set forth in paragraphs (f)(1)(i) and (f)(1)(ii) of this section have been met. When the TIB entry is converted, the bond will be cancelled and the entry closed. Once the conversion is complete, the Center director will provide a courtesy acknowledgment to this effect to the importer in writing or electronically.

[CBP Dec. 04–36, 69 FR 63449, Nov. 2, 2004, as amended by CBP Dec. 16–26, 81 FR 93014, Dec. 20, 2016]

§§ 10.92–10.97 [Reserved]

FLUXING MATERIAL

§ 10.98 Copper-bearing fluxing material.

(a) For the purpose of this section, ores usable as a flux or sulphur reagent, mentioned in the provision for such ores in subheading 2603.00.00, Harmonized Tariff Schedule of the United States, shall include only ores which contain by weight not over 15 percent copper.

(b) [Reserved]

(c) There shall be filed in connection with the entry of such copper-bearing ores, either for consumption or warehouse, a declaration of the importer, or its electronic equivalent, that the material is to be used for fluxing purposes only. In the case of a consumption entry, the estimated tax shall be deposited at the time of entry. Liquidation of entries shall be suspended pending proof of use for fluxing purposes as hereinafter provided.

(d) Samples of the material shall be taken in accordance with the commercial method in effect at the plant if to be used in a bonded smelting warehouse, or in accordance with §§ 151.52 through 151.55 of this chapter if entered for consumption, and the copper content thereof shall be determined by the Government chemist in accordance with the assay.

(e) The management of the smelting or converting plant shall file with the appropriate Customs officer at the port or ports where the entries are to be liquidated, a statement based on its records of operation for each quarterly period showing for each furnace or converter the total quantity of material charged during each month or part thereof of each quarter, the total quantity of material used for fluxing purposes, and the quantity of imported ores used for fluxing purposes for which

free entry was claimed under the above-mentioned provision, together with the copper content of such imported ores computed in accordance with the Government assay. If the quantity of ores used for fluxing purposes in any furnace or converter during any month or part thereof of any quarter is in excess of 25 percent of the charge of such furnace or converter, the quarterly statement shall be accompanied by an explanation of the necessity for using such quantity for fluxing purposes.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 73–175, 38 FR 17445, July 2, 1973; T.D. 87–75, 52 FR 20067, May 29, 1987; T.D. 89–1, 53 FR 51251, Dec. 21, 1988; CBP Dec. 15–14, 80 FR 61284, Oct. 13, 2015]

ETHYL ALCOHOL

§ 10.99 Importation of ethyl alcohol for nonbeverage purposes.

(a) If claim is made by an importer other than the United States or a governmental agency thereof for the classification of ethyl alcohol of an alcoholic strength by volume of 80 percent volume or higher under subheading 2207.10.60, Harmonized Tariff Schedules of the United States, the importer or his agent shall file in connection with the entry a declaration, or its electronic equivalent, that the alcohol is to be used for nonbeverage purposes only and whether the alcohol is to be used for fuel purposes. Customs shall release the alcohol for transfer, under internal revenue bond, to a distilled spirits plant upon deposit of estimated duty, if any, and without the payment of the internal revenue tax upon receipt of a transfer record for bulk spirits. In addition, a package gauge record must be submitted to Customs if the alcohol is in packages, as specified in subpart I of part 251, Bureau of Alcohol, Tobacco and Firearms (BATF) Regulations (27 CFR part 251, subpart I). The transfer shall be accomplished in accordance with subpart L of part 251, Bureau of Alcohol, Tobacco and Firearms Regulations (27 CFR part 251, subpart L).

(b) An appropriate BATF permit shall be filed with Customs in connection with the withdrawal of ethyl alcohol from Customs custody by the United States or any governmental agency thereof for its own use for nonbeverage purposes. Such permit shall be filed before release under the entry without the deposit of estimated duties, if any, and internal revenue tax, or before release in accordance with the provisions of §141.102(d) of this chapter. (See subpart M of part 251, Bureau of Alcohol, Tobacco and Firearms Regulations (27 CFR part 251, subpart M)).

(c) The procedures for the withdrawal free of tax on the entry of ethyl alcohol for nonbeverage purposes from the Virgin Islands are found in subpart O of part 250, Bureau of Alcohol, Tobacco and Firearms Regulations (27 CFR part 250, subpart O).

[T.D. 89–65, 54 FR 28413, July 6, 1989, as amended by CBP Dec. 15–14, 80 FR 61284, Oct. 13, 2015]

UNITED STATES GOVERNMENT IMPORTATIONS

§ 10.100 Entry, examination, and tariff status.

Except as otherwise provided for in §§10.101, 10.102, 10.104, 141.83(d)(8), 141.102(d), or elsewhere in this chapter, importations made by or for the account of any agency or office of the United States Government are subject to the usual Customs entry and examination requirements. In the absence of express exemptions from duty, such as are contained in subheadings 9808.00.10, 9808.00.20, 9808.00.30, 9808.00.40, 9808.00.50, 9808.00.60, 9808.00.70, or other subheadings in the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) providing for free entry, such importations are also subject to duty.

[T.D. 77–23, 42 FR 2310, Jan. 11, 1977, as amended by T.D. 89–1, 53 FR 51251, Dec. 21, 1988; T.D. 97–82, 62 FR 51769, Oct. 3, 1997]

§ 10.101 Immediate delivery.

(a) *Shipments entitled to immediate delivery.* Shipments consigned to or for the account of any agency or office of the United States Government, or to an officer or official of any such agency in his official capacity, shall be regarded for purposes of these regulations as shipments the immediate delivery of which is necessary within the

purview of section 448(b), Tariff Act of 1930, as amended (19 U.S.C. 1448(b)).

(b) *Immediate delivery applications.* The shipments described in the preceding paragraph may be released upon the filing of immediate delivery applications on Customs Form 3461, or its electronic equivalent, as set forth in subpart A of part 142 of this chapter. Such applications may be limited to particular shipments or may cover all shipments imported by the Government agency making the application. They may be approved for specific periods of time or for indefinite periods of time, provided in either case they are supported by carrier's certificates and stipulations as provided for in paragraph (c) of this section.

(c) *Carrier's certificates and stipulations.* Before the release of a shipment under an immediate delivery permit, evidence of the right of the applicant to make entry for the articles shall be furnished the port director in accordance with the provisions of §§141.11 and 141.12 of this chapter.

(d) *Bond.* No bond shall be required in support of an immediate delivery application provided for in this section if a stipulation in the form as set forth below is filed with the port director in connection with the application:

I, _____, _____ (Title), a duly authorized representative of the _____

(Name of United States Government department or agency) stipulate and agree on behalf of such department or agency that all applicable provisions of the Tariff Act of 1930, as amended, and the regulations thereunder, and all other laws and regulations, relating to the release and entry of merchandise will be observed and complied with in all respects.

_____

(Signature)

(e) *Timely entries required.* If proper entries for consumption for importations released under these regulations are not filed within a reasonable time, appropriate steps shall be taken to insure the prompt filing of such entries.

[T.D. 77–23, 42 FR 2310, Jan. 11, 1977, as amended by T.D. 87–75, 52 FR 20067, May 29, 1987; CBP Dec. 15–14, 80 FR 61284, Oct. 13, 2015]

§ 10.102 Duty-free entries.

(a) *Invoice or declaration.* No invoice or other declaration of the shipper shall be required for shipments expressly exempt from duty as provided in subheadings 9808.00.10, 9808.00.20, 9808.00.30, 9808.00.40, 9808.00.50, 9808.00.60, 9808.00.70, or other subheadings in the Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202) providing for free entry. However, the importing Government agency or office shall present any invoice, memorandum invoice, or bill, or their electronic equivalents, pertaining to the merchandise in its possession or available to it, or, if no such invoice or bill is available, a pro forma invoice, or its electronic equivalent, prepared in accordance with §141.85 of this chapter, setting forth adequate information for examination and determination of the dutiable status of the merchandise. In addition, the Center director shall only admit articles free of duty under subheadings 9808.00.30, 9808.00.40, 9808.00.50, HTSUS (19 U.S.C. 1202), upon the receipt, either at the port of entry or electronically, of a certificate executed in the manner and form described in paragraph (b) of this section.

(b) *Certification.* One of the following certificates executed by a duly authorized officer or official of the appropriate Government agency or office is required for free entry of articles under subheadings 9808.00.30, 9808.00.40, or 9808.00.50, HTSUS (19 U.S.C. 1202). The certificates may be submitted electronically, printed, stamped, or typewritten on the Customs entry or withdrawal form, Customs Form 7501, or its electronic equivalent, or on a separate paper attached to the entry or withdrawal form filed by the Government agency or office, provided the certification is clearly and unmistakably identified with the articles covered by the entry or withdrawal.

(1) *Articles for military departments, subheading 9808.00.30, HTSUS.* I certify that the procurement of this material constituted an emergency purchase of war material abroad by the Department of the (name of military department), and it is accordingly requested that such material be admitted free of duty pursuant to subheading 9808.00.30, HTSUS.

(Name)

(Title), who has been designated to execute free-entry certificates for the above-named department.

(Grade or Rank) (Organization)

(2) *Articles for the Defense Logistics Agency, subheading 9808.00.40, HTSUS.* Pursuant to subheading 9808.00.40, HTSUS, I hereby certify that the above-described materials are strategic and critical materials procured under the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98e).

(Name)

(Title), Defense Logistics Agency, who has been duly authorized to execute the above certificate.

(3) *Articles for the Department of Energy, subheading 9808.00.50, HTSUS.* I certify to the Secretary of the Treasury that the above-described materials are source materials purchased abroad, the admittance of which is necessary in the interest of the common defense and security, in accordance with subheading 9808.00.50, HTSUS.

(Name)

(Title), who has been authorized to execute free-entry certificates for the Department of Energy.

(c) *Release of shipments.* Shipments for which free entry has been or will be claimed under subheading 9808.00.30, 9808.00.40, 9808.00.50, HTSUS (19 U.S.C. 1202), shall be released after only such examination as is necessary to identify them.

(d) *Entry in Government name.* All materials for which free entry is claimed under subheading 9808.00.30, 9808.00.40, 9808.00.50, HTSUS (19 U.S.C. 1202), shall be entered, or withdrawn from warehouse, for consumption in the name of the Government department whose representative executes the certificate set forth in §10.102(b) unless exemption from this requirement is specifically authorized by the Center director.

[T.D. 77–23, 42 FR 2311, Jan. 11, 1977, as amended by T.D. 85–123, 50 FR 29953, July 23, 1985; T.D. 89–1, 53 FR 51251, Dec. 21, 1988; T.D. 93–44, 58 FR 34523, June 28, 1993; T.D. 95–81, 60 FR 52295, Oct. 6, 1995; CBP Dec. 15–14, 80 FR 61284, Oct. 13, 2015; CBP Dec. 16–26, 81 FR 93014, Dec. 20, 2016]

§ 10.103 American goods returned.

(a) *Certificate required.* Articles entered, or withdrawn from warehouse, for consumption in the name of an agency or office of the United States Government (with the exception of military scrap belonging to the Department of Defense) may be admitted free of duty under subheading 9801.00.10, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), upon the filing of a certificate on the letterhead of the agency or office in the following form in lieu of other entry documentation:

I hereby certify:

1. That the following articles imported in the _____ (Name of Carrier) at the port of _____ (Port) on _____ (Date) consist of returned products which are the growth, produce, or manufacture of the United States, and have been returned to the United States without having been advanced in value or improved in condition by any process of manufacture or other means, and that no drawback has been or will be claimed on such articles, and that the articles currently belonging to and are for the further use of _____ (Agency or Office)

[1] If shipment arrives in the United States on a commercial carrier.

2. That the shipment does not contain military scrap.

3. That the shipment is entitled to entry under subheading 9801.00.10, Harmonized Tariff Schedule of the United States (HTSUS) free of duty.

4. That I am a military installation transportation officer having knowledge of the facts involved in this certificate.

or

I am an officer or official authorized by _____ (Agency or Office) (Whichever is applicable) to execute this certificate.

(Name)

(Rank and branch of service or Agency or Office)

(b) *Combined certificate when articles are intermingled.* When articles claimed to be free under subheading 9801.00.10 and other articles claimed to be free under subheadings 9808.00.30, 9808.00.40, 9808.00.50, HTSUS (19 U.S.C. 1202), are intermingled in a single shipment in a manner which precludes separation for the purpose of making claims for free entry under the separate categories, all the articles may be covered by a combined certificate which follows the requirements of §10.102(b) and paragraph (a) of this section.

(c) *Execution of certificate.* The certificate required by paragraph (a) of this section may be executed by any military installation transportation officer having knowledge of the facts or by any other officer or official specifically designated or authorized to execute such certificates by the importing Government agency or office. If the merchandise arrived on a commercial carrier, the entry shall be supported by evidence of the right to make it.

[T.D. 77–23, 42 FR 2311, Jan. 11, 1977, as amended by T.D. 89–1, 53 FR 51251, Dec. 21, 1988]

§10.104 Temporary importation entries for United States Government agencies.

The entry of articles brought into the United States temporarily by an agency or office of the United States Government and claimed to be exempt from duty under Chapter 98, Subchapter XIII, Heading 9813, Harmonized Tariff Schedule of the United States (HTSUS), shall be made on Customs Form 7501, or its electronic equivalent. No bond shall be required if the agency or office files a stipulation in the form set forth in §141.102(d) of this chapter. In those cases in which the provisions of Chapter 98, Subchapter XIII, HTSUS (19 U.S.C. 1202), are not met, however, the Center director will proceed as if a bond had been filed to cover the particular importation. Articles temporarily imported by a Government agency or office under this section are entitled to immediate delivery under the procedures set forth in §10.101.

[T.D. 77–23, 42 FR 2311, Jan. 11, 1977, as amended by T.D. 89–1, 53 FR 51251, Dec. 21, 1988; CBP Dec. 15–14, 80 FR 61284, Oct. 13, 2015]

WHEAT

§10.106 [Reserved]

RESCUE AND RELIEF WORK

§10.107 Equipment and supplies; admission.

(a) There shall be admitted without entry and without the payment of duty or any tax imposed upon or by reason of importation of any article described in section 322(b), Tariff Act of 1930, as amended, subject to compliance with the following conditions:

(1) Before importation or as soon thereafter as possible, and in every case before the expiration of 10 days after importation, a report, or its electronic equivalent, shall be made to the nearest Customs officer by the person in charge of sending the article from the foreign country, or by the person for whose account it was brought into the United States, stating the character, quantity, destination, and use to be made of the article.

(2) If practicable, the article shall be exported under Customs supervision. In any other case a report shall be made by the person in charge of the exportation as soon as possible after exportation to the Customs officer to whom the arrival was reported, stating the character, quantity, and circumstances of the exportation.

(b) In the case of each article admitted under paragraph (a) of this section, the port director shall satisfy himself as to whether the article was exported within a reasonable time, or that it has been properly expended or destroyed. If an article is so far destroyed, in connection with a use contemplated for it by section 322 (b) that it has only a salvage value, it shall not be required to be exported.

(c) Any article admitted under paragraph (a) of this section which is used in the United States otherwise than for a purpose contemplated for it by section 322(b), or which is not exported within 90 days after its arrival in the

United States, or within such longer time as may be specially authorized by the port director or Headquarters, U.S. Customs Service, shall be seized and forfeited to the United States.

[28 FR 14663, Dec. 31, 1963, as amended by T.D. 89–1, 53 FR 51252, Dec. 21, 1988; CBP Dec. 15–14, 80 FR 61284, Oct. 13, 2015]

PRODUCTS EXPORTED UNDER LEASE AND REIMPORTED

§ 10.108 Entry of reimported articles exported under lease.

Free entry shall be accorded under subheading 9801.00.20, Harmonized Tariff Schedule of the United States (HTSUS), whenever it is established to the satisfaction of the Center director that the article for which free entry is claimed was duty paid on a previous importation or was previously entered free of duty pursuant to the Caribbean Basin Economic Recovery Act or Title V of the Trade Act of 1974, is being reimported without having been advanced in value or improved in condition by any process of manufacture or other means, was exported from the United States under a lease or similar use agreement, and is being reimported by or for the account of the person who imported it into, and exported it from, the United States.

[T.D. 94–40, 59 FR 17474, Apr. 13, 1994]

STRATEGIC MATERIALS OBTAINED BY BARTER OR EXCHANGE

§ 10.110 [Reserved]

LATE FILING OF FREE ENTRY AND REDUCED DUTY DOCUMENTS

§ 10.112 Filing free entry documents or reduced duty documents after entry.

Whenever a free entry or a reduced duty document, form, or statement required to be filed in connection with the entry is not filed at the time of the entry or within the period for which a bond was filed for its production, but failure to file it was not due to willful negligence or fraudulent intent, such document, form, or statement may be filed at any time prior to liquidation of the entry or, if the entry was liquidated, before the liquidation becomes final. See §113.43(c) of this chapter for satisfaction of the bond and cancellation of the bond charge.

[T.D. 74–227, 39 FR 32015, Sept. 4, 1974]

INSTRUMENTS AND APPARATUS FOR EDUCATIONAL AND SCIENTIFIC INSTITUTIONS

§ 10.114 General provisions.

The consolidated regulations of the Commerce and Treasury Departments relating to the entry of instruments and apparatus for educational and scientific institutions are contained in 15 CFR part 301.

[T.D. 82–224, 47 FR 53727, Nov. 29, 1982]

§§ 10.115–10.119 [Reserved]

VISUAL OR AUDITORY MATERIALS

§ 10.121 Visual or auditory materials of an educational, scientific, or cultural character.

(a) Where photographic film and other articles described in subheading 9817.00.40, Harmonized Tariff Schedule of the United States (HTSUS), are claimed to be free of duty under subheading 9817.00.40, HTSUS, there must be filed, in connection with the entry covering such articles, a document issued by the U.S. Department of State, or its electronic equivalent, certifying that it has determined that the articles are visual or auditory materials of an educational, scientific, or cultural character within the meaning of the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character as required by U.S. note 1(a)(i), Subchapter XVII, chapter 98, HTSUS.

(b) Articles entered under subheading 9817.00.40, HTSUS, will be released from CBP custody prior to submission of the document required in paragraph (a) of this section only upon the deposit of estimated duties with CBP, either at the port of entry or electronically. Liquidation of an entry which has been released under this procedure will be suspended for a period of 314 days from the date of entry or until the required document is submitted, whichever comes first. In the event that documentation is not submitted before liquidation, the

merchandise will be classified and liquidated in the ordinary course, without regard to subheading 9817.00.40, HTSUS.

[CBP Dec. 10–33, 75 FR 69585, Nov. 15, 2010; CBP Dec. 12–02, 77 FR 10369, Feb. 22, 2012; CBP Dec. 15–14, 80 FR 61284, Oct. 13, 2015]

RATE OF DUTY DEPENDENT UPON ACTUAL USE

§ 10.131 Circumstances in which applicable.

The provisions of §§ 10.131 through 10.139 are applicable in those circumstances in which the rate of duty applicable to merchandise is dependent upon actual use, unless there is a specific provision in this part which governs the treatment of the merchandise. However, specific marking or certification requirements, such as those for bolting cloths in section 10.58, may be applicable to merchandise subject to the provisions of sections 10.131–10.139.

[T.D. 71–139, 36 FR 10726, June 2, 1971, as amended by T.D. 86–118, 51 FR 22515, June 20, 1986]

§ 10.132 [Reserved]

§ 10.133 Conditions required to be met.

When the tariff classification of any article is controlled by its actual use in the United States, three conditions must be met in order to qualify for free entry or a lower rate of duty unless the language of the particular subheading of the Harmonized Tariff Schedule of the United States applicable to the merchandise specifies other conditions. The conditions are that:

(a) Such use is intended at the time of importation.

(b) The article is so used.

(c) Proof of use is furnished within 3 years after the date the article is entered or withdrawn from warehouse for consumption.

[T.D. 71–139, 36 FR 10726, June 2, 1971, as amended by T.D. 89–1, 53 FR 51252, Dec. 21, 1988]

§ 10.134 Declaration of intent.

A showing of intent by the importer as to the actual use of imported merchandise shall be made by filing with the entry for consumption or for warehouse a declaration as to the intended use of the merchandise, or by entering the proper subheading of an actual use provision of the Harmonized Tariff Schedule of the United States (HTSUS) and the reduced or free rate of duty on the entry form. Entry made under an actual use provision of the HTSUS may be construed as a declaration that the merchandise is entered to be used for the purpose stated in the HTSUS, provided the Center director is satisfied the merchandise will be so used. However, the Center director shall require a written declaration to be filed if he is not satisfied that merchandise entered under an actual use provision will be used for the purposes stated in the HTSUS.

[T.D. 71–139, 36 FR 10726, June 2, 1971, as amended by T.D. 89–1, 53 FR 51252, Dec. 21, 1988]

§ 10.135 Deposit of duties.

When the requirement of § 10.134 has been met the merchandise may be entered or withdrawn from warehouse for consumption without deposit of duty when proof of use will result in free entry, or with deposit of duty at the lower rate when proof of use will result in a lower rate of duty.

[T.D. 71–139, 36 FR 10726, June 2, 1971, as amended by T.D. 84–213, 49 FR 41166, Oct. 19, 1984]

§ 10.136 Suspension of liquidation.

Liquidation of an entry covering merchandise for which a declaration of intent has been made pursuant to § 10.134 and any required deposit of duties made, shall be suspended until proof of use is furnished or the 3-year period allowed for production thereof has expired.

[T.D. 71–139, 36 FR 10726, June 2, 1971]

§ 10.137 Records of use.

(a) *Maintenance by importer*. The importer shall maintain accurate and detailed records showing the use or other disposition of the imported merchandise. The burden shall be on the importer to keep records so that the claim of actual use can be readily established.

(b) *Retention of records*. The importer shall retain records of use or disposition for a period of 3 years from the date of liquidation of the entry.

(c) *Examination of records.* The records required to be kept by paragraph (a) of this section shall be available at all times for examination and inspection by an authorized Customs officer.

[T.D. 71–139, 36 FR 10726, June 2, 1971]

§ 10.138 Proof of use.

Within 3 years from the date of entry or withdrawal from warehouse for consumption, the importer shall submit in duplicate in support of his claim for free entry or for a reduced rate of duty a certificate executed by (1) the superintendent or manager of the manufacturing plant, or (2) the individual end-user or other person having knowledge of the actual use of the imported article. The certificate shall include a description of the processing in sufficient detail to show that the use contemplated by the law has actually taken place. A blanket certificate covering all purchases of a given type of merchandise from a particular importer during a given period, or all such purchases with specified exceptions, may be accepted for this purpose, provided the importer shall furnish a statement showing in detail, in such manner as to be readily identified with each entry, the merchandise which he sold to such manufacturer or end-user during such period.

[T.D. 71–139, 36 FR 10727, June 2, 1971]

§ 10.139 Liquidation.

(a) *In general.* Upon satisfactory proof of timely use of the merchandise for the purpose specified by law, the entry shall be liquidated free of duty or at the lower rate of duty specified by law. When such proof is not filed within 3 years from the date of entry or withdrawal from warehouse for consumption, the entry shall be liquidated dutiable under the appropriate subheading of the Harmonized Tariff Schedule of the United States.

(b) *Exception for blackstrap molasses.* An entry covering blackstrap molasses, as hereinafter defined, may be accepted and liquidated with duty at the lower rate after the filing of the declaration of intent required by § 10.134 and the deposit of estimated duties required by § 10.135 without compliance with §§ 10.136, 10.137, and 10.138. Blackstrap molasses is ''final'' molasses practically free from sugar crystals, containing not over 58 percent total sugars and having a ratio of

$$\text{total sugars} \times 100/\text{Brix}$$

not in excess of 71. In the event of doubt, an ash determination may be made. An ash content of not less than 7 percent indicates a blackstrap molasses within the meaning of this paragraph.

[T.D. 71–139, 36 FR 10727, June 2, 1971, as amended by T.D. 89–1, 53 FR 51252, Dec. 21, 1988]

IMPORTATIONS NOT OVER $200 AND BONA FIDE GIFTS

§ 10.151 Importations not over $800.

Subject to the conditions in § 10.153 of this part, the port director shall pass free of duty and tax any shipment of merchandise, as defined in § 101.1 of this chapter, imported by one person on one day having a fair retail value, as evidenced by an oral declaration or the bill of lading (or other document filed as the entry) or manifest listing each bill of lading, in the country of shipment not exceeding $800, unless he has reason to believe that the shipment is one of several lots covered by a single order or contract and that it was sent separately for the express purpose of securing free entry therefor or of avoiding compliance with any pertinent law or regulation. Merchandise subject to this exemption shall be entered under the informal entry procedures (see subpart C, part 143, and §§ 128.24, 145.31, 148.12, and 148.62, of this chapter).

[T.D. 94–51, 59 FR 30293, June 13, 1994, as amended by T.D. 95–31, 60 FR 18990, Apr. 14, 1995; T.D. 95–31, 60 FR 37875, July 24, 1995; T.D. 97–82, 62 FR 51769, Oct. 3, 1997; CBP Dec. No. 16-13, 81 FR 58833, Aug. 26, 2016]

§ 10.152 Bona-fide gifts.

Subject to the conditions in § 10.153 of this part, the port director shall pass free of duty and tax any article sent as a bona-fide gift from a person in a foreign country to a person in the United States, provided that the aggregate fair retail value in the country of shipment of such articles received by one person on one day does not exceed $100

or, in the case of articles sent from a person in the Virgin Islands, Guam, and American Samoa, $200. Articles subject to this exemption shall be entered under the informal entry procedures (see subpart C, part 143, and §§145.32, 148.12, 148.51, and 148.64, of this chapter). An article is ''sent'' for purposes of this section if it is conveyed in any manner other than on the person or in the accompanied or unaccompanied baggage of the donor or donee.

[T.D. 94–51, 59 FR 30293, June 13, 1994]

§ 10.153 Conditions for exemption.

Customs officers shall be further guided as follows in determining whether an article or parcel shall be exempted from duty and tax under §10.151 or §10.152:

(a) A ''bona fide gift'' for purposes of §10.152 is an article formerly owned by a donor (may be a commercial firm) who gave it outright in its entirety to a donee without compensation or promise of compensation. It does not include articles acquired by purchase, barter, promissory exchange, or similar transaction, nor does it include articles said to be ''given'' in conjunction with a purchase, barter, promissory exchange, or similar transaction, such as a so-called bonus article.

(b) A parcel addressed to a person in the United States from an individual in a foreign country which contains a gift should be clearly marked on the outside to indicate that it contains a gift. Such marking is not conclusive evidence of a gift nor is the absence of such marking conclusive evidence that an article is not a gift. Ordinarily an article not exceeding $100 in fair retail value in the country of shipment sent from a person in a foreign country to a person in the United States ($200, in the case of an article sent from a person in the Virgin Islands, Guam, and American Samoa) will be recognizable as a gift from the nature of the article and obvious facts surrounding the shipment.

(c) A parcel addressed to a person in the United States from a business firm in a foreign country would ordinarily not contain a gift from a donor in the foreign country. When such a parcel in fact contains an article entitled to free entry under §10.152, the parcel should be clearly marked to indicate that it contains such a gift and a statement to this effect should be enclosed in the parcel.

(d) Consolidated shipments addressed to one consignee shall be treated for purposes of §§10.151 and 10.152 as one importation. The foregoing shall not apply to shipments of bona fide gifts consolidated abroad for shipment to the United States when:

(1) The consolidation for shipment to the United States is in a cargo van or similar containerization which is consigned to a common carrier, freight forwarder, freight handler, or other public service agency for distribution of the gift packages;

(2) The separate gifts not exceeding $100 in fair retail value in the country of shipment ($200, in the case of articles sent from persons in the Virgin Islands, Guam, and American Samoa) included in the consolidated shipment are before shipment individually wrapped and addressed to the donee in the United States;

(3) Each gift package is marked on the outside to indicate that it contains a gift not exceeding $100 in fair retail value in the country of shipment ($200, in the case of packages sent from persons in the Virgin Islands, Guam, and American Samoa); and

(4) Each gift package is separately listed in the name of the addressee-donee on a packing list, manifest, bill of lading, or other shipping document.

(e) No alcoholic beverage, cigars (including cheroots and cigarillos) and cigarettes containing tobacco, cigarette tubes, cigarette papers, smoking tobacco (including water pipe tobacco, pipe tobacco, and roll-your-own tobacco), snuff, or chewing tobacco, shall be exempted from the payment of duty and tax under §10.151 or §10.152.

(f) The exemptions provided for in §10.151 or §10.152 are not to be allowed in respect of any shipment containing one or more gifts having an aggregate fair retail value in the country of shipment in excess of $100 ($200, in the case of articles sent from persons in the Virgin Islands, Guam, and American Samoa), except as indicated in paragraph (d) of this section. For example, an article ordinarily subject to an ad valorem rate of duty but sent as a gift,

if the fair retail value exceeds the $100 (or $200) exemption, would be subject to a duty based upon its value under the provisions of section 402 or 402(a), Tariff Act of 1930, as amended (19 U.S.C. 1401a or 1402), even though the dutiable value is less than the $100 (or $200) exemption.

(g) The exemption referred to in §10.151 is not to be allowed in the case of any merchandise of a class or kind provided for in any absolute or tariff-rate quota, whether the quota is open or closed. In the case of merchandise of a class or kind provided for in a tariff-rate quota, the merchandise is subject to the rate of duty in effect on the date of entry.

(h) The exemption provided for in §10.151 is not to be allowed with respect to any tax imposed under the Internal Revenue Code collected by other agencies on imported goods.

[T.D. 73–175, 38 FR 17445, July 2, 1973, as amended by T.D. 75–185, 40 FR 31753, July 29, 1975; T.D. 78–394, 43 FR 49787, Oct. 25, 1978; T.D. 85–123, 50 FR 29953, July 23, 1985; T.D. 94–51, 59 FR 30293, June 13, 1994; CBP Dec. No. 16-13, 81 FR 58833, Aug. 26, 2016]

GENERALIZED SYSTEM OF PREFERENCES

§10.171 General.

(a) *Statutory authority*. Title V of the Trade Act of 1974 as amended (19 U.S.C. 2461–2467) authorizes the President to establish a Generalized System of Preferences (GSP) to provide duty-free treatment for eligible articles imported directly from designated beneficiary developing countries. Beneficiary developing countries and articles eligible for duty-free treatment are designated by the President by Executive order in accordance with sections 502(a)(1) and 503(a) of the Trade Act of 1974 as amended (19 U.S.C. 2462(a)(1), 2463(a)).

(b) *Country defined*. For purposes of §§10.171 through 10.178, except as otherwise provided in §10.176(a), the term ''country'' means any foreign country, any overseas dependent territory or possession of a foreign country, or the Trust Territory of the Pacific Islands. In the case of an association of countries which is a free trade area or customs union or which is contributing to comprehensive regional economic integration among its members through appropriate means, including but not limited to, the reduction of duties, the President may by Executive order provide that all members of such association other than members which are barred from designation under section 502(b) of the Trade Act of 1974 (19 U.S.C. 2462(b)) shall be treated as one country for purposes of §§10.171 through 10.178.

[T.D. 76–2, 40 FR 60047, Dec. 31, 1975, as amended by T.D. 80–271, 45 FR 75641, Nov. 17, 1980; T.D. 00–67, 65 FR 59675, Oct. 5, 2000]

§10.172 Claim for exemption from duty under the Generalized System of Preferences.

A claim for an exemption from duty on the ground that the Generalized System of Preferences applies shall be allowed by the Center director only if he is satisfied that the requirements set forth in this section and §§10.173 through 10.178 have been met. If duty-free treatment is claimed at the time of entry, a written claim shall be filed on the entry document by placing the symbol ''A'' as a prefix to the subheading of the Harmonized Tariff Schedule of the United States for each article for which such treatment is claimed.

[T.D. 76–2, 40 FR 60048, Dec. 31, 1975, as amended by T.D. 77–36, 42 FR 5041, Jan. 27, 1977; T.D. 89–1, 53 FR 51252, Dec. 21, 1988; T.D. 94–47, 59 FR 25569, May 17, 1994; T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§10.173 Evidence of country of origin.

(a) *Shipments covered by a formal entry*—(1) *Merchandise not wholly the growth, product, or manufacture of a beneficiary developing country*—(i) *Declaration*. In a case involving merchandise covered by a formal entry which is not wholly the growth, product, or manufacture of a single beneficiary developing country, the exporter of the merchandise or other appropriate party having knowledge of the relevant facts shall be prepared to submit directly to the Center director, upon request, a declaration setting forth all pertinent detailed information concerning the production or manufacture of the merchandise. When requested by the Center director, the declaration shall be prepared in substantially the following form:

GSP DECLARATION

I, _____(name), hereby declare that the articles described below were produced or manufactured in _____ (country) by means of processing operations performed in that country as set forth below and were also subjected to processing operations in the other country or countries which are members of the same association of countries as set forth below and incorporate materials produced in the country named above or in any other country or countries which are members of the same association of countries as set forth below:

Number and date of invoices	Description of articles and quantity	Processing operations performed on articles		Materials produced in a beneficiary developing country or members of the same association	
		Description of processing operations and country of processing	Direct costs of processing operations	Description of material, production process, and country of production	Cost or value of material

Date _____
Address _____
Signature _____
Title _____

(ii) *Retention of records and submission of declaration.* The information necessary for preparation of the declaration shall be retained in the files of the party responsible for its preparation and submission for a period of 5 years. In the event that the Center director requests submission of the declaration during the 5-year period, it shall be submitted by the appropriate party directly to the Center director within 60 days of the date of the request or such additional period as the Center director may allow for good cause shown. Failure to submit the declaration in a timely fashion will result in a denial of duty-free treatment.

(2) *Merchandise wholly the growth, product, or manufacture of a beneficiary developing country.* In a case involving merchandise covered by a formal entry which is wholly the growth, product, or manufacture of a single beneficiary developing country, a statement to that effect shall be included on the commercial invoice provided to Customs.

(b) *Shipments covered by an informal entry.* Although the filing of the declaration provided for in paragraph (a)(1)(i) of this section will not be required for a shipment covered by an informal entry, the Center director may require such other evidence of country of origin as deemed necessary.

(c) *Verification of documentation.* Any evidence of country of origin submitted under this section shall be subject to such verification as the Center director deems necessary. In the event that the Center director is prevented from obtaining the necessary verification, the Center director may treat the entry as dutiable.

[T.D. 94–47, 59 FR 25569, May 17, 1994]

§ 10.174 Evidence of direct shipment.

(a) *Documents constituting evidence of direct shipment.* The Center director may require that appropriate shipping papers, invoices, or other documents be submitted within 60 days of the date of entry as evidence that the articles were ''imported directly'', as that term is defined in § 10.175. Any evidence of direct shipment required by the Center director shall be subject to such verification as he deems necessary.

(b) *Waiver of evidence of direct shipment.* The Center director may waive the submission of evidence of direct shipment when he is otherwise satisfied, taking into consideration the kind and value of the merchandise, that the merchandise clearly qualifies for treatment under the Generalized System of Preferences.

[T.D. 76–2, 40 FR 60048, Dec. 31, 1975, as amended by T.D. 77–27, 42 FR 3162, Jan. 17, 1977]

§ 10.175 Imported directly defined.

Eligible articles shall be imported directly from a beneficiary developing country to qualify for treatment under the Generalized System of Preferences. For purposes of §§ 10.171 through 10.178 the words ''imported directly'' mean:

(a) Direct shipment from the beneficiary country to the United States without passing through the territory of any other country; or

(b) If the shipment is from a beneficiary developing country to the U.S. through the territory of any other country, the merchandise in the shipment does not enter into the commerce of any other country while en route to the U.S., and the invoice, bills of lading, and other shipping documents show the U.S. as the final destination; or

(c) If shipped from the beneficiary developing country to the United States through a free trade zone in a beneficiary developing country, the merchandise shall not enter into the commerce of the country maintaining the free trade zone, and

(1) The eligible articles must not undergo any operation other than:

(i) Sorting, grading, or testing,

(ii) Packing, unpacking, changes of packing, decanting or repacking into other containers,

(iii) Affixing marks, labels, or other like distinguishing signs on articles or their packing, if incidental to operations allowed under this section, or

(iv) Operations necessary to ensure the preservation of merchandise in its condition as introduced into the free trade zone.

(2) Merchandise may be purchased and resold, other than at retail, for export within the free trade zone.

(3) For the purposes of this section, a free trade zone is a predetermined area or region declared and secured by or under governmental authority, where certain operations may be performed with respect to articles, without such articles having entered into the commerce of the country maintaining the free trade zone; or

(d) If the shipment is from any beneficiary developing country to the U.S through the territory of any other country and the invoices and other documents do not show the U.S as the final destination, the articles in the shipment upon arrival in the U.S. are imported directly only if they:

(1) Remained under the control of the customs authority of the intermediate country;

(2) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the Center director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the latter's sales agent; and

(3) Were not subjected to operations other than loading and unloading, and other activities necessary to preserve the articles in good condition; or

(e)(1) Shipment to the U.S. from a beneficiary developing country which is a member of an association of countries treated as one country under section 507(2), Trade Act of 1974, as amended (19 U.S.C. 2467(2)), through the territory of a former beneficiary developing country whose designation as a member of the same association for GSP purposes was terminated by the President pursuant to section 502(d), Trade Act of 1974, as amended (19 U.S.C. 2462(d)), provided the articles in the shipment did not enter into the commerce of the former beneficiary developing country except for purposes of performing one or more of the operations specified in paragraph (c)(1) of this section and except for purposes of purchase or resale, other than at retail, for export.

(2) The designation of the following countries as members of an association of countries for GSP purposes has been terminated by the President pursuant to section 502(d) of the Trade Act of 1974 (19 U.S.C. 2462(d)):

The Bahamas
Brunei Darussalam
Malaysia
Singapore

[T.D. 76–2, 40 FR 60048, Dec. 31, 1975, as amended by T.D. 83–144, 48 FR 29684, June 28, 1983; T.D. 84–237, 49 FR 47992, Dec. 7, 1984; T.D. 86–107, 51 FR 20816, June 9, 1986; T.D. 92–6, 57 FR 2018, Jan. 17, 1992; T.D. 94–47, 59 FR 25569, May 17, 1994; T.D. 95–30, 60 FR 18543, Apr. 12, 1995; T.D. 00–67, 65 FR 59675, Oct. 5, 2000]

§ 10.176 Country of origin criteria.

(a) *Merchandise produced in a beneficiary developing country or any two or more countries which are members of the same association of countries*—(1) *General.* Except as otherwise provided in this section, any article which either is wholly the growth, product, or manufacture of, or is a new or different article of commerce that has been grown, produced, or manufactured in, a beneficiary developing country may qualify for duty-free entry under the Generalized System of Preferences (GSP). No article will be considered to have been grown, produced, or manufactured in a beneficiary developing country by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. Duty-free entry under the GSP may be accorded to an article only if the sum of the cost or value of the materials produced in the beneficiary developing country or any two or more countries that are members of the same association of countries and are treated as one country under section 507(2) of the Trade Act of 1974, as amended (19 U.S.C. 2467(2)), plus the direct costs of processing operations performed in the beneficiary developing country or member countries, is not less than 35 percent of the appraised value of the article at the time it is entered.

(2) *Combining, packaging, and diluting operations.* No article which has undergone only a simple combining or packaging operation or a mere dilution in a beneficiary developing country within the meaning of paragraph (a)(1) of this section will be entitled to duty-free treatment even though the processing operation causes the article to meet the value requirement set forth in that paragraph. For purposes of this section:

(i) Simple combining or packaging operations and mere dilution include, but are not limited to, the following:

(A) The addition of batteries to devices;

(B) Fitting together a small number of components by bolting, glueing, soldering, etc.;

(C) Blending foreign and beneficiary developing country tobacco;

(D) The addition of substances such as anticaking agents, preservatives, wetting agents, etc.;

(E) Repacking or packaging components together;

(F) Reconstituting orange juice by adding water to orange juice concentrate; and

(G) Diluting chemicals with inert ingredients to bring them to standard degrees of strength;

(ii) Simple combining or packaging operations and mere dilution will not be taken to include processes such as the following:

(A) The assembly of a large number of discrete components onto a printed circuit board;

(B) The mixing together of two bulk medicinal substances followed by the packaging of the mixed product into individual doses for retail sale;

(C) The addition of water or another substance to a chemical compound under pressure which results in a reaction creating a new chemical compound; and

(D) A simple combining or packaging operation or mere dilution coupled with any other type of processing such as testing or fabrication (for example, a simple assembly of a small number of components, one of which was fabricated in the beneficiary developing country where the assembly took place); and

(iii) The fact that an article has undergone more than a simple combining or packaging operation or mere dilution is not necessarily dispositive of the question of whether that processing constitutes a substantial transformation for purposes of determining the country of origin of the article.

(b) [Reserved]

(c) *Merchandise grown, produced, or manufactured in a beneficiary developing country.* Merchandise which is wholly the growth, product, or manufacture of a beneficiary developing country, or an association of countries treated as one country under section 507(2) of the Trade Act of 1974 (19 U.S.C. 2467(2)) and § 10.171(b), and manufactured products consisting of materials produced only

in such country or countries, shall normally be presumed to meet the requirements set forth in this section.

[T.D. 76–2, 40 FR 60048, Dec. 31, 1975, as amended by T.D. 80–271, 45 FR 75641, Nov. 17, 1980; T.D. 00–67, 65 FR 59675, Oct. 5, 2000]

§ 10.177 Cost or value of materials produced in the beneficiary developing country.

(a) *''Produced in the beneficiary developing country'' defined.* For purposes of §§ 10.171 through 10.178, the words ''produced in the beneficiary developing country'' refer to the constituent materials of which the eligible article is composed which are either:

(1) Wholly the growth, product, or manufacture of the beneficiary developing country; or

(2) Substantially transformed in the beneficiary developing country into a new and different article of commerce.

(b) *Questionable origin.* When the origin of an article either is not ascertainable or not satisfactorily demonstrated to the Center director, the article shall not be considered to have been produced in the beneficiary developing country.

(c) *Determination of cost or value of materials produced in the beneficiary developing country.* (1) The cost or value of materials produced in the beneficiary developing country includes:

(i) The manufacturer's actual cost for the materials;

(ii) When not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;

(iii) The actual cost of waste or spoilage (material list), less the value of recoverable scrap; and

(iv) Taxes and/or duties imposed on the materials by the beneficiary developing country, or an association of countries treated as one country, provided they are not remitted upon exportation.

(2) Where the material is provided to the manufacturer without charge, or at less than fair market value, its cost or value shall be determined by computing the sum of:

(i) All expenses incurred in the growth, production, manufacture or assembly of the material, including general expenses;

(ii) An amount for profit; and

(iii) Freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant.

If the pertinent information needed to compute the cost or value of the materials is not available, the appraising officer may ascertain or estimate the value thereof using all reasonable ways and means at his disposal.

[T.D. 76–2, 40 FR 60049, Dec. 31, 1975, as amended by T.D. 86–118, 51 FR 22515, June 20, 1986]

§ 10.178 Direct costs of processing operations performed in the beneficiary developing country.

(a) *Items included in the direct costs of processing operations.* As used in § 10.176, the words ''direct costs of processing operations'' means those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific merchandise under consideration. Such costs include, but are not limited to:

(1) All actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(2) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise;

(3) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific merchandise; and

(4) Costs of inspecting and testing the specific merchandise.

(b) *Items not included in the direct costs of processing operations.* Those items which are not included within the meaning of the words ''direct costs of processing operations'' are those which are not directly attributable to the merchandise under consideration or are not ''costs'' of manufacturing the product. These include, but are not limited to:

(1) Profit; and

(2) General expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

[T.D. 76–2, 40 FR 60049, Dec. 31, 1975]

§ 10.178a Special duty-free treatment for sub-Saharan African countries.

(a) *General.* Section 506A of the Trade Act of 1974 (19 U.S.C. 2466a) authorizes the President to provide duty-free treatment for certain articles otherwise excluded from duty-free treatment under the Generalized System of Preferences (GSP) pursuant to section 503(b)(1)(B) through (G) of the Trade Act of 1974 (19 U.S.C. 2463(b)(1)(B) through (G)) and authorizes the President to designate a country listed in section 107 of the African Growth and Opportunity Act (19 U.S.C. 3706) as an eligible beneficiary sub-Saharan African country for purposes of that duty-free treatment.

(b) *Eligible articles.* The duty-free treatment referred to in paragraph (a) of this section will apply to any article within any of the following classes of articles, provided that the article in question has been designated by the President for that purpose and is the growth, product, or manufacture of an eligible beneficiary sub-Saharan African country and meets the requirements specified or referred to in paragraph (d) of this section:

(1) Watches, except those watches entered after June 30, 1989, that the President specifically determines, after public notice and comment, will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or the United States insular possessions;

(2) Certain electronic articles;

(3) Certain steel articles;

(4) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of the GSP on January 1, 1995, as the GSP was in effect on that date;

(5) Certain semimanufactured and manufactured glass products; and

(6) Any other articles which the President determines to be import-sensitive in the context of the GSP.

(c) *Claim for duty-free treatment.* A claim for the duty-free treatment referred to in paragraph (a) of this section must be made by placing on the entry document the symbol ''D'' as a prefix to the subheading of the Harmonized Tariff Schedule of the United States for each article for which duty-free treatment is claimed;

(d) *Origin and related rules.* The provisions of §§ 10.171, 10.173, and 10.175 through 10.178 will apply for purposes of duty-free treatment under this section. However, application of those provisions in the context of this section will be subject to the following rules:

(1) The term ''beneficiary developing country,'' wherever it appears, means ''beneficiary sub-Saharan African country;'

(2) In the GSP declaration set forth in § 10.173(a)(1)(i), the column heading ''Materials produced in a beneficiary developing country or members of the same association'' should read ''Material produced in a beneficiary sub-Saharan African country, a former beneficiary sub-Saharan African country, or the U.S.;''

(3) The provisions of § 10.175(c) will not apply; and

(4) For purposes of determining compliance with the 35 percent value content requirement set forth in § 10.176(a):

(i) An amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the United States, and the provisions of § 10.177 will apply for purposes of identifying materials produced in the customs territory of the United States and the cost or value of those materials; and

(ii) The cost or value of materials included in the article that are produced in more than one beneficiary sub-Saharan African country or former beneficiary sub-Saharan African country may be applied without regard to whether those countries are members of the same association of countries.

(5) As used in this paragraph, the term ''former beneficiary sub-Saharan African country'' means a country that, after being designated by the President as a beneficiary sub-Saharan African country under section 506A of the Trade Act of 1974 (19 U.S.C. 2466a), ceased to be designated as such a beneficiary sub-Saharan African country by reason of its entering into a free trade agreement with the United States.

(e) *Importer requirements.* In order to make a claim for duty-free treatment under this section, the importer:

(1) Must have records that explain how the importer came to the conclusion that the article qualifies for duty-free treatment;

(2) Must have records that demonstrate that the importer is claiming that the article qualifies for duty-free treatment because it is the growth of a beneficiary sub-Saharan African country or because it is the product of a beneficiary sub-Saharan African country or because it is the manufacture of a beneficiary sub-Saharan African country. If the importer is claiming that the article is the growth of a beneficiary sub-Saharan African country, the importer must have records that indicate that the product was grown in that country, such as a record of receipt from a farmer whose crops are grown in that country. If the importer is claiming that the article is the product of, or the manufacture of, a beneficiary sub-Saharan African country, the importer must have records that indicate that the manufacturing or processing operations reflected in or applied to the article meet the country of origin rules set forth in §10.176(a) and paragraph (d) of this section. A properly completed GSP declaration in the form set forth in §10.173(a)(1) is one example of a record that would serve this purpose;

(3) Must establish and implement internal controls which provide for the periodic review of the accuracy of the declarations or other records referred to in paragraph (e)(2) of this section;

(4) Must have shipping papers that show how the article moved from the beneficiary sub-Saharan African country to the United States. If the imported article was shipped through a country other than a beneficiary sub-Saharan African country and the invoices and other documents from the beneficiary sub-Saharan African country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in §10.175(d)(1) through (3) were met;

(5) Must have records that demonstrate the cost or value of the materials produced in the United States and the cost or value of the materials produced in a beneficiary sub-Saharan African country or countries and the direct costs of processing operations incurred in the beneficiary sub-Saharan African country that were relied upon by the importer to determine that the article met the 35 percent value content requirement set forth in §10.176(a) and paragraph (c) of this section. A properly completed GSP declaration in the form set forth in §10.173(a)(1) is one example of a record that would serve this purpose; and

(6) Must be prepared to produce the records referred to in paragraphs (e)(1), (e)(2), (e)(4), and (e)(5) of this section within 30 days of a request from Customs and must be prepared to explain how those records and the internal controls referred to in paragraph (e)(3) of this section justify the importer's claim for duty-free treatment.

[T.D. 00–67, 65 FR 59675, Oct. 5, 2000, as amended by CBP Dec. 14–07, 79 FR 30392, May 27, 2014]

CANADIAN CRUDE PETROLEUM

§10.179 Canadian crude petroleum subject to a commercial exchange agreement between United States and Canadian refiners.

(a) Crude petroleum (as defined in Chapter 27, Additional U.S. Note 1, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202)) produced in Canada may be admitted free of duty if the entry is accompanied by a certificate from the importer, or its electronic equivalent, establishing that:

(1) The petroleum is imported pursuant to a commercial exchange agreement between United States and Canadian refiners which has been approved by the Secretary of Energy;

(2) An equivalent amount of domestic or duty-paid foreign crude petroleum

on which the importer has executed a written waiver of drawback, has been exported to Canada pursuant to the export license and previously has not been used to effect the duty-free entry of like Canadian products; and,

(3) An export license has been issued by the Secretary of Commerce for the petroleum which has been exported to Canada.

(b) The provisions of this section may be applied to:

(1) Liquidated or reliquidated entries if the required certification is filed with CBP, either at the port of entry or electronically on or before the 180th day after the date of entry; and

(2) Articles entered, or withdrawn from warehouse, for consumption, pursuant to a commercial exchange agreement.

(c) Verification of the quantities of crude petroleum exported to or imported from Canada under such a commercial exchange agreement shall be made in accordance with import verification provided in Part 151, Subpart C, Customs Regulations (19 CFR part 151, subpart C).

[T.D. 81–292, 46 FR 58069, Nov. 30, 1981, as amended by T.D. 89–1, 53 FR 51252, Dec. 21, 1988; T.D. 91–82, 56 FR 49845, Oct. 2, 1991; CBP Dec. 15–14, 80 FR 61284, Oct. 13, 2015]

CERTAIN FRESH, CHILLED, OR FROZEN BEEF

§ 10.180 Certification.

(a) The foreign official's meat-inspection certificate, or its electronic equivalent, required by U.S. Department of Agriculture regulations (9 CFR 327.4) shall be modified to include the certification below when fresh, chilled, or frozen beef is to be entered under the provisions of subheadings 0201.20.10, 0201.30.02, 0202.20.02, 0202.20.10, Harmonized Tariff Schedule of the United States (HTSUS). The certification shall be made, prior to exportation of the beef, by an official of the government of the exporting country and filed with Customs with the entry summary or with the entry when the entry summary is filed at the time of entry. The requirements of this section shall be in addition to those requirements contained in 9 CFR 327.4. Appropriate officials of the exporting country should consult with the U.S. Department of Agriculture as to the beef grades or standards within their country that satisfy the certification requirement. Exporters or importers of beef to be entered under the provisions of subheadings 0201.20.10, 0201.30.02, 0202.20.02, 0202.20.10, HTSUS, should consult with the U.S. Department of Agriculture prior to exportation in order to insure that the beef will satisfy the certification requirements. This certification is relevant only to U.S. Customs tariff classification and is not applicable to marketing of beef under U.S. Department of Agriculture grading standards, a matter within U.S. Department of Agriculture's jurisdiction.

CERTIFICATION

I hereby certify to the best of my knowledge and belief that the herein described fresh, chilled, or frozen beef, meets the specifications prescribed in regulations issued by the U.S. Department of Agriculture (7 CFR 2853.106 (a) and (b)).

(b) Appropriate officials of the following countries have agreed with the U.S. Department of Agriculture as to the grades or standards for fresh, chilled, or frozen beef within their respective countries which will satisfy the certification requirements of paragraph (a) of this section: Canada.

[T.D. 82–8, 47 FR 945, Jan. 8, 1982, as amended by T.D. 89–1, 53 FR 51252, Dec. 21, 1988; T.D. 97–82, 62 FR 51769, Oct. 3, 1997; CBP Dec. 15–14, 80 FR 61284, Oct. 13, 2015]

WATCHES AND WATCH MOVEMENTS FROM U.S. INSULAR POSSESSIONS

§§ 10.181–10.182 [Reserved]

CIVIL AIRCRAFT

§ 10.183 Duty-free entry of civil aircraft, aircraft engines, ground flight simulators, parts, components, and subassemblies.

(a) *Applicability*. Except as provided in paragraph (b) of this section, this section applies to aircraft, aircraft engines, and ground flight simulators, including their parts, components, and subassemblies, that qualify as civil aircraft under General Note 6(b) ofthe Harmonized Tariff Schedule of the United States (HTSUS) by meeting the following requirements:

(1) The aircraft, aircraft engines, ground flight simulators, or their parts, components, and subassemblies, are used as original or replacement equipment in the design, development, testing, evaluation, manufacture, repair, maintenance, rebuilding, modification, or conversion of aircraft; and

(2) They are either:

(i) Manufactured or operated pursuant to a certificate issued by the Administrator of the Federal Aviation Administration (FAA) under 49 U.S.C. 44704 or pursuant to the approval of the airworthiness authority in the country of exportation, if that approval is recognized by the FAA as an acceptable substitute for the FAA certificate;

(ii) Covered by an application for such certificate, submitted to and accepted by the FAA, filed by an existing type and production certificate holder pursuant to 49 U.S.C. 44702 and implementing regulations (Federal Aviation Administration Regulations, title 14, Code of Federal Regulations); or

(iii) Covered by an application for such approval or certificate which will be submitted in the future by an existing type and production certificate holder, pending the completion of design or other technical requirements stipulated by the FAA (applicable only to the quantities of parts, components, and subassemblies as are required to meet the stipulation).

(b) *Department of Defense or U.S. Coast Guard use.* If purchased for use by the Department of Defense or the United States Coast Guard, aircraft, aircraft engines, and ground flight simulators, including their parts, components, and subassemblies, are subject to this section only if they are used as original or replacement equipment in the design, development, testing, evaluation, manufacture, repair, maintenance, rebuilding, modification, or conversion of aircraft and meet the requirements of either paragraph (a)(2)(i) or (a)(2)(ii) of this section.

(c) *Claim for admission free of duty.* Merchandise qualifying under paragraph (a) or paragraph (b) of this section is entitled to duty-free admission in accordance with General Note 6, HTSUS, upon meeting the requirements of this section. An importer will make a claim for duty-free admission under this section and General Note 6, HTSUS, by properly entering qualifying merchandise under a provision for which the rate of duty ''Free (C)'' appears in the ''Special'' subcolumn of the HTSUS and by placing the special indicator ''C'' on the entry summary. The fact that qualifying merchandise has previously been exported with benefit of drawback does not preclude free entry under this section.

(d) *Importer certification.* In making a claim for duty-free admission as provided for under paragraph (c) of this section, the importer is deemed to certify, in accordance with General Note 6(a)(ii), HTSUS, that the imported merchandise is, as described in paragraph (a) or paragraph (b) of this section, a civil aircraft or has been imported for use in a civil aircraft and will be so used.

(e) *Documentation.* Each entry summary claiming duty-free admission for imported merchandise in accordance with paragraph (c) of this section must be supported by documentation to verify the claim for duty-free admission, including the written order or contract and other evidence that the merchandise entered qualifies under General Note 6, HTSUS, as a civil aircraft, aircraft engine, or ground flight simulator, or their parts, components, and subassemblies. Evidence that the merchandise qualifies under the general note includes evidence of compliance with paragraph (a)(1) of this section concerning use of the merchandise and evidence of compliance with the airworthiness certification requirement of paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this section, including, as appropriate in the circumstances, an FAA certification; approval of airworthiness by an airworthiness authority in the country of export and evidence that the FAA recognizes that approval as an acceptable substitute for an FAA certification; an application for a certification submitted to and accepted by the FAA; a type and production certificate issued by the FAA; and/or evidence that a type and production certificate holder will submit an application for certification or approval in the future pending completion of design or other technical requirements stipulated by the FAA and of estimates

of quantities of parts, components, and subassemblies as are required to meet design and technical requirements stipulated by the FAA. This documentation need not be filed with the entry summary but must be maintained in accordance with the general note and with the recordkeeping provisions of part 163 of this chapter. Customs may request production of documentation at any time to verify the claim for duty-free admission. Failure to produce documentation sufficient to satisfy the Center director that the merchandise qualifies for duty-free admission will result in a denial of duty-free treatment and may result in such other measures permitted under the regulations as the Center director finds necessary to more closely monitor the importer's importations of merchandise claimed to be duty-free under this section. Proof of end use of the entered merchandise need not be maintained.

(f) *Post-entry claim.* An importer may file a claim for duty-free treatment under General Note 6, HTSUS, after filing an entry that made no such duty-free claim, by filing a written statement with Customs any time prior to liquidation of the entry or prior to the liquidation becoming final. When filed, the written statement constitutes the importer's claim for duty-free treatment under the general note and its certification that the entered merchandise is a civil aircraft or has been imported for use in a civil aircraft and will be so used. In accordance with General Note 6, HTSUS, any refund resulting from a claim made under this paragraph will be without interest, notwithstanding the provision of 19 U.S.C. 1505(c).

(g) *Verification.* The Center director will monitor and periodically audit selected entries made under this section.

[T.D. 02–31, 67 FR 39289, June 7, 2002]

Subpart B—Caribbean Basin Initiative

SOURCE: Sections 10.191 through 10.197 issued by T.D. 84–237, 49 FR 47993, Dec. 7, 1984, unless otherwise noted.

§ 10.191 General.

(a) *Statutory authority.* Subtitle A, Title II, Pub. L. 98–67, entitled the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701–2706) and referred to as the Caribbean Basin Initiative (CBI), authorizes the President to proclaim duty-free treatment for all eligible articles from any beneficiary country.

(b) *Definitions*—(1) *Beneficiary country.* For purposes of §§10.191 through 10.199 and except as otherwise provided in §10.195(b), the term ''beneficiary country'' means any country or territory or successor political entity with respect to which there is in effect a proclamation by the President designating such country, territory or successor political entity as a beneficiary country in accordance with section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2702(a)(1)(A)). *See* General Note 7(a), Harmonized Tariff Schedule of the United States (HTSUS). For purposes of this paragraph, when the word ''former'' is used in conjunction with the term ''beneficiary country'', it means a country that ceases to be designated as a beneficiary country under the CBERA because the country has become a party to a free trade agreement with the United States. *See* General Note 7(b)(i)(C), HTSUS.

(2) *Eligible articles.* Except as provided herein, for purposes of §10.191(a), the term ''eligible articles'' means any merchandise which is imported directly from a beneficiary country as provided in §10.193 and which meets the country of origin criteria set forth in §10.195 or in §10.198b. The following merchandise shall not be considered eligible articles entitled to duty-free treatment under the CBI.

(i) Textile and apparel articles which were not eligible articles for purposes of the CBI on January 1, 1994, as the CBI was in effect on that date.

(ii) Footwear not designated on August 5, 1983, as eligible articles for the purpose of the Generalized System of Preferences under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461 through 2467).

(iii) Tuna, prepared or preserved in any manner, in airtight containers.

(iv) Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710, HTSUS.

(v) Watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTSUS column 2 rates of duty apply.

(vi) Articles to which reduced rates of duty apply under §10.198a.

(vii) Sugars, sirups, and molasses, provided for in subheadings 1701.11.00 and 1701.12.00, HTSUS, to the extent that importation and duty-free treatment of such articles are limited by Additional U.S. Note 4, Chapter 17, HTSUS.

(viii) Articles subject to the provisions of the subheadings of Subchapter III, from the beginning through 9903.85.21, Chapter 99, HTSUS, to the extent that such provisions have not been modified or terminated by the President pursuant to section 213(e)(5) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(e)(5)).

(ix) Merchandise for which duty-free treatment under the CBI is suspended or withdrawn by the President pursuant to sections 213 (c)(2), (e)(1), or (f)(3) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703 (c)(2), (e)(1), or (f)(3)).

(3) *Wholly the growth, product, or manufacture of a beneficiary country.* For purposes of §10.191 through §10.199, the expression ''wholly the growth, product, or manufacture of a beneficiary country'' refers both to any article which has been entirely grown, produced, or manufactured in a beneficiary country or two or more beneficiary countries and to all materials incorporated in an article which have been entirely grown, produced, or manufactured in any beneficiary country or two or more beneficary countries, as distinguished from articles or materials imported into a beneficiary country from a non-beneficiary country whether or not such articles or materials were substantially transformed into new or different articles of commerce after their importation into the beneficiary country.

(4) *Entered.* For purposes of §10.191 through §10.199, the term ''entered'' means entered, or withdrawn from warehouse for consumption, in the customs territory of the U.S.

[T.D. 84–237, 49 FR 47993, Dec. 7, 1984, as amended by T.D. 89–1, 53 FR 51252, Dec. 21, 1988; T.D. 00–68, 65 FR 59657, Oct. 5, 2000; T.D. 01–17, 66 FR 9645, Feb. 9, 2001; CBP Dec. 10–29, 75 FR 52450, Aug. 26, 2010]

§10.192 Claim for exemption from duty under the CBI.

A claim for an exemption from duty on the ground that the CBI applies shall be allowed by the Center director only if he is satisfied that the requirements set forth in this section and §§10.193 through 10.198b have been met. Duty-free treatment may be claimed at the time of filing the entry summary by placing the symbol ''E'' as a prefix to the HTSUS subheading number for each article for which such treatment is claimed on that document.

[T.D. 84–237, 49 FR 47993, Dec. 7, 1984, as amended by T.D. 89–1, 53 FR 51252, Dec. 21, 1988; T.D. 94–47, 59 FR 25570, May 17, 1994; T.D. 00–68, 65 FR 59658, Oct. 5, 2000]

§10.193 Imported directly.

To qualify for treatment under the CBI, an article shall be imported directly from a beneficiary country into the customs territory of the U.S. For purposes of §10.191 through §10.198b the words ''imported directly'' mean:

(a) Direct shipment from any beneficiary country to the U.S. without passing through the territory of any non-beneficiary country; or

(b) If the shipment is from any beneficiary country to the U.S. through the territory of any non-beneficiary country, the articles in the shipment do not enter into the commerce of any non-beneficiary country while en route to the U.S. and the invoices, bills of lading, and other shipping documents show the U.S. as the final destination; or

(c) If the shipment is from any beneficiary country to the U.S. through the territory of any non-beneficiary country, and the invoices and other documents do not show the U.S. as the final destination, the articles in the shipment upon arrival in the U.S. are imported directly only if they:

(1) Remained under the control of the customs authority of the intermediate country;

(2) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the Center director is satisfied that the importation results from the original commericial transaction between the importer and the producer or the latter's sales agent; and

(3) Were not subjected to operations other than loading and unloading, and other activities necessary to preserve the articles in good condition.

[T.D. 84–237, 49 FR 47993, Dec. 7, 1984, as amended by T.D. 00–68, 65 FR 59658, Oct. 5, 2000]

§ 10.194 Evidence of direct shipment.

(a) *Documents constituting evidence of direct shipment.* The Center director may require that appropriate shipping papers, invoices, or other documents be submitted within 60 days of the date of entry as evidence that the articles were ''imported directly'', as that term is defined in § 10.193. Any evidence of direct shipment required shall be subject to such verification as deemed necessary by the Center director.

(b) *Waiver of evidence of direct shipment.* The Center director may waive the submission of evidence of direct shipment when otherwise satisfied, taking into consideration the kind and value of the merchandise, that the merchandise was, in fact, imported directly and that it otherwise clearly qualifies for treatment under the CBI.

§ 10.195 Country of origin criteria.

(a) *Articles produced in a beneficiary country*—(1) *General.* Except as provided herein, any article which is either wholly the growth, product, or manufacture of a beneficiary country or a new or different article of commerce which has been grown, produced, or manufactured in a beneficiary country, may qualify for duty-free entry under the CBI. No article or material shall be considered to have been grown, produced, or manufactured in a beneficiary country by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. Duty-free entry under the CBI may be accorded to an article only if the sum of the cost or value of the material produced in a beneficiary country or countries, plus the direct costs of processing operations performed in a beneficiary country or countries, is not less than 35 percent of the appraised value of the article at the time it is entered.

(2) *Combining, packaging, and diluting operations.* No article which has undergone only a simple combining or packaging operation or a mere dilution in a beneficiary country within the meaning of paragraph (a)(1) of this section shall be entitled to duty-free treatment even though the processing operation causes the article to meet the value requirement set forth in that paragraph.

(i) For purposes of this section, simple combining or packaging operations and mere dilution include, but are not limited to, the following processes:

(A) The addition of batteries to devices;

(B) Fitting together a small number of components by bolting, glueing, soldering etc.;

(C) Blending foreign and beneficiary country tobacco;

(D) The addition of substances such as anticaking agents, preservatives, wetting agents, etc.;

(E) Repacking or packaging components together;

(F) Reconstituting orange juice by adding water to orange juice concentrate; and

(G) Diluting chemicals with inert ingredients to bring them to standard degrees of strength.

(ii) For purposes of this section, simple combining or packaging operations and mere dilution shall not be taken to include processes such as the following:

(A) The assembly of a large number of discrete components onto a printed circuit board;

(B) The mixing together of two bulk medicinal substances followed by the packaging of the mixed product into individual doses for retail sale;

(C) The addition of water or another substance to a chemical compound

under pressure which results in a reaction creating a new chemical compound; and

(D) A simple combining or packaging operation or mere dilution coupled with any other type of processing such as testing or fabrication (*e.g.*, a simple assembly of a small number of components, one of which was fabricated in the beneficiary country where the assembly took place).

The fact that an article or material has undergone more than a simple combining or packaging operation or mere dilution is not necessarily dispositive of the question of whether that processing constitutes a substantial transformation for purposes of determining the country of origin of the article or material.

(b) *Commonwealth of Puerto Rico, U.S. Virgin Islands, and former beneficiary countries*—(1) *General.* For purposes of determining the percentage referred to in paragraph (a) of this section, the term ''beneficiary country'' includes the Commonwealth of Puerto Rico, U.S. Virgin Islands, and any former beneficiary countries. Any cost or value of materials or direct costs of processing operations attributable to the U.S. Virgin Islands or any former beneficiary country must be included in the article prior to its final exportation from a beneficiary country to the United States.

(2) *Manufacture in the Commonwealth of Puerto Rico after final exportation.* Notwithstanding the provisions of 19 U.S.C. 1311, if an article from a beneficiary country is entered under bond for processing or use in manufacturing in the Commonwealth of Puerto Rico, no duty will be imposed on the withdrawal from warehouse for consumption of the product of that processing or manufacturing provided that:

(i) The article entered in the warehouse in the Commonwealth of Puerto Rico was grown, produced, or manufactured in a beneficiary country within the meaning of paragraph (a) of this section and was imported directly from a beneficiary country within the meaning of § 10.193; and

(ii) At the time of its withdrawal from the warehouse, the product of the processing or manufacturing in the Commonwealth of Puerto Rico meets the 35 percent value-content requirement prescribed in paragraph (a) of this section.

(c) *Materials produced in the U.S.* For purposes of determining the percentage referred to in paragraph (a) of this section, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the U.S. (other than the Commonwealth of Puerto Rico). In the case of materials produced in the customs territory of the U.S., the provisions of § 10.196 shall apply.

(d) *Textile components cut to shape in the U.S.* The percentage referred to in paragraph (c) of this section may be attributed in whole or in part to the cost or value of a textile component that is cut to shape (but not to length, width, or both) in the U.S. (including the Commonwealth of Puerto Rico) from foreign fabric and exported to a beneficiary country for assembly into an article that is then returned to the U.S. and entered, or withdrawn from warehouse, for consumption on or after July 1, 1996. For purposes of this paragraph, the terms ''textile component'' and ''fabric'' have reference only to goods covered by the definition of ''textile or apparel product'' set forth in § 102.21(b)(5) of this chapter.

(e) *Articles wholly grown, produced, or manufactured in a beneficiary country.* Any article which is wholly the growth, product, or manufacture of a beneficiary country, including articles produced or manufactured in a beneficiary country exclusively from materials which are wholly the growth, product, or manufacture of a beneficiary country or countries, shall normally be presumed to meet the requirements set forth in paragraph (a) of this section.

(f) *Country of origin marking.* The general country of origin marking requirements that apply to all importations are also applicable to articles imported under the CBI.

[T.D. 84–237, 49 FR 47993, Dec. 7, 1984; 49 FR 49575, Dec. 20, 1984, as amended by T.D. 95–69, 60 FR 46197, Sept. 5, 1995; T.D. 95–69, 60 FR 55995, Nov. 6, 1996; T.D. 00–68, 65 FR 59658, Oct. 5, 2000; CBP Dec. 10–29, 75 FR 52450, Aug. 26, 2010]

§ 10.196 Cost or value of materials produced in a beneficiary country or countries.

(a) *''Materials produced in a beneficiary country or countries'' defined.* For purposes of § 10.195, the words ''materials produced in a beneficiary country or countries'' refer to those materials incorporated in an article which are either:

(1) Wholly the growth, product, or manufacture of a beneficiary country or two or more beneficiary countries; or

(2) Subject to the limitations set forth in § 10.195(a), substantially transformed in any beneficiary country or two or more beneficiary countries into a new or different article of commerce which is then used in any beneficiary country in the production or manufacture of a new or different article which is imported directly into the U.S.

Example 1. A raw, perishable skin of an animal grown in one beneficiary country is sent to another beneficiary country where it is tanned to create nonperishable ''crust leather''. The tanned product is then imported directly into the U.S. Because the material of which the imported article is composed is wholly the growth, product, or manufacture of one of more beneficiary countries, the entire cost or value of that material may be counted toward the 35 percent value requirement set forth in § 10.195.

Example 2. A raw, perishable skin of an animal grown in a non-beneficiary country is sent to a beneficiary country where it is tanned to create nonperishable ''crust leather''. The tanned skin is then imported directly into the U.S. Although the tanned skin represents a new or different article of commerce produced in a beneficiary country within the meaning of § 10.195(a), the cost or value of the raw skin may not be counted toward the 35 percent value requirement because (1) the tanned material of which the imported article is composed is not wholly the growth, product, or manufacture of a beneficiary country and (2) the tanning operation creates the imported article itself rather than an intermediate article which is then used in the beneficiary country in the production or manufacture of an article imported into the U.S. The tanned skin would be eligible for duty-free treatment only if the direct costs attributable to the tanning operation represent at least 35 percent of the appraised value of the imported article.

Example 3. A raw, perishable skin of an animal grown in a non-beneficiary country is sent to a beneficiary country where it is tanned to create nonperishable ''crust leather''. The tanned material is then cut, sewn and assembled with a metal buckle imported from a non-beneficiary country to create a finished belt which is imported directly into the U.S. Because the operations performed in the beneficiary country involved both the substantial transformation of the raw skin into a new or different article and the use of that intermediate article in the production or manufacture of a new or different article imported into the U.S., the cost or value of the tanned material used to make the imported article may be counted toward the 35 percent value requirement. The cost or value of the metal buckle imported into the beneficiary country may not be counted toward the 35 percent value requirement because the buckle was not substantially transformed in the beneficiary country into a new or different article prior to its incorporation in the finished belt.

Example 4. A raw, perishable skin of an animal grown in the U.S. Virgin Islands is sent to a beneficiary country where it is tanned to create nonperishable ''crust leather'', which is then imported directly into the U.S. The tanned skin represents a new or different article of commerce produced in a beneficiary country within the meaning of § 10.195(a), and under § 10.195(b), the raw skin from which the tanned product was made is considered to have been grown in a beneficiary country for the purpose of applying the 35 percent value requirement. The tanned material of which the imported article is composed is considered to be wholly the growth, product, or manufacture of one or more beneficiary countries with the result that the entire cost or value of that material may be counted toward the 35 percent value requirement.

(b) *Questionable origin.* When the origin of a material either is not ascertainable or is not satisfactorily demonstrated to the Center director, the material shall not be considered to have been grown, produced, or manufactured in a beneficiary country.

(c) *Determination of cost or value of materials produced in a beneficiary country.* (1) The cost or value of materials produced in a beneficiary country or countries includes:

(i) The manufacturer's actual cost for the materials;

(ii) When not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;

(iii) The actual cost of waste or spoilage (material list), less the value of recoverable scrap; and

(iv) Taxes and/or duties imposed on the materials by any beneficiary country, provided they are not remitted upon exportation.

(2) Where a material is provided to the manufacturer without charge, or at less than fair market value, its cost or value shall be determined by computing the sum of:

(i) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(ii) An amount for profit; and

(iii) Freight, insurance, packing, and all other costs incurred in transporting the material to the manufacturer's plant.

If the pertinent information needed to compute the cost or value of a material is not available, the appraising officer may ascertain or estimate the value thereof using all reasonable ways and means at his disposal.

§ 10.197 Direct costs of processing operations performed in a beneficiary country or countries.

(a) *Items included in the direct costs of processing operations.* As used in §§ 10.195 and 10.198, the words ''direct costs of processing operations'' mean those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific merchandise under consideration. Such costs include, but are not limited to the following, to the extent that they are includable in the appraised value of the imported merchandise:

(1) All actual labor costs involved in the growth, production, manufacture or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(2) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise;

(3) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific merchandise and;

(4) Costs of inspecting and testing the specific merchandise.

(b) *Items not included in the direct costs of processing operations.* Those items which are not included within the meaning of the words ''direct costs of processing operations'' are those which are not directly attributable to the merchandise under consideration or are not ''costs'' of manufacturing the product. These include, but are not limited to:

(1) Profit; and

(2) General expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

[T.D. 84–237, 49 FR 47993, Dec. 7, 1984; 49 FR 49575, Dec. 20, 1984]

§ 10.198 Evidence of country of origin.

(a) *Shipments covered by a formal entry*—(1) *Articles not wholly the growth, product, or manufacture of a beneficiary country*—(i) *Declaration.* In a case involving an article covered by a formal entry which is not wholly the growth, product, or manufacture of a single beneficiary country, the exporter or other appropriate party having knowledge of the relevant facts in the beneficiary country where the article was produced or last processed shall be prepared to submit directly to the Center director, upon request, a declaration setting forth all pertinent detailed information concerning the production or manufacture of the article. When requested by the Center director, the declaration shall be prepared in substantially the following form:

CBI DECLARATION

I, _____,
(name), hereby declare that the articles described below (a) were produced or manufactured in _____ (country) by means of processing operations performed in that country as set forth below and were also subjected to processing operations in the other beneficiary country or countries (including the Commonwealth of Puerto Rico and the U.S. Virgin Islands) as set forth below and (b) incorporate materials produced in the

country named above or in any other beneficiary country or countries (including the Commonwealth of Puerto Rico and the U.S. Virgin Islands) or in the customs territory of the United States (other than the Commonwealth of Puerto Rico) as set forth below:

Number and date of invoices	Description of articles and quantity	Processing operations performed on articles		Material produced in a beneficiary country or in the U.S.	
		Description of processing operations and country of processing	Direct costs of processing operations	Description of material, production process, and country of production	Cost or value of material

Date _____
Address _____
Signature _____
Title _____

(ii) *Retention of records and submission of declaration.* The information necessary for preparation of the declaration shall be retained in the files of the party responsible for its preparation and submission for a period of 5 years. In the event that the Center director requests submission of the declaration during the 5-year period, it shall be submitted by the appropriate party directly to the Center director within 60 days of the date of the request or such additional period as the Center director may allow for good cause shown. Failure to submit the declaration in a timely fashion will result in a denial of duty-free treatment.

(iii) *Value added after final exportation.* In a case in which value is added to an article in a bonded warehouse or in a foreign-trade zone in the Commonwealth of Puerto Rico or in the U.S. after final exportation of the article from a beneficiary country, in order to ensure compliance with the value requirement under § 10.195(a), the declaration provided for in paragraph (a)(1)(i) of this section shall be filed by the importer or consignee with the entry summary as evidence of the country of origin. The declaration shall be properly completed by the party responsible for the addition of such value.

(2) *Merchandise wholly the growth, product, or manufacture of a beneficiary country.* In a case involving merchandise covered by a formal entry which is wholly the growth, product, or manufacture of a single beneficiary country, a statement to that effect shall be included on the commercial invoice provided to Customs.

(b) *Shipments covered by an informal entry.* Although the filing of the declaration provided for in paragraph (a)(1)(i) of this section will not be required for a shipment covered by an informal entry, the Center director may require such other evidence of country of origin as deemed necessary.

(c) *Verification of documentation.* Any evidence of country of origin submitted under this section shall be subject to such verification as the Center director deems necessary. In the event that the Center director is prevented from obtaining the necessary verification, the Center director may treat the entry as dutiable.

[T.D. 94–47, 59 FR 25570, May 17, 1994]

§ 10.198a Duty reduction for certain leather-related articles.

Except as otherwise provided in § 10.233, reduced rates of duty as proclaimed by the President will apply to handbags, luggage, flat goods, work gloves, and leather wearing apparel that were not designated on August 5, 1983, as eligible articles for purposes of the Generalized System of Preferences under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461 through 2467), provided that the article in question at the time it is entered:

(a) Was grown, produced, or manufactured in a beneficiary country within the meaning of § 10.195;

(b) Meets the 35 percent value-content requirement prescribed in § 10.195; and

(c) Was imported directly from a beneficiary country within the meaning of §10.193.

[T.D. 00–68, 65 FR 59658, Oct. 5, 2000]

§ 10.198b Products of Puerto Rico processed in a beneficiary country.

Except in the case of any article described in §10.191(b)(2)(i) through (vi), the duty-free treatment provided for under the CBI will apply to an article that is the growth, product, or manufacture of the Commonwealth of Puerto Rico and that is by any means advanced in value or improved in condition in a beneficiary country, provided that:

(a) If any materials are added to the article in the beneficiary country, those materials consist only of materials that are a product of a beneficiary country or the United States; and

(b) The article is imported directly from the beneficiary country into the customs territory of the United States within the meaning of §10.193.

[T.D. 00–68, 65 FR 59658, Oct. 5, 2000]

§ 10.199 Duty-free entry for certain beverages produced in Canada from Caribbean rum.

(a) *General.* A spirituous beverage that is imported directly from the territory of Canada and that is classifiable under subheading 2208.40 or 2208.90, Harmonized Tariff Schedule of the United States (HTSUS), will be entitled, upon entry or withdrawal from warehouse for consumption, to duty-free treatment under section 213(a)(6) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(a)(6)), also known as the Caribbean Basin Initiative (CBI), if the spirituous beverage has been produced in the territory of Canada from rum, provided that the rum:

(1) Is the growth, product, or manufacture either of a beneficiary country or of the U.S. Virgin Islands;

(2) Was imported directly into the territory of Canada from a beneficiary country or from the U.S. Virgin Islands; and

(3) Accounts for at least 90 percent of the alcoholic content by volume of the spirituous beverage.

(b) *Claim for exemption from duty under CBI.* A claim for an exemption from duty for a spirituous beverage under section 213(a)(6) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(a)(6)) may be made by entering such beverage under subheading 9817.22.05, HTSUS, on the entry summary document or its electronic equivalent. In order to claim the exemption, the importer must have the records described in paragraphs (d), (e), (f) and (g) of this section so that, upon Customs request, the importer can establish that:

(1) The rum used to produce the beverage is the growth, product or manufacture either of a beneficiary country or of the U.S. Virgin Islands;

(2) The rum was shipped directly from a beneficiary country or from the U.S. Virgin Islands to Canada;

(3) The beverage was produced in Canada;

(4) The rum accounts for at least 90% of the alcohol content of the beverage; and

(5) The beverage was shipped directly from Canada to the United States.

(c) *Imported directly.* For a spirituous beverage imported from Canada to qualify for duty-free entry under the CBI, the spirituous beverage must be imported directly into the customs territory of the United States from Canada; and the rum used in its production must have been imported directly into the territory of Canada either from a beneficiary country or from the U.S. Virgin Islands.

(1) ''Imported directly'' into the customs territory of the United States from Canada means:

(i) Direct shipment from the territory of Canada to the U.S. without passing through the territory of any other country; or

(ii) If the shipment is from the territory of Canada to the U.S. through the territory of any other country, the spirituous beverages do not enter into the commerce of any other country while en route to the U.S.; or

(iii) If the shipment is from the territory of Canada to the U.S. through the territory of another country, and the invoices and other documents do not show the U.S. as the final destination,

the spirituous beverages in the shipment are imported directly only if they:

(A) Remained under the control of the customs authority of the intermediate country;

(B) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the Center director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the latter's sales agent; and

(C) Were not subjected to operations other than loading and unloading, and other activities necessary to preserve the products in good condition.

(2) ''Imported directly'' from a beneficiary country or from the U.S. Virgin Islands into the territory of Canada means:

(i) Direct shipment from a beneficiary country or from the U.S. Virgin Islands into the territory of Canada without passing through the territory of any non-beneficiary country; or

(ii) If the shipment is from a beneficiary country or from the U.S. Virgin Islands into the territory of Canada through the territory of any non-beneficiary country, the rum does not enter into the commerce of any non-beneficiary country while en route to Canada; or

(iii) If the shipment is from a beneficiary country or from the U.S. Virgin Islands into the territory of Canada through the territory of any non-beneficiary country, the rum in the shipment is imported directly into the territory of Canada only if it:

(A) Remained under the control of the customs authority of the intermediate country;

(B) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail; and

(C) Was not subjected to operations in the intermediate country other than loading and unloading, and other activities necessary to preserve the product in good condition.

(d) *Evidence of direct shipment*—(1) *Spirituous beverages imported from Canada.* The importer must be prepared to provide to the Center director, if requested, documentary evidence that the spirituous beverages were imported directly from the territory of Canada, as described in paragraph (c)(1) of this section. This evidence may include documents such as a bill of lading, invoice, air waybill, freight waybill, or cargo manifest. Any evidence of the direct shipment of these spirituous beverages from Canada into the U.S. may be subject to such verification as deemed necessary by the Center director.

(2) *Rum imported into Canada from beneficiary country or U.S. Virgin Islands.* The importer must be prepared to provide to the Center director, if requested, evidence that the rum used in producing the spirituous beverages was imported directly into the territory of Canada from a beneficiary country or from the U.S. Virgin Islands, as described in paragraph (c)(2) of this section. This evidence may include documents such as a Canadian customs entry, Canadian customs invoice, Canadian customs manifest, cargo manifest, bill of lading, landing certificate, airway bill, or freight waybill. Any evidence of the direct shipment of the rum from a beneficiary country or from the U.S. Virgin Islands into the territory of Canada for use there in producing the spirituous beverages may be subject to such verification as deemed necessary by the Center director.

(e) *Origin of rum used in production of the spirituous beverage*—(1) *Origin criteria.* In order for a spirituous beverage covered by this section to be entitled to duty-free entry under the CBI, the rum used in producing the spirituous beverage in the territory of Canada must be wholly the growth, product, or manufacture either of a beneficiary country under the CBI or of the U.S. Virgin Islands, or must constitute a new or different article of commerce that was produced or manufactured in a beneficiary country or in the U.S. Virgin Islands. Such rum will not be considered to have been grown, produced, or manufactured in a beneficiary country or in the U.S. Virgin Islands by virtue of having merely undergone blending, combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the product.

(2) *Evidence of origin of rum*—(i) *Declaration*. The importer must be prepared to submit directly to the Center director, if requested, a declaration prepared and signed by the person who produced or manufactured the rum, affirming that the rum is the growth, product or manufacture of a beneficiary country or of the U.S. Virgin Islands. While no particular form is prescribed for the declaration, it must include all pertinent information concerning the processing operations by which the rum was produced or manufactured, the address of the producer or manufacturer, the title of the party signing the declaration, and the date it is signed.

(ii) *Records supporting declaration*. The supporting records, including those production records, that are necessary for the preparation of the declaration must also be available for submission to the Center director if requested. The declaration and any supporting evidence as to the origin of the rum may be subject to such verification as deemed necessary by the Center director.

(f) *Canadian processor declaration; supporting documentation*—(1) *Canadian processor declaration*. The importer must be prepared to submit directly to the Center director, if requested, a declaration prepared by the person who produced the spirituous beverage(s) in Canada, setting forth all pertinent information concerning the production of the beverages. The declaration will be in substantially the following form:

I, _____ declare that the spirituous beverages here specified are the products that were produced by me (us), as described below, with the use of rum that was received by me (us); that the rum used in producing the beverages was received by me (us) on _____ (date), from _____ (name and address of owner or exporter in the beneficiary country or in the U.S. Virgin Islands, as applicable); and that such rum accounts for at least 90 percent of the alcoholic content by volume, as shown below, of each spirituous beverage so produced.

Marks and numbers	Description of products and of processing	Alcoholic content of products; alcoholic content (%) attributable to rum [1]
.....	.....	.....
.....	.....	.....

[1] The production records must establish, for each lot of beverage produced, the quantity of rum the growth, product or manufacture of a CBI beneficiary country or of the U.S. Virgin Islands under 19 U.S.C. 2703(a)(6) that is used in producing the finished beverage; the alcoholic content by volume of the finished beverage; and the alcoholic content by volume of the finished beverage, expressed as a percentage, that is attributable to the qualifying rum. If rum from two or more qualifying sources (*e.g.,* rum the growth, product or manufacture of a CBI beneficiary country or of the U.S. Virgin Islands and other rum the growth, product or manufacture of another CBI country) are used in processing the beverage, the alcoholic content requirement may be met by aggregating the alcoholic content of the finished beverage that is attributable to rum from each of the qualifying sources used in processing the finished beverage, as reflected in the production records.

Date _____
Address _____
Signature _____
Title _____

(2) *Availability of supporting documents*. The information, including any supporting documents and records, necessary for the preparation of the declaration, as described in paragraph (f)(1) of this section, must be available for submission to the Center director, if requested. The declaration and any supporting evidence may be subject to such verification as deemed necessary by the Center director. The specific documentary evidence necessary to support the declaration consists of those documents and records which satisfactorily establish:

(i) The receipt of the rum by the Canadian processor, including the date of receipt and the name and address of the party from whom the rum was received (the owner or exporter in the beneficiary country or the U.S. Virgin Islands); and

(ii) For each lot of beverage produced and included in the declaration, the specific identification of the production lot(s) involved; the quantity of qualifying rum that is used in producing the finished beverage, including a description of the processing and of the finished products; the alcoholic content by volume of the finished beverage; and the alcoholic content by volume of the finished beverage, expressed as a percentage, that is attributable to the qualifying rum.

(g) *Importer system for review of necessary recordkeeping.* The importer will establish and implement a system of internal controls which demonstrate that reasonable care was exercised in its claim for duty-free treatment under the CBI. These controls should include tests to assure the accuracy and availability of records that establish:

(1) The origin of the rum;

(2) The direct shipment of the rum from a beneficiary country or from the U.S. Virgin Islands to Canada;

(3) The alcohol content of the finished beverage imported from Canada; and

(4) The direct shipment of the finished beverage from Canada to the United States.

(h) *Submission of documents to Customs.* The importer must be prepared to submit directly to the Center director, if requested, those documents and/or supporting records as described in paragraphs (d), (e) and (f) of this section, for a period of 5 years from the date of entry of the related spirituous beverages under section 213(a)(6) of the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(a)(6)), as provided in §163.4(a) of this chapter. If requested, the importer must submit such documents and/or supporting records to the Center director within 60 calendar days of the date of the request or such additional period as the Center director may allow for good cause shown.

[T.D. 02–59, 67 FR 62882, Oct. 9, 2002]

Subpart C—Andean Trade Preference

SOURCE: Sections 10.201 through 10.208 appear at T.D. 98–76, 63 FR 51292, Sept. 25, 1998, unless otherwise noted.

§10.201 Applicability.

Title II of Pub. L. 102–182 (105 Stat. 1233), entitled the Andean Trade Preference Act (ATPA) and codified at 19 U.S.C. 3201 through 3206, authorizes the President to proclaim duty-free treatment for all eligible articles from any beneficiary country and to designate countries as beneficiary countries. The provisions of §§10.202 through 10.207 set forth the legal requirements and procedures that apply for purposes of obtaining that duty-free treatment for certain articles from a beneficiary country which are identified for purposes of that treatment in General Note 11, Harmonized Tariff Schedule of the United States (HTSUS), and in the ''Special'' rate of duty column of the HTSUS. Provisions regarding preferential treatment of apparel and other textile articles under the ATPA are contained in §§10.241 through 10.248, and provisions regarding preferential treatment of tuna and certain other non-textile articles under the ATPA are contained in §§10.251 through 10.257.

[T.D. 03–16, 68 FR 14486, Mar. 25, 2003; 68 FR 67338, Dec. 1, 2003]

§10.202 Definitions.

The following definitions apply for purposes of §§10.201 through 10.207:

(a) *Beneficiary country.* Except as otherwise provided in §10.206(b), the term ''beneficiary country'' refers to any country or successor political entity with respect to which there is in effect a proclamation by the President designating such country or successor political entity as a beneficiary country in accordance with section 203 of the ATPA (19 U.S.C. 3202).

(b) *Eligible articles.* The term ''eligible'' when used with reference to an article means merchandise which is imported directly from a beneficiary country as provided in §10.204, which meets the country of origin criteria set forth in §10.205 and the value-content requirement set forth in §10.206, and which, if the requirements of §10.207 are met, is therefore entitled to duty-free treatment under the ATPA. However, the following merchandise shall not be considered eligible articles entitled to duty-free treatment under the ATPA:

(1) Textiles and apparel articles which were not eligible articles for purposes of the ATPA on January 1, 1994, as the ATPA was in effect on that date, except as otherwise provided in §§10.241 through 10.248;

(2) Rum and tafia classified in subheading 2208.40, Harmonized Tariff Schedule of the United States;

(3) Sugars, syrups, and sugar-containing products subject to over-quota duty rates under applicable tariff-rate quotas; or

(4) Tuna prepared or preserved in any manner in airtight containers, except as otherwise provided in §§ 10.251 through 10.257.

(c) *Entered.* The term ''entered'' means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(d) *Wholly the growth, product, or manufacture of a beneficiary country.* The expression ''wholly the growth, product, or manufacture of a beneficiary country'' has the same meaning as that set forth in § 10.191(b)(3) of this part.

[T.D. 98–76, 63 FR 51292, Sept. 25, 1998, as amended by T.D. 03–16, 68 FR 14486, Mar. 25, 2003; 68 FR 67338, Dec. 1, 2003]

§ 10.203 Eligibility criteria in general.

An article classifiable under a subheading of the Harmonized Tariff Schedule of the United States for which a rate of duty of ''Free'' appears in the ''Special'' subcolumn followed by the symbol ''J'' or ''J*'' in parentheses is eligible for duty-free treatment, and will be accorded such treatment, if each of the following requirements is met:

(a) *Imported directly.* The article is imported directly from a beneficiary country as provided in § 10.204.

(b) *Country of origin criteria.* The article complies with the country of origin criteria set forth in § 10.205.

(c) *Value content requirement.* The article complies with the value content requirement set forth in § 10.206.

(d) *Filing of claim and submission of supporting documentation.* The claim for duty-free treatment is filed, and any required documentation in support of the claim is submitted, in accordance with the procedures set forth in § 10.207.

§ 10.204 Imported directly.

In order to be eligible for duty-free treatment under the ATPA, an article shall be imported directly from a beneficiary country into the customs territory of the United States. For purposes of this requirement, the words ''imported directly'' mean:

(a) Direct shipment from any beneficiary country to the United States without passing through the territory of any non-beneficiary country; or

(b) If shipment from any beneficiary country to the United States was through the territory of a non-beneficiary country, the articles in the shipment did not enter into the commerce of the non-beneficiary country while en route to the United States, and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(c) If shipment from any beneficiary country to the United States was through the territory of a non-beneficiary country and the invoices and other documents do not show the United States as the final destination, then the articles in the shipment, upon arrival in the United States, are imported directly only if they:

(1) Remained under the control of the customs authority in the intermediate country;

(2) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the articles are imported into the United States as a result of the original commercial transaction between the importer and the producer or the latter's sales agent; and

(3) Were not subjected to operations in the intermediate country other than loading and unloading, and other activities necessary to preserve the articles in good condition.

§ 10.205 Country of origin criteria.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an article may be eligible for duty-free treatment under the ATPA if the article is either:

(1) Wholly the growth, product, or manufacture of a beneficiary country; or

(2) A new or different article of commerce which has been grown, produced, or manufactured in a beneficiary country.

(b) *Exceptions.* No article shall be eligible for duty-free treatment under the ATPA by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. The principles and examples set forth in

§10.195(a)(2) of this part shall apply equally for purposes of this paragraph.

§ 10.206 Value content requirement.

(a) *General.* An article may be eligible for duty-free treatment under the ATPA only if the sum of the cost or value of the materials produced in a beneficiary country or countries, plus the direct costs of processing operations performed in a beneficiary country or countries, is not less than 35 percent of the appraised value of the article at the time it is entered.

(b) *Commonwealth of Puerto Rico, U.S. Virgin Islands and CBI beneficiary countries.* For purposes of determining the percentage referred to in paragraph (a) of this section, the term ''beneficiary country'' includes the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country as defined in §10.191(b)(1) of this part. Any cost or value of materials or direct costs of processing operations attributable to the Virgin Islands or any CBI beneficiary country must be included in the article prior to its final exportation to the United States from a beneficiary country as defined in §10.202(a).

(c) *Materials produced in the United States.* For purposes of determining the percentage referred to in paragraph (a) of this section, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico). The principles set forth in paragraph (d)(1) of this section shall apply in determining whether a material is ''produced in the customs territory of the United States'' for purposes of this paragraph.

(d) *Cost or value of materials*—(1) *''Materials produced in a beneficiary country or countries'' defined.* For purposes of paragraph (a) of this section, the words *materials produced in a beneficiary country or countries* refer to those materials incorporated in an article which are either:

(i) Wholly the growth, product, or manufacture of a beneficiary country or two or more beneficiary countries; or

(ii) Substantially transformed in any beneficiary country or two or more beneficiary countries into a new or different article of commerce which is then used in any beneficiary country as defined in §10.202(a) in the production or manufacture of a new or different article which is imported directly into the United States. For purposes of this paragraph (d)(1)(ii), no material shall be considered to be substantially transformed into a new or different article of commerce by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. The examples set forth in §10.196(a) of this part, and the principles and examples set forth in §10.195(a)(2) of this part, shall apply for purposes of the corresponding context under paragraph (d)(1) of this section.

(2) *Questionable origin.* When the origin of a material either is not ascertainable or is not satisfactorily demonstrated to the appropriate Center director, the material shall not be considered to have been grown, produced, or manufactured in a beneficiary country or in the customs territory of the United States.

(3) *Determination of cost or value of materials.* (i) The cost or value of materials produced in a beneficiary country or countries or in the customs territory of the United States includes:

(A) The manufacturer's actual cost for the materials;

(B) When not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;

(C) The actual cost of waste or spoilage, less the value of recoverable scrap; and

(D) Taxes and/or duties imposed on the materials by any beneficiary country or by the United States, provided they are not remitted upon exportation.

(ii) Where a material is provided to the manufacturer without charge, or at less than fair market value, its cost or

value shall be determined by computing the sum of:

(A) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(B) An amount for profit; and

(C) Freight, insurance, packing, and all other costs incurred in transporting the material to the manufacturer's plant.

(iii) If the pertinent information needed to compute the cost or value of a material is not available, the appraising officer may ascertain or estimate the value thereof using all reasonable ways and means at his disposal.

(e) *Direct costs of processing operations*—(1) *Items included.* For purposes of paragraph (a) of this section, the words *direct costs of processing operations* mean those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific merchandise under consideration. Such costs include, but are not limited to the following, to the extent that they are includable in the appraised value of the imported merchandise:

(i) All actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(ii) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise;

(iii) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific merchandise; and

(iv) Costs of inspecting and testing the specific merchandise.

(2) *Items not included.* For purposes of paragraph (a) of this section, the words ''direct costs of processing operations'' do not include items which are not directly attributable to the merchandise under consideration or are not costs of manufacturing the product. These include, but are not limited to:

(i) Profit; and

(ii) General expenses of doing business which either are not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

(f) *Articles wholly the growth, product, or manufacture of a beneficiary country.* Any article which is wholly the growth, product, or manufacture of a beneficiary country as defined in §10.202(a), and any article produced or manufactured in a beneficiary country as defined in §10.202(a) exclusively from materials which are wholly the growth, product, or manufacture of a beneficiary country or countries, shall normally be presumed to meet the requirement set forth in paragraph (a) of this section.

§10.207 Procedures for filing duty-free treatment claim and submitting supporting documentation.

(a) *Filing claim for duty-free treatment.* Except as provided in paragraph (c) of this section, a claim for duty-free treatment under the ATPA may be made at the time of filing the entry summary by placing the symbol ''J'' as a prefix to the Harmonized Tariff Schedule of the United States subheading number applicable to each article for which duty-free treatment is claimed on that document.

(b) *Shipments covered by a formal entry*—(1) *Articles not wholly the growth, product, or manufacture of a beneficiary country*—(i) *Declaration.* In a case involving an article covered by a formal entry for which duty-free treatment is claimed under the ATPA and which is not wholly the growth, product, or manufacture of a single beneficiary country as defined in §10.202(a), the exporter or other appropriate party having knowledge of the relevant facts in the beneficiary country as defined in §10.202(a) where the article was produced or last processed shall be prepared to submit directly to the Center director, upon request, a declaration setting forth all pertinent detailed information concerning the production or manufacture of the article. When requested by the Center director, the declaration shall be prepared in substantially the following form:

ATPA DECLARATION

I, _____ (name), hereby declare that the articles described below (a) were produced or manufactured in _____ (country) by means of processing operations performed in that country as set forth below and were also subjected to processing operations in the other beneficiary country or countries (including the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country) as set forth below and (b) incorporate materials produced in the country named above or in any other beneficiary country or countries (including the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country) or in the customs territory of the United States (other than the Commonwealth of Puerto Rico) as set forth below:

Number and date of invoices	Description of articles and quantity	Processing operations performed on articles		Material produced in a beneficiary country or in the U.S.	
		Description of processing operations and country of processing	Direct costs of processing operations	Description of material, production process, and country of production	Cost or value of material

Date _____
Address _____
Signature _____
Title _____

(ii) *Retention of records and submission of declaration*. The information necessary for the preparation of the declaration shall be retained in the files of the party responsible for its preparation and submission for a period of 5 years. In the event that the Center director requests submission of the declaration during the 5-year period, it shall be submitted by the appropriate party directly to the Center director within 60 days of the date of the request or such additional period as the Center director may allow for good cause shown. Failure to submit the declaration in a timely fashion will result in a denial of duty-free treatment.

(iii) *Value added after final exportation*. In a case in which value is added to an article in the Commonwealth of Puerto Rico or in the United States after final exportation of the article from a beneficiary country as defined in § 10.202(a), in order to ensure compliance with the value requirement under § 10.206(a), the declaration provided for in paragraph (b)(1)(i) of this section shall be filed by the importer or consignee with the entry summary. The declaration shall be completed by the party responsible for the addition of such value.

(2) *Articles wholly the growth, product, or manufacture of a beneficiary country*. In a case involving an article covered by a formal entry for which duty-free treatment is claimed under the ATPA and which is wholly the growth, product, or manufacture of a single beneficiary country as defined in § 10.202(a), a statement to that effect shall be included on the commercial invoice provided to Customs.

(c) *Shipments covered by an informal entry*. The normal procedure for filing a claim for duty-free treatment as set forth in paragraph (a) of this section need not be followed, and the filing of the declaration provided for in paragraph (b)(1)(i) of this section will not be required, in a case involving a shipment covered by an informal entry. However, the Center director may require submission of such other evidence of entitlement to duty-free treatment as deemed necessary.

(d) *Evidence of direct importation*—(1) *Submission*. The Center director may require that appropriate shipping papers, invoices, or other documents be submitted within 60 days of the date of entry as evidence that the articles were ''imported directly'', as that term is defined in § 10.204.

(2) *Waiver*. The Center director may waive the submission of evidence of direct importation when otherwise satisfied, taking into consideration the kind and value of the merchandise, that the merchandise was, in fact, imported directly and that it otherwise clearly qualifies for duty-free treatment under the ATPA.

(e) *Verification of documentation*. The documentation submitted under this section to demonstrate compliance with the requirements for duty-free treatment under the ATPA shall be

subject to such verification as the Center director deems necessary. In the event that the Center director is prevented from obtaining the necessary verification, the Center director may treat the entry as fully dutiable.

Subpart D—Textile and Apparel Articles Under the African Growth and Opportunity Act

SOURCE: CBP Dec. 14–07, 79 FR 30392, May 27, 2014, unless otherwise noted.

§ 10.211 Applicability.

Title I of Public Law 106–200 (114 Stat. 251), entitled the African Growth and Opportunity Act (AGOA), authorizes the President to extend certain trade benefits to designated countries in sub-Saharan Africa. Section 112 of the AGOA, codified at 19 U.S.C. 3721, provides for the preferential treatment of certain textile and apparel articles from beneficiary countries. The provisions of §§ 10.211–10.217 of this part set forth the legal requirements and procedures that apply for purposes of extending preferential treatment pursuant to section 112.

§ 10.212 Definitions.

When used in §§ 10.211 through 10.217, the following terms have the meanings indicated:

(a) *Apparel articles.* ''Apparel articles'' means goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6504 and subheadings 6406.90.15 and 6505.00.02–6505.00.90, of the HTSUS;

(b) *Beneficiary country.* ''Beneficiary country'' means a country listed in section 107 of the AGOA (19 U.S.C. 3706) which has been the subject of a finding by the President or his designee, published in the FEDERAL REGISTER, that the country has satisfied the requirements of section 113 of the AGOA (19 U.S.C. 3722) and which the President has designated as a beneficiary sub-Saharan African country under section 506A of the Trade Act of 1974 (19 U.S.C. 2466a). *See* U.S. Note 1, Subchapter XIX, Chapter 98, Harmonized Tariff Schedule of the United States (HTSUS);

(c) *Cut in one or more beneficiary countries.* ''Cut in one or more beneficiary countries'' when used with reference to apparel articles means that all fabric components used in the assembly of the article were cut from fabric in one or more beneficiary countries, or were cut from fabric in the United States and used in a partial assembly operation in the United States prior to cutting of fabric and final assembly of the article in one or more beneficiary countries, or both;

(d) *Ethnic printed fabrics.* ''Ethnic printed fabrics'' means fabrics:

(1) Containing a selvedge on both edges, having a width of less than 50 inches, classifiable under subheading 5208.52.30 or 5208.52.40 of the HTSUS;

(2) Of the type that contains designs, symbols, and other characteristics of African prints:

(i) Normally produced for and sold on the indigenous African market; and

(ii) Normally sold in Africa by the piece as opposed to being tailored into garments before being sold in indigenous African markets;

(3) Printed, including waxed, in one or more eligible beneficiary countries; and

(4) Formed in the United States, from yarns formed in the United States, or from fabric formed in one or more beneficiary countries from yarn originating in either the United States or one or more beneficiary countries;

(e) *Foreign origin.* ''Foreign origin'' means, in the case of a finding or trimming of non-textile materials, that the finding or trimming is a product of a country other than the United States or a beneficiary country and, in the case of a finding, trimming, or interlining of textile materials, that the finding, trimming, or interlining does not meet all of the United States and beneficiary country or former beneficiary country production requirements for yarns, fabrics, and/or components specified under § 10.213(a) for the article in which it is incorporated;

(f) *Former beneficiary country.* ''Former beneficiary country'' means a country that, after being designated by the President as a beneficiary sub-Saharan African country under section 506A of the Trade Act of 1974 (19 U.S.C. 2466a), ceased to be designated as such a beneficiary sub-Saharan African country by reason of its entering into a

free trade agreement with the United States;

(g) *HTSUS*. ''HTSUS'' means the Harmonized Tariff Schedule of the United States;

(h) *Knit-to-shape articles*. ''Knit-to-shape,'' when used with reference to sweaters or other apparel articles, means any apparel article of which 50 percent or more of the exterior surface area is formed by major parts that have been knitted or crocheted directly to the shape used in the apparel article, with no consideration being given to patch pockets, appliques, or the like. Minor cutting, trimming, or sewing of those major parts will not affect the determination of whether an apparel article is ''knit-to-shape;''

(i) *Knit-to-shape components*. ''Knit-to-shape,'' when used with reference to textile components, means components that are knitted or crocheted from a yarn directly to a specific shape, that is, the shape or form of the component as it is used in the apparel article, containing at least one self-start edge. Minor cutting or trimming will not affect the determination of whether a component is ''knit-to-shape;''

(j) *Lesser developed beneficiary country*. ''Lesser developed beneficiary country'' means a country that is enumerated in U.S. Note 2(d), Subchapter XIX, Chapter 98, HTSUS and that is also enumerated in U.S. Note 1, Subchapter XIX, Chapter 98, HTSUS. *See* section 112(c)(3) of the AGOA (19 U.S.C. 3721(c)(3));

(k) *Major parts*. ''Major parts'' means integral components of an apparel article but does not include collars, cuffs, waistbands, plackets, pockets, linings, paddings, trim, accessories, or similar parts or components;

(l) *NAFTA*. ''NAFTA'' means the North American Free Trade Agreement entered into by the United States, Canada, and Mexico on December 17, 1992;

(m) *Originating*. ''Originating'' means having the country of origin determined by application of the provisions of § 102.21 of this chapter;

(n) *Preferential treatment*. ''Preferential treatment'' means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States free of duty and free of any quantitative limitations, as provided in 19 U.S.C. 3721(a);

(o) *Self-start edge*. ''Self-start edge,'' when used with reference to knit-to-shape components, means a finished edge which is finished as the component comes off the knitting machine. Several components with finished edges may be linked by yarn or thread as they are produced from the knitting machine;

(p) *Sewing thread*. ''Sewing thread'' means thread designed and used for the assembly or hemming of textile or apparel components or articles;

(q) *Sewn or otherwise assembled in one or more beneficiary countries*. ''Sewn or otherwise assembled in one or more beneficiary countries'' when used in the context of a textile or apparel article has reference to a joining together of two or more components that occurred in one or more beneficiary countries, whether or not a prior joining operation was performed on the article or any of its components in the United States;

(r) *Wholly assembled in*. ''Wholly assembled,'' when used with reference to a textile or apparel article in the context of one or more beneficiary countries or one or more lesser developed beneficiary countries, means that all of the components of the textile or apparel article (including thread, decorative embellishments, buttons, zippers, or similar components) were joined together in one or more beneficiary countries or one or more lesser developed beneficiary countries;

(s) *Wholly formed fabrics*. ''Wholly formed,'' when used with reference to fabric(s), means that all of the production processes, starting with polymers, fibers, filaments, textile strips, yarns, twine, cordage, rope, or strips of fabric and ending with a fabric by a weaving, knitting, needling, tufting, felting, entangling or other process, took place in the United States or in one or more beneficiary countries or former beneficiary countries. For purposes of this definition, dyeing, printing and finishing operations are not production processes that involve fabric formation (*see* § 10.213(b)(1));

(t) *Wholly formed on seamless knitting machines*. ''Wholly formed on seamless

knitting machines,'' when used to describe apparel articles, has reference to a process that created a knit-to-shape apparel article by feeding yarn(s) into a knitting machine to result in that article. When taken from the knitting machine, an apparel article created by this process either is in its final form or requires only minor cutting or trimming or the addition of minor components or parts such as patch pockets, appliques, capping, or elastic strip; and

(u) *Wholly formed yarns.* ''Wholly formed,'' when used with reference to yarns, means that all of the production processes, starting with the extrusion of filament, strip, film, or sheet and including drawing to fully orient a filament, slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a yarn or plied yarn, took place in a single country. For purposes of this definition, dyeing, printing and finishing operations are not production processes that involve yarn formation (*see* § 10.213(b)(1)).

§ 10.213 Articles eligible for preferential treatment.

(a) *General.* The preferential treatment referred to in § 10.211 applies to the following textile and apparel articles that are imported directly into the customs territory of the United States from a beneficiary country:

(1) Apparel articles sewn or otherwise assembled in one or more beneficiary countries from fabrics wholly formed and cut, or from components knit-to shape, in the United States, from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under subheading 9802.00.80 of the HTSUS;

(2) Apparel articles sewn or otherwise assembled in one or more beneficiary countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States, from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under Chapter 61 or 62 of the HTSUS, if, after that assembly, the articles would have qualified for entry under subheading 9802.00.80 of the HTSUS but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes in a beneficiary country;

(3) Apparel articles sewn or otherwise assembled in one or more beneficiary countries with sewing thread formed in the United States from fabrics wholly formed in the United States and cut in one or more beneficiary countries from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if those fabrics are classified under heading 5602 or 5603 of the HTSUS and are wholly formed in the United States);

(4) Apparel articles wholly assembled in one or more beneficiary countries from fabric wholly formed in one or more beneficiary countries from yarns originating in the United States or one or more beneficiary countries or former beneficiary countries, or both (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed in one or more beneficiary countries), or from components knit-to-shape in one or more beneficiary countries from yarns originating in the United States or one or more beneficiary countries or former beneficiary countries, or both, or apparel articles wholly formed on seamless knitting machines in a beneficiary country from yarns originating in the United States or one or more beneficiary countries or former beneficiary countries, or both, whether or not the apparel articles are also made from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (a)(1), (2) or (3) of this section (unless the apparel articles are made exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (a)(1), (2), or (3)

of this section), subject to the applicable quantitative limit published in the FEDERAL REGISTER pursuant to U.S. Note 2, Subchapter XIX, Chapter 98, HTSUS;

(5) Apparel articles wholly assembled, or knit to shape and wholly assembled, or both, in one or more lesser developed beneficiary countries regardless of the country of origin of the fabric or the yarn used to make the articles, subject to the applicable quantitative limit published in the FEDERAL REGISTER pursuant to U.S. Note 2, Subchapter XIX, Chapter 98, HTSUS;

(6) Sweaters, in chief weight of cashmere, knit-to-shape in one or more beneficiary countries and classifiable under subheading 6110.12 of the HTSUS;

(7) Sweaters, containing 50 percent or more by weight of wool measuring 21.5 microns in diameter or finer, knit-to-shape in one or more beneficiary countries;

(8) Apparel articles, other than brassieres classifiable under subheading 6212.10, HTSUS, that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries, provided that the apparel articles would be considered an originating good under General Note 12(t) HTSUS, without regard to the source of the fabric or yarn of which the articles are made, if the apparel articles had been imported directly from Canada or Mexico;

(9) Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries from fabrics or yarn that the President or his designee has designated in the FEDERAL REGISTER as not available in commercial quantities in the United States;

(10) A handloomed, handmade, or folklore article or an ethnic printed fabric of a beneficiary country or countries that is certified as a handloomed, handmade, or folklore article or an ethnic printed fabric by the competent authority of the beneficiary country or countries, provided that the President or his designee has determined that the article in question will be treated as being a handloomed, handmade, or folklore article or an ethnic printed fabric;

(11) Apparel articles sewn or otherwise assembled in one or more beneficiary countries with sewing thread formed in the United States:

(i) From components cut in the United States and one or more beneficiary countries or former beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS);

(ii) From components knit-to-shape in the United States and one or more beneficiary countries or former beneficiary countries from yarns wholly formed in the United States; or

(iii) From any combination of two or more of the cutting or knitting-to-shape operations described in paragraph (a)(11)(i) or paragraph (a)(11)(ii) of this section; and

(12) Textile and textile articles classifiable under Chapters 50 through 60 or Chapter 63 of the HTSUS that are products of a lesser developed beneficiary country and are wholly formed in one or more such countries from fibers, yarns, fabrics, fabric components, or components knit-to-shape that are the product of one or more such countries.

(b) *Dyeing, printing, finishing and other operations*—(1) *Dyeing, printing and finishing operations.* Dyeing, printing and other finishing operations do not constitute part of a yarn or fabric or component formation process. Those operations may be performed on any yarn (including sewing thread) or fabric or knit-to-shape or other component used in the production of any article described under paragraph (a) of this section without affecting the eligibility of the article for preferential treatment, provided that the operation is performed in the United States or in a beneficiary country and not in any other country. However, in the case of an assembled article described in paragraph (a)(1) or (2) of this section, a dyeing, printing or other finishing operation may be performed in a beneficiary country without affecting the eligibility of the article for preferential treatment only if that operation is incidental to the assembly process.

(2) *Other operations.* An article described under paragraph (a) of this section that is otherwise eligible for preferential treatment will not be disqualified from receiving that treatment by virtue of having undergone one or more operations such as embroidering, stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing or screen printing, provided that the operation is performed in the United States or in a beneficiary country and not in any other country. However, in the case of an assembled article described in paragraph (a)(1) of this section, an operation may be performed in a beneficiary country without affecting the eligibility of the article for preferential treatment only if it is incidental to the assembly process.

(c) *Special rules for certain component materials*—(1) *General.* An article otherwise described under paragraph (a) of this section will not be ineligible for the preferential treatment referred to in §10.211 because the article contains:

(i) Findings and trimmings of foreign origin, if the value of those findings and trimmings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section ''findings and trimmings'' include, but are not limited to, hooks and eyes, snaps, buttons, ''bow buds,'' decorative lace trim, elastic strips (but only if they are each less than 1 inch in width and are used in the production of brassieres), zippers (including zipper tapes), labels, and sewing thread except in the case of an article described in paragraph (a)(3) of this section;

(ii) Interlinings of foreign origin, if the value of those interlinings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section ''interlinings'' include only a chest type plate, a ''hymo'' piece, or ''sleeve header,'' of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments;

(iii) Any combination of findings and trimmings of foreign origin and interlinings of foreign origin, if the total value of those findings and trimmings and interlinings does not exceed 25 percent of the cost of the components of the assembled article;

(iv) Fibers or yarns not wholly formed in the United States or one or more beneficiary countries or former beneficiary countries if the total weight of all those fibers and yarns is not more than 10 percent of the total weight of the article; or

(v) Any collars or cuffs (cut or knit-to-shape), drawstrings, shoulder pads or other padding, waistbands, belt attached to the article, straps containing elastic, or elbow patches that do not meet the requirements set forth in paragraph (a) of this section, regardless of the country of origin of the applicable component referred to in this paragraph.

(2) *''Cost'' and ''value'' defined.* The ''cost'' of components and the ''value'' of findings and trimmings or interlinings referred to in paragraph (c)(1) of this section means:

(i) The ex-factory price of the components, findings and trimmings or interlinings as set out in the invoice or other commercial documents, or, if the price is other than ex-factory, the price as set out in the invoice or other commercial documents adjusted to arrive at an ex-factory price; or

(ii) If the price cannot be determined under paragraph (c)(2)(i) of this section or if that price is unreasonable, all reasonable expenses incurred in the growth, production, manufacture or other processing of the components, findings and trimmings, or interlinings, including the cost or value of materials and general expenses, plus a reasonable amount for profit.

(3) *Treatment of fibers and yarns as findings or trimmings.* If any fibers or yarns not wholly formed in the United States or one or more beneficiary countries are used in an article as a finding or trimming described in paragraph (c)(1)(i) of this section, the fibers or yarns will be considered to be a finding or trimming for purposes of paragraph (c)(1) of this section.

(d) *Imported directly defined.* For purposes of paragraph (a) of this section, the words ''imported directly'' mean:

(1) Direct shipment from any beneficiary country to the United States without passing through the territory of any non-beneficiary country;

(2) If the shipment is from any beneficiary country to the United States

through the territory of any non-beneficiary country, the articles in the shipment do not enter into the commerce of any non-beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any beneficiary country to the United States through the territory of any non-beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the Center director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

§ 10.214 Certificate of Origin.

(a) *General.* A Certificate of Origin must be employed to certify that a textile or apparel article being exported from a beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.211. The Certificate of Origin must be prepared in the beneficiary country by the exporter or producer or by the exporter's or producer's authorized agent having knowledge of the facts in the form specified in paragraph (b) of this section. If the person preparing the Certificate of Origin is not the producer of the article, the person may complete and sign a Certificate of Origin on the basis of:

(1) The person's reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(2) A completed and signed Certificate of Origin for the article voluntarily provided to the person by the producer.

(b) *Form of Certificate.* The Certificate of Origin referred to in paragraph (a) of this section must be in the following format:

AFRICAN GROWTH AND OPPORTUNITY ACT TEXTILE CERTIFICATE OF ORIGIN

1. Exporter Name and Address:	3. Importer Name and Address:
2. Producer Name and Address:	4. Preference Group:

5. Description of Article:

Group	*Each description below is only a summary of the cited CFR provision.*	19 CFR
1–A	Apparel assembled from U.S. fabrics and/or knit-to-shape components, from U.S. yarns. All fabric must be cut in the United States.	10.213(a)(1).
2–B	Apparel assembled from U.S. fabrics and/or knit-to-shape components, from U.S. yarns. All fabric must be cut in the United States. After assembly, the apparel is embroidered or subject to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes.	10.213(a)(2).
3–C	Apparel assembled from U.S. fabrics and/or U.S. knit-to-shape components and/or U.S. *and* beneficiary country or former beneficiary country knit-to-shape components, from U.S. yarns and sewing thread. The U.S. fabrics may be cut in beneficiary countries or in the United States *and* beneficiary countries or former beneficiary countries.	10.213(a)(3) or 10.213(a)(11).
4–D	Apparel assembled from beneficiary country fabrics and/or knit-to-shape components, from yarns originating in the United States and/or one or more beneficiary countries or former beneficiary countries.	10.213(a)(4).
5–E	Apparel assembled or knit-to-shape and assembled, or both, in one or more lesser developed beneficiary countries regardless of the country of origin of the fabric or the yarn used to make such articles.	10.213(a)(5).
6–F	Knit-to-shape sweaters in chief weight of cashmere	10.213(a)(6).
7–G	Knit-to-shape sweaters 50 percent or more by weight of wool measuring 21.5 microns in diameter or finer.	10.213(a)(7).
8–H	Apparel assembled from fabrics or yarns considered in short supply in the NAFTA, or designated as not available in commercial quantities in the United States.	10.213(a)(8) or 10.213(a)(9).
9–I	Handloomed fabrics, handmade articles made of handloomed fabrics, or textile folklore articles—as defined in bilateral consultations; ethnic printed fabric.	10.213(a)(10).

Group	*Each description below is only a summary of the cited CFR provision.*	19 CFR
0–J	Textile articles classifiable in Chapters 50 through 60 or Chapter 63, HTSUS, that are products of a lesser developed beneficiary country and are wholly formed in one or more such countries from fibers, yarns, fabrics, fabric components, or components knit-to-shape that are the product of one or more such countries.	10.213(a)(12).

6. U.S./African Fabric Producer Name and Address:		7. U.S./African Yarn Producer Name and Address:
		8. U.S. Thread Producer Name and Address:
9. Handloomed, Handmade, or Folklore Article or Ethnic Printed Fabric:		10. Name of Short Supply or Designated Fabric or Yarn:
I certify that the information on this document is complete and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document. I agree to maintain, and present upon request, documentation necessary to support this certificate.		
11. Authorized Signature:		12. Company:
13. Name: (Print or Type)		14. Title:
15. Date: (DD/MM/YY)	16. Blanket Period From: To:	17. Telephone: Facsimile:

(c) *Preparation of Certificate.* The following rules will apply for purposes of completing the Certificate of Origin set forth in paragraph (b) of this section:

(1) Blocks 1 through 5 pertain only to the final article exported to the United States for which preferential treatment may be claimed;

(2) Block 1 should state the legal name and address (including country) of the exporter;

(3) Block 2 should state the legal name and address (including country) of the producer. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers. If this information is confidential, it is acceptable to state ''available to CBP upon request'' in block 2. If the producer and the exporter are the same, state ''same'' in block 2;

(4) Block 3 should state the legal name and address (including country) of the importer;

(5) In block 4, insert the number and/or letter that identifies the preference group which applies to the article according to the description contained in the CFR provision cited on the Certificate for that group;

(6) Block 5 should provide a full description of each article. The description should be sufficient to relate it to the invoice description and to the description of the article in the international Harmonized System. Include the invoice number as shown on the commercial invoice or, if the invoice number is not known, include another unique reference number such as the shipping order number;

(7) Blocks 6 through 10 must be completed only when the block in question calls for information that is relevant to the preference group identified in block 4;

(8) Block 6 should state the legal name and address (including country) of the fabric producer;

(9) Block 7 should state the legal name and address (including country) of the yarn producer;

(10) Block 8 should state the legal name and address (including country) of the thread producer;

(11) Block 9 should state the name of the folklore article or should state that the article is handloomed, handmade or an ethnic printed fabric;

(12) Block 10, should be completed only when preference group identifier ''8'' and/or ''H'' is inserted in block 4 and should state the name of the fabric or yarn that is in short supply in the NAFTA or that has been designated as not available in commercial quantities in the United States;

(13) Block 11 must contain the signature of the exporter or producer or of the exporter's or producer's authorized agent having knowledge of the relevant facts;

(14) Block 15 should reflect the date on which the Certificate was completed and signed;

(15) Block 16 should be completed if the Certificate is intended to cover multiple shipments of identical articles as described in block 5 that are imported into the United States during a specified period of up to one year (*see* § 10.216(b)(4)(ii)). The ''from'' date is the date on which the Certificate became applicable to the article covered by the blanket Certificate (this date may be prior to the date reflected in block 15). The ''to'' date is the date on which the blanket period expires;

(16) The telephone and facsimile numbers included in block 17 should be those at which the person who signed the Certificate may be contacted; and

(17) The Certificate may be printed and reproduced locally. If more space is needed to complete the Certificate, attach a continuation sheet.

§ 10.215 Filing of claim for preferential treatment.

(a) *Declaration.* In connection with a claim for preferential treatment for a textile or apparel article described in § 10.213, the importer must make a written declaration that the article qualifies for that treatment. The inclusion on the entry summary, or equivalent documentation, of the subheading within Chapter 98 of the HTSUS under which the article is classified will constitute the written declaration. Except in any of the circumstances described in § 10.216(d)(1), the declaration required under this paragraph must be based on an original Certificate of Origin that has been completed and properly executed in accordance with § 10.214, that covers the article being imported, and that is in the possession of the importer.

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the CBP port where the declaration was originally filed.

§ 10.216 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records.* Each importer claiming preferential treatment for an article under § 10.215 must maintain, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include the original Certificate of Origin referred to in § 10.215(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential treatment on a textile or apparel article under § 10.215(a) must provide, at the request of the Center director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to CBP under this paragraph:

(1) Must be in writing or must be transmitted electronically pursuant to any electronic data interchange system authorized by CBP for that purpose;

(2) Must be signed by the exporter or producer or by the exporter's or producer's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to CBP upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified blanket period, not to exceed 12 months, set out in the Certificate by the exporter. For purposes of this paragraph and § 10.214(c)(15), ''identical articles'' means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

(c) *Correction and nonacceptance of Certificate.* If the Center director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the Center director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required*—(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the Center director has in writing waived the requirement for a Certificate of Origin because the Center director is otherwise satisfied that the article qualifies for preferential treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US $2,500, provided that, unless waived by the Center director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential treatment under the AGOA.

Check One:

( ) Producer
( ) Exporter
( ) Importer
( ) Agent
Name
Title
Address
Signature and Date

(2) *Exception.* If the Center director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§ 10.214 through 10.216, the Center director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential treatment. For purposes of this paragraph, a ''series of importations'' means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

§ 10.217 Verification and justification of claim for preferential treatment.

(a) *Verification by CBP.* A claim for preferential treatment made under § 10.215, including any statements or other information contained on a Certificate of Origin submitted to CBP under § 10.216, will be subject to whatever verification the Center director deems necessary. In the event that the Center director for any reason is prevented from verifying the claim, the Center director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to CBP by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence to document the use of U.S. materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements.* In order to make a claim for preferential treatment under §10.215, the importer:

(1) Must have records that explain how the importer came to the conclusion that the textile or apparel article qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it is specifically described in one of the provisions under §10.213(a). If the importer is claiming that the article incorporates fabric or yarn that originated or was wholly formed in the United States, the importer must have records that identify the U.S. producer of the fabric or yarn. A properly completed Certificate of Origin in the form set forth in §10.214(b) is a record that would serve these purposes;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificate of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the beneficiary country to the United States. If the imported article was shipped through a country other than a beneficiary country and the invoices and other documents from the beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in §10.213(d)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from CBP, how the records and internal controls referred to in paragraphs (b)(1) through (3) of this section justify the importer's claim for preferential treatment.

Subpart E—United States-Caribbean Basin Trade Partnership Act

TEXTILE AND APPAREL ARTICLES UNDER THE UNITED STATES-CARIBBEAN BASIN TRADE PARTNERSHIP ACT

SOURCE: T.D. 00–68, 65 FR 59658, Oct. 5, 2000, unless otherwise noted.

§10.221 Applicability.

Title II of Public Law 106–200 (114 Stat. 251), entitled the United States-Caribbean Basin Trade Partnership Act (CBTPA), amended section 213(b) of the Caribbean Basin Economic Recovery Act (the CBERA, 19 U.S.C. 2701–2707) to authorize the President to extend additional trade benefits to countries that have been designated as beneficiary countries under the CBERA. Section 213(b)(2) of the CBERA (19 U.S.C. 2703(b)(2)) provides for the preferential treatment of certain textile and apparel articles from CBERA beneficiary countries. The provisions of §§10.221–10.227 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment pursuant to CBERA section 213(b)(2).

[T.D. 00–68, 65 FR 59658, Oct. 5, 2000; 65 FR 67262, Nov. 9, 2000]

§10.222 Definitions.

When used in §§10.221 through 10.228, the following terms have the meanings indicated:

Apparel articles. ''Apparel articles'' means goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99 and 6505.90 of the HTSUS.

Assembled in one or more CBTPA beneficiary countries. ''Assembled in one or more CBTPA beneficiary countries'' when used in the context of a textile or apparel article has reference to a joining together of two or more components that occurred in one or more CBTPA beneficiary countries, whether or not a prior joining operation was performed on the article or any of its components in the United States.

CBERA. ''CBERA'' means the Caribbean Basin Economic Recovery Act, 19 U.S.C. 2701–2707.

CBTPA beneficiary country. ''CBTPA beneficiary country'' means a ''beneficiary country'' as defined in §10.191(b)(1) for purposes of the CBERA which the President also has designated as a beneficiary country for purposes of preferential treatment of textile and apparel articles under 19 U.S.C. 2703(b)(2) and which has been the subject of a finding by the President or his designee, published in the FEDERAL

REGISTER, that the beneficiary country has satisfied the requirements of 19 U.S.C. 2703(b)(4)(A)(ii).

Cut in one or more CBTPA beneficiary countries. ''Cut in one or more CBTPA beneficiary countries'' when used with reference to apparel articles means that all fabric components used in the assembly of the article were cut from fabric in one or more CBTPA beneficiary countries.

Foreign. ''Foreign'' means of a country other than the United States or a CBTPA beneficiary country.

HTSUS. ''HTSUS'' means the Harmonized Tariff Schedule of the United States.

Knit-to-shape. The term ''knit-to-shape'' applies to any apparel article of which 50 percent or more of the exterior surface area is formed by major parts that have been knitted or crocheted directly to the shape used in the apparel article, with no consideration being given to patch pockets, appliques, or the like. Minor cutting, trimming, or sewing of those major parts will not affect the determination of whether an apparel article is ''knit-to-shape.''

Luggage. ''Luggage'' means travel goods (such as trunks, hand trunks, lockers, valises, satchels, suitcases, wardrobe cases, overnight bags, pullman bags, gladstone bags, traveling bags, knapsacks, kitbags, haversacks, duffle bags, and like articles designed to contain clothing or other personal effects during travel) and brief cases, portfolios, school bags, photographic equipment bags, golf bags, camera cases, binocular cases, gun cases, occupational luggage cases (for example, physicians' cases, sample cases), and like containers and cases designed to be carried with the person. The term ''luggage'' does not include handbags (that is, pocketbooks, purses, shoulder bags, clutch bags, and all similar articles, by whatever name known, customarily carried by women or girls). The term ''luggage'' also does not include flat goods (that is, small flatware designed to be carried on the person, such as banknote cases, bill cases, billfolds, bill purses, bill rolls, card cases, change cases, cigarette cases, coin purses, coin holders, compacts, currency cases, key cases, letter cases, license cases, money cases, pass cases, passport cases, powder cases, spectacle cases, stamp cases, vanity cases, tobacco pouches, and similar articles).

Made in one or more CBTPA beneficiary countries. ''Made in one or more CBTPA beneficiary countries'' when used with reference to non-underwear t-shirts means cut in one or more CBTPA beneficiary countries and wholly assembled in one or more CBTPA beneficiary countries.

Major parts. ''Major parts'' means integral components of an apparel article but does not include collars, cuffs, waistbands, plackets, pockets, linings, paddings, trim, accessories, or similar parts or components.

NAFTA. ''NAFTA'' means the North American Free Trade Agreement entered into by the United States, Canada, and Mexico on December 17, 1992.

Preferential treatment. ''Preferential treatment'' means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels as provided in 19 U.S.C. 2703(b)(2).

Wholly assembled in one or more CBTPA beneficiary countries. ''Wholly assembled in one or more CBTPA beneficiary countries'' when used in the context of a textile or apparel article has reference to a joining together of all components (including thread, decorative embellishments, buttons, zippers, or similar components) that occurred only in one or more CBTPA beneficiary countries.

Wholly formed. ''Wholly formed,'' when used with reference to yarns, means that all of the production processes, starting with the extrusion of filament, strip, film, or sheet and including slitting a film or sheet into strip or the spinning of all fibers into yarn or both and ending with a yarn or plied yarn, took place in a single country, and, when used with reference to fabric(s), means that all of the production processes, starting with polymers, fibers, filaments, textile strips, yarns, twine, cordage, rope, or strips of fabric and ending with a fabric by a weaving,

knitting, needling, tufting, felting, entangling or other process, took place in a single country.

[T.D. 00–68, 65 FR 59658, Oct. 5, 2000; 65 FR 67262, Nov. 9, 2000; T.D. 01–74, 66 FR 50537, Oct. 4, 2001, as amended by T.D. 03–12, 68 FR 13831, Mar. 21, 2003]

§ 10.223 Articles eligible for preferential treatment.

(a) *General.* The preferential treatment referred to in § 10.221 applies to the following textile and apparel articles that are imported directly into the customs territory of the United States from a CBTPA beneficiary country:

(1) Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States, from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under subheading 9802.00.80 of the HTSUS, and provided that any other processing involving the article conforms to the rules set forth in paragraph (b) of this section;

(2) Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut, or from components knit-to-shape, in the United States, from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under Chapter 61 or 62 of the HTSUS, if, after that assembly, the articles would have qualified for entry under subheading 9802.00.80 of the HTSUS but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes in a CBTPA beneficiary country, and provided that any other processing involving the article conforms to the rules set forth in paragraph (b) of this section;

(3) Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries with thread formed in the United States from fabrics wholly formed in the United States and cut in one or more CBTPA beneficiary countries from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed in the United States), and provided that any other processing involving the article conforms to the rules set forth in paragraph (b) of this section;

(4) Apparel articles (other than socks provided for in heading 6115 of the HTSUS) knit to shape in a CBTPA beneficiary country from yarns wholly formed in the United States, and knitted or crocheted apparel articles (other than non-underwear t-shirts classifiable under subheadings 6109.10.00 and 6109.90.10 of the HTSUS and described in paragraph (a)(5) of this section) cut and wholly assembled in one or more CBTPA beneficiary countries from fabrics formed in one or more CBTPA beneficiary countries or in one or more CBTPA beneficiary countries and the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more CBTPA beneficiary countries);

(5) Non-underwear t-shirts, classifiable under subheadings 6109.10.00 and 6109.90.10 of the HTSUS, made in one or more CBTPA beneficiary countries from fabric formed in one or more CBTPA beneficiary countries from yarns wholly formed in the United States;

(6) Brassieres classifiable under subheading 6212.10 of the HTSUS, if both cut and sewn or otherwise assembled in the United States, or in one or more CBTPA beneficiary countries, or in both, other than articles entered as articles described in paragraphs (a)(1) through (a)(5), paragraphs (a)(7) through (a)(9), or paragraph (a)(12), and provided that any applicable additional

requirements set forth in §10.228 are met;

(7) Apparel articles, other than articles described in paragraph (a)(6) of this section, that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries, from fabrics or yarn that is not formed in the United States or in one or more CBTPA beneficiary countries, to the extent that apparel articles of those fabrics or yarn would be eligible for preferential treatment, without regard to the source of the fabrics or yarn, under Annex 401 of the NAFTA;

(8) Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabrics or yarn that the President or his designee has designated in the FEDERAL REGISTER as not available in commercial quantities in the United States;

(9) A handloomed, handmade, or folklore textile or apparel article of a CBTPA beneficiary country that the President or his designee and representatives of the CBTPA beneficiary country mutually agree is a handloomed, handmade, or folklore article and that is certified as a handloomed, handmade, or folklore article by the competent authority of the CBTPA beneficiary country;

(10) Textile luggage assembled in a CBTPA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTSUS;

(11) Textile luggage assembled in a CBTPA beneficiary country from fabric cut in a CBTPA beneficiary country from fabric wholly formed in the United States from yarns wholly formed in the United States;

(12) Knitted or crocheted apparel articles cut and assembled in one or more CBTPA beneficiary countries from fabrics wholly formed in the United States from yarns wholly formed in the United States, or from components knit-to-shape in the United States from yarns wholly formed in the United States, or both (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed wholly in the United States), provided that the assembly is with thread formed in the United States, and provided that any other processing involving the article conforms to the rules set forth in paragraph (b) of this section; and

(13) Apparel articles sewn or otherwise assembled in one or more CBTPA beneficiary countries with thread formed in the United States:

(i) From components cut in the United States and in one or more CBTPA beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS);

(ii) From components knit-to-shape in the United States and one or more CBTPA beneficiary countries from yarns wholly formed in the United States; or

(iii) From any combination of two or more of the cutting or knitting-to-shape operations described in paragraph (a)(13)(i) or paragraph (a)(13)(ii) of this section; and

(iv) Provided that any processing not described in this paragraph (a)(13) conforms to the rules set forth in paragraph (b) of this section.

(b) *Dyeing, printing, finishing and other operations*—(1) *Dyeing, printing and finishing operations.* Dyeing, printing, and finishing operations may be performed on any yarn, fabric, or knit-to-shape or other component used in the production of any article described under paragraph (a) of this section without affecting the eligibility of the article for preferential treatment, provided that the operation is performed in the United States or in a CBTPA beneficiary country and not in any other country and subject to the following additional conditions:

(i) In the case of an article described in paragraph (a)(1), (a)(2), (a)(3), (a)(12), or (a)(13) of this section that is entered on or after September 1, 2002, and that contains a knitted or crocheted or woven fabric, or a knitted or crocheted or woven fabric component produced from fabric, that was wholly formed in the United States from yarns wholly

formed in the United States, any dyeing, printing, or finishing of that knitted or crocheted or woven fabric or component must have been carried out in the United States; and

(ii) In the case of assembled luggage described in paragraph (a)(10) of this section, an operation may be performed in a CBTPA beneficiary country only if that operation is incidental to the assembly process within the meaning of §10.16.

(2) *Other operations.* An article described under paragraph (a) of this section that is otherwise eligible for preferential treatment will not be disqualified from receiving that treatment by virtue of having undergone one or more operations such as embroidering, stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing or screen printing, provided that the operation is performed in the United States or in a CBTPA beneficiary country and not in any other country. However, in the case of assembled luggage described in paragraph (a)(10) of this section, an operation may be performed in a CBTPA beneficiary country without affecting the eligibility of the article for preferential treatment only if it is incidental to the assembly process within the meaning of §10.16.

(c) *Special rules for certain component materials*—(1) *Foreign findings, trimmings, interlinings, fibers and yarns*—(i) *General.* An article otherwise described under paragraph (a) of this section will not be ineligible for the preferential treatment referred to in §10.221 because the article contains:

(A) Findings and trimmings of foreign origin, if the value of those findings and trimmings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section ''findings and trimmings'' include, but are not limited to, hooks and eyes, snaps, buttons, ''bow buds,'' decorative lace trim, elastic strips (but only if they are each less than 1 inch in width and are used in the production of brassieres), zippers (including zipper tapes), labels, and sewing thread except in the case of an article described in paragraph (a)(3) or (a)(12) of this section;

(B) Interlinings of foreign origin, if the value of those interlinings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section ''interlinings'' include only a chest type plate, a ''hymo'' piece, or ''sleeve header,'' of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments;

(C) Any combination of findings and trimmings of foreign origin and interlinings of foreign origin, if the total value of those findings and trimmings and interlinings does not exceed 25 percent of the cost of the components of the assembled article; or

(D) Fibers or yarns not wholly formed in the United States or in one or more CBTPA beneficiary countries if the total weight of all those fibers and yarns is not more than 7 percent of the total weight of the article, except in the case of any apparel article described in paragraph (a)(1) through (a)(5) or (a)(12) of this section containing elastomeric yarns which will be eligible for preferential treatment only if those yarns are wholly formed in the United States.

(ii) *''Cost'' and ''value'' defined.* The ''cost'' of components and the ''value'' of findings and trimmings or interlinings referred to in paragraph (c)(1)(i) of this section means:

(A) The price of the components, findings and trimmings, or interlinings when last purchased, f.o.b. port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price; or

(*2*) If no exportation to a CBTPA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the freight, insurance, packing, and other costs incurred in transporting the components, findings and trimmings, or interlinings to the place of production if included in that price; or

(B) If the price cannot be determined under paragraph (c)(1)(ii)(A) of this section or if Customs finds that price to

be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the components, findings and trimmings, or interlinings, including the cost or value of materials and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the components, findings and trimmings, or interlinings to the port of exportation.

(iii) *Treatment of fibers and yarns as findings or trimmings.* If any fibers or yarns not wholly formed in the United States or one or more beneficiary countries are used in an article as a finding or trimming described in paragraph (c)(1)(i)(A) of this section, the fibers or yarns will be considered to be a finding or trimming for purposes of paragraph (c)(1)(i) of this section.

(2) *Special rule for nylon filament yarn.* An article otherwise described under paragraph (a)(1), (a)(2), (a)(3) or (a)(12) of this section will not be ineligible for the preferential treatment referred to in §10.221 because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable under subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTSUS duty-free from Canada, Mexico or Israel.

(3) *Dyed, printed, or finished thread.* An article otherwise described under paragraph (a) of this section will not be ineligible for the preferential treatment referred to in §10.221 because the thread used to assemble the article is dyed, printed, or finished in one or more CBTPA beneficiary countries.

(d) *Imported directly defined.* For purposes of paragraph (a) of this section, the words ''imported directly'' mean:

(1) Direct shipment from any CBTPA beneficiary country to the United States without passing through the territory of any country that is not a CBTPA beneficiary country;

(2) If the shipment is from any CBTPA beneficiary country to the United States through the territory of any country that is not a CBTPA beneficiary country, the articles in the shipment do not enter into the commerce of any country that is not a CBTPA beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any CBTPA beneficiary country to the United States through the territory of any country that is not a CBTPA beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the Center director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

[T.D. 00–68, 65 FR 59658, Oct. 5, 2000; 65 FR 67262, Nov. 9, 2000, as amended by T.D. 01–74, 66 FR 50537, Oct. 4, 2001; T.D. 03–12, 68 FR 13832, Mar. 21, 2003]

§10.224 Certificate of Origin.

(a) *General.* A Certificate of Origin must be employed to certify that a textile or apparel article being exported from a CBTPA beneficiary country to the United States qualifies for the preferential treatment referred to in §10.221. The Certificate of Origin must be prepared by the exporter in the CBTPA beneficiary country in the form specified in paragraph (b) of this section. Where the CBTPA beneficiary country exporter is not the producer of the article, that exporter may complete and sign a Certificate of Origin on the basis of:

(1) Its reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(2) A completed and signed Certificate of Origin for the article voluntarily provided to the exporter by the producer.

(b) *Form of Certificate.* The Certificate of Origin referred to in paragraph (a) of this section must be in the following format:

Caribbean Basin Trade Partnership Act
Textile Certificate of Origin

1. Exporter Name & Address:	3. Importer Name & Address:
2. Producer Name & Address:	4. Preference Group:
5. Description of Article:	

Group	*Each description below is only a summary of the cited CFR provision.*	19 CFR
A.	Apparel assembled from U.S. formed and cut fabrics and/or knit-to-shape components, from U.S. yarns.	10.223(a)(1)
B.	Apparel assembled and further processed from U.S. formed and cut fabrics and/or knit-to-shape components, from U.S. yarns.	10.223(a)(2)
C.	Apparel (except apparel in group K) assembled with U.S. thread, cut from U.S. formed fabrics from U.S. yarns, and may include components knit-to-shape in the United States from U.S. yarns.	10.223(a)(3)
D.	Apparel knit-to-shape in the region from U.S. yarn (except socks in heading 6115); and knit apparel cut and assembled from regional or regional and U.S. fabrics from U.S. yarn. This group does not include non-underwear t-shirts in group E.	10.223(a)(4)
E.	Non-underwear t-shirts in subheading 6109.10.00 & 6109.90.10 made of regional fabric from U.S. yarn.	10.223(a)(5)
F.	Brassieres cut and assembled in the United States and/or one or more CBTPA beneficiary countries.	10.223(a)(6)
G.	Apparel assembled from fabrics or yarns considered in short supply in the NAFTA, or designated as not available in commercial quantities in the United States.	10.223(a)(7) 10.223(a)(8)
H.	Handloomed fabrics, handmade articles made of handloomed fabrics, or textile folklore articles – as defined in bilateral consultations.	10.223(a)(9)
I.	Textile luggage assembled from U.S. formed and cut fabric from U.S. yarns.	10.223(a)(10)
J.	Textile luggage cut and assembled from U.S. fabric from U.S. yarn.	10.223(a)(11)
K.	Knit apparel assembled with U.S. thread, cut from U.S. formed fabrics from U.S. yarns, and may include components knit-to-shape in the United States from U.S. yarns.	10.223(a)(12)
L.	Apparel assembled with U.S. thread from (1) U.S. fabric cut in the United States and the region, or (2) components knit-to-shape in the United States and the region, or (3) a combination of cutting and knitting-to-shape in the United States or the region.	10.223(a)(13)

6. U.S./Caribbean Fabric Producer Name & Address:	7. U.S./Caribbean Yarn Producer Name & Address:
	8. U.S. Thread Producer Name & Address:
9. Handloomed, Handmade, or Folklore Article:	10. Name of Short Supply Fabric or Yarn:

I certify that the information on this document is complete and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document. I agree to maintain, and present upon request, documentation necessary to support this certificate.

11. Authorized Signature:		12. Company:
13. Name: (Print or Type)		14. Title:
15. Date: (DD/MM/YY)	16. Blanket Period From: To:	17: Telephone: Facsimile:

(c) *Preparation of Certificate.* The following rules will apply for purposes of completing the Certificate of Origin set forth in paragraph (b) of this section:

(1) Blocks 1 through 5 pertain only to the final article exported to the United States for which preferential treatment may be claimed;

(2) Block 1 should state the legal name and address (including country) of the exporter;

(3) Block 2 should state the legal name and address (including country) of the producer. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers. If this information is confidential, it is acceptable to state ''available to Customs upon request'' in block 2. If the producer and the exporter are the same, state ''same'' in block 2;

(4) Block 3 should state the legal name and address (including country) of the importer;

(5) In block 4, insert the letter that designates the preference group which applies to the article according to the description contained in the CFR provision cited on the Certificate for that group;

(6) Block 5 should provide a full description of each article. The description should be sufficient to relate it to the invoice description and to the description of the article in the international Harmonized System. Include the invoice number as shown on the commercial invoice or, if the invoice number is not known, include another unique reference number such as the shipping order number;

(7) Blocks 6 through 10 must be completed only when the block in question calls for information that is relevant to the preference group identified in block 4;

(8) Block 6 should state the legal name and address (including country) of the fabric producer;

(9) Block 7 should state the legal name and address (including country) of the yarn producer;

(10) Block 8 should state the legal name and address (including country) of the thread producer;

(11) Block 9 should state the name of the folklore article or should state that the article is handloomed or handmade of handloomed fabric;

(12) Block 10 should be completed if the article described in block 5 incorporates a fabric or yarn described in preference group G and should state the name of the fabric or yarn that has been considered as being in short supply in the NAFTA or that has been designated as not available in commercial quantities in the United States;

(13) Block 11 must contain the signature of the exporter or of the exporter's authorized agent having knowledge of the relevant facts;

(14) Block 15 should reflect the date on which the Certificate was completed and signed;

(15) Block 16 should be completed if the Certificate is intended to cover multiple shipments of identical articles as described in block 5 that are imported into the United States during a specified period of up to one year (see §10.226(b)(4)(ii)). The ''from'' date is the date on which the Certificate became applicable to the article covered by the blanket Certificate (this date may be prior to the date reflected in block 15). The ''to'' date is the date on which the blanket period expires; and

(16) The Certificate may be printed and reproduced locally. If more space is needed to complete the Certificate, attach a continuation sheet.

[T.D. 00–68, 65 FR 59658, Oct. 5, 2000; 65 FR 67263, Nov. 9, 2000, as amended by T.D. 03–12, 68 FR 13833, Mar. 21, 2003]

§10.225 Filing of claim for preferential treatment.

(a) *Declaration.* In connection with a claim for preferential treatment for a textile or apparel article described in §10.223, the importer must make a written declaration that the article qualifies for that treatment. The inclusion on the entry summary, or equivalent documentation, of the subheading within Chapter 98 of the HTSUS under which the article is classified will constitute the written declaration. Except in any of the circumstances described in §10.226(d)(1), the declaration required under this paragraph must be based on a Certificate of Origin that has been completed and properly executed in accordance with §10.224 and that covers the article being imported.

(b) *Corrected declaration.* If, after making the declaration required under

paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the Customs port where the declaration was originally filed.

[T.D. 00–68, 65 FR 59658, Oct. 5, 2000; 65 FR 67263, Nov. 9, 2000, as amended by T.D. 03–12, 68 FR 13835, Mar. 21, 2003]

§ 10.226 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records.* Each importer claiming preferential treatment for an article under § 10.225 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include the original Certificate of Origin referred to in § 10.225(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential treatment on a textile or apparel article under § 10.225(a) must provide, at the request of the Center director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to Customs under this paragraph:

(1) Must be in writing or must be transmitted electronically pursuant to any electronic data interchange system authorized by Customs for that purpose;

(2) Must be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to Customs upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified blanket period, not to exceed 12 months, set out in the Certificate by the exporter. For purposes of this paragraph and § 10.224(c)(15), ''identical articles'' means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

(c) *Correction and nonacceptance of Certificate.* If the Center director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the Center director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required*—(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the Center director has in writing waived the requirement for a Certificate of Origin because the Center director is otherwise satisfied that the article qualifies for preferential treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US $2,500, provided that, unless waived by the Center director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential treatment under the CBTPA.

Check One:

( ) Producer
( ) Exporter
( ) Importer
( ) Agent

Name

Title

Address

Signature and Date

(2) *Exception.* If the Center director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§ 10.224 through 10.226, the Center director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential treatment. For purposes of this paragraph, a ''series of importations'' means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

[T.D. 00–68, 65 FR 59658, Oct. 5, 2000, as amended by T.D. 03–12, 68 FR 13835, Mar. 21, 2003]

§ 10.227 Verification and justification of claim for preferential treatment.

(a) *Verification by Customs.* A claim for preferential treatment made under § 10.225, including any statements or other information contained on a Certificate of Origin submitted to Customs under § 10.226, will be subject to whatever verification the Center director deems necessary. In the event that the Center director for any reason is prevented from verifying the claim, the Center director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to Customs by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence to document the use of U.S. materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements.* In order to make a claim for preferential treatment under § 10.225, the importer:

(1) Must have records that explain how the importer came to the conclusion that the textile or apparel article qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it is specifically described in one of the provisions under § 10.223(a). If the importer is claiming that the article incorporates fabric or yarn that was wholly formed in the United States, the importer must have records that identify the U.S. producer of the fabric or yarn. A properly completed Certificate of Origin in the form set forth in § 10.224(b) is a record that would serve these purposes;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificates of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the CBTPA beneficiary country to the United States. If the imported article was shipped through a country other than a CBTPA beneficiary country and the invoices and other documents from the CBTPA beneficiary country do not

show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in §10.223(d)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from Customs, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this section justify the importer's claim for preferential treatment.

[T.D. 00–68, 65 FR 59658, Oct. 5, 2000, as amended by T.D. 03–12, 68 FR 13835, Mar. 21, 2003]

§ 10.228 Additional requirements for preferential treatment of brassieres.

(a) *Definitions.* When used in this section, the following terms have the meanings indicated:

(1) *Producer.* ''Producer'' means an individual, corporation, partnership, association, or other entity or group that exercises direct, daily operational control over the production process in a CBTPA beneficiary country.

(2) *Entity controlling production.* ''Entity controlling production'' means an individual, corporation, partnership, association, or other entity or group that is not a producer and that controls the production process in a CBTPA beneficiary country through a contractual relationship or other indirect means.

(3) *Fabrics formed in the United States.* ''Fabrics formed in the United States'' means fabrics that were produced by a weaving, knitting, needling, tufting, felting, entangling or other fabric-making process performed in the United States.

(4) *Cost.* ''Cost'' when used with reference to fabrics formed in the United States means:

(i) The price of the fabrics when last purchased, f.o.b. port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(A) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price; or

(B) If no exportation to a CBTPA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the freight, insurance, packing, and other costs incurred in transporting the fabrics to the place of production if included in that price; or

(ii) If the price cannot be determined under paragraph (a)(4)(i) of this section or if CBP finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the fabrics, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in forming the fabrics) and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabrics to the port of exportation.

(5) *Declared customs value.* ''Declared customs value'' when used with reference to fabric contained in an article means the sum of:

(i) The cost of fabrics formed in the United States that the producer or entity controlling production can verify; and

(ii) The cost of all other fabric contained in the article, exclusive of all findings and trimmings, determined as follows:

(A) In the case of fabric purchased by the producer or entity controlling production, the f.o.b. port of exportation price of the fabric as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price; or

(*2*) If no exportation to a CBTPA beneficiary country is involved, the price as set out in the invoice or other commercial documents, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price, but less the freight, insurance, packing, and other costs incurred in transporting the fabric to the place of production if included in that price;

(B) In the case of fabric for which the cost cannot be determined under paragraph (a)(5)(ii)(A) of this section or if CBP finds that cost to be unreasonable, all reasonable expenses incurred in the growth, production, or manufacture of the fabric, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in the growth, production, or manufacture of the fabric), general expenses and embroidering and dyeing, printing, and finishing expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric to the port of exportation;

(C) In the case of fabric components purchased by the producer or entity controlling production, the f.o.b. port of exportation price of those fabric components as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify; or

(*2*) If no exportation to a CBTPA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, and less the freight, insurance, packing, and other costs incurred in transporting the fabric components to the place of production if included in that price; and

(D) In the case of fabric components for which a fabric cost cannot be determined under paragraph (a)(5)(ii)(C) of this section or if CBP finds that cost to be unreasonable: all reasonable expenses incurred in the growth, production, or manufacture of the fabric components, including the cost or value of materials (which does not include the cost of recoverable scrap generated in the growth, production, or manufacture of the fabric components) and general expenses, but excluding the cost or value of any non-textile materials, and excluding expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric components to the port of exportation.

(6) *Year*. ''Year'' means a 12-month period beginning on October 1 and ending on September 30 but does not include any 12-month period that began prior to October 1, 2000.

(7) *Entered*. ''Entered'' means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(b) *Limitations on preferential treatment*—(1) *General*. During the year that begins on October 1, 2002, and during any subsequent year, articles of a producer or an entity controlling production that conform to the production standards set forth in §10.223(a)(6) will be eligible for preferential treatment only if:

(i) The aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that are entered as articles described in §10.223(a)(6) during the immediately preceding year was at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production that are entered as articles described in §10.223(a)(6) during that year; or

(ii) In a case in which the 75 percent requirement set forth in paragraph (b)(1)(i) of this section was not met during a year and therefore those articles of that producer or that entity

controlling production were not eligible for preferential treatment during the following year, the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that conform to the production standards set forth in §10.223(a)(6) and that were entered during the immediately preceding year was at least 85 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production that conform to the production standards set forth in §10.223(a)(6) and that were entered during that year; and

(iii) In conjunction with the filing of the claim for preferential treatment under §10.225, the importer records on the entry summary or warehouse withdrawal for consumption (CBP Form 7501, column 34), or its electronic equivalent, the distinct and unique identifier assigned by CBP to the applicable documentation prescribed under paragraph (c) of this section.

(2) *Rules of application*—(i) *General.* For purposes of paragraphs (b)(1)(i) and (b)(1)(ii) of this section and for purposes of preparing and filing the documentation prescribed in paragraph (c) of this section, the following rules will apply:

(A) The articles in question must have been produced in the manner specified in §10.223(a)(6) and the articles in question must be entered within the same year;

(B) Articles that are exported to countries other than the United States and are never entered are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(C) Articles that are entered under an HTSUS subheading other than the HTSUS subheading which pertains to articles described in §10.223(a)(6) are not to be considered in determining compliance with the 75 percent standard specified in paragraph (b)(1)(i) of this section;

(D) For purposes of determining compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section, all articles that conform to the production standards set forth in §10.223(a)(6) must be considered, regardless of the HTSUS subheading under which they were entered;

(E) Fabric components and fabrics that constitute findings or trimmings are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(F) Beginning October 1, 2002, in order for articles to be eligible for preferential treatment in a given year, a producer of, or entity controlling production of, those articles must have met the 75 percent standard specified in paragraph (b)(1)(i) of this section during the immediately preceding year. If articles of a producer or entity controlling production fail to meet the 75 percent standard specified in paragraph (b)(1)(i) of this section during a year, articles of that producer or entity controlling production:

(*1*) Will not be eligible for preferential treatment during the following year;

(*2*) Will remain ineligible for preferential treatment until the year that follows a year in which articles of that producer or entity controlling production met the 85 percent standard specified in paragraph (b)(1)(ii) of this section; and

(*3*) After the 85 percent standard specified in paragraph (b)(1)(ii) of this section has been met, will again be subject to the 75 percent standard specified in paragraph (b)(1)(i) of this section during the following year for purposes of determining eligibility for preferential treatment in the next year.

(G) A new producer or new entity controlling production, that is, a producer or entity controlling production which did not produce or control production of articles that were entered as articles described in §10.223(a)(6) during the immediately preceding year, must first establish compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section as a prerequisite to preparation of the declaration of compliance referred to in paragraph (c) of this section;

(H) A declaration of compliance prepared by a producer or by an entity controlling production must cover all production of that producer or all production that the entity controls for the year in question;

(I) A producer is not required to prepare a declaration of compliance if all of its production is covered by a declaration of compliance prepared by an entity controlling production;

(J) In the case of a producer, the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section and the declaration of compliance procedure under paragraph (c) of this section apply to all articles of that producer for the year in question, even if some but not all of that production is also covered by a declaration of compliance prepared by an entity controlling production;

(K) The U.S. importer does not have to be the producer or the entity controlling production who prepared the declaration of compliance; and

(L) The exclusion references regarding findings and trimmings in paragraph (b)(1)(i) and paragraph (b)(1)(ii) of this section apply to all findings and trimmings, whether or not they are of foreign origin.

(ii) *Examples.* The following examples will illustrate application of the principles set forth in paragraph (b)(2)(i) of this section.

Example 1. A CBTPA beneficiary country producer of articles that meet the production standards specified in §10.223(a)(6) in the first year sends 50 percent of that production to CBTPA region markets and the other 50 percent to the U.S. market; the cost of the fabrics formed in the United States equals 100 percent of the value of all of the fabric in the articles sent to the CBTPA region and 60 percent of the value of all of the fabric in the articles sent to the United States. Although the cost of fabrics formed in the United States is more than 75 percent of the value of all of the fabric used in all of the articles produced, this producer could not prepare a valid declaration of compliance because the articles sent to the United States did not meet the minimum 75 percent standard.

Example 2. A producer sends to the United States in the first year three shipments of articles that meet the description in §10.223(a)(6); one of those shipments is entered under the HTSUS subheading that covers articles described in §10.223(a)(6), the second shipment is entered under the HTSUS subheading that covers articles described in §10.223(a)(12), and the third shipment is entered under subheading 9802.00.80, HTSUS. In determining whether the minimum 75 percent standard has been met in the first year for purposes of entry of articles under the HTSUS subheading that covers articles described in §10.223(a)(6) during the following (that is, second) year, consideration must be restricted to the articles in the first shipment and therefore must not include the articles in the second and third shipments.

Example 3. A producer in the second year begins production of articles that conform to the production standards specified in §10.223(a)(6); some of those articles are entered in that year under HTSUS subheading 6212.10 and others under HTSUS subheading 9802.00.80 but none are entered in that year under the HTSUS subheading which pertains to articles described in §10.223(a)(6) because the 75 percent standard had not been met in the preceding (that is, first) year. In this case the 85 percent standard applies, and all of the articles that were entered under the various HTSUS provisions in the second year must be taken into account in determining whether that 85 percent standard has been met. If the 85 percent was met in the aggregate for all of the articles entered in the second year, in the next (that is, third) year articles of that producer may receive preferential treatment under the HTSUS subheading which pertains to articles described in §10.223(a)(6).

Example 4. An entity controlling production of articles that meet the description in §10.223(a)(6) buys for the U.S., Canadian and Mexican markets; the articles in each case are first sent to the United States where they are entered for consumption and then placed in a commercial warehouse from which they are shipped to various stores in the United States, Canada and Mexico. Notwithstanding the fact that some of the articles ultimately ended up in Canada or Mexico, a declaration of compliance prepared by the entity controlling production must cover all of the articles rather than only those that remained in the United States because all of those articles had been entered for consumption.

Example 5. Fabric is cut and sewn in the United States with other U.S. materials to form cups which are joined together to form brassiere front subassemblies in the United States, and those front subassemblies are then placed in a warehouse in the United States where they are held until the following year; during that following year all of the front subassemblies are shipped to a CBTPA beneficiary country where they are assembled with elastic strips and labels produced in an Asian country and other fabrics, components or materials produced in the CBTPA beneficiary country to form articles that meet the production standards specified in §10.223(a)(6) and that are then shipped to

the United States and entered during that same year. In determining whether the entered articles meet the minimum 75 or 85 percent standard, the fabric in the elastic strips and labels is to be disregarded entirely because the strips and labels constitute findings or trimmings for purposes of this section, and all of the fabric in the front subassemblies is countable because it was all formed in the United States and used in the production of articles that were entered in the same year.

Example 6. A CBTPA beneficiary country producer's entire production of articles that meet the description in §10.223(a)(6) is sent to a U.S. importer in two separate shipments, one in February and the other in June of the same calendar year; the articles shipped in February do not meet the minimum 75 percent standard, the articles shipped in June exceed the 85 percent standard, and the articles in the two shipments, taken together, do meet the 75 percent standard; the articles covered by the February shipment are entered for consumption on March 1 of that calendar year, and the articles covered by the June shipment are placed in a CBP bonded warehouse upon arrival and are subsequently withdrawn from warehouse for consumption on November 1 of that calendar year. The CBTPA beneficiary country producer may not prepare a valid declaration of compliance covering the articles in the first shipment because those articles did not meet the minimum 75 percent standard and because those articles cannot be included with the articles of the second shipment on the same declaration of compliance since they were entered in a different year. However, the CBTPA beneficiary country producer may prepare a valid declaration of compliance covering the articles in the second shipment because those articles did meet the requisite 85 percent standard which would apply for purposes of entry of articles in the following year.

Example 7. A producer in the second year begins production of articles exclusively for the U.S. market that meet the production standards specified in §10.223(a)(6), but the entered articles do not meet the requisite 85 percent standard until the third year; the entered articles fail to meet the 75 percent standard in the fourth year; and the entered articles do not attain the 85 percent standard until the sixth year. The producer's articles may not receive preferential treatment during the second year because there was no production (and thus there were no entered articles) in the immediately preceding (that is, first) year on which to assess compliance with the 75 percent standard. The producer's articles also may not receive preferential treatment during the third year because the 85 percent standard was not met in the immediately preceding (that is, second) year. However, the producer's articles are eligible for preferential treatment during the fourth year based on compliance with the 85 percent standard in the immediately preceding (that is, third) year. The producer's articles may not receive preferential treatment during the fifth year because the 75 percent standard was not met in the immediately preceding (that is, fourth) year. The producer's articles may not receive preferential treatment during the sixth year because the 85 percent standard has become applicable and was not met in the immediately preceding (that is, fifth) year. The producer's articles are eligible for preferential treatment during the seventh year because the 85 percent standard was met in the immediately preceding (that is, sixth) year, and during that seventh year the 75 percent standard is applicable for purposes of determining whether the producer's articles are eligible for preferential treatment in the following (that is, eighth) year.

Example 8. An entity controlling production (Entity A) uses five CBTPA beneficiary country producers (Producers 1–5), all of which produce only articles that meet the description in §10.223(a)(6); Producers 1–4 send all of their production to the United States and Producer 5 sends 10 percent of its production to the United States and the rest to Europe; Producers 1–3 and Producer 5 produce only pursuant to contracts with Entity A, but Producer 4 also operates independently of Entity A by producing for several U.S. importers, one of which is an entity controlling production (Entity B) that also controls all of the production of articles of one other producer (Producer 6) which sends all of its production to the United States. A declaration of compliance prepared by Entity A must cover all of the articles of Producers 1–3 and the 10 percent of articles of Producer 5 that are sent to the United States and that portion of the articles of Producer 4 that are produced pursuant to the contract with Entity A, because Entity A controls the production of those articles. There is no need for Producers 1–3 and Producer 5 to prepare a declaration of compliance because they have no production that is not covered by a declaration of compliance prepared by an entity controlling production. A declaration of compliance prepared by Producer 4 would cover all of its production, that is, articles produced for Entity A, articles produced for Entity B, and articles produced independently for other U.S. importers; a declaration of compliance prepared by Entity B must cover that portion of the production of Producer 4 that it controls as well as all of the production of Producer 6 because Entity B also controls all of the production of Producer 6. Producer 6 would not prepare a declaration of compliance because all of its production is covered by the declaration of compliance prepared by Entity B.

(c) *Documentation*—(1) *Initial declaration of compliance*. In order for an importer to comply with the requirement set forth in paragraph (b)(1)(iii) of this section, the producer or the entity controlling production must have filed with CBP, in accordance with paragraph (c)(4) of this section, a declaration of compliance with the applicable 75 or 85 percent requirement prescribed in paragraph (b)(1)(i) or (b)(1)(ii) of this section. After filing of the declaration of compliance has been completed, CBP will advise the producer or the entity controlling production of the distinct and unique identifier assigned to that declaration. The producer or the entity controlling production will then be responsible for advising each appropriate U.S. importer of that distinct and unique identifier for purposes of recording that identifier on the entry summary or warehouse withdrawal. In order to provide sufficient time for advising the U.S. importer of that distinct and unique identifier prior to the arrival of the articles in the United States, the producer or the entity controlling production should file the declaration of compliance with CBP at least 10 calendar days prior to the date of the first shipment of the articles to the United States.

(2) *Amended declaration of compliance*. If the information on the declaration of compliance referred to in paragraph (c)(1) of this section is based on an estimate because final year-end information was not available at that time and the final data differs from the estimate, or if the producer or the entity controlling production has reason to believe for any other reason that the declaration of compliance that was filed contained erroneous information, within 30 calendar days after the final year-end information becomes available or within 30 calendar days after the date of discovery of the error:

(i) The producer or the entity controlling production must file with the CBP office identified in paragraph (c)(4) of this section an amended declaration of compliance containing that final year-end information or other corrected information; or

(ii) If that final year-end information or other corrected information demonstrates noncompliance with the applicable 75 or 85 percent requirement, the producer or the entity controlling production must in writing advise both the CBP office identified in paragraph (c)(4) of this section and each appropriate U.S. importer of that fact.

(3) *Form and preparation of declaration of compliance*—(i) *Form*. The declaration of compliance referred to in paragraph (c)(1) of this section may be printed and reproduced locally and must be in the following format:

CARIBBEAN BASIN TRADE PARTNERSHIP ACT DECLARATION OF COMPLIANCE FOR BRASSIERES

[19 CFR 10.223(a)(6) and 10.228]

1. Year beginning date: October 1, _____.
Year ending date: September 30, _____.

Official U.S. Customs and Border Protection Use Only
Assigned number: _____
Assignment date: _____

2. Identity of preparer (producer or entity controlling production):
Full name and address:

Telephone number: _____
Facsimile number: _____
Importer identification number: _____

3. If the preparer is an entity controlling production, provide the following for each producer:
Full name and address:

Telephone number: _____
Facsimile number: _____

4. Aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of brassieres that were entered during the year: _____

5. Aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in brassieres that were entered during the year: _____

6. I declare that the aggregate cost of fabric (exclusive of all findings and trimmings) formed in the United States was at least 75 percent (or 85 percent, if applicable under 19 CFR 10.228(b)(1)(ii)) of the aggregate declared customs value of the fabric contained in brassieres entered during the year.

7. Authorized signature:

8. Name and title (print or type):

_____
Date:

(ii) *Preparation.* The following rules will apply for purposes of completing the declaration of compliance set forth in paragraph (c)(3)(i) of this section:

(A) In block 1, fill in the year commencing October 1 and ending September 30 of the calendar year during which the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was met;

(B) Block 2 should state the legal name and address (including country) of the preparer and should also include the preparer's importer identification number (see §24.5 of this chapter), if the preparer has one;

(C) Block 3 should state the legal name and address (including country) of the CBTPA beneficiary country producer if that producer is not already identified in block 2. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers;

(D) Blocks 4 and 5 apply only to articles that were entered during the year identified in block 1; and

(E) In block 7, the signature must be that of an authorized officer, employee, agent or other person having knowledge of the relevant facts and the date must be the date on which the declaration of compliance was completed and signed.

(4) *Filing of declaration of compliance.* The declaration of compliance referred to in paragraph (c)(1) of this section:

(i) Must be completed either in the English language or in the language of the country in which the articles covered by the declaration were produced. If the declaration is completed in a language other than English, the producer or the entity controlling production must provide to CBP upon request a written English translation of the declaration; and

(ii) Must be filed with the New York Strategic Trade Center, Customs and Border Protection, 1 Penn Plaza, New York, New York 10119.

(d) *Verification of declaration of compliance*—(1) *Verification procedure.* A declaration of compliance filed under this section will be subject to whatever verification CBP deems necessary. In the event that CBP for any reason is prevented from verifying the statements made on a declaration of compliance, CBP may deny any claim for preferential treatment made under §10.225 that is based on that declaration. A verification of a declaration of compliance may involve, but need not be limited to, a review of:

(i) All records required to be made, kept, and made available to CBP by the importer, the producer, the entity controlling production, or any other person under part 163 of this chapter;

(ii) Documentation and other information regarding all articles that meet the production standards specified in §10.223(a)(6) that were exported to the United States and that were entered during the year in question, whether or not a claim for preferential treatment was made under §10.225. Those records and other information include, but are not limited to, work orders and other production records, purchase orders, invoices, bills of lading and other shipping documents;

(iii) Evidence to document the cost of fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records;

(iv) Evidence to document the cost or value of all fabric other than fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records; and

(v) Accounting books and documents to verify the records and information referred to in paragraphs (d)(1)(ii) through (d)(1)(iv) of this section. The verification of purchase orders, invoices and bills of lading will be accomplished through the review of a distinct audit trail. The audit trail documents must consist of a cash disbursement or purchase journal or equivalent records to establish the purchase of the fabric. The headings in each of these journals or other records must contain the date, vendor name, and amount paid for the fabric. The verification of

production records and work orders will be accomplished through analysis of the inventory records of the producer or entity controlling production. The inventory records must reflect the production of the finished article which must be referenced to the original purchase order or lot number covering the fabric used in production. In the inventory production records, the inventory should show the opening balance of the inventory plus the purchases made during the accounting period and the inventory closing balance.

(2) *Notice of determination.* If, based on a verification of a declaration of compliance filed under this section, CBP determines that the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was not met, CBP will publish a notice of that determination in the FEDERAL REGISTER.

[CBP Dec. 04–40, 69 FR 69518, Nov. 30, 2004]

NON-TEXTILE ARTICLES UNDER THE UNITED STATES-CARIBBEAN BASIN TRADE PARTNERSHIP ACT

SOURCE: T.D. 00–68, 65 FR 59663, Oct. 5, 2000, unless otherwise noted.

§ 10.231 Applicability.

Title II of Public Law 106–200 (114 Stat. 251), entitled the United States-Caribbean Basin Trade Partnership Act (CBTPA), amended section 213(b) of the Caribbean Basin Economic Recovery Act (the CBERA, 19 U.S.C. 2701–2707) to authorize the President to extend additional trade benefits to countries that have been designated as beneficiary countries under the CBERA. Section 213(b)(3) of the CBERA (19 U.S.C. 2703(b)(3)) provides for special preferential tariff treatment of certain non-textile articles that are otherwise excluded from duty-free treatment under the CBERA. The provisions of §§ 10.231–10.237 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential tariff treatment pursuant to CBERA section 213(b)(3).

[T.D. 00–68, 65 FR 59663, Oct. 5, 2000; 65 FR 67263, Nov. 9, 2000]

§ 10.232 Definitions.

When used in §§ 10.231 through 10.237, the following terms have the meanings indicated:

CBERA. ''CBERA'' means the Caribbean Basin Economic Recovery Act, 19 U.S.C. 2701–2707.

CBTPA beneficiary country. ''CBTPA beneficiary country'' means a ''beneficiary country'' as defined in § 10.191(b)(1) for purposes of the CBERA which the President also has designated as a beneficiary country for purposes of preferential duty treatment of articles under 19 U.S.C. 2703(b)(3) and which has been the subject of a finding by the President or his designee, published in the FEDERAL REGISTER, that the beneficiary country has satisfied the requirements of 19 U.S.C. 2703(b)(4)(A)(ii).

CBTPA originating good. ''CBTPA originating good'' means a good that meets the rules of origin for a good as set forth in General Note 12, HTSUS, and in the appendix to part 181 of this chapter and as applied under § 10.233(b).

HTSUS. ''HTSUS'' means the Harmonized Tariff Schedule of the United States.

NAFTA. ''NAFTA'' means the North American Free Trade Agreement entered into by the United States, Canada, and Mexico on December 17, 1992.

Preferential tariff treatment. ''Preferential tariff treatment'' when used with reference to an imported article means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States with duty and other tariff treatment that is identical to the tariff treatment that would be accorded at that time under Annex 302.2 of the NAFTA to an imported article described in the same 8-digit subheading of the HTSUS that is a good of Mexico.

[T.D. 00–68, 65 FR 59663, Oct. 5, 2000; 65 FR 67264, Nov. 9, 2000]

§ 10.233 Articles eligible for preferential tariff treatment.

(a) *General.* The preferential tariff treatment referred to in § 10.231 applies to any of the following articles, provided that the article in question is a CBTPA originating good, is imported directly into the customs territory of

the United States from a CBTPA beneficiary country, and is not accorded duty-free treatment under U.S. Note 2(b), Subchapter II, Chapter 98, HTSUS (see §10.26):

(1) Footwear not designated on August 5, 1983, as eligible articles for the purpose of the Generalized System of Preferences under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461 through 2467);

(2) Tuna, prepared or preserved in any manner, in airtight containers;

(3) Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTSUS;

(4) Watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if those watches or watch parts contain any material which is the product of any country with respect to which HTSUS column 2 rates of duty apply; and

(5) Articles to which reduced rates of duty apply under §10.198a, except as otherwise provided in paragraph (c) of this section.

(b) *Application of NAFTA rules of origin.* In determining whether an article is a CBTPA originating good for purposes of paragraph (a) of this section, application of the provisions of General Note 12 of the HTSUS and the appendix to part 181 of this chapter will be subject to the following rules:

(1) No country other than the United States and a CBTPA beneficiary country may be treated as being a party to the NAFTA;

(2) Any reference to trade between the United States and Mexico will be deemed to refer to trade between the United States and a CBTPA beneficiary country;

(3) Any reference to a party will be deemed to refer to a CBTPA beneficiary country or the United States; and

(4) Any reference to parties will be deemed to refer to any combination of CBTPA beneficiary countries or to the United States and one or more CBTPA beneficiary countries (or any combination involving the United States and CBTPA beneficiary countries).

(c) *Duty reductions for leather-related articles.* If, after it is determined that an article described in paragraph (a)(5) of this section qualifies as a CBTPA originating good and is eligible for preferential tariff treatment under this section, it is determined that the article in question also would otherwise qualify for a reduced rate of duty under §10.198a and that reduced rate of duty is lower than the rate of duty that would apply under this section, that lower rate of duty will apply to the article for purposes of preferential tariff treatment under this section.

(d) *Imported directly defined.* For purposes of paragraph (a) of this section, the words ''imported directly'' mean:

(1) Direct shipment from any CBTPA beneficiary country to the United States without passing through the territory of any country that is not a CBTPA beneficiary country;

(2) If the shipment is from any CBTPA beneficiary country to the United States through the territory of any country that is not a CBTPA beneficiary country, the articles in the shipment do not enter into the commerce of any country that is not a CBTPA beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any CBTPA beneficiary country to the United States through the territory of any country that is not a CBTPA beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the Center director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

§ 10.234 Certificate of Origin.

A Certificate of Origin as specified in § 10.236 must be employed to certify that an article described in § 10.233(a)(1) through (5) being exported from a CBTPA beneficiary country to the United States qualifies for the preferential tariff treatment referred to in § 10.231. The Certificate of Origin must be prepared by the exporter in the CBTPA beneficiary country. Where the CBTPA beneficiary country exporter is not the producer of the article, that exporter may complete and sign a Certificate of Origin on the basis of:

(a) Its reasonable reliance on the producer's written representation that the article qualifies for preferential tariff treatment; or

(b) A completed and signed Certificate of Origin for the article voluntarily provided to the exporter by the producer.

§ 10.235 Filing of claim for preferential tariff treatment.

(a) *Declaration*. In connection with a claim for preferential tariff treatment for an article described in § 10.233(a)(1) through (5), the importer must make a written declaration that the article qualifies for that treatment. The written declaration should be made by including on the entry summary, or equivalent documentation, the symbol ''R'' as a prefix to the subheading of the HTSUS under which the article in question is classified. Except in any of the circumstances described in § 10.236(d)(1), the declaration required under this paragraph must be based on a complete and properly executed original Certificate of Origin that covers the article being imported and that is in the possession of the importer.

(b) *Corrected declaration*. If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to CBP, either at the port of entry or electronically.

§ 10.236 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records*. Each importer claiming preferential tariff treatment for an article under § 10.235 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include the original Certificate of Origin referred to in § 10.235(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate*. An importer who claims preferential tariff treatment on an article under § 10.235(a) must provide, at the request of the Center director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to CBP under this paragraph:

(1) Must be on CBP Form 450, including privately-printed copies of that Form, or, as an alternative to CBP Form 450, in an approved computerized format or other medium or format as is approved by the Office of International Trade, U.S. Customs and Border Protection, Washington, DC 20229. An alternative format must contain the same information and certification set forth on CBP Form 450;

(2) Must be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to Customs upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified period,

not to exceed 12 months, set out in the Certificate by the exporter.

(c) *Correction and nonacceptance of Certificate.* If the Center director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the Center director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required*—(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the Center director has in writing waived the requirement for a Certificate of Origin because the Center director is otherwise satisfied that the article qualifies for preferential tariff treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US$2,500, provided that, unless waived by the Center director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential tariff treatment under the CBTPA.

Check One:
( ) Producer
( ) Exporter
( ) Importer
( ) Agent

Name

Title

Address

Signature and Date

(2) *Exception.* If the Center director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§ 10.234 through 10.236, the Center director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential tariff treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential tariff treatment. For purposes of this paragraph, a ''series of importations'' means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

§ 10.237 Verification and justification of claim for preferential tariff treatment.

(a) *Verification by Customs.* A claim for preferential tariff treatment made under § 10.235, including any statements or other information contained on a Certificate of Origin submitted to Customs under § 10.236, will be subject to whatever verification the Center director deems necessary. In the event that the Center director for any reason is prevented from verifying the claim, the Center director may deny the claim for preferential tariff treatment. A verification of a claim for preferential tariff treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to Customs by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information in a CBTPA beneficiary country regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence in a CBTPA beneficiary country to document the use of U.S. materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements.* In order to make a claim for preferential tariff treatment under §10.235, the importer:

(1) Must have records that explain how the importer came to the conclusion that the article qualifies for preferential tariff treatment. Those records must include documents that support a claim that the article in question qualifies for preferential tariff treatment because it meets the applicable rule of origin set forth in General Note 12, HTSUS, and in the appendix to part 181 of this chapter. A properly completed Certificate of Origin in the form prescribed in §10.236(b) is a record that would serve this purpose;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificate of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the CBTPA beneficiary country to the United States. If the imported article was shipped through a country other than a CBTPA beneficiary country and the invoices and other documents from the CBTPA beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in §10.233(d)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from Customs, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this section justify the importer's claim for preferential tariff treatment.

Subpart F—Andean Trade Promotion and Drug Eradication Act

APPAREL AND OTHER TEXTILE ARTICLES UNDER THE ANDEAN TRADE PROMOTION AND DRUG ERADICATION ACT

SOURCE: Sections 10.241 through 10.248 issued by CBP Dec. 06–21, 71 FR 44574, Aug. 7, 2006, unless otherwise noted.

§ 10.241 Applicability.

Title XXXI of Public Law 107–210 (116 Stat. 933), entitled the Andean Trade Promotion and Drug Eradication Act (ATPDEA), amended sections 202, 203, 204, and 208 of the Andean Trade Preference Act (the ATPA, 19 U.S.C. 3201–3206) to authorize the President to extend additional trade benefits to countries that are designated as beneficiary countries under the ATPA. Section 204(b)(3) of the ATPA (19 U.S.C. 3203(b)(3)) provides for the preferential treatment of certain apparel and other textile articles from those ATPA beneficiary countries which the President designates as ATPDEA beneficiary countries. The provisions of §§10.241 through 10.248 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment pursuant to ATPA section 204(b)(3) and Subchapter XXI, Chapter 98, HTSUS.

§ 10.242 Definitions.

When used in §§10.241 through 10.248, the following terms have the meanings indicated:

Apparel articles. ''Apparel articles'' means goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99.15 and 6505.90 of the HTSUS.

Assembled or sewn or otherwise assembled in one or more ATPDEA beneficiary countries. ''Assembled'' and ''sewn or otherwise assembled'' when used in the context of production of an apparel or other textile article in one or more ATPDEA beneficiary countries has reference to a joining together of two or more components that occurred in one or more ATPDEA beneficiary countries, whether or not a prior joining operation was performed on the article or

any of its components in the United States.

ATPA. ''ATPA'' means the Andean Trade Preference Act, 19 U.S.C. 3201–3206.

ATPDEA beneficiary country. ''ATPDEA beneficiary country'' means a ''beneficiary country'' as defined in §10.202(a) for purposes of the ATPA which the President also has designated as a beneficiary country for purposes of preferential treatment of apparel and other textile articles under 19 U.S.C. 3203(b)(3) and which has been the subject of a determination by the President or his designee, published in the FEDERAL REGISTER, that the beneficiary country has satisfied the requirements of 19 U.S.C. 3203(b)(5)(A)(ii).

Chief value. ''Chief value'' when used with reference to llama, alpaca, and vicuña means that the value of those materials exceeds the value of any other single textile material in the fabric or component under consideration, with the value in each case determined by application of the principles set forth in §10.243(c)(1)(ii).

Cut in one or more ATPDEA beneficiary countries. ''Cut'' when used in the context of production of textile luggage in one or more ATPDEA beneficiary countries means that all fabric components used in the assembly of the article were cut from fabric in one or more ATPDEA beneficiary countries, or were cut from fabric in the United States and used in a partial assembly operation in the United States prior to cutting of fabric and assembly of the article in one or more ATPDEA beneficiary countries, or both.

Foreign origin. ''Foreign origin'' means, in the case of a finding or trimming of non-textile materials, that the finding or trimming is a product of a country other than the United States or a ATPDEA beneficiary country and, in the case of a finding, trimming, or interlining of textile materials, that the finding, trimming, or interlining does not meet all of the U.S. and ATPDEA beneficiary country production requirements for yarns, fabrics, and/or components specified under §10.243(a) for the article in which it is incorporated.

HTSUS. ''HTSUS''means the Harmonized Tariff Schedule of the United States.

Knit-to-Shape Components. ''Knit-to-shape,'' when used with reference to textile components, means components that are knitted or crocheted from a yarn directly to a specific shape, that is, the shape or form of the component as it is used in the apparel article, containing at least one self-start edge. Minor cutting or trimming will not affect the determination of whether a component is ''knit-to-shape.''

Luggage. ''Luggage'' means travel goods (such as trunks, hand trunks, lockers, valises, satchels, suitcases, wardrobe cases, overnight bags, pullman bags, gladstone bags, traveling bags, knapsacks, kitbags, haversacks, duffle bags, and like articles designed to contain clothing or other personal effects during travel) and brief cases, portfolios, school bags, photographic equipment bags, golf bags, camera cases, binocular cases, gun cases, occupational luggage cases (for example, physicians' cases, sample cases), and like containers and cases designed to be carried with the person. The term ''luggage'' does not include handbags (that is, pocketbooks, purses, shoulder bags, clutch bags, and all similar articles, by whatever name known, customarily carried by women or girls). The term ''luggage'' also does not include flat goods (that is, small flatware designed to be carried on the person, such as banknote cases, bill cases, billfolds, bill purses, bill rolls, card cases, change cases, cigarette cases, coin purses, coin holders, compacts, currency cases, key cases, letter cases, license cases, money cases, pass cases, passport cases, powder cases, spectacle cases, stamp cases, vanity cases, tobacco pouches, and similar articles).

NAFTA. ''NAFTA'' means the North American Free Trade Agreement entered into by the United States, Canada, and Mexico on December 17, 1992.

Preferential treatment. ''Preferential treatment'' means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels as provided in 19 U.S.C. 3203(b)(3).

Self-start edge. ''Self-start edge'' when used with reference to knit-to-shape components means a finished edge which is finished as the component comes off the knitting machine. Several components with finished edges may be linked by yarn or thread as they are produced from the knitting machine.

Wholly formed fabric components. ''Wholly formed,'' when used with reference to fabric components, means that all of the production processes, starting with the production of wholly formed fabric and ending with a component that is ready for incorporation into an apparel article, took place in a single country.

Wholly formed fabrics. ''Wholly formed,'' when used with reference to fabric(s), means that all of the production processes, starting with polymers, fibers, filaments, textile strips, yarns, twine, cordage, rope, or strips of fabric and ending with a fabric by a weaving, knitting, needling, tufting, felting, entangling or other process, took place in a single country.

Wholly formed yarns. ''Wholly formed,'' when used with reference to yarns, means that all of the production processes, starting with the extrusion of filament, strip, film, or sheet and including drawing to fully orient a filament or slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a yarn or plied yarn, took place in the United States or in one or more ATPDEA beneficiary countries.

§ 10.243 Articles eligible for preferential treatment.

(a) *General.* Subject to paragraphs (b) and (c) of this section, preferential treatment applies to the following apparel and other textile articles that are imported directly into the customs territory of the United States from an ATPDEA beneficiary country:

(1) Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries, or in the United States, or in both, exclusively from any one of the following:

(i) Fabrics or fabric components wholly formed, or components knit-to-shape, in the United States, from yarns wholly formed in the United States or in one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in the United States), provided that, if the apparel article is assembled from knitted or crocheted or woven wholly formed fabrics or from knitted or crocheted or woven wholly formed fabric components produced from fabric, all dyeing, printing, and finishing of that knitted or crocheted or woven fabric or component was carried out in the United States;

(ii) Fabrics or fabric components formed, or components knit-to-shape, in one or more ATPDEA beneficiary countries from yarns wholly formed in one or more ATPDEA beneficiary countries, if those fabrics (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries) or components are in chief value of llama, alpaca, and/or vicuña;

(iii) Fabrics or yarns, provided that apparel articles (except articles classifiable under subheading 6212.10 of the HTSUS) of those fabrics or yarns would be considered an originating good under General Note 12(t), HTSUS, if the apparel articles had been imported directly from Canada or Mexico; or

(iv) Fabrics or yarns that the President or his designee has designated in the FEDERAL REGISTER as fabrics or yarns that cannot be supplied by the domestic industry in commercial quantities in a timely manner;

(2) Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries, or in the United States, or in both, exclusively from a combination of fabrics, fabric components, knit-to-shape components or yarns described in two or more of paragraphs (a)(1)(i) through (a)(1)(iv) of this section;

(3) A handloomed, handmade, or folklore apparel or other textile article of an ATPDEA beneficiary country that the President or his designee and representatives of the ATPDEA beneficiary country mutually agree is a handloomed, handmade, or folklore article and that is certified as a

handloomed, handmade, or folklore article by the competent authority of the ATPDEA beneficiary country;

(4) Brassieres classifiable under subheading 6212.10 of the HTSUS, if both cut and sewn or otherwise assembled in the United States, or in one or more ATPDEA beneficiary countries, or in both, other than articles entered as articles described in paragraphs (a)(1) through (a)(3) and (a)(7) of this section, and provided that any applicable additional requirements set forth in § 10.248 are met;

(5) Textile luggage assembled in an ATPDEA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTSUS;

(6) Textile luggage assembled in one or more ATPDEA beneficiary countries from fabric cut in one or more ATPDEA beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States; and

(7) Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries from fabrics or from fabric components formed, or from components knit-to-shape, in one or more ATPDEA beneficiary countries from yarns wholly formed in the United States or in one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries), including apparel articles sewn or otherwise assembled in part but not exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (a)(1) of this section.

(b) *Dyeing, printing, finishing and other operations*—(1) *Dyeing, printing and finishing operations.* Dyeing, printing, and finishing operations may be performed on any yarn, fabric, or knit-to-shape or other component used in the production of any article described under paragraph (a) of this section without affecting the eligibility of the article for preferential treatment, provided that the operation is performed in the United States or in an ATPDEA beneficiary country and not in any other country and subject to the following additional conditions:

(i) In the case of an article described in paragraph (a)(1), (a)(2), or (a)(7) of this section that contains a knitted or crocheted or woven fabric, or a knitted or crocheted or woven fabric component produced from fabric, that was wholly formed in the United States from yarns wholly formed in the United States or in one or more ATPDEA beneficiary countries, as described in paragraph (a)(1)(i) of this section, any dyeing, printing, or finishing of that knitted or crocheted or woven fabric or component must have been carried out in the United States; and

(ii) In the case of assembled luggage described in paragraph (a)(5) of this section, an operation may be performed in an ATPDEA beneficiary country only if that operation is incidental to the assembly process within the meaning of § 10.16.

(2) *Other operations.* An article described under paragraph (a) of this section that is otherwise eligible for preferential treatment will not be disqualified from receiving that treatment by virtue of having undergone one or more operations such as embroidering, stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing or screen printing, provided that the operation is performed in the United States or in an ATPDEA beneficiary country and not in any other country. However, in the case of assembled luggage described in paragraph (a)(5) of this section, an operation may be performed in an ATPDEA beneficiary country without affecting the eligibility of the article for preferential treatment only if it is incidental to the assembly process within the meaning of § 10.16.

(c) *Special rules for certain component materials*—(1) *Foreign findings, trimmings, interlinings, and yarns*—(i) *General.* An article otherwise described under paragraph (a) of this section will not be ineligible for the preferential treatment referred to in § 10.241 because the article contains:

(A) Findings and trimmings of foreign origin, if the value of those findings and trimmings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section ''findings and trimmings'' include, but are not limited to, sewing thread, hooks and eyes, snaps, buttons, ''bow buds,'' decorative lace trim, elastic strips, zippers (including zipper tapes), and labels;

(B) Interlinings of foreign origin, if the value of those interlinings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section ''interlinings'' include only a chest type plate, a ''hymo'' piece, or ''sleeve header,'' of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments;

(C) Any combination of findings and trimmings of foreign origin and interlinings of foreign origin, if the total value of those findings and trimmings and interlinings does not exceed 25 percent of the cost of the components of the assembled article; or

(D) Yarns not wholly formed in the United States or in one or more ATPDEA beneficiary countries if the total weight of all those yarns is not more than 7 percent of the total weight of the article.

(ii) *''Cost'' and ''value'' defined.* The ''cost'' of components and the ''value'' of findings and trimmings or interlinings referred to in paragraph (c)(1)(i) of this section means:

(A) The ex-factory price of the components, findings and trimmings, or interlinings as set out in the invoice or other commercial documents, or, if the price is other than ex-factory, the price as set out in the invoice or other commercial documents adjusted to arrive at an ex-factory price; or

(B) If the price cannot be determined under paragraph (c)(1)(ii)(A) of this section or if CBP finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the components, findings and trimmings, or interlinings, including the cost or value of materials and general expenses, plus a reasonable amount for profit.

(iii) *Treatment of yarns as findings or trimmings.* If any yarns not wholly formed in the United States or one or more ATPDEA beneficiary countries are used in an article as a finding or trimming described in paragraph (c)(1)(i)(A) of this section, the yarns will be considered to be a finding or trimming for purposes of paragraph (c)(1)(i) of this section.

(2) *Special rule for nylon filament yarn.* An article otherwise described under paragraph (a)(1)(i) through (iii), (a)(2), or (a)(7) of this section will not be ineligible for the preferential treatment referred to in §10.241 because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable in subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTSUS and that is entered free of duty from Canada, Mexico, or Israel.

(d) *Imported directly defined.* For purposes of paragraph (a) of this section, the words ''imported directly'' mean:

(1) Direct shipment from any ATPDEA beneficiary country to the United States without passing through the territory of any country that is not an ATPDEA beneficiary country;

(2) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, the articles in the shipment do not enter into the commerce of any country that is not an ATPDEA beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for

the purpose of sale other than at retail, and the Center director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

§ 10.244 Certificate of Origin.

(a) *General.* A Certificate of Origin must be employed to certify that an apparel or other textile article being exported from an ATPDEA beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.241. The Certificate of Origin must be prepared in the ATPDEA beneficiary country by the producer or exporter or by the producer's or exporter's authorized agent in the format specified in paragraph (b) of this section. If the person preparing the Certificate of Origin is not the producer of the article, the person may complete and sign a Certificate of Origin on the basis of:

(1) The person's reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(2) A completed and signed Certificate of Origin for the article voluntarily provided to the person by the producer.

(b) *Form of Certificate.* The Certificate of Origin referred to in paragraph (a) of this section must be in the following format:

ANDEAN TRADE PROMOTION AND DRUG ERADICATION ACT TEXTILE CERTIFICATE OF ORIGIN

1. Exporter Name & Address:

2. Producer Name & Address:

3. Importer Name & Address:

4. Description of Article:

5. Preference Group:

Group ...	Each Description Below Is Only a Summary of the Cited CFR Provision.	19 CFR
A	Apparel assembled from U.S. formed, dyed, printed and finished fabrics or fabric components, or U.S. formed knit-to-shape components from U.S. or Andean yarns.	10.243(a)(1)(i).
B	Apparel assembled from Andean chief value llama, alpaca or vicuña fabrics, fabric components, or knit-to-shape components, from Andean yarns.	10.243(a)(1)(ii).
C	Apparel assembled from fabrics or yarns considered as being in short supply in the NAFTA.	10.243(a)(1)(iii).
D	Apparel assembled from fabrics or yarns designated as not available in commercial quantities in the United States.	10.243(a)(1)(iv).
E	Apparel assembled from a combination of two or more yarns, fabrics, fabric components, or knit-to-shape components described in preference groups A though D.	10.243(a)(2).
F	Handloomed, handmade, or folklore textile and apparel goods	10.243(a)(3).
G	Brassieres assembled in the U.S. and/or one or more Andean beneficiary countries.	10.243(a)(4).
H	Textile luggage assembled from U.S. formed fabrics from U.S. yarns.	10.243(a)(5)&(6).
I	Apparel assembled from Andean formed fabrics, fabric components, or knit-to-shape components from U.S. or Andean yarns, whether or not also assembled, in part, from yarns, fabrics and fabric components described in preference groups A through D.	10.243(a)(7).

6. U.S./Andean Fabric Producer Name & Address:

ANDEAN TRADE PROMOTION AND DRUG ERADICATION ACT TEXTILE CERTIFICATE OF ORIGIN—Continued

7. U.S./Andean Yarn Producer Name & Address:
8. Handloomed, Handmade, or Folklore Article:
9. Name of Short Supply Fabric or Yarn:
I certify that the information on this document is complete and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document. I agree to maintain, and present upon request, documentation necessary to support this certificate.
10. Authorized Signature:
11. Company:
12. Name: (Print or Type)
13. Title:
14. Date: (DD/MM/YY)
15. Blanket Period: From: To:
16. Telephone: Facsimile:

(c) *Preparation of Certificate.* The following rules will apply for purposes of completing the Certificate of Origin set forth in paragraph (b) of this section:

(1) Blocks 1 through 5 pertain only to the final article exported to the United States for which preferential treatment may be claimed;

(2) Block 1 should state the legal name and address (including country) of the exporter;

(3) Block 2 should state the legal name and address (including country) of the producer. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers. If this information is confidential, it is acceptable to state ''available to Customs and Border Protection (CBP) upon request'' in block 2. If the producer and the exporter are the same, state ''same'' in block 2;

(4) Block 3 should state the legal name and address (including country) of the importer;

(5) Block 4 should provide a full description of each article. The description should be sufficient to relate it to the invoice description and to the description of the article in the international Harmonized System. Include the invoice number as shown on the commercial invoice or, if the invoice number is not known, include another unique reference number such as the shipping order number;

(6) In block 5, insert the letter that designates the preference group which applies to the article according to the description contained in the CFR provision cited on the Certificate for that group;

(7) Blocks 6 through 9 must be completed only when the block in question calls for information that is relevant to the preference group identified in block 5;

(8) Block 6 should state the legal name and address (including country) of the fabric producer;

(9) Block 7 should state the legal name and address (including country) of the yarn producer;

(10) Block 8 should state the name of the folklore article or should state that the article is handloomed or handmade of handloomed fabric;

(11) Block 9 should be completed if the article described in block 4 incorporates a fabric or yarn described in preference group C or D and should state the name of the fabric or yarn that has been considered as being in short supply in the NAFTA or that has been designated as not available in commercial quantities in the United States. Block 9 also should be completed if preference group E or I applies to the article described in block 4 and the article incorporates a fabric or yarn described in preference group C or D;

(12) Block 10 must contain the signature of the producer or exporter or the producer's or exporter's authorized agent having knowledge of the relevant facts;

(13) Block 14 should reflect the date on which the Certificate was completed and signed;

(14) Block 15 should be completed if the Certificate is intended to cover multiple shipments of identical articles as described in block 4 that are imported into the United States during a specified period of up to one year (see §10.246(b)(4)(ii)). The ''from'' date is the date on which the Certificate became applicable to the article covered by the blanket Certificate (this date may be prior to the date reflected in block 14). The ''to'' date is the date on which the blanket period expires; and

(15) The Certificate may be printed and reproduced locally. If more space is needed to complete the Certificate, attach a continuation sheet.

§ 10.245 Filing of claim for preferential treatment.

(a) *Declaration.* In connection with a claim for preferential treatment for an apparel or other textile article described in §10.243, the importer must make a written declaration that the article qualifies for that treatment. The inclusion on the entry summary, or equivalent documentation, of the subheading within Chapter 98 of the HTSUS under which the article is classified will constitute the written declaration. Except in any of the circumstances described in §10.246(d)(1), the declaration required under this paragraph must be based on a Certificate of Origin that has been completed and properly executed in accordance with §10.244, that covers the article being imported, and that is in the possession of the importer.

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to CBP, either at the port of entry or electronically.

§ 10.246 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records.* Each importer claiming preferential treatment for an article under §10.245 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include a copy of the Certificate of Origin referred to in §10.245(a) and any other relevant documents or other records as specified in §163.1(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential treatment on an apparel or other textile article under §10.245(a) must provide, at the request of the Center director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to CBP under this paragraph:

(1) Must be in writing or must be transmitted electronically through any electronic data interchange system authorized by CBP for that purpose;

(2) If in writing, must be signed by the producer or exporter or the producer's or exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to

CBP upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified blanket period, not to exceed 12 months, set out in the Certificate by the exporter. For purposes of this paragraph and §10.244(c)(14), ''identical articles'' means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

(c) *Correction and nonacceptance of Certificate.* If the Center director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the Center director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required*—(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the Center director has in writing waived the requirement for a Certificate of Origin because the Center director is otherwise satisfied that the article qualifies for preferential treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US$2,500, provided that, unless waived by the Center director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential treatment under the ATPDEA.

Check One:
( ) Producer
( ) Exporter
( ) Importer
( ) Agent

Name

Title

Address

Signature and Date

(2) *Exception.* If the Center director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§10.244 through 10.246, the Center director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential treatment. For purposes of this paragraph, a ''series of importations'' means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

§10.247 Verification and justification of claim for preferential treatment.

(a) *Verification by CBP.* A claim for preferential treatment made under §10.245, including any statements or other information contained on a Certificate of Origin submitted to CBP under §10.246, will be subject to whatever verification the Center director deems necessary. In the event that the Center director for any reason is prevented from verifying the claim, the Center director may deny the claim for preferential treatment. A verification

of a claim for preferential treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to CBP by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence to document the use of U.S. or ATPDEA beneficiary country materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements.* In order to make a claim for preferential treatment under §10.245, the importer:

(1) Must have records that explain how the importer came to the conclusion that the apparel or other textile article qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it is specifically described in one of the provisions under §10.243(a). If the importer is claiming that the article incorporates fabric or yarn that was wholly formed in the United States or in an ATPDEA beneficiary country, the importer must have records that identify the producer of the fabric or yarn. A properly completed Certificate of Origin in the form set forth in §10.244(b) is a record that would serve these purposes;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificates of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the ATPDEA beneficiary country to the United States. If the imported article was shipped through a country other than an ATPDEA beneficiary country and the invoices and other documents from the ATPDEA beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in §10.243(d)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from CBP, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this section justify the importer's claim for preferential treatment.

§10.248 Additional requirements for preferential treatment of brassieres.

(a) *Definitions.* When used in this section, the following terms have the meanings indicated:

(1) *Producer.* ''Producer'' means an individual, corporation, partnership, association, or other entity or group that exercises direct, daily operational control over the production process in an ATPDEA beneficiary country.

(2) *Entity controlling production.* ''Entity controlling production'' means an individual, corporation, partnership, association, or other entity or group that is not a producer and that controls the production process in an ATPDEA beneficiary country through a contractual relationship or other indirect means.

(3) *Fabrics formed in the United States.* ''Fabrics formed in the United States'' means fabrics that were produced by a weaving, knitting, needling, tufting, felting, entangling or other fabric-making process performed in the United States.

(4) *Cost.* ''Cost'' when used with reference to fabrics formed in the United States means:

(i) The price of the fabrics when last purchased, f.o.b. port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(A) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price; or

(B) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the freight, insurance, packing, and other

costs incurred in transporting the fabrics to the place of production if included in that price; or

(ii) If the price cannot be determined under paragraph (a)(4)(i) of this section or if CBP finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the fabrics, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in forming the fabrics) and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabrics to the port of exportation.

(5) *Declared customs value.* ''Declared customs value'' when used with reference to fabric contained in an article means the sum of:

(i) The cost of fabrics formed in the United States that the producer or entity controlling production can verify; and

(ii) The cost of all other fabric contained in the article, exclusive of all findings and trimmings, determined as follows:

(A) In the case of fabric purchased by the producer or entity controlling production, the f.o.b. port of exportation price of the fabric as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price; or

(*2*) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price, but less the freight, insurance, packing, and other costs incurred in transporting the fabric to the place of production if included in that price;

(B) In the case of fabric for which the cost cannot be determined under paragraph (a)(5)(ii)(A) of this section or if CBP finds that cost to be unreasonable, all reasonable expenses incurred in the growth, production, or manufacture of the fabric, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in the growth, production, or manufacture of the fabric), general expenses and embroidering and dyeing, printing, and finishing expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric to the port of exportation;

(C) In the case of fabric components purchased by the producer or entity controlling production, the f.o.b. port of exportation price of those fabric components as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify; or

(*2*) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, and less the freight, insurance, packing, and other costs incurred in transporting the fabric components to the place of production if included in that price; and

(D) In the case of fabric components for which a fabric cost cannot be determined under paragraph (a)(5)(ii)(C) of this section or if CBP finds that cost to be unreasonable: All reasonable expenses incurred in the growth, production, or manufacture of the fabric components, including the cost or value of

materials (which does not include the cost of recoverable scrap generated in the growth, production, or manufacture of the fabric components) and general expenses, but excluding the cost or value of any non-textile materials, and excluding expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric components to the port of exportation.

(6) *Year*. ''Year'' means a 12-month period beginning on October 1 and ending on September 30 but does not include any 12-month period that began prior to October 1, 2002.

(7) *Entered*. ''Entered'' means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(b) *Limitations on preferential treatment*—(1) *General*. During the year that begins on October 1, 2003, and during any subsequent year, articles of a producer or an entity controlling production that conform to the production standards set forth in §10.243(a)(4) will be eligible for preferential treatment only if:

(i) The aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that are entered as articles described in §10.243(a)(4) during the immediately preceding year was at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production that are entered as articles described in §10.243(a)(4) during that year; or

(ii) In a case in which the 75 percent requirement set forth in paragraph (b)(1)(i) of this section was not met during a year and therefore those articles of that producer or that entity controlling production were not eligible for preferential treatment during the following year, the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that conform to the production standards set forth in §10.243(a)(4) and that were entered during the immediately preceding year was at least 85 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production that conform to the production standards set forth in §10.243(a)(4) and that were entered during that year; and

(iii) In conjunction with the filing of the claim for preferential treatment under §10.245, the importer records on the entry summary or warehouse withdrawal for consumption (CBP Form 7501, column 34), or its electronic equivalent, the distinct and unique identifier assigned by CBP to the applicable documentation prescribed under paragraph (c) of this section.

(2) *Rules of application*—(i) *General*. For purposes of paragraphs (b)(1)(i) and (b)(1)(ii) of this section and for purposes of preparing and filing the documentation prescribed in paragraph (c) of this section, the following rules will apply:

(A) The articles in question must have been produced in the manner specified in §10.243(a)(4) and the articles in question must be entered within the same year;

(B) Articles that are exported to countries other than the United States and are never entered are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(C) Articles that are entered under an HTSUS subheading other than the HTSUS subheading which pertains to articles described in §10.243(a)(4) are not to be considered in determining compliance with the 75 percent standard specified in paragraph (b)(1)(i) of this section;

(D) For purposes of determining compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section, all articles that conform to the production standards set forth in

§10.243(a)(4) must be considered, regardless of the HTSUS subheading under which they were entered;

(E) Fabric components and fabrics that constitute findings or trimmings are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(F) Beginning October 1, 2003, in order for articles to be eligible for preferential treatment in a given year, a producer of, or entity controlling production of, those articles must have met the 75 percent standard specified in paragraph (b)(1)(i) of this section during the immediately preceding year. If articles of a producer or entity controlling production fail to meet the 75 percent standard specified in paragraph (b)(1)(i) of this section during a year, articles of that producer or entity controlling production:

(*1*) Will not be eligible for preferential treatment during the following year;

(*2*) Will remain ineligible for preferential treatment until the year that follows a year in which articles of that producer or entity controlling production met the 85 percent standard specified in paragraph (b)(1)(ii) of this section; and

(*3*) After the 85 percent standard specified in paragraph (b)(1)(ii) of this section has been met, will again be subject to the 75 percent standard specified in paragraph (b)(1)(i) of this section during the following year for purposes of determining eligibility for preferential treatment in the next year.

(G) A new producer or new entity controlling production, that is, a producer or entity controlling production who did not produce or control production of articles that were entered as articles described in §10.243(a)(4) during the immediately preceding year, must first establish compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section as a prerequisite to preparation of the declaration of compliance referred to in paragraph (c) of this section;

(H) A declaration of compliance prepared by a producer or by an entity controlling production must cover all production of that producer or all production that the entity controls for the year in question;

(I) A producer would not prepare a declaration of compliance if all of its production is covered by a declaration of compliance prepared by an entity controlling production;

(J) In the case of a producer, the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section and the declaration of compliance procedure under paragraph (c) of this section apply to all articles of that producer for the year in question, even if some but not all of that production is also covered by a declaration of compliance prepared by an entity controlling production;

(K) The U.S. importer does not have to be the producer or the entity controlling production who prepared the declaration of compliance; and

(L) The exclusion references regarding findings and trimmings in paragraph (b)(1)(i) and paragraph (b)(1)(ii) of this section apply to all findings and trimmings, whether or not they are of foreign origin.

(ii) *Examples*. The following examples will illustrate application of the principles set forth in paragraph (b)(2)(i) of this section.

Example 1. An ATPDEA beneficiary country producer of articles that meet the production standards specified in §10.243(a)(4) in the first year sends 50 percent of that production to ATPDEA region markets and the other 50 percent to the U.S. market; the cost of the fabrics formed in the United States equals 100 percent of the value of all of the fabric in the articles sent to the ATPDEA region and 60 percent of the value of all of the fabric in the articles sent to the United States. Although the cost of fabrics formed in the United States is more than 75 percent of the value of all of the fabric used in all of the articles produced, this producer could not prepare a valid declaration of compliance because the articles sent to the United States did not meet the minimum 75 percent standard.

Example 2. A producer sends to the United States in the first year three shipments of articles that meet the description in §10.243(a)(4); one of those shipments is entered under the HTSUS subheading that covers articles described in §10.243(a)(4), the second shipment is entered under the HTSUS subheading that covers articles described in §10.243(a)(7), and the third shipment is entered under subheading 9802.00.80, HTSUS. In

determining whether the minimum 75 percent standard has been met in the first year for purposes of entry of articles under the HTSUS subheading that covers articles described in §10.243(a)(4) during the following (that is, second) year, consideration must be restricted to the articles in the first shipment and therefore must not include the articles in the second and third shipments.

Example 3. A producer in the second year begins production of articles that conform to the production standards specified in §10.243(a)(4); some of those articles are entered in that year under HTSUS subheading 6212.10 and others under HTSUS subheading 9802.00.80 but none are entered in that year under the HTSUS subheading which pertains to articles described in §10.243(a)(4) because the 75 percent standard had not been met in the preceding (that is, first) year. In this case the 85 percent standard applies, and all of the articles that were entered under the various HTSUS provisions in the second year must be taken into account in determining whether that 85 percent standard has been met. If the 85 percent was met in the aggregate for all of the articles entered in the second year, in the next (that is, third) year articles of that producer may receive preferential treatment under the HTSUS subheading which pertains to articles described in §10.243(a)(4).

Example 4. An entity controlling production of articles that meet the description in §10.243(a)(4) buys for the U.S., Canadian and Mexican markets; the articles in each case are first sent to the United States where they are entered for consumption and then placed in a commercial warehouse from which they are shipped to various stores in the United States, Canada and Mexico. Notwithstanding the fact that some of the articles ultimately ended up in Canada or Mexico, a declaration of compliance prepared by the entity controlling production must cover all of the articles rather than only those that remained in the United States because all of those articles had been entered for consumption.

Example 5. Fabric is cut and sewn in the United States with other U.S. materials to form cups which are joined together to form brassiere front subassemblies in the United States, and those front subassemblies are then placed in a warehouse in the United States where they are held until the following year; during that following year all of the front subassemblies are shipped to an ATPDEA beneficiary country where they are assembled with elastic strips for use as brassiere straps and labels produced in an Asian country and other fabrics, components or materials produced in the ATPDEA beneficiary country to form articles that meet the production standards specified in §10.243(a)(4) and that are then shipped to the United States and entered during that same year. In determining whether the entered articles meet the minimum 75 or 85 percent standard, the fabric in the labels is to be disregarded entirely because the labels constitute findings or trimmings for purposes of this section, and all of the fabric in the front subassemblies is countable because it was all formed in the United States and used in the production of articles that were entered in the same year.

Example 6. An ATPDEA beneficiary country producer's entire production of articles that meet the description in §10.243(a)(4) is sent to a U.S. importer in two separate shipments, one in February and the other in June of the same calendar year; the articles shipped in February do not meet the minimum 75 percent standard, the articles shipped in June exceed the 85 percent standard, and the articles in the two shipments, taken together, do meet the 75 percent standard; the articles covered by the February shipment are entered for consumption on March 1 of that calendar year, and the articles covered by the June shipment are placed in a CBP bonded warehouse upon arrival and are subsequently withdrawn from warehouse for consumption on November 1 of that calendar year. The ATPDEA beneficiary country producer may not prepare a valid declaration of compliance covering the articles in the first shipment because those articles did not meet the minimum 75 percent standard and because those articles cannot be included with the articles of the second shipment on the same declaration of compliance since they were entered in a different year. However, the ATPDEA beneficiary country producer may prepare a valid declaration of compliance covering the articles in the second shipment because those articles did meet the requisite 85 percent standard which would apply for purposes of entry of articles in the following year.

Example 7. A producer in the second year begins production of articles exclusively for the U.S. market that meet the production standards specified in §10.243(a)(4), but the entered articles do not meet the requisite 85 percent standard until the third year. The producer's articles may not receive preferential treatment during the second year because there was no production (and thus there were no entered articles) in the immediately preceding (that is, first) year on which to assess compliance with the 75 percent standard. The producer's articles also may not receive preferential treatment during the third year because the 85 percent standard was not met in the immediately preceding (that is, second) year. However, the producer's articles are eligible for preferential treatment during the fourth year based on compliance with the 85 percent standard in the immediately preceding (that is, third) year.

Example 8. An entity controlling production (Entity A) uses five ATPDEA beneficiary country producers (Producers 1–5), all of which produce only articles that meet the description in §10.243(a)(4); Producers 1–4 send all of their production to the United States and Producer 5 sends 10 percent of its production to the United States and the rest to Europe; Producers 1–3 and Producer 5 produce only pursuant to contracts with Entity A, but Producer 4 also operates independently of Entity A by producing for several U.S. importers, one of which is an entity controlling production (Entity B) that also controls all of the production of articles of one other producer (Producer 6) which sends all of its production to the United States. A declaration of compliance prepared by Entity A must cover all of the articles of Producers 1–3 and the 10 percent of articles of Producer 5 that are sent to the United States and that portion of the articles of Producer 4 that are produced pursuant to the contract with Entity A, because Entity A controls the production of those articles. There is no need for Producers 1–3 and Producer 5 to prepare a declaration of compliance because they have no production that is not covered by a declaration of compliance prepared by an entity controlling production. A declaration of compliance prepared by Producer 4 would cover all of its production, that is, articles produced for Entity A, articles produced for Entity B, and articles produced independently for other U.S. importers; a declaration of compliance prepared by Entity B must cover that portion of the production of Producer 4 that it controls as well as all of the production of Producer 6 because Entity B also controls all of the production of Producer 6. Producer 6 would not prepare a declaration of compliance because all of its production is covered by the declaration of compliance prepared by Entity B.

(c) *Documentation*—(1) *Initial declaration of compliance.* In order for an importer to comply with the requirement set forth in paragraph (b)(1)(iii) of this section, the producer or the entity controlling production must have filed with CBP, in accordance with paragraph (c)(4) of this section, a declaration of compliance with the applicable 75 or 85 percent requirement prescribed in paragraph (b)(1)(i) or (b)(1)(ii) of this section. After filing of the declaration of compliance has been completed, CBP will advise the producer or the entity controlling production of the distinct and unique identifier assigned to that declaration. The producer or the entity controlling production will then be responsible for advising each appropriate U.S. importer of that distinct and unique identifier for purposes of recording that identifier on the entry summary or warehouse withdrawal. In order to provide sufficient time for advising the U.S. importer of that distinct and unique identifier prior to the arrival of the articles in the United States, the producer or the entity controlling production should file the declaration of compliance with CBP at least 10 calendar days prior to the date of the first shipment of the articles to the United States.

(2) *Amended declaration of compliance.* If the information on the declaration of compliance referred to in paragraph (c)(1) of this section is based on an estimate because final year-end information was not available at that time and the final data differs from the estimate, or if the producer or the entity controlling production has reason to believe for any other reason that the declaration of compliance that was filed contained erroneous information, within 30 calendar days after the final year-end information becomes available or within 30 calendar days after the date of discovery of the error:

(i) The producer or the entity controlling production must file with the CBP office identified in paragraph (c)(4) of this section an amended declaration of compliance containing that final year-end information or other corrected information; or

(ii) If that final year-end information or other corrected information demonstrates noncompliance with the applicable 75 or 85 percent requirement, the producer or the entity controlling production must in writing advise both the CBP office identified in paragraph (c)(4) of this section and each appropriate U.S. importer of that fact.

(3) *Form and preparation of declaration of compliance*—(i) *Form.* The declaration of compliance referred to in paragraph (c)(1) of this section may be printed and reproduced locally and must be in the following format:

ANDEAN TRADE PROMOTION AND DRUG ERADICATION ACT DECLARATION OF COMPLIANCE FOR BRASSIERES

[19 CFR 10.243(a)(4) and 10.248]

1. Year beginning date: October 1, _____ Year ending date: September 30, _____	Official U.S. CBP Use Only Assigned number: _____ Assignment date: _____
2. Identity of preparer (producer or entity controlling production): Full name and address:	Telephone number: _____ Facsimile number: _____ Importer identification number: _____
3. If the preparer is an entity controlling production, provide the following for each producer:	
Full name and address: _____	Telephone number: _____ Facsimile number: _____
4. Aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of brassieres that were entered during the year: _____	
5. Aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in brassieres that were entered during the year: _____	
6. I declare that the aggregate cost of fabric (exclusive of all findings and trimmings) formed in the United States was at least 75 percent (or 85 percent, if applicable under 19 CFR 10.248(b)(1)(ii)) of the aggregate declared customs value of the fabric contained in brassieres entered during the year.	
7. Authorized signature: _____	8. Name and title (print or type): _____
Date:	

(ii) *Preparation*. The following rules will apply for purposes of completing the declaration of compliance set forth in paragraph (c)(3)(i) of this section:

(A) In block 1, fill in the year commencing October 1 and ending September 30 of the calendar year during which the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was met;

(B) Block 2 should state the legal name and address (including country) of the preparer and should also include the preparer's importer identification number (see §24.5 of this chapter), if the preparer has one;

(C) Block 3 should state the legal name and address (including country) of the ATPDEA beneficiary country producer if that producer is not already identified in block 2. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers;

(D) Blocks 4 and 5 apply only to articles that were entered during the year identified in block 1; and

(E) In block 7, the signature must be that of an authorized officer, employee, agent or other person having knowledge of the relevant facts and the date must be the date on which the declaration of compliance was completed and signed.

(4) *Filing of declaration of compliance*. The declaration of compliance referred to in paragraph (c)(1) of this section:

(i) Must be completed either in the English language or in the language of the country in which the articles covered by the declaration were produced. If the declaration is completed in a

language other than English, the producer or the entity controlling production must provide to CBP upon request a written English translation of the declaration; and

(ii) Must be filed with the New York Strategic Trade Center, Customs and Border Protection, 1 Penn Plaza, New York, New York 10119.

(d) *Verification of declaration of compliance*—(1) *Verification procedure*. A declaration of compliance filed under this section will be subject to whatever verification CBP deems necessary. In the event that CBP for any reason is prevented from verifying the statements made on a declaration of compliance, CBP may deny any claim for preferential treatment made under §10.245 that is based on that declaration. A verification of a declaration of compliance may involve, but need not be limited to, a review of:

(i) All records required to be made, kept, and made available to CBP by the importer, the producer, the entity controlling production, or any other person under part 163 of this chapter;

(ii) Documentation and other information regarding all articles that meet the production standards specified in §10.243(a)(4) that were exported to the United States and that were entered during the year in question, whether or not a claim for preferential treatment was made under §10.245. Those records and other information include, but are not limited to, work orders and other production records, purchase orders, invoices, bills of lading and other shipping documents;

(iii) Evidence to document the cost of fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records;

(iv) Evidence to document the cost or value of all fabric other than fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records; and

(v) Accounting books and documents to verify the records and information referred to in paragraphs (d)(1)(ii) through (d)(1)(iv) of this section. The verification of purchase orders, invoices and bills of lading will be accomplished through the review of a distinct audit trail. The audit trail documents must consist of a cash disbursement or purchase journal or equivalent records to establish the purchase of the fabric. The headings in each of these journals or other records must contain the date, vendor name, and amount paid for the fabric. The verification of production records and work orders will be accomplished through analysis of the inventory records of the producer or entity controlling production. The inventory records must reflect the production of the finished article which must be referenced to the original purchase order or lot number covering the fabric used in production. In the inventory production records, the inventory should show the opening balance of the inventory plus the purchases made during the accounting period and the inventory closing balance.

(2) *Notice of determination*. If, based on a verification of a declaration of compliance filed under this section, CBP determines that the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was not met, CBP will publish a notice of that determination in the FEDERAL REGISTER.

EXTENSION OF ATPA BENEFITS TO TUNA AND CERTAIN OTHER NON-TEXTILE ARTICLES

SOURCE: Sections 10.251 through 10.257 issued by T.D. 03–16, 68 FR 14497, Mar. 25, 2003; 68 FR 67349, Dec. 1, 2003, unless otherwise noted.

§10.251 Applicability.

Title XXXI of Public Law 107–210 (116 Stat. 933), entitled the Andean Trade Promotion and Drug Eradication Act (ATPDEA), amended sections 202, 203, 204, and 208 of the Andean Trade Preference Act (the ATPA, 19 U.S.C. 3201–3206) to authorize the President to extend additional trade benefits to ATPA beneficiary countries that have been

designated as ATPDEA beneficiary countries. Sections 204(b)(1) and (b)(4) of the ATPA (19 U.S.C. 3203(b)(1) and (b)(4)) provide for the preferential treatment of certain non-textile articles that were not entitled to duty-free treatment under the ATPA prior to enactment of the ATPDEA. The provisions of §§10.251–10.257 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment pursuant to ATPA sections 204(b)(1) and (b)(4).

§ 10.252 Definitions.

When used in §§10.251 through 10.257, the following terms have the meanings indicated:

ATPA. ''ATPA'' means the Andean Trade Preference Act, 19 U.S.C. 3201–3206.

ATPDEA beneficiary country. ''ATPDEA beneficiary country'' means a ''beneficiary country'' as defined in §10.202(a) for purposes of the ATPA which the President also has designated as a beneficiary country for purposes of preferential treatment of products under 19 U.S.C. 3203(b)(1) and (b)(4) and which has been the subject of a finding by the President or his designee, published in the FEDERAL REGISTER, that the beneficiary country has satisfied the requirements of 19 U.S.C. 3203(b)(5)(A)(ii).

ATPDEA beneficiary country vessel. ''ATPDEA beneficiary country vessel'' means a vessel:

(a) Which is registered or recorded in an ATPDEA beneficiary country;

(b) Which sails under the flag of an ATPDEA beneficiary country;

(c) Which is at least 75 percent owned by nationals of an ATPDEA beneficiary country or by a company having its principal place of business in an ATPDEA beneficiary country, of which the manager or managers, chairman of the board of directors or of the supervisory board, and the majority of the members of those boards are nationals of an ATPDEA beneficiary country and of which, in the case of a company, at least 50 percent of the capital is owned by an ATPDEA beneficiary country or by public bodies or nationals of an ATPDEA beneficiary country;

(d) Of which the master and officers are nationals of an ATPDEA beneficiary country; and

(e) Of which at least 75 percent of the crew are nationals of an ATPDEA beneficiary country.

HTSUS. ''HTSUS'' means the Harmonized Tariff Schedule of the United States.

Preferential treatment. ''Preferential treatment'' means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States free of duty and free of any quantitative restrictions in the case of tuna described in §10.253(a)(1) and free of duty in the case of any article described in §10.253(a)(2).

United States vessel. ''United States vessel'' means either: a vessel having a certificate of documentation with a fishery endorsement under chapter 121 of title 46 of the United States Code; or a vessel that is documented under the laws of the United States and for which a license has been issued pursuant to section 9 of the South Pacific Tuna Act of 1988.

[T.D. 03–16, 68 FR 14497, Mar. 25, 2003; 68 FR 67349, Dec. 1, 2003, as amended by CBP Dec. 06–21, 71 FR 44583, Aug. 7, 2006]

§ 10.253 Articles eligible for preferential treatment.

(a) *General.* Preferential treatment applies to any of the following articles, provided that the article in question is imported directly into the customs territory of the United States from an ATPDEA beneficiary country within the meaning of paragraph (b) of this section:

(1) Tuna that is harvested by United States vessels or ATPDEA beneficiary country vessels, that is prepared or preserved in any manner, in an ATPDEA beneficiary country, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kilograms each; and

(2) Any of the following articles that the President has determined are not import-sensitive in the context of imports from ATPDEA beneficiary countries, provided that the article in question meets the country of origin and value content requirements set forth in paragraphs (c) and (d) of this section:

(i) Footwear not designated on December 4, 1991, as eligible articles for the purpose of the Generalized System of Preferences (GSP) under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461 through 2467);

(ii) Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTSUS;

(iii) Watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if those watches or watch parts contain any material which is the product of any country with respect to which HTSUS column 2 rates of duty apply; and

(iv) Handbags, luggage, flat goods, work gloves, and leather wearing apparel that were not designated on August 5, 1983, as eligible articles for purposes of the GSP.

(b) *Imported directly defined.* For purposes of paragraph (a) of this section, the words ''imported directly'' mean:

(1) Direct shipment from any ATPDEA beneficiary country to the United States without passing through the territory of any country that is not an ATPDEA beneficiary country;

(2) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, the articles in the shipment do not enter into the commerce of any country that is not an ATPDEA beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the Center director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

(c) *Country of origin criteria*—(1) *General.* Except as otherwise provided in paragraph (c)(2) of this section, an article described in paragraph (a)(2) of this section may be eligible for preferential treatment if the article is either:

(i) Wholly the growth, product, or manufacture of an ATPDEA beneficiary country; or

(ii) A new or different article of commerce which has been grown, produced, or manufactured in an ATPDEA beneficiary country.

(2) *Exceptions.* No article will be eligible for preferential treatment by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. The principles and examples set forth in §10.195(a)(2) will apply equally for purposes of this paragraph.

(d) *Value content requirement*—(1) *General.* An article may be eligible for preferential treatment only if the sum of the cost or value of the materials produced in an ATPDEA beneficiary country or countries, plus the direct costs of processing operations performed in an ATPDEA beneficiary country or countries, is not less than 35 percent of the appraised value of the article at the time it is entered.

(2) *Commonwealth of Puerto Rico, U.S. Virgin Islands and CBI beneficiary countries.* For the specific purpose of determining the percentage referred to in paragraph (d)(1) of this section, the term ''ATPDEA beneficiary country'' includes the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country as defined in §10.191(b)(1). Any cost or value of materials or direct costs of processing operations attributable to the Virgin Islands or any CBI beneficiary country must be included in the article prior to its final exportation to the United

States from an ATPDEA beneficiary country as defined in §10.252.

(3) *Materials produced in the United States.* For purposes of determining the percentage referred to in paragraph (d)(1) of this section, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico). The principles set forth in paragraph (d)(4)(i) of this section will apply in determining whether a material is ''produced in the customs territory of the United States'' for purposes of this paragraph.

(4) *Cost or value of materials*—(i) *''Materials produced in an ATPDEA beneficiary country or countries'' defined.* For purposes of paragraph (d)(1) of this section, the words ''materials produced in an ATPDEA beneficiary country or countries'' refer to those materials incorporated in an article which are either:

(A) Wholly the growth, product, or manufacture of an ATPDEA beneficiary country or two or more ATPDEA beneficiary countries; or

(B) Substantially transformed in any ATPDEA beneficiary country or two or more ATPDEA beneficiary countries into a new or different article of commerce which is then used in any ATPDEA beneficiary country as defined in §10.252 in the production or manufacture of a new or different article which is imported directly into the United States. For purposes of this paragraph (d)(4)(i)(B), no material will be considered to be substantially transformed into a new or different article of commerce by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. The examples set forth in §10.196(a), and the principles and examples set forth in §10.195(a)(2), will apply for purposes of the corresponding context under paragraph (d)(4)(i) of this section.

(ii) *Failure to establish origin.* If the importer fails to maintain adequate records to establish the origin of a material, that material may not be considered to have been grown, produced, or manufactured in an ATPDEA beneficiary country or in the customs territory of the United States for purposes of determining the percentage referred to in paragraph (d)(1) of this section.

(iii) *Determination of cost or value of materials.* (A) The cost or value of materials produced in an ATPDEA beneficiary country or countries or in the customs territory of the United States includes:

(*1*) The manufacturer's actual cost for the materials;

(*2*) When not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;

(*3*) The actual cost of waste or spoilage, less the value of recoverable scrap; and

(*4*) Taxes and/or duties imposed on the materials by any ATPDEA beneficiary country or by the United States, provided they are not remitted upon exportation.

(B) Where a material is provided to the manufacturer without charge, or at less than fair market value, its cost or value will be determined by computing the sum of:

(*1*) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(*2*) An amount for profit; and

(*3*) Freight, insurance, packing, and all other costs incurred in transporting the material to the manufacturer's plant.

(5) *Direct costs of processing operations*—(i) *Items included.* For purposes of paragraph (d)(1) of this section, the words ''direct costs of processing operations'' mean those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific merchandise under consideration. Those costs include, but are not limited to the following, to the extent that they are includable in the appraised value of the imported merchandise:

(A) All actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(B) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise;

(C) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific merchandise; and

(D) Costs of inspecting and testing the specific merchandise.

(ii) *Items not included.* For purposes of paragraph (d)(1) of this section, the words ''direct costs of processing operations'' do not include items which are not directly attributable to the merchandise under consideration or are not costs of manufacturing the product. These include, but are not limited to:

(A) Profit; and

(B) General expenses of doing business which either are not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

(6) *Articles wholly the growth, product, or manufacture of an ATPDEA beneficiary country.* Any article which is wholly the growth, product, or manufacture of an ATPDEA beneficiary country as defined in §10.252, and any article produced or manufactured in an ATPDEA beneficiary country as defined in §10.252 exclusively from materials which are wholly the growth, product, or manufacture of an ATPDEA beneficiary country or countries, will normally be presumed to meet the requirement set forth in paragraph (d)(1) of this section.

§10.254 Certificate of Origin.

A Certificate of Origin as specified in §10.256 must be employed to certify that an article described in §10.253(a) being exported from an ATPDEA beneficiary country to the United States qualifies for the preferential treatment referred to in §10.251. The Certificate of Origin must be prepared in the ATPDEA beneficiary country by the producer or exporter or by the producer's or exporter's authorized agent. If the person preparing the Certificate of Origin is not the producer of the article, the person may complete and sign a Certificate on the basis of:

(a) The person's reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(b) A completed and signed Certificate of Origin for the article voluntarily provided to the person by the producer.

[CBP Dec. 06–21, 71 FR 44583, Aug. 7, 2006]

§10.255 Filing of claim for preferential treatment.

(a) *Declaration.* In connection with a claim for preferential treatment for an article described in §10.253(a), the importer must make a written declaration that the article qualifies for that treatment. The written declaration should be made by including on the entry summary, or equivalent documentation, the symbol ''J + '' as a prefix to the subheading of the HTSUS in which the article in question is classified. Except in any of the circumstances described in §10.256(d)(1), the declaration required under this paragraph must be based on a complete and properly executed original Certificate of Origin that covers the article being imported and that is in the possession of the importer.

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the Customs port where the declaration was originally filed.

§ 10.256 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records.* Each importer claiming preferential treatment for an article under § 10.255 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include the original Certificate of Origin referred to in § 10.255(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential treatment on an article under § 10.255(a) must provide, at the request of the Center director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to Customs under this paragraph:

(1) Must be on CBP Form 449, including privately-printed copies of that Form, or, as an alternative to CBP Form 449, in an approved computerized format or other medium or format as is approved by the Office of International Trade, U.S. Customs and Border Protection, Washington, DC 20229. An alternative format must contain the same information and certification set forth on CBP Form 449;

(2) Must be signed by the producer or exporter or by the producer's or exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to Customs upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified blanket period, not to exceed 12 months, set out in the Certificate by the exporter. For purposes of this paragraph, ''identical articles'' means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

(c) *Correction and nonacceptance of Certificate.* If the Center director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the Center director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required*—(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the Center director has in writing waived the requirement for a Certificate of Origin because the Center director is otherwise satisfied that the article qualifies for preferential treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US$2,500, provided that, unless waived by the Center director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential tariff treatment under the ATPDEA.

Check One:

( ) Producer
( ) Exporter
( ) Importer
( ) Agent

Name

Title

Address

Signature and Date

(2) *Exception.* If the Center director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§ 10.254 through 10.256, the Center director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential treatment. For purposes of this paragraph, a ''series of importations'' means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

[T.D. 03–16, 68 FR 14497, Mar. 25, 2003; 68 FR 67349, Dec. 1, 2003, as amended by CBP Dec. 06–21, 71 FR 44583, Aug. 7, 2006]

§ 10.257 Verification and justification of claim for preferential treatment.

(a) *Verification by Customs.* A claim for preferential treatment made under § 10.255, including any statements or other information contained on a Certificate of Origin submitted to Customs under § 10.256, will be subject to whatever verification the Center director deems necessary. In the event that the Center director for any reason is prevented from verifying the claim, the Center director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to Customs by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence to document the use of U.S. or ATPDEA beneficiary country materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements.* In order to make a claim for preferential treatment under § 10.255, the importer:

(1) Must have records that explain how the importer came to the conclusion that the article qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it meets the country of origin and value content requirements set forth in § 10.253(c) and (d). A properly completed Certificate of Origin in the form prescribed in § 10.254(b) is a record that would serve this purpose;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificate of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the ATPDEA beneficiary country to the United States. If the imported article was shipped through a country other than an ATPDEA beneficiary country and the invoices and other documents from the ATPDEA beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.253(b)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from Customs, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this section justify the importer's claim for preferential treatment.

Subpart G—United States-Canada Free Trade Agreement

SOURCE: Sections 10.301 through 10.311 issued by T.D. 89–3, 53 FR 51766, Dec. 23, 1988, unless otherwise noted.

§ 10.301 Scope and applicability.

The provisions of §§ 10.302 through 10.311 of this part relate to the procedures for obtaining duty preferences on imported goods under the United States-Canada Free-Trade Agreement (the Agreement) entered into on January 2, 1988, and the United States-Canada Free-Trade Agreement Implementation Act of 1988 (102 Stat. 1851). The United States and Canada agreed to suspend operation of the Agreement with effect from January 1, 1994, to coincide with the entry into force of the North American Free Trade Agreement (see part 181 of this chapter) and, accordingly, the provisions of §§ 10.302 through 10.311 of this part apply only to goods imported from Canada that were entered for consumption, or withdrawn from warehouse for consumption, during the period January 1, 1989, through December 31, 1993. In situations involving goods subject to bilateral restrictions or prohibitions, or country of origin marking, other criteria for determining origin may be applicable pursuant to Article 407 of the Agreement.

[T.D. 96–35, 61 FR 19835, May 3, 1996]

§ 10.302 Eligibility criteria in general.

Subject to the more specific explanations of the criteria in §§ 10.303 and 10.305 of this part, goods classifiable under an HTSUS heading or subheading for which the symbol ''CA'' appears in the ''special'' column are eligible for a preference if:

(a) *Originating goods.* The goods originate in Canada or the United States, or both, and

(b) *Direct shipment required.* Except as provided in § 10.306(b), are directly shipped to the United States from Canada.

§ 10.303 Originating goods.

(a) *General.* For purposes of eligibility for a preference under the Agreement, goods may be regarded as originating goods if:

(1) *Wholly of Canadian or United States origin.* The goods are wholly obtained or produced in the Territory of Canada or the United States, or both, as set forth in General Note 3(c), HTSUS;

(2) *Transformed with a change in classification.* The goods have been transformed by a processing which results in a change in classification and, if required, a sufficient value-content, as set forth in General Note 3(c), HTSUS; or

(3) *Transformed without a change in classification.* An assembly of goods, other than goods of chapters 61 to 63 of the HTSUS, which does not result in a change in classification because the goods were imported in an unassembled or disassembled form and classified as the goods, unassembled or disassembled, pursuant to General Rule of Interpretation 2(a), HTSUS, or because the tariff subheading for the goods provides for both the goods themselves and their parts, shall nonetheless be treated as originating goods if:

(i) The value of originating materials and the direct cost of assembling in Canada or the United States, or both, as defined in § 10.305 constitute not less than 50 percent of the value of the goods when exported to the United States;

(ii) The assembled goods are not subsequently processed or further assembled in a third country; and

(iii) The goods satisfy the requirement in § 10.306.

(b) *Originating materials.* For purposes of this section and § 10.305, the term ''materials'' means goods, other than those included as part of the direct cost of processing or assembling, used or consumed in the production of other goods, and the term ''orginating'' when used with reference to such materials means that the materials satisfy one of the criteria for originating goods set forth in paragraph (a) of this section.

(c) *Change in classification.* For purposes of paragraph (a) of this section, the expression ''change in classification'' means a change of classification within the Harmonized Commodity Description and Coding System (Harmonized System) as published and

amended from time to time by the Customs Cooperation Council.

(d) *Articles of feather.* The goods are eligible to be treated as originating in Canada pursuant to General Note 3(c)(vii)(R)(12)(ee), HTSUS.

[T.D. 92–8, 57 FR 2453, Jan. 22, 1992]

§ 10.304 Exclusions.

(a) *Changes based on simple processing.* No goods shall be considered originating for purposes of eligibility under the Agreement if they have merely undergone simple packaging or simple combining operations, or have undergone mere dilution with water or with another substance that does not materially alter the characteristics of the goods.

(b) *Other excluded processing.* No goods shall be considered to be originating merely by virtue of having undergone any process or work in which the facts clearly justify the presumption that the sole object was to circumvent the provisions of Chapter 3 of the Agreement.

§ 10.305 Value content requirement.

(a) *Direct cost of processing or assembling*—(1) *Definition.* For purposes of applying a specific rule of origin under the Agreement which requires a value content determination, the terms ''direct cost of processing'' and ''direct cost of assembling'' mean the costs directly incurred in, or that can be reasonably allocated to, the production of goods, including:

(i) The cost of all labor, including benefits and on-the-job training, labor provided in connection with supervision, quality control, shipping, receiving, storage, packaging, management at the location of the process or assembly, and other like labor, whether provided by employees or independent contractors;

(ii) The cost of inspecting and testing the goods;

(iii) The cost of energy, fuel, dies, molds, tooling, and the depreciation and maintenance of machinery and equipment, without regard to whether they originate within the territory of the United States or Canada;

(iv) Development, design, and engineering costs;

(v) Rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, taxes and the cost of utilities for real property used in the production of the goods; and

(vi) Royalty, licensing, or other like payments for the right to the goods.

(2) *Exclusions from direct costs of processing or assembling.* Excluded from the direct costs of processing or assembling are:

(i) Costs relating to the general expense of doing business, such as the cost of providing executive, financial, sales, advertising, marketing, accounting and legal services, and insurance;

(ii) Brokerage charges relating to the importation and exportation of goods;

(iii) Costs for telephone, mail, and other means of communication;

(iv) Packing costs for exporting the goods;

(v) Royalty payments related to a licensing agreement to distribute or sell the goods;

(vi) Rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, taxes, and the cost of utilities for real property used by personnel charged with administrative functions; and

(vii) Profit on the goods.

(3) *Interpretation*—(i) *Indirect materials.* Under the definition of ''materials'' set forth in §10.303(b), certain types of materials are treated as direct costs of processing or assembling under paragraph (a) of this section. This applies principally to materials used or consumed indirectly in the production of exported goods, where no portion of those materials is physically incorporated in the exported goods. In addition to the items specified in paragraph (a)(1)(iii) of this section, such materials include items such as gloves and safety glasses worn by production workers, tape used in painting processes, and tools, materials and spare parts used in the repair and maintenance of machinery and equipment used in the production of the exported goods. Such materials are to be distinguished from waste and spoilage specified in paragraph (b)(1)(ii)(C) of this section, which relate to materials that are physically incorporated in the exported goods.

(ii) *Directly incurred.* In order for costs incurred by a production facility to be treated as direct costs of processing or assembling, those costs must be directly incurred in the production of the exported goods and not merely associated with the production facility as peripheral costs necessary to operate the facility. In addition to the exclusions set forth in paragraph (a)(2) of this section, such peripheral costs include labor costs for nurses tending to employees, for accounting personnel involved in physical inventory taking, for personnel responsible for purchasing or requisitioning materials to be used or consumed in the production process, and for second level supervisors and above who are not directly involved in the production process.

(iii) *Labor costs.* Under paragraph (a)(1)(i) of this section, labor costs includable as direct costs of processing or assembling are limited to labor provided by the producer's employees or by independent contractors. Thus, for example, where processing operations are performed on components in the United States and those components are sold to a manufacturer in Canada where they are incorporated in goods exported to the United States, the cost of those processing operations in the United States cannot be separately counted as a direct cost of processing attributable to the finished goods exported to the United States.

(iv) *Interest expense. Bona fide* interest payments on debt of any form, secured or unsecured, undertaken on arm's length terms in the ordinary course of business to finance the acquisition of fixed assets such as real property, a plant, and/or equipment used in the production of goods in the territory of Canada or the U.S. are includable in the direct cost of processing or direct cost of assembling. Interest will be treated as a direct cost of processing or assembling, but only that portion of the interest which is related to a fixed asset directly used in the production of the goods exported; thus, where an entire production facility is covered by a mortgage and incorporates both production and administrative or other general expense space, an appropriate allocation must be made in order to ensure that only that portion of the interest allocated to the production area is counted toward the value-content requirement. Interest expenses attributable to general and administrative costs or expenses, including interest on funds borrowed to meet the payroll of personnel directly involved in the production of goods, are not considered direct costs of processing or assembly.

(b) *Value of originating materials*—(1) *Definition.* The term ''value of materials originating in the United States or Canada or both'' means the aggregate of:

(i) The price paid by the producer of exported goods for materials originating in either the United States or Canada, or both, or for materials imported from a third country used or consumed in the production of such originating materials; and

(ii) When not included in that price, the following costs related thereto:

(A) Freight, insurance, packing and all other costs incurred in transporting any of the materials referred to in paragraph (b)(1)(i) of this section to the location of the producer;

(B) Duties, taxes and brokerage fees on such materials paid in the United States, or Canada, or both;

(C) The cost of waste or spoilage resulting from the use or consumption of such materials, less the value of renewable scrap or by-product; and

(D) The value of goods and services relating to such materials determined in accordance with subparagraph 1(b) of Article 8 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade.

(2) *Directly attributable.* Whenever a value-content determination is required by the rules of the Agreement and whenever originating materials and materials obtained or produced in a third country are used or consumed together in the production of goods in the United States or Canada, the value of originating materials may be treated as such only to the extent that the value is directly attributable to the goods under consideration.

(3) *Interpretation*—(i) *Price paid.* As provided in paragraph (b)(1) of this section, the ''price paid'' for materials by the producer of exported goods forms the basis for determining the value of such materials when incorporated in

the exported goods. The actual price paid for such materials will determine the value of those materials for purposes of the value-content requirement, even though a relationship between the producer and the seller of the materials may have influenced the price, except where the price did not include items specified in paragraph (b)(1)(ii) of this section that relate to the materials. The following examples will illustrate these principles. Notwithstanding these examples, the totality of the facts must be examined in each case to determine whether § 10.304(b) is applicable.

Example 1. Non-originating materials are sold by Company X (a foreign corporation located outside the United States or Canada) to Company Y (a Canadian corporation) for $100; Company X also sold identical materials to Company Z (a U.S. corporation) for $200 which was the price Company Z had paid to Company X for similar materials prior to implementation of the Agreement; and those non-originating materials sold by Company X to Company Y are then incorporated by Company Y into goods exported to the United States. In this case the $100 price paid by Company Y to Company X constitutes the value of those materials for purposes of the value-content requirement.

Example 2. Company X purchased materials for $100, added a four percent mark-up to the price paid to defray purchasing expenses, and then sold the marked-up materials to Company Y (a Canadian corporation) which incorporated the materials in goods exported to the United States. In this case the $104 price paid by Company Y to Company X constitutes the value of the materials for purposes of the value-content requirement.

Example 3. Company X (a foreign corporation located outside the United States) sold non-originating materials to Company Y (a U.S. corporation) for $200, and Company Y then sold those materials for $100 to Company Z (a Canadian corporation) which incorporated the materials in goods which were imported into the United States by Company P (the U.S. parent company of Company Y). In this case, in accordance with paragraph (b)(1)(ii)(D) of this section, $100 would be added to the price paid by Company Z for purposes of the value-content requirement because the materials were sold at a reduced cost within the meaning of subparagraph 1(b) of Article 8 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade.

(ii) *Originating materials for which no price paid.* In cases involving a vertically integrated producer (that is, an entity which produces goods for export from materials which that producer has also made) a ''price paid'' for such originating materials normally does not exist. Even in the absence of a ''price paid'', such a vertically integrated producer may still claim the materials as originating materials for purposes of qualifying the finished goods exported to the United States as goods originating in Canada. However, under paragraph (b)(1)(i) of this section the value of those materials for purposes of applying the value-content requirement is limited to the price paid for those materials imported from the third country plus any costs added thereto under paragraph (b)(1)(ii) of this section. The following examples will illustrate these principles.

Example 1. If an automobile producer in the United States or Canada fabricates body panels wholly from third country steel coil, those body panels can qualify as originating materials without having to satisfy a value-content requirement because steel coil is classified in chapter 72 of the Harmonized System and body panels are classified in chapter 87 and the change in classification rules in chapter 87 do not incorporate a value-content requirement in this context. Thus, the producer can claim the body panels fabricated from the third country steel as originating materials for purposes of the value-content requirement applicable to the finished automobile which will be exported to the United States. The value of those originating materials is the price paid for the steel coil imported from the third country and used or consumed in the production of the body panels.

Example 2. An automobile exporter in Canada purchases and imports body panels fabricated in a third country in order to join them with vertically (locally) fabricated body panels to form an automobile body. If the body qualifies as an originating material, the exporter has two options. Under the first option, the exporter can claim the body as originating material, in which case the value of originating material is the price paid for the foreign body panels. Under the second option, the exporter may elect not to claim the body as originating material; but, rather, the exporter may claim as originating material any domestic steel coil used in producing the vertically (locally) fabricated body panels, in which case the value of originating material is the price paid for the domestic steel coil.

(c) *Value of goods when exported.* The term ''value of the goods when exported to the United States'' means the aggregate of:

(1) The price paid by the producer for all materials, whether or not the materials originate in the United States, or Canada, or both, and, when not included in the price paid for the materials, the following costs related thereto:

(i) Freight, insurance, packing, and all other costs incurred in transporting all materials to the location of the producer;

(ii) Duties, taxes, and brokerage fees on all materials paid in the United States, or Canada, or both;

(iii) The cost of waste or spoilage resulting from the use or consumption of such materials, less the value of renewable scrap or by-product; and

(iv) The value of goods and services relating to all materials determined in accordance with subparagraph 1(b) of Article 8 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs Trade; and

(2) The direct cost of processing or the direct cost of assembling the goods.

[T.D. 92–8, 57 FR 2453, Jan. 22, 1992; 57 FR 4793, Feb. 7, 1992, as amended by T.D. 92–98, 57 FR 46504, Oct. 9, 1992]

§ 10.306 Direct shipment to the United States.

Goods shall be considered as directly shipped to the United States from Canada for the purpose of eligibility for preferences under the Agreement only under the following circumstances:

(a) *Through shipment.* The goods have been shipped directly from Canada to the United States without passage through the territory of any third country; or

(b) *Shipment through a third country.* The goods were shipped through the territory of a third country but:

(1) The goods did not enter the commerce of any third country;

(2) The goods did not undergo any operation other than unloading, reloading, or any operation necessary to transport them to the United States or to preserve them in good condition; and

(3) All shipping and export documents show the United States as the final destination.

§ 10.307 Documentation.

(a) *Claims for a preference.* A preference in accordance with the Agreement may be claimed by including on the entry summary, or equivalent documentation, the symbol ''CA'' as a prefix to the subheading of the HTSUS under which each eligible good is classified.

(b) *Failure to claim a preference.* Failure to make a timely claim for a preference under the Agreement will result in liquidation at the rate which would otherwise be applicable.

(c) *Documentation showing origin.* A claim for a preference under the Agreement shall be based on the Exporter's Certificate of Origin, properly completed and signed by the person who exports or knowingly causes the goods to be exported from Canada. The Exporter's Certificate of Origin must be available at the time the preference is claimed and shall be presented to the Center director upon request.

(d) *Exporter's Certificate of Origin*—(1) *General.* The Exporter's Certificate of Origin shall be prepared on Customs Form 353. In lieu of the Customs Form 353, the exporter may use an approved computerized format or such other format as is approved by the Headquarters, U.S. Customs Service, Office of Trade Operations, Washington, DC 20229. Alternative formats must contain the same information and certification set forth on Customs Form 353.

(2) *Blanket certifications.* A blanket Exporter's Certificate of Origin, not to exceed a period of 12 months, issued for goods claimed as originating goods under the Agreement, can only be used if the certifying exporter is able to verify that the goods in each shipment to be covered by the blanket certification actually qualify for treatment under the Agreement. A blanket certification does not allow an exporter to average its costs over the blanket certification period in order to establish that the exported goods meet the criteria for originating goods under the Agreement. Under § 10.308, the exporter must retain supporting records that will permit a review of the eligibility

of the goods in each shipment covered by a blanket certification.

(e) *Exceptions to documentation requirements.* Exceptions to the foregoing documentation requirements may be authorized at the discretion of the Center director in the following circumstances:

(1) *Exception for informal entries.* As set forth in paragraphs (e)(1) (i) and (ii) of this section, an Exporter's Certificate of Origin may be waived in connection with an entry entitled to informal entry procedures as authorized in §§ 143.21 and 143.22 of this chapter if:

(i) *Commercial goods which qualify for informal entry.* The invoice, or an appropriate Customs release document, for commercial goods which qualify both for informal entry and a preference must include the following statement, on the invoice or appropriate Customs document:

I hereby certify that the goods described herein are eligible for a preference based upon the rules of origin enumerated in the United States-Canada Free-Trade Agreement.

Check One:

( ) Manufacturer
( ) Supplier
( ) Exporter

Signature

Title
Date:

(ii) *Noncommercial goods which qualify for informal entry.* The importation of goods from Canada by a person for noncommercial use may be exempt from documentation requirements if the goods are legally marked ''Made in Canada'', or it can otherwise be shown that they are originating goods under the Agreement and there is no evidence to the contrary.

(2) *Waiver of evidence of direct shipment.* The Center director may waive the submission of evidence of direct shipment when otherwise satisfied, taking into consideration the kind and value of the goods, that the goods were, in fact, imported directly from Canada, and that they otherwise qualify for a preference in accordance with the Agreement.

[T.D. 89–3, 53 FR 51766, Dec. 23, 1988, as amended by T.D. 92–8, 57 FR 2455, Jan. 22, 1992]

§ 10.308 Records retention.

(a) *Importer.* The importer of record shall retain the exporter's certificate of origin required by § 10.307(d) for a period of 5 years and it must be made available upon request by the appropriate Customs official.

(b) *Exporter.* Any person who exports, or who knowlingly causes to be exported, any merchandise to Canada shall make, keep, and render for examination and inspection, such records (including certifications of origin or copies thereof), which pertain to such exportation for a period of 5 years from the date of exportation. In the event that the appropriate Customs official requests submission of the records, they shall be submitted directly to the requesting official.

§ 10.309 Verification of documentation.

Any evidence of country of origin or of direct shipment submitted in support of a preference under the Agreement shall be subject to such verification as the appropriate Customs official may deem necessary. If the U.S. importer or U.S. exporter or their agent does not provide the information requested by the appropriate Customs officer, the Center director may refuse to grant the claim for preference, in addition to other available sanctions.

§ 10.310 Election to average for motor vehicles.

(a) *Election.* In determining whether a motor vehicle is originating for purposes of the preferences under the Agreement or a Canadian article under the Automotive Products Trade Act of 1965 (APTA), a manufacturer may elect to average, over its 12-month financial year, its calculation of the value-content requirement for vehicles of the same class or sister vehicles which are assembled in the same plant as provided for in the Agreement. A manufacturer must declare its election to average before the importation of any vehicles produced within the identified 12-

month period. The election to average is subject to the conditions and requirements set forth in §§ 10.310 and 10.311.

(b) *Effect of election.* An election to average shall be binding at the time of the first entry of vehicles for which the election has been made and shall remain binding for the plant for the entire period covered by the election. If a manufacturer's annual report, required by § 10.311, does not verify the claim that the vehicles are originating goods under the Agreement or Canadian articles under APTA, or if a manufacturer otherwise fails to comply with the reporting requirements, entries of the vehicles identified in the averaging declaration will be subject to liquidation in accordance with the rate of duty which would otherwise apply.

(c) *Election in lieu of certificate of origin.* In lieu of the Exporter's Certificate of Origin required in § 10.307(c), an importer of vehicles covered by an election to average under this section may have its claim for preference based on a copy of the declaration of election.

[T.D. 89–3, 53 FR 51766, Dec. 23, 1988, as amended by T.D. 92–8, 57 FR 2455, Jan. 22, 1992]

§ 10.311 Documentation for election to average for motor vehicles.

A manufacturer who elects to average for motor vehicles shall submit a declaration of election to average, quarterly reports, and an annual report in the form and manner as follows:

(a) *Declaration of election.* A declaration of election to average, signed by an authorized company official, shall be submitted by the manufacturer to the U.S. Customs and Border Protection, Office of International Trade, Regulatory Audit, Detroit, Michigan 48226–2568 on CBP Form 355, Declaration of Election to Average.

(b) *Quarterly Report.* A quarterly report shall be submitted to the Office of International Trade, Regulatory Audit, at the above address, on CBP Form 356, Vehicle Cost Report (Quarterly), within 30 days after the end of each quarter. In lieu of the CBP Form 356, the manufacturer may submit the information required on the form in an approved computerized format or such other format as is approved by the U.S. Customs and Border Protection, Office of International Trade, Regulatory Audit, Detroit, Michigan 48226–2568. Alternative formats must contain the same information set forth on the CBP Form 356. Negative quarterly reports are required.

(c) *Annual Report.* An annual report shall be submitted to the U.S. Customs and Border Protection, Office of International Trade, Regulatory Audit, Detroit, Michigan 48226–2568, on CBP Form 357, Vehicle Cost Report (Annual), within 90 days of the end of the financial year identified in the Election to Average, CBP Form 355. In lieu of the CBP Form 357, Vehicle Cost Report (Annual), the manufacturer may submit the information required on the form in an approved computerized format or such other format as is approved by the U.S. Customs and Border Protection, Office of International Trade, Regulatory Audit, Detroit, Michigan 48226–2568. Alternative formats must contain the same information set forth on CBP Form 357.

Subpart H—United States-Chile Free Trade Agreement

SOURCE: CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, unless otherwise noted.

GENERAL PROVISIONS

§ 10.401 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported goods under the United States-Chile Free Trade Agreement (the US-CFTA) signed on June 6, 2003, and under the United States-Chile Free Trade Agreement Implementation Act (the Act; 117 Stat. 909). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the US-CFTA and the Act are contained in parts 12, 24, 162, and 163 of this chapter.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76131, Dec. 20, 2006]

§ 10.402 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Certification.* ''Certification'' means, either when used by itself or in the expression ''certification of origin'', the certification established under article 4.13 of the US-CFTA, that a good qualifies as an originating good under the US-CFTA;

(b) *Claim of origin.* ''Claim of origin'' means a claim that a textile or apparel good is an originating good or a good of a Party;

(c) *Claim for preferential tariff treatment.* ''Claim for preferential tariff treatment'' means a claim that a good is entitled to the duty rate applicable under the US–CFTA and to an exemption from the merchandise processing fee;

(d) *Customs authority.* ''Customs authority'' means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations;

(e) *Customs Valuation Agreement.* ''Customs Valuation Agreement'' means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement;

(f) *Days.* ''Days'' means calendar days;

(g) *Customs duty.* ''Customs duty'' includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but, for purposes of implementing the US-CFTA, does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994; in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty; and

(3) Fee or other charge in connection with importation commensurate with the cost of services rendered;

(h) *Enterprise.* ''Enterprise'' means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association;

(i) *GATT 1994.* ''GATT 1994'' means the *General Agreement on Tariffs and Trade 1994,* which is part of the *WTO Agreement;*

(j) *Goods.* ''Goods'' means domestic products as these are understood in the GATT 1994 or such goods as the Parties may agree, and includes originating goods of that Party. A good of a Party may include materials of other countries;

(k) *Harmonized System.* ''Harmonized System (HS)'' means the *Harmonized Commodity Description and Coding System,* including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(l) *Heading.* ''Heading'' means the first four digits in the tariff classification number under the Harmonized System;

(m) *HTSUS.* ''HTSUS'' means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(n) *Identical goods.* ''Identical goods'' means goods that are the same in all respects relevant to the particular rule of origin that qualifies the goods as originating;

(o) *Indirect material.* ''Indirect material'' means a good used in the production, testing, or inspection of a good in the territory of the United States or Chile but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good in the territory of the United States or Chile, including—

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment and buildings;

(4) Lubricants, greases, compounding materials, and other materials used in production or used to operate equipment and buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the goods;

(7) Catalysts and solvents; and

(8) Any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

(p) *Originating*. ''Originating'' means qualifying under the rules of origin set out in Chapter Four (Rules of Origin and Origin Procedures) of the US-CFTA;

(q) *Party*. ''Party'' means the United States or the Republic of Chile;

(r) *Person*. ''Person'' means a natural person or an enterprise;

(s) *Preferential tariff treatment*. ''Preferential tariff treatment'' means the duty rate applicable to an originating good under the US–CFTA, and an exemption from the merchandise processing fee.

(t) *Subheading*. ''Subheading'' means the first six digits in the tariff classification number under the Harmonized System;

(u) *Tariff preference level*. ''Tariff preference level'' means a quantitative limit for certain non-originating textiles and textile apparel goods that may be entitled to preferential tariff treatment as if such goods were originating based on the goods meeting the production requirements set forth in §10.421 of this subpart.

(v) *Textile or apparel good*. ''Textile or apparel good'' means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as ATC), which is part of the WTO Agreement;

(w) *Territory*. ''Territory'' means:

(1) With respect to Chile, the land, maritime and air space under its sovereignty, and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law; and

(2) With respect to the United States,

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico,

(ii) The foreign trade zones located in the United States and Puerto Rico, and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

(x) *WTO Agreement*. ''WTO Agreement'' means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76131, Dec. 20, 2006]

IMPORT REQUIREMENTS

§ 10.410 Filing of claim for preferential tariff treatment upon importation.

(a) *Declaration*. In connection with a claim for preferential tariff treatment for an originating good under the US-CFTA, including an exemption from the merchandise processing fee, the U.S. importer must make a written declaration that the good qualifies for such treatment. The written declaration is made by including on the entry summary, or equivalent documentation, the symbol ''CL'' as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via electronic interchange.

(b) *Corrected declaration*. If, after making the declaration required under paragraph (a) of this section, the U.S. importer has reason to believe that the declaration or the certification or other information on which the declaration was based contains information that is not correct, the importer must, within 30 calendar days after the date of discovery of the error, make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other statement either in writing or via an authorized electronic data interchange system to the CBP office where the original declaration was

filed specifying the correction (*see* §§ 10.482 and 10.483 of this subpart).

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76131, Dec. 20, 2006]

§ 10.411 Certification of origin or other information.

(a) *Contents.* An importer who claims preferential tariff treatment on a good must submit, at the request of the Center director, a certification of origin or other information demonstrating that the good qualifies as originating. A certification or other information submitted to CBP under this paragraph:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must include the following information:

(i) The legal name, address, telephone and e-mail address of the importer of record of the good (if known);

(ii) The legal name, address, telephone and e-mail address of the exporter of the good (if different from the producer);

(iii) The legal name, address, telephone and e-mail address of the producer of the good (if known);

(iv) A description of the good for which preferential tariff treatment is claimed, which must be sufficiently detailed to relate it to the invoice and the HS nomenclature;

(v) The HTSUS tariff classification, to six or more digits, as necessary for the specific change in tariff classification rule for the good set forth in General Note 26(n), HTSUS;

(vi) The preference criterion as set forth in paragraph (f) of this section.

(b) *Statement.* A certification submitted to CBP under paragraph (a) of this section must include a statement, in substantially the following form:

''I Certify that:

The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;

I agree to maintain, and present upon request, documentation necessary to support this certification, and to inform, in writing, all persons to whom the certification was given of any changes that could affect the accuracy or validity of this certification; and

The goods originated in the territory of one or more of the parties, and comply with the origin requirements specified for those goods in the United States-Chile Free Trade Agreement; there has been no further production or any other operation outside the territories of the parties, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the United States; and

This document consists of ____ pages, including all attachments.''

(c) *Responsible official or agent.* A certification submitted under paragraph (a) of this section must be signed and dated by a responsible official of the importer; exporter; or producer; or by the importer's, exporter's, or producer's authorized agent having knowledge of the relevant facts. The certification must include the legal name and address of the responsible official or authorized agent signing the certification, and should include that person's telephone and e-mail address, if available. If the person making the certification is not the producer of the good, or the producer's authorized agent, the person may sign the certification of origin based on:

(1) A certification that the good qualifies as originating issued by the producer; or

(2) Knowledge of the exporter or importer that the good qualifies as an originating good.

(d) *Language.* The certification or other information submitted under paragraph (a) of this section must be completed either in the English or Spanish language. If the certification or other information is completed in Spanish, the importer must also provide to the Center director, upon request, a written English translation of the certification or other information.

(e) *Applicability of certification.* A certification may be applicable to:

(1) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period,

not exceeding 12 months. In the case of multiple shipments of identical goods, the certification must specify the blanket period in ''mm/dd/yyyy to mm/dd/yyyy'' format.

(f) *Preference criteria.* The preference criterion to be included on the certification or other information as required in paragraph (a)(2)(vi) of this section is as follows:

(1) Preference criterion ''A'', refers to a good that is wholly obtained or produced entirely in the territory of Chile or of the United States, or both (see General Note 26(b)(i), HTSUS);

(2) Preference criterion ''B'', refers to a good that is produced entirely in the territory of Chile or the United States, or both (*see* General Note 26(b)(ii), HTSUS), and

(i) Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in General Note 26(n), HTSUS, or

(ii) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 26(n), HTSUS;

(3) Preference criterion ''C'' refers to a good that is produced entirely in the territory of Chile or the United States, or both, exclusively from originating materials (see General Note 26(b)(iii), HTSUS).

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76132, Dec. 20, 2006; CBP Dec. 10–29, 75 FR 52450, Aug. 26, 2010]

§ 10.412 Importer obligations.

(a) *General.* An importer who makes a declaration under § 10.410(a) of this subpart is responsible for the truthfulness of the declaration and of all the information and data contained in the certification or other information submitted to CBP under § 10.411(a) of this subpart, for submitting any supporting documents requested by CBP, and for the truthfulness of the information contained in those documents. CBP will allow for the direct submission by the exporter or producer of business confidential or other sensitive information, including cost and sourcing information.

(b) *Compliance.* In order to make a claim for preferential treatment under § 10.410 of this subpart, the importer:

(1) Must have records that explain how the importer came to the conclusion that the good qualifies for preferential tariff treatment. Those records must include documents that support a claim that the article in question qualifies for preferential tariff treatment because it meets the applicable rules of origin set forth in General Note 26, HTSUS, and in this subpart. Those records may include a properly completed certification or other information as set forth in § 10.411 of this subpart; and

(2) May be required to demonstrate that the conditions set forth in § 10.463 of this subpart were met if the imported article was shipped through an intermediate country.

(c) *Information provided by exporter or producer.* The fact that the importer has issued a certification based on information provided by the exporter or producer will not relieve the importer of the responsibility referred to in paragraph (a) of this section. A U.S. importer who voluntarily makes a corrected declaration will not be subject to penalties for having made an incorrect declaration (*see* § 10.481 of this subpart).

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76132, Dec. 20, 2006]

§ 10.413 Validity of certification.

A certification that is completed, signed and dated in accordance with the requirements listed in § 10.411 of this subpart will be accepted by CBP as valid for four years from the date on which the certification was signed. If the Center director determines that a certification is illegible or defective or has not been completed in accordance with § 10.411 of this subpart, the importer will be given a period of not less than five business days to submit a corrected certification.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76132, Dec. 20, 2006]

§ 10.414 Certification or other information not required.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a certification or other information demonstrating that the good qualifies as originating under § 10.411(a) of this subpart for:

(1) A non-commercial importation of a good; or

(2) A commercial importation of a good whose value does not exceed U.S. $2,500, or the equivalent amount in Chilean currency.

(b) *Exception.* If the Center director determines that an importation described in paragraph (a) of this section may reasonably be considered to have been carried out or planned for the purpose of evading compliance with the rules and procedures governing claims for preference under the US-CFTA, the Center director will notify the importer in writing that for that importation the importer must submit to CBP a valid certification or other information demonstrating that the good qualifies as originating. The importer must submit such a certification or other information within 30 calendar days from the date of the written notice. Failure to timely submit the certification or other information will result in denial of the claim for preferential tariff treatment.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76132, Dec. 20, 2006]

§ 10.415 Maintenance of records.

(a) *General.* An importer claiming preferential tariff treatment for a good imported into the United States must maintain, for five years after the date of importation of the good, a certification (or a copy thereof) or other information demonstrating that the good qualifies as originating, and any records and documents that the importer has relating to the origin of the good, including records and documents associated with:

(1) The purchase of, cost of, value of, and payment for, the good;

(2) Where appropriate, the purchase of, cost of, value of, and payment for, all materials, including recovered goods and indirect materials, used in the production of the good; and,

(3) Where appropriate, the production of the good in the form in which the good was exported.

(b) *Method of maintenance.* The records referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76133, Dec. 20, 2006]

§ 10.416 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *Effect of noncompliance.* If the importer fails to comply with any requirement under this subpart, including submission of a certification of origin or other information demonstrating that the good qualifies as originating under § 10.411(a) of this subpart or submission of a corrected certification under § 10.413 of this subpart, the Center director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the Center director nevertheless may deny preferential tariff treatment to an originating good if the good is shipped through or transshipped in a country other than Chile or the United States, and the importer of the good does not provide, at the request of the Center director, copies of documents demonstrating to the satisfaction of the Center director that the requirements set forth in § 10.463 of this subpart were met.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76133, Dec. 20, 2006]

TARIFF PREFERENCE LEVEL

§ 10.420 Filing of claim for tariff preference level.

A cotton or man-made fiber fabric or apparel good described in § 10.421 of this subpart that does not qualify as an originating good under § 10.451 of this subpart may nevertheless be entitled to preferential tariff treatment under

the US-CFTA under an applicable tariff preference level (TPL). To make a TPL claim, the importer must include on the entry summary, or equivalent documentation, the applicable subheading in Chapter 99 of the HTSUS (9911.99.20 for a good described in §10.421(a) or (b) of this subpart or 9911.99.40 for a good described in §10.421(c) of this subpart) immediately above the applicable subheading in Chapter 52 through 62 of the HTSUS under which each non-originating cotton or man-made fiber fabric or apparel good is classified.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76133, Dec. 20, 2006]

§ 10.421 Goods eligible for tariff preference claims.

The following goods are eligible for a TPL claim filed under §10.420 of this subpart:

(a) *Woven fabrics.* Certain woven fabrics of Chapters 52, 54 and 55 of the HTSUS (Headings 5208 to 5212; 5407 and 5408; 5512 to 5516) that meet the applicable conditions for preferential tariff treatment under the US-CFTA other than the condition that they are originating goods, if they are wholly formed in the U.S. or Chile regardless of the origin of the yarn used to produce these fabrics.

(b) *Cotton or man-made fabric goods.* Certain cotton or man-made fabric goods of Chapters 58 and 60 of the HTSUS that meet the applicable conditions for preferential tariff treatment under the US-CFTA other than the condition that they are originating goods if they are wholly formed in the U.S. or Chile regardless of the origin of the fibers used to produce the spun yarn or the yarn used to produce the fabrics.[1]

(c) *Cotton or man-made apparel goods.* Cotton or man-made apparel goods in Chapters 61 and 62 of the HTSUS that are both cut (or knit-to-shape) and sewn or otherwise assembled in the U.S. or Chile regardless of the origin of the fabric or yarn, provided that they meet the applicable conditions for preferential tariff treatment under the US-CFTA, other than the condition that they are originating goods.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76133, Dec. 20, 2006]

§ 10.422 Submission of certificate of eligibility.

(a) *Contents.* An importer who claims preferential tariff treatment on a non-originating cotton or man-made fiber fabric or apparel good must submit, at the request of the Center director, a certificate of eligibility containing information demonstrating that the good satisfies the requirements for entry under the applicable TPL, as set forth in §10.421 of this subpart. A certificate of eligibility submitted to CBP under this section:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must include the following information:

(i) The legal name, address, telephone and e-mail address of the importer of record of the good;

(ii) The legal name and address of the responsible official or authorized agent of the importer signing the certificate (if different from the importer of record), and that person's telephone and e-mail address, if available;

(iii) The legal name, address, telephone and e-mail address of the exporter of the good (if different from the producer);

(iv) The legal name, address, telephone and e-mail address of the producer of the good (if known);

[1] The relevant HTSUS subheadings for fabric goods in Chapters 58 or 60 eligible under HTSUS 9911.99.20 are as follows: 5801.21, 5801.22, 5801.23, 5801.24, 5801.25, 5801.26, 5801.31, 5801.32, 5801.33, 5801.34, 5801.35, 5801.36, 5802.11, 5802.19, 5802.20.0020, 5802.30.0030, 5803.10, 5803.90.30, 5804.10.10, 5804.21, 5804.29.10, 5804.30.0020, 5805.00.30, 5805.00.4010, 5806.10.10, 5806.10.24, 5806.10.28, 5806.20, 5806.31, 5806.32, 5807.10.05, 5807.10.2010, 5807.10.2020, 5807.90.05, 5807.90.2010, 5807.90.2020, 5808.10.40, 5808.10.70, 5808.90.0010, 5809.00, 5810.10, 5810.91, 5810.92, 5811.00.20, 5811.00.30, 6001.10, 6001.21, 6001.22, 6001.91, 6001.92, 6002.40, 6002.90, 6003.20, 6003.30, 6003.40, 6004.10, 6004.90, 6005.21, 6005.22, 6005.23, 6005.24, 6005.31, 6005.32, 6005.33, 6005.34, 6005.41, 6005.42, 6005.43, 6005.44, 6006.21, 6006.22, 6006.23, 6006.24, 6006.31, 6006.32, 6006.33, 6006.34, 6006.41, 6006.42, 6006.43, 6006.44.

(v) A description of the good, which must be sufficiently detailed to relate it to the invoice and the HS nomenclature;

(vi) The HTSUS tariff classification of the good, to six or more digits, as well as the applicable subheading in Chapter 99 of the HTSUS (9911.99.20 or 9911.99.40);

(vii) For a single shipment, the commercial invoice number;

(viii) For multiple shipments of identical goods, the blanket period in ''mm/dd/yyyy to mm/dd/yyyy'' format (12-month maximum); and

(3) Must include a statement, in substantially the following form:

''I Certify that:

The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;

I agree to maintain and present upon request, documentation necessary to support this certificate, and to inform, in writing, all persons to whom the certificate was given of any changes that could affect the accuracy or validity of this certificate; and

The goods were produced in the territory of one or more of the parties, and comply with the preference requirements specified for those goods in the United States-Chile Free Trade Agreement and Chapter 99, subchapter XI of the HTSUS. There has been no further production or any other operation outside the territories of the parties, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the United States; and

This document consists of ____ pages, including all attachments.''

(b) *Responsible official or agent.* The certificate of eligibility required to be submitted under this section must be signed and dated by a responsible official of the importer or by the importer's authorized agent having knowledge of the relevant facts.

(c) *Language.* The certificate of eligibility must be completed either in the English or Spanish language. If the certificate is completed in Spanish, the importer must also provide to the Center director, upon request, a written English translation of the certificate;

(d) *Applicability of certificate of eligibility.* A certificate of eligibility may be applicable to:

(1) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the certificate.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76133, Dec. 20, 2006]

§ 10.423 Certificate of eligibility not required.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a certificate of eligibility for:

(1) A non-commercial importation of a good; or

(2) A commercial importation of a good whose value does not exceed U.S. $2,500, or the equivalent amount in Chilean currency.

(b) *Exception.* If the Center director determines that an importation described in paragraph (a) of this section may reasonably be considered to have been carried out or planned for the purpose of evading compliance with the rules and procedures governing TPL claims for preference under the US-CFTA, the Center director will notify the importer in writing that for that importation the importer must submit to CBP a valid certificate of eligibility. The importer must submit such a certificate within 30 calendar days from the date of the written notice. Failure to timely submit the certificate will result in denial of the claim for preferential tariff treatment.

§ 10.424 Effect of noncompliance; failure to provide documentation regarding transshipment of non-originating cotton or man-made fiber fabric or apparel goods.

(a) *Effect of noncompliance.* If the importer fails to comply with any requirement under this subpart, including submission of a certificate of eligibility under § 10.422 of this subpart, the Center director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the Center director nevertheless may deny preferential tariff treatment to a good for which a TPL claim is made if the good is shipped through or transshipped in a country other than Chile or the United States, and the importer of the good does not provide, at the request of the Center director, copies of documents demonstrating to the satisfaction of the Center director that the requirements set forth in §10.425 of this subpart were met.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76133, Dec. 20, 2006]

§10.425 Transit and transshipment of non-originating cotton or man-made fiber fabric or apparel goods.

(a) *General.* A good will not be considered eligible for preferential tariff treatment under an applicable TPL by reason of having undergone production that occurs entirely in the territory of Chile, the United States, or both, that would enable the good to qualify for preferential tariff treatment if subsequent to that production the good undergoes further production or any other operation outside the territories of Chile and the United States, other than unloading, reloading, or any other process necessary to preserve the good in good condition or to transport the good to the territory of Chile or the United States.

(b) *Documentary evidence.* An importer making a claim for preferential tariff treatment may be required to demonstrate, to CBP's satisfaction, that no further production or subsequent operation, other than permitted under paragraph (a) of this section, occurred outside the territories of Chile or the United States. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, packing lists, commercial invoices, and customs entry and exit documents.

EXPORT REQUIREMENTS

§10.430 Export requirements.

(a) *Submission of certification to CBP.* An exporter or producer in the United States that signs a certification of origin for a good exported from the United States to Chile must provide a copy of the certification (or such other medium or format approved by the Chile customs authority for that purpose) to CBP upon request.

(b) *Notification of errors in certification.* An exporter or producer in the United States who has completed and signed a certification of origin, and who has reason to believe that the certification contains or is based on information that is not correct, must immediately after the date of discovery of the error notify in writing all persons to whom the certification was given by the exporter or producer of any change that could affect the accuracy or validity of the certification.

(c) *Maintenance of records*—(1) *General.* An exporter or producer in the United States that signs a certification of origin for a good exported from the United States to Chile must maintain in the United States, for a period of at least five years after the date the certification was signed, all records and supporting documents relating to the origin of a good for which the certification was issued, including records and documents associated with:

(i) The purchase of, cost of, value of, and payment for, the good;

(ii) Where appropriate, the purchase of, cost of, value of, and payment for, all materials, including recovered goods and indirect materials, used in the production of the good; and

(iii) Where appropriate, the production of the good in the form in which the good was exported.

(2) *Method of maintenance.* The records referred to in paragraph (c) of this section must be maintained in accordance with the Generally Accepted Accounting Principles applied in the country of production and in the case of exporters or producers in the United States must be maintained in the same manner as provided in §163.5 of this chapter.

(3) *Availability of records.* For purposes of determining compliance with

the provisions of this part, the exporter's or producer's records required to be maintained under this section must be stored and made available for examination and inspection by the Center director or other appropriate CBP officer in the same manner as provided in part 163 of this chapter.

§ 10.431 Failure to comply with requirements.

The Center director may apply such measures as the circumstances may warrant where an exporter or a producer in the United States fails to comply with any requirement of this part. Such measures may include the imposition of penalties pursuant to 19 U.S.C. 1508(g) for failure to retain records required to be maintained under § 10.430.

POST-IMPORTATION DUTY REFUND CLAIMS

§ 10.440 Right to make post-importation claim and refund duties.

Notwithstanding any other available remedy, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment was made, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in § 10.441 of this subpart. Subject to the provisions of § 10.416 of this subpart, CBP may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 10.442(c) of this part.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76133, Dec. 20, 2006]

§ 10.441 Filing procedures.

(a) *Place of filing.* A post-importation claim for a refund under § 10.440 of this subpart must be filed with CBP, either at the port of entry or electronically.

(b) *Contents of claim.* A post-importation claim for a refund must be filed by presentation of the following:

(1) A written declaration stating that the good qualified as an originating good at the time of importation and setting forth the number and date of the entry or entries covering the good;

(2) Subject to § 10.413 of this subpart, a copy of a certification of origin or other information demonstrating that the good qualifies for preferential tariff treatment;

(3) A written statement indicating whether or not the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was so provided, the statement must identify each recipient by name, CBP identification number and address and must specify the date on which the documentation was provided; and

(4) A written statement indicating whether or not any person has filed a protest relating to the good under any provision of law; and if any such protest has been filed, the statement must identify the protest by number and date.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76133, Dec. 20, 2006]

§ 10.442 CBP processing procedures.

(a) *Status determination.* After receipt of a post-importation claim under § 10.441 of this subpart, the Center director will determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest or judicial review.* If the Center director determines that any protest relating to the good has not been finally decided, the Center director will suspend action on the claim for refund filed under this subpart until the decision on the protest becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the Center director will suspend action on the claim for refund filed under this subpart until judicial review has been completed.

(c) *Allowance of claim*—(1) *Unliquidated entry.* If the Center director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has not been liquidated, the Center director will take into account the claim for

refund under this subpart in connection with the liquidation of the entry.

(2) *Liquidated entry*. If the Center director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties pursuant to this subpart. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, the Center director will reliquidate the entry taking into account the claim for refund under this subpart.

(d) *Denial of claim*—(1) *General*. The Center director may deny a claim for a refund filed under §10.441 of this subpart if the claim was not filed timely, if the importer has not complied with the requirements of §10.441 of this subpart, if the certification submitted under §10.441(b)(2) of this subpart cannot be accepted as valid (see §10.413 of this subpart), or if, following an origin verification under §10.470 of this subpart, the Center director determines either that the imported good did not qualify as an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under §10.470 of this subpart.

(2) *Unliquidated entry*. If the Center director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the Center director will deny the claim in connection with the liquidation of the entry, and notice of the denial and the reason for the denial will be provided to the importer in writing or via an authorized electronic data interchange system.

(3) *Liquidated entry*. If the Center director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the Center director will give the importer notice of the denial and the reason for the denial in writing or via an authorized electronic data interchange system.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76133, Dec. 20, 2006; CBP Dec. 10–29, 75 FR 52450, Aug. 26, 2010]

RULES OF ORIGIN

§10.450 Definitions.

For purposes of §§10.450 through 10.463 of this subpart:

(a) *Adjusted value*. ''Adjusted value'' means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation and the value of packing materials and containers for shipment as defined in §10.450(m) of this subpart;

(b) *Exporter*. ''Exporter'' means a person who exports goods from the territory of a Party;

(c) *Fungible goods or materials*. ''Fungible goods or materials'' means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical;

(d) *Generally Accepted Accounting Principles*. ''Generally Accepted Accounting Principles'' means the principles, rules, and procedures, including both broad and specific guidelines, that define the accounting practices accepted in the territory of a Party;

(e) *Good*. ''Good'' means any merchandise, product, article, or material;

(f) *Goods wholly obtained or produced entirely in the territory of one or both of the Parties*. ''Goods wholly obtained or produced entirely in the territory of one or both of the Parties'' means:

(1) Mineral goods extracted in the territory of one or both of the Parties;

(2) Vegetable goods, as such goods are defined in the Harmonized System, harvested in the territory of one or both of the Parties;

(3) Live animals born and raised in the territory of one or both of the Parties;

(4) Goods obtained from hunting, trapping, or fishing in the territory of one or both of the Parties;

(5) Goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;

(6) Goods produced on board factory ships from the goods referred to in paragraph (f)(5) provided such factory ships are registered or recorded with that Party and fly its flag;

(7) Goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;

(8) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(9) Waste and scrap derived from:

(i) Production in the territory of one or both of the Parties, or

(ii) Used goods collected in the territory of one or both of the Parties, provided such goods are fit only for the recovery of raw materials;

(10) Recovered goods derived in the territory of a Party from used goods, and utilized in the Party's territory in the production of remanufactured goods; and

(11) Goods produced in the territory of one or both of the Parties exclusively from goods referred to in paragraphs (f)(1) through (f)(10) of this section, or from their derivatives, at any stage of production;

(g) *Importer*. ''Importer'' means a person who imports goods into the territory of a Party;

(h) *Issued*. ''Issued'' means prepared by and, where required under a Party's domestic law or regulation, signed by the importer, exporter, or producer of the good;

(i) *Location of the producer*. ''Location of the producer'' means site of production of a good;

(j) *Material*. ''Material'' means a good that is used in the production of another good, including a part, ingredient, or indirect material;

(k) *Non-originating good*. ''Non-originating good'' means a good that does not qualify as originating under this subpart;

(l) *Non-originating material*. ''Non-originating material'' means a material that does not qualify as originating under this subpart;

(m) *Packing materials and containers for shipment*. ''Packing materials and containers for shipment'' means the goods used to protect a good during its transportation to the United States, and does not include the packaging materials and containers in which a good is packaged for retail sale;

(n) *Producer*. ''Producer'' means a person who engages in the production of a good in the territory of a Party;

(o) *Production*. ''Production'' means growing, mining, harvesting, fishing, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good;

(p) *Recovered goods*. ''Recovered goods'' means materials in the form of individual parts that are the result of:

(1) The complete disassembly of used goods into individual parts; and

(2) The cleaning, inspecting, testing, or other processing of those parts as necessary for improvement to sound working condition by one or more of the following processes: welding, flame spraying, surface machining, knurling, plating, sleeving, and rewinding in order for such parts to be assembled with other parts, including other recovered parts in the production of a remanufactured good of Annex 4.18, US-CFTA;

(q) *Remanufactured goods*. ''Remanufactured goods'' means industrial goods assembled in the territory of a Party, listed in Annex 4.18, US-CFTA, that:

(1) Are entirely or partially comprised of recovered goods;

(2) Have the same life expectancy and meet the same performance standards as new goods; and

(3) Enjoy the same factory warranty as such new goods; and

(r) *Self-produced material*. ''Self-produced material'' means a material that is produced by the producer of a good and used in the production of that good; and

(s) *Value.* ''Value'' means the value of a good or material for purposes of calculating customs duties or for purposes of applying this subpart.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76133, Dec. 20, 2006]

§ 10.451 Originating goods.

A good imported into the customs territory of the United States will be considered an originating good under the US-CFTA only if:

(a) The good is wholly obtained or produced entirely in the territory of Chile or of the United States, or both; or

(b) The good is produced entirely in the territory of Chile or of the United States, or both, satisfies all other applicable requirements of this subpart, and

(1) Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in General Note 26(n), HTSUS, and

(2) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 26(n), HTSUS; or

(c) The good is produced entirely in the territory of Chile or the United States, or both, exclusively from originating materials.

§ 10.452 Exclusions.

A good will not be considered to be an originating good and a material will not be considered to be an originating material by virtue of having undergone:

(a) Simple combining or packaging operations; or

(b) Mere dilution with water or with another substance that does not materially alter the characteristics of the good or material.

§ 10.453 Treatment of textile and apparel sets.

Notwithstanding the specific rules specified in General Note 26(n), HTSUS, textile and apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be regarded as originating goods unless each of the goods in the set is an originating good or the non-originating goods in the set do not exceed 10 percent of the adjusted value of the set.

§ 10.454 Regional value content.

Where General Note 26, subdivision (n), HTSUS, sets forth a rule that specifies a regional value content test for a good, the regional value content of such good may be calculated, at the choice of the person claiming the tariff treatment authorized by this note for such good, on the basis of the build-down method or the build-up method described in this section, unless otherwise specified in the note.

(a) *Build-down method.* For the build-down method, the regional value content must be calculated on the basis of the formula RVC = ((AV–VNM)/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value; and VNM is the value of non-originating materials used by the producer in the production of the good; or

(b) *Build-up method.* For the build-up method, the regional value content must be calculated on the basis of the formula RVC = (VOM/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value; and VOM is the value of originating materials used by the producer in the production of the good.

§ 10.455 Value of materials.

(a) *Calculating the regional value content.* For purposes of calculating the regional value content of a good under General Note 26(n), HTSUS, and for purposes of applying the *de minimis* (see § 10.459) provisions of subdivision (e) of the note, the value of a material is:

(1) In the case of a material imported by the producer of the good, the adjusted value of the material with respect to that importation;

(2) In the case of a material acquired in the territory where the good is produced, except for a material to which paragraph (a)(3) of this section applies, the producer's price actually paid or payable for the material;

(3) In the case of a material provided to the producer without charge, or at a price reflecting a discount or similar reduction, the sum of—

(i) All expenses incurred in the growth, production or manufacture of the material, including general expenses, and

(ii) A reasonable amount for profit; or

(4) In the case of a material that is self-produced, the sum of—

(i) All expenses incurred in the production of the material, including general expenses, and

(ii) A reasonable amount for profit.

(b) *Permissible additions to, and deductions from, the value of materials.* The value of materials may be adjusted as follows:

(1) For originating materials, the following expenses, if not included under paragraph (a) of this section, may be added to the value of the originating material:

(i) The costs of freight, insurance, packing and all other costs incurred in transporting the material to the location of the producer;

(ii) Duties, taxes and customs brokerage fees on the material paid in the territory of Chile or of the United States, or both, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable; and

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product; and

(2) For non-originating materials, if included under paragraph (a) of this section, the following expenses may be deducted from the value of the non-originating material:

(i) The costs of freight, insurance, packing and all other costs incurred in transporting the material to the location of the producer;

(ii) Duties, taxes and customs brokerage fees on the material paid in the territory of Chile or of the United States, or both, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable;

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products; and

(iv) The cost of originating materials used in the production of the non-originating material in the territory of Chile or of the United States.

(c) *Accounting method.* Any cost or value referenced in General Note 26(n), HTSUS, and this subpart, must be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the Party in which the good is produced (whether Chile or the United States).

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76133, Dec. 20, 2006]

§ 10.456 Accessories, spare parts or tools.

Accessories, spare parts or tools that form part of the good's standard accessories, spare parts or tools and are delivered with the good will be treated as a material used in the production of the good, if—

(a) The accessories, spare parts or tools are classified with and not invoiced separately from the good; and

(b) The quantities and value of the accessories, spare parts or tools are customary for the good.

§ 10.457 Fungible goods and materials.

(a) A person claiming preferential tariff treatment under the US-CFTA for a good may claim that a fungible good or material is originating either based on the physical segregation of each fungible good or material or by using an inventory management method. For purposes of this subpart, the term ''inventory management method'' means—

(1) Averaging,

(2) ''Last-in, first-out,''

(3) ''First-in, first-out,'' or

(4) Any other method that is recognized in the generally accepted accounting principles of the Party in which the production is performed (whether Chile or the United States) or otherwise accepted by that Party.

(b) A person selecting an inventory management method under paragraph (a) of this section for particular fungible goods or materials must continue to use that method for those fungible

goods or materials throughout the fiscal year of that person.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76134, Dec. 20, 2006]

§ 10.458 Accumulation.

(a) Originating goods or materials of Chile or the United States that are incorporated into a good in the territory of the other Party will be considered to originate in the territory of the other Party for purposes of determining the eligibility of the goods or materials for preferential tariff treatment under the US-CFTA.

(b) A good that is produced in the territory of Chile, the United States, or both, by one or more producers, will be considered as an originating good if the good satisfies the applicable requirements of §10.451 and General Note 26, HTSUS.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76134, Dec. 20, 2006]

§ 10.459 De minimis.

(a) Except as provided in paragraphs (b) and (c) of this section, a good that does not undergo a change in tariff classification pursuant to General Note 26(n), HTSUS, will nonetheless be considered to be an originating good if—

(1) The value of all non-originating materials that are used in the production of the good and do not undergo the applicable change in tariff classification does not exceed 10 percent of the adjusted value of the good;

(2) The value of such non-originating materials is included in calculating the value of non-originating materials for any applicable regional value-content requirement under this note; and

(3) The good meets all other applicable requirements of General Note 26(n), HTSUS.

(b) Paragraph (a) of this section does not apply to:

(1) A non-originating material provided for in Chapter 4 of the Harmonized System, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheadings 1901.90 or 2106.90 of the Harmonized System, that is used in the production of a good provided for in Chapter 4 of the Harmonized System;

(2) A non-originating material provided for in Chapter 4 of the Harmonized System, or non-originating dairy preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.90 of the Harmonized System, that are used in the production of the following goods: infant preparations containing over 10 percent in weight of milk solids provided for in subheading 1901.10 of the Harmonized System; mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20 of the Harmonized System; dairy preparations containing over 10 percent by weight of milk solids provided for in subheadings 1901.90 or 2106.90 of the Harmonized System; goods provided for in heading 2105 of the Harmonized System; beverages containing milk provided for in subheading 2202.90 of the Harmonized System; or animal feeds containing over 10 percent by weight of milk solids provided for in subheading 2309.90 of the Harmonized System;

(3) A non-originating material provided for in heading 0805 of the Harmonized System or subheadings 2009.11 through 2009.30 of the Harmonized System that is used in the production of a good provided for in subheadings 2009.11 through 2009.30 of the Harmonized System, or in fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, provided for in subheadings 2106.90 or 2202.90 of the Harmonized System;

(4) A non-originating material provided for in Chapter 15 of the Harmonized System that is used in the production of a good provided for in headings 1501 through 1508, 1512, 1514, or 1515 of the Harmonized System;

(5) A non-originating material provided for in heading 1701 of the Harmonized System that is used in the production of a good provided for in headings 1701 through 1703 of the Harmonized System;

(6) A non-originating material provided for in Chapter 17 or in heading 1805 of the Harmonized System that is

used in the production of a good provided for in subheading 1806.10 of the Harmonized System;

(7) A non-originating material provided for in headings 2203 through 2208 of the Harmonized System that is used in the production of a good provided for in heading 2207 or 2208 of the Harmonized System; and

(8) A non-originating material used in the production of a good provided for in Chapters 1 through 21 of the Harmonized System unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this section.

(c) A textile or apparel good provided for in Chapters 50 through 63 of the Harmonized System that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in General Note 26(n), HTSUS, shall nonetheless be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than seven percent of the total weight of that component. A good containing elastomeric yarns in the component of the good that determines the tariff classification of the good shall be considered to be an originating good only if such yarns are wholly formed in the territory of a Party. For purposes of this paragraph, if a good is a fiber, yarn or fabric, the component of the good that determines the tariff classification of the good is all of the fibers in the yarn, fabric or group of fibers.

§ 10.460 Indirect materials.

An indirect material, as defined in § 10.402(o), will be considered to be an originating material without regard to where it is produced.

Example. Chilean Producer C produces good C using non-originating material A. Producer C imports non-originating rubber gloves for use by workers in the production of good C. Good C is subject to a tariff shift requirement. As provided in § 10.451(b)(1) and General Note 26(n), each of the non-originating materials in good C must undergo the specified change in tariff classification in order for good C to be considered originating. Although non-originating material A must undergo the applicable tariff shift in order for good C to be considered originating, the rubber gloves do not because they are indirect materials and are considered originating without regard to where they are produced.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76134, Dec. 20, 2006]

§ 10.461 Retail packaging materials and containers.

Packaging materials and containers in which a good is packaged for retail sale, if classified with the good for which preferential tariff treatment under the US-CFTA is claimed, will be disregarded in determining whether all non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in General Note 26(n), HTSUS. If the good is subject to a regional value content requirement, the value of such packaging materials and containers will be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Example 1. Chilean Producer A of good C imports 100 non-originating blister packages to be used as retail packaging for good C. As provided in § 10.455(a)(1), the value of the blister packages is their adjusted value, which in this case is $10. Good C has a regional value content requirement. The United States importer of good C decides to use the build-down method, RVC = ((AV–VNM)/AV) × 100 (*see* § 10.454(a) of this subpart), in determining whether good C satisfies the regional value content requirement. In applying this method, the non-originating blister packages are taken into account as non-originating. As such, their $10 adjusted value is included in the VNM, value of non-originating materials, of good C.

Example 2. Same facts as in Example 1, but the blister packages are originating. In this case, the adjusted value of the originating blister packages would not be included as part of the VNM of good C under the build-down method. However, if the United States importer had used the build-up method, RVC = (VOM/AV) × 100 (*see* § 10.454(b)), the adjusted value of the blister packaging would be included as part of the VOM, value of originating material.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76134, Dec. 20, 2006]

§ 10.462 Packing materials and containers for shipment.

(a) Packing materials and containers for shipment, as defined in § 10.450(m), are to be disregarded in determining whether the non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in General Note 26(n), HTSUS. Accordingly, such materials and containers do not have to undergo the applicable change in tariff classification even if they are non-originating.

(b) Packing materials and containers for shipment, as defined in § 10.450(m), are to be disregarded in determining the regional value content of a good imported into the United States. Accordingly, in applying either the build-down or build-up method for determining the regional value content of the good imported into the United States, the value of such packing materials and containers for shipment (whether originating or non-originating) is disregarded and not included in AV, adjusted value, VNM, value of non-originating materials, or VOM, value of originating materials.

Example. Chilean Producer A produces good C. Producer A ships good C to the United States in a shipping container which it purchased from Company B in Chile. The shipping container is originating. The value of the shipping container determined under section § 10.455(a)(2) is $3. Good C is subject to a regional value content requirement. The transaction value of good C is $100, which includes the $3 shipping container. The U.S. importer decides to use the build-up method, RVC = (VOM/AV) × 100 (*see* § 10.454(b)), in determining whether good C satisfies the regional value content requirement. In determining the AV, adjusted value, of good C imported into the U.S., paragraph (b) of this section requires a $3 deduction for the value of the shipping container. Therefore, the AV is $97 ($100–$3). In addition, the value of the shipping container is disregarded and not included in the VOM, value of originating materials.

§ 10.463 Transit and transshipment.

(a) *General.* A good will not be considered an originating good by reason of having undergone production that occurs entirely in the territory of Chile, the United States, or both, that would enable the good to qualify as an originating good if subsequent to that production the good undergoes further production or any other operation outside the territories of Chile and the United States, other than unloading, reloading, or any other process necessary to preserve the good in good condition or to transport the good to the territory of Chile or the United States.

(b) *Documentary evidence.* An importer making a claim that a good is originating may be required to demonstrate, to CBP's satisfaction, that no further production or subsequent operation, other than permitted under paragraph (a) of this section, occurred outside the territories of Chile or the United States. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, packing lists, commercial invoices, and customs entry and exit documents.

Origin Verifications and Determinations

§ 10.470 Verification and justification of claim for preferential tariff treatment.

(a) *Verification.* A claim for preferential tariff treatment made under § 10.410 or § 10.442 of this subpart, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the Center director deems necessary. In the event that the Center director is provided with insufficient information to verify or substantiate the claim, the Center director may deny the claim for preferential tariff treatment. A verification of a claim for preferential treatment may involve, but is not limited to, a review of:

(1) All records required to be made, kept, and made available to CBP by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, supporting accounting and financial records, information relating to the place of production, the number and identification of

the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence that documents the use of U.S. or Chilean materials in the production of the article subject to the verification, such as purchase orders, invoices, bills of lading and other shipping documents, customs import and clearance documents, and bills of material and inventory records.

(b) *Applicable accounting principles.* When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76134, Dec. 20, 2006; CBP Dec. 10–29, 75 FR 52450, Aug. 26, 2010]

§ 10.471 Special rule for verifications in Chile of U.S. imports of textile and apparel products.

(a) *Procedures to determine whether a claim of origin is accurate.* For the purpose of determining that a claim of origin for a textile or apparel good is accurate, CBP may request that the government of Chile conduct a verification, regardless of whether a claim is made for preferential tariff treatment. While a verification under this paragraph is being conducted, CBP may take appropriate action, as directed by The Committee for the Implementation of Textile Agreements (CITA), which may include suspending the application of preferential treatment to the textile or apparel good for which a claim of origin has been made. If CBP is unable to make the determination described in this paragraph within 12 months after a request for a verification, CBP may take appropriate action with respect to the textile and apparel good subject to the verification, and with respect to similar goods exported or produced by the entity that exported or produced the good, if directed by CITA.

(b) *Procedures to determine compliance with applicable customs laws and regulations of the U.S.* For purposes of enabling CBP to determine that an exporter or producer is complying with applicable customs laws, regulations, and procedures in cases in which CBP has a reasonable suspicion that a Chilean exporter or producer is engaging in unlawful activity relating to trade in textile and apparel goods, CBP may request that the government of Chile conduct a verification, regardless of whether a claim is made for preferential tariff treatment. A ''reasonable suspicion'' for the purpose of this paragraph will be based on relevant factual information, including information of the type set forth in Article 5.5 of the US-CFTA, that indicates circumvention of applicable laws, regulations or procedures regarding trade in textile and apparel goods. CBP may undertake or assist in a verification under this paragraph by conducting visits in Chile, along with the competent authorities of Chile, to the premises of an exporter, producer or any other enterprise involved in the movement of textile or apparel goods from Chile to the United States. While a verification under this paragraph is being conducted, CBP may take appropriate action, as directed by CITA, which may include suspending the application of preferential tariff treatment to the textile and apparel goods exported or produced by the Chilean entity where the reasonable suspicion of unlawful activity relates to those goods. If CBP is unable to make the determination described in this paragraph within 12 months after a request for a verification, CBP may take appropriate action with respect to any textile or apparel goods exported or produced by the entity subject to the verification, if directed by CITA.

(c) *Assistance by CBP to Chilean authorities.* CBP may undertake or assist in a verification under this section by conducting visits in Chile, along with the competent authorities of Chile, to the premises of an exporter, producer or any other enterprise involved in the movement of textile or apparel goods from Chile to the United States.

(d) *Treatment of documents and information provided to CBP.* Any production, trade and transit documents and other information necessary to conduct a verification under this section, provided to CBP by the government of

Chile consistent with the laws, regulations, and procedures of Chile, will be considered confidential as provided for in Article 5.6 of the US-CFTA.

(e) *Notification to Chile.* Prior to commencing appropriate action under paragraph (a) or (b) of this section, CBP will notify the government of Chile. CBP may continue to take appropriate action under paragraph (a) or (b) of this section until it receives information sufficient to enable it to make the determination described in paragraphs (a) and (b) of this section.

(f) *Retention of authority by CBP.* If CBP requests a verification before Chile fully implements its obligations under Article 3.21 of the US-CFTA, the verification will be conducted principally by CBP, including through means described in paragraphs (a) and (b) of this section. CBP retains the authority to exercise its rights under paragraphs (a) and (b) of this section.

§ 10.472 Verification in the United States of textile and apparel goods.

(a) *Procedures to determine whether a claim of origin is accurate.* CBP will endeavor, at the request of the government of Chile, to conduct a verification for the purpose of determining that a claim of origin for a textile or apparel good is accurate. A verification will be conducted under this paragraph regardless of whether a claim is made for preferential tariff treatment. If the government of Chile is unable to make the determination described in this paragraph within 12 months after a request for a verification, Chile may take appropriate action with respect to the textile and apparel good subject to the verification, and with respect to similar goods exported or produced by the entity that exported or produced the good.

(b) *Procedures to determine compliance with applicable customs laws and regulations of Chile.* CBP will endeavor to conduct a verification at the request of the government of Chile for purposes of enabling Chile to determine that the U.S. exporter or producer is complying with applicable customs laws, regulations, and procedures, if Chile has a reasonable suspicion that a U.S. exporter or producer is engaging in unlawful activity relating to trade in textile and apparel goods. A verification will be conducted under this paragraph regardless of whether a claim is made for preferential tariff treatment. A ''reasonable suspicion'' for the purpose of this paragraph will be based on relevant factual information, including information of the type set forth in Article 5.5 of the US-CFTA, that indicates circumvention of applicable laws, regulations or procedures regarding trade in textile and apparel goods. If the government of Chile is unable to make the determination described in this paragraph within 12 months after a request for a verification, it may take action as permitted under its laws with respect to any textile or apparel goods exported or produced by the entity subject to the verification.

(c) *Visits by CBP.* CBP may conduct visits to the premises of a U.S. exporter or producer or any other enterprise involved in the movement of textile or apparel goods from the United States to Chile in order to undertake or assist in a verification pursuant to paragraphs (a) and (b) of this section.

(d) *Initiation of verification by CBP.* CBP may conduct, on its own initiative, a verification for the purpose of determining that a claim of origin for a textile or apparel good is accurate.

(e) *Treatment of documents and information.* CBP will endeavor to provide to the government of Chile, consistent with U.S. laws, regulations, and procedures, production, trade, and transit documents and other information necessary to conduct a verification under paragraphs (a) and (b) of this section. Such information will be considered confidential as provided for in Article 5.6 of the US-CFTA.

§ 10.473 Issuance of negative origin determinations.

If CBP determines, as a result of an origin verification initiated under this subpart, that the good which is the subject of the verification does not qualify as an originating good, it will issue a determination in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates

of the export and import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based;

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 26, HTSUS, and in §§10.450 through 10.463 of this subpart, the legal basis for the determination; and

(d) A notice of intent to deny preferential tariff treatment on the good which is the subject of the determination.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76134, Dec. 20, 2006]

§ 10.474 Repeated false or unsupported preference claims.

Where verification or other information reveals indications of a pattern of conduct by an importer of false or unsupported representations that a good imported into the United States qualifies as originating, CBP may deny subsequent claims for preferential tariff treatment on identical goods imported by that person until compliance with the rules applicable to originating goods as set forth in General Note 26, HTSUS is established to the satisfaction of CBP.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76134, Dec. 20, 2006]

PENALTIES

§ 10.480 General.

Except as otherwise provided in this subpart, all criminal, civil or administrative penalties which may be imposed on U.S. importers, exporters and producers for violations of the customs and related laws and regulations will also apply to U.S. importers, exporters and producers for violations of the laws and regulations relating to the US-CFTA.

§ 10.481 Corrected declaration by importers.

A U.S. importer who makes a corrected declaration under §10.410(b) will not be subject to civil or administrative penalties for having made an incorrect declaration, provided that the corrected declaration was voluntarily made.

§ 10.482 Corrected certifications of origin by exporters or producers.

Civil or administrative penalties provided for under the U.S. customs laws and regulations will not be imposed on an exporter or producer in the United States who voluntarily provides written notification pursuant to §10.430(b) with respect to the making of an incorrect certification.

§ 10.483 Framework for correcting declarations and certifications.

(a) *''Voluntarily'' defined.* For purposes of this subpart, the making of a corrected declaration or the providing of written notification of an incorrect certification will be deemed to have been done voluntarily if:

(1) Done before the commencement of a formal investigation; or

(2) Done before any of the events specified in §162.74(i) of this chapter have occurred; or

(3) Done within 30 calendar days after either the U.S. importer, exporter or producer had reason to believe that the declaration or certification was not correct; and is

(4) Accompanied by a written statement setting forth the information specified in paragraph (c) of this section; and

(5) In the case of a corrected declaration, accompanied or followed by a tender of any actual loss of duties and merchandise processing fees, if applicable, in accordance with paragraph (e) of this section.

(b) *Cases involving fraud.* Notwithstanding paragraph (a) of this section, a person who acted fraudulently in making an incorrect declaration or certification may not make a voluntary correction. For purposes of this paragraph, the term ''fraud'' will have the meaning set forth in paragraph (B)(3) of appendix B to part 171 of this chapter.

(c) *Statement.* For purposes of this subpart, each corrected declaration or notification of an incorrect certification must be accompanied by a statement, submitted in writing or via an

authorized electronic data interchange system, which:

(1) Identifies the class or kind of good to which the incorrect declaration or certification relates;

(2) In the case of a corrected declaration, identifies each affected import transaction, including each port of importation and the approximate date of each importation, and in the case of a notification of an incorrect certification, identifies each affected exportation transaction, including each port of exportation and the approximate date of each exportation. A U.S. producer who provides written notification that certain information in a certification of origin is incorrect and who is unable to identify the specific export transactions under this paragraph must provide as much information concerning those transactions as the producer, by the exercise of good faith and due diligence, is able to obtain;

(3) Specifies the nature of the incorrect statements or omissions regarding the declaration or certification; and

(4) Sets forth, to the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the declaration or certification, and states that the person will provide any additional pertinent information or data which is unknown at the time of making the corrected declaration or certification within 30 calendar days or within any extension of that 30-day period as CBP may permit in order for the person to obtain the information or data.

(d) *Substantial compliance.* For purposes of this section, a person will be deemed to have voluntarily corrected a declaration or certification even though that person provides corrected information in a manner which does not conform to the requirements of the written statement specified in paragraph (c) of this section, provided that:

(1) CBP is satisfied that the information was provided before the commencement of a formal investigation; and

(2) The information provided includes, orally or in writing, substantially the same information as that specified in paragraph (c) of this section.

(e) *Tender of actual loss of duties.* A U.S. importer who makes a corrected declaration must tender any actual loss of duties at the time of making the corrected declaration, or within 30 calendar days thereafter, or within any extension of that 30-day period as CBP may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

(f) *Applicability of prior disclosure provisions.* Where a person fails to meet the requirements of this section because the correction of the declaration or the written notification of an incorrect certification is not considered to be done voluntarily as provided in this section, that person may nevertheless qualify for prior disclosure treatment under 19 U.S.C. 1592(c)(4) and §162.74 of this chapter.

[CBP Dec. 05–07, 70 FR 10873, Mar. 7, 2005, as amended by CBP Dec. 06–39, 71 FR 76134, Dec. 20, 2006]

GOODS RETURNED AFTER REPAIR OR ALTERATION

§ 10.490 Goods re-entered after repair or alteration in Chile.

(a) *General.* This section sets forth the rules which apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Chile as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Chile, whether or not pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, ''repairs or alterations'' means restoration, addition, renovation, re-dyeing, cleaning, re-sterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

(b) *Goods not eligible for treatment.* The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to Chile, are incomplete for their intended use and for which the processing operation performed in Chile constitutes an operation that is performed as a matter of course in the

preparation or manufacture of finished goods.

(c) *Documentation*. The provisions of §10.8(a), (b), and (c) of this part, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Chile after having been exported for repairs or alterations and which are claimed to be duty free.

Subpart I—United States-Singapore Free Trade Agreement

SOURCE: CBP Dec. 07–28, 72 FR 31995, June 11, 2007, unless otherwise noted.

GENERAL PROVISIONS

§ 10.501 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported goods under the United States-Singapore Free Trade Agreement (the SFTA) signed on May 6, 2003, and under the United States-Singapore Free Trade Agreement Implementation Act (the Act; 117 Stat. 948). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the SFTA and the Act are contained in parts 24, 162, and 163 of this chapter.

§ 10.502 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Claim for preferential tariff treatment*. ''Claim for preferential tariff treatment'' means a claim that a good is entitled to the duty rate applicable under the SFTA to an originating good or other good specified in the SFTA, and to an exemption from the merchandise processing fee;

(b) *Customs duty*. ''Customs duty'' includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but, for purposes of implementing the SFTA, does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994 in respect of the like domestic good or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty that is applied pursuant to a Party's domestic law;

(3) Fee or other charge in connection with importation commensurate with the cost of services rendered; or

(4) Duty imposed pursuant to Article 5 of the WTO Agreement on Agriculture.

(c) *Customs Valuation Agreement*. ''Customs Valuation Agreement'' means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement;

(d) *Days*. ''Days'' means calendar days;

(e) *Enterprise*. ''Enterprise'' means an entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association;

(f) *GATT 1994*. ''GATT 1994'' means the *General Agreement on Tariffs and Trade 1994*, which is part of the *WTO Agreement*;

(g) *Harmonized System*. ''Harmonized System (HS)'' means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(h) *Heading*. ''Heading'' means the first four digits in the tariff classification number under the Harmonized System;

(i) *HTSUS*. ''HTSUS'' means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(j) *Indirect material.* ''Indirect material'' means a good used in the production, testing, or inspection of a good in the territory of the United States or Singapore but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good in the territory of the United States or Singapore, including:

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment and buildings;

(4) Lubricants, greases, compounding materials, and other materials used in production or used to operate equipment and buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the good;

(7) Catalysts and solvents; and

(8) Any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

(k) *Originating.* ''Originating'' means qualifying for preferential tariff treatment under the rules of origin set out in SFTA Chapter Three (Rules of Origin) and General Note 25, HTSUS;

(l) *Party.* ''Party'' means the United States or the Republic of Singapore;

(m) *Person.* ''Person'' means a natural person or an enterprise;

(n) *Preferential tariff treatment.* ''Preferential tariff treatment'' means the duty rate applicable under the SFTA to an originating good, and an exemption from the merchandise processing fee;

(o) *Subheading.* ''Subheading'' means the first six digits in the tariff classification number under the Harmonized System;

(p) *Tariff preference level.* ''Tariff preference level'' means a quantitative limit for certain non-originating textiles and textile apparel goods that may be entitled to preferential tariff treatment based on the goods meeting the production requirements set forth in §10.521 of this subpart;

(q) *Textile or apparel good.* ''Textile or apparel good'' means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as ''the ATC''), which is part of the WTO Agreement;

(r) *Territory.* ''Territory'' means:

(1) With respect to Singapore, its land territory, internal waters and territorial sea as well as the maritime zones beyond the territorial sea, including the seabed and subsoil over which the Republic of Singapore exercises sovereign rights or jurisdiction under its national laws and international law for the purpose of exploration and exploitation of the natural resources of such areas; and

(2) With respect to the United States;

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico;

(ii) The foreign trade zones located in the United States and Puerto Rico; and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources; and

(s) *WTO Agreement.* ''WTO Agreement'' means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

IMPORT REQUIREMENTS

§ 10.510 Filing of claim for preferential tariff treatment upon importation.

(a) *Claim.* An importer may make a claim for SFTA preferential tariff treatment, including an exemption from the merchandise processing fee, based on the importer's knowledge or information in the importer's possession that the good qualifies as an originating good. For goods that qualify as originating goods under the Integrated Sourcing Initiative (*see* subdivisions (b)(ii) and (m) of General Note 25, HTSUS, and §10.532 of this subpart), the claim is made by including on the entry summary, or equivalent documentation, the tariff item 9999.00.84, HTSUS, or by the method specified for equivalent reporting via an authorized electronic data interchange system. For all other qualifying goods, the claim is made by including on the

entry summary, or equivalent documentation, the letters ''SG'' as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.

(b) *Corrected claim.* If, after making the claim required under paragraph (a) of this section, the importer becomes aware that the claim is invalid, the importer must promptly correct the claim and pay any duties that may be due. The importer must submit a statement either in writing or via an authorized electronic data interchange system to the CBP office where the original claim was filed specifying the correction (*see* §§ 10.561 and 10.562 of this subpart).

§ 10.511 Supporting statement.

(a) *Contents.* An importer who makes a claim under § 10.510(a) of this subpart must submit, at the request of the Center director, a statement setting forth the reasons that the good qualifies as an originating good, including pertinent cost and manufacturing data. A statement submitted to CBP under this paragraph:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must include the following information:

(i) The legal name, address, telephone, and e-mail address (if any) of the importer of record of the good;

(ii) The legal name, address, telephone, and e-mail address (if any) of the responsible official or authorized agent of the importer signing the supporting statement (if different from the information required by paragraph (a)(2)(i) of this section);

(iii) The legal name, address, telephone, and e-mail address (if any) of the exporter of the good (if different from the producer);

(iv) The legal name, address, telephone, and e-mail address (if any) of the producer of the good (if known);

(v) A description of the good for which preferential tariff treatment is claimed, which must be sufficiently detailed to relate it to the invoice and the HS nomenclature;

(vi) The HTSUS tariff classification, to six or more digits, as necessary for the specific change in tariff classification rule for the good set forth in General Note 25(o), HTSUS;

(vii) The applicable rule of origin set forth in General Note 25, HTSUS, under which the good qualifies as an originating good; and

(3) Must include a statement, in substantially the following form:

> I certify that:
>
> The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;
>
> I agree to maintain and present upon request, documentation necessary to support these representations;
>
> The goods originated or are considered to have originated in the territory of one or more of the Parties, and comply with the origin requirements specified for those goods in the United States-Singapore Free Trade Agreement; there has been no further production or any other operation outside the territories of the parties, other than unloading, reloading, or any other operation necessary to preserve the goods in good condition or to transport the goods to the United States; and
>
> This document consists of _____ pages, including all attachments.''

(b) *Responsible official or agent.* The supporting statement required to be submitted under paragraph (a) of this section must be signed and dated by a responsible official of the importer or by the importer's authorized agent having knowledge of the relevant facts.

(c) *Language.* The supporting statement required to be submitted under paragraph (a) of this section must be completed in the English language.

(d) *Applicability of supporting statement.* The supporting statement required to be submitted under paragraph (a) of this section may be applicable to:

(1) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(2) Multiple importations of identical goods into the United States that

occur within a specified blanket period, not exceeding 12 months, set out in the statement. For purposes of this paragraph, ''identical goods'' means goods that are the same in all respects relevant to the particular rule of origin that qualifies the goods as originating.

§ 10.512 Importer obligations.

(a) *General.* An importer who makes a claim under § 10.510(a) of this subpart is responsible for the truthfulness of the claim and of all the information and data contained in the supporting statement provided for in § 10.511 of this subpart, for submitting any supporting documents requested by CBP, and for the truthfulness of the information contained in those documents. However, an importer will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for making an invalid claim for preferential tariff treatment or submitting an incorrect supporting statement, provided that the importer promptly and voluntarily corrects the claim or supporting statement and pays any duty owing (*see* §§ 10.561 and 10.562 of this subpart). In instances in which CBP requests the submission of supporting documents, CBP will allow for the direct submission by the exporter or producer of business confidential or other sensitive information, including cost and sourcing information.

(b) *Compliance.* In order to make a claim for preferential tariff treatment under § 10.510(a) of this subpart, the importer:

(1) Must have records that explain how the importer came to the conclusion that the good qualifies for preferential tariff treatment. Those records must include documents that support a claim that the article in question qualifies for preferential tariff treatment because it meets the applicable rules of origin set forth in General Note 25, HTSUS, and in this subpart. Those records may include a properly completed importer's supporting statement as set forth in § 10.511 of this subpart; and

(2) May be required to present evidence that the conditions set forth in § 10.542 of this subpart were met if the imported article was shipped through an intermediate country.

(c) *Information provided by exporter or producer.* The fact that the importer has made a claim or supporting statement based on information provided by an exporter or producer will not relieve the importer of the responsibility referred to in the first sentence of paragraph (a) of this section.

§ 10.513 Supporting statement not required.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a supporting statement under § 10.511 of this subpart for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the goods does not exceed U.S. $2,500.

(b) *Exception.* If the Center director determines that an importation described in paragraph (a) of this section may reasonably be considered to have been carried out or planned for the purpose of evading compliance with the rules and procedures governing claims for preference under the SFTA, the Center director will notify the importer that for that importation the importer must submit to CBP a supporting statement. The importer must submit such a statement within 30 days from the date of the notice. Failure to timely submit the supporting statement will result in denial of the claim for preferential treatment.

§ 10.514 Maintenance of records.

(a) *General.* An importer claiming preferential tariff treatment for a good imported into the United States under § 10.510(a) of this subpart must maintain, for five years after the date of importation of the good, any records and documents that the importer has relating to the origin of the good, including records and documents associated with:

(1) The purchase of, cost of, value of, and payment for, the good;

(2) Where appropriate, the purchase of, cost of, value of, and payment for, all materials, including recovered goods and indirect materials, used in the production of the good; and

(3) Where appropriate, the production of the good in the form in which the good was exported.

(b) *Applicability of other recordkeeping requirements.* The records and documents referred to in paragraph (a) of this section are in addition to any other records that the importer is required to prepare, maintain, or make available to CBP under part 163 of this chapter.

(c) *Method of maintenance.* The records and documents referred to in paragraph (a) of this section must be maintained by importers as provided in §163.5 of this chapter.

§ 10.515 Effect of noncompliance; failure to provide documentation regarding third country transportation.

(a) *Effect of noncompliance.* If the importer fails to comply with any requirement under this subpart, including submission of a complete supporting statement under §10.511 of this subpart, when requested, the Center director may deny preferential treatment to the imported good.

(b) *Failure to provide documentation regarding third country transportation.* Where the requirements for preferential treatment set forth elsewhere in this subpart are met, the Center director nevertheless may deny preferential treatment to an originating good if the good is shipped through or transshipped in a country other than Singapore or the United States, and the importer of the good does not provide, at the request of the Center director, evidence demonstrating to the satisfaction of the Center director that the conditions set forth in §10.542 of this subpart were met.

TARIFF PREFERENCE LEVEL

§ 10.520 Filing of claim for tariff preference level.

A cotton or man-made fiber apparel good described in §10.521 of this subpart that does not qualify as an originating good under §10.531 of this subpart may nevertheless be entitled to preferential tariff treatment under the SFTA under an applicable tariff preference level (TPL). To make a TPL claim, the importer must include on the entry summary, or equivalent documentation, the applicable tariff item in Chapter 99 of the HTSUS (9910.61.01 through 9910.61.89) and the applicable subheading in Chapter 61 or 62 of the HTSUS under which each non-originating cotton or man-made fiber apparel good is classified. For TPL goods, the letters ''SG'' must be inserted as a prefix to the applicable HTSUS 9910 tariff item when the entry is filed. The importer must also submit a certificate of eligibility as set forth in §10.522 of this subpart.

§ 10.521 Goods eligible for tariff preference level claims.

Goods eligible for a TPL claim consist of cotton or man-made fiber apparel goods provided for in Chapters 61 and 62 of the HTSUS that are both cut (or knit-to-shape) and sewn or otherwise assembled in Singapore from fabric or yarn produced or obtained outside the territory of Singapore or the United States, and that meet the applicable conditions for preferential tariff treatment under the SFTA, other than the condition that they are originating goods. The preferential tariff treatment is limited to the quantities specified in U.S. Note 13, Subchapter X, Chapter 99, HTSUS.

§ 10.522 Submission of certificate of eligibility.

An importer who claims preferential tariff treatment on a non-originating cotton or man-made fiber apparel good must submit a certificate of eligibility issued by the Government of Singapore, demonstrating that the good is eligible for entry under the applicable TPL, as set forth in §10.521 of this subpart.

RULES OF ORIGIN

§ 10.530 Definitions.

For purposes of §§10.530 through 10.542:

(a) *Adjusted value.* ''Adjusted value'' means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude:

(1) Any costs, charges, or expenses incurred for transportation, insurance and related services incident to the

international shipment of the merchandise from the country of exportation to the place of importation; and

(2) The value of packing materials and containers for shipment as defined in paragraph (j) of this section;

(b) *Exporter*. ''Exporter'' means a person who exports goods from the territory of a Party;

(c) *Fungible goods or materials*. ''Fungible goods or materials'' means goods or materials, as the case may be, that are interchangeable for commercial purposes and the properties of which are essentially identical;

(d) *Generally Accepted Accounting Principles*. ''Generally Accepted Accounting principles'' means the recognized consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;

(e) *Good*. ''Good'' means any merchandise, product, article, or material;

(f) *Goods wholly obtained or produced entirely in the territory of one or both of the Parties*. ''Goods wholly obtained or produced entirely in the territory of one or both of the Parties'' means:

(1) Mineral goods extracted in the territory of one or both of the Parties;

(2) Vegetable goods, as such goods are defined in the Harmonized System, harvested in the territory of one or both of the Parties;

(3) Live animals born and raised in the territory of one or both of the Parties;

(4) Goods obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of one or both of the Parties;

(5) Goods (fish, shellfish and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;

(6) Goods produced exclusively from products referred to in subparagraph (f)(5) of this section on board factory ships registered or recorded with a Party and flying its flag;

(7) Goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;

(8) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(9) Waste and scrap derived from:

(i) Production in the territory of one or both of the Parties; or

(ii) Used goods collected in the territory of one or both of the Parties, provided such goods are fit only for the recovery of raw materials;

(10) Recovered goods derived in the territory of one or both of the Parties from used goods; or

(11) Goods produced in one or both of the Parties exclusively from goods referred to in paragraphs (f)(1) through (f)(9) of this section or from the derivatives of such goods;

(g) *Material*. ''Material'' means a good that is used in the production of another good;

(h) *Non-originating good*. ''Non-originating good'' means a good that does not qualify as originating under General Note 25, HTSUS;

(i) *Non-originating material*. ''Non-originating material'' means a material that does not qualify as originating under General Note 25, HTSUS;

(j) *Packing materials and containers for shipment*. ''Packing materials and containers for shipment'' means the goods used to protect a good during its transportation to the United States, and does not include the packaging materials and containers in which a good is packaged for retail sale;

(k) *Producer*. ''Producer'' means a person who grows, raises, mines, harvests, fishes, traps, hunts, manufactures, processes, assembles or disassembles a good;

(l) *Production*. ''Production'' means growing, mining, harvesting, fishing, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good;

(m) *Recovered goods*. ''Recovered goods'' means materials in the form of individual parts that are the result of:

(1) The complete disassembly of used goods into individual parts; and

(2) The cleaning, inspecting, testing, or other processing of those parts as necessary for improvement to sound

working condition by one or more of the following processes: Welding, flame spraying, surface machining, knurling, plating, sleeving, and rewinding, in order for such parts to be assembled with other parts, including other recovered parts, in the production of a remanufactured good as defined in paragraph (o) of this section;

(n) *Relationship.* ''Relationship'' means whether the buyer and seller are related parties in accordance with Article 15.4 of the Customs Valuation Agreement;

(o) *Remanufactured good.* ''Remanufactured good'' means an industrial good assembled in the territory of Singapore or the United States that is enumerated in Annex 3C, SFTA, and:

(1) Is entirely or partially comprised of recovered goods;

(2) Has the same life expectancy and meets the same performance standards as a new good; and

(3) Enjoys the same factory warranty as such a new good;

(p) *Self-produced material.* ''Self-produced material'' means a good, such as a part or ingredient, produced by the producer and used by the producer in the production of another good; and

(q) *Value.* ''Value'' means the value of a good or material for purposes of calculating customs duties or for purposes of applying this subpart.

§ 10.531 Originating goods.

Except as provided in § 10.543 of this subpart, a good imported into the customs territory of the United States will be considered an originating good under the SFTA only if:

(a) The good is wholly obtained or produced entirely in the territory of one or both of the Parties;

(b) The good is transformed in one or both of the Parties so that:

(1) Each non-originating material undergoes an applicable change in tariff classification specified in General Note 25(o), HTSUS, as a result of production occurring entirely in the territory of one or both of the Parties; and

(2) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 25(o), HTSUS; or

(c) The good, in its condition as imported into the United States, is enumerated as an Integrated Sourcing Initiative good in General Note 25(m), HTSUS, and is imported from the territory of Singapore.

§ 10.532 Integrated Sourcing Initiative.

(a) For purposes of General Note 25(b)(ii), HTSUS, a good is eligible for treatment as an originating good under the Integrated Sourcing Initiative if:

(1) The good, in its condition as imported, is both classified in a tariff provision enumerated in the first column of General Note 25(m), HTSUS, and described opposite that tariff provision in the list of information technology articles set forth in the second column of General Note 25(m), HTSUS;

(2) The good, regardless of its origin, is imported into the territory of the United States from the territory of Singapore. If a product of a non-Party, the good must have been imported into Singapore prior to its importation into the territory of the United States; and

(3) The good satisfies the conditions and requirements of § 10.542 relating to third country transportation.

(b) A good enumerated in General Note 25(m), HTSUS, that is used in the production of another good in Singapore will not be considered an originating material for purposes of determining the eligibility for preferential tariff treatment of such other good unless:

(1) The good enumerated in General Note 25(m), HTSUS, satisfies an applicable rule of origin set out in General Note 25(o), HTSUS; or

(2) The good enumerated in General Note 25(m), HTSUS, is imported into the territory of Singapore from the territory of the United States prior to being used in the production of a good in Singapore.

§ 10.533 De minimis.

(a) Except as provided in paragraphs (b) and (c) of this section, a good that does not undergo a change in tariff classification pursuant to General Note 25(o), HTSUS, will nonetheless be considered to be an originating good if:

(1) The value of all non-originating materials used in the production of the good that do not undergo the applicable change in tariff classification does

not exceed 10 percent of the adjusted value of the good;

(2) The value of the non-originating materials described in paragraph (a)(1) of this section is included in calculating the value of non-originating materials for any applicable regional value content requirement for the good under General Note 25(o), HTSUS; and

(3) The good meets all other applicable requirements of General Note 25, HTSUS.

(b) Paragraph (a) does not apply to:

(1) A non-originating material provided for in Chapter 4, HTSUS, or in subheading 1901.90, HTSUS, that is used in the production of a good provided for in Chapter 4, HTSUS;

(2) A non-originating material provided for in Chapter 4, HTSUS, or in subheading 1901.90, HTSUS, that is used in the production of a good provided for in one of the following HTSUS provisions: Subheading 1901.10, 1901.20 or 1901.90; heading 2105; or subheading 2106.90, 2202.90 or 2309.90;

(3) A non-originating material provided for in heading 0805, HTSUS, or subheadings 2009.11 through 2009.39, HTSUS, that is used in the production of a good provided for in subheadings 2009.11 through 2009.39, HTSUS, or in subheading 2106.90 or 2202.90, HTSUS;

(4) A non-originating material provided for in Chapter 15, HTSUS, that is used in the production of a good provided for in headings 1501 through 1508, 1512, 1514 or 1515, HTSUS;

(5) A non-originating material provided for in heading 1701, HTSUS, that is used in the production of a good provided for in headings 1701 through 1703, HTSUS;

(6) A non-originating material provided for in Chapter 17, HTSUS, or heading 1805, HTSUS, that is used in the production of a good provided for in subheading 1806.10, HTSUS;

(7) A non-originating material provided for in headings 2203 through 2208, HTSUS, that is used in the production of a good provided for in heading 2207 or 2208, HTSUS; and

(8) A non-originating material used in the production of a good provided for in Chapters 1 through 21, HTSUS, unless the non-originating material is provided for in a different subheading than the good for which origin is being determined.

(c) A textile or apparel good provided for in Chapters 50 through 63, HTSUS, that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in General Note 25(o), HTSUS, will nevertheless be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than 7 percent of the total weight of that component. Notwithstanding the preceding sentence, a textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good will be considered an originating good only if such yarns are wholly formed in the territory of a Party.

§ 10.534 Accumulation.

(a) Originating materials of Singapore or the United States that are used in the production of a good in the territory of the other party will be considered to originate in the territory of the other party.

(b) A good that is produced in the territory of one or both of the Parties by one or more producers, will be considered an originating good if the good satisfies:

(1) The applicable requirements of § 10.531 of this subpart and General Note 25, HTSUS; or

(2) The provisions of § 10.532 of this subpart.

§ 10.535 Regional value content.

(a) *General.* Where General Note 25(o), HTSUS, sets forth a rule that specifies a regional value content test for a good, the regional value content of such good must be calculated, at the choice of the person claiming the preferential tariff treatment for such good, on the basis of the build-down method or the build-up method described in paragraphs (b) and (c) of this section, unless otherwise specified in General Note 25(o), HTSUS.

(b) *Build-down method.* Under the build-down method, the regional value content must be calculated on the

basis of the formula RVC = ((AV − VNM)/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good.

(c) *Build-up method.* Under the build-up method, the regional value content must be calculated on the basis of the formula RVC = (VOM /AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value; and VOM is the value of originating materials that are acquired or self-produced and used by the producer in the production of the good.

§ 10.536 Value of materials.

(a) *Calculating the value of materials.* Except as provided in § 10.541, for purposes of calculating the regional value content of a good under General Note 25(o), HTSUS, and for purposes of applying the *de minimis* (*see* § 10.533 of this subpart) provisions of General Note 25(o), HTSUS, the value of a material is:

(1) In the case of a material imported by the producer of the good, the adjusted value of the material;

(2) In the case of a material acquired by the producer in the territory where the good is produced, except for a material to which paragraph (a)(3) of this section applies, the adjusted value of the material with reasonable modifications to the provisions of the Customs Valuation Agreement so as to permit their application to the domestic acquisition by the producer. Such reasonable modifications include, but are not limited to, treating a domestic purchase by the producer as if it were a sale for export to the country of importation; or

Example 1. The producer in Singapore purchases material x from an unrelated seller in Singapore for $100. Under the provisions of Article 1 of the Customs Valuation Agreement, transaction value is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8. In order to apply Article 1 to this domestic purchase by the producer, such purchase is treated as if it were a sale for export to the country of importation. Therefore, for purposes of determining the adjusted value of material x, Article 1 transaction value is the price actually paid or payable for the goods when sold to the producer in Singapore ($100), adjusted in accordance with the provisions of Article 8. In this example, it is irrelevant whether material x was initially imported into Singapore by the seller (or by anyone else). So long as the producer acquired material x in Singapore, it is intended that the value of material x will be determined on the basis of the price actually paid or payable by the producer adjusted in accordance with the provisions of Article 8.

Example 2. Same facts as in Example 1, except the sale between the seller and the producer is subject to certain restrictions that preclude the application of Article 1. Under Article 2 of the Customs Valuation Agreement, the value is the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued. In order to permit the application of Article 2 to the domestic acquisition by the producer, it should be modified so that the value is the transaction value of identical goods sold within Singapore at or about the same time the goods were sold to the producer in Singapore. Thus, if the seller of material x also sold an identical material to another buyer in Singapore without restrictions, that other sale would be used to determine the adjusted value of material x.

(3) In the case of a self-produced material, or in a case in which the relationship between the producer of the good and the seller of the material influenced the price actually paid or payable for the material, including a material obtained without charge, the sum of:

(i) All expenses incurred in the production of the material, including general expenses; and

(ii) A reasonable amount for profit.

(b) *Permissible additions to, and deductions from, the value of materials*—(1) *Additions to originating materials.* For originating materials, the following expenses, if not included under paragraph (a) of this section, may be added to the value of the originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit

against duty or tax paid or payable; and

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-product; and

(2) *Deductions from non-originating materials.* For non-originating materials, if included under paragraph (a) of this section, the following expenses may be deducted from the value of the non-originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in one or both of the Parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable;

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products;

(iv) The cost of processing incurred in the territory of Singapore or the United States in the production of the non-originating material; and

(v) The cost of originating materials used in the production of the non-originating material in the territory of Singapore or the United States.

(c) *Accounting method.* Any cost or value referenced in General Note 25, HTSUS and this subpart, must be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the country in which the good is produced (whether Singapore or the United States).

§ 10.537 Accessories, spare parts, or tools.

Accessories, spare parts, or tools that are delivered with a good and that form part of the good's standard accessories, spare parts, or tools will be treated as originating goods if the good is an originating good, and will be disregarded in determining whether all the non-originating materials used in the production of the good undergo an applicable change in tariff classification specified in General Note 25(o), HTSUS, provided that:

(a) The accessories, spare parts, or tools are not invoiced separately from the good;

(b) The quantities and value of the accessories, spare parts, or tools are customary for the good; and

(c) If the good is subject to a regional value content requirement, the value of the accessories, spare parts, or tools will be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good under § 10.535 of this subpart.

§ 10.538 Fungible goods and materials.

(a) A person claiming preferential treatment under the SFTA for a good may claim that a fungible good or material is originating either based on the physical segregation of each fungible good or material or by using an inventory management method. For purposes of this subpart, the term ''inventory management method'' means:

(1) Averaging;

(2) ''Last-in, first-out;''

(3) ''First-in, first-out;'' or

(4) Any other method that is recognized in the Generally Accepted Accounting Principles of the Party in which the production is performed or otherwise accepted by that country.

(b) A person selecting an inventory management method under paragraph (a) of this section for particular fungible goods or materials must continue to use that method for those fungible goods or materials throughout the fiscal year of that person.

§ 10.539 Retail packaging materials and containers.

Packaging materials and containers in which a good is packaged for retail sale, if classified with the good for which preferential treatment under the SFTA is claimed, will be disregarded in determining whether all non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in General Note 25(o), HTSUS. If the good is subject to a regional value content requirement, the value of such packaging materials and containers

will be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Example 1. Singaporean Producer A of good C imports 100 non-originating blister packages to be used as retail packaging for good C. As provided in §10.536(a)(1) of this subpart, the value of the blister packages is their adjusted value, which in this case is $10. Good C has a regional value content requirement. The United States importer of good C decides to use the build-down method, RVC = ((AV − VNM)/AV) × 100 (*see* §10.535(b) of this subpart), in determining whether good C satisfies the regional value content requirement. In applying this method, the non-originating blister packages are taken into account as non-originating. As such, their $10 adjusted value is included in the VNM, value of non-originating materials, of good C.

Example 2. Same facts as in Example 1, but the blister packages are originating. In this case, the adjusted value of the originating blister packages would not be included as part of the VNM of good C under the build-down method. However, if the U.S. importer had used the build-up method, RVC = (VOM/AV) × 100 (*see* §10.535(c) of this subpart), the adjusted value of the blister packaging would be included as part of the VOM, value of originating material.

§10.540 Packing materials and containers for shipment.

(a) Packing materials and containers for shipment, as defined in §10.530(j) of this subpart, are to be disregarded in determining whether the non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in General Note 25(o), HTSUS. Accordingly, such materials and containers are not required to undergo the applicable change in tariff classification even if they are non-originating.

(b) Packing materials and containers for shipment, as defined in §10.530(j) of this subpart, are to be disregarded in determining the regional value content of a good imported into the United States. Accordingly, in applying either the build-down or build-up method for determining the regional value content of the good imported into the United States, the value of such packing materials and containers for shipment (whether originating or non-originating) is disregarded and not included in AV, adjusted value, VNM, value of non-originating materials, or VOM, value of originating materials.

Example. Singaporean Producer A produces good C. Producer A ships good C to the U.S. in a shipping container which it purchased from Company B in Singapore. The shipping container is originating. The value of the shipping container determined under section §10.536(a)(2) of this subpart is $3. Good C is subject to a regional value content requirement. The transaction value of good C is $100, which includes the $3 shipping container. The United States importer decides to use the build-up method, RVC = (VOM/AV) × 100 (*see* §10.535(c) of this subpart), in determining whether good C satisfies the regional value content requirement. In determining the AV, adjusted value, of good C imported into the U.S., paragraph (b) of this section requires a $3 deduction for the value of the shipping container. Therefore, the AV is $97 ($100 − $3). In addition, the value of the shipping container is disregarded and not included in the VOM, value of originating materials.

§10.541 Indirect materials.

An indirect material, as defined in §10.502(j) of this subpart, will be considered to be an originating material without regard to where it is produced, and its value will be the cost registered in the accounting records of the producer of the good.

Example. Singaporean Producer C produces good C using non-originating material A. Producer C imports non-originating rubber gloves for use by workers in the production of good C. Good C is subject to a tariff shift requirement. As provided in §10.531(b)(1) of this subpart and General Note 25(o), each of the non-originating materials in good C must undergo the specified change in tariff classification in order for good C to be considered originating. Although non-originating material A must undergo the applicable tariff shift in order for good C to be considered originating, the rubber gloves do not because they are indirect materials and are considered originating without regard to where they are produced.

§10.542 Third country transportation.

(a) *General.* A good will not be considered an originating good by reason of having undergone production that would enable the good to qualify as an originating good if subsequent to that production the good undergoes further production or any other operation outside the territories of the Parties, other than unloading, reloading, or any

other process necessary to preserve the good in good condition or to transport the good to the territory of a Party.

(b) *Documentary evidence.* An importer making a claim that a good is originating may be required to demonstrate, to CBP's satisfaction, that no further production or subsequent operation, other than permitted under paragraph (a) of this section, occurred outside the territories of the Parties. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

§ 10.543 Certain apparel goods made from fabric or yarn not available in commercial quantities.

Notwithstanding the provisions of § 10.531 of this subpart, a textile apparel article of Chapter 61 or 62, HTSUS, will be considered an originating good under the SFTA if it is both cut (or knit to shape) and sewn or otherwise assembled in one or both of the Parties from fabric or yarn, regardless of origin, designated by the Committee for the Implementation of Textile Agreements (''CITA'') as not available in commercial quantities in a timely manner in the United States. Such designations by CITA, identifying apparel goods made from such fabric or yarn as eligible for entry under subheading 9819.11.24 or 9820.11.27, HTSUS, must have been made by notices published in the FEDERAL REGISTER no later than November 15, 2002.[1] For purposes of this section, any reference in these notices to fabric or yarn formed in the United States will be interpreted as also including fabric or yarn formed in Singapore.

[1] These designations are set forth in notices published in the FEDERAL REGISTER on September 25, 2001 (66 FR 49005), November 19, 2001 (66 FR 57942), April 10, 2002 (67 FR 17412), May 28, 2002 (67 FR 36858), and September 5, 2002 (67 FR 56806).

ORIGIN VERIFICATIONS AND DETERMINATIONS

§ 10.550 Verification and justification of claim for preferential treatment.

(a) *Verification.* A claim for preferential treatment made under § 10.510(a) of this subpart, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the Center director deems necessary. In the event that the Center director is provided with insufficient information to verify or substantiate the claim, the Center director may deny the claim for preferential treatment. A verification of a claim for preferential tariff treatment may be conducted by means of one or more of the following:

(1) Requests for information from the importer;

(2) Written requests for information to the exporter or producer;

(3) Requests for the importer to arrange for the exporter or producer to provide information directly to CBP;

(4) Visits to the premises of the exporter or producer in Singapore, in accordance with procedures that the Parties adopt pertaining to verification; and

(5) Such other procedures as the Parties may agree.

(b) *Applicable accounting principles.* When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

§ 10.551 Issuance of negative origin determinations.

If, as a result of an origin verification initiated under § 10.550 of this subpart, CBP denies a claim for preferential treatment made under § 10.510(a) of this subpart, it will issue a determination in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates of the import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 25, HTSUS, and in §§ 10.530 through 10.543 of this subpart, the legal basis for the determination.

§ 10.552 Information sharing by CBP regarding textile and apparel goods produced in the United States.

(a) *Documents or information in the possession of U.S. enterprises.* Upon written request from the Government of Singapore containing a brief statement of the matter at issue and the cooperation requested, CBP will promptly request from a U.S. enterprise and provide to the Government of Singapore, to the extent available, all correspondence, reports, bills of lading, invoices, order confirmations, and other documents or information relevant to circumvention that the Government of Singapore considers may have taken place.

(b) *Circumvention defined.* For purposes of this section and § 10.554 of this subpart, ''circumvention'' means providing a false claim or false information for the purpose of, or with the effect of, violating or evading existing customs, country of origin labeling, or trade laws of the Party into which the textile or apparel goods are imported, if such action results in the avoidance of tariffs, quotas, embargoes, prohibitions, restrictions, trade remedies, including antidumping or countervailing duties, or safeguard measures, or in obtaining preferential tariff treatment. Examples of circumvention include: Illegal transshipment; rerouting; fraud; false claims concerning country of origin, fiber content, quantities, description, or classification; falsification of documents; and smuggling.

§ 10.553 Textile and apparel site visits.

(a) *Visits to enterprises of Singapore.* U.S. officials may undertake to conduct site visits to enterprises in the territory of Singapore. U.S. officials will conduct such visits together with responsible officials of the Government of Singapore and in accordance with the laws of Singapore.

(b) *Denial of permission to visit.* If the responsible officials of an enterprise of Singapore that is proposed to be visited do not consent to the site visit, CBP will, if directed by The Committee for the Implementation of Textile Agreements (CITA), exclude from the territory of the United States textile or apparel goods produced or exported by the enterprise until CITA determines that the enterprise's production of, and capability to produce, such goods is consistent with statements by the enterprise that textile or apparel goods it produces or has produced are originating goods or products of Singapore.

§ 10.554 Exclusion of textile or apparel goods for intentional circumvention.

(a) *General.* If CITA finds that an enterprise of Singapore has knowingly or willfully engaged in circumvention, CBP will, if directed by CITA, exclude from the customs territory of the United States textile or apparel goods produced or exported by that enterprise for a period no longer than the applicable period described in paragraph (b) of this section.

(b) *Time periods.* An exclusion from entry imposed under paragraph (a) of this section will begin on the date a finding of knowing or willful circumvention is made by CITA and will remain in effect for the following applicable time period:

(1) With respect to a first finding, the applicable period is six months;

(2) With respect to a second finding, the applicable period is two years; or

(3) With respect to a third or subsequent finding, the applicable period is two years. If, at the time of a third or subsequent finding, an exclusion of goods with respect to an enterprise is in effect as a result of a previous finding, the two-year period applicable to the third or subsequent finding will begin on the day after the day on which the previous exclusion period terminates.

PENALTIES

§ 10.560 General.

Except as otherwise provided in this subpart, all criminal, civil or administrative penalties which may be imposed on U.S. importers for violations of the customs and related laws and regulations will also apply to U.S. importers for violations of the laws and regulations relating to the SFTA.

§ 10.561 Corrected claim or supporting statement.

An importer who makes a corrected claim under § 10.510(b) will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for having made an incorrect claim or supporting statement, provided that the corrected claim is promptly and voluntarily made.

§ 10.562 Framework for correcting claims or supporting statements.

(a) *''Promptly and voluntarily'' defined.* Except as provided for in paragraph (b) of this section, for purposes of this subpart, the making of a corrected claim or supporting statement will be deemed to have been done promptly and voluntarily if:

(1)(i) Done within one year following the date on which the importer made the incorrect claim; or

(ii) Done later than one year following the date on which the importer made the incorrect claim, provided that the corrected claim is made:

(A) Before the commencement of a formal investigation, within the meaning of § 162.74(g) of this chapter; or

(B) Before any of the events specified in § 162.74(i) of this chapter has occurred; or

(C) Within 30 days after the importer initially becomes aware that the incorrect claim is not valid; and

(2) Accompanied by a statement setting forth the information specified in paragraph (c) of this section; and

(3) Accompanied or followed by a tender of any actual loss of duties and merchandise processing fees, if applicable, in accordance with paragraph (e) of this section.

(b) *Exception in cases involving fraud or subsequent incorrect claims*—(1) *Fraud.* An importer who acted fraudulently in making an incorrect claim may not make a voluntary correction of that claim. For purposes of this paragraph, the term ''fraud'' will have the meaning set forth in paragraph (C)(3) of appendix B to part 171 of this chapter.

(2) *Subsequent incorrect claims.* An importer who makes one or more incorrect claims after becoming aware that a claim involving the same merchandise and circumstances is invalid may not make a voluntary correction of the subsequent claims pursuant to paragraph (a)(1)(ii)(C) of this section.

(c) *Statement.* For purposes of this subpart, each corrected claim must be accompanied by a statement, submitted in writing or via an authorized electronic data interchange system, which:

(1) Identifies the class or kind of good to which the incorrect claim relates;

(2) Identifies each affected import transaction, including each port of importation and the approximate date of each importation.

(3) Specifies the nature of the incorrect statements or omissions regarding the claim; and

(4) Sets forth, to the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the claim, and states that the person will provide any additional information or data which is unknown at the time of making the corrected claim within 30 days or within any extension of that 30-day period as CBP may permit in order for the person to obtain the information or data.

(d) *Substantial compliance.* For purposes of this section, a person will be deemed to have submitted the statement described in paragraph (c) of this section even though that person provided corrected information in a manner which does not conform to the requirements of the statement specified in paragraph (c) of this section, provided that the information submitted includes, orally or otherwise, substantially the same information as that specified in paragraph (c) of this section.

(e) *Tender of actual loss of duties.* A U.S. importer who makes a corrected claim must tender any actual loss of

duties at the time of making the corrected claim, or within 30 days thereafter, or within any extension of that 30-day period as CBP may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

(f) *Applicability of prior disclosure provisions.* Where a person fails to meet the requirements of this section, that person may nevertheless qualify for prior disclosure treatment under 19 U.S.C. 1592(c)(4) and 162.74 of this chapter.

GOODS RETURNED AFTER REPAIR OR ALTERATION

§ 10.570 Goods re-entered after repair or alteration in Singapore.

(a) *General.* This section sets forth the rules which apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Singapore as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Singapore, whether or not pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, ''repairs or alterations'' means restoration, addition, renovation, redyeing, cleaning, re-sterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

(b) *Goods not eligible for duty-free treatment after repair or alteration.* The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to Singapore, are incomplete for their intended use and for which the processing operation performed in Singapore constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

(c) *Documentation.* The provisions of paragraphs (a), (b), and (c) of §10.8 of this part, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Singapore after having been exported for repairs or alterations and which are claimed to be duty free.

Subpart J—Dominican Republic—Central America—United States Free Trade Agreement

SOURCE: CBP Dec. 08–22, 73 FR 33678, June 13, 2008, unless otherwise noted.

GENERAL PROVISIONS

§ 10.581 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported and exported goods under the Dominican Republic—Central America—United States Free Trade Agreement (the CAFTA–DR) signed on August 5, 2004, and under the Dominican Republic—Central America—United States Free Trade Agreement Implementation Act (the Act; Pub. L. 109–53, 119 Stat. 462 (19 U.S.C. 4001 *et seq.*), as amended by section 1634 of the Pension Protection Act of 2006 (Pub. L. 109–280, 120 Stat. 1167). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the CAFTA–DR and the Act are contained in parts 24, 162, and 163 of this chapter.

§ 10.582 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Claim for preferential tariff treatment.* ''Claim for preferential tariff treatment'' means a claim that a good is entitled to the duty rate applicable under the CAFTA–DR to an originating good or other good specified in the CAFTA–DR, and to an exemption from the merchandise processing fee;

(b) *Claim of origin.* ''Claim of origin'' means a claim that a textile or apparel good is an originating good or a good of a Party;

(c) *Customs authority*. ''Customs authority'' means the competent governmental unit that is responsible under the law of a Party for the administration of customs laws and regulations;

(d) *Customs duty*. ''Customs duty'' includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but, for purposes of implementing the CAFTA–DR, does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994 in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty that is applied pursuant to a Party's domestic law; or

(3) Fee or other charge in connection with importation commensurate with the cost of services rendered;

(e) *Customs Valuation Agreement*. ''Customs Valuation Agreement'' means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement;

(f) *Days*. ''Days'' means calendar days;

(g) *Enterprise*. ''Enterprise'' means any entity constituted or organized under applicable law, whether or not for profit, and whether privately owned or governmentally owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association;

(h) *GATT 1994*. ''GATT 1994'' means the *General Agreement on Tariffs and Trade 1994*, which is part of the *WTO Agreement;*

(i) *Harmonized System*. ''Harmonized System'' means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(j) *Heading*. ''Heading'' means the first four digits in the tariff classification number under the Harmonized System;

(k) *HTSUS*. ''HTSUS'' means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(l) *Identical goods*. ''Identical goods'' means goods that are produced in the same country and are the same in all respects, including physical characteristics, quality, and reputation, but excluding minor differences in appearance.

(m) *Indirect material*. ''Indirect material'' means a good used in the production, testing, or inspection of a good in the territory of one or more of the Parties but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good in the territory of one or more of the Parties, including:

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment or buildings;

(4) Lubricants, greases, compounding materials, and other materials used in production or used to operate equipment or buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the good;

(7) Catalysts and solvents; and

(8) Any other goods that are not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be a part of that production;

(n) *Originating*. ''Originating'' means qualifying for preferential tariff treatment under the rules of origin set out in CAFTA–DR Chapter Four (Rules of Origin and Origin Procedures) and General Note 29, HTSUS;

(o) *Party*. ''Party'' means:

(1) The United States; and

(2) Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, or Nicaragua, for such time as the CAFTA–DR is in force between the United States and that country;

(p) *Person*. ''Person'' means a natural person or an enterprise;

(q) *Preferential tariff treatment*. ''Preferential tariff treatment'' means the

duty rate applicable under the CAFTA–DR to an originating good or other good specified in the CAFTA–DR, and an exemption from the merchandise processing fee;

(r) *Subheading*. ''Subheading'' means the first six digits in the tariff classification number under the Harmonized System;

(s) *Tariff preference level*. ''Tariff preference level'' means a quantitative limit for certain non-originating apparel goods that may be entitled to preferential tariff treatment based on the goods meeting the requirements set forth in §§ 10.606 through 10.610 of this subpart.

(t) *Textile or apparel good*. ''Textile or apparel good'' means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as ''the ATC''), which is part of the WTO Agreement, except for those goods listed in Annex 3.29 of the CAFTA–DR;

(u) *Territory*. ''Territory'' means:

(1) With respect to each Party other than the United States, the land, maritime, and air space under its sovereignty and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law;

(2) With respect to the United States:

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico;

(ii) The foreign trade zones located in the United States and Puerto Rico; and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

(v) *WTO*. ''WTO'' means the World Trade Organization; and

(w) *WTO Agreement*. ''WTO Agreement'' means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

[CBP Dec. 08–22, 73 FR 33678, June 13, 2008, as amended by CBP Dec. 10–26, 75 FR 50698, Aug. 17, 2010]

IMPORT REQUIREMENTS

§ 10.583 Filing of claim for preferential tariff treatment upon importation.

(a) *Basis of claim*. An importer may make a claim for CAFTA–DR preferential tariff treatment, including an exemption from the merchandise processing fee, based on:

(1) A certification, as specified in § 10.584 of this subpart, that is prepared by the importer, exporter, or producer of the good; or

(2) The importer's knowledge that the good qualifies as an originating good, including reasonable reliance on information in the importer's possession that the good is an originating good.

(b) *Making a claim*. The claim is made by including on the entry summary, or equivalent documentation, the letter ''P'' or ''P + '' as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.

(c) *Corrected claim*. If, after making the claim specified in paragraph (b) of this section, the importer has reason to believe that the claim is based on inaccurate information or is otherwise invalid, the importer must, within 30 calendar days after the date of discovery of the error, correct the claim and pay any duties that may be due. The importer must submit a statement either in writing or via an authorized electronic data interchange system to the CBP office where the original claim was filed specifying the correction (*see* §§ 10.621 and 10.623 of this subpart).

[CBP Dec. 08–22, 73 FR 33678, June 13, 2008, as amended by CBP Dec. 10–26, 75 FR 50699, Aug. 17, 2010]

§ 10.584 Certification.

(a) *General*. An importer who makes a claim under § 10.583(b) of this subpart based on a certification of the importer, exporter, or producer that the good qualifies as originating must submit, at the request of the Center director, a copy of the certification. The certification:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to

any electronic means authorized by CBP for that purpose;

(2) Must be in the possession of the importer at the time the claim for preferential tariff treatment is made if the certification forms the basis for the claim;

(3) Must include the following information:

(i) The legal name, address, telephone, and e-mail address (if any) of the importer of record of the good, the exporter of the good (if different from the producer), and the producer of the good;

(ii) The legal name, address, telephone, and e-mail address (if any) of the responsible official or authorized agent of the importer, exporter, or producer signing the certification (if different from the information required by paragraph (a)(3)(i) of this section);

(iii) A description of the good for which preferential tariff treatment is claimed, which must be sufficiently detailed to relate it to the invoice and the HS nomenclature;

(iv) The HTSUS tariff classification, to six or more digits, as necessary for the specific change in tariff classification rule for the good set forth in General Note 29(n), HTSUS; and

(v) The applicable rule of origin set forth in General Note 29, HTSUS, under which the good qualifies as an originating good; and

(4) Must include a statement, in substantially the following form:

''I certify that:

The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;

I agree to maintain and present upon request, documentation necessary to support these representations;

The goods originated or are considered to have originated in the territory of one or more of the Parties, and comply with the origin requirements specified for those goods in the Dominican Republic—Central America—United States Free Trade Agreement; there has been no further production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the goods in good condition or to transport the goods to the United States; the goods remained under the control of customs authorities while in the territory of a non-Party; and

This document consists of ____ pages, including all attachments.''

(b) *Responsible official or agent.* The certification provided for in paragraph (a) of this section must be signed and dated by a responsible official of the importer, exporter, or producer, or by the importer's, exporter's, or producer's authorized agent having knowledge of the relevant facts.

(c) *Language.* The certification provided for in paragraph (a) of this section must be completed in either the English language or the language of the exporting Party. In the latter case, the Center director may require the importer to submit an English translation of the certification.

(d) *Certification by the exporter or producer.* A certification may be prepared by the exporter or producer of the good on the basis of:

(1) The exporter's or producer's knowledge that the good is originating; or

(2) In the case of an exporter, reasonable reliance on the producer's certification that the good is originating.

(e) *Applicability of certification.* The certification provided for in paragraph (a) of this section may be applicable to:

(1) A single shipment of a good into the United States; or

(2) Multiple shipments of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the certification.

(f) *Validity of certification.* A certification that is properly completed, signed, and dated in accordance with the requirements of this section will be accepted as valid for four years following the date on which it was signed.

§ 10.585 Importer obligations.

(a) *General.* An importer who makes a claim for preferential tariff treatment under § 10.583(b) of this subpart:

(1) Will be deemed to have certified that the good is eligible for preferential tariff treatment under the CAFTA–DR;

(2) Is responsible for the truthfulness of the claim and of all the information and data contained in the certification provided for in § 10.584 of this subpart;

(3) Is responsible for submitting any supporting documents requested by CBP, and for the truthfulness of the information contained in those documents. When a certification prepared by an exporter or producer forms the basis of a claim for preferential tariff treatment, and CBP requests the submission of supporting documents, the importer will provide to CBP, or arrange for the direct submission by the exporter or producer, all information relied on by the exporter or producer in preparing the certification.

(b) *Information provided by exporter or producer.* The fact that the importer has made a claim or submitted a certification based on information provided by an exporter or producer will not relieve the importer of the responsibility referred to in paragraph (a) of this section.

(c) *Exemption from penalties.* An importer will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for making an incorrect claim for preferential tariff treatment or submitting an incorrect certification, provided that the importer promptly and voluntarily corrects the claim or certification and pays any duty owing (see §§ 10.621 and 10.623 of this subpart).

§ 10.586 Certification not required.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a copy of a certification under § 10.584 of this subpart for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the originating goods does not exceed U.S. $2,500.

(b) *Exception.* If the Center director determines that an importation described in paragraph (a) of this section is part of a series of importations carried out or planned for the purpose of evading compliance with the certification requirements of § 10.584 of this subpart, the Center director will notify the importer that for that importation the importer must submit to CBP a copy of the certification. The importer must submit such a copy within 30 days from the date of the notice. Failure to timely submit a copy of the certification will result in denial of the claim for preferential tariff treatment.

§ 10.587 Maintenance of records.

(a) *General.* An importer claiming preferential tariff treatment for a good imported into the United States under § 10.583(b) of this subpart must maintain, for a minimum of five years after the date of importation of the good, all records and documents that the importer has demonstrating that the good qualifies for preferential tariff treatment under the CAFTA–DR. These records are in addition to any other records that the importer is required to prepare, maintain, or make available to CBP under part 163 of this chapter.

(b) *Method of maintenance.* The records and documents referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

§ 10.588 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *General.* If the importer fails to comply with any requirement under this subpart, including submission of a complete certification prepared in accordance with § 10.584 of this subpart, when requested, the Center director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the Center director nevertheless may deny preferential tariff treatment to an originating good if the good is shipped through or transshipped in a country other than a Party to the CAFTA–DR, and the importer of the good does not provide, at the request of the Center director, evidence demonstrating to the satisfaction of the Center director that the conditions set forth in § 10.604(a) of this subpart were met.

EXPORT REQUIREMENTS

§ 10.589 Certification for goods exported to a Party.

(a) *Submission of certification to CBP.* Any person who completes and issues a certification for a good exported from

the United States to a Party must provide a copy of the certification (or such other medium or format approved by the Party's customs authority for that purpose) to CBP upon request.

(b) *Notification of errors in certification.* Any person who completes and issues a certification for a good exported from the United States to a Party and who has reason to believe that the certification contains or is based on incorrect information must promptly notify every person to whom the certification was provided of any change that could affect the accuracy or validity of the certification. Notification of an incorrect certification must also be given either in writing or via an authorized electronic data interchange system to CBP specifying the correction (*see* §§ 10.622 and 10.623 of this subpart).

(c) *Maintenance of records*—(1) *General.* Any person who completes and issues a certification for a good exported from the United States to a Party must maintain, for a period of at least five years after the date the certification was signed, all records and supporting documents relating to the origin of a good for which the certification was issued, including the certification or copies thereof and records and documents associated with:

(i) The purchase, cost, and value of, and payment for, the good;

(ii) The purchase, cost, and value of, and payment for, all materials, including indirect materials, used in the production of the good; and

(iii) The production of the good in the form in which the good was exported.

(2) *Method of maintenance.* The records referred to in paragraph (c) of this section must be maintained as provided in § 163.5 of this chapter.

(3) *Availability of records.* For purposes of determining compliance with the provisions of this part, the records required to be maintained under this section must be stored and made available for examination and inspection by the Center director or other appropriate CBP officer in the same manner as provided in part 163 of this chapter.

POST-IMPORTATION DUTY REFUND CLAIMS

§ 10.590 Right to make post-importation claim and refund duties.

Notwithstanding any other available remedy, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment was made, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in § 10.591 of this subpart. Subject to the provisions of § 10.588 of this subpart, CBP may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 10.592(c) of this subpart.

§ 10.591 Filing procedures.

(a) *Place of filing.* A post-importation claim for a refund must be filed with CBP, either at the port of entry or electronically.

(b) *Contents of claim.* A post-importation claim for a refund must be filed by presentation of the following:

(1) A written declaration stating that the good qualified as an originating good at the time of importation and setting forth the number and date of the entry or entries covering the good;

(2) A copy of a certification prepared in accordance with § 10.584 of this subpart if a certification forms the basis for the claim, or other information demonstrating that the good qualifies for preferential tariff treatment;

(3) A written statement indicating whether the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was so provided, the statement must identify each recipient by name, CBP identification number, and address and must specify the date on which the documentation was provided; and

(4) A written statement indicating whether or not any person has filed a protest relating to the good under any provision of law; and if any such protest has been filed, the statement must identify the protest by number and date.

§ 10.592 CBP processing procedures.

(a) *Status determination.* After receipt of a post-importation claim under § 10.591 of this subpart, the Center director will determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest or judicial review.* If the Center director determines that any protest relating to the good has not been finally decided, the Center director will suspend action on the claim filed under § 10.591 of this subpart until the decision on the protest becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the Center director will suspend action on the claim filed under § 10.591 of this subpart until judicial review has been completed.

(c) *Allowance of claim*—(1) *Unliquidated entry.* If the Center director determines that a claim for a refund filed under § 10.591 of this subpart should be allowed and the entry covering the good has not been liquidated, the Center director will take into account the claim for refund in connection with the liquidation of the entry.

(2) *Liquidated entry.* If the Center director determines that a claim for a refund filed under § 10.591 of this subpart should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties under this section. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, the Center director will reliquidate the entry taking into account the claim for refund under § 10.591 of this subpart.

(d) *Denial of claim*—(1) *General.* The Center director may deny a claim for a refund filed under § 10.591 of this subpart if the claim was not filed timely, if the importer has not complied with the requirements of §§ 10.588 and 10.591 of this subpart, or if, following an origin verification under § 10.616 of this subpart, the Center director determines either that the imported good did not qualify as an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under § 10.616 of this subpart.

(2) *Unliquidated entry.* If the Center director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the Center director will deny the claim in connection with the liquidation of the entry, and notice of the denial and the reason for the denial will be provided to the importer in writing or via an authorized electronic data interchange system.

(3) *Liquidated entry.* If the Center director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the Center director will provide notice of the denial and the reason for the denial to the importer in writing or via an authorized electronic data interchange system.

[CBP Dec. 08–22, 73 FR 33678, June 13, 2008, as amended by CBP Dec. 10–26, 75 FR 50699, Aug. 17, 2010]

RULES OF ORIGIN

§ 10.593 Definitions.

For purposes of §§ 10.593 through 10.605:

(a) *Adjusted value.* ''Adjusted value'' means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude:

(1) Any costs, charges, or expenses incurred for transportation, insurance and related services incident to the international shipment of the good from the country of exportation to the place of importation; and

(2) The value of packing materials and containers for shipment as defined in paragraph (m) of this section;

(b) *Class of motor vehicles.* ''Class of motor vehicles'' means any one of the following categories of motor vehicles:

(1) Motor vehicles provided for in subheading 8701.20, 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, HTSUS, or motor vehicles for the transport of 16 or more persons provided for in subheading 8702.10 or 8702.90, HTSUS;

(2) Motor vehicles provided for in subheading 8701.10 or any of subheadings 8701.30 through 8701.90, HTSUS;

(3) Motor vehicles for the transport of 15 or fewer persons provided for in subheading 8702.10 or 8702.90, HTSUS, or motor vehicles provided for in subheading 8704.21 or 8704.31, HTSUS; or

(4) Motor vehicles provided for in subheadings 8703.21 through 8703.90, HTSUS;

(c) *Exporter.* ''Exporter'' means a person who exports goods from the territory of a Party;

(d) *Fungible good or material.* ''Fungible good or material'' means a good or material, as the case may be, that is interchangeable with another good or material for commercial purposes and the properties of which are essentially identical to such other good or material;

(e) *Generally Accepted Accounting Principles.* ''Generally Accepted Accounting Principles'' means the recognized consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These principles may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;

(f) *Good.* ''Good'' means any merchandise, product, article, or material;

(g) *Goods wholly obtained or produced entirely in the territory of one or more of the Parties.* ''Goods wholly obtained or produced entirely in the territory of one or more of the Parties'' means:

(1) Plants and plant products harvested or gathered in the territory of one or more of the Parties;

(2) Live animals born and raised in the territory of one or more of the Parties;

(3) Goods obtained in the territory of one or more of the Parties from live animals;

(4) Goods obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of one or more of the Parties;

(5) Minerals and other natural resources not included in paragraphs (g)(1) through (g)(4) of this section that are extracted or taken in the territory of one or more of the Parties;

(6) Fish, shellfish, and other marine life taken from the sea, seabed, or subsoil outside the territory of one or more of the Parties by vessels registered or recorded with a Party and flying its flag;

(7) Goods produced on board factory ships from the goods referred to in paragraph (g)(6) of this section, if such factory ships are registered or recorded with a Party and flying its flag;

(8) Goods taken by a Party or a person of a Party from the seabed or subsoil outside territorial waters, if a Party has rights to exploit such seabed or subsoil;

(9) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(10) Waste and scrap derived from:

(i) Manufacturing or processing operations in the territory of one or more of the Parties; or

(ii) Used goods collected in the territory of one or more of the Parties, if such goods are fit only for the recovery of raw materials;

(11) Recovered goods derived in the territory of one or more of the Parties from used goods, and used in the territory of a Party in the production of remanufactured goods; and

(12) Goods produced in the territory of one or more of the Parties exclusively from goods referred to in any of paragraphs (g)(1) through (g)(10) of this section, or from the derivatives of such goods, at any stage of production;

(h) *Material.* ''Material'' means a good that is used in the production of another good, including a part or an ingredient;

(i) *Model line.* ''Model line'' means a group of motor vehicles having the same platform or model name;

(j) *Net cost.* ''Net cost'' means total cost minus sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost;

(k) *Non-allowable interest costs.* ''Non-allowable interest costs'' means interest costs incurred by a producer that exceed 700 basis points above the applicable official interest rates for comparable maturities of the Party in which the producer is located;

(l) *Non-originating good or non-originating material.* ''Non-originating good'' or ''non-originating material'' means a good or material, as the case may be, that does not qualify as originating under General Note 29, HTSUS, or this subpart;

(m) *Packing materials and containers for shipment.* ''Packing materials and containers for shipment'' means the goods used to protect a good during its transportation to the United States, and does not include the packaging materials and containers in which a good is packaged for retail sale;

(n) *Producer.* ''Producer'' means a person who engages in the production of a good in the territory of a Party;

(o) *Production.* ''Production'' means growing, mining, harvesting, fishing, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good;

(p) *Reasonably allocate.* ''Reasonably allocate'' means to apportion in a manner that would be appropriate under Generally Accepted Accounting Principles;

(q) *Recovered goods.* ''Recovered goods'' means materials in the form of individual parts that are the result of:

(1) The disassembly of used goods into individual parts; and

(2) The cleaning, inspecting, testing, or other processing that is necessary to improve such individual parts to sound working condition;

(r) *Remanufactured good.* ''Remanufactured good'' means a good that is classified in Chapter 84, 85, or 87, or heading 9026, 9031, or 9032, HTSUS, other than a good classified in heading 8418 or 8516, HTSUS, and that:

(1) Is entirely or partially comprised of recovered goods; and

(2) Has a similar life expectancy and enjoys a factory warranty similar to a new good that is classified in one of the enumerated HTSUS chapters or headings;

(s) *Royalties.* ''Royalties'' means payments of any kind, including payments under technical assistance agreements or similar agreements, made as consideration for the use of, or right to use, any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance agreements or similar agreements that can be related to specific services such as:

(1) Personnel training, without regard to where performed; and

(2) If performed in the territory of one or more of the Parties, engineering, tooling, die-setting, software design and similar computer services;

(t) *Sales promotion, marketing, and after-sales service costs.* ''Sales promotion, marketing, and after-sales service costs'' means the following costs related to sales promotion, marketing, and after-sales service:

(1) Sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing and after-sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;

(2) Sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;

(3) Salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, pension), traveling and living expenses, membership and professional fees, for sales promotion, marketing and after-sales service personnel;

(4) Recruiting and training of sales promotion, marketing and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing and after-

sales service of goods on the financial statements or cost accounts of the producer;

(5) Product liability insurance;

(6) Office supplies for sales promotion, marketing and after-sales service of goods, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(7) Telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(8) Rent and depreciation of sales promotion, marketing and after-sales service offices and distribution centers;

(9) Property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing and after-sales service offices and distribution centers, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer; and

(10) Payments by the producer to other persons for warranty repairs;

(u) *Self-produced material.* ''Self-produced material'' means an originating material that is produced by a producer of a good and used in the production of that good;

(v) *Shipping and packing costs.* ''Shipping and packing costs'' means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, excluding the costs of preparing and packaging the good for retail sale;

(w) *Total cost.* ''Total cost'' means all product costs, period costs, and other costs for a good incurred in the territory of one or more of the Parties. Product costs are costs that are associated with the production of a good and include the value of materials, direct labor costs, and direct overhead. Period costs are costs, other than product costs, that are expensed in the period in which they are incurred, such as selling expenses and general and administrative expenses. Other costs are all costs recorded on the books of the producer that are not product costs or period costs, such as interest. Total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

(x) *Used.* ''Used'' means used or consumed in the production of goods; and

(y) *Value.* ''Value'' means the value of a good or material for purposes of calculating customs duties or for purposes of applying this subpart.

[CBP Dec. 08–22, 73 FR 33678, June 13, 2008, as amended by CBP Dec. 10–26, 75 FR 50699, Aug. 17, 2010]

§ 10.594 Originating goods.

Except as otherwise provided in this subpart and General Note 29(m), HTSUS, a good imported into the customs territory of the United States will be considered an originating good under the CAFTA-DR only if:

(a) The good is wholly obtained or produced entirely in the territory of one or more of the Parties;

(b) The good is produced entirely in the territory of one or more of the Parties and:

(1) Each non-originating material used in the production of the good undergoes an applicable change in tariff classification specified in General Note 29(n), HTSUS, and the good satisfies all other applicable requirements of General Note 29, HTSUS; or

(2) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 29(n), HTSUS, and satisfies all other applicable requirements of General Note 29, HTSUS; or

(c) The good is produced entirely in the territory of one or more of the Parties exclusively from originating materials.

§ 10.595 Regional value content.

(a) *General.* Except for goods to which paragraph (d) of this section applies, where General Note 29(n), HTSUS, sets forth a rule that specifies a regional value content test for a good, the regional value content of such good must be calculated by the importer, exporter, or producer of the good on the basis of the build-down method described in paragraph (b) of this section

or the build-up method described in paragraph (c) of this section.

(b) *Build-down method.* Under the build-down method, the regional value content must be calculated on the basis of the formula RVC = ((AV − VNM)/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced.

(c) *Build-up method.* Under the build-up method, the regional value content must be calculated on the basis of the formula RVC = (VOM/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VOM is the value of originating materials that are acquired or self-produced and used by the producer in the production of the good.

(d) *Special rule for certain automotive goods*—(1) *General.* Where General Note 29(n), HTSUS, sets forth a rule that specifies a regional value content test for an automotive good provided for in any of subheadings 8407.31 through 8407.34, subheading 8408.20, heading 8409, or headings 8701 through 8708, HTSUS, the regional value content of such good may be calculated by the importer, exporter, or producer of the good on the basis of the net cost method described in paragraph (d)(2) of this section.

(2) *Net cost method.* Under the net cost method, the regional value content is calculated on the basis of the formula RVC = ((NC–VNM)/NC) × 100, where RVC is the regional value content, expressed as a percentage; NC is the net cost of the good; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced. Consistent with the provisions regarding allocation of costs set out in Generally Accepted Accounting Principles, the net cost of the good must be determined by:

(i) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost of all such goods, and then reasonably allocating the resulting net cost of those goods to the automotive good;

(ii) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, reasonably allocating the total cost to the automotive good, and then subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the portion of the total cost allocated to the automotive good; or

(iii) Reasonably allocating each cost that forms part of the total costs incurred with respect to the automotive good so that the aggregate of these costs does not include any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, or non-allowable interest costs.

(3) *Motor vehicles*—(i) *General.* For purposes of calculating the regional value content under the net cost method for an automotive good that is a motor vehicle provided for in any of headings 8701 through 8705, an importer, exporter, or producer may average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over the producer's fiscal year using any one of the categories described in paragraph (d)(3)(ii) of this section either on the basis of all motor vehicles in the category or those motor vehicles in the category that are exported to the territory of one or more Parties.

(ii) *Categories.* The categories referred to in paragraph (d)(3)(i) of this section are as follows:

(A) The same model line of motor vehicles, in the same class of vehicles, produced in the same plant in the territory of a Party, as the motor vehicle for which the regional value content is being calculated;

(B) The same class of motor vehicles, and produced in the same plant in the

territory of a Party, as the motor vehicle for which the regional value content is being calculated; and

(C) The same model line of motor vehicles produced in the territory of a Party as the motor vehicle for which the regional value content is being calculated.

(4) *Other automotive goods*—(i) *General.* For purposes of calculating the regional value content under the net cost method for automotive goods provided for in any of subheadings 8407.31 through 8407.34, subheading 8408.20, heading 8409, 8706, 8707, or 8708, HTSUS, that are produced in the same plant, an importer, exporter, or producer may:

(A) Average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over any of the following: The fiscal year, or any quarter or month, of the motor vehicle producer to whom the automotive good is sold, or the fiscal year, or any quarter or month, of the producer of the automotive good, provided the goods were produced during the fiscal year, quarter, or month that is the basis for the calculation;

(B) Determine the average referred to in paragraph (d)(4)(i) of this section separately for such goods sold to one or more motor vehicle producers; or

(C) Make a separate determination under paragraph (d)(4)(i) or (d)(4)(ii) for automotive goods that are exported to the territory of one or more Parties.

(ii) *Duration of use.* A person selecting an averaging period of one month or quarter under paragraph (d)(4)(i)(A) of this section must continue to use that method for that category of automotive goods throughout the fiscal year.

[CBP Dec. 08–22, 73 FR 33678, June 13, 2008, as amended by CBP Dec. 10–26, 75 FR 50699, Aug. 17, 2010]

§ 10.596 Value of materials.

(a) *Calculating the value of materials.* Except as provided in § 10.603, for purposes of calculating the regional value content of a good under General Note 29(n), HTSUS, and for purposes of applying the *de minimis* (*see* § 10.598 of this subpart) provisions of General Note 29(n), HTSUS, the value of a material is:

(1) In the case of a material imported by the producer of the good, the adjusted value of the material;

(2) In the case of a material acquired by the producer in the territory where the good is produced, the value, determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, of the material with reasonable modifications to the provisions of the Customs Valuation Agreement as may be required due to the absence of an importation by the producer (including, but not limited to, treating a domestic purchase by the producer as if it were a sale for export to the country of importation); or

(3) In the case of a self-produced material, the sum of:

(i) All expenses incurred in the production of the material, including general expenses; and

(ii) An amount for profit equivalent to the profit added in the normal course of trade.

(b) *Examples.* The following examples illustrate application of the principles set forth in paragraph (a)(2) of this section:

Example 1. A producer in El Salvador purchases material x from an unrelated seller in El Salvador for $100. Under the provisions of Article 1 of the Customs Valuation Agreement, transaction value is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8. In order to apply Article 1 to this domestic purchase by the producer, such purchase is treated as if it were a sale for export to the country of importation. Therefore, for purposes of determining the adjusted value of material x, Article 1 transaction value is the price actually paid or payable for the goods when sold to the producer in El Salvador ($100), adjusted in accordance with the provisions of Article 8. In this example, it is irrelevant whether material x was initially imported into El Salvador by the seller (or by anyone else). So long as the producer acquired material x in El Salvador, it is intended that the value of material x will be determined on the basis of the price actually paid or payable by the producer adjusted in accordance with the provisions of Article 8.

Example 2. Same facts as in Example 1, except that the sale between the seller and the producer is subject to certain restrictions that preclude the application of Article 1. Under Article 2 of the Customs Valuation

Agreement, the value is the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued. In order to permit the application of Article 2 to the domestic acquisition by the producer, it should be modified so that the value is the transaction value of identical goods sold within El Salvador at or about the same time the goods were sold to the producer in El Salvador. Thus, if the seller of material x also sold an identical material to another buyer in El Salvador without restrictions, that other sale would be used to determine the adjusted value of material x.

(c) *Permissible additions to, and deductions from, the value of materials*—(1) *Additions to originating materials.* For originating materials, the following expenses, if not included under paragraph (a) of this section, may be added to the value of the originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or more of the Parties to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or more of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable; and

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproducts.

(2) *Deductions from non-originating materials.* For non-originating materials, if included under paragraph (a) of this section, the following expenses may be deducted from the value of the non-originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or more of the Parties to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or more of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable;

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products; and

(iv) The cost of originating materials used in the production of the non-originating material in the territory of one or more of the Parties.

(d) *Accounting method.* Any cost or value referenced in General Note 29, HTSUS, and this subpart, must be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

§ 10.597 Accumulation.

(a) Originating materials from the territory of one or more of the Parties that are used in the production of a good in the territory of another Party will be considered to originate in the territory of that other Party.

(b) A good that is produced in the territory of one or more of the Parties by one or more producers is an originating good if the good satisfies the requirements of § 10.594 of this subpart and all other applicable requirements of General Note 29, HTSUS.

§ 10.598 De minimis.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, a good that does not undergo a change in tariff classification pursuant to General Note 29(n), HTSUS, is an originating good if:

(1) The value of all non-originating materials used in the production of the good that do not undergo the applicable change in tariff classification does not exceed 10 percent of the adjusted value of the good;

(2) The value of the non-originating materials described in paragraph (a)(1) of this section is included in the value of non-originating materials for any applicable regional value content requirement for the good under General Note 29(n), HTSUS; and

(3) The good meets all other applicable requirements of General Note 29, HTSUS.

(b) *Exceptions.* Paragraph (a) does not apply to:

(1) A non-originating material provided for in Chapter 4, HTSUS, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90, HTSUS, that is used in the production of a good provided for in Chapter 4, HTSUS;

(2) A non-originating material provided for in Chapter 4, HTSUS, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90, HTSUS, that is used in the production of the following goods:

(i) Infant preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.10, HTSUS;

(ii) Mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20, HTSUS;

(iii) Dairy preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90, HTSUS;

(iv) Goods provided for in heading 2105, HTSUS;

(v) Beverages containing milk provided for in subheading 2202.90, HTSUS; and

(vi) Animal feeds containing over 10 percent by weight of milk solids provided for in subheading 2309.90, HTSUS; and

(3) A non-originating material provided for in heading 0805, HTSUS, or any of subheadings 2009.11 through 2009.39, HTSUS, that is used in the production of a good provided for in any of subheadings 2009.11 through 2009.39, HTSUS, or in fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, provided for in subheading 2106.90 or 2202.90, HTSUS;

(4) A non-originating material provided for in heading 0901 or 2101, HTSUS, that is used in the production of a good provided for in heading 0901 or 2101, HTSUS;

(5) A non-originating material provided for in heading 1006, HTSUS, that is used in the production of a good provided for in heading 1102 or 1103, HTSUS, or subheading 1904.90, HTSUS;

(6) A non-originating material provided for in Chapter 15, HTSUS, that is used in the production of a good provided for in Chapter 15, HTSUS;

(7) A non-originating material provided for in heading 1701, HTSUS, that is used in the production of a good provided for in any of headings 1701 through 1703, HTSUS;

(8) A non-originating material provided for in Chapter 17, HTSUS, that is used in the production of a good provided for in subheading 1806.10, HTSUS; and

(9) Except as provided in paragraphs (b)(1) through (b)(8) of this section and General Note 29(n), HTSUS, a non-originating material used in the production of a good provided for in any of Chapters 1 through 24, HTSUS, unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this subpart.

(c) *Textile and apparel goods*—(1) *General.* Except as provided in paragraph (c)(2) of this section, a textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in General Note 29(n), HTSUS, will nevertheless be considered to be an originating good if:

(i) The total weight of all such fibers or yarns in that component is not more than 10 percent of the total weight of that component; or

(ii) The yarns are nylon filament yarns (other than elastomeric yarns) that are provided for in subheading 5402.11.30, 5402.11.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.45.10, 5402.45.90, 5402.51.00, or 5402.61.00, HTSUS, and that are products of Canada, Mexico, or Israel.

(2) *Exception for goods containing elastomeric yarns.* A textile or apparel good containing elastomeric yarns (excluding latex) in the component of the good that determines the tariff classification of the good will be considered an originating good only if such yarns are wholly formed in the territory of a Party. For purposes of this paragraph, ''wholly formed'' means that all the

production processes and finishing operations, starting with the extrusion of filaments, strips, film, or sheet, and including slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a finished yarn or plied yarn, took place in the territory of a Party.

(3) *Yarn, fabric, or fiber.* For purposes of paragraph (c) of this section, in the case of a textile or apparel good that is a yarn, fabric, or fiber, the term ''component of the good that determines the tariff classification of the good'' means all of the fibers in the good.

[CBP Dec. 08–22, 73 FR 33678, June 13, 2008, as amended by CBP Dec. 10–26, 75 FR 50699, Aug. 17, 2010]

§ 10.599 Fungible goods and materials.

(a) *General.* A person claiming that a fungible good or material is an originating good may base the claim either on the physical segregation of the fungible good or material or by using an inventory management method with respect to the fungible good or material. For purposes of this section, the term ''inventory management method'' means:

(1) Averaging;

(2) ''Last-in, first-out;''

(3) ''First-in, first-out;'' or

(4) Any other method that is recognized in the Generally Accepted Accounting Principles of the Party in which the production is performed or otherwise accepted by that country.

(b) *Duration of use.* A person selecting an inventory management method under paragraph (a) of this section for a particular fungible good or material must continue to use that method for that fungible good or material throughout the fiscal year of that person.

§ 10.600 Accessories, spare parts, or tools.

(a) *General.* Accessories, spare parts, or tools that are delivered with a good and that form part of the good's standard accessories, spare parts, or tools will be treated as originating goods if the good is an originating good, and will be disregarded in determining whether all the non-originating materials used in the production of the good undergo an applicable change in tariff classification specified in General Note 29(n), HTSUS, provided that:

(1) The accessories, spare parts, or tools are classified with, and not invoiced separately from, the good, regardless of whether they appear specified or separately identified in the invoice for the good; and

(2) The quantities and value of the accessories, spare parts, or tools are customary for the good.

(a) *Regional value content.* If the good is subject to a regional value content requirement, the value of the accessories, spare parts, or tools is taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good under §10.595 of this subpart.

§ 10.601 Retail packaging materials and containers.

(a) *Effect on tariff shift rule.* Packaging materials and containers in which a good is packaged for retail sale, if classified with the good for which preferential tariff treatment under the CAFTA–DR is claimed, will be disregarded in determining whether all non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in General Note 29(n), HTSUS.

(b) *Effect on regional value content calculation.* If the good is subject to a regional value content requirement, the value of such packaging materials and containers will be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Example 1. Guatemalan Producer A of good C imports 100 non-originating blister packages to be used as retail packaging for good C. As provided in §10.596(a)(1) of this subpart, the value of the blister packages is their adjusted value, which in this case is $10. Good C has a regional value content requirement. The United States importer of good C decides to use the build-down method, RVC = ((AV–VNM)/AV) × 100 (*see* §10.595(b) of this subpart), in determining whether good C satisfies the regional value content requirement. In applying this method, the non-originating blister packages are taken into account as non-originating. As such, their $10 adjusted value is included in the VNM, value of non-originating materials, of good C.

Example 2. Same facts as in Example 1, except that the blister packages are originating. In this case, the adjusted value of the originating blister packages would *not* be included as part of the VNM of good C under the build-down method. However, if the U.S. importer had used the build-up method, RVC = (VOM/AV) × 100 (*see* §10.595(c) of this subpart), the adjusted value of the blister packaging would be included as part of the VOM, value of originating material.

§ 10.602 Packing materials and containers for shipment.

(a) *Effect on tariff shift rule.* Packing materials and containers for shipment, as defined in §10.593(m) of this subpart, are to be disregarded in determining whether the non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in General Note 29(n), HTSUS. Accordingly, such materials and containers are not required to undergo the applicable change in tariff classification even if they are non-originating.

(b) *Effect on regional value content calculation.* Packing materials and containers for shipment, as defined in §10.593(m) of this subpart, are to be disregarded in determining the regional value content of a good imported into the United States. Accordingly, in applying the build-down, build-up, or net cost method for determining the regional value content of a good imported into the United States, the value of such packing materials and containers for shipment (whether originating or non-originating) is disregarded and not included in AV, adjusted value, VNM, value of non-originating materials, VOM, value of originating materials, or NC, net cost of a good.

Example. Producer A of the Dominican Republic produces good C. Producer A ships good C to the United States in a shipping container that it purchased from Company B in the Dominican Republic. The shipping container is originating. The value of the shipping container determined under section §10.596(a)(2) of this subpart is $3. Good C is subject to a regional value content requirement. The transaction value of good C is $100, which includes the $3 shipping container. The United States importer decides to use the build-up method, RVC = (VOM/AV) × 100 (*see* §10.595(c) of this subpart), in determining whether good C satisfies the regional value content requirement. In determining the AV, adjusted value, of good C imported into the U.S., paragraph (b) of this section and the definition of AV require a $3 deduction for the value of the shipping container. Therefore, the AV is $97 ($100 − $3). In addition, the value of the shipping container is disregarded and not included in the VOM, value of originating materials.

§ 10.603 Indirect materials.

An indirect material, as defined in §10.582(m) of this subpart, will be considered to be an originating material without regard to where it is produced.

Example. Honduran Producer C produces good C using non-originating material A. Producer C imports non-originating rubber gloves for use by workers in the production of good C. Good C is subject to a tariff shift requirement. As provided in §10.594(b)(1) of this subpart and General Note 29(n), each of the non-originating materials in good C must undergo the specified change in tariff classification in order for good C to be considered originating. Although non-originating material A must undergo the applicable tariff shift in order for good C to be considered originating, the rubber gloves do not because they are indirect materials and are considered originating without regard to where they are produced.

§ 10.604 Transit and transshipment.

(a) *General.* A good that has undergone production necessary to qualify as an originating good under §10.594 of this subpart will not be considered an originating good if, subsequent to that production, the good:

(1) Undergoes further production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party; or

(2) Does not remain under the control of customs authorities in the territory of a non-Party.

(b) *Documentary evidence.* An importer making a claim that a good is originating may be required to demonstrate, to CBP's satisfaction, that the conditions and requirements set forth in paragraph (a) of this section were met. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills,

packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

§ 10.605 Goods classifiable as goods put up in sets.

Notwithstanding the specific rules set forth in General Note 29(n), HTSUS, goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be considered to be originating goods unless:

(a) Each of the goods in the set is an originating good; or

(b) The total value of the non-originating goods in the set does not exceed;

(1) In the case of textile or apparel goods, 10 percent of the adjusted value of the set; or

(2) In the case of a good other than a textile or apparel good, 15 percent of the adjusted value of the set.

TARIFF PREFERENCE LEVEL

§ 10.606 Filing of claim for tariff preference level.

Apparel goods of a Party described in § 10.607 of this subpart that do not qualify as originating goods under § 10.594 of this subpart may nevertheless be entitled to preferential tariff treatment under the CAFTA–DR under an applicable tariff preference level (TPL). To make a TPL claim, the importer must include on the entry summary, or equivalent documentation, the applicable subheading in Chapter 98 or 99 of the HTSUS immediately above the applicable subheading in Chapter 61 or 62 of the HTSUS under which each non-originating apparel good is classified. The applicable Chapter 98 and 99 subheadings are:

(a) Subheading 9822.05.11 or 9822.05.13 for goods described in § 10.607(a);

(b) Subheading 9915.61.01 for goods described in § 10.607(b) and (c);

(c) Subheading 9915.62.05 for goods described in § 10.607(d);

(d) Subheading 9915.62.15 for goods described in § 10.607(e); and

(e) Subheading 9915.61.03 or 9915.61.04 for goods described in § 10.607(f);

[CBP Dec. 10–26, 75 FR 50699, Aug. 17, 2010]

§ 10.607 Goods eligible for tariff preference level claims.

The following goods are eligible for a TPL claim filed under § 10.606 of this subpart:

(a) *Cumulation for certain woven apparel goods of a Party.* In accordance with General Note 29(d)(vii), HTSUS, for purposes of determining whether a good of Chapter 62, HTSUS, is an originating good, materials used in the production of the good produced in the territory of Mexico that would have been considered originating if produced in the territory of a Party, will be considered as having been produced in the territory of a Party. The applicable product-specific and chapter rules for Chapter 62, HTSUS, set forth in General Note 29, HTSUS, must be satisfied. The preferential tariff treatment is limited to the quantities specified in U.S. Note 21(b), Subchapter XXII, Chapter 98, HTSUS, except that the following goods made from wool fabric are not subject to these limits: men's and boys' and women's and girls' suits, trousers, suit-type jackets and blazers and vests and women's and girls' skirts, provided that such goods are not made of carded wool fabric or made from wool yarn having an average fiber diameter of not over 18.5 microns. Subheading 9822.05.11, HTSUS, applies to the goods described above that are subject to quantitative limits while subheading 9822.05.13, HTSUS, applies to the goods described above that are not subject to such limits;

(b) *Cotton or man-made fiber apparel goods of Nicaragua.* Cotton or man-made fiber apparel goods described in U.S. Note 15(b), Subchapter XV, Chapter 99, HTSUS, that are both cut (or knit-to-shape) and sewn or otherwise assembled in the territory of Nicaragua, and that meet the applicable conditions for preferential tariff treatment under the CAFTA–DR, other than the condition that they are originating goods. The preferential tariff treatment is limited to the quantities specified in U.S. Note 15(c), Subchapter XV, Chapter 99, HTSUS;

(c) *Men's wool sport coats of Nicaragua.* Men's sport coats described in U.S. Note 15(b), Subchapter XV, Chapter 99, HTSUS, provided that the component

that determines the tariff classification of the good is of carded wool fabric of subheading 5111.11.70, 5111.19.60, or 5111.90.90, HTSUS, the goods are both cut (or knit-to-shape) and sewn or otherwise assembled in the territory of Nicaragua, and the goods meet the applicable conditions for preferential tariff treatment under the CAFTA–DR, other than the condition that they are originating goods. The preferential tariff treatment is limited to the quantities specified in U.S. Note 15(c), Subchapter XV, Chapter 99, HTSUS;

(d) *Apparel goods of Costa Rica, not knitted or crocheted.* Apparel goods described in U.S. Note 16(b), Subchapter XV, Chapter 99, HTSUS, not knitted or crocheted, containing 36 percent or more by weight of wool or subject to wool restraints, provided that the goods are both cut and sewn or otherwise assembled in the territory of Costa Rica, meet the applicable conditions for preferential tariff treatment under the CAFTA–DR, other than the condition that they are originating goods, and comply with the requirements set forth in chapter rules 1, 3, 4, and 5 for Chapter 62 of General Note 29, HTSUS. The preferential tariff treatment is limited to the quantities specified in U.S. Note 16(a), Subchapter XV, Chapter 99, HTSUS.;

(e) *Apparel goods of Costa Rica made from wool fabric.* Apparel goods described in U.S. Note 16(d), Subchapter XV, Chapter 99, HTSUS, made from fabric of wool (except fabric of carded wool or fabric made from wool yarn having an average fiber diameter of less than or equal to 18.5 microns), provided that the goods are both cut and sewn or otherwise assembled in the territory of Costa Rica, and meet the applicable conditions for preferential tariff treatment under the CAFTA–DR, other than the condition that they are originating goods. The preferential tariff treatment is limited to the quantities specified in U.S. Note 16(c), Subchapter XV, Chapter 99, HTSUS; and

(f) *Mastectomy swimsuits of Costa Rica.* Women's knitted or crocheted swimwear, classified in subheading 6112.41.00 (of synthetic fibers) or 6112.49.00, HTSUS (of other textile fibers), specially designed to accommodate post-mastectomy breast prostheses, containing two full size interior pockets with side openings, two preformed cups, a supporting elastic band below the breast and vertical center stitching to separate the two pockets, provided that the goods are both cut (or knit-to-shape) and sewn or otherwise assembled in the territory of Costa Rica, and meet the applicable conditions for preferential tariff treatment under the CAFTA–DR, other than the condition that they are originating goods. Subheading 9915.61.03, HTSUS, applies to the swimsuits described above classified in subheading 6112.41.00, HTSUS, while subheading 9915.61.04, HTSUS, applies to the swimsuits described above classified in subheading 6112.49.00, HTSUS. The preferential tariff treatment is limited to the quantities specified in U.S. Note 17(a), Subchapter XV, Chapter 99, HTSUS.

[CBP Dec. 10–26, 75 FR 50699, Aug. 17, 2010]

§ 10.608 Submission of certificate of eligibility for certain apparel goods of Nicaragua.

An importer who claims preferential tariff treatment on a non-originating apparel good of Nicaragua specified in paragraphs (b) and (c) of § 10.607 of this subpart must submit a certificate of eligibility issued by an authorized official of the Government of Nicaragua, demonstrating that the good is eligible for entry under the applicable TPL. The certificate of eligibility must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose.

[CBP Dec. 08–22, 73 FR 33678, June 13, 2008, as amended by CBP Dec. 10–26, 75 FR 50700, Aug. 17, 2010]

§ 10.609 Transshipment of non-originating cotton or man-made fiber apparel goods.

(a) *General.* A good will not be considered eligible for preferential tariff treatment under an applicable TPL by reason of having undergone production that would enable the good to qualify for preferential tariff treatment if subsequent to that production the good:

(1) Undergoes production or any other operation outside the territories of the Parties, other than unloading,

reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party; or

(2) Does not remain under the control of customs authorities in the territory of a non-Party.

(b) *Documentary evidence.* An importer making a claim for preferential tariff treatment under an applicable TPL may be required to demonstrate, to CBP's satisfaction, that the requirements set forth in paragraph (a) of this section were met. An importer may demonstrate compliance with these requirements by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

§ 10.610 Effect of noncompliance; failure to provide documentation regarding transshipment of non-originating cotton or man-made fiber apparel goods.

(a) *Effect of noncompliance.* If an importer of a good for which a TPL claim is made fails to comply with any applicable requirement under this subpart, the Center director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the Center director nevertheless may deny preferential tariff treatment to a good for which a TPL claim is made if the good is shipped through or transshipped in a country other than a Party, and the importer of the good does not provide, at the request of the Center director, evidence demonstrating to the satisfaction of the Center director that the requirements set forth in §10.609(a) of this subpart were met.

ORIGIN VERIFICATIONS AND DETERMINATIONS

§ 10.616 Verification and justification of claim for preferential tariff treatment.

(a) *Verification.* A claim for preferential tariff treatment made under §10.583(b) or §10.591 of this subpart, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the Center director deems necessary. In the event that the Center director is provided with insufficient information to verify or substantiate the claim, or the exporter or producer fails to consent to a verification visit, the Center director may deny the claim for preferential treatment. A verification of a claim for preferential tariff treatment under CAFTA–DR for goods imported into the United States may be conducted by means of one or more of the following:

(1) Written requests for information from the importer, exporter, or producer;

(2) Written questionnaires to the importer, exporter, or producer;

(3) Visits to the premises of the exporter or producer in the territory of the Party in which the good is produced, to review the records of the type referred to in §10.589(c)(1) of this subpart or to observe the facilities used in the production of the good, in accordance with the framework that the Parties develop for conducting verifications; and

(4) Such other procedures to which the United States and the exporting Party may agree.

(b) *Applicable accounting principles.* When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

[CBP Dec. 08–22, 73 FR 33678, June 13, 2008, as amended by CBP Dec. 10–26, 75 FR 50700, Aug. 17, 2010]

§ 10.617 Special rule for verifications in a Party of U.S. imports of textile and apparel goods.

(a) *Procedures to determine whether a claim of origin is accurate*—(1) *General.* For the purpose of determining that a claim of origin for a textile or apparel good is accurate, CBP may request that the government of a Party conduct a verification, regardless of whether a claim is made for preferential tariff treatment.

(2) *Actions during a verification.* While a verification under this paragraph is being conducted, CBP may take appropriate action, which may include:

(i) Suspending the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made, if CBP determines there is insufficient information to support the claim;

(ii) Denying the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made that is the subject of a verification if CBP determines that an enterprise has provided incorrect information to support the claim;

(iii) Detention of any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine the country of origin of any such good; and

(iv) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines that the enterprise has provided incorrect information as to the country of origin of any such good.

(3) *Actions following a verification.* On completion of a verification under this paragraph, CBP may take appropriate action, which may include:

(i) Denying the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made that is the subject of a verification if CBP determines there is insufficient information, or that the enterprise has provided incorrect information, to support the claim; and

(ii) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine, or that the enterprise has provided incorrect information as to, the country of origin of any such good.

(b) *Procedures to determine compliance with applicable customs laws and regulations of the U.S.*—(1) *General.* For purposes of enabling CBP to determine that an exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile and apparel goods, CBP may request that the government of a Party conduct a verification.

(2) *Actions during a verification.* While a verification under this paragraph is being conducted, CBP may take appropriate action, which may include:

(i) Suspending the application of preferential tariff treatment to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to support a claim for preferential tariff treatment with respect to any such good;

(ii) Denying the application of preferential tariff treatment to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines that the enterprise has provided incorrect information to support a claim for preferential tariff treatment with respect to any such good;

(iii) Detention of any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine the country of origin of any such good; and

(iv) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines that the enterprise has provided incorrect information as to the country of origin of any such good.

(3) *Actions following a verification.* On completion of a verification under this paragraph, CBP may take appropriate action, which may include:

(i) Denying the application of preferential tariff treatment to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information, or that the enterprise has provided incorrect information, to support a claim for preferential tariff treatment with respect to any such good; and

(ii) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine,

or that the enterprise has provided incorrect information as to, the country of origin of any such good.

(c) *Denial of permission to conduct a verification.* If an enterprise does not consent to a verification under this section, CBP may deny preferential tariff treatment to the type of goods of the enterprise that would have been the subject of the verification.

(d) *Assistance by U.S. officials in conducting a verification abroad.* U.S. officials may undertake or assist in a verification under this section by conducting visits in the territory of a Party, along with the competent authorities of the Party, to the premises of an exporter, producer or any other enterprise involved in the movement of textile or apparel goods from a Party to the United States.

(e) *Continuation of appropriate action.* CBP may continue to take appropriate action under paragraph (a) or (b) of this section until it receives information sufficient to enable it to make the determination described in paragraphs (a) and (b) of this section.

[CBP Dec. 08–22, 73 FR 33678, June 13, 2008, as amended by CBP Dec. 10–26, 75 FR 50700, Aug. 17, 2010]

§ 10.618 Issuance of negative origin determinations.

If, as a result of an origin verification initiated under this subpart, CBP determines that a claim for preferential tariff treatment made under § 10.583(b) of this subpart should be denied, it will issue a determination in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates of the import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 29, HTSUS, and in §§ 10.593 through 10.605 of this subpart, the legal basis for the determination.

§ 10.619 Repeated false or unsupported preference claims.

Where verification or other information reveals a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the CAFTA–DR rules of origin set forth in General Note 29, HTSUS, CBP may suspend preferential tariff treatment under the CAFTA–DR to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until CBP determines that representations of that person are in conformity with General Note 29, HTSUS.

PENALTIES

§ 10.620 General.

Except as otherwise provided in this subpart, all criminal, civil, or administrative penalties which may be imposed on U.S. importers, exporters, and producers for violations of the customs and related laws and regulations will also apply to U.S. importers, exporters, and producers for violations of the laws and regulations relating to the CAFTA–DR.

§ 10.621 Corrected claim or certification by importers.

An importer who makes a corrected claim under § 10.583(c) of this subpart will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for having made an incorrect claim or having submitted an incorrect certification, provided that the corrected claim is promptly and voluntarily made.

§ 10.622 Corrected certification by U.S. exporters or producers.

Civil or administrative penalties provided for under 19 U.S.C. 1592 will not be imposed on an exporter or producer in the United States who promptly and voluntarily provides written notification pursuant to § 10.589(b) with respect to the making of an incorrect certification.

§ 10.623 Framework for correcting claims or certifications.

(a) *''Promptly and voluntarily'' defined.* Except as provided for in paragraph (b)

of this section, for purposes of this subpart, the making of a corrected claim or certification by an importer or the providing of written notification of an incorrect certification by an exporter or producer in the United States will be deemed to have been done promptly and voluntarily if:

(1)(i) Done before the commencement of a formal investigation, within the meaning of §162.74(g) of this chapter; or

(ii) Done before any of the events specified in §162.74(i) of this chapter have occurred; or

(iii) Done within 30 days after the importer, exporter, or producer initially becomes aware that the claim or certification is incorrect; and

(2) Accompanied by a statement setting forth the information specified in paragraph (c) of this section; and

(3) In the case of a corrected claim or certification by an importer, accompanied or followed by a tender of any actual loss of duties and merchandise processing fees, if applicable, in accordance with paragraph (d) of this section.

(b) *Exception in cases involving fraud or subsequent incorrect claims*—(1) *Fraud.* Notwithstanding paragraph (a) of this section, a person who acted fraudulently in making an incorrect claim or certification may not make a voluntary correction of that claim or certification. For purposes of this paragraph, the term ''fraud'' will have the meaning set forth in paragraph (C)(3) of appendix B to part 171 of this chapter.

(2) *Subsequent incorrect claims.* An importer who makes one or more incorrect claims after becoming aware that a claim involving the same merchandise and circumstances is invalid may not make a voluntary correction of the subsequent claims pursuant to paragraph (a) of this section.

(c) *Statement.* For purposes of this subpart, each corrected claim or certification must be accompanied by a statement, submitted in writing or via an authorized electronic data interchange system, which:

(1) Identifies the class or kind of good to which the incorrect claim or certification relates;

(2) In the case of a corrected claim or certification by an importer, identifies each affected import transaction, including each port of importation and the approximate date of each importation;

(3) Specifies the nature of the incorrect statements or omissions regarding the claim or certification; and

(4) Sets forth, to the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the claim or certification, and states that the person will provide any additional information or data which are unknown at the time of making the corrected claim or certification within 30 days or within any extension of that 30-day period as CBP may permit in order for the person to obtain the information or data.

(d) *Tender of actual loss of duties.* A U.S. importer who makes a corrected claim must tender any actual loss of duties at the time of making the corrected claim, or within 30 days thereafter, or within any extension of that 30-day period as CBP may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

GOODS RETURNED AFTER REPAIR OR ALTERATION

§ 10.624 Goods re-entered after repair or alteration in a Party.

(a) *General.* This section sets forth the rules which apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in a Party as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in a Party, whether or not pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, ''repairs or alterations'' means restoration, addition, renovation, re-dyeing, cleaning, re-sterilizing, or other treatment that does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

(b) *Goods not eligible for duty-free treatment after repair or alteration.* The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United

States to a Party, are incomplete for their intended use and for which the processing operation performed in the Party constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

(c) *Documentation.* The provisions of paragraphs (a), (b), and (c) of §10.8 of this part, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from a Party after having been exported for repairs or alterations and which are claimed to be duty free.

RETROACTIVE PREFERENTIAL TARIFF TREATMENT FOR TEXTILE AND APPAREL GOODS

§ 10.625 Refunds of excess customs duties.

(a) *Applicability.* Section 205 of the Dominican Republic—Central America—United States Free Trade Agreement Implementation Act, as amended by section 1634(d) of the Pension Protection Act of 2006, provides for the retroactive application of the Agreement and payment of refunds for any excess duties paid with respect to entries of textile and apparel goods of eligible CAFTA–DR countries that meet certain conditions and requirements. Those conditions and requirements are set forth in paragraphs (b) and (c) of this section.

(b) *General.* Notwithstanding 19 U.S.C. 1514 or any other provision of law, and subject to paragraph (c) of this section, a textile or apparel good of an eligible CAFTA–DR country that was entered or withdrawn from warehouse for consumption on or after January 1, 2004, and before January 1, 2009, will be liquidated or reliquidated at the applicable rate of duty for that good set out in the Schedule of the United States to Annex 3.3 of the Agreement, and CBP will refund any excess customs duties paid with respect to such entry, with interest accrued from the date of entry, provided:

(1) The good would have qualified as an originating good under section 203 of the Act if the good had been entered after the date of entry into force of the Agreement for that country; and

(2) Customs duties in excess of the applicable rate of duty for that good set out in the Schedule of the United States to Annex 3.3 of the Agreement were paid.

(c) *Request for liquidation or reliquidation.* Liquidation or reliquidation may be made under paragraph (b) of this section with respect to an entry of a textile or apparel good of an eligible CAFTA–DR country only if a request for liquidation or reliquidation is filed with the CBP port where the entry was originally filed by April 1, 2009, and the request contains sufficient information to enable CBP:

(1) To locate the entry or to reconstruct the entry if it cannot be located; and

(2) To determine that the good satisfies the conditions set forth in paragraph (b) of this section.

(d) *Eligible CAFTA–DR country defined.* For purposes of this section, the term ''eligible CAFTA–DR country'' means a country that the United States Trade Representative has determined, by notice published in the FEDERAL REGISTER, to be an eligible country for purposes of section 205 of the Act.

[CBP Dec. 08–22, 73 FR 33678, June 13, 2008, as amended by CBP Dec. 10–26, 75 FR 50700, Aug. 17, 2010]

Subpart K—United States-Jordan Free Trade Agreement

SOURCE: CBP Dec. 07–50, 72 FR 35156, June 27, 2007, unless otherwise noted.

GENERAL PROVISIONS

§ 10.701 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported goods under the United States-Jordan Free Trade Agreement (the US–JFTA) signed on October 24, 2000, and under the United States-Jordan Free Trade Area Implementation Act (the Act; 115 Stat. 243). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general

application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the US–JFTA are contained in part 163 of this chapter.

§ 10.702 Definitions.

The following definitions apply for purposes of §§ 10.701 through 10.712:

(a) *Claim for preferential tariff treatment*. ''Claim for preferential tariff treatment'' means a claim that a good is entitled to the duty rate applicable under the US–JFTA;

(b) *Customs authority*. ''Customs authority'' means the competent authority that is responsible under the law of a country for the administration of customs laws and regulations;

(c) *Customs territory of the United States*. ''Customs territory of the United States'' means the 50 states, the District of Columbia, and Puerto Rico;

(d) *Days*. ''Days'' means calendar days unless otherwise specified;

(e) *Entered*. ''Entered'' means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States;

(f) *Good*. ''Good'' means any merchandise, product, article, or material;

(g) *Harmonized System*. ''Harmonized System'' means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(h) *Heading*. ''Heading'' means the first four digits in the tariff classification number under the Harmonized System;

(i) *HTSUS*. ''HTSUS'' means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(j) *Material*. ''Material'' means a good that is used in the production of another good;

(k) *New or different article of commerce*. ''New or different article of commerce'' means a good that has been substantially transformed into a new and different article of commerce having a new name, character, or use distinct from the good or material from which it was so transformed;

(l) *Party*. ''Party'' means the United States or the Hashemite Kingdom of Jordan;

(m) *Preferential tariff treatment*. ''Preferential tariff treatment'' means the duty rate applicable under the US–JFTA;

(n) *Subheading*. ''Subheading'' means the first six digits in the tariff classification number under the Harmonized System;

(o) *Territory*. ''Territory'' means:

(1) With respect to Jordan, the land, maritime and air space under its sovereignty, and the exclusive economic zone within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law; and

(2) With respect to the United States,

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico,

(ii) The foreign trade zones located in the United States and Puerto Rico, and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

(p) *Textile or apparel good*. ''Textile or apparel good'' means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as ''the ATC''), which is part of the WTO Agreement;

(q) *WTO Agreement*. ''WTO Agreement'' means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994;

(r) *Wholly the growth, product, or manufacture of Jordan*. ''Wholly the growth, product, or manufacture of Jordan'' refers both to any good which has been entirely grown, produced, or manufactured in Jordan and to all materials incorporated in a good which have been entirely grown, produced, or manufactured in Jordan, as distinguished from goods or materials imported into Jordan from another country, whether or not such goods or materials were substantially transformed into new or different articles of commerce after their importation into Jordan.

IMPORT REQUIREMENTS

§ 10.703 Filing of claim for preferential tariff treatment.

An importer may make a claim for US–JFTA preferential tariff treatment by including on the entry summary, or equivalent documentation, the symbol ''JO'' as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.

§ 10.704 Declaration.

(a) *Contents.* An importer who claims preferential tariff treatment for a good under the US–JFTA must submit, at the request of the Center director, a declaration setting forth all pertinent information concerning the production or manufacture of the good. A declaration submitted to CBP under this paragraph:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must include the following information:

(i) The legal name, address, telephone, and e-mail address (if any) of the importer of record of the good;

(ii) The legal name, address, telephone, and e-mail address (if any) of the responsible official or authorized agent of the importer signing the declaration (if different from the information required by paragraph (a)(2)(i) of this section);

(iii) The legal name, address, telephone and e-mail address (if any) of the exporter of the good (if different from the producer);

(iv) The legal name, address, telephone and e-mail address (if any) of the producer of the good (if known);

(v) A description of the good, quantity, numbers, and marks of packages, invoice numbers, and bills of lading;

(vi) A description of the operations performed in the production of the good in Jordan and identification of the direct costs of processing operations;

(vii) A description of any materials used in the production of the good that are wholly the growth, product, or manufacture of Jordan or the United States, and a statement as to the cost or value of such materials;

(viii) A description of the operations performed on, and a statement as to the origin and cost or value of, any foreign materials used in the good that are claimed to have been sufficiently processed in Jordan so as to be materials produced in Jordan; and

(ix) A description of the origin and cost or value of any foreign materials used in the good that have not been substantially transformed in Jordan.

(3) Must include a statement, in substantially the following form:

> ''I certify that:
>
> The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;
>
> I agree to maintain, and present upon request, documentation necessary to support these representations;
>
> The goods comply with all the requirements for preferential tariff treatment specified for those goods in the United States-Jordan Free Trade Agreement; and
>
> This document consists of ____ pages, including all attachments.''

(b) *Responsible official or agent.* The declaration must be signed and dated by a responsible official of the importer or by the importer's authorized agent having knowledge of the relevant facts.

(c) *Language.* The declaration must be completed in the English language.

(d) *Applicability of declaration.* The declaration may be applicable to:

(1) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the declaration. For purposes of this paragraph, ''identical goods'' means goods that are the same in all respects relevant to the production that qualifies the goods for preferential tariff treatment.

§ 10.705 Importer obligations.

(a) *General.* An importer who makes a claim for preferential tariff treatment under § 10.703 of this subpart:

(1) Will be deemed to have certified that the good is eligible for preferential tariff treatment under the US–JFTA:

(2) Is responsible for the truthfulness of the information and data contained in the declaration provided for in § 10.704 of this subpart;

(3) Is responsible for submitting any supporting documents requested by CBP and for the truthfulness of the information contained in those documents. CBP will allow for the direct submission by the exporter or producer of business confidential or other sensitive information, including cost and sourcing information.

(b) *Information provided by exporter or producer.* The fact that the importer has made a claim for preferential tariff treatment or prepared a declaration based on information provided by an exporter or producer will not relieve the importer of the responsibility referred to in paragraph (a) of this section.

§ 10.706 Declaration not required.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a declaration under § 10.704 of this subpart for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the goods does not exceed U.S. $2,500.

(b) *Exception.* If the Center director determines that an importation described in paragraph (a) of this section may reasonably be considered to have been carried out or planned for the purpose of evading compliance with the rules and procedures governing claims for preference under the US–JFTA, the Center director will notify the importer that for that importation the importer must submit to CBP a declaration. The importer must submit such a declaration within 30 days from the date of the notice. Failure to timely submit the declaration will result in denial of the claim for preferential tariff treatment.

§ 10.707 Maintenance of records.

(a) *General.* An importer claiming preferential tariff treatment for a good under § 10.703 of this subpart must maintain, for five years after the date of the claim for preferential tariff treatment, all records and documents necessary for the preparation of the declaration.

(b) *Applicability of other recordkeeping requirements.* The records and documents referred to in paragraph (a) of this section are in addition to any other records required to be made, kept, and made available to CBP under part 163 of this chapter.

(c) *Method of maintenance.* The records and documents referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

§ 10.708 Effect of noncompliance; failure to provide documentation regarding third-country transportation.

(a) *Effect of noncompliance.* If the importer fails to comply with any requirement under this subpart, including submission of a complete declaration under § 10.704 of this subpart, when requested, the Center director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding third country transportation.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the Center director nevertheless may deny preferential treatment to a good if the good is shipped through or transshipped in a country other than Jordan or the United States, and the importer of the good does not provide, at the request of the Center director, evidence demonstrating to the satisfaction of the Center director that the good was ''imported directly'', as that term is defined in § 10.711(a) of this subpart.

RULES OF ORIGIN

§ 10.709 Country of origin criteria.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, a good imported directly from Jordan into the customs territory of the

United States will be eligible for preferential tariff treatment under the US–JFTA only if:

(1) The good is either:

(i) Wholly the growth, product, or manufacture of Jordan; or

(ii) A new or different article of commerce that has been grown, produced, or manufactured in Jordan; and

(2) With respect to a good described in paragraph (a)(1)(ii) of this section, the good satisfies the value-content requirement specified in §10.710 of this subpart.

(b) *Exceptions*—(1) *Combining, packaging, and diluting operations.* No good will be considered to meet the requirements of paragraph (a)(1) of this section by virtue of having merely undergone simple combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the good. The principles and examples set forth in §10.195(a)(2) of this part will apply equally for purposes of this paragraph.

(2) *Certain juices.* A good will not be considered to meet the requirements of paragraph (a)(1) of this section if the good:

(i) Is imported into Jordan, and, at the time of importation, would be classified in heading 0805, HTSUS; and

(ii) Is processed in Jordan into a good classified in any of subheadings 2009.11 through 2009.30, HTSUS.

(c) *Textile and apparel goods.* For purposes of determining whether a textile or apparel good meets the requirements of paragraph (a)(1) of this section, the provisions of §102.21 of this chapter will apply.

§10.710 Value-content requirement.

(a) *General.* A good described in §10.709(a)(1)(ii) may be eligible for preferential tariff treatment under the US–JFTA only if the sum of the cost or value of the materials produced in Jordan, plus the direct costs of processing operations performed in Jordan, is not less than 35 percent of the appraised value of the good at the time it is entered.

(b) *Materials produced in the United States.* For purposes of determining the percentage referred to paragraph (a) of this section, an amount not to exceed 15 percent of the appraised value of the good at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the United States. A material is ''produced in the customs territory of the United States'' for purposes of this paragraph if it is either:

(1) Wholly the growth, product, or manufacture of the United States; or

(2) Subject to the exceptions specified in §10.709(b) of this subpart, substantially transformed in the United States into a new and different article of commerce that has a new name, character, or use, which is then used in Jordan in the production or manufacture of a new or different article of commerce that is imported into the United States. Except where the context otherwise requires, the examples set forth in §10.196(a) of this part will apply for purposes of this paragraph.

(c) *Cost or value of materials*—(1) *Materials produced in Jordan defined.* For purposes of paragraph (a) of this section, the words ''materials produced in Jordan'' refer to those materials incorporated into a good that are either:

(i) Wholly the growth, product, or manufacture of Jordan; or

(ii) Subject to the exceptions specified in §10.709(b) of this subpart, substantially transformed in Jordan into a new and different article of commerce that has a new name, character, or use, which is then used in Jordan in the production or manufacture of a new or different article of commerce that is imported into the United States. Except where the context otherwise requires, the examples set forth in §10.196(a) of this part will apply for purposes of this paragraph.

(2) *Determination of cost or value of materials.* (i) Except as provided in paragraph (c)(2)(ii) of this section, the cost or value of materials produced in Jordan or in the United States includes:

(A) The manufacturer's actual cost for the materials;

(B) When not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;

(C) The actual cost of waste or spoilage, less the value of recoverable scrap; and

(D) Taxes and/or duties imposed on the materials by a Party, provided they are not remitted upon exportation.

(ii) Where a material is provided to the manufacturer without charge, or at less than fair market value, its cost or value will be determined by computing the sum of:

(A) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(B) An amount for profit; and

(C) Freight, insurance, packing, and all other costs incurred in transporting the material to the manufacturer's plant.

(iii) If the pertinent information needed to compute the cost or value of a material is not available, the Center director may ascertain or estimate the value thereof using all reasonable ways and means at his or her disposal.

(d) *Direct costs of processing operations*—(1) *Items included.* For purposes of paragraph (a) of this section, the words ''direct costs of processing operations'' mean those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific goods under consideration. Such costs include, but are not limited to the following, to the extent that they are includable in the appraised value of the imported goods:

(i) All actual labor costs involved in the growth, production, manufacture, or assembly of the specific goods, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(ii) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific goods;

(iii) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific goods; and

(iv) Costs of inspecting and testing the specific goods.

(2) *Items not included.* For purposes of paragraph (a) of this section, the words ''direct costs of processing operations'' do not include items that are not directly attributable to the goods under consideration or are not costs of manufacturing the product. These include, but are not limited to:

(i) Profit; and

(ii) General expenses of doing business that either are not allocable to the specific goods or are not related to the growth, production, manufacture, or assembly of the goods, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

§ 10.711 Imported directly.

(a) *General.* To be eligible for preferential tariff treatment under the US–JFTA, a good must be imported directly from Jordan into the customs territory of the United States. For purposes of this requirement, the words ''imported directly'' mean:

(1) Direct shipment from Jordan to the United States without passing through the territory of any intermediate country;

(2) If shipment is from Jordan to the United States through the territory of an intermediate country, the goods in the shipment do not enter into the commerce of the intermediate country and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If shipment is through an intermediate country and the invoices and other documents do not show the United States as the final destination, the goods in the shipment are imported directly only if they:

(i) Remained under the control of the customs authority in the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of a sale other than at retail, provided that the goods are imported as a result of the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Have not been subjected to operations other than loading and unloading, and other activities necessary to preserve the goods in good condition.

(b) *Documentary evidence.* An importer making a claim for preferential tariff treatment under the US–JFTA may be required to demonstrate, to CBP's satisfaction, that the goods were ''imported directly'' as that term is defined in paragraph (a) of this section. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

ORIGIN VERIFICATIONS

§ 10.712 Verification of claim for preferential tariff treatment.

A claim for preferential tariff treatment made under §10.703 of this subpart, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the Center director deems necessary. In the event that the Center director for any reason is prevented from verifying the claim, or is provided with insufficient information to verify or substantiate the claim, the Center director may deny the claim for preferential tariff treatment.

Subpart L—United States-Australia Free Trade Agreement

SOURCE: CBP Dec. 15–03, 80 FR 7308, Feb. 10, 2015, unless otherwise noted.

GENERAL PROVISIONS

§ 10.721 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported goods under the United States-Australia Free Trade Agreement (the AFTA) signed on May 18, 2004, and under the United States-Australia Free Trade Agreement Implementation Act (''the Act''), Pub. L. 108–286, 118 Stat. 919 (19 U.S.C. 3805 note). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the AFTA and the Act are contained in parts 24, 162, and 163 of this chapter.

§ 10.722 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Claim for preferential tariff treatment.* ''Claim for preferential tariff treatment'' means a claim that a good is entitled to the duty rate applicable under the AFTA to an originating good, and to an exemption from the merchandise processing fee;

(b) *Claim of origin.* ''Claim of origin'' means a claim that a textile or apparel good is an originating good or a good of a Party or satisfies the non-preferential rules of origin of a Party;

(c) *Customs duty.* ''Customs duty'' includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994 in respect of the like domestic good or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty that is applied pursuant to a Party's law; or

(3) Fee or other charge in connection with importation commensurate with the cost of services rendered;

(d) *Customs Valuation Agreement.* ''Customs Valuation Agreement'' means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the WTO Agreement;

(e) *Days.* ''Days'' means calendar days;

(f) *Enterprise.* ''Enterprise'' means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned or controlled, including any corporation, trust, partnership, sole proprietorship,

joint venture, association, or similar organization;

(g) *Enterprise of a Party*. ''Enterprise of a Party'' means an enterprise constituted or organized under a Party's law;

(h) *GATT 1994*. ''GATT 1994'' means the *General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the *WTO Agreement;*

(i) *Goods of a Party*. ''Goods of a Party'' means domestic products as these are understood in the GATT 1994 or such goods as the Parties determine under the rules of origin as applied in the normal course of trade, and includes originating goods of a Party.

(j) *Harmonized System*. ''Harmonized System'' means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(k) *Heading*. ''Heading'' means the first four digits in the tariff classification number under the Harmonized System;

(l) *HTSUS*. ''HTSUS'' means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(m) *Identical goods*. ''Identical goods'' means goods that are the same in all respects relevant to the rule of origin that qualifies the goods as originating goods;

(n) *Originating*. ''Originating'' means qualifying for preferential tariff treatment under the rules of origin set out in AFTA Chapters Four (Textiles and Apparel) and Five (Rules of Origin) and General Note 28, HTSUS;

(o) *Party*. ''Party'' means the United States or Australia;

(p) *Person*. ''Person'' means a natural person or an enterprise;

(q) *Preferential tariff treatment*. ''Preferential tariff treatment'' means the duty rate applicable under the AFTA to an originating good, and an exemption from the merchandise processing fee;

(r) *Subheading*. ''Subheading'' means the first six digits in the tariff classification number under the Harmonized System;

(s) *Territory*. ''Territory'' means:

(1) With respect to Australia, the territory of the Commonwealth of Australia:

(i) Excluding all external territories other than the Territory of Norfolk Island, the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands, the Territory of Ashmore and Cartier Islands, the Territory of Heard Island and McDonald Islands, and the Coral Sea Islands Territory; and

(ii) Including Australia's territorial sea, contiguous zone, exclusive economic zone, and continental shelf; and

(2) With respect to the United States:

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico;

(ii) The foreign trade zones located in the United States and Puerto Rico; and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

(t) *Textile or apparel good*. ''Textile or apparel good'' means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as ''the ATC''), which is part of the WTO Agreement;

(u) *WTO*. ''WTO'' means the World Trade Organization; and

(v) *WTO Agreement*. ''WTO Agreement'' means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

IMPORT REQUIREMENTS

§ 10.723 Filing of claim for preferential tariff treatment upon importation.

(a) *Claim*. An importer may make a claim for AFTA preferential tariff treatment, including an exemption from the merchandise processing fee, based on the importer's knowledge or information in the importer's possession that the good qualifies as an originating good. The claim is made by including on the entry summary, or equivalent documentation, the letters ''AU'' as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting

via an authorized electronic data interchange system.

(b) *Corrected claim.* If, after making the claim required under paragraph (a) of this section, the importer becomes aware that the claim is invalid, the importer must promptly and voluntarily correct the claim and pay any duties that may be due. The importer must submit a statement either in writing or via an authorized electronic data interchange system to the CBP office where the original claim was filed specifying the correction (*see* §§ 10.746 and 10.747 of this subpart).

§ 10.724 Supporting statement.

(a) *Contents.* An importer who makes a claim under § 10.723(a) of this subpart must submit, at the request of the port director, a supporting statement setting forth the reasons that the good qualifies as an originating good, including pertinent cost and manufacturing data. A statement submitted to CBP under this paragraph:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must include the following information:

(i) The legal name, address, telephone, and email address of the importer of record of the good;

(ii) The legal name, address, telephone, and email address of the responsible official or authorized agent of the importer signing the supporting statement (if different from the information required by paragraph (a)(2)(i) of this section);

(iii) The legal name, address, telephone, and email address of the exporter of the good (if different from the producer);

(iv) The legal name, address, telephone, and email address of the producer of the good, if known;

(v) A description of the good for which preferential tariff treatment is claimed, which must be sufficiently detailed to relate it to the invoice and the HS nomenclature;

(vi) The HTSUS tariff classification, to six or more digits, as necessary for the specific change in tariff classification rule for the good set forth in General Note 28(n), HTSUS;

(vii) The applicable rule of origin set forth in General Note 28, HTSUS, under which the good qualifies as an originating good; and

(3) Must include a statement, in substantially the following form:

> I certify that:
>
> The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;
>
> I agree to maintain and present upon request, documentation necessary to support these representations;
>
> The goods originated or are considered to have originated in the territory of one or more of the Parties, and comply with the origin requirements specified for those goods in the United States-Australia Free Trade Agreement; there has been no further production or any other operation outside the territories of the parties, other than unloading, reloading, or any other operation necessary to preserve the goods in good condition or to transport the goods to the United States; and
>
> This document consists of _____ pages, including all attachments.

(b) *Responsible official or agent.* The supporting statement required to be submitted under paragraph (a) of this section must be signed and dated by a responsible official of the importer or by the importer's authorized agent having knowledge of the relevant facts.

(c) *Language.* The supporting statement required to be submitted under paragraph (a) of this section must be completed in the English language.

(d) *Applicability of supporting statement.* The supporting statement required to be submitted under paragraph (a) of this section may be applicable to:

(1) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the statement. For purposes of this paragraph, ''identical goods'' means goods

that are the same in all respects relevant to the particular rule of origin that qualifies the goods as originating.

§ 10.725 Importer obligations.

(a) *General.* An importer who makes a claim under § 10.723(a) of this subpart:

(1) Is responsible for the truthfulness of the claim and of all the information and data contained in the supporting statement provided for in § 10.724 of this subpart; and

(2) Is responsible for submitting any supporting documents requested by CBP and for the truthfulness of the information contained in those documents. If CBP requests the submission of supporting documents, CBP will allow for the direct submission by the exporter or producer of business confidential or other sensitive information, including cost and sourcing information.

(b) *Information provided by exporter or producer.* The fact that the importer has made a claim or submitted a supporting statement based on information provided by an exporter or producer will not relieve the importer of the responsibility referred to in the first sentence of paragraph (a) of this section.

(c) *Exemption from penalties.* An importer will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for making an invalid claim for preferential tariff treatment or submitting an incorrect supporting statement, provided that the importer promptly and voluntarily corrects the claim or supporting statement and pays any duty owing pursuant to §§ 10.746 and 10.747 of this subpart.

[CBP Dec. 15–03, 80 FR 7308, Feb. 10, 2015, as amended by CBP Dec. 16–1, 81 FR 2086, Jan. 15, 2016]

§ 10.726 Supporting statement not required.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a supporting statement under § 10.724 for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the originating goods does not exceed U.S. $2,500.

(b) *Exception.* If the port director determines that an importation described in paragraph (a) of this section may reasonably be considered to have been carried out or planned for the purpose of evading compliance with the rules and procedures governing claims for preference under the AFTA, the port director will notify the importer that for that importation the importer must submit to CBP a supporting statement. The importer must submit such a statement within 30 days from the date of the notice. Failure to timely submit the supporting statement will result in denial of the claim for preferential tariff treatment.

§ 10.727 Maintenance of records.

(a) *General.* An importer claiming preferential tariff treatment for a good imported into the United States under § 10.723(a) of this subpart must maintain, for five years after the date of importation of the good, records and documents necessary to demonstrate that the good qualifies as an originating good, including records and documents associated with:

(1) The purchase of, cost of, value of, and payment for, the good;

(2) Where appropriate, the purchase of, cost of, value of, and payment for, all materials, including recovered goods and indirect materials, used in the production of the good; and

(3) Where appropriate, the production of the good in the form in which the good was exported.

(b) *Applicability of other recordkeeping requirements.* The records and documents referred to in paragraph (a) of this section are in addition to any other records that the importer is required to prepare, maintain, or make available to CBP under part 163 of this chapter.

(c) *Method of maintenance.* The records and documents referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

§ 10.728 Effect of noncompliance; failure to provide documentation regarding third country transportation.

(a) *General.* If the importer fails to comply with any requirement under

this subpart, including submission of a complete supporting statement prepared in accordance with §10.724 of this subpart, when requested, the port director may deny preferential treatment to the imported good.

(b) *Failure to provide documentation regarding third country transportation.* Where the requirements for preferential treatment set forth elsewhere in this subpart are met, the port director nevertheless may deny preferential treatment to an originating good if the good is shipped through or transshipped in a country other than a Party to the AFTA, and the importer of the good does not provide, at the request of the port director, evidence demonstrating to the satisfaction of the port director that the conditions set forth in §10.741 of this subpart were met.

RULES OF ORIGIN

§ 10.729 Definitions.

For purposes of §§10.729 through 10.741 of this subpart:

(a) *Adjusted value.* ''Adjusted value'' means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude:

(1) Any costs, charges, or expenses incurred for transportation, insurance and related services incidental to the international shipment of the good from the country of exportation to the place of importation; and

(2) The value of packing materials and containers for shipment as defined in paragraph (n) of this section;

(b) *Class of motor vehicles.* ''Class of motor vehicles'' means any one of the following categories of motor vehicles:

(1) Motor vehicles classified under subheading 8701.20, motor vehicles for the transport of 16 or more persons classified under subheading 8702.10 or 8702.90, and motor vehicles classified under subheading 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, HTSUS;

(2) Motor vehicles classified under subheading 8701.10 or under any of subheadings 8701.30 through 8701.90, HTSUS;

(3) Motor vehicles provided for the transport of 15 or fewer persons classified under subheading 8702.10 or 8702.90, HTSUS, or motor vehicles classified under subheading 8704.21 or 8704.31; or

(4) Motor vehicles classified under subheadings 8703.21 through 8703.90, HTSUS;

(c) *Exporter.* ''Exporter'' means a person who exports goods from the territory of a Party;

(d) *Fungible goods or materials.* ''Fungible goods or materials'' means goods or materials, as the case may be, that are interchangeable for commercial purposes and the properties of which are essentially identical;

(e) *Generally Accepted Accounting Principles.* ''Generally Accepted Accounting Principles'' means the recognized consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;

(f) *Good.* ''Good'' means any merchandise, product, article, or material;

(g) *Goods wholly obtained or produced entirely in the territory of one or both of the Parties.* ''Goods wholly obtained or produced entirely in the territory of one or both of the Parties'' means:

(1) Mineral goods extracted in the territory of one or both of the Parties;

(2) Vegetable goods, as such goods are defined in the Harmonized System, harvested in the territory of one or both of the Parties;

(3) Live animals born and raised in the territory of one or both of the Parties;

(4) Goods obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of one or both of the Parties;

(5) Goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;

(6) Goods produced exclusively from products referred to in paragraph (g)(5) of this section on board factory ships registered or recorded with a Party and flying its flag;

(7) Goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;

(8) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(9) Waste and scrap derived from:

(i) Production in the territory of one or both of the Parties; or

(ii) Used goods collected in the territory of one or both of the Parties, provided such goods are fit only for the recovery of raw materials;

(10) Recovered goods derived in the territory of one or both of the Parties from goods that have passed their life expectancy, or are no longer useable due to defects, and utilized in the territory of one or both of the Parties in the production of remanufactured goods; or

(11) Goods produced in one or both of the Parties exclusively from goods referred to in paragraphs (g)(1) through (9) of this section, or from the derivatives of such goods, at any stage of production;

(h) *Indirect material.* ''Indirect material'' means a good used in the production, testing, or inspection of another good in the territory of one or both of the Parties but not physically incorporated into that other good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of another good, including:

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment or buildings;

(4) Lubricants, greases, compounding materials, and other materials used in production or used to operate equipment or buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the good;

(7) Catalysts and solvents; and

(8) Any other good that is not incorporated into the other good but the use of which in the production of the other good can reasonably be demonstrated to be a part of that production.

(i) *Material.* ''Material'' means a good that is used in the production of another good;

(j) *Model line.* ''Model line'' means a group of motor vehicles having the same platform or model name;

(k) *Net cost.* ''Net cost'' means total cost minus sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost;

(l) *Non-allowable interest costs.* ''Non-allowable interest costs'' means interest costs incurred by a producer that exceed 700 basis points above the applicable official interest rates for comparable maturities of the United States or Australia;

(m) *Non-originating good or non-originating material.* ''Non-originating good'' or ''non-originating material'' means a good or material, as the case may be, that does not qualify as originating under General Note 28, HTSUS, or this subpart;

(n) *Packing materials and containers for shipment.* ''Packing materials and containers for shipment'' means the goods used to protect a good during its transportation to the United States, and does not include the packaging materials and containers in which a good is packaged for retail sale;

(o) *Producer.* ''Producer'' means a person who grows, raises, mines, harvests, fishes, traps, hunts, manufactures, processes, assembles or disassembles a good;

(p) *Production.* ''Production'' means growing, raising, mining, harvesting, fishing, trapping, hunting, manufacturing, processing, assembling, or disassembling a good;

(q) *Reasonably allocate.* ''Reasonably allocate'' means to apportion in a manner that would be appropriate under generally accepted accounting principles;

(r) *Recovered goods.* ''Recovered goods'' means materials in the form of individual parts that result from:

(1) The complete disassembly of goods which have passed their life expectancy, or are no longer useable due to defects, into individual parts; and

(2) The cleaning, inspecting, or testing, or other processing that is necessary for improvement to sound working condition of such individual parts;

(s) *Remanufactured good*. ''Remanufactured good'' means an industrial good assembled in the territory of a Party that is classified in Chapter 84, 85, or 87, or heading 9026, 9031, or 9032, HTSUS, other than a good classified in heading 8418 or 8516 or any of headings 8701 through 8706, HTSUS, and that:

(1) Is entirely or partially comprised of recovered goods;

(2) Has a similar life expectancy to, and meets the same performance standards as, a like good that is new; and

(3) Enjoys a factory warranty similar to a like good that is new;

(t) *Royalties*. ''Royalties'' means payments of any kind, including payments under technical assistance agreements or similar agreements, made as consideration for the use of, or right to use, any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance agreements or similar agreements that can be related to specific services such as:

(1) Personnel training, without regard to where performed; and

(2) If performed in the territory of one or both of the Parties, engineering, tooling, die-setting, software design and similar computer services;

(u) *Sales promotion, marketing, and after-sales service costs*. ''Sales promotion, marketing, and after-sales service costs'' means the following costs related to sales promotion, marketing, and after-sales service:

(1) Sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing and after-sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;

(2) Sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;

(3) Salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, pension), traveling and living expenses, membership and professional fees, for sales promotion, marketing and after-sales service personnel;

(4) Recruiting and training of sales promotion, marketing and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(5) Product liability insurance;

(6) Office supplies for sales promotion, marketing and after-sales service of goods, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(7) Telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(8) Rent and depreciation of sales promotion, marketing and after-sales service offices and distribution centers;

(9) Property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing and after-sales service offices and distribution centers, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer; and

(10) Payments by the producer to other persons for warranty repairs;

(v) *Self-produced material*. ''Self-produced material'' means an originating material that is produced by a producer of a good and used in the production of that good;

(w) *Shipping and packing costs*. ''Shipping and packing costs'' means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the

buyer, excluding the costs of preparing and packaging the good for retail sale;

(x) *Total cost*. ''Total cost'' means all product costs, period costs, and other costs for a good incurred in the territory of one or both of the Parties. Product costs are costs that are associated with the production of a good and include the value of materials, direct labor costs, and direct overhead. Period costs are costs, other than product costs, that are expensed in the period in which they are incurred, such as selling expenses and general and administrative expenses. Other costs are all costs recorded on the books of the producer that are not product costs or period costs, such as interest. Total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

(y) *Used*. ''Used'' means used or consumed in the production of goods; and

(z) *Value*. ''Value'' means the value of a good or material for purposes of calculating customs duties or for purposes of applying this subpart.

§ 10.730 Originating goods.

Except as otherwise provided in this subpart and General Note 28, HTSUS, a good imported into the customs territory of the United States will be considered an originating good under the AFTA only if:

(a) The good is wholly obtained or produced entirely in the territory of one or both of the Parties;

(b) The good is produced entirely in the territory of one or both of the Parties and:

(1) Each non-originating material used in the production of the good undergoes an applicable change in tariff classification specified in General Note 28(n), HTSUS;

(2) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 28(n), HTSUS; or

(3) The good meets any other requirements specified in General Note 28(n), HTSUS;

(c) The good is produced entirely in the territory of one or both of the Parties exclusively from originating materials; or

(d) The good otherwise qualifies as an originating good under General Note 28(n), HTSUS.

§ 10.731 Textile and apparel goods classifiable as goods put up in sets.

Notwithstanding the specific rules set forth in General Note 28(n), HTSUS, textile or apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be considered to be originating goods unless each of the goods in the set is an originating good or the total value of the non-originating goods in the set does not exceed 10 percent of the value of the set.

§ 10.732 De minimis.

(a) Except as provided in paragraphs (b) and (c) of this section, a good that does not undergo a change in tariff classification pursuant to General Note 28(n), HTSUS, is an originating good if:

(1) The value of all non-originating materials used in the production of the good that do not undergo the applicable change in tariff classification does not exceed 10 percent of the adjusted value of the good;

(2) The value of the non-originating materials described in paragraph (a)(1) of this section is included in the value of non-originating materials for any applicable regional value content requirement for the good under General Note 28(n), HTSUS; and

(3) The good meets all other applicable requirements of General Note 28, HTSUS.

(b) Paragraph (a) does not apply to:

(1) A non-originating material provided for in Chapter 4, HTSUS, or in subheading 1901.90, HTSUS, that is used in the production of a good provided for in Chapter 4, HTSUS;

(2) A non-originating material provided for in Chapter 4, HTSUS, or in subheading 1901.90, HTSUS, that is used in the production of a good provided for in one of the following HTSUS provisions: subheading 1901.10, 1901.20 or 1901.90; heading 2105; or subheading 2106.90, 2202.90 or 2309.90;

(3) A non-originating material provided for in heading 0805, HTSUS, or

subheadings 2009.11 through 2009.39, HTSUS, that is used in the production of a good provided for in subheadings 2009.11 through 2009.39, HTSUS, or in subheading 2106.90 or 2202.90, HTSUS;

(4) A non-originating material provided for in Chapter 15, HTSUS, that is used in the production of a good provided for in headings 1501 through 1508, 1512, 1514 or 1515, HTSUS;

(5) A non-originating material provided for in heading 1701, HTSUS, that is used in the production of a good provided for in headings 1701 through 1703, HTSUS;

(6) A non-originating material provided for in Chapter 17, HTSUS, or heading 1805, HTSUS, that is used in the production of a good provided for in subheading 1806.10, HTSUS;

(7) A non-originating material provided for in headings 2203 through 2208, HTSUS, that is used in the production of a good provided for in heading 2207 or 2208, HTSUS; or

(8) A non-originating material used in the production of a good provided for in Chapters 1 through 21, HTSUS, unless the non-originating material is provided for in a different subheading than the good for which origin is being determined.

(c) A textile or apparel good provided for in Chapters 42, 50 through 63, 70, or 94, HTSUS, that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in General Note 28(n), HTSUS, will nevertheless be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than 7 percent of the total weight of that component. Notwithstanding the preceding sentence, a textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good will be considered an originating good only if such yarns are wholly formed in the territory of a Party. For purposes of this paragraph, in the case of a textile or apparel good that is a yarn, fabric, or group of fibers, the term ''component of the good that determines the tariff classification of the good'' means all of the fibers in the yarn, fabric, or group of fibers.

§ 10.733 Accumulation.

(a) Originating materials from the territory of a Party that are used in the production of a good in the territory of another Party will be considered to originate in the territory of that other Party.

(b) A good that is produced in the territory of one or both of the Parties by one or more producers is an originating good if the good satisfies the requirements of § 10.730 of this subpart and all other applicable requirements of General Note 28, HTSUS.

§ 10.734 Regional value content.

(a) *General.* Except for goods to which paragraph (d) of this section applies, where General Note 28(n), HTSUS, sets forth a rule that specifies a regional value content test for a good, the regional value content of such good must be calculated by the importer, exporter, or producer of the good on the basis of the build-down method described in paragraph (b) of this section or the build-up method described in paragraph (c) of this section.

(b) *Build-down method.* Under the build-down method, the regional value content must be calculated on the basis of the formula RVC = ((AV − VNM)/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced.

(c) *Build-up method.* Under the build-up method, the regional value content must be calculated on the basis of the formula RVC = (VOM/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VOM is the value of originating materials that are acquired or self-produced and used by the producer in the production of the good.

(d) *Special rule for certain automotive goods*—(1) *General.* Where General Note 28(n), HTSUS, sets forth a rule that specifies a regional value content test

for an automotive good provided for in subheadings 8407.31 through 8407.34 (engines), subheading 8408.20 (diesel engine for vehicles), heading 8409 (parts of engines), or any of headings 8701 through 8705 (motor vehicles), and headings 8706 (chassis), 8707 (bodies), and 8708 (motor vehicle parts), HTSUS, the regional value content of such good must be calculated by the importer, exporter, or producer of the good on the basis of the net cost methods described in paragraphs (d)(2) through (4) of this section.

(2) *Net cost method.* Under the net cost method, the regional value content must be calculated on the basis of the formula RVC = ((NC − VNM)/NC) × 100, where RVC is the regional value content, expressed as a percentage; NC is the net cost of the good; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced. Consistent with the provisions regarding allocation of costs set out in generally accepted accounting principles, the net cost of the good must be determined by:

(i) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost of all such goods, and then reasonably allocating the resulting net cost of those goods to the automotive good;

(ii) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, reasonably allocating the total cost to the automotive good, and then subtracting any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the portion of the total cost allocated to the automotive good; or

(iii) Reasonably allocating each cost that forms part of the total costs incurred with respect to the automotive good so that the aggregate of these costs does not include any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, or non-allowable interest costs.

(3) *Motor vehicles*—(i) *General.* For purposes of calculating the regional value content under the net cost method for an automotive good that is a motor vehicle provided for in headings 8701 through 8705, an importer, exporter, or producer may average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over the producer's fiscal year using any one of the categories described in paragraph (d)(3)(ii) of this section either on the basis of all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of a Party.

(ii) *Categories.* The categories referred to in paragraph (d)(3)(i) of this section are as follows:

(A) The same model line of motor vehicles, in the same class of vehicles, produced in the same plant in the territory of a Party, as the motor vehicle for which the regional value content is being calculated;

(B) The same class of motor vehicles, produced in the same plant in the territory of a Party, as the motor vehicle for which the regional value content is being calculated; and

(C) The same model line of motor vehicles produced in the territory of a Party as the motor vehicle for which the regional value content is being calculated.

(4) *Other automotive goods*—(i) *General.* For purposes of calculating the regional value content under the net cost method for automotive goods provided for in subheadings 8407.31 through 8407.34, subheading 8408.20, heading 8409, 8706, 8707, or 8708, HTSUS, that are produced in the same plant, an importer, exporter, or producer may:

(A) Average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over any of the following: The fiscal year, or any quarter or month, of the motor vehicle producer to whom the automotive good is sold, or the fiscal year, or any quarter or month, of the producer of the automotive good, provided the goods were produced during the fiscal year, quarter, or month that is the basis for the calculation;

(B) Determine the average referred to in paragraph (d)(4)(i)(A) of this section separately for such goods sold to one or more motor vehicle producers; or

(C) Make a separate determination under paragraph (d)(4)(i)(A) or (B) for automotive goods that are exported to the territory of a Party.

(ii) *Duration of use.* A person selecting an averaging period of one month or quarter under paragraph (d)(4)(i)(A) of this section must continue to use that method for that category of automotive goods throughout the fiscal year.

§ 10.735 Value of materials.

(a) *Calculating the value of materials.* For purposes of calculating the regional value content of a good under General Note 28(n), HTSUS, and for purposes of applying the *de minimis* (*see* § 10.732 of this subpart) provisions of General Note 28(n), HTSUS, the value of a material is:

(1) In the case of a material imported by the producer of the good, the adjusted value of the material;

(2) In the case of a material acquired by the producer in the territory where the good is produced, the value, determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, of the material with reasonable modifications to the provisions of the Customs Valuation Agreement as may be required due to the absence of an importation by the producer (including, but not limited to, treating a domestic purchase by the producer as if it were a sale for exportation to the country of importation); or

(3) In the case of a self-produced material, the sum of:

(i) All expenses incurred in the production of the material, including general expenses; and

(ii) An amount for profit equivalent to the profit added in the normal course of trade.

(b) *Examples.* The following examples illustrate application of the principles set forth in paragraph (a)(2) of this section:

Example 1. The producer in Australia purchases material x from an unrelated seller in Australia for $100. Under the provisions of Article 1 of the Customs Valuation Agreement, transaction value is the price actually paid or payable for the goods when sold for exportation to the country of importation adjusted in accordance with the provisions of Article 8. In order to apply Article 1 to this domestic purchase by the producer, such purchase is treated as if it were a sale for export to the country of importation. Therefore, for purposes of determining the adjusted value of material x, the Article 1 transaction value is the price actually paid or payable for the goods when sold to the producer in Australia ($100), adjusted in accordance with the provisions of Article 8. In this example, it is irrelevant whether material x was initially imported into Australia by the seller (or by anyone else). So long as the producer acquired material x in Australia, it is intended that the value of material x will be determined on the basis of the price actually paid or payable by the producer acquired in accordance with the provisions of Article 8.

Example 2. Same facts as in Example 1, except that the sale between the seller and the producer is subject to certain restrictions that preclude the application of Article 1. Under Article 2 of the Customs Valuation Agreement, the value is the transaction value of identical goods sold for exportation to the same country of importation and exported at or about the same time as the goods being valued. In order to permit the application of Article 2 to the domestic acquisition by the producer, the price paid by the producer should be modified so that the value is the transaction value of identical goods sold within Australia at or about the same time the goods were sold to the producer in Australia. Thus, if the seller of material x also sold an identical material to another buyer in Australia without restrictions, that other sale would be used to determine the adjusted value of material x.

(c) *Permissible additions to, and deductions from, the value of materials*—(1) *Additions to originating materials.* For originating materials, the following expenses, if not included under paragraph (a) of this section, may be added to the value of the originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or both of the Parties to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit

against duty or tax paid or payable; and

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproducts.

(2) *Deductions from non-originating materials.* For non-originating materials, if included under paragraph (a) of this section, the following expenses may be deducted from the value of the non-originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or both of the Parties to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable;

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products;

(iv) The cost of processing incurred in the territory of one or both of the Parties in the production of the non-originating material; and

(v) The cost of originating materials used in the production of the non-originating material in the territory of one or both of the Parties.

(d) *Accounting method.* Any cost or value referenced in General Note 28, HTSUS, and this subpart, must be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the Party in which the good is produced.

§ 10.736 Accessories, spare parts, or tools.

(a) *General.* Accessories, spare parts, or tools that are delivered with a good and that form part of the good's standard accessories, spare parts, or tools will be treated as originating goods if the good is an originating good, and will be disregarded in determining whether all the non-originating materials used in the production of the good undergo an applicable change in tariff classification specified in General Note 28(n), HTSUS, provided that:

(1) The accessories, spare parts, or tools are not invoiced separately from the good; and

(2) The quantities and value of the accessories, spare parts, or tools are customary for the good.

(b) *Regional value content.* If the good is subject to a regional value content requirement, the value of the accessories, spare parts, or tools is taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good under § 10.734 of this subpart.

§ 10.737 Fungible goods and materials.

(a) *General.* A person claiming that a fungible good or material is an originating good may base the claim either on the physical segregation of the fungible good or material or by using an inventory management method with respect to the fungible good or material. For purposes of this section, the term ''inventory management method'' means:

(1) Averaging;

(2) ''Last-in, first-out;''

(3) ''First-in, first-out;'' or

(4) Any other method that is recognized in the Generally Accepted Accounting Principles of the Party in which the production is performed or otherwise accepted by that country.

(b) *Duration of use.* A person selecting an inventory management method under paragraph (a) of this section for a particular fungible good or material must continue to use that method for that fungible good or material throughout the fiscal year of that person.

§ 10.738 Retail packaging materials and containers.

(a) *Effect on tariff shift rule.* Packaging materials and containers in which a good is packaged for retail sale, if classified with the good for which preferential tariff treatment under the AFTA is claimed, will be disregarded in determining whether all non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in General Note 28(n), HTSUS.

(b) *Effect on regional value content calculation.* If the good is subject to a regional value content requirement, the value of such packaging materials and containers will be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Example 1. Australian Producer A of good C imports 100 non-originating blister packages to be used as retail packaging for good C. As provided in §10.735(a)(1) of this subpart, the value of the blister packages is their adjusted value, which in this case is $10. Good C has a regional value content requirement. The United States importer of good C decides to use the build-down method, RVC = ((AV − VNM)/AV) × 100 (*see* §10.734(b) of this subpart), in determining whether good C satisfies the regional value content requirement. In applying this method, the non-originating blister packages are taken into account as non-originating. As such, their $10 adjusted value is included in the VNM, value of non-originating materials, of good C.

Example 2. Same facts as in Example 1, except that the blister packages are originating. In this case, the adjusted value of the originating blister packages would *not* be included as part of the VNM of good C under the build-down method. However, if the U.S. importer had used the build-up method, RVC = (VOM/AV) × 100 (*see* §10.734(c) of this subpart), the adjusted value of the blister packaging would be included as part of the VOM, value of originating materials.

§ 10.739 Packing materials and containers for shipment.

(a) *Effect on tariff shift rule.* Packing materials and containers for shipment, as defined in §10.729 (n) of this subpart, are to be disregarded in determining whether the non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in General Note 28(n), HTSUS. Accordingly, such materials and containers are not required to undergo the applicable change in tariff classification even if they are non-originating.

(b) *Effect on regional value content calculation.* Packing materials and containers for shipment, as defined in §10.729(n) of this subpart, are to be disregarded in determining the regional value content of a good imported into the United States. Accordingly, in applying the build-down, build-up, or net cost method for determining the regional value content of a good imported into the United States, the value of such packing materials and containers for shipment (whether originating or non-originating) is disregarded and not included in AV, adjusted value, VNM, value of non-originating materials, VOM, value of originating materials, or NC, net cost of a good.

Example. Australian Producer A produces good C. Producer A ships good C to the U.S. in a shipping container which it purchased from Company B in Australia. The shipping container is originating. The value of the shipping container determined under section §10.735(a)(2) of this subpart is $3. Good C is subject to a regional value content requirement. The transaction value of good C is $100, which includes the $3 shipping container. The United States importer decides to use the build-up method, RVC = (VOM/AV) × 100 (*see* §10.734(c) of this subpart), in determining whether good C satisfies the regional value content requirement. In determining the AV, adjusted value, of good C imported into the U.S., paragraph (b) of this section and the definition of AV require a $3 deduction for the value of the shipping container. Therefore, the AV is $97 ($100 − $3). In addition, the value of the shipping container is disregarded and not included in the VOM, value of originating materials.

§ 10.740 Indirect materials.

An indirect material, as defined in §10.729(h) of this subpart, will be considered to be an originating material without regard to where it is produced, and its value will be the cost registered in the accounting records of the producer of the good.

Example. Australian Producer C produces good C using non-originating material A. Producer C imports non-originating rubber gloves for use by workers in the production of good C. Good C is subject to a tariff shift requirement. As provided in §10.730(b)(1) of this subpart and General Note 28(n), each of the non-originating materials in good C must undergo the specified change in tariff classification in order for good C to be considered originating. Although non-originating material A must undergo the applicable tariff shift in order for good C to be considered originating, the rubber gloves do not because they are indirect materials and are considered originating without regard to where they are produced.

§ 10.741 Third country transportation.

(a) *General.* A good that has undergone production necessary to qualify as

an originating good under §10.730 of this subpart will not be considered an originating good if, subsequent to that production, the good undergoes further production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party.

(b) *Documentary evidence.* An importer making a claim that a good is originating may be required to demonstrate, to CBP's satisfaction, that no further production or subsequent operation, other than permitted under paragraph (a) of this section, occurred outside the territories of the Parties. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

ORIGIN VERIFICATIONS AND DETERMINATIONS

§10.742 Verification and justification of claim for preferential treatment.

(a) *Verification.* A claim for preferential tariff treatment made under §10.723(a) of this subpart, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the port director deems necessary. In the event that the port director is provided with insufficient information to verify or substantiate the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may be conducted by means of one or more of the following:

(1) Requests for information from the importer;

(2) Written requests for information to the exporter or producer;

(3) Requests for the importer to arrange for the exporter or producer to provide information directly to CBP;

(4) Visits to the premises of the exporter or producer in Australia, in accordance with procedures that the Parties adopt pertaining to the verification; and

(5) Such other procedures as the Parties may agree.

(b) *Applicable accounting principles.* When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

§10.743 Special rule for verifications in Australia of U.S. imports of textile and apparel goods.

(a) *Procedures to determine whether a claim of origin is accurate.* For the purpose of determining that a claim of origin for a textile or apparel good is accurate, CBP may request that the government of Australia conduct a verification, regardless of whether a claim is made for preferential tariff treatment. While a verification under this paragraph is being conducted, CBP, if directed by the President, may take appropriate action which may include suspending the application of preferential tariff treatment to the textile or apparel good for which a claim of origin has been made. If an exporter, producer, or other person refuses to consent to a visit as provided for in this paragraph, or if CBP is unable to make the determination described in this paragraph within 12 months after a request for a verification, or CBP makes a negative determination, CBP, if directed by the President, may take appropriate action which may include denying the application of preferential tariff treatment to the textile or apparel good subject to the verification, and to similar goods exported or produced by the entity that exported or produced the good.

(b) *Procedures to determine compliance with applicable customs laws and regulations of the U.S.* For purposes of enabling CBP to determine that an exporter or producer is complying with applicable customs laws, regulations, and procedures in cases in which CBP has a reasonable suspicion that an Australian exporter or producer is engaging in unlawful activity relating to trade in textile and apparel goods, CBP may request that the government of

Australia conduct a verification, regardless of whether a claim is made for preferential tariff treatment. A ''reasonable suspicion'' for the purpose of this paragraph will be based on relevant factual information, including information of the type set forth in Article 6.5 of the AFTA, which indicates circumvention of applicable laws, regulations or procedures regarding trade in textile and apparel goods. While a verification under this paragraph is being conducted, CBP, if directed by the President, may take appropriate action which may include suspending the application of preferential tariff treatment to the textile and apparel goods exported or produced by the Australian entity where the reasonable suspicion of unlawful activity relates to those goods. If an exporter, producer, or other person refuses to consent to a visit as provided for in this paragraph, or if CBP is unable to make the determination described in this paragraph within 12 months after a request for a verification, or makes a negative determination, CBP, if directed by the President, may take appropriate action which may include denying the application of preferential tariff treatment to any textile or apparel goods exported or produced by the entity subject to the verification.

(c) *Assistance by U.S. officials to Australian authorities.* U.S. officials may undertake or assist in a verification under this section by conducting visits in Australia, along with the competent authorities of Australia, to the premises of an exporter, producer or any other enterprise involved in the movement of textile or apparel goods from Australia to the United States.

(d) *Treatment of documents and information provided to CBP.* Any production, trade and transit documents and other information necessary to conduct a verification under this section, provided to CBP by the government of Australia consistent with the laws, regulations, and procedures of Australia, will be treated as confidential in accordance with Article 22.4 of the AFTA (Disclosure of Information).

(e) *Continuation of appropriate action.* CBP may continue to take appropriate action under paragraph (a) or (b) of this section until it receives information sufficient to enable it to make the determination described in paragraphs (a) and (b) of this section.

§ 10.744 Issuance of negative origin determinations.

If, as a result of an origin verification initiated under this subpart, CBP determines that a claim for preferential tariff treatment made under § 10.723(a) of this subpart should be denied, it will issue a determination in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates of the import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 28, HTSUS, and in §§ 10.729 through 10.741 of this subpart, the legal basis for the determination.

PENALTIES

§ 10.745 General.

Except as otherwise provided in this subpart, all criminal, civil or administrative penalties which may be imposed on U.S. importers for violations of the customs and related laws and regulations will also apply to U.S. importers for violations of the laws and regulations relating to the AFTA.

§ 10.746 Corrected claim or supporting statement.

An importer who makes a corrected claim under § 10.723(b) of this subpart will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for having made an incorrect claim or having submitted an incorrect supporting statement, provided that the corrected claim or supporting statement is promptly and voluntarily made pursuant to the terms set forth in § 10.747 of this subpart.

§ 10.747 Framework for correcting claims or supporting statements.

(a) ''*Promptly and voluntarily'' defined.* Except as provided for in paragraph (b) of this section, for purposes of this subpart, the making of a corrected claim or supporting statement will be deemed to have been done promptly and voluntarily if:

(1)(i) Done within one year following the date on which the importer made the incorrect claim; or

(ii) Done later than one year following the date on which the importer made the incorrect claim, provided the corrected claim is made:

(A) Before the commencement of a formal investigation, within the meaning of § 162.74(g) of this chapter; or

(B) Before any of the events specified in § 162.74(i) of this chapter have occurred; or

(C) Within 30 days after the importer initially becomes aware that the incorrect claim is not valid; and

(2) Accompanied by a statement setting forth the information specified in paragraph (c) of this section; and

(3) Accompanied or followed by a tender of any actual loss of duties and merchandise processing fees, if applicable, in accordance with paragraph (d) of this section.

(b) *Exception in cases involving fraud or subsequent incorrect claims*—(1) *Fraud.* Notwithstanding paragraph (a) of this section, an importer who acted fraudulently in making an incorrect claim may not make a voluntary correction of that claim. For purposes of this paragraph, the term ''fraud'' will have the meaning set forth in paragraph (C)(3) of Appendix B to Part 171 of this chapter.

(2) *Subsequent incorrect claims.* An importer who makes one or more incorrect claims after becoming aware that a claim involving the same merchandise and circumstances is invalid may not make a voluntary correction of the subsequent claims pursuant to paragraph (a) of this section.

(c) *Statement.* For purposes of this subpart, each corrected claim must be accompanied by a statement, submitted in writing or via an authorized electronic data interchange system, which:

(1) Identifies the class or kind of good to which the incorrect claim relates;

(2) Identifies each affected import transaction, including each port of importation and the approximate date of each importation;

(3) Specifies the nature of the incorrect statements or omissions regarding the claim; and

(4) Sets forth, to the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the claim, and states that the person will provide any additional information or data which is unknown at the time of making the corrected claim within 30 days or within any extension of that 30-day period as CBP may permit in order for the person to obtain the information or data.

(d) *Tender of actual loss of duties.* A U.S. importer who makes a corrected claim must tender any actual loss of duties at the time of making the corrected claim, or within one (1) year thereafter, or within any extension of that 1-year period as CBP may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

GOODS RETURNED AFTER REPAIR OR ALTERATION

§ 10.748 Goods re-entered after repair or alteration in Australia.

(a) *General.* This section sets forth the rules which apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Australia as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Australia, whether or not pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, ''repairs or alterations'' means restoration, addition, renovation, redyeing, cleaning, re-sterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States. The term ''repair or alternation'' does not include

an operation or process that transforms an unfinished good into a finished good.

(b) *Goods not eligible for duty-free treatment after repair or alteration.* The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to Australia, are incomplete for their intended use and for which the processing operation performed in Australia constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

(c) *Documentation.* The provisions of §10.8(a) through (c) of this part, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Australia after having been exported for repairs or alterations and which are claimed to be duty free.

Subpart M—United States-Morocco Free Trade Agreement

SOURCE: CBP Dec. 07–51, 72 FR 35651, June 29, 2007, unless otherwise noted.

GENERAL PROVISIONS

§ 10.761 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported goods under the United States-Morocco Free Trade Agreement (the MFTA) signed on June 15, 2004, and under the United States-Morocco Free Trade Agreement Implementation Act (the Act; 118 Stat. 1103). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the MFTA and the Act are contained in Parts 102, 162, and 163 of this chapter.

[CBP Dec. 07–51, 72 FR 35651, June 29, 2007, as amended at CBP Dec. 08–29, 73 FR 45354, Aug. 5, 2008]

§ 10.762 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Claim of origin.* ''Claim of origin'' means a claim that a good is an originating good;

(b) *Claim for preferential tariff treatment.* ''Claim for preferential tariff treatment'' means a claim that a good is entitled to the duty rate applicable under the MFTA to an originating good;

(c) *Customs Valuation Agreement.* ''Customs Valuation Agreement'' means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement;

(d) *Customs duty.* ''Customs duty'' includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994 in respect of like, directly competitive, or substitutable goods of the Party or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty; and

(3) Fee or other charge in connection with importation commensurate with the cost of services rendered;

(e) *Days.* ''Days'' means calendar days.

(f) *Enterprise.* ''Enterprise'' means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association;

(g) *Foreign material.* ''Foreign material'' means a material other than a material produced in the territory of one or both of the Parties;

(h) *GATT 1994.* ''GATT 1994'' means the General Agreement on Tariffs and

Trade 1994, which is part of the WTO Agreement;

(i) *Good*. ''Good'' means any merchandise, product, article, or material;

(j) *Harmonized System*. ''Harmonized System (HS)'' means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(k) *Heading*. ''Heading'' means the first four digits in the tariff classification number under the Harmonized System;

(l) *HTSUS*. ''HTSUS'' means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(m) *Originating*. ''Originating'' means a good qualifying under the rules of origin set forth in General Note 27, HTSUS, and MFTA Chapter Four (Textiles and apparel) or Chapter Five (Rules of Origin);

(n) *Party*. ''Party'' means the United States or the Kingdom of Morocco;

(o) *Person*. ''Person'' means a natural person or an enterprise;

(p) *Preferential tariff treatment*. ''Preferential tariff treatment'' means the duty rate applicable under the MFTA to an originating good;

(q) *Subheading*. ''Subheading'' means the first six digits in the tariff classification number under the Harmonized System;

(r) *Textile or apparel good*. ''Textile or apparel good'' means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as ATC), which is part of the WTO Agreement;

(s) *Territory*. ''Territory'' means:

(1) With respect to Morocco, the land, maritime and air space under its sovereignty, and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law; and

(2) With respect to the United States,

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico,

(ii) The foreign trade zones located in the United States and Puerto Rico, and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

(t) *WTO Agreement*. ''WTO Agreement'' means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

IMPORT REQUIREMENTS

§ 10.763 Filing of claim for preferential tariff treatment upon importation.

An importer may make a claim for MFTA preferential tariff treatment for an originating good by including on the entry summary, or equivalent documentation, the symbol ''MA'' as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.

§ 10.764 Declaration.

(a) *Contents*. An importer who claims preferential tariff treatment for a good under the MFTA must submit to CBP, at the request of the Center director, a declaration setting forth all pertinent information concerning the growth, production, or manufacture of the good. A declaration submitted to CBP under this paragraph:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must include the following information:

(i) The legal name, address, telephone, and e-mail address (if any) of the importer of record of the good;

(ii) The legal name, address, telephone, and e-mail address (if any) of the responsible official or authorized agent of the importer signing the declaration (if different from the information required by paragraph (a)(2)(i) of this section);

(iii) The legal name, address, telephone, and e-mail address (if any) of the exporter of the good (if different from the producer);

(iv) The legal name, address, telephone, and e-mail address (if any) of the producer of the good (if known);

(v) A description of the good, which must be sufficiently detailed to relate it to the invoice and HS nomenclature, including quantity, numbers, invoice numbers, and bills of lading;

(vi) A description of the operations performed in the growth, production, or manufacture of the good in the territory of one or both of the Parties and, where applicable, identification of the direct costs of processing operations;

(vii) A description of any materials used in the growth, production, or manufacture of the good that are wholly the growth, product, or manufacture of one or both of the Parties, and a statement as to the value of such materials;

(viii) A description of the operations performed on, and a statement as to the origin and value of, any materials used in the article that are claimed to have been sufficiently processed in the territory of one or both of the Parties so as to be materials produced in one or both of the Parties, or are claimed to have undergone an applicable change in tariff classification specified in General Note 27(h), HTSUS; and

(ix) A description of the origin and value of any foreign materials used in the good that have not been substantially transformed in the territory of one or both of the Parties, or have not undergone an applicable change in tariff classification specified in General Note 27(h), HTSUS;

(3) Must include a statement, in substantially the following form:

''I certify that:

The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;

I agree to maintain and present upon request, documentation necessary to support these representations;

The goods comply with all the requirements for preferential tariff treatment specified for those goods in the United States-Morocco Free Trade Agreement; and

This document consists of ____pages, including all attachments.''

(b) *Responsible official or agent*. The declaration must be signed and dated by a responsible official of the importer or by the importer's authorized agent having knowledge of the relevant facts.

(c) *Language*. The declaration must be completed in the English language.

(d) *Applicability of declaration*. The declaration may be applicable to:

(1) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the declaration. For purposes of this paragraph, ''identical goods'' means goods that are the same in all respects relevant to the production that qualifies the goods for preferential tariff treatment.

§ 10.765 Importer obligations.

(a) *General*. An importer who makes a claim for preferential tariff treatment under § 10.763 of this subpart:

(1) Will be deemed to have certified that the good is eligible for preferential tariff treatment under the MFTA;

(2) Is responsible for the truthfulness of the information and data contained in the declaration provided for in § 10.764 of this subpart; and

(3) Is responsible for submitting any supporting documents requested by CBP and for the truthfulness of the information contained in those documents. CBP will allow for the direct submission by the exporter or producer of business confidential or other sensitive information, including cost and sourcing information.

(b) I*nformation provided by exporter or producer*. The fact that the importer has made a claim for preferential tariff treatment or prepared a declaration based on information provided by an exporter or producer will not relieve the importer of the responsibility referred to in paragraph (a) of this section.

§ 10.766 Declaration not required.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a declaration under § 10.764 of this subpart for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the originating goods does not exceed U.S. $2,500.

(b) *Exception.* If the Center director determines that an importation described in paragraph (a) of this section may reasonably be considered to have been carried out or planned for the purpose of evading compliance with the rules and procedures governing claims for preference under the MFTA, the Center director will notify the importer that for that importation the importer must submit to CBP a declaration. The importer must submit such a declaration within 30 days from the date of the notice. Failure to timely submit the declaration will result in denial of the claim for preferential tariff treatment.

§ 10.767 Maintenance of records.

(a) *General.* An importer claiming preferential tariff treatment for a good under § 10.763 of this subpart must maintain, for five years after the date of the claim for preferential tariff treatment, all records and documents necessary for the preparation of the declaration.

(b) *Applicability of other recordkeeping requirements.* The records and documents referred to in paragraph (a) of this section are in addition to any other records required to be made, kept, and made available to CBP under part 163 of this chapter.

(c) *Method of maintenance.* The records and documents referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

§ 10.768 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *General.* If the importer fails to comply with any requirement under this subpart, including submission of a complete declaration under § 10.764 of this subpart, when requested, the Center director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the Center director nevertheless may deny preferential treatment to a good if the good is shipped through or transshipped in the territory of a country other than a Party, and the importer of the good does not provide, at the request of the Center director, evidence demonstrating to the satisfaction of the Center director that the good was imported directly from the territory of a Party into the territory of the other Party (*see* § 10.777 of this subpart).

RULES OF ORIGIN

§ 10.769 Definitions.

For purposes of §§ 10.769 through 10.777:

(a) *Exporter.* ''Exporter'' means a person who exports goods from the territory of a Party;

(b) *Generally Accepted Accounting Principles.* ''Generally Accepted Accounting Principles'' means the recognized consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;

(c) *Good.* ''Good'' means any merchandise, product, article, or material;

(d) *Goods wholly the growth, product, or manufacture of one or both of the Parties.* ''Goods wholly the growth, product, or manufacture of one or both of the Parties'' means:

(1) Mineral goods extracted in the territory of one or both of the Parties;

(2) Vegetable goods, as such goods are defined in the HTSUS, harvested in the territory of one or both of the Parties;

(3) Live animals born and raised in the territory of one or both of the Parties;

(4) Goods obtained from live animals raised in the territory of one or both of the Parties;

(5) Goods obtained from hunting, trapping, or fishing in the territory of one or both of the parties;

(6) Goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;

(7) Goods produced from goods referred to in paragraph (d)(5) on board factory ships registered or recorded with that Party and flying its flag;

(8) Goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;

(9) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(10) Waste and scrap derived from:

(i) Production or manufacture in the territory of one or both of the Parties, or

(ii) Used goods collected in the territory of one or both of the Parties, provided such goods are fit only for the recovery of raw materials;

(11) Recovered goods derived in the territory of a Party from used goods, and utilized in the territory of that Party in the production of remanufactured goods; and

(12) Goods produced in the territory of one or both of the Parties exclusively from goods referred to in paragraphs (d)(1) through (d)(10) of this section, or from their derivatives, at any stage of production;

(e) *Importer.* Importer means a person who imports goods into the territory of a Party;

(f) *Indirect material.* ''Indirect material'' means a good used in the growth, production, manufacture, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the growth, production, or manufacture of a good, including:

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment and buildings;

(4) Lubricants, greases, compounding materials, and other materials used in the growth, production, or manufacture of a good or used to operate equipment and buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the good;

(7) Catalysts and solvents; and

(8) Any other goods that are not incorporated into the good but the use of which in the growth, production, or manufacture of the good can reasonably be demonstrated to be a part of that growth, production, or manufacture;

(g) *Material.* ''Material'' means a good, including a part or ingredient, that is used in the growth, production, or manufacture of another good that is a new or different article of commerce that has been grown, produced, or manufactured in one or both of the Parties;

(h) *Material produced in the territory of one or both of the Parties.* ''Material produced in the territory of one or both of the Parties'' means a good that is either wholly the growth, product, or manufacture of one or both of the Parties, or a new or different article of commerce that has been grown, produced, or manufactured in the territory of one or both of the Parties;

(i) *New or different article of commerce.* A ''new or different article of commerce'' exists when the country of origin of a good which is produced in a Party from foreign materials is determined to be that country under the provisions of §§ 102.1 through 102.21 of this chapter;

(j) *Non-originating material.* ''Non-originating material'' means a material that does not qualify as originating under this subpart or General Note 27, HTSUS;

(k) *Packing materials and containers for shipment.* ''Packing materials and containers for shipment'' means the goods used to protect a good during its transportation to the United States, and does not include the packaging materials and containers in which a good is packaged for retail sale;

(l) *Recovered goods.* ''Recovered goods'' means materials in the form of individual parts that result from:

(1) The complete disassembly of used goods into individual parts; and

(2) The cleaning, inspecting, testing, or other processing of those parts as

necessary for improvement to sound working condition;

(m) *Remanufactured good*. ''Remanufactured good'' means an industrial good that is assembled in the territory of a Party and that:

(1) Is entirely or partially comprised of recovered goods;

(2) Has a similar life expectancy to, and meets the similar performance standards as, a like good that is new; and

(3) Enjoys the factory warranty similar to that of a like good that is new;

(n) *Simple combining or packaging operations*. ''Simple combining or packaging operations'' means operations such as adding batteries to electronic devices, fitting together a small number of components by bolting, gluing, or soldering, or packing or repacking components together;

[CBP Dec. 07–51, 72 FR 35651, June 29, 2007, as amended at CBP Dec. 08–29, 73 FR 45354, Aug. 5, 2008]

§ 10.770 Originating goods.

(a) *General*. A good will be considered an originating good under the MFTA when imported directly from the territory of a Party into the territory of the other Party only if:

(1) The good is wholly the growth, product, or manufacture of one or both of the Parties;

(2) The good is a new or different article of commerce, as defined in § 10.769(i) of this subpart, that has been grown, produced, or manufactured in the territory of one or both of the Parties, is provided for in a heading or subheading of the HTSUS that is not covered by the product-specific rules set forth in General Note 27(h), HTSUS, and meets the value-content requirement specified in paragraph (b) of this section; or

(3) The good is provided for in a heading or subheading of the HTSUS covered by the product-specific rules set forth in General Note 27(h), HTSUS, and:

(i)(A) Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in General Note 27(h), HTSUS, as a result of production occurring entirely in the territory of one or both of the Parties; or

(B) The good otherwise satisfies the requirements specified in General Note 27(h), HTSUS; and

(ii) The good meets any other requirements specified in General Note 27, HTSUS.

(b) *Value-content requirement*. A good described in paragraph (a)(2) of this section will be considered an originating good under the MFTA only if the sum of the value of materials produced in one or both of the Parties, plus the direct costs of processing operations (*see* § 10.774 of this subpart) performed in one or both of the Parties, is not less than 35 percent of the appraised value of the good at the time the good is entered into the territory of the United States.

(c) *Combining, packaging, and diluting operations*. For purposes of this subpart, a good will not be considered a new or different article of commerce by virtue of having undergone simple combining or packaging operations, or mere dilution with water or another substance that does not materially alter the characteristics of the good. The principles and examples set forth in § 10.195(a)(2) of this part will apply equally for purposes of this paragraph.

[CBP Dec. 07–51, 72 FR 35651, June 29, 2007, as amended at CBP Dec. 08–29, 73 FR 45354, Aug. 5, 2008]

§ 10.771 Textile or apparel goods.

(a) *De minimis*. Except as provided in paragraph (a)(1) of this section, a textile or apparel good that is not an originating good under the MFTA because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in General Note 27(h), HTSUS, will be considered to be an originating good if the total weight of all such fibers is not more than seven percent of the total weight of that component.

(1) *Exception*. A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good will be considered to be an originating good only if such yarns are

wholly formed in the territory of a Party.

(2) *Yarn, fabric, or group of fibers.* For purposes of paragraph (a) of this section, in the case of a textile or apparel good that is a yarn, fabric, or group of fibers, the term ''component of the good that determines the tariff classification of the good'' means all of the fibers in the yarn, fabric, or group of fibers.

(b) *Textile or apparel goods put up in sets.* Notwithstanding the specific rules specified in General Note 27(h), HTSUS, textile or apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be considered to be originating goods under the MFTA unless each of the goods in the set is an originating good or the total value of the non-originating goods in the set does not exceed ten percent of the appraised value of the set.

§ 10.772 Accumulation.

(a) An originating good or material produced in the territory of one or both of the Parties that is incorporated into a good in the territory of the other Party will be considered to originate in the territory of the other Party.

(b) A good that is grown, produced, or manufactured in the territory of one or both of the Parties by one or more producers is an originating good if the good satisfies the requirements of § 10.770 of this subpart and all other applicable requirements of General Note 27, HTSUS.

§ 10.773 Value of materials.

(a) *General.* For purposes of § 10.770(b) of this subpart and, except as provided in paragraph (b) of this section, the value of a material produced in the territory of one or both of the Parties includes the following:

(1) The price actually paid or payable for the material by the producer of the good;

(2) The freight, insurance, packing and all other costs incurred in transporting the material to the producer's plant, if such costs are not included in the price referred to in paragraph (a)(1) of this section;

(3) The cost of waste or spoilage resulting from the use of the material in the growth, production, or manufacture of the good, less the value of recoverable scrap; and

(4) Taxes or customs duties imposed on the material by one or both of the Parties, if the taxes or customs duties are not remitted upon exportation from the territory of a Party.

(b) *Exception.* If the relationship between the producer of a good and the seller of a material influenced the price actually paid or payable for the material, or if there is no price actually paid or payable by the producer for the material, the value of the material produced in the territory of one or both of the Parties, includes the following:

(1) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(2) A reasonable amount for profit; and

(3) The freight, insurance, packing, and all other costs incurred in transporting the material to the producer's plant.

§ 10.774 Direct costs of processing operations.

(a) *Items included.* For purposes of § 10.770(b) of this subpart, the words ''direct costs of processing operations'', with respect to a good, mean those costs either directly incurred in, or that can be reasonably allocated to, the growth, production, or manufacture of the good in the territory of one or both of the Parties. Such costs include, to the extent they are includable in the appraised value of the good when imported into a Party, the following:

(1) All actual labor costs involved in the growth, production, or manufacture of the specific good, including fringe benefits, on-the-job training, and the costs of engineering, supervisory, quality control, and similar personnel;

(2) Tools, dies, molds, and other indirect materials, and depreciation on machinery and equipment that are allocable to the specific good;

(3) Research, development, design, engineering, and blueprint costs, to the extent that they are allocable to the specific good;

(4) Costs of inspecting and testing the specific good; and

(5) Costs of packaging the specific good for export to the territory of the other Party.

(b) *Items not included.* For purposes of §10.770(b) of this subpart, the words ''direct costs of processing operations'' do not include items that are not directly attributable to the good or are not costs of growth, production, or manufacture of the good. These include, but are not limited to:

(1) Profit; and

(2) General expenses of doing business that are either not allocable to the good or are not related to the growth, production, or manufacture of the good, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

§ 10.775 Packaging and packing materials and containers for retail sale and for shipment.

Packaging materials and containers in which a good is packaged for retail sale and packing materials and containers for shipment are to be disregarded in determining whether a good qualifies as an originating good under §10.770 of this subpart and General Note 27, HTSUS, except to the extent that the value of such packaging and packing materials and containers may be included in meeting the value-content requirement specified in §10.770(b) of this subpart.

§ 10.776 Indirect materials.

Indirect materials are to be disregarded in determining whether a good qualifies as an originating good under §10.770 of this subpart and General Note 27, HTSUS, except that the cost of such indirect materials may be included in meeting the value-content requirement specified in §10.770(b) of this subpart.

§ 10.777 Imported directly.

(a) *General.* To qualify as an originating good under the MFTA, a good must be imported directly from the territory of a Party into the territory of the other Party. For purposes of this subpart, the words ''imported directly'' mean:

(1) Direct shipment from the territory of a Party into the territory of the other Party without passing through the territory of a non-Party; or

(2) If the shipment passed through the territory of a non-Party, the good, upon arrival in the territory of a Party, will be considered to be ''imported directly'' only if the good did not undergo production, manufacturing, or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party. Operations that may be performed outside the territories of the Parties include inspection, removal of dust that accumulates during shipment, ventilation, spreading out or drying, chilling, replacing salt, sulfur dioxide, or aqueous solutions, replacing damaged packing materials and containers, and removal of units of the good that are spoiled or damaged and present a danger to the remaining units of the good, or to transport the good to the territory of a Party.

(b) *Documentary evidence.* An importer making a claim for preferential tariff treatment under the MFTA for an originating good may be required to demonstrate, to CBP's satisfaction, that the good was ''imported directly'' from the territory of a Party into the territory of the other Party, as that term is defined in paragraph (a) of this section. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

TARIFF PREFERENCE LEVEL

§ 10.778 Filing of claim for tariff preference level.

A fabric or apparel good described in §10.779 of this subpart that does not qualify as an originating good under §10.770 of this subpart may nevertheless be entitled to preferential tariff treatment under the MFTA under an applicable tariff preference level (TPL). To make a TPL claim, the importer must include on the entry summary, or equivalent documentation,

the applicable subheading in Chapter 99 of the HTSUS (9912.99.20) immediately above the applicable subheading in Chapters 51 through 62 of the HTSUS under which each non-originating fabric or apparel good is classified.

§ 10.779 Goods eligible for tariff preference claims.

The following goods are eligible for a TPL claim filed under § 10.778 of this subpart:

(a) *Fabric goods.* Fabric goods provided for in Chapters 51, 52, 54, 55, 58, and 60 of the HTSUS that are wholly formed in Morocco, regardless of the origin of the fiber or yarn used to produce the goods, provided that they meet the applicable conditions for preferential tariff treatment under the MFTA, other than the condition that they are originating; and

(b) *Apparel goods.* Apparel goods provided for in Chapters 61 and 62 of the HTSUS that are cut or knit to shape, or both, and sewn or otherwise assembled in Morocco, regardless of the origin of the fabric or yarn used to produce the goods, provided that they meet the applicable conditions for preferential tariff treatment under the MFTA, other than the condition that they are originating goods.

§ 10.780 Transshipment of non-originating fabric or apparel goods.

(a) *General.* To qualify for preferential tariff treatment under an applicable TPL, a good must be imported directly from the territory of a Party into the territory of the other Party. For purposes of this subpart, the words ''imported directly'' mean:

(1) Direct shipment from the territory of a Party into the territory of the other Party without passing through the territory of a non-Party; or

(2) If the shipment passed through the territory of a non-Party, the good, upon arrival in the territory of a Party, will be considered to be ''imported directly'' only if the good did not undergo production, manufacturing, or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve it in good condition or to transport the good to the territory of a Party. Operations that may be performed outside the territories of the Parties include inspection, removal of dust that accumulates during shipment, ventilation, spreading out or drying, chilling, replacing salt, sulfur dioxide, or other aqueous solutions, replacing damaged packing materials and containers, and removal of units of the good that are spoiled or damaged and present a danger to the remaining units of the good, or to transport the good to the territory of a Party.

(b) *Documentary evidence.* An importer making a claim for preferential tariff treatment under an applicable TPL may be required to demonstrate, to CBP's satisfaction, that the good was ''imported directly'' from the territory of a Party into the territory of the other Party, as that term is defined in paragraph (a) of this section. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

§ 10.781 Effect of noncompliance; failure to provide documentation regarding transshipment of non-originating fabric or apparel goods.

(a) *Effect of noncompliance.* If an importer of a good for which a TPL claim is made fails to comply with any applicable requirement under this subpart, the Center director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the Center director nevertheless may deny preferential tariff treatment to a good for which a TPL claim is made if the good is shipped through or transshipped in a country other than a Party, and the importer of the good does not provide, at the request of the Center director, evidence demonstrating to the satisfaction of the Center director that the requirements set forth in § 10.780 of this subpart were met.

ORIGIN VERIFICATIONS AND DETERMINATIONS

§ 10.784 Verification and justification of claim for preferential treatment.

(a) *Verification.* A claim for preferential treatment made under § 10.763 of this subpart, including any declaration or other information submitted to CBP in support of the claim, will be subject to such verification as the Center director deems necessary. In the event that the Center director is provided with insufficient information to verify or substantiate the claim, the Center director may deny the claim for preferential treatment.

(b) *Applicable accounting principles.* When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

§ 10.785 Issuance of negative origin determinations.

If, as a result of an origin verification initiated under this subpart, CBP determines that a claim for preferential tariff treatment made under § 10.763 of this subpart should be denied, it will issue a determination in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates of the export and import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 27, HTSUS, and in §§ 10.769 through 10.777 of this subpart, the legal basis for the determination.

[CBP Dec. 07–51, 72 FR 35651, June 29, 2007. Redesignated at CBP Dec. 08–29, 73 FR 45354, Aug. 5, 2008]

PENALTIES

§ 10.786 Violations relating to the MFTA.

All criminal, civil, or administrative penalties which may be imposed on U.S. importers for violations of the customs and related laws and regulations will also apply to U.S. importers for violations of the laws and regulations relating to the MFTA.

[CBP Dec. 07–51, 72 FR 35651, June 29, 2007. Redesignated at CBP Dec. 08–29, 73 FR 45354, Aug. 5, 2008]

GOODS RETURNED AFTER REPAIR OR ALTERATION

§ 10.787 Goods re-entered after repair or alteration in Morocco.

(a) *General.* This section sets forth the rules that apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Morocco as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Morocco, whether or not pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, ''repairs or alterations'' means restoration, addition, renovation, re-dyeing, cleaning, re-sterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

(b) *Goods not eligible for treatment.* The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to Morocco, are incomplete for their intended use and for which the processing operation performed in Morocco constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

(c) *Documentation.* The provisions of § 10.8(a), (b), and (c) of this part, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Morocco after having been exported for repairs

or alterations and which are claimed to be duty free.

[CBP Dec. 07–51, 72 FR 35651, June 29, 2007. Redesignated at CBP Dec. 08–29, 73 FR 45354, Aug. 5, 2008]

Subpart N—United States-Bahrain Free Trade Agreement

SOURCE: CBP Dec. 07–81, 72 FR 58515, Oct. 16, 2007, unless otherwise noted.

GENERAL PROVISIONS

§ 10.801 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported goods under the United States-Bahrain Free Trade Agreement (the BFTA) signed on September 14, 2004, and under the United States-Bahrain Free Trade Agreement Implementation Act (the Act; 119 Stat. 3581). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the BFTA and the Act are contained in parts 24, 102, 162, and 163 of this chapter.

§ 10.802 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Claim of origin*. ''Claim of origin'' means a claim that a good is an originating good or a good of a Party;

(b) *Claim for preferential tariff treatment*. ''Claim for preferential tariff treatment'' means a claim that a good is entitled to the duty rate applicable under the BFTA to an originating good or other good specified in the BFTA, and to an exemption from the merchandise processing fee;

(c) *Customs Valuation Agreement*. ''Customs Valuation Agreement'' means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement;

(d) *Customs duty*. ''Customs duty'' includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994; in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty; and

(3) Fee or other charge in connection with importation commensurate with the cost of services rendered;

(e) *Days*. ''Days'' means calendar days;

(f) *Enterprise*. ''Enterprise'' means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association;

(g) *Foreign material*. ''Foreign material'' means a material other than a material produced in the territory of one or both of the Parties;

(h) *GATT 1994*. ''GATT 1994'' means the *General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement;

(i) *Good*. ''Good'' means any merchandise, product, article, or material;

(j) *Harmonized System*. ''Harmonized System (HS)'' means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(k) *Heading*. ''Heading'' means the first four digits in the tariff classification number under the Harmonized System;

(l) *HTSUS*. ''HTSUS'' means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(m) *Originating*. ''Originating'' means a good qualifying under the rules of origin set forth in General Note 30,

HTSUS, and BFTA Chapter Three (Textiles and apparel) or Chapter Four (Rules of Origin);

(n) *Party*. ''Party'' means the United States or the Kingdom of Bahrain;

(o) *Person*. ''Person'' means a natural person or an enterprise;

(p) *Preferential tariff treatment*. ''Preferential tariff treatment'' means the duty rate applicable under the BFTA to an originating good and an exemption from the merchandise processing fee;

(q) *Subheading*. ''Subheading'' means the first six digits in the tariff classification number under the Harmonized System;

(r) *Textile or apparel good*. ''Textile or apparel good'' means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as ''the ATC''), which is part of the WTO Agreement;

(s) *Territory*. ''Territory'' means:

(1) With respect to Bahrain, the territory of Bahrain as well as the maritime areas, seabed, and subsoil over which Bahrain exercises, in accordance with international law, sovereignty, sovereign rights, and jurisdiction; and

(2) With respect to the United States,

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico,

(ii) The foreign trade zones located in the United States and Puerto Rico, and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources; and

(t) *WTO Agreement*. ''WTO Agreement'' means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

IMPORT REQUIREMENTS

§ 10.803 Filing of claim for preferential tariff treatment upon importation.

An importer may make a claim for BFTA preferential tariff treatment for an originating good by including on the entry summary, or equivalent documentation, the symbol ''BH'' as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.

§ 10.804 Declaration.

(a) *Contents*. An importer who claims preferential tariff treatment for a good under the BFTA must submit, at the request of the Center director, a declaration setting forth all pertinent information concerning the growth, production, or manufacture of the good. A declaration submitted under this paragraph:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must include the following information:

(i) The legal name, address, telephone, and e-mail address (if any) of the importer of record of the good;

(ii) The legal name, address, telephone, and e-mail address (if any) of the responsible official or authorized agent of the importer signing the declaration (if different from the information required by paragraph (a)(2)(i) of this section);

(iii) The legal name, address, telephone and e-mail address (if any) of the exporter of the good (if different from the producer);

(iv) The legal name, address, telephone and e-mail address (if any) of the producer of the good (if known);

(v) A description of the good, which must be sufficiently detailed to relate it to the invoice and HS nomenclature, including quantity, numbers, invoice numbers, and bills of lading;

(vi) A description of the operations performed in the growth, production, or manufacture of the good in the territory of one or both of the Parties and, where applicable, identification of the direct costs of processing operations;

(vii) A description of any materials used in the growth, production, or manufacture of the good that are wholly the growth, product, or manufacture of one or both of the Parties, and a statement as to the value of such materials;

(viii) A description of the operations performed on, and a statement as to the origin and value of, any materials used in the article that are claimed to have been sufficiently processed in the territory of one or both of the Parties so as to be materials produced in one or both of the Parties, or are claimed to have undergone an applicable change in tariff classification specified in General Note 30(h), HTSUS; and

(ix) A description of the origin and value of any foreign materials used in the good that have not been substantially transformed in the territory of one or both of the Parties, or have not undergone an applicable change in tariff classification specified in General Note 30(h), HTSUS;

(3) Must include a statement, in substantially the following form:

''I certify that:

The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;

I agree to maintain and present upon request, documentation necessary to support these representations;

The goods comply with all the requirements for preferential tariff treatment specified for those goods in the United States-Bahrain Free Trade Agreement; and

This document consists of _____ pages, including all attachments.''

(b) *Responsible official or agent.* The declaration must be signed and dated by a responsible official of the importer or by the importer's authorized agent having knowledge of the relevant facts.

(c) *Language.* The declaration must be completed in the English language.

(d) *Applicability of declaration.* The declaration may be applicable to:

(1) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the declaration. For purposes of this paragraph, ''identical goods'' means goods that are the same in all respects relevant to the production that qualifies the goods for preferential tariff treatment.

[CBP Dec. 07–81, 72 FR 58515, Oct. 16, 2007, as amended by CBP 08-28, 73 FR 42681, July 23, 2008; CBP Dec. 16–26, 81 FR 93014, Dec. 20, 2016]

§ 10.805 Importer obligations.

(a) *General.* An importer who makes a claim for preferential tariff treatment under § 10.803 of this subpart:

(1) Will be deemed to have certified that the good is eligible for preferential tariff treatment under the BFTA:

(2) Is responsible for the truthfulness of the information and data contained in the declaration provided for in § 10.804 of this subpart; and

(3) Is responsible for submitting any supporting documents requested by CBP and for the truthfulness of the information contained in those documents. CBP will allow for the direct submission by the exporter or producer of business confidential or other sensitive information, including cost and sourcing information.

(b) *Information provided by exporter or producer.* The fact that the importer has made a claim for preferential tariff treatment or prepared a declaration based on information provided by an exporter or producer will not relieve the importer of the responsibility referred to in paragraph (a) of this section.

§ 10.806 Declaration not required.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a declaration under § 10.804 of this subpart for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the originating goods does not exceed U.S. $2,500.

(b) *Exception.* If the Center director determines that an importation described in paragraph (a) of this section may reasonably be considered to have been carried out or planned for the purpose of evading compliance with the rules and procedures governing claims for preference under the BFTA, the

Center director will notify the importer that for that importation the importer must submit to CBP a declaration. The importer must submit such a declaration within 30 days from the date of the notice. Failure to timely submit the declaration will result in denial of the claim for preferential tariff treatment.

§ 10.807 Maintenance of records.

(a) *General.* An importer claiming preferential tariff treatment for a good under § 10.803 of this subpart must maintain, for five years after the date of the claim for preferential tariff treatment, all records and documents necessary for the preparation of the declaration.

(b) *Applicability of other recordkeeping requirements.* The records and documents referred to in paragraph (a) of this section are in addition to any other records required to be made, kept, and made available to CBP under part 163 of this chapter.

(c) *Method of maintenance.* The records and documents referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

§ 10.808 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *General.* If the importer fails to comply with any requirement under this subpart, including submission of a complete declaration under § 10.804 of this subpart, when requested, the Center director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the Center director nevertheless may deny preferential treatment to a good if the good is shipped through or transshipped in the territory of a country other than a Party, and the importer of the good does not provide, at the request of the Center director, evidence demonstrating to the satisfaction of the Center director that the good was imported directly from the territory of a Party into the territory of the other Party (*see* § 10.817 of this subpart).

RULES OF ORIGIN

§ 10.809 Definitions.

For purposes of §§ 10.809 through 10.817:

(a) *Exporter.* ''Exporter'' means a person who exports goods from the territory of a Party;

(b) *Generally Accepted Accounting Principles.* ''Generally Accepted Accounting Principles'' means the recognized consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;

(c) *Good.* ''Good'' means any merchandise, product, article, or material;

(d) *Goods wholly the growth, product, or manufacture of one or both of the Parties.* ''Goods wholly the growth, product, or manufacture of one or both of the Parties'' means:

(1) Mineral goods extracted in the territory of one or both of the Parties;

(2) Vegetable goods, as such goods are defined in the HTSUS, harvested in the territory of one or both of the Parties;

(3) Live animals born and raised in the territory of one or both of the Parties;

(4) Goods obtained from live animals raised in the territory of one or both of the Parties;

(5) Goods obtained from hunting, trapping, or fishing in the territory of one or both of the parties;

(6) Goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a party and flying its flag;

(7) Goods produced from goods referred to in paragraph (d)(6) of this section on board factory ships registered or recorded with that Party and flying its flag;

(8) Goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;

(9) Goods taken from outer space, provided they are obtained by a Party

or a person of a Party and not processed in the territory of a non-Party;

(10) Waste and scrap derived from:

(i) Production or manufacture in the territory of one or both of the Parties, or

(ii) Used goods collected in the territory of one or both of the Parties, provided such goods are fit only for the recovery of raw materials;

(11) Recovered goods derived in the territory of a Party from used goods, and utilized in the territory of that Party in the production of remanufactured goods; and

(12) Goods produced in the territory of one or both of the Parties exclusively from goods referred to in paragraphs (d)(1) through (d)(10) of this section, or from their derivatives, at any stage of production;

(e) *Importer*. Importer means a person who imports goods into the territory of a Party;

(f) *Indirect material*. ''Indirect material'' means a good used in the growth, production, manufacture, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the growth, production, or manufacture of a good, including:

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment and buildings;

(4) Lubricants, greases, compounding materials, and other materials used in the growth, production, or manufacture of a good or used to operate equipment and buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the good;

(7) Catalysts and solvents; and

(8) Any other goods that are not incorporated into the good but the use of which in the growth, production, or manufacture of the good can reasonably be demonstrated to be a part of that growth, production, or manufacture;

(g) *Material*. ''Material'' means a good, including a part or ingredient, that is used in the growth, production, or manufacture of another good that is a new or different article of commerce that has been grown, produced, or manufactured in one or both of the Parties;

(h) *Material produced in the territory of one or both of the Parties*. ''Material produced in the territory of one or both of the Parties'' means a good that is either wholly the growth, product, or manufacture of one or both of the Parties, or a new or different article of commerce that has been grown, produced, or manufactured in the territory of one or both of the Parties;

(i) *New or different article of commerce*. A ''new or different article of commerce'' exists when the country of origin of a good which is produced in a Party from foreign materials is determined to be that country under the provisions of §§ 102.1 through 102.21 of this chapter;

(j) *Non-originating material*. ''Non-originating material'' means a material that does not qualify as originating under this subpart or General Note 30, HTSUS;

(k) *Packing materials and containers for shipment*. ''Packing materials and containers for shipment'' means the goods used to protect a good during its transportation to the United States, and does not include the packaging materials and containers in which a good is packaged for retail sale;

(l) *Recovered goods*. ''Recovered goods'' means materials in the form of individual parts that result from:

(1) The complete disassembly of used goods into individual parts; and

(2) The cleaning, inspecting, testing, or other processing of those parts as necessary for improvement to sound working condition;

(m) *Remanufactured good*. ''Remanufactured good'' means an industrial good that is assembled in the territory of a Party and that:

(1) Is entirely or partially comprised of recovered goods;

(2) Has a similar life expectancy to, and meets the same performance standards as, a like good that is new; and

(3) Enjoys the factory warranty similar to that of a like good that is new;

(n) *Simple combining or packaging operations*. ''Simple combining or packaging operations'' means operations such as adding batteries to electronic

devices, fitting together a small number of components by bolting, gluing, or soldering, and repacking and packaging components together.

[CBP Dec. 07–81, 72 FR 58515, Oct. 16, 2007, as amended at CBP Dec. 10–29, 75 FR 52450, Aug. 26, 2010]

§ 10.810 Originating goods.

(a) *General.* A good will be considered an originating good under the BFTA when imported directly from the territory of a Party into the territory of the other Party only if:

(1) The good is wholly the growth, product, or manufacture of one or both of the Parties;

(2) The good is a new or different article of commerce, as defined in § 10.809(i) of this subpart, that has been grown, produced, or manufactured in the territory of one or both of the Parties, is provided for in a heading or subheading of the HTSUS that is not covered by the product-specific rules set forth in General Note 30(h), HTSUS, and meets the value-content requirement specified in paragraph (b) of this section; or

(3) The good is provided for in a heading or subheading of the HTSUS covered by the product-specific rules set forth in General Note 30(h), HTSUS, and:

(i)(A) Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in General Note 30(h), HTSUS, as a result of production occurring entirely in the territory of one or both of the Parties; or

(B) The good otherwise satisfies the requirements specified in General Note 30(h), HTSUS; and

(ii) The good meets any other requirements specified in General Note 30, HTSUS.

(b) *Value-content requirement.* A good described in paragraph (a)(2) of this section will be considered an originating good under the BFTA only if the sum of the value of materials produced in one or both of the Parties, plus the direct costs of processing operations performed in one or both of the Parties, is not less than 35 percent of the appraised value of the good at the time the good is entered into the territory of the United States.

(c) *Combining, packaging, and diluting operations.* For purposes of this subpart, a good will not be considered a new or different article of commerce by virtue of having undergone simple combining or packaging operations, or mere dilution with water or another substance that does not materially alter the characteristics of the good. The principles and examples set forth in § 10.195(a)(2) of this part will apply equally for purposes of this paragraph.

§ 10.811 Textile or apparel goods.

(a) *De minimis*—(1) *General.* Except as provided in paragraph (a)(2) of this section, a textile or apparel good that is not an originating good under the BFTA because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in General Note 30(h), HTSUS, will be considered to be an originating good if the total weight of all such fibers or yarns is not more than seven percent of the total weight of that component.

(2) *Exception.* A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good will be considered to be an originating good only if such yarns are wholly formed in the territory of a Party.

(b) *Textile or apparel goods put up in sets.* Notwithstanding the specific rules specified in General Note 30(h), HTSUS, textile or apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be considered to be originating goods under the BFTA unless each of the goods in the set is an originating good or the total value of the non-originating goods in the set does not exceed ten percent of the appraised value of the set.

[CBP Dec. 07–81, 72 FR 58515, Oct. 16, 2007, as amended at CBP Dec. 10–29, 75 FR 52450, Aug. 26, 2010]

§ 10.812 Accumulation.

(a) An originating good or material produced in the territory of one or both

of the Parties that is incorporated into a good in the territory of the other Party will be considered to originate in the territory of the other Party.

(b) A good that is grown, produced, or manufactured in the territory of one or both of the Parties by one or more producers is an originating good if the good satisfies the requirements of §10.810 of this subpart and all other applicable requirements of General Note 30, HTSUS.

§10.813 Value of materials.

(a) *General.* For purposes of §10.810(b) of this subpart and, except as provided in paragraph (b) of this section, the value of a material produced in the territory of one or both of the Parties includes the following:

(1) The price actually paid or payable for the material by the producer of the good;

(2) The freight, insurance, packing and all other costs incurred in transporting the material to the producer's plant, if such costs are not included in the price referred to in paragraph (a)(1) of this section;

(3) The cost of waste or spoilage resulting from the use of the material in the growth, production, or manufacture of the good, less the value of recoverable scrap; and

(4) Taxes or customs duties imposed on the material by one or both of the Parties, if the taxes or customs duties are not remitted upon exportation from the territory of a Party.

(b) *Exception.* If the relationship between the producer of a good and the seller of a material influenced the price actually paid or payable for the material, or if there is no price actually paid or payable by the producer for the material, the value of the material produced in the territory of one or both of the Parties includes the following:

(1) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(2) A reasonable amount for profit; and

(3) The freight, insurance, packing, and all other costs incurred in transporting the material to the producer's plant.

§10.814 Direct costs of processing operations.

(a) *Items included.* For purposes of §10.810(b) of this subpart, the words ''direct costs of processing operations'', with respect to a good, mean those costs either directly incurred in, or that can be reasonably allocated to, the growth, production, or manufacture of the good in the territory of one or both of the Parties. Such costs include, to the extent they are includable in the appraised value of the good when imported into a Party, the following:

(1) All actual labor costs involved in the growth, production, or manufacture of the specific good, including fringe benefits, on-the-job training, and the costs of engineering, supervisory, quality control, and similar personnel;

(2) Tools, dies, molds, and other indirect materials, and depreciation on machinery and equipment that are allocable to the specific good;

(3) Research, development, design, engineering, and blueprint costs, to the extent that they are allocable to the specific good;

(4) Costs of inspecting and testing the specific good; and

(5) Costs of packaging the specific good for export to the territory of the other Party.

(b) *Items not included.* For purposes of §10.810(b) of this subpart, the words ''direct costs of processing operations'' do not include items that are not directly attributable to the good or are not costs of growth, production, or manufacture of the good. These include, but are not limited to:

(1) Profit; and

(2) General expenses of doing business that are either not allocable to the good or are not related to the growth, production, or manufacture of the good, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

§10.815 Packaging and packing materials and containers for retail sale and for shipment.

Packaging materials and containers in which a good is packaged for retail sale and packing materials and containers for shipment are to be disregarded in determining whether a

good qualifies as an originating good under §10.810 of this subpart and General Note 30, HTSUS, except to the extent that the value of such packaging and packing materials and containers may be included in meeting the value-content requirement specified in §10.810(b) of this subpart.

§10.816 Indirect materials.

Indirect materials are to be disregarded in determining whether a good qualifies as an originating good under §10.810 of this subpart and General Note 30, HTSUS, except that the cost of such indirect materials may be included in meeting the value-content requirement specified in §10.810(b) of this subpart.

§10.817 Imported directly.

(a) *General.* To qualify as an originating good under the BFTA, a good must be imported directly from the territory of a Party into the territory of the other Party. For purposes of this subpart, the words ''imported directly'' mean:

(1) Direct shipment from the territory of a Party into the territory of the other Party without passing through the territory of a non-Party; or

(2) If the shipment passed through the territory of a non-Party, the good, upon arrival in the territory of a Party, will be considered to be ''imported directly'' only if the good did not undergo production, manufacturing, or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party. Operations that may be performed outside the territories of the Parties include inspection, removal of dust that accumulates during shipment, ventilation, spreading out or drying, chilling, replacing salt, sulfur dioxide, or aqueous solutions, replacing damaged packing materials and containers, and removal of units of the good that are spoiled or damaged and present a danger to the remaining units of the good, or to transport the good to the territory of a Party.

(b) *Documentary evidence.* An importer making a claim for preferential tariff treatment under the BFTA for an originating good may be required to demonstrate, to CBP's satisfaction, that the good was ''imported directly'' from the territory of a Party into the territory of the other Party, as that term is defined in paragraph (a) of this section. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

[CBP Dec. 07–81, 72 FR 58515, Oct. 16, 2007, as amended by CBP Dec. 09–17, 74 FR 23951, May 22, 2009]

Tariff Preference Level

§10.818 Filing of claim for tariff preference level.

A fabric, apparel, or made-up good described in §10.819 of this subpart that does not qualify as an originating good under §10.810 of this subpart may nevertheless be entitled to preferential tariff treatment under the BFTA under an applicable tariff preference level (TPL). To make a TPL claim, the importer must include on the entry summary, or equivalent documentation, the applicable subheading in Chapter 99 of the HTSUS (9914.99.20) immediately above the applicable subheading in Chapter 52 through Chapter 63 of the HTSUS under which each non-originating fabric or apparel good is classified.

§10.819 Goods eligible for tariff preference claims.

The following goods are eligible for a TPL claim filed under §10.818 of this subpart (subject to the quantitative limitations set forth in U.S. Note 13, Subchapter XIV, Chapter 99, HTSUS):

(a) Cotton or man-made fiber fabric goods provided for in Chapters 52, 54, 55, 58, and 60 of the HTSUS that are wholly formed in the territory of Bahrain from yarn produced or obtained outside the territory of Bahrain or the United States;

(b) Cotton or man-made fiber fabric goods provided for in subheadings 5801.21, 5801.22, 5801.23, 5801.24, 5801.25, 5801.26, 5801.31, 5801.32, 5801.33, 5801.34,

5801.35, 5801.36, 5802.11, 5802.19, 5802.20, 5802.30, 5803.10, 5803.90.30, 5804.10.10, 5804.21, 5804.29.10, 5804.30, 5805.00.30, 5805.00.40, 5806.10.10, 5806.10.24, 5806.10.28, 5806.20, 5806.31, 5806.32, 5807.10.05, 5807.10.20, 5807.90.05, 5807.90.20, 5808.10.40, 5808.10.70, 5808.90, 5809.00, 5810.10, 5810.91, 5810.92, 5811.00.20, 5811.00.30, 6001.10, 6001.21, 6001.22, 6001.91, 6001.92, 6002.40, 6002.90, 6003.20, 6003.30, 6003.40, 6004.10, 6004.90, 6005.21, 6005.22, 6005.23, 6005.24, 6005.31, 6005.32, 6005.33, 6005.34, 6005.41, 6005.42, 6005.43, 6005.44, 6006.21, 6006.22, 6006.23, 6006.24, 6006.31, 6006.32, 6006.33, 6006.34, 6006.41, 6006.42, 6006.43, and 6006.44 of the HTSUS that are wholly formed in the territory of Bahrain from yarn spun in the territory of Bahrain or the United States from fiber produced or obtained outside the territory of Bahrain or the United States;

(c) Cotton or man-made fiber apparel goods provided for in Chapters 61 or 62 of the HTSUS that are cut or knit to shape, or both, and sewn or otherwise assembled in the territory of Bahrain from fabric or yarn produced or obtained outside the territory of Bahrain or the United States; and

(d) Cotton or man-made fiber made-up goods provided for in Chapter 63 of the HTSUS that are cut or knit to shape, or both, and sewn or otherwise assembled in the territory of Bahrain from fabric wholly formed in Bahrain or the United States from yarn produced or obtained outside the territory of Bahrain or the United States.

§ 10.820 Certificate of eligibility.

Upon request, an importer claiming preferential tariff treatment on a non-originating cotton or man-made fiber good specified in § 10.819 of this subpart must submit to CBP a certificate of eligibility. The certificate of eligibility must be completed and signed by an authorized official of the Government of Bahrain and must be in the possession of the importer at the time the preferential tariff treatment is claimed.

§ 10.821 Declaration.

(a) *General.* An importer who claims preferential tariff treatment on a non-originating cotton or man-made fiber good specified in § 10.819 of this subpart must submit, at the request of the Center director, a declaration supporting such a claim for preferential tariff treatment that sets forth all pertinent information concerning the production of the good, including:

(1) A description of the good, quantity, invoice numbers, and bills of lading;

(2) A description of the operations performed in the production of the good in the territory of one or both of the Parties;

(3) A reference to the specific provision in § 10.819 of this subpart that forms the basis for the claim for preferential tariff treatment; and

(4) A statement as to any fiber, yarn, or fabric of a non-Party and the origin of such materials used in the production of the good.

(b) *Retention of records.* An importer must retain all documents relied upon to prepare the declaration for a period of five years.

§ 10.822 Transshipment of non-originating fabric or apparel goods.

(a) *General.* To qualify for preferential tariff treatment under an applicable TPL, a good must be imported directly from the territory of a Party into the territory of the other Party. For purposes of this subpart, the words ''imported directly'' mean:

(1) Direct shipment from the territory of a Party into the territory of the other Party without passing through the territory of a non-Party; or

(2) If the shipment passed through the territory of a non-Party, the good, upon arrival in the territory of a Party, will be considered to be ''imported directly'' only if the good did not undergo production, manufacturing, or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party. Operations that may be performed outside the territories of the Parties include inspection, removal of dust that accumulates during shipment, ventilation, spreading out or drying, chilling, replacing salt, sulfur dioxide, or aqueous solutions, replacing damaged packing materials and containers, and removal of units of the good that are

spoiled or damaged and present a danger to the remaining units of the good, or to transport the good to the territory of a Party.

(b) *Documentary evidence.* An importer making a claim for preferential tariff treatment under an applicable TPL may be required to demonstrate, to CBP's satisfaction, that the good was ''imported directly'' from the territory of a Party into the territory of the other Party, as that term is defined in paragraph (a) of this section. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

[CBP Dec. 07–81, 72 FR 58515, Oct. 16, 2007, as amended by CBP 08-28, 73 FR 42681, July 23, 2008; CBP Dec. 09–17, 74 FR 23951, May 22, 2009]

§ 10.823 Effect of non-compliance; failure to provide documentation regarding transshipment of non-originating fabric or apparel goods.

(a) *General.* If an importer of a good for which a TPL claim is made fails to comply with any applicable requirement under this subpart, the Center director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the Center director nevertheless may deny preferential tariff treatment to a good for which a TPL claim is made if the good is shipped through or transshipped in a country other than a Party, and the importer of the good does not provide, at the request of the Center director, evidence demonstrating to the satisfaction of the Center director that the requirements set forth in §10.822 of this subpart were met.

ORIGIN VERIFICATIONS AND DETERMINATIONS

§ 10.824 Verification and justification of claim for preferential treatment.

(a) *Verification.* A claim for preferential treatment made under §10.803 of this subpart, including any declaration or other information submitted to CBP in support of the claim, will be subject to such verification as the Center director deems necessary. In the event that the Center director is provided with insufficient information to verify or substantiate the claim, the Center director may deny the claim for preferential treatment.

(b) *Applicable accounting principles.* When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

§ 10.825 Issuance of negative origin determinations.

If, as a result of an origin verification initiated under this subpart, CBP determines that a claim for preferential tariff treatment made under §10.803 of this subpart should be denied, it will issue a determination in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates of the export and import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 30, HTSUS, and in §§10.809 through 10.817 of this subpart, the legal basis for the determination.

PENALTIES

§ 10.826 Violations relating to the BFTA.

All criminal, civil, or administrative penalties which may be imposed on U.S. importers for violations of the customs and related laws and regulations will also apply to U.S. importers for violations of the laws and regulations relating to the BFTA.

GOODS RETURNED AFTER REPAIR OR ALTERATION

§ 10.827 Goods re-entered after repair or alteration in Bahrain.

(a) *General.* This section sets forth the rules that apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Bahrain as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Bahrain, whether or not pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, ''repairs or alterations'' means restoration, addition, renovation, re-dyeing, cleaning, re-sterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

(b) *Goods not eligible for treatment.* The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to Bahrain, are incomplete for their intended use and for which the processing operation performed in Bahrain constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

(c) *Documentation.* The provisions of paragraphs (a), (b), and (c) of §10.8 of this part, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Bahrain after having been exported for repairs or alterations and which are claimed to be duty free.

Subpart O—Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006

SOURCE: CBP Dec. 07–43, 72 FR 34369, June 22, 2007, unless otherwise noted.

§ 10.841 Applicability.

Title V of Public Law 109–432, entitled the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2006 (HOPE I Act), amended the Caribbean Basin Economic Recovery Act (the CBERA, 19 U.S.C. 2701–2707) by adding a new section 213A (19 U.S.C. 2703A) to authorize the President to extend additional trade benefits to Haiti. part I, Subtitle D, Title XV of Public Law 110–234, entitled the Haitian Hemispheric Opportunity through Partnership Encouragement Act of 2008 (HOPE II Act) amended certain provisions within section 213A. Section 213A of the CBERA provides for the duty-free treatment of certain apparel articles and certain wiring sets from Haiti. The provisions of this subpart set forth the legal requirements and procedures that apply for purposes of obtaining duty-free treatment pursuant to CBERA section 213A.

[CBP Dec. 08–24, 73 FR 56725, Sept. 30, 2008]

§ 10.842 Definitions.

As used in this subpart, the following terms have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Apparel articles.* ''Apparel articles'' means goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99.15 and 6505.90 of the HTSUS;

(b) *Applicable one-year period.* ''Applicable one-year period'' means each of the following one-year periods:

(1) *Initial applicable one-year period.* ''Initial applicable one-year period'' means the period beginning on December 20, 2006, and ending on December 19, 2007;

(2) *Second applicable one-year period.* ''Second applicable one-year period'' means the period beginning on December 20, 2007, and ending on December 19, 2008;

(3) *Third applicable one-year period.* ''Third applicable one-year period'' means the period beginning on December 20, 2008, and ending on December 19, 2009;

(4) *Fourth applicable one-year period.* ''Fourth applicable one-year period'' means the period beginning on December 20, 2009, and ending on December 19, 2010; and

(5) *Fifth applicable one-year period.* ''Fifth applicable one-year period'' means the period beginning on December 20, 2010, and ending on December 19, 2011;

(c) *Customs territory of the United States.* ''Customs territory of the United States'' means the 50 states, the District of Columbia, and Puerto Rico;

(d) *Declared customs value.* ''Declared customs value'' means the appraised value of an imported article determined in accordance with section 402 of the Tariff Act of 1930, as amended (19 U.S.C. 1401a);

(e) *Enter; entry.* ''Enter'' and ''entry'' refer to the entry, or withdrawal from warehouse for consumption, in the customs territory of the United States;

(f) *Entity controlling production.* ''Entity controlling production'' means an individual, corporation, partnership, association, or other entity or group that is not a producer and that controls the production process in Haiti through a contractual relationship or other indirect means;

(g) *Fabric component.* ''Fabric component'' means a component cut from fabric to the shape or form of the component as it is used in the apparel article;

(h) *Foreign material.* ''Foreign material'' means a material not produced in Haiti or any eligible country described in §10.844(c);

(i) *HTSUS.* ''HTSUS'' means the Harmonized Tariff Schedule of the United States;

(j) *Knit-to-shape articles.* ''Knit-to-shape,'' when used with reference to apparel articles, means any apparel article of which 50 percent or more of the exterior surface area is formed by major parts that have been knitted or crocheted directly to the shape used in the apparel article, with no consideration being given to patch pockets, appliques, or the like. Minor cutting, trimming, or sewing of those major parts will not affect the determination of whether an apparel article is ''knit-to-shape'';

(k) *Knit-to-shape components.* ''Knit-to-shape,'' when used with reference to textile components, means components that are knitted or crocheted from a yarn directly to a specific shape, that is, the shape or form of the component as it is used in the apparel article, containing at least one self-start edge. Minor cutting or trimming will not affect the determination of whether a component is ''knit-to-shape'';

(l) *Major parts.* ''Major parts'' means integral components of an apparel article but does not include collars, cuffs, waistbands, plackets, pockets, linings, paddings, trim, accessories, or similar parts or components;

(m) *Producer.* ''Producer'' means an individual, corporation, partnership, association, or other entity or group that exercises direct, daily operational control over the production process in Haiti;

(n) *Self-start edge.* ''Self-start edge,'' when used with reference to knit-to-shape components, means a finished edge which is finished as the component comes off the knitting machine. Several components with finished edges may be linked by yarn or thread as they are produced from the knitting machine;

(o) *Subheading.* ''Subheading'' means the first six digits in the tariff classification number under the HTSUS;

(p) *Wholly assembled in Haiti.* ''Wholly assembled in Haiti'' means that all components, of which there must be at least two, pre-existed in essentially the same condition as found in the finished good and were combined to form the finished good in Haiti. Minor attachments and minor embellishments (for example, appliqués, beads, spangles, embroidery, and buttons) not appreciably affecting the identity of the good, and minor subassemblies (for example, collars, cuffs, plackets, and pockets), will not affect the determination of whether a good is ''wholly assembled in Haiti''.

(q) *Wholly the growth, product, or manufacture.* ''Wholly the growth, product, or manufacture,'' when used with reference to Haiti or one or more eligible countries described in §10.844(c) of this subpart, refers both to any article which has been entirely grown, produced, or manufactured in Haiti or one or more eligible countries described in §10.844(c) of this subpart and to all materials incorporated in an article which have been entirely grown, produced, or manufactured in Haiti or one or more

eligible countries described in §10.844(c) of this subpart.

[CBP Dec. 07–43, 72 FR 34369, June 22, 2007, as amended by CBP Dec. 08–24, 73 FR 56725, Sept. 30, 2008]

§10.843 Articles eligible for duty-free treatment.

The duty-free treatment referred to in §10.841 of this subpart applies to the articles described in paragraphs (a) through (j) of this section that are imported directly from Haiti or the Dominican Republic into the customs territory of the United States and to the articles described in paragraph (k) of this section that are imported directly from Haiti into the customs territory of the United States.

(a) *Certain apparel articles.* Apparel articles of a producer or entity controlling production that are wholly assembled or knit-to-shape in Haiti from any combination of fabrics, fabric components, components knit-to-shape, and yarns, subject to the applicable quantitative limits set forth in U.S. Note 6(g), Subchapter XX, Chapter 98, HTSUS, and provided that the applicable value-content requirement set forth in §10.844(a) of this subpart is met through the use of:

(1) The individual entry method (*see* §10.844(a)(1) of this subpart); or

(2) The annual aggregation method (*see* §10.844(a)(2) of this subpart).

(b) *Certain woven apparel articles.* Apparel articles classifiable in Chapter 62 of the HTSUS that are wholly assembled or knit-to-shape in Haiti from any combination of fabrics, fabric components, components knit-to-shape, and yarns, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the article is made, subject to the applicable quantitative limits set forth in U.S. Note 6(h), Subchapter XX, Chapter 98, HTSUS.

(c) *Brassieres.* Apparel articles classifiable in subheading 6212.10 of the HTSUS that are wholly assembled or knit-to-shape in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the article is made.

(d) *Certain knit apparel articles*—(1) *General.* Apparel articles classifiable in Chapter 61 of the HTSUS (other than those described in paragraph (d)(2) of this section) that are wholly assembled or knit-to-shape in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the article is made, subject to the applicable quantitative limits set forth in U.S. Note 6(j), Subchapter XX, Chapter 98, HTSUS.

(2) *Exclusions.* Duty-free treatment for the articles described in paragraph (d)(1) of this section will not apply to the following:

(i) The following apparel articles of cotton, for men or boys, that are classifiable in subheading 6109.10.00 of the HTSUS:

(A) All white T-shirts, with short hemmed sleeves and hemmed bottom, with crew or round neckline or with V-neck and with a mitered seam at the center of the V, and without pockets, trim, or embroidery;

(B) All white singlets, without pockets, trim, or embroidery; and

(C) Other T-shirts, but not including thermal undershirts;

(ii) T-shirts for men or boys that are classifiable in subheading 6109.90.10 of the HTSUS;

(iii) The following apparel articles of cotton, for men or boys, that are classifiable in subheading 6110.20.20 of the HTSUS:

(A) Sweatshirts; and

(B) Pullovers, other than sweaters, vests, or garments imported as part of playsuits; or

(iv) Sweatshirts for men or boys, of man-made fibers and containing less than 65 percent by weight of man-made fibers, that are classifiable in subheading 6110.30.30 of the HTSUS.

(e) *Other apparel articles.* Any of the following apparel articles that is wholly assembled or knit-to-shape in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the article is made:

(1) Any apparel article that is of a type listed in chapter rule 3, 4, or 5 for chapter 61 of the HTSUS (as such chapter rules are contained in section A of the Annex to Presidential Proclamation 8213 of December 20, 2007) as being excluded from the scope of such chapter rule, when such chapter rule is applied to determine whether an apparel article is an originating good for purposes of General Note 29(n), HTSUS, except that, for purposes of this provision, reference in such chapter rules to subheading 6104.12.00 of the HTSUS is deemed to refer to subheading 6104.19.60 of the HTSUS; or

(2) Any apparel article (other than articles to which paragraph (c) of this section applies (brassieres)) that is of a type listed in chapter rule 3(a), 4(a), or 5(a) for chapter 62 of the HTSUS, as such chapter rules are contained in paragraph 9 of section A of the Annex to Presidential Proclamation 8213 of December 20, 2007.

(f) *Luggage and similar items.* Articles classifiable in subheading 4202.12, 4202.22, 4202.32, or 4202.92 of the HTSUS that are wholly assembled in Haiti, without regard to the source of the fabric, components, or materials from which the article is made.

(g) *Headgear.* Articles classifiable in heading 6501, 6502, or 6504, or subheading 6505.90 of the HTSUS that are wholly assembled, knit-to-shape, or formed in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the article is made.

(h) *Certain sleepwear.* Any of the following apparel articles that is wholly assembled or knit-to-shape in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the article is made:

(1) Pajama bottoms and other sleepwear for women and girls, of cotton, that are classifiable in subheading 6208.91.30, HTSUS, or of man-made fibers, that are classifiable in subheading 6208.92.00, HTSUS; or

(2) Pajama bottoms and other sleepwear for girls, of other textile materials, that are classifiable in subheading 6208.99.20, HTSUS.

(i) *Earned import allowance rule.* Apparel articles wholly assembled or knit-to-shape in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns, without regard to the source of the fabric, fabric components, components knit-to-shape, or yarns from which the articles are made, if such apparel articles are accompanied by an earned import allowance certificate issued by the Department of Commerce that reflects the amount of credits equal to the total square meter equivalents of such apparel articles, in accordance with the earned import allowance program established by the Secretary of Commerce pursuant to 19 U.S.C. 2703A(b)(4)(B).

(j) *Apparel articles of short supply materials.* Apparel articles that are wholly assembled or knit-to-shape in Haiti from any combination of fabrics, fabric components, components knit-to-shape, or yarns, without regard to the source of the fabrics, fabric components, components knit-to-shape, or yarns from which the article is made, if the fabrics, fabric components, components knit-to-shape, or yarns comprising the component that determines the tariff classification of the article are of any of the following:

(1) Fabrics or yarns, to the extent that apparel articles of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabrics or yarns, under Annex 401 of the North American Free Trade Agreement (NAFTA); or

(2) Fabrics or yarns, to the extent that such fabrics or yarns are designated as not being available in commercial quantities for purposes of:

(i) Section 213(b)(2)(A)(v) of the CBERA (19 U.S.C. 2703(b)(2)(A)(v));

(ii) Section 112(b)(5) of the African Growth and Opportunity Act (19 U.S.C. 3721(b)(5));

(iii) Section 204(b)(3)(B)(i)(III) or 204(b)(3)(B)(ii) of the Andean Trade Preference Act (19 U.S.C. 3203(b)(3)(B)(i)(II) or 3203(b)(3)(B)(ii)); or

(iv) Any other provision, relating to determining whether a textile or apparel article is an originating good eligible for preferential treatment, of a law that implements a free trade agreement entered into by the United States that is in effect at the time the claim for preferential tariff treatment is made under §10.847 of this subpart.

(k) *Wiring sets.* Any article classifiable in subheading 8544.30.00 of the HTSUS, as in effect on December 20, 2006, that is the product or manufacture of Haiti, provided the article satisfies the value-content requirement set forth in §10.844(b) of this subpart. For purposes of this paragraph, the term ''product or manufacture of Haiti'' refers to an article that is either:

(1) Wholly the growth, product, or manufacture of Haiti; or

(2) A new or different article of commerce that has been grown, produced, or manufactured in Haiti.

[CBP Dec. 07–43, 72 FR 34369, June 22, 2007, as amended by CBP Dec. 08–24, 73 FR 56725, Sept. 30, 2008]

§10.844 Value-content requirement.

(a) *Certain apparel articles*—(1) *General.* Except as provided in paragraph (a)(2) of this section, apparel articles described in §10.843(a) of this subpart will be eligible for duty-free treatment only if, for each entry of such articles in the applicable one-year period for which a duty-free claim is made for such articles under §10.847(a) of this subpart, the sum of the cost or value of the materials produced in Haiti or one or more eligible countries described in paragraph (c) of this section, or any combination thereof, plus the direct costs of processing operations performed in Haiti or one or more eligible countries described in paragraph (c) of this section, or any combination thereof, is not less than (as applicable):

(i) 50 percent or more of the declared customs value of the articles entered during the initial applicable one-year period, the second applicable one-year period, and the third applicable one-year period;

(ii) 55 percent or more of the declared customs value of the articles entered during the fourth applicable one-year period; and

(iii) 60 percent or more of the declared customs value of the articles entered during the fifth applicable one-year period.

(2) *Annual aggregation*—(i) *Initial applicable one-year period.* In the initial applicable one-year period, the applicable value-content requirement set forth in paragraph (a)(1) of this section may also be met for apparel articles of a producer or an entity controlling production that are entered during the initial applicable one-year period and for which duty-free treatment is claimed under §10.847(a) of this subpart by aggregating the cost or value of materials and the direct costs of processing operations, as those terms are used in paragraph (a)(1) of this section, with respect to all apparel articles of that producer or entity controlling production that are wholly assembled or knit-to-shape in Haiti and are entered during the initial applicable one-year period (except as provided in paragraph (a)(2)(iii) of this section).

(ii) *Other applicable one-year periods.* In each of the second, third, fourth, and fifth applicable one-year periods, the applicable value-content requirement set forth in paragraph (a)(1) of this section may also be met for apparel articles of a producer or an entity controlling production that are entered during the applicable one-year period and for which duty-free treatment is claimed under §10.847(a) of this subpart by aggregating the cost or value of materials and the direct costs of processing, as those terms are used in paragraph (a)(1) of this section, with respect to all apparel articles of that producer or entity controlling production that are wholly assembled or knit-to-shape in Haiti and are entered during the preceding applicable one-year period (except as provided in paragraph (a)(2)(iii) of this section).

(iii) *Exclusions from annual aggregation calculation.* The entry of an apparel article that is wholly assembled or knit-to-shape in Haiti and is receiving preferential tariff treatment under any provision of law other than section 213A(b)(1) of the CBERA (19 U.S.C. 2703A(b)(1)) or is subject to the ''General'' subcolumn of column 1 of the HTSUS will only be included in an annual aggregation under paragraph

(a)(2)(i) or (a)(2)(ii) of this section if the producer or entity controlling production elects, at the time the annual aggregation calculation is made, to include such entry in the aggregation.

Example. A Haitian producer elects to use the annual aggregation method in the initial applicable one-year period, and also elects to include in the aggregation calculation an entry of apparel articles receiving preferential tariff treatment under another preference program. The producer ships to the United States four shipments during the initial applicable one-year period and all are entered during that period. The first shipment of apparel (qualifying for and receiving preference under the Caribbean Basin Trade Partnership Act (CBTPA)) has an appraised value of $100,000 and meets a value-content percentage (under §10.844(a) of this section) of 80%. The second shipment of apparel is wholly assembled in Haiti, has an appraised value of $100,000, and meets a value-content percentage of 40%. The third shipment is wholly assembled in Haiti, has an appraised value of $50,000, and meets a value-content percentage of 0%. The last shipment is wholly assembled in Haiti, has an appraised value of $20,000, and meets a value-content requirement of 80%. Taken together, the four shipments have an appraised value of $270,000 and meet a value-content percentage of 50.4%. The apparel articles shipped to the United States in the last three shipments would qualify for duty-free treatment under section 213A(b)(1) of the CBERA and §10.843(a) of this subpart as the applicable value-content requirement for the initial applicable one-year period (50 %) is satisfied. This conclusion assumes that: The CBTPA-eligible apparel articles in the first shipment (that were included in the annual aggregation calculation at the election of the producer) were wholly assembled or knit-to-shape in Haiti, as required in §10.844(a)(2)(iii) of this section; and the articles in the last three shipments that were wholly assembled in Haiti satisfy all other applicable requirements set forth in this subpart.

(3) *Election to use the annual aggregation method for an applicable one-year period.* A producer or entity controlling production may elect to use the individual entry or annual aggregation method in any applicable one-year period and then elect to use the other method during the subsequent applicable one-year period, provided that all applicable requirements are met during the applicable one-year period preceding the period in which the switch is made. If a producer or entity controlling production using the individual entry method in an applicable one-year period elects to use the annual aggregation method during the subsequent applicable one-year period, the declaration of compliance described in §10.848 of this subpart must be submitted to CBP within 30 days following the end of the applicable one-year period in which the individual entry method was used.

(4) *Failure to meet applicable requirements*—(i) *Initial applicable one-year period.* Except as provided in paragraph (a)(4)(iii) of this section, if CBP determines that apparel articles of a producer or entity controlling production that are entered as articles described in §10.843(a) of this subpart during the initial applicable one-year period have not met the requirements of §10.843(a) of this subpart or the applicable value-content requirement set forth in paragraph (a)(1) of this section, then:

(A) All apparel articles of the producer or entity controlling production for which duty-free treatment is claimed under §10.847(a) of this subpart that are entered under the annual aggregation method during that initial applicable one-year period will be denied duty-free treatment;

(B) Those apparel articles of the producer or entity controlling production for which duty-free treatment is claimed under §10.847(a) of this subpart that are entered on an individual entry basis and that fail to meet the requirements of §10.843(a)(1) of this subpart or the applicable value-content requirement set forth in paragraph (a)(1) of this section during that initial applicable one-year period will be denied duty-free treatment. However, apparel articles of the producer or entity controlling production for which duty-free treatment is claimed under §10.847(a) of this subpart that are entered on an individual entry basis prior to an election being made by the producer or entity controlling production to use the annual aggregation method will be considered to have met the applicable value-content requirement if that requirement is met through application of the individual entry method; and

(C) All apparel articles of the producer or entity controlling production for which duty-free treatment is

claimed under §10.847(a) of this subpart, whether entered on an individual entry or annual aggregation basis, will be not be eligible for duty-free treatment during the succeeding applicable one-year periods until the increased percentage in the value-content requirement specified in paragraph (a)(4)(iii) of this section has been met by all the apparel articles of that producer or entity controlling production that are wholly assembled or knit-to-shape in Haiti and are entered during the immediately preceding applicable one-year period, unless the articles qualify for tariff benefits pursuant to the provisions of §10.845 of this subpart.

(ii) *Other applicable one-year periods.* Except as provided in paragraph (a)(4)(iii) of this section, if CBP determines that apparel articles of a producer or entity controlling production that are entered as articles described in §10.843(a) of this subpart during any applicable one-year period following the initial applicable one-year period have not met the requirements of §10.843(a) or the applicable value-content requirement set forth in paragraph (a) of this section, then:

(A) Those apparel articles of the producer or entity controlling production for which duty-free treatment is claimed under §10.847(a) of this subpart that are entered on an individual entry basis and that fail to meet the requirements of §10.843(a)(1) or the applicable value-content requirement set forth in paragraph (a)(1) of this subpart during that applicable one-year period will be denied duty-free treatment; and

(B) All apparel articles of the producer or entity controlling production for which duty-free treatment is claimed under §10.847(a) of this subpart, whether entered on an individual entry or annual aggregation basis, will not be eligible for duty-free treatment during the succeeding applicable one-year periods until the increased percentage in the value-content requirement specified in paragraph (a)(4)(iii) of this section has been met by all the apparel articles of that producer or entity controlling production that are wholly assembled or knit-to-shape in Haiti and are entered during the immediately preceding applicable one-year period, unless the articles qualify for tariff benefits pursuant to the provisions of §10.845 of this subpart.

(iii) *Entity controlling production of apparel articles of a producer also producing for its own account.* Where an entity controlling production controls the production of apparel articles, as described in §10.843(a) of this subpart, of a producer that also produces for its own account, the failure of apparel articles of that producer to meet the requirements of §10.843(a) of this subpart or the applicable value-content requirement set forth in paragraph (a) of this section in an applicable one-year period, either under the annual aggregation method or the individual entry method, will not affect the eligibility for duty-free treatment under §10.843(a) of this subpart of those apparel articles of that producer which are part of a claim for such treatment made on behalf of the entity controlling production.

Example. Importer D, an entity controlling production, purchases apparel articles that meet the description in §10.843(a) of this subpart from Haitian Producers A, B, and C and enters those articles during the initial applicable one-year period. Importer D elects to use the annual aggregation method during that period. The three producers also produce apparel for other U.S. importers and each producer elects to use the annual aggregation method. The apparel articles purchased by Importer D from the three producers and entered during the initial applicable one-year period meet a value-content percentage of 51.7%. However, the value-content percentage met by all the apparel that is wholly assembled in Haiti by Producer C and entered (including the apparel imported by Importer D) during the initial applicable one-year period is 49%. As all of the articles, in the aggregate, purchased by Importer D from the three producers and entered during the initial applicable one-year period satisfy the applicable value-content requirement (50%), all of these articles are entitled to duty-free treatment under section 213A(b)(1) of the CBERA and §10.843(a) of this subpart, assuming all other applicable requirements are met. The failure of Producer C to meet the 50% value-content requirement with respect to all of the articles that it wholly assembled in Haiti and entered during the initial applicable one-year period will not prevent duty-free status being claimed for the

articles purchased by Importer D from Producer C. Therefore, the consequences of Producer C's failure to meet the 50% value-content requirement include the denial of preferential tariff treatment for all articles that are wholly assembled in Haiti by Producer C and entered during the initial applicable one-year period, *except for* those articles sold by Producer C to Importer D. An additional consequence of Producer C's failure to meet the value-content requirement in the initial applicable one-year period is that articles wholly assembled in Haiti by Producer C and entered during succeeding applicable one-year periods will be ineligible for duty-free treatment until the appropriate increased value-content requirement has been met (*see* § 10.844(a)(4)(i)(C) of this subpart), except to the extent the articles qualify for preference under § 10.845 of this subpart.

(iv) *Increased percentage.* For apparel articles of a producer or entity controlling production to meet the increased percentage referred to in paragraphs (a)(4)(i)(C) and (a)(4)(ii)(B) of this section, the sum of the cost or value of the materials produced in Haiti or one or more eligible countries described in paragraph (c) of this section, or any combination thereof, plus the direct costs of processing operations performed in Haiti or one or more eligible countries described in paragraph (c) of this section, or any combination thereof, must not be less than the applicable percentage under paragraph (a)(1) of this section, plus 10 percent, of the aggregate declared customs value of all apparel articles of that producer or entity controlling production that are wholly assembled or knit-to-shape in Haiti and are entered during the immediately preceding applicable one-year period. Once the increased value-content percentage has been met for the articles of a producer or entity controlling production that are entered during an applicable one-year period, the articles of that producer or entity controlling production that are entered during the next succeeding applicable one-year period will be subject to the applicable value-content percentage specified in paragraph (a)(1) of this section.

(v) *Articles of a new producer or entity controlling production.* Apparel articles of a new producer or entity controlling production electing to use the annual aggregation method for purposes of meeting the applicable value-content requirement must first meet the increased value-content percentage specified in paragraph (a)(4)(iv) of this section as a prerequisite to receiving duty-free treatment during a succeeding applicable one-year period. Apparel articles of a new producer or entity controlling production electing to use the individual entry method are not subject to the requirement of first meeting the increased value-content percentage as a prerequisite to receiving duty-free treatment during the first year of participation or in any succeeding applicable one-year period. For purposes of this paragraph, a ''new producer or entity controlling production'' is a producer or entity controlling production that did not produce or control production of articles that were entered as articles pursuant to § 10.843(a) of this subpart during the immediately preceding applicable one-year period.

Example 1. A Haitian producer begins production of apparel articles that meet the description in § 10.843(a) of this subpart during the second applicable one-year period and elects to use the annual aggregation method for each applicable one-year period. The producer's articles entered during the second applicable one-year period meet a value-content percentage of 55%; articles entered during the third applicable one-year period meet a value-content percentage of 65%; and articles entered during the fourth applicable one-year period meet a value-content percentage of 55%. The producer's articles may not receive duty-free treatment during the second applicable one-year period because there was no production (and thus no entered articles) during the immediately preceding period (the initial applicable one-year period) on which to assess compliance with the applicable value-content requirement. The producer's articles also may not receive duty-free treatment during the third applicable one-year period because the increased value-content percentage requirement (50% plus 10% = 60%) was not met in the immediately preceding period (the second applicable one-year period). However, the producer's articles are eligible for duty-free treatment during the fourth applicable one-year period based on compliance with the 60% value-content percentage requirement in the immediately preceding period (the third applicable one-year period). The producer's articles also are eligible for duty-free treatment during the fifth applicable one-year period based on compliance with the 55% value-content percentage requirement in the immediately preceding period (the fourth applicable one-year period).

Example 2. Same facts as in example 1, except that the producer elects to use the individual entry method for purposes of meeting the applicable value-content requirement for each applicable one-year period. The producer's articles entered during the second applicable one-year period are eligible for duty-free treatment because these articles meet the requisite 50% value-content requirement. The producer's articles also may receive duty-free treatment during the third, fourth, and fifth applicable one-year periods based on compliance with the applicable value-content requirements for each of those periods set forth in paragraph (a)(1) of this section.

(vi) *Notification of compliance with the increased percentage*—(A) *General.* If apparel articles of a producer or entity controlling production are required to meet the increased value-content percentage described in paragraph (a)(4)(iv) of this section, either because of failure to meet the requirements of §10.843(a) or the applicable value-content requirement set forth in paragraph (a) of this section in an applicable one-year period, or because the producer or entity controlling production is a new producer or entity controlling production, as defined in paragraph (a)(4)(v) of this section, that elects to use the annual aggregation method, the importer of such articles must notify CBP that the increased percentage has been met in an applicable one-year period by submitting to CBP the declaration of compliance described in §10.848 of this subpart within 30 days following the end of the applicable one-year period. An importer that is required to submit a declaration of compliance under this paragraph must submit such a declaration for each importer of record identification number used by that importer. A declaration of compliance required under this paragraph must be sent to the address set forth in §10.848(a) of this subpart.

(B) *Contents.* A declaration of compliance required under paragraph (a)(4)(v)(A) of this section must include, in addition to the information specified in §10.848(c) of this subpart, a statement as to whether the increased value-content percentage was required because the apparel articles failed to meet the production standards or the applicable value-content requirement or because the producer or entity controlling production was a new producer or entity controlling production that elected to use the annual aggregation method.

(C) *Effect of noncompliance.* If an importer fails to submit to CBP the declaration of compliance required under paragraph (a)(4)(v)(A) of this section within 30 days following the end of the applicable one-year period during which the increased value-content percentage was met for apparel articles of a producer or entity controlling production, CBP may deny duty-free treatment to all apparel articles, as described in §10.843(a) of this subpart, of that producer or entity controlling production that are entered by that importer during the next succeeding applicable one-year period. Additionally, the timely submission of a declaration of compliance is a prerequisite for a producer or entity controlling production to request retroactive application of duty-free treatment under §10.845 of this subpart for apparel articles that meet the increased value-content percentage during an applicable one-year period. However, the submission of a declaration of compliance is not a substitute for filing a request for liquidation or reliquidation of an entry for which retroactive duty-free treatment is sought under §10.845 of this subpart.

(5) *Inclusion of the cost of fabrics or yarns not available in commercial quantities in value-content requirement.* For purposes of meeting the applicable value-content requirement set forth in paragraph (a) of this section, either in regard to individual entries or entries entered in the aggregate, the following costs may be included:

(i) The cost of fabrics or yarns to the extent that apparel articles of such fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabrics or yarns, under Annex 401 of the NAFTA; and

(ii) The cost of fabrics or yarns (without regard to their source) that are designated as not being available in commercial quantities for purposes of:

(A) Section 213(b)(2)(A)(v) of the CBERA (19 U.S.C. 2703(b)(2)(A)(v));

(B) Section 112(b)(5) of the African Growth and Opportunity Act (19 U.S.C. 3721(b)(5));

(C) Section 204(b)(3)(B)(i)(III) or 204(b)(3)(B)(ii) of the Andean Trade Preference Act (19 U.S.C. 3203(b)(3)(B)(i)(III) or 3203(b)(3)(B)(ii)); or

(D) Any other provision, relating to determining whether a textile or apparel article is an originating good eligible for preferential treatment, of a law that implements a free trade agreement that enters into force with respect to the United States.

(b) *Wiring sets.* An article described in §10.843(d) of this subpart will be eligible for duty-free treatment during the five-year period ending on December 19, 2011, only if the sum of the cost or value of the materials produced in Haiti or one or more eligible countries described in paragraph (c) of this section, or any combination thereof, plus the direct costs of processing operations performed in Haiti or the United States, or both, is not less than 50 percent of the declared customs value of the article.

(c) *Eligible countries described.* As used in this section, the term ''eligible countries'' includes:

(1) The United States;

(2) Israel, Canada, Mexico, Jordan, Singapore, Chile, Australia, Morocco, Bahrain, El Salvador, Honduras, Nicaragua, Guatemala, Dominican Republic, and any other country that is a party to a free trade agreement with the United States that is in effect on December 20, 2006, or that enters into force thereafter; and

(3) The designated beneficiary countries listed in General Notes 11 (Andean Trade Preference Act), 16 (African Growth and Opportunity Act), and 17 (Caribbean Basin Trade Partnership Act) of the HTSUS.

(d) *Cost or value of materials*—(1) *Materials produced in Haiti or one or more eligible countries described in paragraph (c) of this section defined*—(i) *Certain apparel articles.* As used in paragraph (a) of this section, the words ''materials produced in Haiti or one or more eligible countries described in paragraph (c) of this section'' refer to those materials incorporated into an article that are either:

(A) Wholly obtained or produced, within the meaning of §102.1(g) of this chapter, in Haiti or one or more eligible countries described in paragraph (c) of this section; or

(B) Determined to originate in Haiti or one or more eligible countries described in paragraph (c) of this section by application of the provisions of §102.21 of this chapter.

(ii) *Wiring sets.* As used in paragraph (b) of this section, the words ''materials produced in Haiti or one or more eligible countries described in paragraph (c) of this section'' refer to those materials incorporated into an article that are either:

(A) Wholly the growth, product, or manufacture of Haiti or one or more eligible countries described in paragraph (c) of this section; or

(B) Substantially transformed in Haiti or one or more eligible countries described in paragraph (c) of this section into a new or different article of commerce which is then used in Haiti in the production of a new or different article of commerce that is imported into the United States.

(2) *Determination of cost or value of materials*—(i) *Costs included.* (A) For purposes of paragraphs (a) and (b) of this section, and subject to paragraphs (d)(2)(i)(B) and (d)(2)(ii) of this section, the cost or value of materials produced in Haiti or one or more eligible countries described in paragraph (c) of this section includes:

(*1*) The manufacturer's actual cost for the materials;

(*2*) When not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;

(*3*) The actual cost of waste or spoilage, less the value of recoverable scrap; and

(*4*) Taxes and/or duties imposed on the materials by Haiti or one or more eligible countries described in paragraph (c) of this section, provided they are not remitted upon exportation.

(B) Where a material is provided to the manufacturer without charge, or at less than fair market value, its cost or value will be determined by computing the sum of:

(*1*) All expenses incurred in the growth, production, or manufacture of

the material, including general expenses;

(*2*) An amount for profit; and

(*3*) Freight, insurance, packing, and all other costs incurred in transporting the material to the manufacturer's plant.

(ii) *Costs deducted in regard to certain apparel articles.* For purposes of paragraph (a) of this section, in calculating the cost or value of materials produced in Haiti or one or more eligible countries described in paragraph (c) of this section, either in regard to individual entries or entries entered in the aggregate, deductions are to be made for the cost or value of:

(A) Any foreign materials used in the production of the apparel articles in Haiti; and

(B) Any foreign materials used in the production of the materials produced in Haiti or one or more eligible countries described in paragraph (c) of this section.

(e) *Direct costs of processing operations*—(1) *Items included.* As used in paragraphs (a) and (b) of this section, the words ''direct costs of processing operations'' mean those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific articles under consideration. Such costs include, but are not limited to the following, to the extent that they are includable in the appraised value of the imported articles:

(i) All actual labor costs involved in the growth, production, manufacture, or assembly of the specific articles, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(ii) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific articles;

(iii) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific articles; and

(iv) Costs of inspecting and testing the specific articles.

(2) *Items not included.* The words ''direct costs of processing operations'' do not include items that are not directly attributable to the articles under consideration or are not costs of manufacturing the product. These include, but are not limited to:

(i) Profit; and

(ii) General expenses of doing business that either are not allocable to the specific articles or are not related to the growth, production, manufacture, or assembly of the articles, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

[CBP Dec. 07–43, 72 FR 34369, June 22, 2007, as amended by CBP Dec. 08–24, 73 FR 56728, Sept. 30, 2008]

§ 10.845 Retroactive application of duty-free treatment for certain apparel articles.

(a) *General.* Notwithstanding 19 U.S.C. 1514 or any other provision of law, if apparel articles, as described in §10.843(a) of this subpart, of a producer or entity controlling production are ineligible for duty-free treatment in an applicable one-year period because the apparel articles of the producer or entity controlling production did not meet the requirements of §10.843(a) of this subpart or the applicable value-content requirement set forth in §10.844(a) of this subpart, and the apparel articles of the producer or entity controlling production satisfy the increased value-content percentage set forth in §10.844(a)(4)(iii) of this subpart in that same applicable one-year period, the entry of any such articles made during that applicable one-year period will be liquidated or reliquidated free of duty, and CBP will refund any customs duties paid with respect to such entry, with interest accrued from the date of entry, provided that the conditions and requirements set forth in paragraph (b) of this section are met.

(b) *Conditions and requirements.* The conditions and requirements referred to in paragraph (a) of this section are as follows:

(1) The articles in such entry would have received duty-free treatment if they had satisfied the requirements of §10.843(a) and the applicable value-content requirement set forth in §10.844(a) of this subpart;

(2) A declaration of compliance with the increased value-content percentage

is submitted to CBP within 30 days following the end of the applicable one-year period during which the increased percentage is met (*see* § 10.844(a)(4)(v) of this subpart); and

(3) A request for liquidation or reliquidation with respect to such entry is filed with CBP before the 90th day after CBP determines and notifies the importer that the apparel articles of the producer or entity controlling production satisfy the increased value-content percentage set forth in § 10.844(a)(4)(iii) of this subpart during that applicable one-year period.

Example. A Haitian producer of articles that meet the description in § 10.843(a) of this subpart begins exporting those articles to the United States during the initial applicable one-year period and elects to use the annual aggregation method for purposes of meeting the applicable value-content requirement. The articles entered during that initial period meet a value-content percentage of 48%, while articles entered during the second applicable one-year period meet a value-content percentage of 62%. The producer's articles may not receive duty-free treatment during the initial applicable one-year period because the requisite 50% value-content requirement was not met. The producer's articles also are ineligible for duty-free treatment during the second applicable one-year period because the 50% value-content requirement was not met in the immediately preceding period (the initial applicable one-year period). However, because the producer's articles entered during the second applicable one-year period satisfy the increased value-content percentage requirement (60%), the importer(s) of these articles may file a request for and receive a refund of the duties paid with respect to the articles entered during that period, assuming compliance with the conditions and requirements set forth in § 10.847 of this subpart. In addition, the producer's articles entered during the third applicable one-year period are eligible for duty-free treatment based on compliance with the increased value-content percentage in the second applicable one-year period.

§ 10.846 Imported directly.

(a) *Textile and apparel articles.* To be eligible for duty-free treatment under this subpart, textile and apparel articles described in paragraphs (a) through (j) of § 10.843 of this subpart must be imported directly from Haiti or the Dominican Republic into the customs territory of the United States. For purposes of this requirement, the words ''imported directly from Haiti or the Dominican Republic'' mean:

(1) Direct shipment from Haiti or the Dominican Republic to the United States without passing through the territory of any intermediate country;

(2) If shipment is from Haiti or the Dominican Republic to the United States through the territory of an intermediate country, the articles in the shipment do not enter into the commerce of the intermediate country and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If shipment is through an intermediate country and the invoices and other documents do not show the United States as the final destination, the articles in the shipment are imported directly only if they:

(i) Remained under the control of the customs authority in the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of a sale other than at retail; and

(iii) Have not been subjected to operations other than loading and unloading, and other activities necessary to preserve the articles in good condition.

(b) *Wiring sets.* To be eligible for duty-free treatment under this subpart, articles described in paragraph (k) of § 10.843 of this subpart must be imported directly from Haiti into the customs territory of the United States. For purposes of this requirement, the words ''imported directly from Haiti'' mean:

(1) Direct shipment from Haiti to the United States without passing through the territory of any intermediate country;

(2) If shipment is from Haiti to the United States through the territory of an intermediate country, the articles in the shipment do not enter into the commerce of the intermediate country and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If shipment is through an intermediate country and the invoices and other documents do not show the United States as the final destination,

the articles in the shipment are imported directly only if they:

(i) Remained under the control of the customs authority in the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of a sale other than at retail; and

(iii) Have not been subjected to operations other than loading and unloading, and other activities necessary to preserve the articles in good condition.

(c) *Documentary evidence.* An importer making a claim for duty-free treatment under §10.847 of this subpart may be required to demonstrate, to CBP's satisfaction, that the articles were ''imported directly'' as that term is defined in paragraphs (a) and (b) of this section. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

[CBP Dec. 08–24, 73 FR 56728, Sept. 30, 2008]

§10.847 Filing of claim for duty-free treatment.

(a) *General.* An importer may make a claim for duty-free treatment for an article described in §10.843 of this subpart by including on the entry summary, or equivalent documentation, the applicable subheading within Subchapter XX of Chapter 98 of the HTSUS under which the article is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system. The applicable subheadings within Subchapter XX, Chapter 98, HTSUS, are as follows:

(1) Subheading 9820.61.25 for apparel articles described in §10.843(a) of this subpart for which the individual entry method is used for purposes of meeting the applicable value-content requirement set forth in §10.844(a) of this subpart;

(2) Subheading 9820.61.30 for apparel articles described in §10.843(a) of this subpart for which the annual aggregation method is used for purposes of meeting the applicable value-content requirement set forth in §10.844(a) of this subpart;

(3) Subheading 9820.62.05 for apparel articles described in §10.843(b) of this subpart;

(4) Subheading 9820.62.12 for brassieres described in §10.843(c) of this subpart;

(5) Subheading 9820.61.35 for apparel articles described in §10.843(d) of this subpart;

(6) Subheading 9820.61.40 for apparel articles described in §10.843(e) of this subpart;

(7) Subheading 9820.42.05 for articles described in §10.843(f) of this subpart;

(8) Subheading 9820.65.05 for articles described in §10.843(g) of this subpart;

(9) Subheading 9820.62.20 for articles described in §10.843(h) of this subpart;

(10) Subheading 9820.62.25 for articles described in §10.843(i) of this subpart;

(11) Subheading 9820.62.30 for articles described in §10.843(j) of this subpart; and

(12) Subheading 9820.85.44 for wiring sets described in §10.843(k) of this subpart.

(b) *Restriction on claims submitted under subheading 9820.61.30, HTSUS.* An importer may make a claim for duty-free treatment under subheading 9820.61.30, HTSUS, for apparel articles described in §10.843(a) of this subpart for which the annual aggregation method is used, only if the importer has a copy of a certification by the producer or entity controlling production setting forth its election to use the annual aggregation method for its articles (*see* §10.848(c)(3) of this subpart). In the absence of receipt of such certification from the producer or entity controlling production, an importer of articles described in §10.843(a) of this subpart for which duty-free treatment is sought under this subpart must enter the articles under subheading 9820.61.25, HTSUS.

(c) *Corrected claim.* If, after making a claim for duty-free treatment under paragraph (a) of this section, the importer has reason to believe that the claim is incorrect, the importer must promptly make a corrected claim and

pay any duties that may be due. A corrected claim will be effected by submission of a letter or other written statement to CBP, either at the port of entry or electronically.

[CBP Dec. 07–43, 72 FR 34369, June 22, 2007, as amended by CBP Dec. 08–24, 73 FR 56728, Sept. 30, 2008]

§ 10.848 Declaration of compliance.

(a) *General.* Each importer claiming duty-free treatment for apparel articles, as described in § 10.843(a) of this subpart, of a producer or entity controlling production that uses the annual aggregation method to satisfy the applicable value-content requirement set forth in § 10.844(a) of this subpart with respect to the entries filed by the importer during an applicable one-year period must prepare and submit to CBP a declaration of compliance with the applicable value-content requirement within 30 days following the end of the applicable one-year period. An importer that is required to submit a declaration of compliance under this paragraph must submit such a declaration for each importer of record identification number used by that importer. The declaration of compliance must be sent to: Office of International Trade, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

(b) *Effect of noncompliance*—(1) *Initial applicable one-year period.* If an importer fails to submit to CBP the declaration of compliance required under paragraph (a) of this section within 30 days following the end of the initial applicable one-year period, CBP may deny duty-free treatment to all entries of apparel articles, as described in § 10.843(a), of that producer or entity controlling production that were filed by that importer during the initial applicable one-year period and that are entered by that importer during the next succeeding applicable one-year period.

(2) *Other applicable one-year periods.* If an importer fails to submit to CBP the declaration of compliance required by paragraph (a) of this section within 30 days following the end of any applicable one-year period (other than the initial applicable one-year period), CBP may deny duty-free treatment to all entries of apparel articles, as described in § 10.843(a) of this subpart, of that producer or entity controlling production that are entered by that importer during the next succeeding applicable one-year period.

(c) *Contents.* A declaration of compliance submitted to CBP under paragraph (a) of this section:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must include the following information:

(i) The applicable one-year period during which the aggregation method was used (year beginning December 20, 20__, year ending December 19, 20__);

(ii) The legal name, address, telephone, fax number, e-mail address (if any), and identification number of the importer of record, and the legal name, telephone, and e-mail address (if any) of the point of contact;

(iii) With respect to each entry for which duty-free treatment is claimed for apparel articles described in § 10.843(a) of this subpart and for which the aggregation method is used, the entry number, line number(s), port of entry, and line value;

(iv) If the producer or entity controlling production elects to include in the aggregation calculation entries of brassieres receiving duty-free treatment under § 10.843(c) of this subpart and entries of apparel articles that are wholly assembled or knit-to-shape in Haiti and that are receiving preferential tariff treatment under any provision of law other than section 213A of the CBERA or are subject to the rate of duty in the ''General'' subcolumn of column 1 of the HTSUS (*see* § 10.844(a)(2)(iii)(B) and (C) of this subpart), the entry number, line number(s), port of entry, line value, name and address of the producer(s), and, if applicable, name and address of the entity controlling production;

(v) The value-content percentage that was met during the applicable one-year period with respect to each producer or entity controlling production;

(vi) The name and title of the person who prepared the declaration of compliance. The declaration must be prepared and signed by a responsible official of the importer or by the importer's authorized agent having knowledge of the relevant facts;

(vii) Signature of the person who prepared the declaration of compliance; and

(viii) Date the declaration of compliance was prepared and signed; and

(3) Must include as an attachment to the declaration a copy of a certification from each producer or entity controlling production setting forth its election to use the annual aggregation method, a description of the classes or kinds of apparel articles involved, and the name and address of each producer or entity controlling production.

§ 10.849 Importer obligations.

(a) *General.* An importer who makes a claim for duty-free treatment under § 10.847 of this subpart for an article described in § 10.843 of this subpart:

(1) Will be deemed to have certified that the article is eligible for duty-free treatment under this subpart;

(2) Is responsible for the truthfulness of the statements and information contained in the declaration of compliance, if that document is required to be submitted to CBP pursuant to §§ 10.844(a)(4)(v) or 10.848(a) of this subpart; and

(3) Is responsible for submitting any supporting documents requested by CBP and for the truthfulness of the information contained in those documents. When requested, CBP may arrange for the direct submission by the exporter, producer, or entity controlling production of business confidential or other sensitive information, including cost and sourcing information.

(b) *Information provided by exporter, producer, or entity controlling production.* The fact that the importer has made a claim for duty-free treatment or prepared a declaration of compliance based on information provided by an exporter, producer, or entity controlling production will not relieve the importer of the responsibility referred to in paragraph (a) of this section.

§ 10.850 Verification of claim for duty-free treatment.

(a) *General.* A claim for duty-free treatment made under § 10.847 of this subpart, including any declaration of compliance or other information submitted to CBP in support of the claim, will be subject to whatever verification CBP deems necessary. In the event that CBP is provided with insufficient information to verify or substantiate the claim, including the statements and information contained in a declaration of compliance (if required under § 10.844(a)(4)(v) or § 10.848(a) of this subpart), CBP may deny the claim for duty-free treatment.

(b) *Documentation and information subject to verification.* A verification of a claim for duty-free treatment under § 10.847 of this subpart may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to CBP by the importer, the producer, the entity controlling production, or any other person under part 163 of this chapter; and

(2) The documentation and information set forth in paragraphs (b)(2)(i) through (b)(2)(v) of this section, when requested by CBP. This documentation and information may be made available to CBP by the importer or the importer may arrange to have the documentation and information made available to CBP directly by the exporter, producer, or entity controlling production:

(i) Documentation and other information regarding all apparel articles that meet the requirements specified in § 10.843(a) of this subpart that were exported to the United States and that were entered during the applicable one-year period, whether or not a claim for duty-free treatment was made under § 10.847 of this subpart. Those records and other information include, but are not limited to, work orders and other production records, purchase orders, invoices, bills of lading and other shipping documents;

(ii) Records to document the cost of all yarn, fabric, fabric components, and knit-to-shape components that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import

and clearance documents, work orders and other production records, and inventory control records;

(iii) Records to document the direct costs of processing operations performed in Haiti or one or more eligible countries described in §10.844(c) of this subpart, such as direct labor and fringe expenses, machinery and tooling costs, factory expenses, and testing and inspection expenses that were incurred in production;

(iv) Affidavits or statements of origin that certify who manufactured the yarn, fabric, fabric components and knit-to-shape components. The affidavit or statement of origin should include a product description, name and address of the producer, and the date the articles were produced. An affidavit for fabric components should state whether or not subassembly operations occurred; and

(v) Summary accounting and financial records which relate to the source records provided for in paragraphs (b)(2)(i) through (b)(2)(iii) of this section.

Subpart P—United States-Oman Free Trade Agreement

SOURCE: CBP Dec. 11–01, 76 FR 701, Jan. 6, 2011, unless otherwise noted.

GENERAL PROVISIONS

§10.861 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported goods under the United States-Oman Free Trade Agreement (the OFTA) signed on January 19, 2006, and under the United States-Oman Free Trade Agreement Implementation Act (the Act; 120 Stat. 1191). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the OFTA and the Act are contained in Parts 24, 162, and 163 of this chapter.

§10.862 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Claim for preferential tariff treatment.* ''Claim for preferential tariff treatment'' means a claim that a good is entitled to the duty rate applicable under the OFTA to an originating good or other good specified in the OFTA, and to an exemption from the merchandise processing fee;

(b) *Customs duty.* ''Customs duty'' includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994, in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty; and

(3) Fee or other charge in connection with importation;

(c) *Days.* ''Days'' means calendar days;

(d) *Enterprise.* ''Enterprise'' means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organization;

(e) *Foreign material.* ''Foreign material'' means a material other than a material produced in the territory of one or both of the Parties;

(f) *GATT 1994.* ''GATT 1994'' means the *General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement;

(g) *Good.* ''Good'' means any merchandise, product, article, or material;

(h) *Harmonized System.* ''Harmonized System (HS)'' means the *Harmonized*

Commodity Description and Coding System, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(i) *Heading*. ''Heading'' means the first four digits in the tariff classification number under the Harmonized System;

(j) *HTSUS*. ''HTSUS'' means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(k) *Originating*. ''Originating'' means a good qualifying under the rules of origin set forth in General Note 31, HTSUS, and OFTA Chapter Three (Textiles and apparel) or Chapter Four (Rules of Origin);

(l) *Party*. ''Party'' means the United States or the Sultanate of Oman;

(m) *Person*. ''Person'' means a natural person or an enterprise;

(n) *Preferential tariff treatment*. ''Preferential tariff treatment'' means the duty rate applicable under the OFTA to an originating good and an exemption from the merchandise processing fee;

(o) *Subheading*. ''Subheading'' means the first six digits in the tariff classification number under the Harmonized System;

(p) *Textile or apparel good*. ''Textile or apparel good'' means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as ''the ATC''), which is part of the WTO Agreement;

(q) *Territory*. ''Territory'' means:

(1) With respect to Oman, all the lands of Oman within its geographical boundaries, the internal waters, maritime areas including the territorial sea, and airspace under its sovereignty, and the exclusive economic zone and continental shelf where Oman exercises sovereign rights and jurisdiction in accordance with its domestic law and international law, including the United Nations Convention on the Law of the Sea; and

(2) With respect to the United States,

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico,

(ii) The foreign trade zones located in the United States and Puerto Rico, and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources; and

(r) *WTO Agreement*. ''WTO Agreement'' means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

IMPORT REQUIREMENTS

§ 10.863 Filing of claim for preferential tariff treatment upon importation.

An importer may make a claim for OFTA preferential tariff treatment for an originating good by including on the entry summary, or equivalent documentation, the symbol ''OM'' as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.

§ 10.864 Declaration.

(a) *Contents*. An importer who claims preferential tariff treatment for a good under the OFTA must submit, at the request of the Center director, a declaration setting forth all pertinent information concerning the growth, production, or manufacture of the good. A declaration submitted under this paragraph:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must include the following information:

(i) The legal name, address, telephone, and e-mail address (if any) of the importer of record of the good;

(ii) The legal name, address, telephone, and e-mail address (if any) of the responsible official or authorized agent of the importer signing the declaration (if different from the information required by paragraph (a)(2)(i) of this section);

(iii) The legal name, address, telephone and e-mail address (if any) of the

exporter of the good (if different from the producer);

(iv) The legal name, address, telephone and e-mail address (if any) of the producer of the good (if known);

(v) A description of the good, which must be sufficiently detailed to relate it to the invoice and HS nomenclature, including quantity, numbers, invoice numbers, and bills of lading;

(vi) A description of the operations performed in the growth, production, or manufacture of the good in territory of one or both of the Parties and, where applicable, identification of the direct costs of processing operations;

(vii) A description of any materials used in the growth, production, or manufacture of the good that are wholly the growth, product, or manufacture of one or both of the Parties, and a statement as to the value of such materials;

(viii) A description of the operations performed on, and a statement as to the origin and value of, any materials used in the article that are claimed to have been sufficiently processed in the territory of one or both of the Parties so as to be materials produced in one or both of the Parties, or are claimed to have undergone an applicable change in tariff classification specified in General Note 31(h), HTSUS; and

(ix) A description of the origin and value of any foreign materials used in the good that have not been substantially transformed in the territory of one or both of the Parties, or have not undergone an applicable change in tariff classification specified in General Note 31(h), HTSUS;

(3) Must include a statement, in substantially the following form: ''I certify that:

The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;

I agree to maintain and present upon request, documentation necessary to support these representations;

The goods comply with all the requirements for preferential tariff treatment specified for those goods in the United States-Oman Free Trade Agreement; and

This document consists of _____ pages, including all attachments.''

(b) *Responsible official or agent*. The declaration must be signed and dated by a responsible official of the importer or by the importer's authorized agent having knowledge of the relevant facts.

(c) *Language*. The declaration must be completed in the English language.

(d) *Applicability of declaration*. The declaration may be applicable to:

(1) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(2) Multiple importations of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the declaration. For purposes of this paragraph, ''identical goods'' means goods that are the same in all respects relevant to the production that qualifies the goods for preferential tariff treatment.

[CBP Dec. 11-01, 76 FR 701, Jan. 6, 2011, as amended by CBP Dec. 16–26, 81 FR 93014, Dec. 20, 2016]

§ 10.865 Importer obligations.

(a) *General*. An importer who makes a claim for preferential tariff treatment under § 10.863 of this subpart:

(1) Will be deemed to have certified that the good is eligible for preferential tariff treatment under the OFTA;

(2) Is responsible for the truthfulness of the information and data contained in the declaration provided for in § 10.864 of this subpart; and

(3) Is responsible for submitting any supporting documents requested by CBP and for the truthfulness of the information contained in those documents. CBP will allow for the direct submission by the exporter or producer of business confidential or other sensitive information, including cost and sourcing information.

(b) *Information provided by exporter or producer*. The fact that the importer has made a claim for preferential tariff treatment or prepared a declaration based on information provided by an exporter or producer will not relieve

the importer of the responsibility referred to in paragraph (a) of this section.

§ 10.866 Declaration not required.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a declaration under § 10.864 of this subpart for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the originating goods does not exceed U.S. $2,500.

(b) *Exception.* If the Center director determines that an importation described in paragraph (a) of this section may reasonably be considered to have been carried out or planned for the purpose of evading compliance with the rules and procedures governing claims for preference under the OFTA, the Center director will notify the importer that for that importation the importer must submit a declaration. The importer must submit such a declaration within 30 days from the date of the notice. Failure to timely submit the declaration will result in denial of the claim for preferential tariff treatment.

[CBP Dec. 11-01, 76 FR 701, Jan. 6, 2011, as amended by CBP Dec. 16–26, 81 FR 93014, Dec. 20, 2016]

§ 10.867 Maintenance of records.

(a) *General.* An importer claiming preferential tariff treatment for a good under § 10.863 of this subpart must maintain, for five years after the date of the claim for preferential tariff treatment, all records and documents necessary for the preparation of the declaration.

(b) *Applicability of other recordkeeping requirements.* The records and documents referred to in paragraph (a) of this section are in addition to any other records required to be made, kept, and made available to CBP under Part 163 of this chapter.

(c) *Method of maintenance.* The records and documents referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

§ 10.868 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *General.* If the importer fails to comply with any requirement under this subpart, including submission of a complete declaration under § 10.864 of this subpart, when requested, the Center director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the Center director nevertheless may deny preferential treatment to a good if the good is shipped through or transshipped in the territory of a country other than a Party, and the importer of the good does not provide, at the request of the Center director, evidence demonstrating to the satisfaction of the Center director that the good was imported directly from the territory of a Party into the territory of the other Party (*see* § 10.880 of this subpart).

Post-Importation Duty Refund Claims

§ 10.869 Right to make post-importation claim and refund duties.

Notwithstanding any other available remedy, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential treatment was made, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in § 10.870 of this subpart. Subject to the provisions of § 10.868 of this subpart, CBP may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 10.871(c) of this part.

§ 10.870 Filing procedures.

(a) *Place of filing.* A post-importation claim for a refund under § 10.869 of this subpart must be filed with CBP, either at the port of entry or electronically.

(b) *Contents of claim.* A post-importation claim for a refund must be filed by presentation of the following:

(1) A written declaration stating that the good qualified as an originating good at the time of importation and setting forth the number and date of the entry or entries covering the good;

(2) A written statement indicating whether or not the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was provided, the statement must identify each recipient by name, CBP identification number and address and must specify the date on which the documentation was provided; and

(3) A written statement indicating whether or not any person has filed a protest relating to the good under any provision of law; and if any such protest has been filed, the statement must identify the protest by number and date.

§ 10.871 CBP processing procedures.

(a) *Status determination.* After receipt of a post-importation claim under § 10.870 of this subpart, the Center director will determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest or judicial review.* If the Center director determines that any protest relating to the good has not been finally decided, the Center director will suspend action on the claim for refund filed under this subpart until the decision on the protest becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the Center director will suspend action on the claim for refund filed under this subpart until judicial review has been completed.

(c) *Allowance of claim*—(1) *Unliquidated entry.* If the Center director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has not been liquidated, the Center director will take into account the claim for a refund under this subpart in connection with the liquidation of the entry.

(2) *Liquidated entry.* If the Center director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties pursuant to this subpart. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, the Center director will reliquidate the entry taking into account the claim for refund under this subpart.

(d) *Denial of claim*—(1) *General.* The Center director may deny a claim for a refund filed under § 10.870 of this subpart if the claim was not filed timely, if the importer has not complied with the requirements of §§ 10.868 and 10.870 of this subpart, or if, following an origin verification under § 10.887 of this subpart, the Center director determines either that the imported good did not qualify as an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under § 10.887 of this subpart.

(2) *Unliquidated entry.* If the Center director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the Center director will deny the claim in connection with the liquidation of the entry, and notice of the denial and the reason for the denial will be provided to the importer in writing or via an authorized electronic data interchange system.

(3) *Liquidated entry.* If the Center director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the Center director will give the importer notice of the denial and the reason for the denial in writing or via an authorized electronic data interchange system.

RULES OF ORIGIN

§ 10.872 Definitions.

For purposes of §§ 10.872 through 10.880:

(a) *Exporter*. ''Exporter'' means a person who exports goods from the territory of a Party;

(b) *Generally Accepted Accounting Principles*. ''Generally Accepted Accounting Principles'' means the recognized consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;

(c) *Good*. ''Good'' means any merchandise, product, article, or material;

(d) *Goods wholly the growth, product, or manufacture of one or both of the Parties*. ''Goods wholly the growth, product, or manufacture of one or both of the Parties'' means:

(1) Mineral goods extracted in the territory of one or both of the Parties;

(2) Vegetable goods, as such goods are defined in the HTSUS, harvested in the territory of one or both of the Parties;

(3) Live animals born and raised in the territory of one or both of the Parties;

(4) Goods obtained from live animals raised in the territory of one or both of the Parties;

(5) Goods obtained from hunting, trapping, or fishing in the territory of one or both of the Parties;

(6) Goods (fish, shellfish, and other marine life) taken from the sea by vessels registered or recorded with a Party and flying its flag;

(7) Goods produced from goods referred to in paragraph (d)(6) of this section on board factory ships registered or recorded with that Party and flying its flag;

(8) Goods taken by a Party or a person of a Party from the seabed or beneath the seabed outside territorial waters, provided that a Party has rights to exploit such seabed;

(9) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(10) Waste and scrap derived from:

(i) Production or manufacture in the territory of one or both of the Parties, or

(ii) Used goods collected in the territory of one or both of the Parties, provided such goods are fit only for the recovery of raw materials;

(11) Recovered goods derived in the territory of a Party from used goods, and utilized in the territory of that Party in the production of remanufactured goods; and

(12) Goods produced in the territory of one or both of the Parties exclusively from goods referred to in paragraphs (d)(1) through (d)(10) of this section, or from their derivatives, at any stage of production;

(e) *Importer*. ''Importer'' means a person who imports goods into the territory of a Party;

(f) *Indirect material*. ''Indirect material'' means a good used in the growth, production, manufacture, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the growth, production, or manufacture of a good, including:

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment and buildings;

(4) Lubricants, greases, compounding materials, and other materials used in the growth, production, or manufacture of a good or used to operate equipment and buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the good;

(7) Catalysts and solvents; and

(8) Any other goods that are not incorporated into the good but the use of which in the growth, production, or manufacture of the good can reasonably be demonstrated to be a part of that growth, production, or manufacture;

(g) *Material*. ''Material'' means a good, including a part or ingredient, that is used in the growth, production, or manufacture of another good that is

a new or different article of commerce that has been grown, produced, or manufactured in one or both of the Parties;

(h) *Material produced in the territory of one or both of the Parties.* ''Material produced in the territory of one or both of the Parties'' means a good that is either wholly the growth, product, or manufacture of one or both of the Parties, or a new or different article of commerce that has been grown, produced, or manufactured in the territory of one or both of the Parties;

(i) *New or different article of commerce.* ''New or different article of commerce'' means, except as provided in §10.873(c) of this subpart, a good that:

(1) Has been substantially transformed from a good or material that is not wholly the growth, product, or manufacture of one of both of the Parties; and

(2) Has a new name, character, or use distinct from the good or material from which it was transformed;

(j) *Non-originating material.* ''Non-originating material'' means a material that does not qualify as originating under this subpart or General Note 31, HTSUS;

(k) *Packing materials and containers for shipment.* ''Packing materials and containers for shipment'' means the goods used to protect a good during its transportation to the United States, and does not include the packaging materials and containers in which a good is packaged for retail sale;

(l) *Recovered goods.* ''Recovered goods'' means materials in the form of individual parts that result from:

(1) The disassembly of used goods into individual parts; and

(2) The cleaning, inspecting, testing, or other processing of those parts as necessary for improvement to sound working condition;

(m) *Remanufactured good.* ''Remanufactured good'' means an industrial good that is assembled in the territory of a Party and that:

(1) Is entirely or partially comprised of recovered goods;

(2) Has a similar life expectancy to a like good that is new; and

(3) Enjoys the factory warranty similar to that of a like good that is new;

(n) *Simple combining or packaging operations.* ''Simple combining or packaging operations'' means operations such as adding batteries to electronic devices, fitting together a small number of components by bolting, gluing, or soldering, and repacking or packaging components together; and

(o) *Substantially transformed.* ''Substantially transformed'' means, with respect to a good or material, changed as the result of a manufacturing or processing operation so that the good loses its separate identity in the manufacturing or processing operation and:

(1) The good or material is converted from a good that has multiple uses into a good or material that has limited uses;

(2) The physical properties of the good or material are changed to a significant extent; or

(3) The operation undergone by the good or material is complex by reason of the number of different processes and materials involved and the time and level of skill required to perform those processes.

§ 10.873 Originating goods.

(a) *General.* A good will be considered an originating good under the OFTA when imported directly from the territory of a Party into the territory of the other Party only if:

(1) The good is wholly the growth, product, or manufacture of one or both of the Parties;

(2) The good is a new or different article of commerce, as defined in §10.872(i) of this subpart, that has been grown, produced, or manufactured in the territory of one or both of the Parties, is provided for in a heading or subheading of the HTSUS that is not covered by the product-specific rules set forth in General Note 31(h), HTSUS, and meets the value-content requirement specified in paragraph (b) of this section; or

(3) The good is provided for in a heading or subheading of the HTSUS covered by the product-specific rules set forth in General Note 31(h), HTSUS, and:

(i)(A) Each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification specified in General Note 31(h), HTSUS, as a result of production occurring entirely in the

territory of one or both of the Parties; or

(B) The good otherwise satisfies the requirements specified in General Note 31(h), HTSUS; and

(ii) The good meets any other requirements specified in General Note 31, HTSUS.

(b) *Value-content requirement.* A good described in paragraph (a)(2) of this section will be considered an originating good under the OFTA only if the sum of the value of materials produced in one or both of the Parties, plus the direct costs of processing operations performed in one or both of the Parties, is not less than 35 percent of the appraised value of the good at the time the good is entered into the territory of the United States.

(c) *Combining, packaging, and diluting operations.* For purposes of this subpart, a good will not be considered a new or different article of commerce by virtue of having undergone simple combining or packaging operations, or mere dilution with water or another substance that does not materially alter the characteristics of the good. The principles and examples set forth in §10.195(a)(2) of this part will apply equally for purposes of this paragraph.

§10.874 Textile or apparel goods.

(a) *De minimis*—(1) *General.* Except as provided in paragraph (a)(2) of this section, a textile or apparel good that is not an originating good under the OFTA because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in General Note 31(h), HTSUS, will be considered to be an originating good if the total weight of all such fibers or yarns is not more than seven percent of the total weight of that component.

(2) *Exception.* A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good will be considered to be an originating good only if such yarns are wholly formed in the territory of a Party.

(b) *Textile or apparel goods put up in sets.* Notwithstanding the specific rules specified in General Note 31(h), HTSUS, textile or apparel goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be considered to be originating goods under the OFTA unless each of the goods in the set is an originating good or the total value of the non-originating goods in the set does not exceed ten percent of the appraised value of the set.

§10.875 Accumulation.

(a) An originating good or material produced in the territory of one or both of the Parties that is incorporated into a good in the territory of the other Party will be considered to originate in the territory of the other Party.

(b) A good that is grown, produced, or manufactured in the territory of one or both of the Parties by one or more producers is an originating good if the good satisfies the requirements of §10.873 of this subpart and all other applicable requirements of General Note 31, HTSUS.

§10.876 Value of materials.

(a) *General.* For purposes of §10.873(b) of this subpart and, except as provided in paragraph (b) of this section, the value of a material produced in the territory of one or both of the Parties includes the following:

(1) The price actually paid or payable for the material by the producer of the good;

(2) The freight, insurance, packing and all other costs incurred in transporting the material to the producer's plant, if such costs are not included in the price referred to in paragraph (a)(1) of this section;

(3) The cost of waste or spoilage resulting from the use of the material in the growth, production, or manufacture of the good, less the value of recoverable scrap; and

(4) Taxes or customs duties imposed on the material by one or both of the Parties, if the taxes or customs duties are not remitted upon exportation from the territory of a Party.

(b) *Exception.* If the relationship between the producer of a good and the seller of a material influenced the price actually paid or payable for the material, or if there is no price actually

paid or payable by the producer for the material, the value of the material produced in the territory of one or both of the Parties includes the following:

(1) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(2) A reasonable amount for profit; and

(3) The freight, insurance, packing, and all other costs incurred in transporting the material to the producer's plant.

§ 10.877 Direct costs of processing operations.

(a) *Items included.* For purposes of § 10.873(b) of this subpart, the words ''direct costs of processing operations'', with respect to a good, mean those costs either directly incurred in, or that can be reasonably allocated to, the growth, production, or manufacture of the good in the territory of one or both of the Parties. Such costs include, to the extent they are includable in the appraised value of the good when imported into a Party, the following:

(1) All actual labor costs involved in the growth, production, or manufacture of the specific good, including fringe benefits, on-the-job training, and the costs of engineering, supervisory, quality control, and similar personnel;

(2) Tools, dies, molds, and other indirect materials, and depreciation on machinery and equipment that are allocable to the specific good;

(3) Research, development, design, engineering, and blueprint costs, to the extent that they are allocable to the specific good;

(4) Costs of inspecting and testing the specific good; and

(5) Costs of packaging the specific good for export to the territory of the other Party.

(b) *Items not included.* For purposes of § 10.873(b) of this subpart, the words ''direct costs of processing operations'' do not include items that are not directly attributable to the good or are not costs of growth, production, or manufacture of the good. These include, but are not limited to:

(1) Profit; and

(2) General expenses of doing business that are either not allocable to the good or are not related to the growth, production, or manufacture of the good, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

§ 10.878 Packaging and packing materials and containers for retail sale and for shipment.

Packaging materials and containers in which a good is packaged for retail sale and packing materials and containers for shipment are to be disregarded in determining whether a good qualifies as an originating good under § 10.873 of this subpart and General Note 31, HTSUS, except that the value of such packaging and packing materials and containers may be included in meeting the value-content requirement specified in § 10.873(b) of this subpart.

§ 10.879 Indirect materials.

Indirect materials are to be disregarded in determining whether a good qualifies as an originating good under § 10.873 of this subpart and General Note 31, HTSUS, except that the cost of such indirect materials may be included in meeting the value-content requirement specified in § 10.873(b) of this subpart.

§ 10.880 Imported directly.

(a) *General.* To qualify as an originating good under the OFTA, a good must be imported directly from the territory of a Party into the territory of the other Party. For purposes of this subpart, the words ''imported directly'' mean:

(1) Direct shipment from the territory of a Party into the territory of the other Party without passing through the territory of a non-Party; or

(2) If the shipment passed through the territory of a non-Party, the good, upon arrival in the territory of a Party, will be considered to be ''imported directly'' only if the good did not undergo production, manufacturing, or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party.

Operations that may be performed outside the territories of the Parties include inspection, removal of dust that accumulates during shipment, ventilation, spreading out or drying, chilling, replacing salt, sulfur dioxide, or aqueous solutions, replacing damaged packing materials and containers, and removal of units of the good that are spoiled or damaged and present a danger to the remaining units of the good, or to transport the good to the territory of a Party.

(b) *Documentary evidence.* An importer making a claim for preferential tariff treatment under the OFTA for an originating good may be required to demonstrate, to CBP's satisfaction, that the good was ''imported directly'' from the territory of a Party into the territory of the other Party, as that term is defined in paragraph (a) of this section. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

TARIFF PREFERENCE LEVEL

§ 10.881 Filing of claim for tariff preference level.

A cotton or man-made fiber apparel good described in § 10.882 of this subpart that does not qualify as an originating good under § 10.873 of this subpart may nevertheless be entitled to preferential tariff treatment under the OFTA under an applicable tariff preference level (TPL). To make a TPL claim, the importer must include on the entry summary, or equivalent documentation, the applicable subheading in Chapter 99 of the HTSUS (9916.99.20) immediately above the applicable subheading in Chapter 61 or Chapter 62 of the HTSUS under which each non-originating cotton or man-made fiber apparel good is classified.

§ 10.882 Goods eligible for tariff preference claims.

Cotton or man-made fiber apparel goods provided for in Chapters 61 or 62 of the HTSUS that are cut or knit to shape, or both, and sewn or otherwise assembled in the territory of Oman from fabric or yarn produced or obtained outside the territory of Oman or the United States are eligible for a TPL claim filed under § 10.881 of this subpart (subject to the quantitative limitations set forth in U.S. Note 13, Subchapter XVI, Chapter 99, HTSUS).

§ 10.883 [Reserved]

§ 10.884 Declaration.

(a) *General.* An importer who claims preferential tariff treatment on a non-originating cotton or man-made fiber good specified in § 10.882 of this subpart must submit, at the request of the Center director, a declaration supporting such a claim for preferential tariff treatment that sets forth all pertinent information concerning the production of the good, including:

(1) A description of the good, quantity, invoice numbers, and bills of lading;

(2) A description of the operations performed in the production of the good in the territory of one or both of the Parties;

(3) A statement as to any yarn or fabric of a non-Party and the origin of such materials used in the production of the good.

(b) *Retention of records.* An importer must retain all documents relied upon to prepare the declaration for a period of five years.

§ 10.885 Transshipment of non-originating apparel goods.

(a) *General.* To qualify for preferential tariff treatment under an applicable TPL, a good must be imported directly from the territory of a Party into the territory of the other Party. For purposes of this subpart, the words ''imported directly'' mean:

(1) Direct shipment from the territory of a Party into the territory of the other Party without passing through the territory of a non-Party; or

(2) If the shipment passed through the territory of a non-Party, the good, upon arrival in the territory of a Party, will be considered to be ''imported directly'' only if the good did not undergo production, manufacturing, or any other operation outside the territories of the Parties, other

than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party. Operations that may be performed outside the territories of the Parties include inspection, removal of dust that accumulates during shipment, ventilation, spreading out or drying, chilling, replacing salt, sulfur dioxide, or aqueous solutions, replacing damaged packing materials and containers, and removal of units of the good that are spoiled or damaged and present a danger to the remaining units of the good, or to transport the good to the territory of a Party.

(b) *Documentary evidence.* An importer making a claim for preferential tariff treatment under an applicable TPL may be required to demonstrate, to CBP's satisfaction, that the good was ''imported directly'' from the territory of a Party into the territory of the other Party, as that term is defined in paragraph (a) of this section. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

§ 10.886 Effect of non-compliance; failure to provide documentation regarding transshipment of non-originating apparel goods.

(a) *General.* If an importer of a good for which a TPL claim is made fails to comply with any applicable requirement under this subpart, the Center director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the Center director nevertheless may deny preferential tariff treatment to a good for which a TPL claim is made if the good is shipped through or transshipped in a country other than a Party, and the importer of the good does not provide, at the request of the Center director, evidence demonstrating to the satisfaction of the Center director that the requirements set forth in §10.885 of this subpart were met.

Origin Verifications and Determinations

§ 10.887 Verification and justification of claim for preferential treatment.

(a) *Verification.* A claim for preferential treatment made under §10.863 or §10.870 of this subpart, including any declaration or other information submitted to CBP in support of the claim, will be subject to such verification as the Center director deems necessary. In the event that the Center director is provided with insufficient information to verify or substantiate the claim, the Center director may deny the claim for preferential treatment.

(b) *Applicable accounting principles.* When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

§ 10.888 Issuance of negative origin determinations.

If, as a result of an origin verification initiated under this subpart, CBP determines that a claim for preferential tariff treatment made under §10.863 of this subpart should be denied, it will issue a determination in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates of the export and import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 31, HTSUS, and in §§10.863 through 10.886 of this subpart, the legal basis for the determination.

PENALTIES

§ 10.889 Violations relating to the OFTA.

All criminal, civil, or administrative penalties which may be imposed upon importers or other parties for violations of the U.S. customs or related laws or regulations will also apply to importations subject to the OFTA.

GOODS RETURNED AFTER REPAIR OR ALTERATION

§ 10.890 Goods re-entered after repair or alteration in Oman.

(a) *General.* This section sets forth the rules that apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Oman as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Oman, whether or not pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, ''repairs or alterations'' means restoration, renovation, cleaning, re-sterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

(b) *Goods not eligible for treatment.* The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to Oman, are incomplete for their intended use and for which the processing operation performed in Oman constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

(c) *Documentation.* The provisions of paragraphs (a), (b), and (c) of §10.8 of this part, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Oman after having been exported for repairs or alterations and which are claimed to be duty free.

Subpart Q—United States-Peru Trade Promotion Agreement

SOURCE: 76 FR 68072, Nov. 3, 2011, unless otherwise noted.

GENERAL PROVISIONS

§ 10.901 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported and exported goods under the United States-Peru Trade Promotion Agreement (the PTPA) signed on April 12, 2006, and under the United States-Peru Trade Promotion Agreement Implementation Act (the Act; Pub. L. 110–138, 121 Stat. 1455 (19 U.S.C. 3805 note). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the PTPA and the Act are contained in Parts 24, 162, and 163 of this chapter.

§ 10.902 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Claim for preferential tariff treatment.* ''Claim for preferential tariff treatment'' means a claim that a good is entitled to the duty rate applicable under the PTPA to an originating good and to an exemption from the merchandise processing fee;

(b) *Claim of origin.* ''Claim of origin'' means a claim that a textile or apparel good is an originating good or satisfies the non-preferential rules of origin of a Party;

(c) *Customs authority.* ''Customs authority'' means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations;

(d) *Customs duty.* ''Customs duty'' includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good,

including any form of surtax or surcharge in connection with such importation, but, for purposes of implementing the PTPA, does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994 in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty that is applied pursuant to a Party's domestic law; or

(3) Fee or other charge in connection with importation;

(e) *Customs Valuation Agreement.* ''Customs Valuation Agreement'' means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, which is part of the WTO Agreement;

(f) *Days.* ''Days'' means calendar days;

(g) *Enterprise.* ''Enterprise'' means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association;

(h) *GATT 1994.* ''GATT 1994'' means the *General Agreement on Tariffs and Trade 1994*, which is part of the *WTO Agreement;*

(i) *Harmonized System.* ''Harmonized System'' means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(j) *Heading.* ''Heading'' means the first four digits in the tariff classification number under the Harmonized System;

(k) *HTSUS.* ''HTSUS'' means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(l) *Identical goods.* ''Identical goods'' means goods that are the same in all respects relevant to the rule of origin that qualifies the goods as originating goods;

(m) *Indirect material.* ''Indirect material'' means a good used in the production, testing, or inspection of another good in the territory of one or both of the Parties but not physically incorporated into that other good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of another good in the territory of one or both of the Parties, including:

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment or buildings;

(4) Lubricants, greases, compounding materials, and other materials used in production or used to operate equipment or buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the good;

(7) Catalysts and solvents; and

(8) Any other goods that are not incorporated into the other good but the use of which in the production of the other good can reasonably be demonstrated to be a part of that production;

(n) *Originating.* ''Originating'' means qualifying for preferential tariff treatment under the rules of origin set out in Chapter Four and Article 3.3 of the PTPA, and General Note 32, HTSUS;

(o) *Party.* ''Party'' means the United States or Peru;

(p) *Person.* ''Person'' means a natural person or an enterprise;

(q) *Preferential tariff treatment.* ''Preferential tariff treatment'' means the duty rate applicable under the PTPA to an originating good, and an exemption from the merchandise processing fee;

(r) *Subheading.* ''Subheading'' means the first six digits in the tariff classification number under the Harmonized System;

(s) *Textile or apparel good.* ''Textile or apparel good'' means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as ''the ATC''), which is part of the WTO Agreement, except for those goods listed in Annex 3–C of the PTPA;

(t) *Territory.* ''Territory'' means:

(1) With respect to Peru, the continental territory, the islands, the maritime areas and the air space above them, in which Peru exercises sovereignty and jurisdiction or sovereign rights in accordance with its domestic law and international law;

(2) With respect to the United States:

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico;

(ii) The foreign trade zones located in the United States and Puerto Rico; and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

(u) *WTO*. ''WTO'' means the World Trade Organization; and

(v) *WTO Agreement*. ''WTO Agreement'' means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

IMPORT REQUIREMENTS

§ 10.903 Filing of claim for preferential tariff treatment upon importation.

(a) *Basis of claim*. An importer may make a claim for PTPA preferential tariff treatment, including an exemption from the merchandise processing fee, based on:

(1) A certification, as specified in § 10.904 of this subpart, that is prepared by the importer, exporter, or producer of the good; or

(2) The importer's knowledge that the good is an originating good, including reasonable reliance on information in the importer's possession that the good is an originating good.

(b) *Making a claim*. The claim is made by including on the entry summary, or equivalent documentation, the letters ''PE'' as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.

(c) *Corrected claim*. If, after making the claim specified in paragraph (b) of this section, the importer has reason to believe that the claim is based on inaccurate information or is otherwise invalid, the importer must, within 30 calendar days after the date of discovery of the error, correct the claim and pay any duties that may be due. The importer must submit a statement either in writing or via an authorized electronic data interchange system to the CBP office where the original claim was filed specifying the correction (*see* §§ 10.931 and 10.933 of this subpart).

§ 10.904 Certification.

(a) *General*. An importer who makes a claim under § 10.903(b) of this subpart based on a certification by the importer, exporter, or producer that the good is originating must submit, at the request of the Center director, a copy of the certification. The certification:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must be in the possession of the importer at the time the claim for preferential tariff treatment is made if the certification forms the basis for the claim;

(3) Must include the following information:

(i) The legal name, address, telephone, and email address (if any) of the importer of record of the good, the exporter of the good (if different from the producer), and the producer of the good;

(ii) The legal name, address, telephone, and email address (if any) of the responsible official or authorized agent of the importer, exporter, or producer signing the certification (if different from the information required by paragraph (a)(3)(i) of this section);

(iii) A description of the good for which preferential tariff treatment is claimed, which must be sufficiently detailed to relate it to the invoice and the HS nomenclature;

(iv) The HTSUS tariff classification, to six or more digits, as necessary for the specific change in tariff classification rule for the good set forth in General Note 32(n), HTSUS; and

(v) The applicable rule of origin set forth in General Note 32, HTSUS, under which the good qualifies as an originating good; and

(4) Must include a statement, in substantially the following form:

I certify that:
The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;
I agree to maintain and present upon request, documentation necessary to support these representations;
The goods comply with all requirements for preferential tariff treatment specified for those goods in the United States-Peru Trade Promotion Agreement; and
This document consists of _____ pages, including all attachments.

(b) *Responsible official or agent.* The certification provided for in paragraph (a) of this section must be signed and dated by a responsible official of the importer, exporter, or producer, or by the importer's, exporter's, or producer's authorized agent having knowledge of the relevant facts.

(c) *Language.* The certification provided for in paragraph (a) of this section must be completed in either the English or Spanish language. In the latter case, the Center director may require the importer to submit an English translation of the certification.

(d) *Certification by the exporter or producer.* A certification may be prepared by the exporter or producer of the good on the basis of:

(1) The exporter's or producer's knowledge that the good is originating; or

(2) In the case of an exporter, reasonable reliance on the producer's certification that the good is originating.

(e) *Applicability of certification.* The certification provided for in paragraph (a) of this section may be applicable to:

(1) A single shipment of a good into the United States; or

(2) Multiple shipments of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the certification.

(f) *Validity of certification.* A certification that is properly completed, signed, and dated in accordance with the requirements of this section will be accepted as valid for four years following the date on which it was signed.

§ 10.905 Importer obligations.

(a) *General.* An importer who makes a claim for preferential tariff treatment under § 10.903(b) of this subpart:

(1) Will be deemed to have certified that the good is eligible for preferential tariff treatment under the PTPA;

(2) Is responsible for the truthfulness of the claim and of all the information and data contained in the certification provided for in § 10.904 of this subpart;

(3) Is responsible for submitting any supporting documents requested by CBP, and for the truthfulness of the information contained in those documents. When a certification prepared by an exporter or producer forms the basis of a claim for preferential tariff treatment, and CBP requests the submission of supporting documents, the importer will provide to CBP, or arrange for the direct submission by the exporter or producer of, all information relied on by the exporter or producer in preparing the certification.

(b) *Information provided by exporter or producer.* The fact that the importer has made a claim or submitted a certification based on information provided by an exporter or producer will not relieve the importer of the responsibility referred to in paragraph (a) of this section.

(c) *Exemption from penalties.* An importer will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for making an incorrect claim for preferential tariff treatment or submitting an incorrect certification, provided that the importer promptly and voluntarily corrects the claim or certification and pays any duty owing (*see* §§ 10.931 and 10.933 of this subpart).

§ 10.906 Certification not required.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a copy of a certification under § 10.904 of this subpart for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the originating goods does not exceed U.S. $2,500.

(b) *Exception.* If the Center director determines that an importation described in paragraph (a) of this section

is part of a series of importations carried out or planned for the purpose of evading compliance with the certification requirements of §10.904 of this subpart, the Center director will notify the importer that for that importation the importer must submit a copy of the certification. The importer must submit such a copy within 30 days from the date of the notice. Failure to timely submit a copy of the certification will result in denial of the claim for preferential tariff treatment.

[76 FR 68072, Nov. 3, 2011, as amended by CBP Dec. 16–26, 81 FR 93014, Dec. 20, 2016]

§10.907 Maintenance of records.

(a) *General.* An importer claiming preferential tariff treatment for a good imported into the United States under §10.903(b) of this subpart must maintain, for a minimum of five years after the date of importation of the good, all records and documents that the importer has demonstrating that the good qualifies for preferential tariff treatment under the PTPA. These records are in addition to any other records that the importer is required to prepare, maintain, or make available to CBP under Part 163 of this chapter.

(b) *Method of maintenance.* The records and documents referred to in paragraph (a) of this section must be maintained by importers as provided in §163.5 of this chapter.

§10.908 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *General.* If the importer fails to comply with any requirement under this subpart, including submission of a complete certification prepared in accordance with §10.904 of this subpart, when requested, the Center director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the Center director nevertheless may deny preferential tariff treatment to an originating good if the good is shipped through or transshipped in a country other than a Party to the PTPA, and the importer of the good does not provide, at the request of the Center director, evidence demonstrating to the satisfaction of the Center director that the conditions set forth in §10.925(a) of this subpart were met.

EXPORT REQUIREMENTS

§10.909 Certification for goods exported to Peru.

(a) *Submission of certification to CBP.* Any person who completes and issues a certification for a good exported from the United States to Peru must provide a copy of the certification (or such other medium or format approved by the Peru customs authority for that purpose) to CBP upon request.

(b) *Notification of errors in certification.* Any person who completes and issues a certification for a good exported from the United States to Peru and who has reason to believe that the certification contains or is based on incorrect information must promptly notify every person to whom the certification was provided of any change that could affect the accuracy or validity of the certification. Notification of an incorrect certification must also be given either in writing or via an authorized electronic data interchange system to CBP specifying the correction (*see* §§10.932 and 10.933 of this subpart).

(c) *Maintenance of records*—(1) *General.* Any person who completes and issues a certification for a good exported from the United States to Peru must maintain, for a period of at least five years after the date the certification was signed, all records and supporting documents relating to the origin of a good for which the certification was issued, including the certification or copies thereof and records and documents associated with:

(i) The purchase, cost, and value of, and payment for, the good;

(ii) The purchase, cost, and value of, and payment for, all materials, including indirect materials, used in the production of the good; and

(iii) The production of the good in the form in which the good was exported.

(2) *Method of maintenance.* The records referred to in paragraph (c) of this section must be maintained as provided in §163.5 of this chapter.

(3) *Availability of records.* For purposes of determining compliance with the provisions of this part, the records required to be maintained under this section must be stored and made available for examination and inspection by the Center director or other appropriate CBP officer in the same manner as provided in part 163 of this chapter.

POST-IMPORTATION DUTY REFUND CLAIMS

§ 10.910 Right to make post-importation claim and refund duties.

Notwithstanding any other available remedy, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment was made, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in § 10.911 of this subpart. Subject to the provisions of § 10.908 of this subpart, CBP may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 10.912(c) of this subpart.

§ 10.911 Filing procedures.

(a) *Place of filing.* A post-importation claim for a refund must be filed with CBP, either at the port of entry or electronically.

(b) *Contents of claim.* A post-importation claim for a refund must be filed by presentation of the following:

(1) A written declaration stating that the good was an originating good at the time of importation and setting forth the number and date of the entry or entries covering the good;

(2) A copy of a certification prepared in accordance with § 10.904 of this subpart if a certification forms the basis for the claim, or other information demonstrating that the good qualifies for preferential tariff treatment;

(3) A written statement indicating whether the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was so provided, the statement must identify each recipient by name, CBP identification number, and address and must specify the date on which the documentation was provided; and

(4) A written statement indicating whether or not any person has filed a protest relating to the good under any provision of law; and if any such protest has been filed, the statement must identify the protest by number and date.

§ 10.912 CBP processing procedures.

(a) *Status determination.* After receipt of a post-importation claim under § 10.911 of this subpart, the Center director will determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest or judicial review.* If the Center director determines that any protest relating to the good has not been finally decided, the Center director will suspend action on the claim filed under § 10.911 of this subpart until the decision on the protest becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the Center director will suspend action on the claim filed under § 10.911 of this subpart until judicial review has been completed.

(c) *Allowance of claim*—(1) *Unliquidated entry.* If the Center director determines that a claim for a refund filed under § 10.911 of this subpart should be allowed and the entry covering the good has not been liquidated, the Center director will take into account the claim for refund in connection with the liquidation of the entry.

(2) *Liquidated entry.* If the Center director determines that a claim for a refund filed under § 10.911 of this subpart should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties under this section. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, the Center director will reliquidate the entry taking into account the claim for refund under § 10.911 of this subpart.

(d) *Denial of claim*—(1) *General.* The Center director may deny a claim for a refund filed under §10.911 of this subpart if the claim was not filed timely, if the importer has not complied with the requirements of §§10.908 and 10.911 of this subpart, or if, following an origin verification under §10.926 of this subpart, the Center director determines either that the imported good was not an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under §10.926 of this subpart.

(2) *Unliquidated entry.* If the Center director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the Center director will deny the claim in connection with the liquidation of the entry, and notice of the denial and the reason for the denial will be provided to the importer in writing or via an authorized electronic data interchange system.

(3) *Liquidated entry.* If the Center director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the Center director will provide notice of the denial and the reason for the denial to the importer in writing or via an authorized electronic data interchange system.

RULES OF ORIGIN

§10.913 Definitions.

For purposes of §§10.913 through 10.925:

(a) *Adjusted value.* ''Adjusted value'' means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude:

(1) Any costs, charges, or expenses incurred for transportation, insurance and related services incident to the international shipment of the good from the country of exportation to the place of importation; and

(2) The value of packing materials and containers for shipment as defined in paragraph (m) of this section;

(b) *Class of motor vehicles.* ''Class of motor vehicles'' means any one of the following categories of motor vehicles:

(1) Motor vehicles provided for in subheading 8701.20, 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, HTSUS, or motor vehicles for the transport of 16 or more persons provided for in subheading 8702.10 or 8702.90, HTSUS;

(2) Motor vehicles provided for in subheading 8701.10 or any of subheadings 8701.30 through 8701.90, HTSUS;

(3) Motor vehicles for the transport of 15 or fewer persons provided for in subheading 8702.10 or 8702.90, HTSUS, or motor vehicles provided for in subheading 8704.21 or 8704.31, HTSUS; or

(4) Motor vehicles provided for in subheadings 8703.21 through 8703.90, HTSUS;

(c) *Exporter.* ''Exporter'' means a person who exports goods from the territory of a Party;

(d) *Fungible good or material.* ''Fungible good or material'' means a good or material, as the case may be, that is interchangeable with another good or material for commercial purposes and the properties of which are essentially identical to such other good or material;

(e) *Generally Accepted Accounting Principles.* ''Generally Accepted Accounting Principles'' means the recognized consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These principles may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;

(f) *Good.* ''Good'' means any merchandise, product, article, or material;

(g) *Goods wholly obtained or produced entirely in the territory of one or more of*

the Parties. ''Goods wholly obtained or produced entirely in the territory of one or both of the Parties'' means:

(1) Plants and plant products harvested or gathered in the territory of one or both of the Parties;

(2) Live animals born and raised in the territory of one or more of the Parties;

(3) Goods obtained in the territory of one or both of the Parties from live animals;

(4) Goods obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of one or both of the Parties;

(5) Minerals and other natural resources not included in paragraphs (g)(1) through (g)(4) of this section that are extracted or taken in the territory of one or both of the Parties;

(6) Fish, shellfish, and other marine life taken from the sea, seabed, or subsoil outside the territory of the Parties by:

(i) Vessels registered or recorded with Peru and flying its flag; or

(ii) Vessels documented under the laws of the United States;

(7) Goods produced on board factory ships from the goods referred to in aragraph (g)(6) of this section, if such factory ships are:

(i) Registered or recorded with Peru and fly its flag; or

(i) Documented under the laws of the United States;

(8) Goods taken by a Party or a person of a Party from the seabed or subsoil outside territorial waters, if a Party has rights to exploit such seabed or subsoil;

(9) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(10) Waste and scrap derived from:

(i) Manufacturing or processing operations in the territory of one or both of the Parties; or

(ii) Used goods collected in the territory of one or both of the Parties, if such goods are fit only for the recovery of raw materials;

(11) Recovered goods derived in the territory of one or both of the Parties from used goods, and used in the territory of one or both of the Parties in the production of remanufactured goods; and

(12) Goods produced in the territory of one or both of the Parties exclusively from goods referred to in any of paragraphs (g)(1) through (g)(10) of this section, or from the derivatives of such goods, at any stage of production;

(h) *Material*. ''Material'' means a good that is used in the production of another good, including a part or an ingredient;

(i) *Model line*. ''Model line'' means a group of motor vehicles having the same platform or model name;

(j) *Net cost*. ''Net cost'' means total cost minus sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost;

(k) *Non-allowable interest costs*. ''Non-allowable interest costs'' means interest costs incurred by a producer that exceed 700 basis points above the applicable official interest rate for comparable maturities of the Party in which the producer is located;

(l) *Non-originating good or non-originating material*. ''Non-originating good'' or ''non-originating material'' means a good or material, as the case may be, that does not qualify as originating under General Note 32, HTSUS, or this subpart;

(m) *Packing materials and containers for shipment*. ''Packing materials and containers for shipment'' means the goods used to protect a good during its transportation to the United States, and does not include the packaging materials and containers in which a good is packaged for retail sale;

(n) *Producer*. ''Producer'' means a person who engages in the production of a good in the territory of a Party;

(o) *Production*. ''Production'' means growing, mining, harvesting, fishing, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good;

(p) *Reasonably allocate*. ''Reasonably allocate'' means to apportion in a manner that would be appropriate under Generally Accepted Accounting Principles;

(q) *Recovered goods*. ''Recovered goods'' means materials in the form of individual parts that are the result of:

(1) The disassembly of used goods into individual parts; and

(2) The cleaning, inspecting, testing, or other processing that is necessary to improve such individual parts to sound working condition;

(r) *Remanufactured good.* ''Remanufactured good'' means an industrial good assembled in the territory of one or both of the Parties that is classified in Chapter 84, 85, 87, or 90 or heading 9402, HTSUS, other than a good classified in heading 8418 or 8516, HTSUS, and that:

(1) Is entirely or partially comprised of recovered goods; and

(2) Has a similar life expectancy and enjoys a factory warranty similar to a new good that is classified in one of the enumerated HTSUS chapters or headings;

(s) *Royalties.* ''Royalties'' means payments of any kind, including payments under technical assistance agreements or similar agreements, made as consideration for the use of, or right to use, any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance agreements or similar agreements that can be related to specific services such as:

(1) Personnel training, without regard to where performed; and

(2) If performed in the territory of one or both of the Parties, engineering, tooling, die-setting, software design and similar computer services;

(t) *Sales promotion, marketing, and after-sales service costs.* ''Sales promotion, marketing, and after-sales service costs'' means the following costs related to sales promotion, marketing, and after-sales service:

(1) Sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing, and after-sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;

(2) Sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;

(3) Salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, pension), traveling and living expenses, membership and professional fees, for sales promotion, marketing, and after-sales service personnel;

(4) Recruiting and training of sales promotion, marketing, and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(5) Product liability insurance;

(6) Office supplies for sales promotion, marketing, and after-sales service of goods, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(7) Telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(8) Rent and depreciation of sales promotion, marketing, and after-sales service offices and distribution centers;

(9) Property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing, and after-sales service offices and distribution centers, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer; and

(10) Payments by the producer to other persons for warranty repairs;

(u) *Self-produced material.* ''Self-produced material'' means an originating material that is produced by a producer of a good and used in the production of that good;

(v) *Shipping and packing costs.* ''Shipping and packing costs'' means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the

buyer, excluding the costs of preparing and packaging the good for retail sale;

(w) *Total cost.* ''Total cost'' means all product costs, period costs, and other costs for a good incurred in the territory of one or both of the Parties. Product costs are costs that are associated with the production of a good and include the value of materials, direct labor costs, and direct overhead. Period costs are costs, other than product costs, that are expensed in the period in which they are incurred, such as selling expenses and general and administrative expenses. Other costs are all costs recorded on the books of the producer that are not product costs or period costs, such as interest. Total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

(x) *Used.* ''Used'' means utilized or consumed in the production of goods; and

(y) *Value.* ''Value'' means the value of a good or material for purposes of calculating customs duties or for purposes of applying this subpart.

§ 10.914 Originating goods.

Except as otherwise provided in this subpart and General Note 32(m), HTSUS, a good imported into the customs territory of the United States will be considered an originating good under the PTPA only if:

(a) The good is wholly obtained or produced entirely in the territory of one or both of the Parties;

(b) The good is produced entirely in the territory of one or both of the Parties and:

(1) Each non-originating material used in the production of the good undergoes an applicable change in tariff classification specified in General Note 32(n), HTSUS, and the good satisfies all other applicable requirements of General Note 32, HTSUS; or

(2) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 32(n), HTSUS, and satisfies all other applicable requirements of General Note 32, HTSUS; or

(c) The good is produced entirely in the territory of one or both of the Parties exclusively from originating materials.

§ 10.915 Regional value content.

(a) *General.* Except for goods to which paragraph (d) of this section applies, where General Note 32(n), HTSUS, sets forth a rule that specifies a regional value content test for a good, the regional value content of such good must be calculated by the importer, exporter, or producer of the good on the basis of the build-down method described in paragraph (b) of this section or the build-up method described in paragraph (c) of this section.

(b) *Build-down method.* Under the build-down method, the regional value content must be calculated on the basis of the formula $RVC = ((AV - VNM)/AV) \times 100$, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced.

(c) *Build-up method.* Under the build-up method, the regional value content must be calculated on the basis of the formula $RVC = (VOM/AV) \times 100$, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VOM is the value of originating materials that are acquired or self-produced and used by the producer in the production of the good.

(d) *Special rule for certain automotive goods*—(1) *General.* Where General Note 32(n), HTSUS, sets forth a rule that specifies a regional value content test for an automotive good provided for in any of subheadings 8407.31 through 8407.34, subheading 8408.20, heading 8409, or any of headings 8701 through 8708, HTSUS, the regional value content of such good must be calculated by the importer, exporter, or producer of the good on the basis of the net cost method described in paragraph (d)(2) of this section.

(2) *Net cost method.* Under the net cost method, the regional value content is calculated on the basis of the formula

RVC = ((NC − VNM)/NC) × 100, where RVC is the regional value content, expressed as a percentage; NC is the net cost of the good; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced. Consistent with the provisions regarding allocation of costs set out in Generally Accepted Accounting Principles, the net cost of the good must be determined by:

(i) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, subtracting any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost of all such goods, and then reasonably allocating the resulting net cost of those goods to the automotive good;

(ii) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, reasonably allocating the total cost to the automotive good, and then subtracting any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the portion of the total cost allocated to the automotive good; or

(iii) Reasonably allocating each cost that forms part of the total costs incurred with respect to the automotive good so that the aggregate of these costs does not include any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, or non-allowable interest costs.

(3) *Motor vehicles*—(i) *General.* For purposes of calculating the regional value content under the net cost method for an automotive good that is a motor vehicle provided for in any of headings 8701 through 8705, an importer, exporter, or producer may average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over the producer's fiscal year using any one of the categories described in paragraph (d)(3)(ii) of this section either on the basis of all motor vehicles in the category or those motor vehicles in the category that are exported to the territory of one or both Parties.

(ii) *Categories.* The categories referred to in paragraph (d)(3)(i) of this section are as follows:

(A) The same model line of motor vehicles, in the same class of vehicles, produced in the same plant in the territory of a Party, as the motor vehicle for which the regional value content is being calculated;

(B) The same class of motor vehicles, and produced in the same plant in the territory of a Party, as the motor vehicle for which the regional value content is being calculated; and

(C) The same model line of motor vehicles produced in the territory of a Party as the motor vehicle for which the regional value content is being calculated.

(4) *Other automotive goods*—(i) *General.* For purposes of calculating the regional value content under the net cost method for automotive goods provided for in any of subheadings 8407.31 through 8407.34, subheading 8408.20, heading 8409, 8706, 8707, or 8708, HTSUS, that are produced in the same plant, an importer, exporter, or producer may:

(A) Average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over any of the following: The fiscal year, or any quarter or month, of the motor vehicle producer to whom the automotive good is sold, or the fiscal year, or any quarter or month, of the producer of the automotive good, provided the goods were produced during the fiscal year, quarter, or month that is the basis for the calculation;

(B) Determine the average referred to in paragraph (d)(4)(i)(A) of this section separately for such goods sold to one or more motor vehicle producers; or

(C) Make a separate determination under paragraph (d)(4)(i)(A) or (d)(4)(i)(B) of this section for automotive goods that are exported to the territory of Peru or the United States.

(ii) *Duration of use.* A person selecting an averaging period of one month or quarter under paragraph (d)(4)(i)(A) of this section must continue to use that method for that category of automotive goods throughout the fiscal year.

§ 10.916 Value of materials.

(a) *Calculating the value of materials.* Except as provided in § 10.924, for purposes of calculating the regional value content of a good under General Note 32(n), HTSUS, and for purposes of applying the *de minimis* (*see* § 10.918 of this subpart) provisions of General Note 32(n), HTSUS, the value of a material is:

(1) In the case of a material imported by the producer of the good, the adjusted value of the material;

(2) In the case of a material acquired by the producer in the territory where the good is produced, the value, determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, of the material with reasonable modifications to the provisions of the Customs Valuation Agreement as may be required due to the absence of an importation by the producer (including, but not limited to, treating a domestic purchase by the producer as if it were a sale for export to the country of importation); or

(3) In the case of a self-produced material, the sum of:

(i) All expenses incurred in the production of the material, including general expenses; and

(ii) An amount for profit equivalent to the profit added in the normal course of trade.

(b) *Examples.* The following examples illustrate application of the principles set forth in paragraph (a)(2) of this section:

Example 1. A producer in Peru purchases material x from an unrelated seller in Peru for $100. Under the provisions of Article 1 of the Customs Valuation Agreement, transaction value is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8. In order to apply Article 1 to this domestic purchase by the producer, such purchase is treated as if it were a sale for export to the country of importation. Therefore, for purposes of determining the adjusted value of material x, Article 1 transaction value is the price actually paid or payable for the goods when sold to the producer in Peru ($100), adjusted in accordance with the provisions of Article 8. In this example, it is irrelevant whether material x was initially imported into Peru by the seller (or by anyone else). So long as the producer acquired material x in Peru, it is intended that the value of material x will be determined on the basis of the price actually paid or payable by the producer adjusted in accordance with the provisions of Article 8.

Example 2. Same facts as in Example 1, except that the sale between the seller and the producer is subject to certain restrictions that preclude the application of Article 1. Under Article 2 of the Customs Valuation Agreement, the value is the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued. In order to permit the application of Article 2 to the domestic acquisition by the producer, it should be modified so that the value is the transaction value of identical goods sold within Peru at or about the same time the goods were sold to the producer in Peru. Thus, if the seller of material x also sold an identical material to another buyer in Peru without restrictions, that other sale would be used to determine the adjusted value of material x.

(c) *Permissible additions to, and deductions from, the value of materials*—(1) *Additions to originating materials.* For originating materials, the following expenses, if not included under paragraph (a) of this section, may be added to the value of the originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or both of the Parties to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable; and

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproducts.

(2) *Deductions from non-originating materials.* For non-originating materials, if included under paragraph (a) of this section, the following expenses may be deducted from the value of the non-originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or both of

the Parties to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable;

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products; and

(iv) The cost of originating materials used in the production of the non-originating material in the territory of one or both of the Parties.

(d) *Accounting method.* Any cost or value referenced in General Note 32, HTSUS, and this subpart, must be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

§ 10.917 Accumulation.

(a) Originating materials from the territory of a Party that are used in the production of a good in the territory of another Party will be considered to originate in the territory of that other Party.

(b) A good that is produced in the territory of one or both of the Parties by one or more producers is an originating good if the good satisfies the requirements of § 10.914 of this subpart and all other applicable requirements of General Note 32, HTSUS.

§ 10.918 De minimis.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, a good that does not undergo a change in tariff classification pursuant to General Note 32(n), HTSUS, is an originating good if:

(1) The value of all non-originating materials used in the production of the good that do not undergo the applicable change in tariff classification does not exceed 10 percent of the adjusted value of the good;

(2) The value of the non-originating materials described in paragraph (a)(1) of this section is included in the value of non-originating materials for any applicable regional value content requirement for the good under General Note 32(n), HTSUS; and

(3) The good meets all other applicable requirements of General Note 32, HTSUS.

(b) *Exceptions.* Paragraph (a) of this section does not apply to:

(1) A non-originating material provided for in Chapter 4, HTSUS, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90, HTSUS, that is used in the production of a good provided for in Chapter 4, HTSUS;

(2) A non-originating material provided for in Chapter 4, HTSUS, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90, HTSUS, that is used in the production of the following goods:

(i) Infant preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.10, HTSUS;

(ii) Mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20, HTSUS;

(iii) Dairy preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90, HTSUS;

(iv) Goods provided for in heading 2105, HTSUS;

(v) Beverages containing milk provided for in subheading 2202.90, HTSUS; and

(vi) Animal feeds containing over 10 percent by weight of milk solids provided for in subheading 2309.90, HTSUS; and

(3) A non-originating material provided for in heading 0805, HTSUS, or any of subheadings 2009.11 through 2009.39, HTSUS, that is used in the production of a good provided for in any of subheadings 2009.11 through 2009.39, HTSUS, or in fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, provided for in subheading 2106.90 or 2202.90, HTSUS;

(4) A non-originating material provided for in heading 0901 or 2101, HTSUS, that is used in the production

of a good provided for in heading 0901 or 2101, HTSUS;

(5) A non-originating material provided for in Chapter 15, HTSUS, that is used in the production of a good provided for in Chapter 15, HTSUS;

(6) A non-originating material provided for in heading 1701, HTSUS, that is used in the production of a good provided for in any of headings 1701 through 1703, HTSUS;

(7) A non-originating material provided for in Chapter 17, HTSUS, that is used in the production of a good provided for in subheading 1806.10, HTSUS; and

(8) Except as provided in paragraphs (b)(1) through (b)(7) of this section and General Note 32(n), HTSUS, a non-originating material used in the production of a good provided for in any of Chapters 1 through 24, HTSUS, unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this subpart.

(c) *Textile and apparel goods*—(1) *General.* Except as provided in paragraph (c)(2) of this section, a textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in General Note 32(n), HTSUS, will nevertheless be considered to be an originating good if:

(i) The total weight of all such fibers or yarns in that component is not more than 10 percent of the total weight of that component; or

(ii) The yarns are nylon filament yarns (other than elastomeric yarns) that are provided for in subheading 5402.11.30, 5402.11.60, 5402.19.30, 5402.19.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.45.10, 5402.45.90, 5402.51.00, or 5402.61.00, HTSUS, and that are products of Canada, Mexico, or Israel.

(2) *Exception for goods containing elastomeric yarns.* A textile or apparel good containing elastomeric yarns (excluding latex) in the component of the good that determines the tariff classification of the good will be considered an originating good only if such yarns are wholly formed in the territory of one or both of the Parties. For purposes of this paragraph, ''wholly formed'' means that all the production processes and finishing operations, starting with the extrusion of filaments, strips, film, or sheet, and including slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a finished yarn or plied yarn, took place in the territory of one or both of the Parties.

(3) *Yarn, fabric, or fiber.* For purposes of paragraph (c) of this section, in the case of a textile or apparel good that is a yarn, fabric, or fiber, the term ''component of the good that determines the tariff classification of the good'' means all of the fibers in the good.

[76 FR 68072, Nov. 3, 2011, as amended at 77 FR 64032, Oct. 18, 2012]

§ 10.919 Fungible goods and materials.

(a) *General.* A person claiming that a fungible good or material is an originating good may base the claim either on the physical segregation of the fungible good or material or by using an inventory management method with respect to the fungible good or material. For purposes of this section, the term ''inventory management method'' means:

(1) Averaging;

(2) ''Last-in, first-out;''

(3) ''First-in, first-out;'' or

(4) Any other method that is recognized in the Generally Accepted Accounting Principles of the Party in which the production is performed or otherwise accepted by that country.

(b) *Duration of use.* A person selecting an inventory management method under paragraph (a) of this section for a particular fungible good or material must continue to use that method for that fungible good or material throughout the fiscal year of that person.

§ 10.920 Accessories, spare parts, or tools.

(a) *General.* Accessories, spare parts, or tools that are delivered with a good and that form part of the good's standard accessories, spare parts, or tools will be treated as originating goods if the good is an originating good, and will be disregarded in determining whether all the non-originating materials used in the production of the good

undergo an applicable change in tariff classification specified in General Note 32(n), HTSUS, provided that:

(1) The accessories, spare parts, or tools are classified with, and not invoiced separately from, the good, regardless of whether they are specified or separately identified in the invoice for the good; and

(2) The quantities and value of the accessories, spare parts, or tools are customary for the good.

(b) *Regional value content.* If the good is subject to a regional value content requirement, the value of the accessories, spare parts, or tools is taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good under §10.915 of this subpart.

§10.921 Goods classifiable as goods put up in sets.

Notwithstanding the specific rules set forth in General Note 32(n), HTSUS, goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be considered to be originating goods unless:

(a) Each of the goods in the set is an originating good; or

(b) The total value of the non-originating goods in the set does not exceed;

(1) In the case of textile or apparel goods, 10 percent of the adjusted value of the set; or

(2) In the case of a good other than a textile or apparel good, 15 percent of the adjusted value of the set.

§10.922 Retail packaging materials and containers.

(a) *Effect on tariff shift rule.* Packaging materials and containers in which a good is packaged for retail sale, if classified with the good for which preferential tariff treatment under the PTPA is claimed, will be disregarded in determining whether all non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in General Note 32(n), HTSUS.

(b) *Effect on regional value content calculation.* If the good is subject to a regional value content requirement, the value of such packaging materials and containers will be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Example 1. Peruvian Producer A of good C imports 100 non-originating blister packages to be used as retail packaging for good C. As provided in §10.916(a)(1) of this subpart, the value of the blister packages is their adjusted value, which in this case is $10. Good C has a regional value content requirement. The United States importer of good C decides to use the build-down method, RVC = ((AV − VNM)/AV) × 100 (*see* §10.915(b) of this subpart), in determining whether good C satisfies the regional value content requirement. In applying this method, the non-originating blister packages are taken into account as non-originating. As such, their $10 adjusted value is included in the VNM, value of non-originating materials, of good C.

Example 2. Same facts as in Example 1, except that the blister packages are originating. In this case, the adjusted value of the originating blister packages would *not* be included as part of the VNM of good C under the build-down method. However, if the U.S. importer had used the build-up method, RVC = (VOM/AV) × 100 (*see* §10.915(c) of this subpart), the adjusted value of the blister packaging would be included as part of the VOM, value of originating materials.

§10.923 Packing materials and containers for shipment.

(a) *Effect on tariff shift rule.* Packing materials and containers for shipment, as defined in §10.913(m) of this subpart, are to be disregarded in determining whether the non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in General Note 32(n), HTSUS. Accordingly, such materials and containers are not required to undergo the applicable change in tariff classification even if they are non-originating.

(b) *Effect on regional value content calculation.* Packing materials and containers for shipment, as defined in §10.913(m) of this subpart, are to be disregarded in determining the regional value content of a good imported into the United States. Accordingly, in applying the build-down, build-up, or net cost method for determining the regional value content of a good imported into the United States, the value of such packing materials and

containers for shipment (whether originating or non-originating) is disregarded and not included in AV, adjusted value, VNM, value of non-originating materials, VOM, value of originating materials, or NC, net cost of a good.

Example. Peruvian producer A produces good C. Producer A ships good C to the United States in a shipping container that it purchased from Company B in Peru. The shipping container is originating. The value of the shipping container determined under section §10.916(a)(2) of this subpart is $3. Good C is subject to a regional value content requirement. The transaction value of good C is $100, which includes the $3 shipping container. The U.S. importer decides to use the build-up method, RVC = (VOM/AV) × 100 (*see* §10.915(c) of this subpart), in determining whether good C satisfies the regional value content requirement. In determining the AV, adjusted value, of good C imported into the U.S., paragraph (b) of this section and the definition of AV require a $3 deduction for the value of the shipping container. Therefore, the AV is $97 ($100 − $3). In addition, the value of the shipping container is disregarded and not included in the VOM, value of originating materials.

§10.924 Indirect materials.

An indirect material, as defined in §10.902(m) of this subpart, will be considered to be an originating material without regard to where it is produced.

Example. Peruvian Producer A produces good C using non-originating material B. Producer A imports non-originating rubber gloves for use by workers in the production of good C. Good C is subject to a tariff shift requirement. As provided in §10.914(b)(1) of this subpart and General Note 32(n), each of the non-originating materials in good C must undergo the specified change in tariff classification in order for good C to be considered originating. Although non-originating material B must undergo the applicable tariff shift in order for good C to be considered originating, the rubber gloves do not because they are indirect materials and are considered originating without regard to where they are produced.

§10.925 Transit and transshipment.

(a) *General.* A good that has undergone production necessary to qualify as an originating good under §10.914 of this subpart will not be considered an originating good if, subsequent to that production, the good:

(1) Undergoes further production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party; or

(2) Does not remain under the control of customs authorities in the territory of a non-Party.

(b) *Documentary evidence.* An importer making a claim that a good is originating may be required to demonstrate, to CBP's satisfaction, that the conditions and requirements set forth in paragraph (a) of this section were met. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

Origin Verifications and Determinations

§10.926 Verification and justification of claim for preferential tariff treatment.

(a) *Verification.* A claim for preferential tariff treatment made under §10.903(b) or §10.911 of this subpart, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the Center director deems necessary. In the event that the Center director is provided with insufficient information to verify or substantiate the claim, or the exporter or producer fails to consent to a verification visit, the Center director may deny the claim for preferential treatment. A verification of a claim for preferential tariff treatment under PTPA for goods imported into the United States may be conducted by means of one or more of the following:

(1) Written requests for information from the importer, exporter, or producer;

(2) Written questionnaires to the importer, exporter, or producer;

(3) Visits to the premises of the exporter or producer in the territory of Peru, to review the records of the type referred to in §10.909(c)(1) of this subpart or to observe the facilities used in

the production of the good, in accordance with the framework that the Parties develop for conducting verifications; and

(4) Such other procedures to which the Parties may agree.

(b) *Applicable accounting principles.* When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

§ 10.927 Special rule for verifications in Peru of U.S. imports of textile and apparel goods.

(a) *Procedures to determine whether a claim of origin is accurate*—(1) *General.* For the purpose of determining that a claim of origin for a textile or apparel good is accurate, CBP may request that the Government of Peru conduct a verification, regardless of whether a claim is made for preferential tariff treatment.

(2) *Actions during a verification.* While a verification under this paragraph is being conducted, CBP may take appropriate action, which may include:

(i) Suspending the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made, if CBP determines there is insufficient information to support the claim;

(ii) Denying the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made that is the subject of a verification if CBP determines that an enterprise has provided incorrect information to support the claim;

(iii) Detention of any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine the country of origin of any such good; and

(iv) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines that the enterprise has provided incorrect information as to the country of origin of any such good.

(3) *Actions following a verification.* On completion of a verification under this paragraph, CBP may take appropriate action, which may include:

(i) Denying the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made that is the subject of a verification if CBP determines there is insufficient information, or that the enterprise has provided incorrect information, to support the claim; and

(ii) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine, or that the enterprise has provided incorrect information as to, the country of origin of any such good.

(b) *Procedures to determine compliance with applicable customs laws and regulations of the United States*—(1) *General.* For purposes of enabling CBP to determine that an exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile and apparel goods, CBP may request that the government of Peru conduct a verification.

(2) *Actions during a verification.* While a verification under this paragraph is being conducted, CBP may take appropriate action, which may include:

(i) Suspending the application of preferential tariff treatment to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to support a claim for preferential tariff treatment with respect to any such good;

(ii) Denying the application of preferential tariff treatment to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines that the enterprise has provided incorrect information to support a claim for preferential tariff treatment with respect to any such good;

(iii) Detention of any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine the country of origin of any such good; and

(iv) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines that the enterprise has provided incorrect information as to the country of origin of any such good.

(3) *Actions following a verification.* On completion of a verification under this paragraph, CBP may take appropriate action, which may include:

(i) Denying the application of preferential tariff treatment to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information, or that the enterprise has provided incorrect information, to support a claim for preferential tariff treatment with respect to any such good; and

(ii) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine, or that the enterprise has provided incorrect information as to, the country of origin of any such good.

(c) *Denial of permission to conduct a verification.* If an enterprise does not consent to a verification under this section, CBP may deny preferential tariff treatment to the type of goods of the enterprise that would have been the subject of the verification.

(d) *Assistance by U.S. officials in conducting a verification abroad.* U.S. officials may undertake or assist in a verification under this section by conducting visits in the territory of Peru, along with the competent authorities of Peru, to the premises of an exporter, producer, or any other enterprise involved in the movement of textile or apparel goods from Peru to the United States.

(e) *Continuation of appropriate action.* CBP may continue to take appropriate action under paragraph (a) or (b) of this section until it receives information sufficient to enable it to make the determination described in paragraphs (a) and (b) of this section.

§ 10.928 Issuance of negative origin determinations.

If, as a result of an origin verification initiated under this subpart, CBP determines that a claim for preferential tariff treatment under this subpart should be denied, it will issue a determination in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates of the import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 32, HTSUS, and in §§10.913 through 10.925 of this subpart, the legal basis for the determination.

§ 10.929 Repeated false or unsupported preference claims.

Where verification or other information reveals a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the PTPA rules of origin set forth in General Note 32, HTSUS, CBP may suspend preferential tariff treatment under the PTPA to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until CBP determines that representations of that person are in conformity with General Note 32, HTSUS.

PENALTIES

§ 10.930 General.

Except as otherwise provided in this subpart, all criminal, civil, or administrative penalties which may be imposed on U.S. importers, exporters, and producers for violations of the customs and related laws and regulations will also apply to U.S. importers, exporters, and producers for violations of the laws and regulations relating to the PTPA.

§ 10.931 Corrected claim or certification by importers.

An importer who makes a corrected claim under §10.903(c) of this subpart will not be subject to civil or administrative penalties under 19 U.S.C. 1592

for having made an incorrect claim or having submitted an incorrect certification, provided that the corrected claim is promptly and voluntarily made.

§ 10.932 Corrected certification by U.S. exporters or producers.

Civil or administrative penalties provided for under 19 U.S.C. 1592 will not be imposed on an exporter or producer in the United States who promptly and voluntarily provides written notification pursuant to §10.909(b) with respect to the making of an incorrect certification.

§ 10.933 Framework for correcting claims or certifications.

(a) ''*Promptly and voluntarily'' defined.* Except as provided for in paragraph (b) of this section, for purposes of this subpart, the making of a corrected claim or certification by an importer or the providing of written notification of an incorrect certification by an exporter or producer in the United States will be deemed to have been done promptly and voluntarily if:

(1)(i) Done before the commencement of a formal investigation, within the meaning of §162.74(g) of this chapter; or

(ii) Done before any of the events specified in §162.74(i) of this chapter have occurred; or

(iii) Done within 30 days after the importer, exporter, or producer initially becomes aware that the claim or certification is incorrect; and

(2) Accompanied by a statement setting forth the information specified in paragraph (c) of this section; and

(3) In the case of a corrected claim or certification by an importer, accompanied or followed by a tender of any actual loss of duties and merchandise processing fees, if applicable, in accordance with paragraph (d) of this section.

(b) *Exception in cases involving fraud or subsequent incorrect claims*—(1) *Fraud.* Notwithstanding paragraph (a) of this section, a person who acted fraudulently in making an incorrect claim or certification may not make a voluntary correction of that claim or certification. For purposes of this paragraph, the term ''fraud'' will have the meaning set forth in paragraph (C)(3) of appendix B to part 171 of this chapter.

(2) *Subsequent incorrect claims.* An importer who makes one or more incorrect claims after becoming aware that a claim involving the same merchandise and circumstances is invalid may not make a voluntary correction of the subsequent claims pursuant to paragraph (a) of this section.

(c) *Statement.* For purposes of this subpart, each corrected claim or certification must be accompanied by a statement, submitted in writing or via an authorized electronic data interchange system, which:

(1) Identifies the class or kind of good to which the incorrect claim or certification relates;

(2) In the case of a corrected claim or certification by an importer, identifies each affected import transaction, including each port of importation and the approximate date of each importation;

(3) Specifies the nature of the incorrect statements or omissions regarding the claim or certification; and

(4) Sets forth, to the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the claim or certification, and states that the person will provide any additional information or data which is unknown at the time of making the corrected claim or certification within 30 days or within any extension of that 30-day period as CBP may permit in order for the person to obtain the information or data.

(d) *Tender of actual loss of duties.* A U.S. importer who makes a corrected claim must tender any actual loss of duties at the time of making the corrected claim, or within 30 days thereafter, or within any extension of that 30-day period as CBP may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

GOODS RETURNED AFTER REPAIR OR ALTERATION

§ 10.934 Goods re-entered after repair or alteration in Peru.

(a) *General.* This section sets forth the rules which apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in

Peru as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Peru, whether or not pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, ''repairs or alterations'' means restoration, addition, renovation, re-dyeing, cleaning, re-sterilizing, or other treatment that does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

(b) *Goods not eligible for duty-free treatment after repair or alteration.* The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to Peru, are incomplete for their intended use and for which the processing operation performed in Peru constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

(c) *Documentation.* The provisions of paragraphs (a), (b), and (c) of §10.8 of this part, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Peru after having been exported for repairs or alterations and which are claimed to be duty free.

Subpart R—United States-Korea Free Trade Agreement

SOURCE: 77 FR 15948, Mar. 19, 2012, unless otherwise noted.

GENERAL PROVISIONS

§ 10.1001 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported and exported goods under the United States-Korea Free Trade Agreement (the UKFTA) signed on June 30, 2007, and under the United States-Korea Free Trade Agreement Implementation Act (the Act; Pub. L. 112–41, 125 Stat. 428 (19 U.S.C. 3805 note)). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the UKFTA and the Act are contained in parts 24, 162, and 163 of this chapter.

§ 10.1002 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Claim for preferential tariff treatment.* ''*Claim for preferential tariff treatment*'' means a claim that a good is entitled to the duty rate applicable under the UKFTA to an originating good and to an exemption from the merchandise processing fee;

(b) *Claim of origin.* ''*Claim of origin*'' means a claim that a textile or apparel good is an originating good or satisfies the non-preferential rules of origin of a Party;

(c) *Customs duty.* ''*Customs duty*'' includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, such as an adjustment tariff imposed pursuant to Article 69 of Korea's *Customs Act*, but does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994, in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty that is applied pursuant to a Party's law; or

(3) Fee or other charge in connection with importation commensurate with the cost of services rendered.

(d) *Customs Valuation Agreement.* ''*Customs Valuation Agreement*'' means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the WTO Agreement;

(e) *Days*. ''*Days*'' means calendar days;

(f) *Enterprise*. ''*Enterprise*'' means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally-owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association, or similar organization;

(g) *Enterprise of a Party*. ''*Enterprise of a Party*'' means an enterprise constituted or organized under a Party's law;

(h) *GATT 1994*. ''*GATT 1994*'' means the *General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the WTO Agreement;

(i) *Goods of a Party*. ''*Goods of a Party*'' means domestic products as these are understood in GATT 1994 or such goods as the Parties may agree, and includes originating goods of that Party;

(j) *Harmonized System*. ''*Harmonized System*'' means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(k) *Heading*. ''*Heading*'' means the first four digits in the tariff classification number under the Harmonized System;

(l) *HTSUS*. ''*HTSUS*'' means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(m) *Identical goods*. ''*Identical goods*'' means goods that are the same in all respects relevant to the rule of origin that qualifies the goods as originating;

(n) *Indirect material*. ''*Indirect material*'' means a good used in the production, testing, or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, including:

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment or buildings;

(4) Lubricants, greases, compounding materials, and other materials used in production or used to operate equipment or buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the good;

(7) Catalysts and solvents; and

(8) Any other goods that are not incorporated into the other good but the use of which in the production of the other good can reasonably be demonstrated to be a part of that production;

(o) *Korea*. ''*Korea*'' means the Republic of Korea.

(p) *Originating*. ''*Originating*'' means qualifying for preferential tariff treatment under the rules of origin set out in Chapter Four (Textiles and Apparel) or Chapter Six (Rules of Origin and Origin Procedures) of the UKFTA and General Note 33, HTSUS;

(q) *Party*. ''*Party*'' means the United States or the Republic of Korea;

(r) *Person*. ''*Person*'' means a natural person or an enterprise;

(s) *Person of a Party*. ''*Person of a Party*'' means a national or an enterprise of a Party;

(t) *Preferential tariff treatment*. ''*Preferential tariff treatment*'' means the duty rate applicable under the UKFTA to an originating good, and an exemption from the merchandise processing fee;

(u) *Subheading*. ''*Subheading*'' means the first six digits in the tariff classification number under the Harmonized System;

(v) *Textile or apparel good*. ''*Textile or apparel good*'' means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as ''the ATC'');

(w) *Territory*. ''*Territory*'' means:

(1) With respect to Korea, the land, maritime, and air space over which Korea exercises sovereignty, and those maritime areas, including the seabed and subsoil adjacent to and beyond the outer limit of the territorial seas over which it may exercise sovereign rights or jurisdiction in accordance with international law and its domestic law; and

(2) With respect to the United States,

(i) The customs territory of the United States, which includes the 50

states, the District of Columbia, and Puerto Rico;

(ii) The foreign trade zones located in the United States and Puerto Rico; and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise sovereign rights with respect to the seabed and subsoil and their natural resources;

(x) *WTO*. ''*WTO*'' means the World Trade Organization; and

(y) *WTO Agreement*. ''*WTO Agreement*'' means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

IMPORT REQUIREMENTS

§ 10.1003 Filing of claim for preferential tariff treatment upon importation.

(a) *Basis of claim*. An importer may make a claim for UKFTA preferential tariff treatment, including an exemption from the merchandise processing fee, based on either:

(1) A written or electronic certification, as specified in §10.1004 of this subpart, that is prepared by the importer, exporter, or producer of the good; or

(2) The importer's knowledge that the good is an originating good, including reasonable reliance on information in the importer's possession that the good is an originating good.

(b) *Making a claim*. The claim is made by including on the entry summary, or equivalent documentation, the letters ''KR'' as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.

(c) *Corrected claim*. If, after making the claim specified in paragraph (b) of this section, the importer has reason to believe that the claim is based on inaccurate information or is otherwise invalid, the importer must, within 30 calendar days after the date of discovery of the error, correct the claim and pay any duties that may be due. The importer must submit a statement either in writing or via an authorized electronic data interchange system to the CBP office where the original claim was filed specifying the correction (*see* §§10.1031 and 10.1033 of this subpart).

§ 10.1004 Certification.

(a) *General*. An importer who makes a claim pursuant to §10.1003(b) of this subpart based on a certification by the importer, exporter, or producer that the good is originating must submit, at the request of the Center director, a copy of the certification. The certification:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must be in the possession of the importer at the time the claim for preferential tariff treatment is made if the certification forms the basis for the claim;

(3) Must include the following information:

(i) The legal name, address, telephone, and email address (if any) of the importer of record of the good (if known), the exporter of the good (if different from the producer), and the producer of the good (if known);

(ii) The legal name, address, telephone, and email address (if any) of the responsible official or authorized agent of the importer, exporter, or producer signing the certification (if different from the information required by paragraph (a)(3)(i) of this section);

(iii) A description of the good for which preferential tariff treatment is claimed, which must be sufficiently detailed to relate it to the invoice and the HS nomenclature;

(iv) The HTSUS tariff classification, to six or more digits, as necessary for the specific change in tariff classification rule for the good set forth in General Note 33(o), HTSUS; and

(v) The applicable rule of origin set forth in General Note 33, HTSUS, under which the good qualifies as an originating good;

(vi) Date of certification;

(vii) In case of a blanket certification issued with respect to the multiple shipments of identical goods within any period specified in the written or electronic certification, not exceeding

12 months from the date of certification, the period that the certification covers; and

(4) Must include a statement, in substantially the following form:

''I certify that:
The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;
I agree to maintain and present upon request, documentation necessary to support these representations;
The goods comply with all requirements for preferential tariff treatment specified for those goods in the United States-Korea Free Trade Agreement; and
This document consists of ____ pages, including all attachments.''

(b) *Responsible official or agent.* The certification provided for in paragraph (a) of this section must be signed and dated by a responsible official of the importer, exporter, or producer, or by the importer's, exporter's, or producer's authorized agent having knowledge of the relevant facts.

(c) *Language.* The certification provided for in paragraph (a) of this section must be completed in either the English or Korean language. In the latter case, the Center director may require the importer to submit an English translation of the certification.

(d) *Certification by the exporter or producer.* (1) A certification may be prepared by the exporter or producer of the good on the basis of:

(i) The exporter's or producer's knowledge that the good is originating; or

(ii) In the case of an exporter, reasonable reliance on the producer's written or electronic certification that the good is originating.

(2) The Center director may not require an exporter or producer to provide a written or electronic certification to another person.

(e) *Applicability of certification.* The certification provided for in paragraph (a) of this section may be applicable to:

(1) A single shipment of a good into the United States; or

(2) Multiple shipments of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the certification.

(f) *Validity of certification.* A certification that is properly completed, signed, and dated in accordance with the requirements of this section will be accepted as valid for four years following the date on which it was issued.

§ 10.1005 Importer obligations.

(a) *General.* An importer who makes a claim for preferential tariff treatment under § 10.1003(b) of this subpart:

(1) Will be deemed to have certified that the good is eligible for preferential tariff treatment under the UKFTA;

(2) Is responsible for the truthfulness of the claim and of all the information and data contained in the certification provided for in § 10.1004 of this subpart; and

(3) Is responsible for submitting any supporting documents requested by CBP, and for the truthfulness of the information contained in those documents. When a certification prepared by an exporter or producer forms the basis of a claim for preferential tariff treatment, and CBP requests the submission of supporting documents, the importer will provide to CBP, or arrange for the direct submission by the exporter or producer of, all information relied on by the exporter or producer in preparing the certification.

(b) *Information provided by exporter or producer.* The fact that the importer has made a claim or submitted a certification based on information provided by an exporter or producer will not relieve the importer of the responsibility referred to in paragraph (a) of this section.

(c) *Exemption from penalties.* An importer will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for making an incorrect claim for preferential tariff treatment or submitting an incorrect certification, provided that the importer promptly and voluntarily corrects the claim or certification and pays any duty owing (*see* §§ 10.1031 and 10.1033 of this subpart).

§ 10.1006 Certification not required.

(a) *General.* Except as otherwise provided in paragraph (b) of this section,

an importer will not be required to submit a copy of a certification under §10.1004 of this subpart for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the originating goods does not exceed U.S. $2,500.

(b) *Exception.* If the Center director determines that an importation described in paragraph (a) of this section is part of a series of importations carried out or planned for the purpose of evading compliance with the certification requirements of §10.1004 of this subpart, the Center director will notify the importer that for that importation the importer must submit a copy of the certification. The importer must submit such a copy within 30 days from the date of the notice. Failure to timely submit a copy of the certification will result in denial of the claim for preferential tariff treatment.

[77 FR 15948, Mar. 19, 2012, as amended by CBP Dec. 16–26, 81 FR 93014, Dec. 20, 2016]

§ 10.1007 Maintenance of records.

(a) *General.* An importer claiming preferential tariff treatment for a good (based on either the importer's certification or its knowledge, or on the certification issued by the exporter or producer) imported into the United States under §10.1003(b) of this subpart must maintain for a minimum of five years from the date of importation of the good, all records and documents that the importer has demonstrating that the good qualifies for preferential tariff treatment under the UKFTA. These records are in addition to any other records that the importer is required to prepare, maintain, or make available to CBP under part 163 of this chapter.

(b) *Method of maintenance.* The records and documents referred to in paragraph (a) of this section must be maintained by importers as provided in §163.5 of this chapter.

§ 10.1008 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *General.* If the importer fails to comply with any requirement under this subpart, including submission of a complete certification prepared in accordance with §10.1004 of this subpart, when requested, the Center director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the Center director nevertheless may deny preferential tariff treatment to an originating good if the good is shipped through or transshipped in a country other than a Party to the UKFTA, and the importer of the good does not provide, at the request of the Center director, evidence demonstrating to the satisfaction of the Center director that the conditions set forth in §10.1025(a) of this subpart were met.

Export Requirements

§ 10.1009 Certification for goods exported to Korea.

(a) *Submission of certification to CBP.* Any person who completes and issues a certification for a good exported from the United States to Korea must provide a copy of the certification (written or electronic) to CBP upon request.

(b) *Notification of errors in certification.* Any person who completes and issues a certification for a good exported from the United States to Korea and who has reason to believe that the certification contains or is based on incorrect information must promptly notify every person to whom the certification was provided of any change that could affect the accuracy or validity of the certification. Notification of an incorrect certification must also be given either in writing or via an authorized electronic data interchange system to CBP specifying the correction (*see* §§10.1032 and 10.1033 of this subpart).

(c) *Maintenance of records*—(1) *General.* Any person who completes and issues a certification for a good exported from the United States to Korea must maintain, for a period of at least five years after the date the certification was issued, all records and supporting documents relating to the origin of a good for which the certification was issued, including the certification or copies thereof and records and documents associated with:

(i) The purchase, cost, and value of, and payment for, the good;

(ii) The purchase, cost, and value of, and payment for, all materials, including indirect materials, used in the production of the good; and

(iii) The production of the good in the form in which the good was exported.

(2) *Method of maintenance.* The records referred to in paragraph (c)(1) of this section must be maintained as provided in §163.5 of this chapter.

(3) *Availability of records.* For purposes of determining compliance with the provisions of this part, the records required to be maintained under this section must be stored and made available for examination and inspection by the Center director or other appropriate CBP officer in the same manner as provided in part 163 of this chapter.

[77 FR 15948, Mar. 19, 2012, as amended at 78 FR 32358, May 30, 2013]

POST-IMPORTATION DUTY REFUND CLAIMS

§10.1010 Right to make post-importation claim and refund duties.

Notwithstanding any other available remedy, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment was made, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in §10.1011 of this subpart. Subject to the provisions of §10.1008 of this subpart, CBP may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with §10.1012(c) of this subpart.

§10.1011 Filing procedures.

(a) *Place of filing.* A post-importation claim for a refund must be filed with CBP, either at the port of entry or electronically.

(b) *Contents of claim.* A post-importation claim for a refund must be filed by presentation of the following:

(1) A written or electronic declaration or statement stating that the good was an originating good at the time of importation and setting forth the number and date of the entry or entries covering the good;

(2) A copy of a written or electronic certification prepared in accordance with §10.1004 of this subpart if a certification forms the basis for the claim, or other information demonstrating that the good qualifies for preferential tariff treatment;

(3) A written statement indicating whether the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was so provided, the statement must identify each recipient by name, CBP identification number, and address and must specify the date on which the documentation was provided; and

(4) A written statement indicating whether or not any person has filed a protest relating to the good under any provision of law; and if any such protest has been filed, the statement must identify the protest by number and date.

§10.1012 CBP processing procedures.

(a) *Status determination.* After receipt of a post-importation claim made pursuant to §10.1011 of this subpart, the Center director will determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest or judicial review.* If the Center director determines that any protest relating to the good has not been finally decided, the Center director will suspend action on the claim filed under §10.1011 of this subpart until the decision on the protest becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the Center director will suspend action on the claim filed under §10.1011 of this subpart until judicial review has been completed.

(c) *Allowance of claim*—(1) *Unliquidated entry.* If the Center director determines that a claim for a refund filed under §10.1011 of this subpart should be allowed and the entry covering the good has not been liquidated, the Center director will take into account the

claim for refund in connection with the liquidation of the entry.

(2) *Liquidated entry*. If the Center director determines that a claim for a refund filed under § 10.1011 of this subpart should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties under this section. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, the Center director will reliquidate the entry taking into account the claim for refund under § 10.1011 of this subpart.

(d) *Denial of claim*—(1) *General*. The Center director may deny a claim for a refund filed under § 10.1011 of this subpart if the claim was not filed timely, if the importer has not complied with the requirements of §§ 10.1008 and 10.1011 of this subpart, or if, following an origin verification under § 10.1026 of this subpart, the Center director determines either that the imported good was not an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under § 10.1026 of this subpart.

(2) *Unliquidated entry*. If the Center director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the Center director will deny the claim in connection with the liquidation of the entry, and notice of the denial and the reason for the denial will be provided to the importer in writing or via an authorized electronic data interchange system.

(3) *Liquidated entry*. If the Center director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the Center director will provide notice of the denial and the reason for the denial to the importer in writing or via an authorized electronic data interchange system.

RULES OF ORIGIN

§ 10.1013 Definitions.

For purposes of §§ 10.1013 through 10.1025:

(a) *Adjusted value*. ''*Adjusted value*'' means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude:

(1) Any costs, charges, or expenses incurred for transportation, insurance and related services incident to the international shipment of the good from the country of exportation to the place of importation; and

(2) The value of packing materials and containers for shipment as defined in paragraph (m) of this section;

(b) *Class of motor vehicles*. ''*Class of motor vehicles*'' means any one of the following categories of motor vehicles:

(1) Motor vehicles classified under subheading 8701.20, HTSUS, motor vehicles for the transport of 16 or more persons classified under subheading 8702.10 or 8702.90, HTSUS, and motor vehicles classified under subheading 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 87.05 or 87.06, HTSUS;

(2) Motor vehicles classified under subheading 8701.10 or subheading 8701.30 through 8701.90, HTSUS;

(3) Motor vehicles for the transport of 15 or fewer persons classified under subheading 8702.10 or 8702.90, HTSUS and motor vehicles classified under subheading 8704.21 or 8704.31, HTSUS; or

(4) Motor vehicles classified under subheading 8703.21 through 8703.90, HTSUS;

(c) *Exporter*. ''*Exporter*'' means a person who exports goods from the territory of a Party;

(d) *Fungible goods or materials*. ''*Fungible goods or materials*'' means goods or materials that are interchangeable with another good or material for commercial purposes and the properties of which are essentially

identical to such other good or material;

(e) *Generally Accepted Accounting Principles.* ''*Generally Accepted Accounting Principles*'' means the recognized consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These principles may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;

(f) *Good.* ''*Good*'' means any merchandise, product, article, or material;

(g) *Goods wholly obtained or produced entirely in the territory of one or more of the Parties.* ''*Goods wholly obtained or produced entirely in the territory of one or both of the Parties*'' means:

(1) Plants and plant products grown, and harvested or gathered, in the territory of one or both of the Parties;

(2) Live animals born and raised in the territory of one or both of the Parties;

(3) Goods obtained in the territory of one or both of the Parties from live animals;

(4) Goods obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of one or both of the Parties;

(5) Minerals and other natural resources not included in paragraphs (g)(1) through (g)(4) extracted or taken from the territory of one or both of the Parties;

(6) Fish, shellfish, and other marine life taken from the sea, seabed, or subsoil outside the territory of the Parties by:

(i) A vessel that is registered or recorded with Korea and flying the flag of Korea; or

(ii) A vessel that is documented under the laws of the United States;

(7) Goods produced on board factory ships from the goods referred to in paragraph (g)(6), if such factory ship:

(i) Is registered or recorded with Korea and flies the flag of Korea; or

(ii) Is a vessel that is documented under the laws of the United States;

(8) Goods taken by a Party or a person of a Party from the seabed or subsoil outside the territory of one or both of the Parties, provided that Party has rights to exploit such seabed or subsoil;

(9) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(10) Waste and scrap derived from:

(i) Manufacturing or processing operations in the territory of one or both of the Parties; or

(ii) Used goods collected in the territory of one or both of the Parties, provided such goods are fit only for the recovery of raw materials;

(11) Recovered goods derived in the territory of one or both of the Parties from used goods, and used in the territory of one or both of the Parties in the production of remanufactured goods; and

(12) Goods produced in the territory of one or both of the Parties exclusively from goods referred to in paragraphs (g)(1) through (g)(10) of this section, or from their derivatives, at any stage of production;

(h) *Material.* ''*Material*'' means a good that is used in the production of another good, including a part or an ingredient;

(i) *Model line.* ''*Model line*'' means a group of motor vehicles having the same platform or model name;

(j) *Net cost.* ''*Net cost*'' means total cost minus sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost;

(k) *Non-allowable interest costs.* ''*Non-allowable interest costs*'' means interest costs incurred by a producer that exceed 700 basis points above the applicable official interest rate on debt obligations of comparable maturities issued by the central level of government of the Party in which the producer is located;

(l) *Non-originating good or non-originating material.* ''*Non-originating good*'' or ''*non-originating material*'' means a good or material, as the case may be, that does not qualify as originating under General Note 33, HTSUS, or this subpart;

(m) *Packing materials and containers for shipment.* ''*Packing materials and containers for shipment*'' means the goods used to protect a good during its

transportation to the United States and does not include the packaging materials and containers in which a good is packaged for retail sale;

(n) *Producer*. ''*Producer*'' means a person who engages in the production of a good in the territory of a Party;

(o) *Production*. ''*Production*'' means growing, mining, harvesting, fishing, breeding, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good;

(p) *Reasonably allocate*. ''*Reasonably allocate*'' means to apportion in a manner that would be appropriate under Generally Accepted Accounting Principles;

(q) *Reasonable suspicion of unlawful activity*. ''*Reasonable suspicion of unlawful activity*'' means a suspicion based on relevant factual information obtained from public or private sources comprising one or more of the following:

(1) Historical evidence of non-compliance with laws or regulations governing importations by an importer or exporter;

(2) Historical evidence of non-compliance with laws or regulations governing importations by a manufacturer, producer, or other person involved in the movement of goods from the territory of one Party to the territory of the other Party;

(3) Historical evidence that some or all of the persons involved in the movement from the territory of one Party to the territory of the other Party of goods within a specific product sector have not complied with a Party's laws and regulations governing importations; or

(4) Other information that the requesting Party and the Party from whom the information is requested agree is sufficient in the context of a particular request;

(r) *Recovered goods*. ''*Recovered goods*'' means materials in the form of individual parts that are the result of:

(1) The disassembly of used goods into individual parts; and

(2) The cleaning, inspecting, testing, or other processing that is necessary to improve such individual parts to sound working condition;

(s) *Remanufactured goods*. ''*Remanufactured goods*'' means goods classified in Chapter 84, 85, 87, or 90, or under heading 9402, HTSUS, that:

(1) Are entirely or partially comprised of recovered goods as defined in §10.1013(r) and,

(2) Have a similar life expectancy and enjoy a factory warranty similar to such new goods;

(t) *Royalties*. ''*Royalties*'' means payments of any kind, including payments under technical assistance agreements or similar agreements, made as consideration for the use of, or right to use, any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance agreements or similar agreements that can be related to specific services such as:

(1) Personnel training, without regard to where performed; and

(2) If performed in the territory of one or both of the Parties, engineering, tooling, die-setting, software design and similar computer services;

(u) *Sales promotion, marketing, and after-sales service costs*. ''*Sales promotion, marketing, and after-sales service costs*'' means the following costs related to sales promotion, marketing, and after-sales service:

(1) Sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing, and after-sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;

(2) Sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;

(3) Salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, pension), traveling and living expenses, membership and professional fees, for sales promotion, marketing, and after-sales service personnel;

(4) Recruiting and training of sales promotion, marketing, and after-sales

service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(5) Product liability insurance;

(6) Office supplies for sales promotion, marketing, and after-sales service of goods, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(7) Telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(8) Rent and depreciation of sales promotion, marketing, and after-sales service offices and distribution centers;

(9) Property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing, and after-sales service offices and distribution centers, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer; and

(10) Payments by the producer to other persons for warranty repairs;

(v) *Self-produced material.* ''*Self-produced material*'' means an originating material that is produced by a producer of a good and used in the production of that good;

(w) *Shipping and packing costs.* ''*Shipping and packing costs*'' means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, excluding the costs of preparing and packaging the good for retail sale;

(x) *Total cost.* ''*Total cost*'' means all product costs, period costs, and other costs for a good incurred in the territory of one or both of the Parties. Product costs are costs that are associated with the production of a good and include the value of materials, direct labor costs, and direct overhead. Period costs are costs, other than product costs, that are expensed in the period in which they are incurred, such as selling expenses and general and administrative expenses. Other costs are all costs recorded on the books of the producer that are not product costs or period costs, such as interest. Total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

(y) *Used.* ''*Used*'' means utilized or consumed in the production of goods; and

(z) *Value.* ''*Value*'' means the value of a good or material for purposes of calculating customs duties or for purposes of applying this subpart.

§ 10.1014 Originating goods.

Except as otherwise provided in this subpart and General Note 33(n), HTSUS, a good imported into the customs territory of the United States will be considered an originating good under the UKFTA only if:

(a) The good is wholly obtained or produced entirely in the territory of one or both of the Parties;

(b) The good is produced entirely in the territory of one or both of the Parties and:

(1) Each non-originating material used in the production of the good undergoes an applicable change in tariff classification specified in General Note 33(o), HTSUS, and the good satisfies all other applicable requirements of General Note 33, HTSUS; or

(2) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 33(o), HTSUS, and satisfies all other applicable requirements of General Note 33, HTSUS; or

(c) The good is produced entirely in the territory of one or both of the Parties exclusively from originating materials.

§ 10.1015 Regional value content.

(a) *General.* Except for goods to which paragraph (d) of this section applies, where General Note 33, HTSUS, sets forth a rule that specifies a regional value content test for a good, the regional value content of such good must be calculated by the importer, exporter, or producer of the good on the

basis of the build-down method described in paragraph (b) of this section or the build-up method described in paragraph (c) of this section.

(b) *Build-down method.* Under the build-down method, the regional value content must be calculated on the basis of the formula RVC = ((AV − VNM)/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VNM is the value of non-originating materials, other than indirect materials, that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced.

(c) *Build-up method.* Under the build-up method, the regional value content must be calculated on the basis of the formula RVC = (VOM/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VOM is the value of originating materials, other than indirect materials, that are acquired or self-produced and used by the producer in the production of the good.

(d) *Special rule for certain automotive goods*—(1) *General.* Where General Note 33, HTSUS, sets forth a rule that specifies a regional value content test for an automotive good provided for in any of subheadings 8407.31 through 8407.34 (engines), subheading 8408.20 (diesel engine for vehicles), heading 8409 (parts of engines), headings 8701 through 8705 (motor vehicles), and headings 8706 (chassis), 8707 (bodies), and 8708 (motor vehicle parts), HTSUS, the regional value content of such good may be calculated by the importer, exporter, or producer of the good on the basis of the net cost method described in paragraph (d)(2) of this section.

(2) *Net cost method.* Under the net cost method, the regional value content is calculated on the basis of the formula RVC = ((NC − VNM)/NC) × 100, where RVC is the regional value content, expressed as a percentage; NC is the net cost of the good; and VNM is the value of non-originating materials, other than indirect materials, that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced. Consistent with the provisions set out in Generally Accepted Accounting Principles, applicable in the territory of the Party where the good is produced, the net cost of the good must be determined by:

(i) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, subtracting any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost of all such goods, and then reasonably allocating the resulting net cost of those goods to the automotive good;

(ii) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, reasonably allocating the total cost to the automotive good, and then subtracting any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the portion of the total cost allocated to the automotive good; or

(iii) Reasonably allocating each cost that forms part of the total costs incurred with respect to the automotive good so that the aggregate of these costs does not include any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, or non-allowable interest costs.

(3) *Motor vehicles*—(i) *General.* For purposes of calculating the regional value content under the net cost method for an automotive good that is a motor vehicle provided for in any of headings 8701 through 8705, an importer, exporter, or producer may average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over the producer's fiscal year using any one of the categories described in paragraph (d)(3)(ii) of this section either on the basis of all motor vehicles in the category or those motor vehicles in the category that are exported to the territory of one or both Parties.

(ii) *Categories.* The categories referred to in paragraph (d)(3)(i) of this section are as follows:

(A) The same model line of motor vehicles, in the same class of vehicles, produced in the same plant in the territory of a Party, as the motor vehicle for which the regional value content is being calculated;

(B) The same class of motor vehicles, and produced in the same plant in the territory of a Party, as the motor vehicle for which the regional value content is being calculated; and

(C) The same model line of motor vehicles produced in the territory of a Party as the motor vehicle for which the regional value content is being calculated.

(4) *Other automotive goods*—(i) *General.* For purposes of calculating the regional value content under the net cost method for automotive goods provided for in any of subheadings 8407.31 through 8407.34, subheading 8408.20, heading 8409, 8706, 8707, or 8708, HTSUS, that are produced in the same plant, an importer, exporter, or producer may:

(A) Average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over any of the following: the fiscal year, or any quarter or month, of the motor vehicle producer to whom the automotive good is sold, or the fiscal year, or any quarter or month, of the producer of the automotive good, provided the goods were produced during the fiscal year, quarter, or month that is the basis for the calculation;

(B) Determine the average referred to in paragraph (d)(4)(i)(A) of this section separately for such goods sold to one or more motor vehicle producers; or

(C) Make a separate determination under paragraph (d)(4)(i)(A) or (B) of this section for automotive goods that are exported to the territory of Korea or the United States.

(ii) *Duration of use.* A person selecting an averaging period of one month or quarter under paragraph (d)(4)(i)(A) of this section must continue to use that method for that category of automotive goods throughout the fiscal year.

§ 10.1016 Value of materials.

(a) *Calculating the value of materials.* Except as provided in § 10.1024 of this subpart, for purposes of calculating the regional value content of a good under General Note 33 HTSUS, and for purposes of applying the *de minimis* (*see* § 10.1018 of this subpart) provisions of General Note 33, HTSUS, the value of a material is:

(1) In the case of a material imported by the producer of the good, the adjusted value of the material;

(2) In the case of a material acquired by the producer in the territory where the good is produced, the value, determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, of the material, i.e., in the same manner as for imported goods, with reasonable modifications to the provisions of the Customs Valuation Agreement as may be required due to the absence of an importation by the producer (including, but not limited to, treating a domestic purchase by the producer as if it were a sale for export to the country of importation); or

(3) In the case of a self-produced material, the sum of:

(i) All the costs incurred in the production of the material, including general expenses; and

(ii) An amount for profit equivalent to the profit added in the normal course of trade.

(b) *Examples.* The following examples illustrate application of the principles set forth in paragraph (a)(2) of this section:

Example 1. A producer in Korea purchases material x from an unrelated seller in Korea for $100. Under the provisions of Article 1 of the Customs Valuation Agreement, transaction value is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8. In order to apply Article 1 to this domestic purchase by the producer, such purchase is treated as if it were a sale for export to the country of importation. Therefore, for purposes of determining the adjusted value of material x, Article 1 transaction value is the price actually paid or payable for the goods when sold to the producer in Korea ($100), adjusted in accordance with the provisions of Article 8. In this example, it is irrelevant whether material x was initially imported into Korea by the seller (or by anyone else). So long as the producer acquired material x in Korea, it is intended that the value of material x will be determined on the basis of

the price actually paid or payable by the producer adjusted in accordance with the provisions of Article 8.

Example 2. Same facts as in Example 1, except that the sale between the seller and the producer is subject to certain restrictions that preclude the application of Article 1. Under Article 2 of the Customs Valuation Agreement, the value is the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued. In order to permit the application of Article 2 to the domestic acquisition by the producer, it should be modified so that the value is the transaction value of identical goods sold within Korea at or about the same time the goods were sold to the producer in Korea. Thus, if the seller of material x also sold an identical material to another buyer in Korea without restrictions, that other sale would be used to determine the adjusted value of material x.

(c) *Permissible additions to, and deductions from, the value of materials*—(1) *Additions to originating materials.* For originating materials, the following expenses, if not included under paragraph (a) of this section, may be added to the value of the originating material:

(i) The costs of freight (''cost of freight'' includes the costs of all types of freight, including in-land freight incurred within a Party's territory, regardless of the mode of transportation), insurance, packing, and all other costs incurred in transporting the material within a Party's territory or between the Parties to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable; and

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproducts.

(2) *Deductions from non-originating materials.* For non-originating materials, if included under paragraph (a) of this section, the following expenses may be deducted from the value of the non-originating material:

(i) The costs of freight (''cost of freight'' includes the costs of all types of freight, including in-land freight incurred within a Party's territory, regardless of the mode of transportation), insurance, packing, and all other costs incurred in transporting the material within a Party's territory or between the territories of the Parties to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable;

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products; and

(iv) The cost of originating materials used in the production of the non-originating material in the territory of a Party.

(d) *Accounting method.* Any cost or value referenced in General Note 33, HTSUS, and this subpart, must be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

§ 10.1017 Accumulation.

(a) Originating goods or materials from the territory of one Party, incorporated into a good in the territory of the other Party will be considered to originate in the territory of that other Party.

(b) A good that is produced in the territory of one or both of the Parties by one or more producers is an originating good if the good satisfies the requirements of § 10.1014 of this subpart and all other applicable requirements of General Note 33, HTSUS.

§ 10.1018 De minimis.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, a good that does not undergo a change in tariff classification pursuant to General Note 33, HTSUS, is an originating good if:

(1) The value of all non-originating materials used in the production of the good that do not undergo the applicable change in tariff classification does

not exceed 10 percent of the adjusted value of the good;

(2) The value of the non-originating materials described in paragraph (a)(1) of this section is included in the value of non-originating materials for any applicable regional value content requirement for the good under General Note 33, HTSUS; and

(3) The good meets all other applicable requirements of General Note 33, HTSUS.

(b) *Exceptions.* Paragraph (a) of this section does not apply to:

(1) A non-originating material provided for in Chapter 3, HTSUS, that is used in the production of a good classified in that Chapter;

(2) A non-originating material provided for in Chapter 4, HTSUS, or a non-originating dairy preparation containing over 10 percent by weight of milk solids classified under subheadings 1901.90 or 2106.90, HTSUS, that is used in the production of a good provided for in Chapter 4, HTSUS;

(3) A non-originating material provided for in Chapter 4, HTSUS, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90, HTSUS, which is used in the production of the following goods:

(i) Infant preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.10, HTSUS;

(ii) Mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20, HTSUS;

(iii) Dairy preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90, HTSUS;

(iv) Goods provided for in heading 2105, HTSUS;

(v) Beverages containing milk provided for in subheading 2202.90, HTSUS; or

(vi) Animal feeds containing over 10 percent by weight of milk solids provided for in subheading 2309.90, HTSUS;

(4) A non-originating material provided for in Chapter 7, HTSUS that is used in the production of a good classified under the following subheadings: 0703.10, 0703.20, 0709.59, 0709.60, 0710.21 through 0710.80, 0711.90, 0712.20, 0712.39 through 0713.10 or 0714.20, HTSUS;

(5) A non-originating material provided for in heading 1006, HTSUS, or a non-originating rice product classified in Chapter 11, HTSUS that is used in the production of a good provided for under the headings 1006, 1102, 1103, 1104, HTSUS, or subheadings 1901.20 or 1901.90, HTSUS;

(6) A non-originating material provided for in heading 0805, HTSUS or subheadings 2009.11 through 2009.39, HTSUS, that is used in the production of a good provided for under subheadings 2009.11 through 2009.39, HTSUS, or in fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, provided for under subheadings 2106.90 or 2202.90, HTSUS;

(7) Non-originating peaches, pears, or apricots provided for in Chapters 8 or 20, HTSUS, that are used in the production of a good classified under heading 2008, HTSUS;

(8) A non-originating material provided for in Chapter 15, HTSUS, that is used in the production of a good classified under headings 1501 through 1508, 1512, 1514, or 1515, HTSUS;

(9) A non-originating material provided for in heading 1701, HTSUS, that is used in the production of a good provided for in any of headings 1701 through 1703, HTSUS;

(10) A non-originating material provided for in Chapter 17, HTSUS, that is used in the production of a good provided for in subheading 1806.10, HTSUS; or

(11) Except as provided in paragraphs (b)(1) through (10) of this section and General Note 33, HTSUS, a non-originating material used in the production of a good provided for in any of Chapters 1 through 24, HTSUS, unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this subpart.

(c) *Textile and apparel goods*—(1) *General.* Except as provided in paragraph (c)(2) of this section, a textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the

tariff classification of the good do not undergo an applicable change in tariff classification set out in General Note 33, HTSUS, will nevertheless be considered to be an originating good if the total weight of all such fibers or yarns in that component is not more than 7 percent of the total weight of that component.

(2) *Exception for goods containing elastomeric yarns.* A textile or apparel good containing elastomeric yarns in the component of the good that determines the tariff classification of the good will be considered an originating good only if such yarns are wholly formed and finished in the territory of a Party.

(3) For purposes of this section, ''*wholly formed or finished*'' means when used in reference to fabrics, all production processes and finishing operations necessary to produce a finished fabric ready for use without further processing. These processes and operations include formation processes, such as weaving, knitting, needling, tufting, felting, entangling, or other such processes, and finishing operations, including bleaching, dyeing, and printing. When used in reference to yarns, ''*wholly formed or finished*'' means all production processes and finishing operations, beginning with the extrusion of filaments, strips, film, or sheet, and including drawing to fully orient a filament or slitting a film or sheer into strip, or the spinning of all fibers into yarn, or both, and ending with a finished yarn or plied yarn.

§ 10.1019 Fungible goods and materials.

(a) *General.* A person claiming that a fungible good or material is an originating good may base the claim either on the physical segregation of each fungible good or material or by using an inventory management method with respect to the fungible good or material. For purposes of this section, the term ''*inventory management method*'' means:

(1) Averaging;

(2) ''Last-in, first-out;''

(3) ''First-in, first-out;'' or

(4) Any other method that is recognized in the Generally Accepted Accounting Principles of the Party in which the production is performed or otherwise accepted by that country.

(b) *Duration of use.* A person selecting an inventory management method under paragraph (a) of this section for a particular fungible good or material must continue to use that method for that fungible good or material throughout the fiscal year of that person.

§ 10.1020 Accessories, spare parts, or tools.

(a) *General.* Accessories, spare parts, or tools that are delivered with a good and that form part of the good's standard accessories, spare parts, or tools will be treated as originating goods if the good is an originating good, and will be disregarded in determining whether all the non-originating materials used in the production of the good undergo an applicable change in tariff classification specified in General Note 33, HTSUS, provided that:

(1) The accessories, spare parts, or tools are classified with, and not invoiced separately from, the good; and

(2) The quantities and value of the accessories, spare parts, or tools are customary for the good.

(b) *Regional value content.* If the good is subject to a regional value content requirement, the value of the accessories, spare parts, or tools is taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good under § 10.1015 of this subpart.

§ 10.1021 Goods classifiable as goods put up in sets.

Notwithstanding the specific rules set forth in General Note 33, HTSUS, goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be considered to be originating goods unless:

(a) Each of the goods in the set is an originating good; or

(b) The total value of the non-originating goods in the set does not exceed:

(1) In the case of textile or apparel goods, 10 percent of the adjusted value of the set; or

(2) In the case of a good other than a textile or apparel good, 15 percent of the adjusted value of the set.

§ 10.1022 Retail packaging materials and containers.

(a) *Effect on tariff shift rule.* Packaging materials and containers in which a good is packaged for retail sale, if classified with the good for which preferential tariff treatment under the UKFTA is claimed, will be disregarded in determining whether all non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in General Note 33, HTSUS.

(b) *Effect on regional value content calculation.* If the good is subject to a regional value content requirement, the value of such packaging materials and containers will be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Example 1. Korean Producer A of good C imports 100 non-originating blister packages to be used as retail packaging for good C. As provided in §10.1016(a)(1) of this subpart, the value of the blister packages is their adjusted value, which in this case is $10. Good C has a regional value content requirement. The United States importer of good C decides to use the build-down method, RVC = ((AV − VNM)/AV) × 100 (*see* §10.1015(b) of this subpart), in determining whether good C satisfies the regional value content requirement. In applying this method, the non-originating blister packages are taken into account as non-originating. As such, their $10 adjusted value is included in the VNM, value of non-originating materials, of good C.

Example 2. Same facts as in Example 1, except that the blister packages are originating. In this case, the adjusted value of the originating blister packages would *not* be included as part of the VNM of good C under the build-down method. However, if the U.S. importer had used the build-up method, RVC = (VOM/AV) × 100 (*see* §10.1015(c) of this subpart), the adjusted value of the blister packaging would be included as part of the VOM, value of originating materials.

§ 10.1023 Packing materials and containers for shipment.

(a) *Effect on tariff shift rule.* Packing materials and containers for shipment, as defined in §10.1013(m) of this subpart, are to be disregarded in determining whether the non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in General Note 33, HTSUS. Accordingly, such materials and containers are not required to undergo the applicable change in tariff classification even if they are non-originating.

(b) *Effect on regional value content calculation.* Packing materials and containers for shipment, as defined in §10.1013(m) of this subpart, are to be disregarded in determining the regional value content of a good imported into the United States. Accordingly, in applying the build-down, build-up, or net cost method for determining the regional value content of a good imported into the United States, the value of such packing materials and containers for shipment (whether originating or non-originating) is disregarded and not included in AV, adjusted value, VNM, value of non-originating materials, VOM, value of originating materials, or NC, net cost of a good.

Example. Korean producer A produces good C. Producer A ships good C to the United States in a shipping container that it purchased from Company B in Korea. The shipping container is originating. The value of the shipping container determined under §10.1016(a)(2) of this subpart is $3. Good C is subject to a regional value content requirement. The transaction value of good C is $100, which includes the $3 shipping container. The U.S. importer decides to use the build-up method, RVC = (VOM/AV) × 100 (*see* §10.1015(c) of this subpart), in determining whether good C satisfies the regional value content requirement. In determining the AV, adjusted value, of good C imported into the U.S., paragraph (b) of this section and the definition of AV require a $3 deduction for the value of the shipping container. Therefore, the AV is $97 ($100 − $3). In addition, the value of the shipping container is disregarded and not included in the VOM, value of originating materials.

§ 10.1024 Indirect materials.

An indirect material, as defined in §10.1002(n) of this subpart, will be disregarded for the purpose of determining whether a good is originating.

Example. Korean Producer A produces good C using non-originating material B. Producer A imports non-originating rubber gloves for use by workers in the production of good C. Good C is subject to a tariff shift requirement. As provided in §10.1014(b)(1) of

this subpart and General Note 33, each of the non-originating materials in good C must undergo the specified change in tariff classification in order for good C to be considered originating. Although non-originating material B must undergo the applicable tariff shift in order for good C to be considered originating, the rubber gloves do not because they are indirect materials and are disregarded for purposes of determining whether the good is originating.

§ 10.1025 Transit and transshipment.

(a) *General.* A good that has undergone production necessary to qualify as an originating good under § 10.1014 of this subpart will not be considered an originating good if, subsequent to that production, the good:

(1) Undergoes further production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party; or

(2) Does not remain under the control of customs authorities in the territory of a non-Party.

(b) *Documentary evidence.* An importer making a claim that a good is originating may be required to demonstrate, to CBP's satisfaction, that the conditions and requirements set forth in paragraph (a) of this section were met. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

ORIGIN VERIFICATIONS AND DETERMINATIONS

§ 10.1026 Verification and justification of claim for preferential tariff treatment.

(a) *Verification.* A claim for preferential tariff treatment made under § 10.1003(b) or § 10.1011 of this subpart, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the Center director deems necessary. In the event that the Center director is provided with insufficient information to verify or substantiate the claim, the Center director finds a pattern of conduct, indicating that an importer, exporter, or producer has provided false or unsupported declarations or certifications, or the exporter or producer fails to consent to a verification visit, the Center director may deny the claim for preferential treatment. A verification of a claim for preferential tariff treatment under UKFTA for goods imported into the United States may be conducted by means of one or more of the following:

(1) Written requests for information from the importer, exporter, or producer;

(2) Written questionnaires to the importer, exporter, or producer;

(3) Visits to the premises of the exporter or producer in the territory of Korea, to review the records of the type referred to in § 10.1009(c)(1) of this subpart or to observe the facilities used in the production of the good, in accordance with the framework that the Parties develop for conducting verifications; and

(4) Such other procedures to which the Parties may agree.

(b) *Applicable accounting principles.* When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

§ 10.1027 Special rule for verifications in Korea of U.S. imports of textile and apparel goods.

(a) *Procedures to determine whether a claim of origin is accurate*—(1) *General.* For the purpose of determining that a claim of origin for a textile or apparel good is accurate, CBP may request that the government of the Republic of Korea conduct a verification, regardless of whether a claim is made for preferential tariff treatment.

(2) *Actions during a verification.* While a verification under this paragraph is being conducted, CBP, if directed by the President, may take appropriate action, which may include suspending the liquidation of the entry of the textile or apparel good for which a claim for preferential tariff treatment or a claim of origin has been made.

(3) *Actions following a verification.* If on completion of a verification under this paragraph, CBP makes a negative determination, or if CBP is unable to determine that a claim of origin for a textile or apparel good is accurate within 12 months after its request for a verification, CBP, if directed by the President, may take appropriate action, which may include:

(i) Denying the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made that is the subject of a verification if CBP determines that the enterprise has provided insufficient or incorrect information to support the claim; and

(ii) Denying entry to the textile or apparel good for which a claim for preferential tariff treatment or a claim of origin has been made that is the subject of a verification, if CBP determines that the enterprise has provided insufficient or incorrect information to support the claim.

(b) *Procedures to determine compliance with applicable customs laws and regulations of the United States*—(1) *General.* For purposes of enabling CBP to determine that an exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile and apparel goods, CBP may request that the government of the Republic of Korea conduct a verification, if CBP has a reasonable suspicion of unlawful activity relating to trade in textile or apparel goods by a person of Korea.

(2) *Actions during a verification.* While a verification under this paragraph is being conducted, CBP, if directed by the President, may take appropriate action, which may include suspending the liquidation of the entry of any textile or apparel good exported or produced by the enterprise subject to the verification.

(3) *Actions following a verification.* If on completion of a verification under this paragraph, CBP makes a negative determination, or if CBP is unable to determine that the person is complying with applicable customs measures affecting trade in textile or apparel goods within 12 months after its request for a verification, CBP, if directed by the President, may take appropriate action, which may include:

(i) Denying the application of preferential tariff treatment to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines that the enterprise has provided insufficient or incorrect information with respect to its obligations under the applicable customs laws, regulations, and procedures regarding trade in textile and apparel goods; and

(ii) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification, if CBP determines that the enterprise has provided insufficient or incorrect information with respect to its obligations under the applicable customs laws, regulations, and procedures regarding trade in textile and apparel goods.

(c) *Action by U.S. officials in conducting a verification abroad.* U.S. officials may undertake or assist in a verification under this section by conducting visits in the territory of Korea, along with the competent authorities of Korea, to the premises of an exporter, producer, or any other enterprise involved in the movement of textile or apparel goods from Korea to the United States.

(d) *Denial of permission to conduct a verification.* If an enterprise does not consent to a verification under this section, CBP may deny preferential tariff treatment or deny entry to similar goods exported or produced by the enterprise that would have been the subject of the verification.

(e) *Continuation of appropriate action.* Before taking any action under paragraph (a) or (b), CBP will notify the government of the Republic of Korea. CBP may continue to take appropriate action under paragraph (a) or (b) of this section until it receives information sufficient to enable it to make the determination described in paragraphs (a) and (b) of this section. CBP may make public the identity of a person that CBP has determined to be engaged in circumvention as provided under

this section or that has failed to demonstrate that it produces, or is capable of producing, textile or apparel goods.

[77 FR 15948, Mar. 19, 2012, as amended at 78 FR 32358, May 30, 2013]

§ 10.1028 Issuance of negative origin determinations.

If, as a result of an origin verification initiated under this subpart, CBP determines that a claim for preferential tariff treatment under this subpart should be denied, it will issue a determination in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates of the import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 33, HTSUS, and in §§ 10.1013 through 10.1025 of this subpart, the legal basis for the determination.

§ 10.1029 Repeated false or unsupported preference claims.

Where verification or other information reveals a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the UKFTA rules of origin set forth in General Note 33, HTSUS, CBP may suspend preferential tariff treatment under the UKFTA to entries of identical goods covered by subsequent statements, declarations, or certifications by that importer, exporter, or producer until CBP determines that representations of that person are in conformity with General Note 33, HTSUS.

PENALTIES

§ 10.1030 General.

Except as otherwise provided in this subpart, all criminal, civil, or administrative penalties which may be imposed on U.S. importers, exporters, and producers for violations of the customs and related U.S. laws and regulations will also apply to U.S. importers, exporters, and producers for violations of the U.S. laws and regulations relating to the UKFTA.

§ 10.1031 Corrected claim or certification by importers.

An importer who makes a corrected claim under § 10.1003(c) of this subpart will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for having made an incorrect claim or having submitted an incorrect certification, provided that the corrected claim is promptly and voluntarily made.

§ 10.1032 Corrected certification by U.S. exporters or producers.

Civil or administrative penalties provided for under 19 U.S.C. 1592 will not be imposed on an exporter or producer in the United States who promptly and voluntarily provides written notification pursuant to § 10.1009(b) with respect to the making of an incorrect certification.

§ 10.1033 Framework for correcting claims or certifications.

(a) ''*Promptly and voluntarily'' defined.* Except as provided for in paragraph (b) of this section, for purposes of this subpart, the making of a corrected claim or certification by an importer or the providing of written notification of an incorrect certification by an exporter or producer in the United States will be deemed to have been done promptly and voluntarily if:

(1)(i) Done before the commencement of a formal investigation, within the meaning of § 162.74(g) of this chapter; or

(ii) Done before any of the events specified in § 162.74(i) of this chapter have occurred; or

(iii) Done within 30 days after the importer, exporter, or producer initially becomes aware that the claim or certification is incorrect; and

(2) Accompanied by a statement setting forth the information specified in paragraph (c) of this section; and

(3) In the case of a corrected claim or certification by an importer, accompanied or followed by a tender of any actual loss of duties and merchandise

processing fees, if applicable, in accordance with paragraph (d) of this section.

(b) *Exception in cases involving fraud or subsequent incorrect claims*—(1) *Fraud.* Notwithstanding paragraph (a) of this section, a person who acted fraudulently in making an incorrect claim or certification may not make a voluntary correction of that claim or certification. For purposes of this paragraph, the term ''fraud'' will have the meaning set forth in paragraph (C)(3) of appendix B to part 171 of this chapter.

(2) *Subsequent incorrect claims.* An importer who makes one or more incorrect claims after becoming aware that a claim involving the same merchandise and circumstances is invalid may not make a voluntary correction of the subsequent claims pursuant to paragraph (a) of this section.

(c) *Statement.* For purposes of this subpart, each corrected claim or certification must be accompanied by a statement, submitted in writing or via an authorized electronic data interchange system, which:

(1) Identifies the class or kind of good to which the incorrect claim or certification relates;

(2) In the case of a corrected claim or certification by an importer, identifies each affected import transaction, including each port of importation and the approximate date of each importation;

(3) Specifies the nature of the incorrect statements or omissions regarding the claim or certification; and

(4) Sets forth, to the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the claim or certification, and states that the person will provide any additional information or data which is unknown at the time of making the corrected claim or certification within 30 days or within any extension of that 30-day period as CBP may permit in order for the person to obtain the information or data.

(d) *Tender of actual loss of duties.* A U.S. importer who makes a corrected claim must tender any actual loss of duties at the time of making the corrected claim, or within 30 days thereafter, or within any extension of that 30-day period as CBP may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

GOODS RETURNED AFTER REPAIR OR ALTERATION

§ 10.1034 Goods re-entered after repair or alteration in Korea.

(a) *General.* This section sets forth the rules which apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Korea as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Korea, regardless of whether the repair or alteration could be performed in the United States or has increased the value of the good and regardless of their origin, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, ''repairs or alterations'' means restoration, addition, renovation, re-dyeing, cleaning, re-sterilizing, or other treatment that does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

(b) *Goods not eligible for duty-free treatment after repair or alteration.* The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to Korea, are incomplete for their intended use and for which the processing operation performed in Korea constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

(c) *Documentation.* The provisions of §10.8(a), (b), and (c) of this part, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Korea after having been exported for repairs or alterations and which are claimed to be duty free.

Subpart S—United States-Panama Trade Promotion Agreement

SOURCE: 78 FR 63056, Oct. 23, 2013, unless otherwise noted.

GENERAL PROVISIONS

§ 10.2001 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported and exported goods under the United States-Panama Trade Promotion Agreement (the PANTPA) signed on June 28, 2007, and under the United States-Panama Trade Promotion Agreement Implementation Act (''the Act''), Public Law 112–43, 125 Stat. 497 (19 U.S.C. 3805 note). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the PANTPA and the Act are contained in parts 24, 162, and 163 of this chapter.

§ 10.2002 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Claim for preferential tariff treatment*. ''Claim for preferential tariff treatment'' means a claim that a good is entitled to the duty rate applicable under the PANTPA to an originating good and to an exemption from the merchandise processing fee;

(b) *Claim of origin*. ''Claim of origin'' means a claim that a textile or apparel good is an originating good or satisfies the non-preferential rules of origin of a Party;

(c) *Customs authority*. ''Customs authority'' means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations;

(d) *Customs duty*. ''Customs duty'' includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994 in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty that is applied pursuant to a Party's domestic law; or

(3) Fee or other charge in connection with importation commensurate with the cost of services rendered;

(e) *Customs Valuation Agreement*. ''Customs Valuation Agreement'' means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the WTO Agreement;

(f) *Days*. ''Days'' means calendar days;

(g) *Enterprise*. ''Enterprise'' means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association;

(h) *Enterprise of a Party*. ''Enterprise of a Party'' means an enterprise constituted or organized under a Party's law;

(i) *Goods of a Party*. ''Goods of a Party'' means domestic products as these are understood in the GATT 1994 or such goods as the Parties may agree, and includes originating goods of that Party;

(j) *GATT 1994*. ''GATT 1994'' means the *General Agreement on Tariffs and Trade 1994*, which is part of the *WTO Agreement;*

(k) *Harmonized System*. ''Harmonized System'' means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(l) *Heading*. ''Heading'' means the first four digits in the tariff classification number under the Harmonized System;

(m) *HTSUS*. ''HTSUS'' means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(n) *Identical goods*. ''Identical goods'' means goods that are the same in all respects relevant to the rule of origin that qualifies the goods as originating goods;

(o) *Originating*. ''Originating'' means qualifying for preferential tariff treatment under the rules of origin set out in Article 3.25 (Rules of Origin and Related Matters) or Chapter Four (Rules of Origin and Origin Procedures) of the PANTPA, and General Note 35, HTSUS;

(p) *Party*. ''Party'' means the United States or Panama;

(q) *Person*. ''Person'' means a natural person or an enterprise;

(r) *Preferential tariff treatment*. ''Preferential tariff treatment'' means the duty rate applicable under the PANTPA to an originating good, and an exemption from the merchandise processing fee;

(s) *Subheading*. ''Subheading'' means the first six digits in the tariff classification number under the Harmonized System;

(t) *Textile or apparel good*. ''Textile or apparel good'' means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as ''the ATC''), which is part of the WTO Agreement, except for those goods listed in Annex 3.30 of the PANTPA;

(u) *Territory*. ''Territory'' means:

(1) With respect to Panama, the land, maritime, and the air space under Panama's sovereignty and the exclusive economic zone and the continental shelf within which it exercises sovereign rights and jurisdiction in accordance with international law and its domestic law;

(2) With respect to the United States:

(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico;

(ii) The foreign trade zones located in the United States and Puerto Rico; and

(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

(v) *WTO*. ''WTO'' means the World Trade Organization; and

(w) *WTO Agreement*. ''WTO Agreement'' means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

IMPORT REQUIREMENTS

§ 10.2003 Filing of claim for preferential tariff treatment upon importation.

(a) *Basis of claim*. An importer may make a claim for PANTPA preferential tariff treatment, including an exemption from the merchandise processing fee, based on either:

(1) A written or electronic certification, as specified in §10.2004, that is prepared by the importer, exporter, or producer of the good; or

(2) The importer's knowledge that the good is an originating good, including reasonable reliance on information in the importer's possession that the good is an originating good.

(b) *Making a claim*. The claim is made by including on the entry summary, or equivalent documentation, the letters ''PA'' as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.

(c) *Corrected claim*. If, after making the claim specified in paragraph (b) of this section, the importer has reason to believe that the claim is based on inaccurate information or is otherwise invalid, the importer must, within 30 calendar days after the date of discovery of the error, correct the claim and pay any duties that may be due. The importer must submit a statement either in writing or via an authorized electronic data interchange system to the CBP office where the original claim was filed specifying the correction (*see* §§10.2031 and 10.2033).

§ 10.2004 Certification.

(a) *General*. An importer who makes a claim pursuant to §10.2003(b) based on a certification by the importer, exporter, or producer that the good is originating must submit, at the request of

the Center director, a copy of the certification. The certification:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) Must be in the possession of the importer at the time the claim for preferential tariff treatment is made if the certification forms the basis for the claim;

(3) Must include the following information:

(i) The legal name, address, telephone number, and email address of the certifying person;

(ii) If not the certifying person, the legal name, address, telephone number, and email address of the importer of record, the exporter, and the producer of the good, if known;

(iii) The legal name, address, telephone number, and email address of the responsible official or authorized agent of the importer, exporter, or producer signing the certification (if different from the information required by paragraph (a)(3)(i) of this section);

(iv) A description of the good for which preferential tariff treatment is claimed, which must be sufficiently detailed to relate it to the invoice and the HS nomenclature;

(v) The HTSUS tariff classification, to six or more digits, as necessary for the specific change in tariff classification rule for the good set forth in General Note 35, HTSUS;

(vi) The applicable rule of origin set forth in General Note 35, HTSUS, under which the good qualifies as an originating good;

(vii) Date of certification; and

(viii) In case of a blanket certification issued with respect to multiple shipments of identical goods within any period specified in the written or electronic certification, not exceeding 12 months from the date of certification, the period that the certification covers; and

(4) Must include a statement, in substantially the following form:

''I certify that:

The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;

I agree to maintain and present upon request, documentation necessary to support these representations;

The goods comply with all requirements for preferential tariff treatment specified for those goods in the United States-Panama Trade Promotion Agreement; and

This document consists of ____ pages, including all attachments.''

(b) *Responsible official or agent.* The certification provided for in paragraph (a) of this section must be signed and dated by a responsible official of the importer, exporter, or producer, or by the importer's, exporter's, or producer's authorized agent having knowledge of the relevant facts.

(c) *Language.* The certification provided for in paragraph (a) of this section must be completed in either the English or Spanish language. In the latter case, the Center director may require the importer to submit an English translation of the certification.

(d) *Certification by the exporter or producer.* (1) A certification may be prepared by the exporter or producer of the good on the basis of:

(i) The exporter's or producer's knowledge that the good is originating; or

(ii) In the case of an exporter, reasonable reliance on the producer's certification that the good is originating.

(2) The Center director may not require an exporter or producer to provide a written or electronic certification to another person.

(e) *Applicability of certification.* The certification provided for in paragraph (a) of this section may be applicable to:

(1) A single shipment of a good into the United States; or

(2) Multiple shipments of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the certification.

(f) *Validity of certification.* A certification that is properly completed, signed, and dated in accordance with the requirements of this section will be accepted as valid for four years following the date on which it was issued.

§ 10.2005 Importer obligations.

(a) *General.* An importer who makes a claim for preferential tariff treatment under § 10.2003(b):

(1) Will be deemed to have certified that the good is eligible for preferential tariff treatment under the PANTPA;

(2) Is responsible for the truthfulness of the claim and of all the information and data contained in the certification provided for in § 10.2004; and

(3) Is responsible for submitting any supporting documents requested by CBP, and for the truthfulness of the information contained in those documents. When a certification prepared by an exporter or producer forms the basis of a claim for preferential tariff treatment, and CBP requests the submission of supporting documents, the importer will provide to CBP, or arrange for the direct submission by the exporter or producer of, all information relied on by the exporter or producer in preparing the certification.

(b) *Information provided by exporter or producer.* The fact that the importer has made a claim or submitted a certification based on information provided by an exporter or producer will not relieve the importer of the responsibility referred to in paragraph (a) of this section.

(c) *Exemption from penalties.* An importer will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for making an incorrect claim for preferential tariff treatment or submitting an incorrect certification, provided that the importer promptly and voluntarily corrects the claim or certification and pays any duty owing (*see* § 10.2031 through 10.2033).

§ 10.2006 Certification not required.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a copy of a certification under § 10.2004 for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the originating goods does not exceed U.S. $2,500.

(b) *Exception.* If the Center director determines that an importation described in paragraph (a) of this section is part of a series of importations carried out or planned for the purpose of evading compliance with the certification requirements of § 10.2004, the Center director will notify the importer that for that importation the importer must submit to CBP a copy of the certification. The importer must submit such a copy within 30 days from the date of the notice. Failure to timely submit a copy of the certification will result in denial of the claim for preferential tariff treatment.

§ 10.2007 Maintenance of records.

(a) *General.* An importer claiming preferential tariff treatment for a good imported into the United States under § 10.2003(b) based on either the importer's certification or its knowledge must maintain, for a minimum of five years after the date of importation of the good, all records and documents necessary to demonstrate that the good qualifies for preferential tariff treatment under the PANTPA. An importer claiming preferential tariff treatment for a good imported into the United States under § 10.2003(b) based on the certification issued by the exporter or producer must maintain, for a minimum of five years after the date of importation of the good, the certification issued by the exporter or producer. These records are in addition to any other records that the importer is required to prepare, maintain, or make available to CBP under Part 163 of this chapter.

(b) *Method of maintenance.* The records and documents referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

§ 10.2008 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *General.* If the importer fails to comply with any requirement under this subpart, including submission of a complete certification prepared in accordance with § 10.2004 of this subpart, when requested, the Center director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the Center director nevertheless may deny preferential tariff treatment to an originating good if the good is shipped through or transshipped in a country other than a Party to the PANTPA, and the importer of the good does not provide, at the request of the Center director, evidence demonstrating to the satisfaction of the Center director that the conditions set forth in §10.2025(a) were met.

EXPORT REQUIREMENTS

§10.2009 Certification for goods exported to Panama.

(a) *Submission of certification to CBP.* Any person who completes and issues a certification for a good exported from the United States to Panama must provide a copy of the certification (written or electronic) to CBP upon request.

(b) *Notification of errors in certification.* Any person who completes and issues a certification for a good exported from the United States to Panama and who has reason to believe that the certification contains or is based on incorrect information must promptly notify every person to whom the certification was provided of any change that could affect the accuracy or validity of the certification. Notification of an incorrect certification must also be given either in writing or via an authorized electronic data interchange system to CBP specifying the correction (*see* §§10.2032 and 10.2033).

(c) *Maintenance of records*—(1) *General.* Any person who completes and issues a certification for a good exported from the United States to Panama must maintain, for a period of at least five years after the date the certification was issued, all records and supporting documents relating to the origin of a good for which the certification was issued, including the certification or copies thereof and records and documents associated with:

(i) The purchase, cost, and value of, and payment for, the good;

(ii) The purchase, cost, and value of, and payment for, all materials, including indirect materials, used in the production of the good; and

(iii) The production of the good in the form in which the good was exported.

(2) *Method of maintenance.* The records referred to in paragraph (c)(1) of this section must be maintained as provided in §163.5 of this chapter.

(3) *Availability of records.* For purposes of determining compliance with the provisions of this part, the records required to be maintained under this section must be stored and made available for examination and inspection by the Center director or other appropriate CBP officer in the same manner as provided in part 163 of this chapter.

POST-IMPORTATION DUTY REFUND CLAIMS

§10.2010 Right to make post-importation claim and refund duties.

Notwithstanding any other available remedy, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment was made, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in §10.2011. Subject to the provisions of §10.2008, CBP may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with §10.2012(c).

§10.2011 Filing procedures.

(a) *Place of filing.* A post-importation claim for a refund must be filed with CBP, either at the port of entry or electronically. The post-importation claim may be filed by paper or by the method specified for equivalent reporting via an authorized electronic data interchange system.

(b) *Contents of claim.* A post-importation claim for a refund must be filed by presentation of the following:

(1) A written or electronic declaration or statement stating that the good was an originating good at the time of importation and setting forth the number and date of the entry or entries covering the good;

(2) A copy of a written or electronic certification prepared in accordance with §10.2004 if a certification forms the basis for the claim, or other information demonstrating that the good qualifies for preferential tariff treatment;

(3) A written statement indicating whether the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was so provided, the statement must identify each recipient by name, CBP identification number, and address and must specify the date on which the documentation was provided; and

(4) A written statement indicating whether any person has filed a protest relating to the good under any provision of law; and if any such protest has been filed, the statement must identify the protest by number and date.

§ 10.2012 CBP processing procedures.

(a) *Status determination.* After receipt of a post-importation claim pursuant to §10.2011, the Center director will determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest or judicial review.* If the Center director determines that any protest relating to the good has not been finally decided, the Center director will suspend action on the claim filed pursuant to §10.2011 until the decision on the protest becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the Center director will suspend action on the claim filed pursuant to §10.2011 until judicial review has been completed.

(c) *Allowance of claim*—(1) *Unliquidated entry.* If the Center director determines that a claim for a refund filed pursuant to §10.2011 should be allowed and the entry covering the good has not been liquidated, the Center director will take into account the claim for refund in connection with the liquidation of the entry.

(2) *Liquidated entry.* If the Center director determines that a claim for a refund filed pursuant to §10.2011 should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties under this section. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, the Center director will reliquidate the entry taking into account the claim for refund pursuant to §10.2011.

(d) *Denial of claim*—(1) *General.* The Center director may deny a claim for a refund filed under §10.2011 if the claim was not filed timely, if the importer has not complied with the requirements of §§10.2008 and 10.2011, or if, following an origin verification under §10.2026, the Center director determines either that the imported good was not an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under §10.2026.

(2) *Unliquidated entry.* If the Center director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the Center director will deny the claim in connection with the liquidation of the entry, and notice of the denial and the reason for the denial will be provided to the importer in writing or via an authorized electronic data interchange system.

(3) *Liquidated entry.* If the Center director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the Center director will provide notice of the denial and the reason for the denial to the importer in writing or via an authorized electronic data interchange system.

RULES OF ORIGIN

§ 10.2013 Definitions.

For purposes of §§ 10.2013 through 10.2025:

(a) *Adjusted value*. ''Adjusted value'' means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude:

(1) Any costs, charges, or expenses incurred for transportation, insurance and related services incident to the international shipment of the good from the country of exportation to the place of importation; and

(2) The value of packing materials and containers for shipment as defined in paragraph (o) of this section;

(b) *Class of motor vehicles*. ''Class of motor vehicles'' means any one of the following categories of motor vehicles:

(1) Motor vehicles classified under subheading 8701.20, motor vehicles for the transport of 16 or more persons classified under subheading 8702.10 or 8702.90, and motor vehicles classified under subheading 8704.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706, HTSUS;

(2) Motor vehicles classified under subheading 8701.10 or any of subheadings 8701.30 through 8701.90, HTSUS;

(3) Motor vehicles for the transport of 15 or fewer persons classified under subheading 8702.10 or 8702.90, HTSUS, or motor vehicles classified under subheading 8704.21 or 8704.31, HTSUS; or

(4) Motor vehicles classified under subheadings 8703.21 through 8703.90, HTSUS;

(c) *Enterprise*. ''Enterprise'' means an enterprise as defined in § 10.2002(g), and includes an enterprise involved in:

(1) Production, processing, or manipulation of textile or apparel goods in the territory of Panama, including in any free trade zone, foreign trade zone, or export processing zone;

(2) Importation of textile or apparel goods into the territory of Panama, including into any free trade zone, foreign trade zone, or export processing zone; or

(3) Exportation of textile or apparel goods from the territory of Panama, including from any free trade zone, foreign trade zone, or export processing zone;

(d) *Exporter*. ''Exporter'' means a person who exports goods from the territory of a Party;

(e) *Fungible good or material*. ''Fungible good or material'' means a good or material, as the case may be, that is interchangeable with another good or material for commercial purposes and the properties of which are essentially identical to such other good or material;

(f) *Generally Accepted Accounting Principles*. ''Generally Accepted Accounting Principles'' means the recognized consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These principles may encompass broad guidelines of general application, as well as detailed standards, practices, and procedures;

(g) *Good*. ''Good'' means any merchandise, product, article, or material;

(h) *Goods wholly obtained or produced entirely in the territory of one or both of the Parties*. ''Goods wholly obtained or produced entirely in the territory of one or both of the Parties'' means:

(1) Plants and plant products harvested or gathered in the territory of one or both of the Parties;

(2) Live animals born and raised in the territory of one or both of the Parties;

(3) Goods obtained in the territory of one or both of the Parties from live animals;

(4) Goods obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of one or both of the Parties;

(5) Minerals and other natural resources not included in paragraphs (h)(1) through (h)(4) of this section that are extracted or taken in the territory of one or both of the Parties;

(6) Fish, shellfish, and other marine life taken from the sea, seabed, or subsoil outside the territory of the Parties by:

(i) Vessels registered or recorded with Panama and flying its flag; or

(ii) Vessels documented under the laws of the United States;

(7) Goods produced on board factory ships from the goods referred to in paragraph (h)(6) of this section, if such factory ships are:

(i) Registered or recorded with Panama and flying its flag; or

(ii) Documented under the laws of the United States;

(8) Goods taken by a Party or a person of a Party from the seabed or subsoil outside territorial waters, if a Party has rights to exploit such seabed or subsoil;

(9) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(10) Waste and scrap derived from:

(i) Manufacturing or processing operations in the territory of one or both of the Parties; or

(ii) Used goods collected in the territory of one or both of the Parties, if such goods are fit only for the recovery of raw materials;

(11) Recovered goods derived in the territory of one or both of the Parties from used goods, and used in the territory of one or both of the Parties in the production of remanufactured goods; and

(12) Goods produced in the territory of one or both of the Parties exclusively from goods referred to in any of paragraphs (h)(1) through (h)(10) of this section, or from the derivatives of such goods, at any stage of production;

(i) *Indirect material.* ''Indirect material'' means a good used in the production, testing, or inspection of another good in the territory of one or both of the Parties but not physically incorporated into that other good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of another good, including:

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment or buildings;

(4) Lubricants, greases, compounding materials, and other materials used in production or used to operate equipment or buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the good;

(7) Catalysts and solvents; and

(8) Any other good that is not incorporated into the other good but the use of which in the production of the other good can reasonably be demonstrated to be a part of that production;

(j) *Material.* ''Material'' means a good that is used in the production of another good, including a part or an ingredient;

(k) *Model line.* ''Model line'' means a group of motor vehicles having the same platform or model name;

(l) *Net cost.* ''Net cost'' means total cost minus sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost;

(m) *Non-allowable interest costs.* ''Non-allowable interest costs'' means interest costs incurred by a producer that exceed 700 basis points above the applicable official interest rate for comparable maturities of the Party in which the producer is located;

(n) *Non-originating good or non-originating material.* ''Non-originating good'' or ''non-originating material'' means a good or material, as the case may be, that does not qualify as originating under General Note 35, HTSUS, or this subpart;

(o) *Packing materials and containers for shipment.* ''Packing materials and containers for shipment'' means the goods used to protect a good during its transportation to the United States, and does not include the packaging materials and containers in which a good is packaged for retail sale;

(p) *Producer.* ''Producer'' means a person who engages in the production of a good in the territory of a Party;

(q) *Production.* ''Production'' means growing, mining, harvesting, fishing, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good;

(r) *Reasonably allocate.* ''Reasonably allocate'' means to apportion in a manner that would be appropriate under Generally Accepted Accounting Principles;

(s) *Recovered goods.* ''Recovered goods'' means materials in the form of individual parts that are the result of:

(1) The disassembly of used goods into individual parts; and

(2) The cleaning, inspecting, testing, or other processing that is necessary to improve such individual parts to sound working condition;

(t) *Remanufactured good.* ''Remanufactured good'' means a good classified in Chapter 84, 85, 87, or 90 or heading 9402, HTSUS, other than a good classified in heading 8418 or 8516, HTSUS, and that:

(1) Is entirely or partially comprised of recovered goods as defined in paragraph (s) of this section; and

(2) Has a similar life expectancy and enjoys a factory warranty similar to such a good that is new;

(u) *Royalties.* ''Royalties'' means payments of any kind, including payments under technical assistance agreements or similar agreements, made as consideration for the use of, or right to use, any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance agreements or similar agreements that can be related to specific services such as:

(1) Personnel training, without regard to where performed; and

(2) If performed in the territory of one or both of the Parties, engineering, tooling, die-setting, software design and similar computer services;

(v) *Sales promotion, marketing, and after-sales service costs.* ''Sales promotion, marketing, and after-sales service costs'' means the following costs related to sales promotion, marketing, and after-sales service:

(1) Sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing, and after-sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;

(2) Sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;

(3) Salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, pension), traveling and living expenses, membership and professional fees, for sales promotion, marketing, and after-sales service personnel;

(4) Recruiting and training of sales promotion, marketing, and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(5) Product liability insurance;

(6) Office supplies for sales promotion, marketing, and after-sales service of goods, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(7) Telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(8) Rent and depreciation of sales promotion, marketing, and after-sales service offices and distribution centers;

(9) Property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing, and after-sales service offices and distribution centers, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer; and

(10) Payments by the producer to other persons for warranty repairs;

(w) *Self-produced material.* ''Self-produced material'' means an originating material that is produced by a producer of a good and used in the production of that good;

(x) *Shipping and packing costs.* ''Shipping and packing costs'' means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the

buyer, excluding the costs of preparing and packaging the good for retail sale;

(y) *Total cost*. ''Total cost'' means all product costs, period costs, and other costs for a good incurred in the territory of one or both of the Parties. Product costs are costs that are associated with the production of a good and include the value of materials, direct labor costs, and direct overhead. Period costs are costs, other than product costs, that are expensed in the period in which they are incurred, such as selling expenses and general and administrative expenses. Other costs are all costs recorded on the books of the producer that are not product costs or period costs, such as interest. Total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

(z) *Used*. ''Used'' means utilized or consumed in the production of goods; and

(aa) *Value*. ''Value'' means the value of a good or material for purposes of calculating customs duties or for purposes of applying this subpart.

§ 10.2014 Originating goods.

Except as otherwise provided in this subpart and General Note 35, HTSUS, a good imported into the customs territory of the United States will be considered an originating good under the PANTPA only if:

(a) The good is wholly obtained or produced entirely in the territory of one or both of the Parties;

(b) The good is produced entirely in the territory of one or both of the Parties and:

(1) Each non-originating material used in the production of the good undergoes an applicable change in tariff classification specified in General Note 35, HTSUS, and the good satisfies all other applicable requirements of General Note 35, HTSUS; or

(2) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 35, HTSUS, and satisfies all other applicable requirements of General Note 35, HTSUS; or

(c) The good is produced entirely in the territory of one or both of the Parties exclusively from originating materials.

§ 10.2015 Regional value content.

(a) *General*. Except for goods to which paragraph (d) of this section applies, where General Note 35, HTSUS, sets forth a rule that specifies a regional value content test for a good, the regional value content of such good must be calculated by the importer, exporter, or producer of the good on the basis of the build-down method described in paragraph (b) of this section or the build-up method described in paragraph (c) of this section.

(b) *Build-down method*. Under the build-down method, the regional value content must be calculated on the basis of the formula RVC = ((AV − VNM)/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced.

(c) *Build-up method*. Under the build-up method, the regional value content must be calculated on the basis of the formula RVC = (VOM/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VOM is the value of originating materials that are acquired or self-produced and used by the producer in the production of the good.

(d) *Special rule for certain automotive goods*—(1) *General*. Where General Note 35, HTSUS, sets forth a rule that specifies a regional value content test for an automotive good provided for in any of subheadings 8407.31 through 8407.34 (engines), subheading 8408.20 (diesel engine for vehicles), heading 8409 (parts of engines), or any of headings 8701 through 8705 (motor vehicles), and headings 8706 (chassis), 8707 (bodies), and 8708 (motor vehicle parts), HTSUS, the regional value content of such good may be calculated by the importer, exporter, or producer of the good on the basis of the

net cost method described in paragraphs (d)(2) through (d)(4) of this section.

(2) *Net cost method.* Under the net cost method, the regional value content is calculated on the basis of the formula RVC = ((NC − VNM)/NC) × 100, where RVC is the regional value content, expressed as a percentage; NC is the net cost of the good; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced. Consistent with the provisions regarding allocation of costs set out in Generally Accepted Accounting Principles, the net cost of the good must be determined by:

(i) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, subtracting any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost of all such goods, and then reasonably allocating the resulting net cost of those goods to the automotive good;

(ii) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, reasonably allocating the total cost to the automotive good, and then subtracting any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the portion of the total cost allocated to the automotive good; or

(iii) Reasonably allocating each cost that forms part of the total costs incurred with respect to the automotive good so that the aggregate of these costs does not include any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, or non-allowable interest costs.

(3) *Motor vehicles*—(i) *General.* For purposes of calculating the regional value content under the net cost method for an automotive good that is a motor vehicle provided for in any of headings 8701 through 8705, an importer, exporter, or producer may average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over the producer's fiscal year using any one of the categories described in paragraph (d)(3)(ii) of this section either on the basis of all motor vehicles in the category or those motor vehicles in the category that are exported to the territory of one or both Parties.

(ii) *Categories.* The categories referred to in paragraph (d)(3)(i) of this section are as follows:

(A) The same model line of motor vehicles, in the same class of vehicles, produced in the same plant in the territory of a Party, as the motor vehicle for which the regional value content is being calculated;

(B) The same class of motor vehicles, and produced in the same plant in the territory of a Party, as the motor vehicle for which the regional value content is being calculated; and

(C) The same model line of motor vehicles produced in the territory of a Party as the motor vehicle for which the regional value content is being calculated.

(4) *Other automotive goods*—(i) *General.* For purposes of calculating the regional value content under the net cost method for automotive goods provided for in any of subheadings 8407.31 through 8407.34, subheading 8408.20, heading 8409, 8706, 8707, or 8708, HTSUS, that are produced in the same plant, an importer, exporter, or producer may:

(A) Average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over any of the following: the fiscal year, or any quarter or month, of the motor vehicle producer to whom the automotive good is sold, or the fiscal year, or any quarter or month, of the producer of the automotive good, provided the goods were produced during the fiscal year, quarter, or month that is the basis for the calculation;

(B) Determine the average referred to in paragraph (d)(4)(i)(A) of this section separately for such goods sold to one or more motor vehicle producers; or

(C) Make a separate determination under paragraph (d)(4)(i)(A) or (d)(4)(i)(B) of this section for automotive goods that are exported to the territory of Panama or the United States.

(ii) *Duration of use.* A person selecting an averaging period of one month or quarter under paragraph (d)(4)(i)(A) of this section must continue to use that method for that category of automotive goods throughout the fiscal year.

§ 10.2016 Value of materials.

(a) *Calculating the value of materials.* For purposes of calculating the regional value content of a good under General Note 35, HTSUS, and for purposes of applying the *de minimis* (*see* § 10.2018) provisions of General Note 35, HTSUS, the value of a material is:

(1) In the case of a material imported by the producer of the good, the adjusted value of the material;

(2) In the case of a material acquired by the producer in the territory where the good is produced, the value, determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, i.e., in the same manner as for imported goods, with reasonable modifications to the provisions of the Customs Valuation Agreement as may be required due to the absence of an importation by the producer (including, but not limited to, treating a domestic purchase by the producer as if it were a sale for export to the country of importation); or

(3) In the case of a self-produced material, the sum of:

(i) All expenses incurred in the production of the material, including general expenses; and

(ii) An amount for profit equivalent to the profit added in the normal course of trade.

(b) *Examples.* The following examples illustrate application of the principles set forth in paragraph (a)(2) of this section:

Example 1. A producer in Panama purchases material x from an unrelated seller in Panama for $100. Under the provisions of Article 1 of the Customs Valuation Agreement, transaction value is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8. In order to apply Article 1 to this domestic purchase by the producer, such purchase is treated as if it were a sale for export to the country of importation. Therefore, for purposes of determining the adjusted value of material x, Article 1 transaction value is the price actually paid or payable for the goods when sold to the producer in Panama ($100), adjusted in accordance with the provisions of Article 8. In this example, it is irrelevant whether material x was initially imported into Panama by the seller (or by anyone else). So long as the producer acquired material x in Panama, it is intended that the value of material x will be determined on the basis of the price actually paid or payable by the producer adjusted in accordance with the provisions of Article 8.

Example 2. Same facts as in Example 1, except that the sale between the seller and the producer is subject to certain restrictions that preclude the application of Article 1. Under Article 2 of the Customs Valuation Agreement, the value is the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued. In order to permit the application of Article 2 to the domestic acquisition by the producer, it should be modified so that the value is the transaction value of identical goods sold within Panama at or about the same time the goods were sold to the producer in Panama. Thus, if the seller of material x also sold an identical material to another buyer in Panama without restrictions, that other sale would be used to determine the adjusted value of material x.

(c) *Permissible additions to, and deductions from, the value of materials*—(1) *Additions to originating materials.* For originating materials, the following expenses, if not included under paragraph (a) of this section, may be added to the value of the originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or both of the Parties to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable; and

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproducts.

(2) *Deductions from non-originating materials.* For non-originating materials, if included under paragraph (a) of this

section, the following expenses may be deducted from the value of the non-originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or both of the Parties to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable;

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products; and

(iv) The cost of originating materials used in the production of the non-originating material in the territory of one or both of the Parties.

(d) *Accounting method.* Any cost or value referenced in General Note 35, HTSUS, and this subpart, must be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

§ 10.2017 Accumulation.

(a) Originating materials from the territory of a Party that are used in the production of a good in the territory of another Party will be considered to originate in the territory of that other Party.

(b) A good that is produced in the territory of one or both of the Parties by one or more producers is an originating good if the good satisfies the requirements of § 10.2014 and all other applicable requirements of General Note 35, HTSUS.

§ 10.2018 De minimis.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, a good that does not undergo a change in tariff classification pursuant to General Note 35, HTSUS, is an originating good if:

(1) The value of all non-originating materials used in the production of the good that do not undergo the applicable change in tariff classification does not exceed 10 percent of the adjusted value of the good;

(2) The value of the non-originating materials described in paragraph (a)(1) of this section is included in the value of non-originating materials for any applicable regional value content requirement for the good under General Note 35, HTSUS; and

(3) The good meets all other applicable requirements of General Note 35, HTSUS.

(b) *Exceptions.* Paragraph (a) of this section does not apply to:

(1) A non-originating material provided for in Chapter 4, HTSUS, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90, HTSUS, that is used in the production of a good provided for in Chapter 4, HTSUS;

(2) A non-originating material provided for in Chapter 4, HTSUS, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90, HTSUS, which is used in the production of the following goods:

(i) Infant preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.10, HTSUS;

(ii) Mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20, HTSUS;

(iii) Dairy preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90, HTSUS;

(iv) Goods provided for in heading 2105, HTSUS;

(v) Beverages containing milk provided for in subheading 2202.90, HTSUS; or

(vi) Animal feeds containing over 10 percent by weight of milk solids provided for in subheading 2309.90, HTSUS;

(3) A non-originating material provided for in heading 0805, HTSUS, or any of subheadings 2009.11 through 2009.39, HTSUS, that is used in the production of a good provided for in any of subheadings 2009.11 through 2009.39, HTSUS, or in fruit or vegetable juice of any single fruit or vegetable, fortified

with minerals or vitamins, concentrated or unconcentrated, provided for in subheading 2106.90 or 2202.90, HTSUS;

(4) A non-originating material provided for in heading 0901 or 2101, HTSUS, that is used in the production of a good provided for in heading 0901 or 2101, HTSUS;

(5) A non-originating material provided for in heading 1006, HTSUS, that is used in the production of a good provided for in heading 1102 or 1103 or subheading 1904.90, HTSUS;

(6) A non-originating material provided for in Chapter 15, HTSUS, that is used in the production of a good provided for in Chapter 15, HTSUS;

(7) A non-originating material provided for in heading 1701, HTSUS, that is used in the production of a good provided for in any of headings 1701 through 1703, HTSUS;

(8) A non-originating material provided for in Chapter 17, HTSUS, that is used in the production of a good provided for in subheading 1806.10, HTSUS; or

(9) Except as provided in paragraphs (b)(1) through (b)(8) of this section and General Note 35, HTSUS, a non-originating material used in the production of a good provided for in any of Chapters 1 through 24, HTSUS, unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this subpart.

(c) *Textile and apparel goods*—(1) *General.* Except as provided in paragraph (c)(2) of this section, a textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in General Note 35, HTSUS, will nevertheless be considered to be an originating good if:

(i) The total weight of all such fibers or yarns in that component is not more than 10 percent of the total weight of that component; or

(ii) The yarns are nylon filament yarns (other than elastomeric yarns) that are provided for in subheading 5402.11.30, 5402.11.60, 5402.19.30, 5402.19.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.45.10, 5402.45.90, 5402.51.00 or 5402.61.00, HTSUS, and that are products of Canada, Mexico, or Israel.

(2) *Exception for goods containing elastomeric yarns.* A textile or apparel good containing elastomeric yarns (excluding latex) in the component of the good that determines the tariff classification of the good will be considered an originating good only if such yarns are wholly formed and finished in the territory of a Party. For purposes of this paragraph, ''wholly formed and finished'' means that all the production processes and finishing operations, starting with the extrusion of filaments, strips, film, or sheet, and including drawing to fully orient a filament or slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a finished yarn or plied yarn.

(3) *Yarn, fabric, or fiber.* For purposes of paragraph (c) of this section, in the case of a textile or apparel good that is a yarn, fabric, or fiber, the term ''component of the good that determines the tariff classification of the good'' means all of the fibers in the good.

§ 10.2019 Fungible goods and materials.

(a) *General.* A person claiming that a fungible good or material is an originating good may base the claim either on the physical segregation of the fungible good or material or by using an inventory management method with respect to the fungible good or material. For purposes of this section, the term ''inventory management method'' means:

(1) Averaging;

(2) ''Last-in, first-out;''

(3) ''First-in, first-out;'' or

(4) Any other method that is recognized in the Generally Accepted Accounting Principles of the Party in which the production is performed or otherwise accepted by that country.

(b) *Duration of use.* A person selecting an inventory management method under paragraph (a) of this section for a particular fungible good or material must continue to use that method for that fungible good or material throughout the fiscal year of that person.

§ 10.2020 Accessories, spare parts, or tools.

(a) *General.* Accessories, spare parts, or tools that are delivered with a good and that form part of the good's standard accessories, spare parts, or tools will be treated as originating goods if the good is an originating good, and will be disregarded in determining whether all the non-originating materials used in the production of the good undergo an applicable change in tariff classification specified in General Note 35, HTSUS, provided that:

(1) The accessories, spare parts, or tools are classified with, and not invoiced separately from, the good, regardless of whether they are specified or separately identified in the invoice for the good; and

(2) The quantities and value of the accessories, spare parts, or tools are customary for the good.

(b) *Regional value content.* If the good is subject to a regional value content requirement, the value of the accessories, spare parts, or tools is taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good under § 10.2015.

§ 10.2021 Goods classifiable as goods put up in sets.

Notwithstanding the specific rules set forth in General Note 35, HTSUS, goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be considered to be originating goods unless:

(a) Each of the goods in the set is an originating good; or

(b) The total value of the non-originating goods in the set does not exceed;

(1) In the case of textile or apparel goods, 10 percent of the adjusted value of the set; or

(2) In the case of a good other than a textile or apparel good, 15 percent of the adjusted value of the set.

§ 10.2022 Retail packaging materials and containers.

(a) *Effect on tariff shift rule.* Packaging materials and containers in which a good is packaged for retail sale, if classified with the good for which preferential tariff treatment under the PANTPA is claimed, will be disregarded in determining whether all non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in General Note 35, HTSUS.

(b) *Effect on regional value content calculation.* If the good is subject to a regional value content requirement, the value of such packaging materials and containers will be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Example 1. Panamanian Producer A of good C imports 100 non-originating blister packages to be used as retail packaging for good C. As provided in § 10.2016(a)(1), the value of the blister packages is their adjusted value, which in this case is $10. Good C has a regional value content requirement. The United States importer of good C decides to use the build-down method, RVC = ((AV − VNM)/AV) × 100 (*see* § 10.2015(b)), in determining whether good C satisfies the regional value content requirement. In applying this method, the non-originating blister packages are taken into account as non-originating. As such, their $10 adjusted value is included in the VNM, value of non-originating materials, of good C.

Example 2. Same facts as in Example 1, except that the blister packages are originating. In this case, the adjusted value of the originating blister packages would *not* be included as part of the VNM of good C under the build-down method. However, if the U.S. importer had used the build-up method, RVC = (VOM/AV) × 100 (*see* § 10.2015(c)), the adjusted value of the blister packaging would be included as part of the VOM, value of originating materials.

§ 10.2023 Packing materials and containers for shipment.

(a) *Effect on tariff shift rule.* Packing materials and containers for shipment, as defined in § 10.2013(o), are to be disregarded in determining whether the non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in General Note 35, HTSUS. Accordingly, such materials and containers are not required to undergo the applicable change in tariff classification even if they are non-originating.

(b) *Effect on regional value content calculation.* Packing materials and containers for shipment, as defined in § 10.2013(o), are to be disregarded in determining the regional value content of

a good imported into the United States. Accordingly, in applying the build-down, build-up, or net cost method for determining the regional value content of a good imported into the United States, the value of such packing materials and containers for shipment (whether originating or non-originating) is disregarded and not included in AV, adjusted value, VNM, value of non-originating materials, VOM, value of originating materials, or NC, net cost of a good.

Example. Panamanian producer A produces good C. Producer A ships good C to the United States in a shipping container that it purchased from Company B in Panama. The shipping container is originating. The value of the shipping container determined under §10.2016(a)(2) is $3. Good C is subject to a regional value content requirement. The transaction value of good C is $100, which includes the $3 shipping container. The U.S. importer decides to use the build-up method, RVC= (VOM/AV) × 100 (*see* §10.2015(c))), in determining whether good C satisfies the regional value content requirement. In determining the AV, adjusted value, of good C imported into the U.S., paragraph (b) of this section and the definition of AV require a $3 deduction for the value of the shipping container. Therefore, the AV is $97 ($100 − $3). In addition, the value of the shipping container is disregarded and not included in the VOM, value of originating materials.

§ 10.2024 Indirect materials.

An indirect material, as defined in §10.2013(i), will be considered to be an originating material without regard to where it is produced.

Example. Panamanian Producer A produces good C using non-originating material B. Producer A imports non-originating rubber gloves for use by workers in the production of good C. Good C is subject to a tariff shift requirement. As provided in §10.2014(b)(1) and General Note 35, each of the non-originating materials in good C must undergo the specified change in tariff classification in order for good C to be considered originating. Although non-originating material B must undergo the applicable tariff shift in order for good C to be considered originating, the rubber gloves do not because they are indirect materials and are considered originating without regard to where they are produced.

§ 10.2025 Transit and transshipment.

(a) *General.* A good that has undergone production necessary to qualify as an originating good under §10.2014 will not be considered an originating good if, subsequent to that production, the good:

(1) Undergoes further production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party; or

(2) Does not remain under the control of customs authorities in the territory of a non-Party.

(b) *Documentary evidence.* An importer making a claim that a good is originating may be required to demonstrate, to CBP's satisfaction, that the conditions and requirements set forth in paragraph (a) of this section were met. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

Origin Verifications and Determinations

§ 10.2026 Verification and justification of claim for preferential tariff treatment.

(a) *Verification.* A claim for preferential tariff treatment made under §10.2003(b) or §10.2011, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the Center director deems necessary. In the event that the Center director is provided with insufficient information to verify or substantiate the claim, or the Center director finds a pattern of conduct, indicating that an importer, exporter, or producer has provided false or unsupported declarations or certifications, or the exporter or producer

fails to consent to a verification visit, the Center director may deny the claim for preferential treatment. A verification of a claim for preferential tariff treatment under PANTPA for goods imported into the United States may be conducted by means of one or more of the following:

(1) Written requests for information from the importer, exporter, or producer;

(2) Written questionnaires to the importer, exporter, or producer;

(3) Visits to the premises of the exporter or producer in the territory of Panama, to review the records of the type referred to in §10.2009(c)(1) or to observe the facilities used in the production of the good, in accordance with the framework that the Parties develop for conducting verifications; and

(4) Such other procedures to which the Parties may agree.

(b) *Applicable accounting principles*. When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

§ 10.2027 Special rule for verifications in Panama of U.S. imports of textile and apparel goods.

(a) *Procedures to determine whether a claim of origin is accurate*—(1) *General*. For the purpose of determining that a claim of origin for a textile or apparel good is accurate, CBP may request that the Government of Panama conduct a verification, regardless of whether a claim is made for preferential tariff treatment.

(2) *Actions during a verification*. While a verification under this paragraph is being conducted, CBP, if directed by the President, may take appropriate action, which may include:

(i) Suspending the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made, if CBP determines there is insufficient information to support the claim;

(ii) Denying the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made that is the subject of a verification if CBP determines that an enterprise has provided incorrect information to support the claim;

(iii) Detention of any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine the country of origin of any such good; and

(iv) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines that the enterprise has provided incorrect information as to the country of origin of any such good.

(3) *Actions following a verification*. On completion of a verification under this paragraph, CBP, if directed by the President, may take appropriate action, which may include:

(i) Denying the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made that is the subject of a verification if CBP determines there is insufficient information, or that the enterprise has provided incorrect information, to support the claim; and

(ii) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine, or that the enterprise has provided incorrect information as to, the country of origin of any such good.

(b) *Procedures to determine compliance with applicable customs laws and regulations of the United States*—(1) *General*. For purposes of enabling CBP to determine that an exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile and apparel goods, CBP may request that the government of Panama conduct a verification.

(2) *Actions during a verification*. While a verification under this paragraph is being conducted, CBP, if directed by the President, may take appropriate action, which may include:

(i) Suspending the application of preferential tariff treatment to any

textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to support a claim for preferential tariff treatment with respect to any such good;

(ii) Denying the application of preferential tariff treatment to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines that the enterprise has provided incorrect information to support a claim for preferential tariff treatment with respect to any such good;

(iii) Detention of any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine the country of origin of any such good; and

(iv) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines that the enterprise has provided incorrect information as to the country of origin of any such good.

(3) *Actions following a verification.* On completion of a verification under this paragraph, CBP, if directed by the President, may take appropriate action, which may include:

(i) Denying the application of preferential tariff treatment to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient or incorrect information, or that the enterprise has provided incorrect information, to support a claim for preferential tariff treatment with respect to any such good; and

(ii) Denying entry to any textile or apparel good exported or produced by the enterprise subject to the verification if CBP determines there is insufficient information to determine, or that the enterprise has provided incorrect information as to, the country of origin of any such good.

(c) *Action by U.S. officials in conducting a verification abroad.* U.S. officials may undertake or assist in a verification under this section by conducting visits in the territory of Panama, along with the competent authorities of Panama, to the premises of an exporter, producer, or any other enterprise involved in the movement of textile or apparel goods from Panama to the United States.

(d) *Denial of permission to conduct a verification.* If an enterprise does not consent to a verification under this section, CBP may deny entry of textile or apparel goods produced or exported by the enterprise.

(e) *Continuation of appropriate action.* CBP may continue to take appropriate action under paragraph (a) or (b) of this section until it receives information sufficient to enable it to make the determination described in paragraphs (a) and (b) of this section.

§ 10.2028 Issuance of negative origin determinations.

If, as a result of an origin verification initiated under this subpart, CBP determines that a claim for preferential tariff treatment under this subpart should be denied, it will issue a determination in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates of the import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 35, HTSUS, and in §§ 10.2013 through 10.2025, the legal basis for the determination.

§ 10.2029 Repeated false or unsupported preference claims.

Where verification or other information reveals a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the PANTPA rules of origin set forth in General Note 35, HTSUS, CBP may suspend preferential tariff treatment under the PANTPA to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until CBP determines that representations of that person are in conformity with General Note 35, HTSUS.

PENALTIES

§ 10.2030 General.

Except as otherwise provided in this subpart, all criminal, civil, or administrative penalties which may be imposed on U.S. importers, exporters, and producers for violations of the customs and related laws and regulations will also apply to U.S. importers, exporters, and producers for violations of the laws and regulations relating to the PANTPA.

§ 10.2031 Corrected claim or certification by importers.

An importer who makes a corrected claim under § 10.2003(c) will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for having made an incorrect claim or having submitted an incorrect certification, provided that the corrected claim is promptly and voluntarily made.

§ 10.2032 Corrected certification by U.S. exporters or producers.

Civil or administrative penalties provided for under 19 U.S.C. 1592 will not be imposed on an exporter or producer in the United States who promptly and voluntarily provides written notification pursuant to § 10.2009(b) with respect to the making of an incorrect certification.

§ 10.2033 Framework for correcting claims or certifications.

(a) ''*Promptly and voluntarily'' defined.* Except as provided for in paragraph (b) of this section, for purposes of this subpart, the making of a corrected claim or certification by an importer or the providing of written notification of an incorrect certification by an exporter or producer in the United States will be deemed to have been done promptly and voluntarily if:

(1)(i) Done before the commencement of a formal investigation, within the meaning of § 162.74(g) of this chapter; or

(ii) Done before any of the events specified in § 162.74(i) of this chapter have occurred; or

(iii) Done within 30 days after the importer, exporter, or producer initially becomes aware that the claim or certification is incorrect; and

(2) Accompanied by a statement setting forth the information specified in paragraph (c) of this section; and

(3) In the case of a corrected claim or certification by an importer, accompanied or followed by a tender of any actual loss of duties and merchandise processing fees, if applicable, in accordance with paragraph (d) of this section.

(b) *Exception in cases involving fraud or subsequent incorrect claims*—(1) *Fraud.* Notwithstanding paragraph (a) of this section, a person who acted fraudulently in making an incorrect claim or certification may not make a voluntary correction of that claim or certification. For purposes of this paragraph, the term ''fraud'' will have the meaning set forth in paragraph (C)(3) of appendix B to part 171 of this chapter.

(2) *Subsequent incorrect claims.* An importer who makes one or more incorrect claims after becoming aware that a claim involving the same merchandise and circumstances is invalid may not make a voluntary correction of the subsequent claims pursuant to paragraph (a) of this section.

(c) *Statement.* For purposes of this subpart, each corrected claim or certification must be accompanied by a statement, submitted in writing or via an authorized electronic data interchange system, which:

(1) Identifies the class or kind of good to which the incorrect claim or certification relates;

(2) In the case of a corrected claim or certification by an importer, identifies each affected import transaction, including each port of importation and the approximate date of each importation;

(3) Specifies the nature of the incorrect statements or omissions regarding the claim or certification; and

(4) Sets forth, to the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the claim or certification, and states that the person will provide any additional information or data which is unknown at the time of making the corrected claim or certification within 30 days or within any extension of that 30-day period as CBP may permit in order for the person to obtain the information or data.

(d) *Tender of actual loss of duties.* A U.S. importer who makes a corrected claim must tender any actual loss of duties at the time of making the corrected claim, or within 30 days thereafter, or within any extension of that 30-day period as CBP may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

GOODS RETURNED AFTER REPAIR OR ALTERATION

§ 10.2034 Goods re-entered after repair or alteration in Panama.

(a) *General.* This section sets forth the rules which apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Panama as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Panama, regardless of whether such repair or alteration could be performed in the territory of the Party from which the good was exported for repair or alteration, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, ''repair or alteration'' means restoration, addition, renovation, re-dyeing, cleaning, re-sterilizing, or other treatment that does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States. The term ''repair or alteration'' does not include an operation or process that transforms an unfinished good into a finished good.

(b) *Goods not eligible for duty-free treatment after repair or alteration.* The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to Panama, are incomplete for their intended use and for which the processing operation performed in Panama constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

(c) *Documentation.* The provisions of paragraphs (a), (b), and (c) of §10.8, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Panama after having been exported for repairs or alterations and which are claimed to be duty free.

Subpart T—United States-Colombia Trade Promotion Agreement

SOURCE: 77 FR 59069, Sept. 26, 2012, unless otherwise noted.

GENERAL PROVISIONS

§ 10.3001 Scope.

This subpart implements the duty preference and related customs provisions applicable to imported and exported goods under the United States-Colombia Trade Promotion Agreement (the CTPA) signed on November 22, 2006, and under the United States-Colombia Trade Promotion Agreement Implementation Act (the ''Act''), Public Law 112–42, 125 Stat. 462 (19 U.S.C. 3805 note). Except as otherwise specified in this subpart, the procedures and other requirements set forth in this subpart are in addition to the customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the CTPA and the Act are contained in Parts 24, 162, and 163 of this chapter.

§ 10.3002 General definitions.

As used in this subpart, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this subpart:

(a) *Claim for preferential tariff treatment.* ''Claim for preferential tariff treatment'' means a claim that a good is entitled to the duty rate applicable under the CTPA to an originating good and to an exemption from the merchandise processing fee;

(b) *Claim of origin.* ''Claim of origin'' means a claim that a textile or apparel good is an originating good or satisfies the non-preferential rules of origin of a Party;

(c) *Customs authority*. ''Customs authority'' means the competent authority that is responsible under the law of a Party for the administration of customs laws and regulations;

(d) *Customs duty*. ''Customs duty'' includes any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, but does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of GATT 1994 in respect of like, directly competitive, or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty that is applied pursuant to a Party's domestic law; or

(3) Fee or other charge in connection with importation commensurate with the cost of services rendered;

(e) *Customs Valuation Agreement*. ''Customs Valuation Agreement'' means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the WTO Agreement;

(f) *Days*. ''Days'' means calendar days;

(g) *Enterprise*. ''Enterprise'' means any entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, sole proprietorship, joint venture, or other association;

(h) *Enterprise of a Party*. ''Enterprise of a Party'' means an enterprise constituted or organized under a Party's law;

(i) *Goods of a Party*. ''Goods of a Party'' means domestic products as these are understood in the GATT 1994 or such goods as the Parties may agree, and includes originating goods of that Party.

(j) *GATT 1994*. ''GATT 1994'' means the *General Agreement on Tariffs and Trade 1994*, which is part of the *WTO Agreement;*

(k) *Harmonized System*. ''Harmonized System'' means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, and Chapter Notes, as adopted and implemented by the Parties in their respective tariff laws;

(l) *Heading*. ''Heading'' means the first four digits in the tariff classification number under the Harmonized System;

(m) *HTSUS*. ''HTSUS'' means the *Harmonized Tariff Schedule of the United States* as promulgated by the U.S. International Trade Commission;

(n) *Identical goods*. ''Identical goods'' means goods that are the same in all respects relevant to the rule of origin that qualifies the goods as originating goods;

(o) *Originating*. ''Originating'' means qualifying for preferential tariff treatment under the rules of origin set out in Article 3.3 (Textiles and Apparel) or Chapter Four (Rules of Origin and Origin Procedures) of the CTPA, and General Note 34, HTSUS;

(p) *Party*. ''Party'' means the United States or Colombia;

(q) *Person*. ''Person'' means a natural person or an enterprise;

(r) *Preferential tariff treatment*. ''Preferential tariff treatment'' means the duty rate applicable under the CTPA to an originating good, and an exemption from the merchandise processing fee;

(s) *Subheading*. ''Subheading'' means the first six digits in the tariff classification number under the Harmonized System;

(t) *Textile or apparel good*. ''Textile or apparel good'' means a good listed in the Annex to the Agreement on Textiles and Clothing (commonly referred to as ''the ATC''), which is part of the WTO Agreement, except for those goods listed in Annex 3–C of the CTPA;

(u) *Territory*. ''Territory'' means:

(1) With respect to Colombia, in addition to its continental territory, the archipelago of San Andrés, Providencia and Santa Catalina, the islands of Malpelo, and all the other islands, islets, keys, headlands and shoals that belong to it, as well as air space and the maritime areas over which Colombia has sovereignty or sovereign rights or jurisdiction in accordance with its domestic law and international law, including applicable international treaties; and

(2) With respect to the United States:
(i) The customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico;
(ii) The foreign trade zones located in the United States and Puerto Rico; and
(iii) Any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources;
(v) *WTO*. ''WTO'' means the World Trade Organization; and
(w) *WTO Agreement*. ''WTO Agreement'' means the *Marrakesh Agreement Establishing the World Trade Organization* of April 15, 1994.

IMPORT REQUIREMENTS

§ 10.3003 Filing of claim for preferential tariff treatment upon importation.

(a) *Basis of claim*. An importer may make a claim for CTPA preferential tariff treatment, including an exemption from the merchandise processing fee, based on either:
(1) A written or electronic certification, as specified in § 10.3004, that is prepared by the importer, exporter, or producer of the good; or
(2) The importer's knowledge that the good is an originating good, including reasonable reliance on information in the importer's possession that the good is an originating good.
(b) *Making a claim*. The claim is made by including on the entry summary, or equivalent documentation, the letters ''CO'' as a prefix to the subheading of the HTSUS under which each qualifying good is classified, or by the method specified for equivalent reporting via an authorized electronic data interchange system.
(c) *Corrected claim*. If, after making the claim specified in paragraph (b) of this section, the importer has reason to believe that the claim is based on inaccurate information or is otherwise invalid, the importer must, within 30 calendar days after the date of discovery of the error, correct the claim and pay any duties that may be due. The importer must submit a statement either in writing or via an authorized electronic data interchange system to the CBP office where the original claim was filed specifying the correction (*see* §§ 10.3031 and 10.3033).

§ 10.3004 Certification.

(a) *General*. An importer who makes a claim pursuant to § 10.3003(b) based on a certification by the importer, exporter, or producer that the good is originating must submit, at the request of the Center director, a copy of the certification. The certification:
(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;
(2) Must be in the possession of the importer at the time the claim for preferential tariff treatment is made if the certification forms the basis for the claim;
(3) Must include the following information:
(i) The legal name, address, telephone number, and email address of the certifying person;
(ii) If not the certifying person, the legal name, address, telephone number, and email address of the importer of record, the exporter, and the producer of the good, if known;
(iii) The legal name, address, telephone number, and email address of the responsible official or authorized agent of the importer, exporter, or producer signing the certification (if different from the information required by paragraph (a)(3)(i) of this section);
(iv) A description of the good for which preferential tariff treatment is claimed, which must be sufficiently detailed to relate it to the invoice and the HS nomenclature;
(v) The HTSUS tariff classification, to six or more digits, as necessary for the specific change in tariff classification rule for the good set forth in General Note 34, HTSUS; and
(vi) The applicable rule of origin set forth in General Note 34, HTSUS, under which the good qualifies as an originating good;
(vii) Date of certification;
(viii) In case of a blanket certification issued with respect to multiple shipments of identical goods within any period specified in the written or

electronic certification, not exceeding 12 months from the date of certification, the period that the certification covers; and

(4) Must include a statement, in substantially the following form:

''I certify that:

The information on this document is true and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document;

I agree to maintain and present upon request, documentation necessary to support these representations;

The goods comply with all requirements for preferential tariff treatment specified for those goods in the United States-Colombia Trade Promotion Agreement; and

This document consists of _____ pages, including all attachments.''

(b) *Responsible official or agent.* The certification provided for in paragraph (a) of this section must be signed and dated by a responsible official of the importer, exporter, or producer, or by the importer's, exporter's, or producer's authorized agent having knowledge of the relevant facts.

(c) *Language.* The certification provided for in paragraph (a) of this section must be completed in either the English or Spanish language. In the latter case, the Center director may require the importer to submit an English translation of the certification.

(d) *Certification by the exporter or producer.* (1) A certification may be prepared by the exporter or producer of the good on the basis of:

(i) The exporter's or producer's knowledge that the good is originating; or

(ii) In the case of an exporter, reasonable reliance on the producer's certification that the good is originating.

(2) The Center director may not require an exporter or producer to provide a written or electronic certification to another person.

(e) *Applicability of certification.* The certification provided for in paragraph (a) of this section may be applicable to:

(1) A single shipment of a good into the United States; or

(2) Multiple shipments of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the certification.

(f) *Validity of certification.* A certification that is properly completed, signed, and dated in accordance with the requirements of this section will be accepted as valid for four years following the date on which it was issued

§ 10.3005 Importer obligations.

(a) *General.* An importer who makes a claim for preferential tariff treatment under § 10.3003(b):

(1) Will be deemed to have certified that the good is eligible for preferential tariff treatment under the CTPA;

(2) Is responsible for the truthfulness of the claim and of all the information and data contained in the certification provided for in § 10.3004; and

(3) Is responsible for submitting any supporting documents requested by CBP, and for the truthfulness of the information contained in those documents. When a certification prepared by an exporter or producer forms the basis of a claim for preferential tariff treatment, and CBP requests the submission of supporting documents, the importer will provide to CBP, or arrange for the direct submission by the exporter or producer of, all information relied on by the exporter or producer in preparing the certification.

(b) *Information provided by exporter or producer.* The fact that the importer has made a claim or submitted a certification based on information provided by an exporter or producer will not relieve the importer of the responsibility referred to in paragraph (a) of this section.

(c) *Exemption from penalties.* An importer will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for making an incorrect claim for preferential tariff treatment or submitting an incorrect certification, provided that the importer promptly and voluntarily corrects the claim or certification and pays any duty owing (*see* §§ 10.3031 through 10.3033).

§ 10.3006 Certification not required.

(a) *General.* Except as otherwise provided in paragraph (b) of this section,

an importer will not be required to submit a copy of a certification under § 10.3004 for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the originating goods does not exceed U.S. $2,500.

(b) *Exception.* If the Center director determines that an importation described in paragraph (a) of this section is part of a series of importations carried out or planned for the purpose of evading compliance with the certification requirements of § 10.3004, the Center director will notify the importer that for that importation the importer must submit a copy of the certification. The importer must submit such a copy within 30 days from the date of the notice. Failure to timely submit a copy of the certification will result in denial of the claim for preferential tariff treatment.

[77 FR 59069, Sept. 26, 2012, as amended by CBP Dec. 16–26, 81 FR 93014, Dec. 20, 2016]

§ 10.3007 Maintenance of records.

(a) *General.* An importer claiming preferential tariff treatment for a good imported into the United States under § 10.3003(b) based on either the importer's certification or its knowledge must maintain, for a minimum of five years after the date of importation of the good, all records and documents necessary to demonstrate that the good qualifies for preferential tariff treatment under the CTPA. An importer claiming preferential tariff treatment for a good imported into the United States under § 10.3003(b) based on the certification issued by the exporter or producer must maintain, for a minimum of five years after the date of importation of the good, the certification issued by the exporter or producer. These records are in addition to any other records that the importer is required to prepare, maintain, or make available to CBP under part 163 of this chapter.

(b) *Method of maintenance.* The records and documents referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

[77 FR 59069, Sept. 26, 2012, as amended at 78 FR 60193, Oct. 1, 2013]

§ 10.3008 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *General.* If the importer fails to comply with any requirement under this subpart, including submission of a complete certification prepared in accordance with § 10.3004 of this subpart, when requested, the Center director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, the Center director nevertheless may deny preferential tariff treatment to an originating good if the good is shipped through or transshipped in a country other than a Party to the CTPA, and the importer of the good does not provide, at the request of the Center director, evidence demonstrating to the satisfaction of the Center director that the conditions set forth in § 10.3025(a) were met.

EXPORT REQUIREMENTS

§ 10.3009 Certification for goods exported to Colombia.

(a) *Submission of certification to CBP.* Any person who completes and issues a certification for a good exported from the United States to Colombia must provide a copy of the certification (written or electronic) to CBP upon request.

(b) *Notification of errors in certification.* Any person who completes and issues a certification for a good exported from the United States to Colombia and who has reason to believe that the certification contains or is based on incorrect information must promptly notify every person to whom the certification was provided of any change that could affect the accuracy or validity of the certification. Notification of an incorrect certification must also be given either in writing or via an authorized electronic data interchange system to CBP specifying the correction (*see* §§ 10.3032 and 10.3033).

(c) *Maintenance of records*—(1) *General.* Any person who completes and issues a certification for a good exported from the United States to Colombia must maintain, for a period of at least five years after the date the certification was issued, all records and supporting documents relating to the origin of a good for which the certification was issued, including the certification or copies thereof and records and documents associated with:

(i) The purchase, cost, and value of, and payment for, the good;

(ii) The purchase, cost, and value of, and payment for, all materials, including indirect materials, used in the production of the good; and

(iii) The production of the good in the form in which the good was exported.

(2) *Method of maintenance.* The records referred to in paragraph (c) of this section must be maintained as provided in § 163.5 of this chapter.

(3) *Availability of records.* For purposes of determining compliance with the provisions of this part, the records required to be maintained under this section must be stored and made available for examination and inspection by the Center director or other appropriate CBP officer in the same manner as provided in part 163 of this chapter.

POST-IMPORTATION DUTY REFUND CLAIMS

§ 10.3010 Right to make post-importation claim and refund duties.

Notwithstanding any other available remedy, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment was made, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance with the procedures set forth in § 10.3011. Subject to the provisions of § 10.3008, CBP may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 10.3012(c).

§ 10.3011 Filing procedures.

(a) *Place of filing.* A post-importation claim for a refund must be filed with CBP, either at the port of entry or electronically. The post-importation claim may be filed by paper or by the method specified for equivalent reporting via an authorized electronic data interchange system.

(b) *Contents of claim.* A post-importation claim for a refund must be filed by presentation of the following:

(1) A written or electronic declaration or statement stating that the good was an originating good at the time of importation and setting forth the number and date of the entry or entries covering the good;

(2) A copy of a written or electronic certification prepared in accordance with § 10.3004 if a certification forms the basis for the claim, or other information demonstrating that the good qualifies for preferential tariff treatment;

(3) A written statement indicating whether the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was so provided, the statement must identify each recipient by name, CBP identification number, and address and must specify the date on which the documentation was provided; and

(4) A written statement indicating whether any person has filed a protest relating to the good under any provision of law; and if any such protest has been filed, the statement must identify the protest by number and date.

[77 FR 59069, Sept. 26, 2012, as amended at 78 FR 60193, Oct. 1, 2013]

§ 10.3012 CBP processing procedures.

(a) *Status determination.* After receipt of a post-importation claim made pursuant to § 10.3011, the Center director will determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest or judicial review.* If the Center director determines that any protest relating to the good has not been finally decided, the Center director will suspend action on the claim filed under § 10.3011 until the decision on the protest becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the

Court of International Trade, the Center director will suspend action on the claim filed under §10.3011 until judicial review has been completed.

(c) *Allowance of claim*—(1) *Unliquidated entry*. If the Center director determines that a claim for a refund filed under §10.3011 should be allowed and the entry covering the good has not been liquidated, the Center director will take into account the claim for refund in connection with the liquidation of the entry.

(2) *Liquidated entry*. If the Center director determines that a claim for a refund filed under §10.3011 should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties under this section. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, the Center director will reliquidate the entry taking into account the claim for refund under §10.3011.

(d) *Denial of claim*—(1) *General*. The Center director may deny a claim for a refund filed under §10.3011 if the claim was not filed timely, if the importer has not complied with the requirements of §§10.3008 and 10.3011, or if, following an origin verification under §10.3026, the Center director determines either that the imported good was not an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under §10.3026.

(2) *Unliquidated entry*. If the Center director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the Center director will deny the claim in connection with the liquidation of the entry, and notice of the denial and the reason for the denial will be provided to the importer in writing or via an authorized electronic data interchange system.

(3) *Liquidated entry*. If the Center director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the Center director will provide notice of the denial and the reason for the denial to the importer in writing or via an authorized electronic data interchange system.

RULES OF ORIGIN

§ 10.3013 Definitions.

For purposes of §§10.3013 through 10.3025:

(a) *Adjusted value*. ''Adjusted value'' means the value determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, adjusted, if necessary, to exclude:

(1) Any costs, charges, or expenses incurred for transportation, insurance and related services incident to the international shipment of the good from the country of exportation to the place of importation; and

(2) The value of packing materials and containers for shipment as defined in paragraph (n) of this section;

(b) *Class of motor vehicles*. ''Class of motor vehicles'' means any one of the following categories of motor vehicles:

(1) Motor vehicles classified under subheading 8701.20, motor vehicles for the transport of 16 or more persons classified under 8702.10 or 8702.90, HTSUS, and motor vehicles classified under subheading under 8702.10, 8704.22, 8704.23, 8704.32, or 8704.90, or heading 8705 or 8706;

(2) Motor vehicles classified under subheading 8701.10 or subheadings 8701.30 through 8701.90, HTSUS;

(3) Motor vehicles for the transport of 15 or fewer persons classified under subheading 8702.10 or 8702.90, HTSUS, and motor vehicles of subheading 8704.21 or 8704.31, HTSUS; or

(4) Motor vehicles classified under subheadings 8703.21 through 8703.90, HTSUS;

(c) *Exporter*. ''Exporter'' means a person who exports goods from the territory of a Party;

(d) *Fungible good or material.* ''Fungible good or material'' means a good or material, as the case may be, that is interchangeable with another good or material for commercial purposes and the properties of which are essentially identical to such other good or material;

(e) *Generally Accepted Accounting Principles.* ''Generally Accepted Accounting Principles'' means the recognized consensus or substantial authoritative support in the territory of a Party, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These principles may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;

(f) *Good.* ''Good'' means any merchandise, product, article, or material;

(g) *Goods wholly obtained or produced entirely in the territory of one or both of the Parties.* ''Goods wholly obtained or produced entirely in the territory of one or both of the Parties'' means:

(1) Plants and plant products harvested or gathered in the territory of one or both of the Parties;

(2) Live animals born and raised in the territory of one or both of the

Parties;

(3) Goods obtained in the territory of one or both of the Parties from live animals;

(4) Goods obtained from hunting, trapping, fishing, or aquaculture conducted in the territory of one or both of the Parties;

(5) Minerals and other natural resources not included in paragraphs (g)(1) through (g)(4) of this section that are extracted or taken in the territory of one or both of the Parties;

(6) Fish, shellfish, and other marine life taken from the sea, seabed, or subsoil outside the territory of the Parties by:

(i) Vessels registered or recorded with Colombia and flying its flag; or

(ii) Vessels documented under the laws of the United States;

(7) Goods produced on board factory ships from the goods referred to in paragraph (g)(6) of this section, if such factory ships are:

(i) Registered or recorded with Colombia and fly its flag; or

(ii) Documented under the laws of the United States;

(8) Goods taken by a Party or a person of a Party from the seabed or subsoil outside territorial waters, if a Party has rights to exploit such seabed or subsoil;

(9) Goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in the territory of a non-Party;

(10) Waste and scrap derived from:

(i) Manufacturing or processing operations in the territory of one or both of the Parties; or

(ii) Used goods collected in the territory of one or both of the Parties, if such goods are fit only for the recovery of raw materials;

(11) Recovered goods derived in the territory of one or both of the Parties from used goods, and used in the territory of one or both of the Parties in the production of remanufactured goods; and

(12) Goods produced in the territory of one or both of the Parties exclusively from goods referred to in any of paragraphs (g)(1) through (g)(10) of this section, or from the derivatives of such goods, at any stage of production;

(h) *Indirect Material.* ''Indirect material'' means a good used in the production, testing, or inspection of another good in the territory of one or both of the Parties but not physically incorporated into that other good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of another good, including:

(1) Fuel and energy;

(2) Tools, dies, and molds;

(3) Spare parts and materials used in the maintenance of equipment or buildings;

(4) Lubricants, greases, compounding materials, and other materials used in production or used to operate equipment or buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the good;

(7) Catalysts and solvents; and

(8) Any other good that is not incorporated into the other good but the use

of which in the production of the other good can reasonably be demonstrated to be a part of that production.

(i) *Material.* ''Material'' means a good that is used in the production of another good, including a part or an ingredient;

(j) *Model line.* ''Model line'' means a group of motor vehicles having the same platform or model name;

(k) *Net cost.* ''Net cost'' means total cost minus sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost;

(l) *Non-allowable interest costs.* ''Non-allowable interest costs'' means interest costs incurred by a producer that exceed 700 basis points above the applicable official interest rate for comparable maturities of the Party in which the producer is located;

(m) *Non-originating good or non-originating material.* ''Non-originating good'' or ''non-originating material'' means a good or material, as the case may be, that does not qualify as originating under General Note 34, HTSUS, or this subpart;

(n) *Packing materials and containers for shipment.* ''Packing materials and containers for shipment'' means the goods used to protect a good during its transportation to the United States, and does not include the packaging materials and containers in which a good is packaged for retail sale;

(o) *Producer.* ''Producer'' means a person who engages in the production of a good in the territory of a Party;

(p) *Production.* ''Production'' means growing, mining, harvesting, fishing, raising, trapping, hunting, manufacturing, processing, assembling, or disassembling a good;

(q) *Reasonably allocate.* ''Reasonably allocate'' means to apportion in a manner that would be appropriate under Generally Accepted Accounting Principles;

(r) *Recovered goods.* ''Recovered goods'' means materials in the form of individual parts that are the result of:

(1) The disassembly of used goods into individual parts; and

(2) The cleaning, inspecting, testing, or other processing that is necessary to improve such individual parts to sound working condition;

(s) *Remanufactured good.* ''Remanufactured good'' means an industrial good assembled in the territory of one or both of the Parties that is classified in Chapter 84, 85, 87, or 90 or heading 9402, HTSUS, other than a good classified in heading 8418 or 8516, HTSUS, and that:

(1) Is entirely or partially comprised of recovered goods as defined in paragraph (r) of this section; and

(2) Has a similar life expectancy and enjoys a factory warranty similar to such new goods;

(t) *Royalties.* ''Royalties'' means payments of any kind, including payments under technical assistance agreements or similar agreements, made as consideration for the use of, or right to use, any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance agreements or similar agreements that can be related to specific services such as:

(1) Personnel training, without regard to where performed; and

(2) If performed in the territory of one or both of the Parties, engineering, tooling, die-setting, software design and similar computer services;

(u) *Sales promotion, marketing, and after-sales service costs.* ''Sales promotion, marketing, and after-sales service costs'' means the following costs related to sales promotion, marketing, and after-sales service:

(1) Sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing, and after-sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;

(2) Sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;

(3) Salaries and wages, sales commissions, bonuses, benefits (for example,

medical, insurance, pension), traveling and living expenses, membership and professional fees, for sales promotion, marketing, and after-sales service personnel;

(4) Recruiting and training of sales promotion, marketing, and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(5) Product liability insurance;

(6) Office supplies for sales promotion, marketing, and after-sales service of goods, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(7) Telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(8) Rent and depreciation of sales promotion, marketing, and after-sales service offices and distribution centers;

(9) Property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing, and after-sales service offices and distribution centers, where such costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer; and

(10) Payments by the producer to other persons for warranty repairs;

(v) *Self-produced material.* ''Self-produced material'' means an originating material that is produced by a producer of a good and used in the production of that good;

(w) *Shipping and packing costs.* ''Shipping and packing costs'' means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, excluding the costs of preparing and packaging the good for retail sale;

(x) *Total cost.* ''Total cost'' means all product costs, period costs, and other costs for a good incurred in the territory of one or both of the Parties. Product costs are costs that are associated with the production of a good and include the value of materials, direct labor costs, and direct overhead. Period costs are costs, other than product costs, that are expensed in the period in which they are incurred, such as selling expenses and general and administrative expenses. Other costs are all costs recorded on the books of the producer that are not product costs or period costs, such as interest. Total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

(y) *Used.* ''Used'' means utilized or consumed in the production of goods; and

(z) *Value.* ''Value'' means the value of a good or material for purposes of calculating customs duties or for purposes of applying this subpart.

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§ 10.3014 Originating goods.

Except as otherwise provided in this subpart and General Note 34, HTSUS, a good imported into the customs territory of the United States will be considered an originating good under the CTPA only if:

(a) The good is wholly obtained or produced entirely in the territory of one or both of the Parties;

(b) The good is produced entirely in the territory of one or both of the Parties and:

(1) Each non-originating material used in the production of the good undergoes an applicable change in tariff classification specified in General Note 34, HTSUS, and the good satisfies all other applicable requirements of General Note 34, HTSUS; or

(2) The good otherwise satisfies any applicable regional value content or other requirements specified in General Note 34, HTSUS, and satisfies all other applicable requirements of General Note 34, HTSUS; or

(c) The good is produced entirely in the territory of one or both of the Parties exclusively from originating materials.

§ 10.3015 Regional value content.

(a) *General.* Except for goods to which paragraph (d) of this section applies, where General Note 34, HTSUS, sets forth a rule that specifies a regional value content test for a good, the regional value content of such good must be calculated by the importer, exporter, or producer of the good on the basis of the build-down method described in paragraph (b) of this section or the build-up method described in paragraph (c) of this section.

(b) *Build-down method.* Under the build-down method, the regional value content must be calculated on the basis of the formula RVC = ((AV − VNM)/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced.

(c) *Build-up method.* Under the build-up method, the regional value content must be calculated on the basis of the formula RVC = (VOM/AV) × 100, where RVC is the regional value content, expressed as a percentage; AV is the adjusted value of the good; and VOM is the value of originating materials that are acquired or self-produced and used by the producer in the production of the good.

(d) *Special rule for certain automotive goods*—(1) *General.* Where General Note 34, HTSUS, sets forth a rule that specifies a regional value content test for an automotive good provided for in any of subheadings 8407.31 through 8407.34 (engines), subheading 8408.20 (diesel engine for vehicles), heading 8409 (parts of engines), or headings 8701 through 8705 (motor vehicles), and headings 8706 (chassis), 8707 (bodies), and 8708 (motor vehicle parts), HTSUS, the regional value content of such good shall be calculated by the importer, exporter, or producer of the good on the basis of the net cost method described in paragraph (d)(2) of this section.

(2) *Net cost method.* Under the net cost method, the regional value content is calculated on the basis of the formula RVC = ((NC − VNM)/NC) × 100, where RVC is the regional value content, expressed as a percentage; NC is the net cost of the good; and VNM is the value of non-originating materials that are acquired and used by the producer in the production of the good, but does not include the value of a material that is self-produced. Consistent with the provisions regarding allocation of costs set out in Generally Accepted Accounting Principles, the net cost of the good must be determined by:

(i) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, subtracting any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost of all such goods, and then reasonably allocating the resulting net cost of those goods to the automotive good;

(ii) Calculating the total cost incurred with respect to all goods produced by the producer of the automotive good, reasonably allocating the total cost to the automotive good, and then subtracting any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the portion of the total cost allocated to the automotive good; or

(iii) Reasonably allocating each cost that forms part of the total costs incurred with respect to the automotive good so that the aggregate of these costs does not include any sales promotion, marketing, and after-sales service costs, royalties, shipping and packing costs, or non-allowable interest costs.

(3) *Motor vehicles*—(i) *General.* For purposes of calculating the regional value content under the net cost method for an automotive good that is a motor vehicle provided for in any of headings 8701 through 8705, an importer, exporter, or producer may average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over the producer's fiscal year using any one of the categories described in paragraph (d)(3)(ii) of this section either on the basis of all motor vehicles in the category or those motor

vehicles in the category that are exported to the territory of one or both Parties.

(ii) *Categories.* The categories referred to in paragraph (d)(3)(i) of this section are as follows:

(A) The same model line of motor vehicles, in the same class of vehicles, produced in the same plant in the territory of a Party, as the motor vehicle for which the regional value content is being calculated;

(B) The same class of motor vehicles, and produced in the same plant in the territory of a Party, as the motor vehicle for which the regional value content is being calculated; and

(C) The same model line of motor vehicles produced in the territory of a Party as the motor vehicle for which the regional value content is being calculated.

(4) *Other automotive goods*—(i) *General.* For purposes of calculating the regional value content under the net cost method for automotive goods provided for in any of subheadings 8407.31 through 8407.34, subheading 8408.20, heading 8409, 8706, 8707, or 8708, HTSUS, that are produced in the same plant, an importer, exporter, or producer may:

(A) Average the amounts calculated under the formula set forth in paragraph (d)(2) of this section over any of the following: the fiscal year, or any quarter or month, of the motor vehicle producer to whom the automotive good is sold, or the fiscal year, or any quarter or month, of the producer of the automotive good, provided the goods were produced during the fiscal year, quarter, or month that is the basis for the calculation;

(B) Determine the average referred to in paragraph (d)(4)(i)(A) of this section separately for such goods sold to one or more motor vehicle producers; or

(C) Make a separate determination under paragraph (d)(4)(i)(A) or (d)(4)(i)(B) of this section for automotive goods that are exported to the territory of Colombia or the United States.

(ii) *Duration of use.* A person selecting an averaging period of one month or quarter under paragraph (d)(4)(i)(A) of this section must continue to use that method for that category of automotive goods throughout the fiscal year.

§ 10.3016 Value of materials.

(a) *Calculating the value of materials.* For purposes of calculating the regional value content of a good under General Note 34, HTSUS, and for purposes of applying the *de minimis* (*see* § 10.3018) provisions of General Note 34, HTSUS, the value of a material is:

(1) In the case of a material imported by the producer of the good, the adjusted value of the material;

(2) In the case of a material acquired by the producer in the territory where the good is produced, the value, determined in accordance with Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, of the material, i.e., in the same manner as for imported goods, with reasonable modifications to the provisions of the Customs Valuation Agreement as may be required due to the absence of an importation by the producer (including, but not limited to, treating a domestic purchase by the producer as if it were a sale for export to the country of importation); or

(3) In the case of a self-produced material, the sum of:

(i) All expenses incurred in the production of the material, including general expenses; and

(ii) An amount for profit equivalent to the profit added in the normal course of trade.

(b) *Examples.* The following examples illustrate application of the principles set forth in paragraph (a)(2) of this section:

Example 1. A producer in Colombia purchases material x from an unrelated seller in Colombia for $100. Under the provisions of Article 1 of the Customs Valuation Agreement, transaction value is the price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of Article 8. In order to apply Article 1 to this domestic purchase by the producer, such purchase is treated as if it were a sale for export to the country of importation. Therefore, for purposes of determining the adjusted value of material x, Article 1 transaction value is the price actually paid or payable for the goods when sold to the producer in Colombia

($100), adjusted in accordance with the provisions of Article 8. In this example, it is irrelevant whether material x was initially imported into Colombia by the seller (or by anyone else). So long as the producer acquired material x in Colombia, it is intended that the value of material x will be determined on the basis of the price actually paid or payable by the producer adjusted in accordance with the provisions of Article 8.

Example 2. Same facts as in Example 1, except that the sale between the seller and the producer is subject to certain restrictions that preclude the application of Article 1. Under Article 2 of the Customs Valuation Agreement, the value is the transaction value of identical goods sold for export to the same country of importation and exported at or about the same time as the goods being valued. In order to permit the application of Article 2 to the domestic acquisition by the producer, it should be modified so that the value is the transaction value of identical goods sold within Colombia at or about the same time the goods were sold to the producer in Colombia. Thus, if the seller of material x also sold an identical material to another buyer in Colombia without restrictions, that other sale would be used to determine the adjusted value of material x.

(c) *Permissible additions to, and deductions from, the value of materials*—(1) *Additions to originating materials.* For originating materials, the following expenses, if not included under paragraph (a) of this section, may be added to the value of the originating material:

(i) The costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or both of the Parties to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable; and

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or byproducts.

(2) *Deductions from non-originating materials.* For non-originating materials, if included under paragraph (a) of this section, the following expenses may be deducted from the value of the non-originating material:

(i) The costs of freight (''cost of freight'' includes the costs of all types of freight, including in-land freight incurred within a Party's territory, regardless of the mode of transportation), insurance, packing, and all other costs incurred in transporting the material within or between the territory of one or both of the Parties to the location of the producer;

(ii) Duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Parties, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable;

(iii) The cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products; and

(iv) The cost of originating materials used in the production of the non-originating material in the territory of one or both of the Parties.

(d) *Accounting method.* Any cost or value referenced in General Note 34, HTSUS, and this subpart, must be recorded and maintained in accordance with the Generally Accepted Accounting Principles applicable in the territory of the Party in which the good is produced.

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§ 10.3017 Accumulation.

(a) Originating materials from the territory of a Party that are used in the production of a good in the territory of another Party will be considered to originate in the territory of that other Party.

(b) A good that is produced in the territory of one or both of the Parties by one or more producers is an originating good if the good satisfies the requirements of § 10.3014 and all other applicable requirements of General Note 34, HTSUS.

§ 10.3018 De minimis.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, a good that does not undergo a change in tariff classification pursuant to General Note 34, HTSUS, is an originating good if:

(1) The value of all non-originating materials used in the production of the good that do not undergo the applicable change in tariff classification does not exceed 10 percent of the adjusted value of the good;

(2) The value of the non-originating materials described in paragraph (a)(1) of this section is included in the value of non-originating materials for any applicable regional value content requirement for the good under General Note 34, HTSUS; and

(3) The good meets all other applicable requirements of General Note 34, HTSUS.

(b) *Exceptions.* Paragraph (a) of this section does not apply to:

(1) A non-originating material provided for in Chapter 4, HTSUS, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90, HTSUS, that is used in the production of a good provided for in Chapter 4, HTSUS;

(2) A non-originating material provided for in Chapter 4, HTSUS, or a non-originating dairy preparation containing over 10 percent by weight of milk solids provided for in subheading 1901.90, HTSUS, which is used in the production of the following goods:

(i) Infant preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.10, HTSUS;

(ii) Mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale, provided for in subheading 1901.20, HTSUS;

(iii) Dairy preparations containing over 10 percent by weight of milk solids provided for in subheading 1901.90 or 2106.90, HTSUS;

(iv) Goods provided for in heading 2105, HTSUS;

(v) Beverages containing milk provided for in subheading 2202.90, HTSUS; or

(vi) Animal feeds containing over 10 percent by weight of milk solids provided for in subheading 2309.90, HTSUS;

(3) A non-originating material provided for in heading 0805, HTSUS, or any of subheadings 2009.11 through 2009.39, HTSUS, that is used in the production of a good provided for in any of subheadings 2009.11 through 2009.39, HTSUS, or in fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, provided for in subheading 2106.90 or 2202.90, HTSUS;

(4) A non-originating material provided for in heading 0901 or 2101, HTSUS, that is used in the production of a good provided for in heading 0901 or 2101, HTSUS;

(5) A non-originating material provided for in headings 1501 through 1508, HTSUS, or headings 1511 through 1515, HTSUS;

(6) A non-originating material provided for in heading 1701, HTSUS, that is used in the production of a good provided for in any of headings 1701 through 1703, HTSUS;

(7) A non-originating material provided for in Chapter 17, HTSUS, that is used in the production of a good provided for in subheading 1806.10, HTSUS; or

(8) Except as provided in paragraphs (b)(1) through (b)(7) of this section and General Note 34, HTSUS, a non-originating material used in the production of a good provided for in any of Chapters 1 through 24, HTSUS, unless the non-originating material is provided for in a different subheading than the good for which origin is being determined under this subpart.

(c) *Textile and apparel goods*—(1) *General.* Except as provided in paragraph (c)(2) of this section, a textile or apparel good that is not an originating good because certain fibers or yarns used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification set out in General Note 34, HTSUS, will nevertheless be considered to be an originating good if:

(i) The total weight of all such fibers or yarns in that component is not more than 10 percent of the total weight of that component; or

(ii) The yarns are nylon filament yarns (other than elastomeric yarns) that are provided for in subheading 5402.11.30, 5402.11.60, 5402.19.30, 5402.19.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.45.10, 5402.45.90, 5402.51.00, or 5402.61.00, HTSUS, and that are products of Canada, Mexico, or Israel.

(2) *Exception for goods containing elastomeric yarns.* A textile or apparel good containing elastomeric yarns (excluding latex) in the component of the good that determines the tariff classification of the good will be considered an originating good only if such yarns are wholly formed in the territory of a Party. For purposes of this paragraph, ''wholly formed'' means that all the production processes and finishing operations, starting with the extrusion of all filaments, strips, films, or sheets, or the spinning of all fibers into yarn, or both, and ending with a finished yarn or plied yarn, took place in the territory of a Party.

(3) *Yarn, fabric, or fiber.* For purposes of paragraph (c) of this section, in the case of a textile or apparel good that is a yarn, fabric, or fiber, the term ''component of the good that determines the tariff classification of the good'' means all of the fibers in the good.

§ 10.3019 Fungible goods and materials.

(a) *General.* A person claiming that a fungible good or material is an originating good may base the claim either on the physical segregation of the fungible good or material or by using an inventory management method with respect to the fungible good or material. For purposes of this section, the term ''inventory management method'' means:

(1) Averaging;

(2) ''Last-in, first-out;''

(3) ''First-in, first-out;'' or

(4) Any other method that is recognized in the Generally Accepted Accounting Principles of the Party in which the production is performed or otherwise accepted by that country.

(b) *Duration of use.* A person selecting an inventory management method under paragraph (a) of this section for a particular fungible good or material must continue to use that method for that fungible good or material throughout the fiscal year of that person.

§ 10.3020 Accessories, spare parts, or tools.

(a) *General.* Accessories, spare parts, or tools that are delivered with a good and that form part of the good's standard accessories, spare parts, or tools will be treated as originating goods if the good is an originating good, and will be disregarded in determining whether all the non-originating materials used in the production of the good undergo an applicable change in tariff classification specified in General Note 34, HTSUS, provided that:

(1) The accessories, spare parts, or tools are classified with, and not invoiced separately from, the good, regardless of whether they are specified or separately identified in the invoice for the good; and

(2) The quantities and value of the accessories, spare parts, or tools are customary for the good.

(b) *Regional value content.* If the good is subject to a regional value content requirement, the value of the accessories, spare parts, or tools is taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good under § 10.3015.

§ 10.3021 Goods classifiable as goods put up in sets.

Notwithstanding the specific rules set forth in General Note 34, HTSUS, goods classifiable as goods put up in sets for retail sale as provided for in General Rule of Interpretation 3, HTSUS, will not be considered to be originating goods unless:

(a) Each of the goods in the set is an originating good; or

(b) The total value of the non-originating goods in the set does not exceed;

(1) In the case of textile or apparel goods, 10 percent of the adjusted value of the set; or

(2) In the case of a good other than a textile or apparel good, 15 percent of the adjusted value of the set.

§ 10.3022 Retail packaging materials and containers.

(a) *Effect on tariff shift rule.* Packaging materials and containers in which a good is packaged for retail sale, if classified with the good for which preferential tariff treatment under the CTPA is claimed, will be disregarded in determining whether all non-originating materials used in the

production of the good undergo the applicable change in tariff classification set out in General Note 34, HTSUS.

(b) *Effect on regional value content calculation.* If the good is subject to a regional value content requirement, the value of such packaging materials and containers will be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Example 1. Colombian Producer A of good C imports 100 non-originating blister packages to be used as retail packaging for good C. As provided in §10.3016(a)(1), the value of the blister packages is their adjusted value, which in this case is $10. Good C has a regional value content requirement. The United States importer of good C decides to use the build-down method, RVC = ((AV − VNM)/AV) × 100 (*see* §10.3015(b)), in determining whether good C satisfies the regional value content requirement. In applying this method, the non-originating blister packages are taken into account as non-originating. As such, their $10 adjusted value is included in the VNM, value of non-originating materials, of good C.

Example 2. Same facts as in Example 1, except that the blister packages are originating. In this case, the adjusted value of the originating blister packages would *not* be included as part of the VNM of good C under the build-down method. However, if the U.S. importer had used the build-up method, RVC = (VOM/AV) × 100 (*see* §10.3015(c)), the adjusted value of the blister packaging would be included as part of the VOM, value of originating materials.

§ 10.3023 Packing materials and containers for shipment.

(a) *Effect on tariff shift rule.* Packing materials and containers for shipment, as defined in §10.3013(n), are to be disregarded in determining whether the non-originating materials used in the production of the good undergo an applicable change in tariff classification set out in General Note 34, HTSUS. Accordingly, such materials and containers are not required to undergo the applicable change in tariff classification even if they are non-originating.

(b) *Effect on regional value content calculation.* Packing materials and containers for shipment, as defined in §10.3013(n), are to be disregarded in determining the regional value content of a good imported into the United States. Accordingly, in applying the build-down, build-up, or net cost method for determining the regional value content of a good imported into the United States, the value of such packing materials and containers for shipment (whether originating or non-originating) is disregarded and not included in AV, adjusted value, VNM, value of non-originating materials, VOM, value of originating materials, or NC, net cost of a good.

Example. Colombian producer A produces good C. Producer A ships good C to the United States in a shipping container that it purchased from Company B in Colombia. The shipping container is originating. The value of the shipping container determined under section §10.3016(a)(2) is $3. Good C is subject to a regional value content requirement. The transaction value of good C is $100, which includes the $3 shipping container. The U.S. importer decides to use the build-up method, RVC = (VOM/AV) × 100 (*see* §10.3015(c)), in determining whether good C satisfies the regional value content requirement. In determining the AV, adjusted value, of good C imported into the U.S., paragraph (b) of this section and the definition of AV require a $3 deduction for the value of the shipping container. Therefore, the AV is $97 ($100-$3). In addition, the value of the shipping container is disregarded and not included in the VOM, value of originating materials.

§ 10.3024 Indirect materials.

An indirect material, as defined in §10.3013(h), will be considered to be an originating material without regard to where it is produced.

Example. Colombian Producer A produces good C using non-originating material B. Producer A imports non-originating rubber gloves for use by workers in the production of good C. Good C is subject to a tariff shift requirement. As provided in §10.3014(b)(1) and General Note 34, each of the non-originating materials in good C must undergo the specified change in tariff classification in order for good C to be considered originating. Although non-originating material B must undergo the applicable tariff shift in order for good C to be considered originating, the rubber gloves do not because they are indirect materials and are considered originating without regard to where they are produced.

§ 10.3025 Transit and transshipment.

(a) *General.* A good that has undergone production necessary to qualify as an originating good under §10.3014 will not be considered an originating good if, subsequent to that production, the good:

(1) Undergoes further production or any other operation outside the territories of the Parties, other than unloading, reloading, or any other operation necessary to preserve the good in good condition or to transport the good to the territory of a Party; or

(2) Does not remain under the control of customs authorities in the territory of a non-Party.

(b) *Documentary evidence.* An importer making a claim that a good is originating may be required to demonstrate, to CBP's satisfaction, that the conditions and requirements set forth in paragraph (a) of this section were met. An importer may demonstrate compliance with this section by submitting documentary evidence. Such evidence may include, but is not limited to, bills of lading, airway bills, packing lists, commercial invoices, receiving and inventory records, and customs entry and exit documents.

ORIGIN VERIFICATIONS AND DETERMINATIONS

§ 10.3026 Verification and justification of claim for preferential tariff treatment.

(a) *Verification.* A claim for preferential tariff treatment made under §10.3003(b) or §10.3011, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as the Center director deems necessary. In the event that the Center director is provided with insufficient information to verify or substantiate the claim, or the Center director finds a pattern of conduct, indicating that an importer, exporter, or producer has provided false or unsupported declarations or certifications, or the exporter or producer fails to consent to a verification visit, the Center director may deny the claim for preferential treatment. A verification of a claim for preferential tariff treatment under CTPA for goods imported into the United States may be conducted by means of one or more of the following:

(1) Written requests for information from the importer, exporter, or producer;

(2) Written questionnaires to the importer, exporter, or producer;

(3) Visits to the premises of the exporter or producer in the territory of Colombia, to review the records of the type referred to in §10.3009(c)(1) or to observe the facilities used in the production of the good, in accordance with the framework that the Parties develop for conducting verifications; and

(4) Such other procedures to which the Parties may agree.

(b) *Applicable accounting principles.* When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, CBP will apply and accept the Generally Accepted Accounting Principles applicable in the country of production.

§ 10.3027 Special rule for verifications in Colombia of U.S. imports of textile and apparel goods.

(a) *Procedures to determine whether a claim of origin is accurate*—(1) *General.* For the purpose of determining that a claim of origin for a textile or apparel good is accurate, CBP may request that the Government of Colombia conduct a verification, regardless of whether a claim is made for preferential tariff treatment.

(2) *Actions during a verification.* While a verification under this paragraph is being conducted, CBP, if directed by the President, may take appropriate action, which may include:

(i) Suspending the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made, if CBP determines there is insufficient information to support the claim;

(ii) Denying the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made that is the subject of a verification if CBP determines that a person has provided incorrect information to support the claim;

(iii) Detention of any textile or apparel good exported or produced by the person subject to the verification if CBP determines there is insufficient information to determine the country of origin of any such good; and

(iv) Denying entry to any textile or apparel good exported or produced by

the person subject to the verification if CBP determines that the person has provided incorrect information as to the country of origin of any such good.

(3) *Actions following a verification.* On completion of a verification under this paragraph, CBP, if directed by the President, may take appropriate action which may include:

(i) Denying the application of preferential tariff treatment to the textile or apparel good for which a claim for preferential tariff treatment has been made that is the subject of a verification if CBP determines there is insufficient information, or that the person has provided incorrect information, to support the claim; and

(ii) Denying entry to any textile or apparel good exported or produced by the person subject to the verification if CBP determines there is insufficient information to determine, or that the person has provided incorrect information as to, the country of origin of any such good.

(b) *Procedures to determine compliance with applicable customs laws and regulations of the United States*—(1) *General.* For purposes of enabling CBP to determine that an exporter or producer is complying with applicable customs laws, regulations, and procedures regarding trade in textile and apparel goods, CBP may request that the government of Colombia conduct a verification.

(2) *Actions during a verification.* While a verification under this paragraph is being conducted, CBP, if directed by the President, may take appropriate action which may include:

(i) Suspending the application of preferential tariff treatment to any textile or apparel good exported or produced by the person subject to the verification if CBP determines there is insufficient information to support a claim for preferential tariff treatment with respect to any such good;

(ii) Denying the application of preferential tariff treatment to any textile or apparel good exported or produced by the person subject to the verification if CBP determines that the person has provided incorrect information to support a claim for preferential tariff treatment with respect to any such good;

(iii) Detention of any textile or apparel good exported or produced by the person subject to the verification if CBP determines there is insufficient information to determine the country of origin of any such good; and

(iv) Denying entry to any textile or apparel good exported or produced by the person subject to the verification if CBP determines that the person has provided incorrect information as to the country of origin of any such good.

(3) *Actions following a verification.* On completion of a verification under this paragraph, CBP, if directed by the President, may take appropriate action which may include:

(i) Denying the application of preferential tariff treatment to any textile or apparel good exported or produced by the person subject to the verification if CBP determines there is insufficient information, or that the person has provided incorrect information, to support a claim for preferential tariff treatment with respect to any such good; and

(ii) Denying entry to any textile or apparel good exported or produced by the person subject to the verification if CBP determines there is insufficient information to determine, or that the person has provided incorrect information as to, the country of origin of any such good.

(c) *Action by U.S. officials in conducting a verification abroad.* U.S. officials may undertake or assist in a verification under this section by conducting visits in the territory of Colombia, along with the competent authorities of Colombia, to the premises of an exporter, producer, or any other person involved in the movement of textile or apparel goods from Colombia to the United States.

(d) *Denial of permission to conduct a verification.* If a person does not consent to a verification under this section, CBP may deny preferential tariff treatment to the type of goods of the person that would have been the subject of the verification.

(e) *Continuation of appropriate action.* CBP may continue to take appropriate action under paragraph (a) or (b) of this section until it receives information sufficient to enable it to make the

determination described in paragraphs (a) and (b) of this section.

[77 FR 59069, Sept. 26, 2012, as amended at 78 FR 60193, Oct. 1, 2013]

§ 10.3028 Issuance of negative origin determinations.

If, as a result of an origin verification initiated under this subpart, CBP determines that a claim for preferential tariff treatment under this subpart should be denied, it will issue a determination in writing or via an authorized electronic data interchange system to the importer that sets forth the following:

(a) A description of the good that was the subject of the verification together with the identifying numbers and dates of the import documents pertaining to the good;

(b) A statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(c) With specific reference to the rules applicable to originating goods as set forth in General Note 34, HTSUS, and in §§ 10.3013 through 10.3025, the legal basis for the determination.

§ 10.3029 Repeated false or unsupported preference claims.

Where verification or other information reveals a pattern of conduct by an importer, exporter, or producer of false or unsupported representations that goods qualify under the CTPA rules of origin set forth in General Note 34, HTSUS, CBP may suspend preferential tariff treatment under the CTPA to entries of identical goods covered by subsequent representations by that importer, exporter, or producer until CBP determines that representations of that person are in conformity with General Note 34, HTSUS.

PENALTIES

§ 10.3030 General.

Except as otherwise provided in this subpart, all criminal, civil, or administrative penalties which may be imposed on U.S. importers, exporters, and producers for violations of the customs and related laws and regulations will also apply to U.S. importers, exporters, and producers for violations of the laws and regulations relating to the CTPA.

§ 10.3031 Corrected claim or certification by importers.

An importer who makes a corrected claim under § 10.3003(c) will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for having made an incorrect claim or having submitted an incorrect certification, provided that the corrected claim is promptly and voluntarily made.

§ 10.3032 Corrected certification by U.S. exporters or producers.

Civil or administrative penalties provided for under 19 U.S.C. 1592 will not be imposed on an exporter or producer in the United States who promptly and voluntarily provides written notification pursuant to § 10.3009(b) with respect to the making of an incorrect certification.

§ 10.3033 Framework for correcting claims or certifications.

(a) ''*Promptly and voluntarily'' defined.* Except as provided for in paragraph (b) of this section, for purposes of this subpart, the making of a corrected claim or certification by an importer or the providing of written notification of an incorrect certification by an exporter or producer in the United States will be deemed to have been done promptly and voluntarily if:

(1)(i) Done before the commencement of a formal investigation, within the meaning of § 162.74(g) of this chapter; or

(ii) Done before any of the events specified in § 162.74(i) of this chapter have occurred; or

(iii) Done within 30 days after the importer, exporter, or producer initially becomes aware that the claim or certification is incorrect; and

(2) Accompanied by a statement setting forth the information specified in paragraph (c) of this section; and

(3) In the case of a corrected claim or certification by an importer, accompanied or followed by a tender of any actual loss of duties and merchandise processing fees, if applicable, in accordance with paragraph (d) of this section.

(b) *Exception in cases involving fraud or subsequent incorrect claims*—(1) *Fraud.* Notwithstanding paragraph (a) of this

section, a person who acted fraudulently in making an incorrect claim or certification may not make a voluntary correction of that claim or certification. For purposes of this paragraph, the term ''fraud'' will have the meaning set forth in paragraph (C)(3) of appendix B to part 171 of this chapter.

(2) *Subsequent incorrect claims.* An importer who makes one or more incorrect claims after becoming aware that a claim involving the same merchandise and circumstances is invalid may not make a voluntary correction of the subsequent claims pursuant to paragraph (a) of this section.

(c) *Statement.* For purposes of this subpart, each corrected claim or certification must be accompanied by a statement, submitted in writing or via an authorized electronic data interchange system, which:

(1) Identifies the class or kind of good to which the incorrect claim or certification relates;

(2) In the case of a corrected claim or certification by an importer, identifies each affected import transaction, including each port of importation and the approximate date of each importation;

(3) Specifies the nature of the incorrect statements or omissions regarding the claim or certification; and

(4) Sets forth, to the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the claim or certification, and states that the person will provide any additional information or data which is unknown at the time of making the corrected claim or certification within 30 days or within any extension of that 30-day period as CBP may permit in order for the person to obtain the information or data.

(d) *Tender of actual loss of duties.* A U.S. importer who makes a corrected claim must tender any actual loss of duties at the time of making the corrected claim, or within 30 days thereafter, or within any extension of that 30-day period as CBP may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

GOODS RETURNED AFTER REPAIR OR ALTERATION

§ 10.3034 Goods re-entered after repair or alteration in Colombia.

(a) *General.* This section sets forth the rules which apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Colombia as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Colombia, regardless of whether such repair or alteration could be performed in the territory of the Party from which the good was exported for repair or alteration, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, ''repairs or alterations'' means restoration, addition, renovation, re-dyeing, cleaning, re-sterilizing, or other treatment that does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States. The term ''repairs or alterations'' does not include an operation or process that transforms an unfinished good into a finished good.

(b) *Goods not eligible for duty-free treatment after repair or alteration.* The duty-free treatment referred to in paragraph (a) of this section will not apply to goods which, in their condition as exported from the United States to Colombia, are incomplete for their intended use and for which the processing operation performed in Colombia constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

(c) *Documentation.* The provisions of paragraphs (a), (b), and (c) of § 10.8, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Colombia after having been exported for repairs or alterations and which are claimed to be duty free.

[77 FR 59069, Sept. 26, 2012, as amended at 78 FR 60193, Oct. 1, 2013]

PART 11—PACKING AND STAMPING; MARKING

PACKING AND STAMPING

MARKING

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i) and (j), Harmonized Tariff Schedule of the United States), 1624.

PACKING AND STAMPING

§ 11.1 Cigars, cigarettes, medicinal preparations, and perfumery.

(a) All cigars and cigarettes imported into the United States, except importations by mail and in baggage, shall be placed in the public stores or in a designated bonded warehouse to remain until inspected, weighed, and repacked, if necessary, under the Customs and internal-revenue laws. However, if the invoice and entry presented specify all of the information necessary for prompt determination of the estimate duty and tax on the packages of cigars and cigarettes covered thereby, the port director may permit designation of less than the entire importation for examination.

(b) After the cigars and cigarettes have been examined, weighed, and appraised, before release the inspecting officer shall verify that they are in properly constructed packages, conforming to the requirements of the regulations of the Bureau of Alcohol, Tobacco and Firearms, bearing a legible imprint or a securely affixed label stating the quantity, kind, and classification for tax purposes as required by such regulations. Cigars or cigarettes must be in compliance with such requirements before being released for consumption unless specifically exempted therefrom as indicated in § 11.3.

(c) The immediate containers of all domestic cigars, cigarettes, medicinal preparations, and perfumery, which are returned to the United States and are subject to a duty equal to an internal-revenue tax, shall be stamped by Customs. The packaging requirements set forth in paragraph (b) of this section apply to returned cigars and cigarettes of domestic origin.

[28 FR 14701, Dec. 31, 1963, as amended by T.D. 78–329, 43 FR 43454, Sept. 26, 1978]

§ 11.2 Manufactured tobacco.

(a) If the invoice and entry presented for manufactured tobacco specify all the information necessary for prompt determination of the estimated duty on the manufactured tobacco covered thereby, the port director may permit designation of less than the entire importation for examination.

(b) In the case of returned American manufactured tobacco, the packages shall be marked or stamped by Customs with the inscription ''American goods returned.''

[28 FR 14701, Dec. 31, 1963, as amended by T.D. 67–193, 32 FR 11764, Aug. 16, 1967]

§ 11.2a Release from Customs custody without payment of tax on cigars, cigarettes and cigarette papers and tubes.

Cigars, cigarettes, and cigarette papers and tubes may be released from Customs custody without payment of any applicable internal revenue tax upon presentation of the Customs entry or withdrawal form and three copies of Alcohol, Tobacco and Firearms Form 2145 (5200.11) or 3072 (5210.14), certified by the appropriate regional regulatory administrator, Bureau of Alcohol, and Tobacco and Firearms. The Customs officer shall complete the notice of release, retain one copy, send one copy to the regional regulatory administrator, and return

one copy to the manufacturer. The release may not be made under a mail entry. See § 145.13(b) of this chapter.

[T.D. 78–329, 43 FR 43454, Sept. 26, 1978]

§ 11.3 Package and notice requirements for cigars and cigarettes; package requirements for cigarette papers and tubes.

Exemptions from tax on cigars, cigarettes, and cigarette papers and tubes apply in accordance with the regulations of the Bureau of Alcohol, Tobacco, and Firearms (27 CFR part 275) upon release from Customs custody of such articles imported by consular officers and employees of foreign states. Cigars, cigarettes, cigarette papers, and tubes may also be released without payment of tax as provided in § 11.2a and for exhibition in accordance with part 147 of this chapter. Additionally, cigars, cigarettes, or cigarette papers and tubes may be admitted free of duty and tax under the provisions of Subchapter IV, Chapter 98, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), or section 321, Tariff Act of 1930, as amended (19 U.S.C. 1321), §§ 148.63, 148.74, and subpart I of part 148 of this chapter. Except in the foregoing instances and in any instance in which such articles are imported in passengers' baggage or are to be released under a mail entry for the personal consumption of the importer or for disposition as his bona fide gift, the provisions in part 275 of the regulations of the Bureau of Alcohol, Tobacco, and Firearms (27 CFR part 275) as to packages and notices thereon apply.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 73–227, 38 FR 22548, Aug. 22, 1973; T.D. 78–329, 43 FR 43454, Sept. 26, 1978; T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

§ 11.5 [Reserved]

§ 11.6 Distilled spirits, wines, and malt liquors in bulk.

(a) The port director, in his discretion, may require marks, brands, stamps, labels, or similar devices to be placed on any bulk container used for holding, storing, transferring, or conveying imported distilled spirits, wines, and malt liquors, in accordance with 19 U.S.C. 467.

(b) Marks, brands, stamps, labels, or similar devices required by Federal, State, or local statute or regulation may be affixed, and Customs inspection, gauging, marking, or measurement may be done, at the place of unlading or other suitable place, unless the port director determines that inspection, gauging, marking, or measurement shall be done at a public store, warehouse, or other appropriate facility.

(c) Marks, brands, stamps, labels, or similar devices shall be permanent in nature and not subject to obliteration or removal as a result of handling or other condtions. The port director shall determine whether a mark, brand, stamp, label, or similar device is acceptable, based on the nature, surface, and composition of the container.

[T.D. 79–221, 44 FR 46813, Aug. 9, 1979; T.D. 80–26, 45 FR 3901, Jan. 21, 1980; T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

§ 11.7 Distilled spirits and other alcoholic beverages imported in bottles and similar containers; regulations of the Bureau of Alcohol, Tobacco, and Firearms.

The importation of distilled spirits and other alcoholic beverages in bottles and similar containers is subject to regulations of the Bureau of Alcohol, Tobacco and Firearms relating to strip stamps and other matters. (27 CFR parts 5, 201, and 251). Customs officers and employees shall perform such functions as are necessary or proper on their part to carry out such regulations.

[28 FR 14701, Dec. 31, 1963, as amended by T.D. 78–329, 43 FR 43454, Sept. 26, 1978]

MARKING

§ 11.9 Special marking on certain articles.

(a) No movement, case, or dial provided for in Chapter 91, Harmonized Tariff Schedule of the United States (HTSUS), shall be released for consumption until marked in exact compliance with the requirements of additional U.S. Note 4, Chapter 91. If any article so required to be marked is found not to be marked to indicate the country of origin, the 10 percent marking duty shall be assessed, unless such

marking is accomplished or the merchandise is exported or destroyed under Customs supervision prior to the liquidation of the entry, in accordance with the provisions of 19 U.S.C. 1304(f).

(b) The name of the manufacturer or purchaser which must appear on articles provided for Chapter 91, Harmonized Tariff Schedule of the United States (HTSUS), and specified in Additional U.S. Note 4, Chapter 91, may be either the actual name of the manufacturer or purchaser or a duly registered trade name under which such manufacturer or purchaser carries on his business. A trade-mark shall not be accepted as meeting any such special marking requirement unless it includes the full name of the manufacturer or purchaser. The term ''Purchaser'' as used in this paragraph means the purchaser in the United States by whom or for whose account the articles are imported.

[28 FR 14701, Dec. 31, 1963, as amended by T.D. 89–1, 53 FR 51253, Dec. 21, 1988; T.D. 90–51, 55 FR 28190, July 10, 1990; T.D. 97–82, 62 FR 51770, Oct. 3, 1997; 62 FR 55512, Oct. 27, 1997]

§ 11.12 Labeling of wool products to indicate fiber content.

(a) Wool products imported into the United States, except those made more than 20 years prior to importation, and except carpets, rugs, mats, and upholsteries, shall have affixed thereto a stamp, tag, label, or other means of identification, as required by the Wool Products Labeling Act of 1939 (54 Stat. 1129; 15 U.S.C. 68 *et seq.)* and the rules and regulations promulgated thereunder by the Federal Trade Commission (16 CFR part 300). The term ''wool product'' means any product, or any portion of a product, which contains, purports to contain, or in any way is represented as containing wool, reprocessed wool, or reused wool.

(b) If imported wool products are not correctly labeled and the Center director is satisfied that the error or omission involved no fraud or willful neglect, the importer shall be afforded a reasonable opportunity to label the merchandise under Customs supervision to conform with the requirements of such act and the rules and regulations of the Federal Trade Commission. The compensation and expenses of Customs officers and employees assigned to supervise the labeling shall be reimbursed to the Government and shall be assessed in the same manner as in the case of marking of country of origin, §134.55 of this chapter.

(c) Packages of wool products subject to the provisions of this section which are not designated for examination may be released pending examination of the designated packages, but only if there shall have been filed in connection with the entry bonds on Customs Form 301, containing the bond conditions set forth in §113.62 and/or §113.68 of this chapter, as appropriate, in such amount as the Center director may require.

(d) The Center director shall give written notice to the importer of any lack of compliance with the Wool Products Labeling Act of 1939 in respect of an importation of wool products, and pursuant to §141.113 of this chapter shall demand the immediate return of the involved products to Customs custody, unless the lack of compliance is forthwith corrected.

(e) If the products covered by a notice and demand given pursuant to paragraph (d) of this section are not promptly returned to Customs custody and the Center director is not fully satisfied that they have been brought into compliance with the Wool Products Labeling Act of 1939, appropriate action shall be taken to effect the collection of liquidated damages in an amount equal to the entered value of the merchandise not redelivered, plus the estimated duty thereon as determined at the time of entry, unless the owner or consignee shall file with the appropriate Customs officer an application for cancellation of the liability incurred under the bond upon the payment as liquidated damages of a lesser amount than the full amount of the liquidated damages incurred, or upon the basis of such other terms and conditions as the Secretary of the Treasury may deem sufficient. The application shall contain a full statement of the reasons for the requested cancellation and shall be in duplicate.

(f) If any fraudulent violation of the act with respect to imported articles comes to the attention of the Center director, the involved merchandise

shall be placed under seizure, or a demand shall be made for the redelivery of the merchandise if it has been released from Customs custody, and the case shall be reported to the Federal Trade Commission, Washington, D.C.

(Sec. 8, 54 Stat. 1132; 15 U.S.C. 68f; R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[28 FR 14701, Dec. 31, 1963, as amended by T.D. 72–262, 37 FR 20318, Sept. 29, 1972; T.D. 73–175, 38 FR 17446, July 2, 1973; T.D. 84–213, 49 FR 41167, Oct. 19, 1984; CBP Dec. 16–26, 81 FR 93014, Dec. 20, 2016]

§ 11.12a Labeling of fur products to indicate composition.

(a) Fur products imported into the United States shall have affixed thereto a label as required by section 4 of the Fur Products Labeling Act (15 U.S.C. 69b) and the rules and regulations promulgated thereunder by the Federal Trade Commission (16 CFR 301.1–301.49). The term ''fur product'' means any article of wearing apparel made in whole or in part of fur or used fur; except that such term shall not include such articles as the Federal Trade Commission shall exempt by reason of the relatively small quantity or value of the fur or used fur contained therein.

(b) If imported fur products are not correctly labeled and the Center director is satisfied that the error or omission involved no fraud or willful neglect, the importer shall be afforded a reasonable opportunity to label the merchandise under Customs supervision to conform with the requirements of such act and the rules and regulations of the Federal Trade Commission. The compensation and expenses of Customs officers and employees assigned to supervise the labeling shall be reimbursed to the Government and shall be assessed in the same manner as in the case of marking of country of origin, § 134.55 of this chapter.

(c) Packages of fur products subject to the provisions of this section which are not designated for examination may be released pending examination of the designated packages, but only if there shall have been filed in connection with the entry bonds on Customs Form 301, containing the bond conditions set forth in § 113.62 and/or § 113.68 of this chapter, as appropriate, in such amount as the Center director may require.

(d) The Center director shall give written notice to the importer of any lack of compliance with the Fur Products Labeling Act in respect of an importation of fur products, and pursuant to § 141.113 of this chapter shall demand the immediate return of the involved products to Customs custody, unless the lack of compliance is forthwith corrected.

(e) If the products covered by a notice and demand given pursuant to paragraph (d) of this section are not promptly returned to Customs custody and the Center director is not fully satisfied that they have been brought into compliance with the Fur Products Labeling Act, appropriate action shall be taken to effect the collection of liquidated damages in an amount equal to the entered value of the merchandise not redelivered, plus the estimated duty thereon as determined at the time of entry, unless the owner or consignee shall file with the appropriate Customs officer an application for cancellation of the liability incurred under the bond upon the payment as liquidated damages of a lesser amount than the full amount of the liquidated damages incurred, or upon the basis of such other terms and conditions as the Secretary of the Treasury may deem sufficient. The application shall contain a full statement of the reasons for the requested cancellation and shall be in duplicate.

(f) If any fraudulent violation of the act with respect to imported articles comes to the attention of a Center director, the involved merchandise shall be placed under seizure, or a demand shall be made for the redelivery of the merchandise if it has been released from Customs custody, and the case shall be reported to the Federal Trade Commission, Washington, DC 20580.

(Sec. 6, 65 Stat. 178; 15 U.S.C. 69d; R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[28 FR 14701, Dec. 31, 1963, as amended by T.D. 72–262, 37 FR 20318, Sept. 29, 1972; T.D. 73–175, 38 FR 17446, July 2, 1973; T.D. 84–213, 49 FR 41167, Oct. 19, 1984; CBP Dec. 16–26, 81 FR 93014, Dec. 20, 2016]

§ 11.12b Labeling textile fiber products.

(a) Textile fiber products imported into the United States shall be labeled or marked in accordance with the Textile Fiber Products Identification Act (15 U.S.C. 70 through 70k) and the rules and regulations promulgated thereunder by the Federal Trade Commission (16 CFR part 303) unless exempt from marking or labeling under section 12 of the Act (15 U.S.C. 70i). An invoice or other paper, containing the specified information may be used in lieu of a label where the textile product is not in the form intended for sale, delivery to, or for use by the ultimate consumer. Rule 31 of the Federal Trade Commission (16 CFR 303.31).

(b) If imported fiber products are not correctly labeled and the Center director is satisfied that the error or omission involved no fraud or willful neglect, the importer shall be afforded a reasonable opportunity to label the merchandise under customs supervision to conform with the requirements of such Act and the rules and regulations of the Federal Trade Commission. The compensation and expenses of Customs officers and employees assigned to supervise the labeling shall be reimbursed to the Government and shall be assessed in the same manner as in the case of marking of country of origin, §134.55 of this chapter.

(c) Packages of fiber products subject to the provisions of this section which are not designated for examination may be released pending examination of the designated packages, but only if there shall have been filed in connection with the entry bonds on Customs Form 301, containing the bond conditions set forth in §113.62 and/or §113.68 of this chapter, as appropriate, in such amount as the Center director may require.

(d) The Center director shall give written notice to the importer of any lack of compliance with the Fiber Products Identification Act in respect of an importation of fiber products, and pursuant to §141.113 of this chapter shall demand the immediate return of the involved products to customs custody, unless the lack of compliance is forthwith corrected.

(e) If the products covered by a notice and demand given pursuant to the preceding paragraph are not promptly returned to Customs custody and the Center director is not fully satisfied that they have been brought into compliance with the Fiber Products Identification Act, appropriate action shall be taken to effect the collection of liquidated damages in an amount equal to the entered value of the merchandise not redelivered, plus the estimated duty thereon as determined at the time of entry, unless the owner or consignee shall file with the appropriate Customs officer an application for cancellation of the liability incurred under the bond upon the payment as liquidated damages of a lesser amount than the full amount of the liquidated damages incurred, or upon the basis of such other terms and conditions as the Secretary of the Treasury may deem sufficient. The application shall contain a full statement of the reasons for the requested cancellation and shall be in duplicate.

(f) If any willful or flagrant violation of the Act with respect to the importation of articles comes to the attention of a Center director, the involved merchandise shall be placed under seizure, or a demand shall be made for the redelivery of the merchandise if it has been released from Customs custody, and the case shall be reported to the Federal Trade Commission, Washington DC 20580.

(Sec. 501, 65 Stat. 290, secs. 2–12, 14, 72 Stat. 1717; 15 U.S.C. 70–70k, 31 U.S.C. 483a; R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[28 FR 14701, Dec. 31, 1963, as amended by T.D. 72–262, 37 FR 20318, Sept. 29, 1972; T.D. 73–175, 38 FR 17446, July 2, 1973; T.D. 84–213, 49 FR 41167, Oct. 19, 1984; CBP Dec. 16–26, 81 FR 93014, Dec. 20, 2016]

§ 11.13 False designations of origin and false descriptions; false marking of articles of gold or silver.

(a) Articles which bear, or the containers which bear, false designations of origin, or false descriptions or representations, including words or other symbols tending falsely to describe or represent the articles, are prohibited importation under 15 U.S.C. 294, 295,

296, 1124, 1125 or 48 U.S.C. 1405q, and shall be detained.

(b) Articles made in whole or in part of gold or silver or alloys thereof imported for sale by manufacturers or dealers which are marked or labeled in a manner indicating a greater degree of fineness than the actual fineness of the gold or silver or alloys thereof, and any plated or filled articles so imported which are marked or labeled to indicate the fineness of the gold or silver and are not also marked or labeled to indicate the plated or filled condition or are marked or labeled with the word ''sterling'' or the word ''coin'', are prohibited importation and shall be detained, and the facts shall be reported to the United States attorney.

(c) Whenever any articles are detained in accordance with the foregoing provisions of this section, and the case of any articles detained under paragraph (b) of this section the United States attorney has indicated that he does not intend to prosecute, the articles shall be seized and forfeited in the usual manner, except that, upon the filing of a petition therefor by the importer prior to final disposition of the articles, the port director may release the articles upon the condition that the prohibited marking be removed or obliterated or that the articles and containers be properly marked to indicate their origin, contents, or condition, or may permit the articles to be exported or destroyed under Customs supervision, and without expense to the Government.

(d) Articles forfeited for violation of section 294, 1124, or 1125, Title 15 and section 545, Title 18, U.S. Code, may be disposed of in accordance with the procedure applicable to other Customs forfeitures, but may not be released from Customs custody except upon the removal by and at the expense of the party in interest of the prohibited marking by reason of which the articles were seized, except articles disposed of under §133.52 (a) or (b) of this chapter.

(Secs. 1–5, 34 Stat. 260–262, secs. 42, 43, 60 Stat. 440, 441, sec. 1, 62 Stat. 716, sec. 618, 46 Stat. 757; 15 U.S.C. 294–298, 1124, 1125, 18 U.S.C. 545, 19 U.S.C. 1618)

[28 FR 14701, Dec. 31, 1963, as amended by T.D. 79–159, 44 FR 31967, June 4, 1979; T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

PART 12—SPECIAL CLASSES OF MERCHANDISE

FOOD, DRUGS, AND COSMETICS, ECONOMIC POISONS, HAZARDOUS SUBSTANCES, AND DANGEROUS CAUSTIC OR CORROSIVE SUBSTANCES

Sec.

IMPORTATION OF CERTAIN CHEESES

MILK AND CREAM

MEAT AND MEAT-FOOD PRODUCTS

PLANTS AND PLANT PRODUCTS

AGRICULTURAL AND VEGETABLE SEEDS

VIRUSES, SERUMS, AND TOXINS FOR TREATMENT OF DOMESTIC ANIMALS

VIRUSES, SERUMS, TOXINS, ANTITOXINS, AND ANALOGOUS PRODUCTS FOR THE TREATMENT OF MAN

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

Section 12.1 also issued under 21 U.S.C. 371(b);

Section 12.3 also issued under 7 U.S.C. 135h, 21 U.S.C. 381;

Section 12.4 also issued under 21 U.S.C. 381(b);

Section 12.6 also issued under 7 U.S.C. 1854;

Section 12.10 also issued under 7 U.S.C. 151–162;

Section 12.15 also issued under 19 U.S.C. 1558;

Section 12.16 also issued under 7 U.S.C. 1592(b);

Sections 12.21 through 12.23 also issued under 42 U.S.C. 262;

Section 12.26 also issued under 18 U.S.C. 42;

Section 12.28 also issued under 18 U.S.C. 42, 19 U.S.C. 1527;

Section 12.34 also issued under 19 U.S.C. 1202 (additional U.S. Note to Chapter 36, HTSUS);

Section 12.37 also issued under 27 U.S.C. 203;

Section 12.39 also issued under 19 U.S.C. 1337, 1623;

Sections 12.40 and 12.41 also issued under 19 U.S.C. 1305;

Sections 12.42 through 12.44 also issued under 19 U.S.C. 1307, Pub. L. 105–61 (111 Stat. 1272), and Public L. 114–125 (130 Stat. 122);

Sections 12.73 and 12.74 also issued under 19 U.S.C. 1484, 42 U.S.C. 7522, 7601;

Section 12.50 also issued under 42 U.S.C. 6301;

Section 12.85 also issued under 19 U.S.C. 1623, 46 U.S.C. 4302, 4306, 4310;

Sections 12.95 through 12.103 also issued under 15 U.S.C. 1241–1245;

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

Section 12.104j also issued under Pub. L. 108–429, 118 Stat. 2600; 19 U.S.C. 2612;

Section 12.104k also issued under Pub. L. 114–151, 130 Stat. 369; 19 U.S.C. 2612;

Sections 12.105 through 12.109 also issued under 19 U.S.C. 2094;

Sections 12.110 through 12.117 also issued under 7 U.S.C. 136 *et seq.;*

Sections 12.118 through 12.127 also issued under 15 U.S.C. 2601 *et seq.;*

Section 12.140 also issued under 19 U.S.C. 1484, 2416(a), 2171;

Section 12.142 also issued under 19 U.S.C. 1484; section 3301 of Pub. L. 110–246.

Section 12.150 also issued under 19 U.S.C. 1595a and 1618; 22 U.S.C. 401.

Section 12.152 also issued under 19 U.S.C. 1484, 1498; the Clean Diamond Trade Act (Pub. L. 108–19, 117 Stat. 631 (19 U.S.C. 3901 et seq.)); Executive Order 13312 dated July 29, 2003.

SOURCE: 28 FR 14710, Dec. 31, 1963, unless otherwise noted.

FOOD, DRUGS, AND COSMETICS, ECONOMIC POISONS, HAZARDOUS SUBSTANCES, AND DANGEROUS CAUSTIC OR CORROSIVE SUBSTANCES

§ 12.1 Cooperation with certain agencies; joint regulations.

(a) *Federal Food, Drug, and Cosmetic Act.* The importation into the United States of food, drugs, devices, cosmetics, and tobacco products as defined in section 201 (f), (g), (h), and (i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 (f), (g), (h), (i)) is governed by section 801 of the Act, as amended (21 U.S.C. 381) and regulations issued under authority of section 701(b) of the Act (21 U.S.C. 371(b)) by the Secretary of Health and Human Services and the Secretary of the Treasury (21 CFR 1.83 through 1.99).

(b) *Federal Insecticide, Fungicide, and Rodenticide Act.* The importation of pesticides and devices is governed by section 17(c) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136*o*(c)), and regulations issued under the authority of section 17(e) of that Act (7 U.S.C. 1360(e)) by the Secretary of the Treasury, in consultation with the Administrator of the Environmental Protection Agency, as set forth below (§ 12.110 *et seq.*).

(c) *Federal Hazardous Substances Act.* The importation of hazardous substances, misbranded hazardous substances, or banned hazardous substances as defined in section 2 of the Federal Hazardous Substances Act, as amended (15 U.S.C. 1261), is governed by regulations issued under the authority of sections 10(b) and 14 of the Act, as amended (15 U.S.C. 1269, 1273), by the Consumer Product Safety Commission (16 CFR 1500.265 through 1500.272).

[T.D. 68–191, 33 FR 11019, Aug. 2, 1968, as amended by T.D. 75–194, 40 FR 32321, Aug. 1, 1975; T.D. 82–145, 47 FR 35475, Aug. 16, 1982; CBP Dec. 10–29, 75 FR 52450, Aug. 26, 2010]

§ 12.3 Release under bond; liquidated damages.

(a) *Release.* No food, drug, device, cosmetic , tobacco product, pesticide, hazardous substance or dangerous caustic or corrosive substance that is the subject of § 12.1 will be released except in accordance with the laws and regulations applicable to the merchandise. When any merchandise that is the subject of § 12.1 is to be released under bond pursuant to regulations applicable to that merchandise, a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, will be required.

(b) *Bond amount.* The bond referred to in paragraph (a) of this section must be in a specific amount prescribed by the port director based on the circumstances of the particular case that is either:

(1) Equal to the domestic value (see § 162.43(a) of this chapter) of the merchandise at the time of release as if the merchandise were admissible and otherwise in compliance; or

(2) Equal to three times the value of the merchandise as provided in § 113.62(n)(1) of this chapter.

(c) *Liquidated damages.* Whenever liquidated damages arise with regard to any food, drug, device or cosmetic subject to § 12.1(a) for failure to redeliver merchandise into Customs custody or for failure to rectify any noncompliance with the applicable provisions of admission, including the failure to export or destroy the merchandise within the time period prescribed by law after the merchandise has been refused admission pursuant to the provisions of the Food, Drug and Cosmetic Act, those liquidated damages will be assessed pursuant to § 113.62(n)(1) of this chapter in the amount of the bond prescribed under paragraph (b) of this section.

[T.D. 01–26, 66 FR 16853, Mar. 28, 2001; CBP Dec. 08–46, 73 FR 71780, Nov. 25, 2008; CBP Dec. 10–29, 75 FR 52451, Aug. 26, 2010; CBP Dec. 18-05, 83 FR 27404, June 12, 2018]

§ 12.4 Exportation.

The exportation of merchandise, the subject of § 12.1, refused admission into the United States in accordance with regulations applicable thereto shall be under Customs supervision in accordance with the regulations set forth in §§ 18.25 and 18.26 of this chapter.

[T.D. 68–191, 33 FR 11019, Aug. 2, 1968]

§ 12.5 Shipment to other ports.

When imported merchandise, the subject of § 12.1, is shipped to another port for reconditioning or exportation, such

shipment must be made in the same manner as shipments in bond in accordance with the requirements of part 18 of this chapter.

[CBP Dec. 17–13, 82 FR 45394, Sept. 28, 2017]

IMPORTATION OF CERTAIN CHEESES

§ 12.6 Affidavits required to accompany entry.

(a) Cheeses produced in the member states of the European Communities shall not be permitted entry into the Customs territory of the United States (excluding Puerto Rico) if exported from any country or area other than the country of origin, or into Puerto Rico, unless accompanied by:

(1) An affidavit, or its electronic equivalent, in the event of shipments into the Customs territory of the United States (excluding Puerto Rico), of the producer or exporter that the cheese has not received and will not receive restitution payments of the type referred to in Executive Order No. 11851, dated April 10, 1975 (40 FR 16645); or

(2) An affidavit, or its electronic equivalent, in the event of shipments into Puerto Rico, of the importer that the cheese will be consumed in Puerto Rico or areas outside the Customs territory of the United States. Proof of actual consumption shall be furnished to the appropriate Customs officer within three years after the date such cheese is entered or withdrawn from warehouse, for consumption.

(b) These affidavits shall not be required to accompany importations of cheese produced in the member states of the European Communities if such cheese is shipped directly to the United States (excluding Puerto Rico) from the country of origin on a through bill of lading.

[T.D. 75–210, 40 FR 36767, Aug. 22, 1975, as amended by CBP Dec. 15–14, 80 FR 61285, Oct. 13, 2015]

MILK AND CREAM

§ 12.7 Permits required for importation.

(a) Under the Act of February 15, 1927 (44 Stat. 1101, as amended, 21 U.S.C. 141–149), commonly known as the Federal Import Milk Act, the importation into the United States of milk and cream is prohibited unless the person by whom such milk or cream is shipped or transported into the United States holds a valid permit, or its electronic equivalent, from the Department of Health and Human Services. Such permits become invalid at the end of one year unless applications for renewal are filed prior to the date of expiration.

(b) The regulations of the Department of Health and Human Services under the said act require that each container of milk or cream shipped or transported into the United States by a permittee shall have firmly attached thereto a tag showing in clear and legible type the product (raw milk, pasteurized milk, raw cream, or pasteurized cream) the permit number and the name and address of the shipper; except that in case of unit shipments consisting of milk only or cream only under one permit number, each container need not be so marked if the vehicle of transportation is sealed and tagged with the above-mentioned tag. In such case the tag is required to show, in addition to the other required information, the number of containers and the contents of each. Customs officers shall not permit the importation of any milk or cream that is not tagged in accordance with such regulations.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 82–145, 47 FR 35475, Aug. 16, 1982; T.D. 89–1, 53 FR 51253, Dec. 21, 1988; CBP Dec. 15–14, 80 FR 61285, Oct. 13, 2015]

MEAT AND MEAT-FOOD PRODUCTS

§ 12.8 Inspection; bond; release.

(a) All imported meat and meat-food products offered for entry into the United States are subject to the regulations prescribed by the Secretary of Agriculture under the Animal Health Protection Act. (7 U.S.C. 8301, *et seq.*). The term ''meat and meat-food products,'' for the purpose of this section, shall include any imported article of food or any imported article which enters or may enter into the composition of food for human consumption, which is derived or prepared in whole or in part from any portion of the carcass of any cattle, sheep, swine, or goat, if such portion is all or a considerable

and definite portion of the article, except such articles as organotherapeutic substances, meat juice, meat extract, and the like, which are only for medicinal purposes and are advertised only to the medical profession. Such meat and meat-food products will not be released from CBP custody prior to inspection by an inspector of the Food Safety and Inspection Service, Meat and Poultry Inspection, except when authority is given by such inspector for inspection at the importer's premises or other place not under CBP supervision. In such case a bond for the return to CBP custody of the merchandise shall be given by the consignee or agent on CBP Form 301, containing the bond conditions set forth in §113.62 of this chapter, and the conveyances or packages in which such merchandise is removed to the place of examination shall be sealed or corded and sealed by a customs officer or an inspector of the Food Safety and Inspection Service, Meat and Poultry Inspection, with import-meat seals furnished by the Department of Agriculture unless bearing United States CBP seals, or in the case of packages otherwise identified as provided for in this section. When cording is necessary for proper sealing, the cords shall be furnished and affixed by the importer or his agent. Import-meat seals or cords and seals may be broken only by a CBP officer or inspector of the Meat Inspection Division, Agricultural Research Service.

In lieu of cording and sealing packages, the carrier or importer may furnish and attach to each package of product a warning notice on bright yellow paper, not less than 5 by 8 inches in size, containing the following legend in black type of a conspicuous size:

(Name of Truck Line or Carrier)

NOTICE

This package of meat or meat product must be delivered intact to an inspector of the Meat Inspection Division, U.S. Department of Agriculture.

WARNING

Failure to comply with these instructions will result in penalty action being taken against the holder of the CBP entry bond.

If the product is found to be acceptable upon inspection the package will be marked ''U.S. Inspected and Passed'' and this warning notice defaced.

(b) Liquidated damages assessed for breach of a bond taken under this section, if not in excess of the Fines, Penalties, and Forfeitures Officer's delegated authority, and if a written application for relief is filed, may be canceled by the port director upon the payment of less than the full amount as he shall deem appropriate, or without the payment of any amount, as may be deemed appropriate, but the Fines, Penalties, and Forfeitures Officer shall not act under this paragraph unless the officer in charge of the local office of the Food Safety and Inspection Service, Meat and Poultry Inspection, Department of Agriculture, is in full agreement with the proposed action. If there is no local inspector of the Food Safety and Inspection Service, Meat and Poultry Inspection, the port director shall not act unless he has obtained the full agreement of the Food Safety and Inspection Service, Meat and Poultry Inspection in Washington.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 78–99, 43 FR 13060, Mar. 29, 1978; T.D. 82–145, 47 FR 35476, Aug. 16, 1982; T.D. 84–213, 49 FR 41167, Oct. 19, 1984; T.D. 89–1, 53 FR 51253, Dec. 21, 1988; T.D. 99–27, 64 FR 13675, Mar. 22, 1999; T.D. 99–64, 64 FR 43265, Aug. 10, 1999; T.D. 00–57, 65 FR 53574, Sept. 5, 2000; CBP Dec. 10–29, 75 FR 52451, Aug. 26, 2010]

§ 12.9 Release for final delivery to consignee.

No meat, meat-food products, or animal casings shall be released for final delivery to the consignee until the port director is advised by the Department of Agriculture, or its representative, that the merchandise is admissible.

PLANTS AND PLANT PRODUCTS

§ 12.10 Regulations and orders of the Department of Agriculture.

The importation into the United States of plants and plant products is subject to regulations and orders of the Department of Agriculture restricting or prohibiting the importation of such plants and plant products. Customs officers and employees shall perform such functions as are necessary or proper on their part to carry out such

regulations and orders of the Department of Agriculture and the provisions of law under which they are made.

§ 12.11 Requirements for entry and release.

(a) The importer or his representative shall submit to the director of the port of first arrival, for each entry of plants or plant products requiring a plant quarantine permit, a notice of arrival, or its electronic equivalent, for any type of entry except rewarehouse and informal mail entries. Such notice shall be on a form, or its electronic equivalent, provided for the purpose by the Department of Agriculture. The director of the port of arrival shall compare the notice of arrival, or its electronic equivalent, which he receives from the importer or his representative with the shipping documents, certify its agreement therewith, and transmit it, together with any accompanying certificates or other documents pertaining to the sanitary status of the shipment, to the Department of Agriculture. The merchandise may not be moved, stored, or otherwise disposed of until the notice of arrival, or its electronic equivalent, has been submitted and release for the intended purpose has been authorized by an inspector of the Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs.

(b) Where plant or plant products are shipped from the port of first arrival to another port or place for inspection or other treatment by a representative of the Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs and all CBP requirements for the release of the merchandise have been met, the merchandise must be forwarded as an in-bond shipment pursuant to part 18 of this chapter to the representative of the Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs at the place at which the inspection or other treatment is to take place. No further release by the port director will be required.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 78–99, 43 FR 13060, Mar. 29, 1978; CBP Dec. 15–14, 80 FR 61285, Oct. 13, 2015; CBP Dec. 17–13, 82 FR 45394, Sept. 28, 2017]

§ 12.12 Release under bond.

Plants or plant products which require fumigation, disinfection, sterilization, or other treatment as a condition of entry may be released to the permittee for treatment at a plant approved by the Department of Agriculture upon the giving of a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter to insure that the merchandise is treated under the supervision and to the satisfaction of an inspector of the Department of Agriculture or returned to Customs custody when demanded by the port director.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 84–213, 49 FR 41167, Oct. 19, 1984]

§ 12.13 Unclaimed shipments.

(a) If plants or plant products enterable into the United States under the rules and regulations promulgated by the Secretary of Agriculture are unclaimed, they may be sold subject to the provisions of subparts C and D of part 127 of this chapter to any person to whom a permit has been issued who can comply with the requirements of the regulations governing the material involved.

(b) Unclaimed plants and plant products not complying with the requirements mentioned in this section shall be destroyed, by burning or otherwise, under Customs supervision.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 74–114, 39 FR 12091, Apr. 3, 1974]

§ 12.14 Detention.

(a) Port directors shall refuse release of all plants or plant products with respect to which a notice of prohibition has been promulgated by the Secretary of Agriculture under any of the various quarantines. If an importer refuses to export a prohibited shipment immediately, the port director shall report the facts to the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs and the United States attorney and withhold delivery pending advice from that Department.

(b) In case of doubt as to whether any plant or plant product is prohibited,

the port director shall detain it pending advice from the Department of Agriculture.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 78–99, 43 FR 13060, Mar. 29, 1978]

§ 12.15 Disposition; refund of duty.

Plants or plant products which are prohibited admission into the United States under Federal law or regulations and are exported or destroyed under proper supervision are exempt from duty and any duties collected thereon shall be refunded. (See §§ 158.41 and 158.45(c) of this chapter.)

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 72–258, 37 FR 20174, Sept. 27, 1972]

AGRICULTURAL AND VEGETABLE SEEDS

§ 12.16 Joint regulations of the Secretary of the Treasury and the Secretary of Agriculture.

(a) The importation into the United States of agricultural and vegetable seeds and screenings thereof is governed by rules and regulations prescribed jointly by the Secretary of the Treasury and the Secretary of Agriculture under section 402(b) of the Federal Seed Act of August 9, 1939 (7 CFR part 201).

(b) Under the said joint rules and regulations, port directors are required to draw samples of such seeds and screenings, forward them to the seed laboratories, and notify the owner or consignee that such samples have been drawn and that the shipment shall be held intact pending a decision of the Livestock, Meat, Grain, and Seed Division, Agricultural Marketing Service, in the matter.

(c) It is further provided in said joint rules and regulations that after samples have been drawn such seeds and screenings shall be admitted into the commerce of the United States only if they have been found to meet the requirements of the Federal Seed Act of August 9, 1939, and the said regulations, but if the containers bear sufficient marks of identification the port director may release the shipment, pending examination and decision in the matter, upon the giving of a bond. The bond shall be filed with the port director on Customs Form 301 and contain the bond conditions set forth in § 113.62 of this chapter. In case of default the port director shall issue a claim for liquidated damages under the bond.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 82–145, 47 FR 35476, Aug. 16, 1982; T.D. 84–213, 49 FR 41167, Oct. 19, 1984; T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

VIRUSES, SERUMS, AND TOXINS FOR TREATMENT OF DOMESTIC ANIMALS

§ 12.17 Importation restricted.

The importation into the United States of viruses, serums, toxins, and analogous products for use in the treatment of domestic animals is prohibited unless the importer holds a permit from the Department of Agriculture covering the specific product. The port director shall notify the Animal and Plant Health Inspection Service, Veterinary Services, Washington, D.C., of the arrival of any such product, and detain it until he shall receive notice from that Department that a permit to import the shipment has been issued.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 78–99, 43 FR 13060, Mar. 29, 1978; T.D. 82–145, 47 FR 35476, Aug. 16, 1982; T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

§ 12.18 Labels.

Each separate container of such virus, serum, toxin, or analogous product imported is required by the regulations of the Department of Agriculture to bear the true name of the product and the permit number assigned by the Department of Agriculture in the following form: ''U.S. Veterinary Permit No. _____,'' or an abbreviation thereof authorized by the Animal and Plant Health Inspection Service, Veterinary Services. Each separate container also shall bear a serial number affixed by the manufacturer for identification of the product with the records of preparation thereof, together with a return date.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 78–99, 43 FR 13060, Mar. 29, 1978]

§ 12.19 Detention; samples.

(a) The port director shall detain all shipments of such products for which no permit to import has been issued pending instructions from the Department of Agriculture.

(b) Samples shall be furnished to the Department of Agriculture upon its request, and the port director shall immediately notify the consignee of any such request.

§ 12.20 Disposition.

Viruses, serums, or toxins rejected by the Department of Agriculture shall be released by the port director to that Department for destruction, or exported under Customs supervision at the expense of the importer if exportation is authorized by the Department of Agriculture.

VIRUSES, SERUMS, TOXINS, ANTITOXINS, AND ANALOGOUS PRODUCTS FOR THE TREATMENT OF MAN

§ 12.21 Licensed establishments.

The bringing into the United States for sale, barter, or exchange, of any virus, therapeutic serum, toxin, antitoxin, or analogous product, or arsphenamine or its derivatives (or any other trivalent organic arsenic compound), applicable to the prevention, treatment, or cure of diseases or injuries of man is prohibited unless such virus, serum, toxin, antitoxin, or other product has been manufactured at an establishment holding an unsuspended and unrevoked license issued by the Secretary of Health and Human Services for such manufacture.

[T.D. 69–201, 34 FR 14328, Sept. 12, 1969, as amended by T.D. 82–145, 47 FR 35476, Aug. 16, 1982]

§ 12.22 Labels; samples.

Each package of such products imported for sale, barter, or exchange shall be labeled or plainly marked with the name, address, and license number of the manufacturer, and the date beyond which the contents cannot be expected to yield their specific results. From each lot of product the port director shall select at random at least two final containers. The random sample together with a copy of the associated documents which describe and identify the shipment shall be forwarded to the Director, Bureau of Biologics, Food and Drug Administration, 8800 Rockville Pike, Bethesda, Md. 20014. For shipments of 20 or less final containers, samples need not be forwarded, provided a copy of an official release from the Bureau of Biologics accompanies each shipment.

[T.D. 69–201, 34 FR 14328, Sept. 12, 1969, as amended by T.D. 82–145, 47 FR 35476, Aug. 16, 1982]

§ 12.23 Detention; examination; disposition.

(a) Port directors shall detain all importations of unlicensed viruses, therapeutic serums, toxins, antitoxins, and analogous products, and arsphenamines or its derivatives (or any other trivalent organic arsenic compound) for the treatment or cure of diseases or injuries of man pending examination by the Director, Bureau of Biologics, unless satisfied from evidence furnished at the time of entry that the products are intended solely for purposes of controlled investigation and not for sale, barter, or exchange, as evidenced by a copy of a filed ''Notice of Claimed Investigational Exemption for a New Drug,'' pursuant to §312.1 of the Food, Drug, and Cosmetic Act Regulations (21 CFR 312.1), or are being imported under the short supply provisions of §601.22 of the Public Health Service Regulations (42 CFR 601.22).

(b) If the shipment is imported for sale, barter, or exchange and is found by the Director, Division of Biologics Standards, to be admissible, the port director shall release it upon receipt of a report from him that the shipment is admissible.

(c) If the Director, Division of Biologics Standards, reports that the shipment was found upon examination not to conform to the law and the regulations, the port director shall not release the shipment but shall permit the exportation or destruction thereof under Customs supervision at the option of the importer.

(d) Shipments of such products for use in the treatment of man but made from or with material of animal origin other than human, shall, unless accompanied by a Department of Agriculture, Veterinary Services, Animal and Plant Health Inspection Service (APHIS) permit, be detained until proof is presented to the port director that their

importation is not prohibited under 9 CFR part 94 or part 122.

[T.D. 69–201, 34 FR 14328, Sept. 12, 1969, as amended by T.D. 82–145, 47 FR 35476, Aug. 16, 1982]

DOMESTIC ANIMALS, ANIMAL PRODUCTS, AND ANIMAL FEEDING MATERIALS

§ 12.24 Regulations of the Department of Agriculture.

(a) The importation into the United States of domestic animals, animal products, and animal feeding materials is subject to inspection and quarantine regulations of the Department of Agriculture, Customs officers and employees are authorized and directed to perform such functions as are necessary or proper on their part to carry out such regulations of the Department of Agriculture.

(b) Inspection by an inspector of the Animal and Plant Health Inspection Service, Veterinary Services is required for all horses, cattle, sheep, other ruminants, and swine as a prerequisite to their entry from any foreign country. Orders listing the ports designated as quarantine stations for the inspection and quarantine of animals will be issued by the Secretary of Agriculture, with the approval of the Secretary of the Treasury, whenever conditions warrant.

(c) The entry of domestic animals may be made, but shall not be required, before the expiration of the quarantine period. Such animals, if not entered at the time of arrival, shall be considered as under general order while under quarantine and shall not be released except upon notice from the port director that the importer has complied with all the requirements for entry.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 78–99, 43 FR 13060, Mar. 29, 1978; T.D. 82–145, 47 FR 35476, Aug. 16, 1982; T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

WILD ANIMALS, BIRDS, AND INSECTS

§ 12.26 Importations of wild animals, fish, amphibians, reptiles, mollusks, and crustaceans; prohibited and endangered and threatened species; designated ports of entry; permits required.

(a)(1) The importation into the United States, the Commonwealth of Puerto Rico, and the territories and possessions of the United States of live specimens of:

(i) Any species of the so-called ''flying fox'' or fruit bat of the genus Pteropus;

(ii) Any species of mongoose or meerkat of the genera Atilax, Cynictis, Helogale, Herpestes, Ichneumia, Mungos, and Suricata;

(iii) Any species of European rabbit the genus Oryctolagus;

(iv) Any species of Indian wild dog, red dog, or dhole of the genus Cuon;

(v) Any species of multimammate rat or mouse of the genus Mastomys;

(vi) Any live specimens or egg of the species of so-called ''pink starling'' or ''rosy pastor'' Sturnus roseus;

(vii) The species of dioch (including the subspecies black-fronted, red-billed, or Sudan dioch) Quelea quelea;

(viii) Any species of Java sparrow, Padda oryzivora;

(ix) The species of red-whiskered bulbul, Pycnonotus jocosus;

(x) Any live fish or viable eggs of the family *Clariidae;*

(xi) Any other species of wild mammals, wild birds, fish (including mollusks and crustacea), amphibians, reptiles, or the offspring or eggs of any of the foregoing which the Secretary of the Interior may prescribe by regulations to be injurious to human beings, to the interest of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the United States, is prohibited, except as may be authorized by the issuance of a permit by the Director, U.S. Fish and Wildlife Service, U.S. Department of the Interior, Washington, DC 20240, or his authorized representative. If any such prohibited specimen is imported, or if any specie or subspecie of other live or dead fish or wildlife, including any parts, products, or eggs thereof, appearing on the Endangered Species List published by the U.S. Fish and Wildlife Service, is imported, Customs release of the prohibited specimen or endangered fish or wildlife shall be refused unless there has been issued and presented in connection with entry a proper U.S. Fish and Wildlife Service permit authorizing the import transaction. In the absence of such permit, injurious specimens prohibited entry shall be required

to be immediately exported or destroyed. Changes in injurious species and endangered species or subspecies which are prohibited or restricted importation may be published from time to time in 50 CFR part 13—Importation of Wildlife or Eggs Thereof or in part 17—Conservation of Endangered Species and Other Fish or Wildlife. Unreleased species or subspecies of live or dead endangered fish or wildlife, including parts, products, or eggs thereof, shall remain under detention subject to seizure and delivery to an appropriate regional director or other agent of the U.S. Fish and Wildlife Service for disposition as appropriate pursuant to 50 CFR part 17.

(2) Fish and eggs of salmonids of the fish family Salmonidae are prohibited entry into the United States for any purpose unless such importations are by direct shipment, accompanied by the signed certification of a qualified fish pathologist in substantially the form as prescribed in 50 CFR 13.7. The following are excepted from the certification requirements:

(i) Salmon landed in North America and brought into the United States for processing or sale;

(ii) Any salmonid caught in the wild in North America under a sport or a commercial fishing license; and

(iii) Fish or eggs of the family Salmonidae when processed or prepared in accordance with 50 CFR 13.7(c), or otherwise exempted from the requirement of certification.

(3) Regulations (50 CFR part 17) require the importer or his agent to file a Declaration for the Importation of Fish or Wildlife, unless it is an import transaction exempted from the requirement by 50 CFR part 13 or part 17. Such declaration on U.S. Fish and Wildlife Service Form 3–177, available to importers through Customs ports of entry, shall be filed with the appropriate Customs officer at the port of entry conducting the actual Customs clearance and release of the declared fish, wild mammal, or bird, amphibian, reptile, mollusk, crustacean, or dead body or egg thereof. The declaration on Form 3–177 shall show the common and scientific names, number, and country of origin of all species or subspecies declared, designate and identify any species listed on the U.S. List of Endangered Foreign Fish and Wildlife, 50 CFR part 17, appendix A, and indicate whether any species is subject to laws and regulations in any foreign country regarding its taking, transportation, or sale. See paragraph (g) of this section for special documentation requirements.

(4) Federal agencies, subject to requirements in paragraph (a)(2) of this section, may import solely for their own use live wildlife except migratory birds, or their eggs, without a permit from the U.S. Fish and Wildlife Service, upon filing the declaration on Form 3–177. Importation of bald or golden eagles, or their eggs is prohibited.

(5) Customs entry for consumption or bonded warehousing of fish and wildlife, as defined in 50 CFR 17.2 (e) and (f), intended for importation into the United States, or admission into a foreign trade zone, shall be filed at a port of entry among those designated for Customs entry in 50 CFR part 17, appendix B. However, Customs entry for consumption or bonded warehousing of shipments subject to emergency diversion or otherwise authorized under regulations or by permit issued by the U.S. Fish and Wildlife Service pursuant to 50 CFR part 17, appendices B and C, may be filed for examination and release at the ports of entry so named or permitted, but no consumption or bonded warehouse entry shall be filed or accepted at an undesignated port for any endangered specie or subspecie permitted importation pursuant to 50 CFR 17.12 except in the case of an emergency diversion of live endangered fish or wildlife accepted for such entry in accordance with item 2(b) of 50 CFR part 17, appendix B. Importations of fish and wildlife subject to regulations of the U.S. Fish and Wildlife Service which arrive from abroad at any place in the United States not designated as an authorized port for Customs entry, unless occurring under conditions or circumstances in which Customs entry for consumption or bonded warehousing and final clearance has been authorized by U.S. Fish and Wildlife Service regulations or permit, may be entered only for immediate transportation without appraisement for

movement under Customs bond to one of the designated ports of entry. Customs entry, release, and delivery of any shipment of shellfish and fishery products defined in 50 CFR 17.2(j) imported for commercial purposes is authorized at any port of entry, except insofar as such items include any species or subspecies which appears on the Endangered Species List in 50 CFR part 17, appendix A.

(b) Permits are required for the importation of wild animals and birds as follows:

(1) Wild birds protected by the Migratory Bird Treaty Act (16 U.S.C. 703 through 711) and the regulations promulgated thereunder (50 CFR part 10), may be imported from foreign countries for scientific, propagating, or other limited purposes only under permits issued by the U.S. Fish and Wildlife Service, United States Department of the Interior, Washington, DC, 20240. State game departments, municipal game farms or parks, and public museums, zoological parks or societies, and scientific or educational institutions may import migratory birds without a permit. Such migratory birds, when imported from Mexico, must be accompanied by Mexican export permits (50 CFR 16.3 and 16.5).

(2) Game mammals (antelopes, mountain sheep, deer, bears, peccaries, squirrels, rabbits, and hares), protected by the Migratory Bird Treaty Act (16 U.S.C. 703 through 711), dead or alive, or their parts or products, must be accompanied by Mexican export permits (50 CFR 15.3) when imported from Mexico.

(3) Wild ruminants (all animals which chew the cud, such as cattle, buffaloes, sheep, goats, deer, antelopes, camels, llamas, and giraffes) and swine (various varieties of wild hogs), except from Canada and certain northern States of Mexico may be imported only under a permit from the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture, Washington, DC 20250. Such permits must be obtained before the animals are shipped from the country of exportation. All wild ruminants and swine must be inspected at designated ports of entry by veterinarians of the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture.

(4) Psittacine birds, which include all birds commonly known as parrots, Amazons, African grays, cockatoos, macaws, parrotlets, beebees, parakeets, lovebirds, lories, lorikeets, and all other birds of the order Psittaciformes, when destined for a zoological park or medical research institution without having had prior confinement and treatment abroad at an approved treatment center, and psittacine birds taken out of the United States but inadmissible under paragraph (c) of this section, may be imported when accompanied by a permit issued by the Surgeon General. Application for such a permit may be made to the Chief, Foreign Quarantine Program, National Communicable Disease Center, U.S. Public Health Service, Atlanta, Ga. 30333, or to a Public Health Service quarantine station established at a port of entry in the United States.

(5) Ducks, geese, swans, turkeys, pigeons, doves, pheasants, grouse, partridges, quail, guinea fowl, and pea fowl, except from Canada, may be imported only under a permit from the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture, Washington, DC 20250. Such permits must be obtained before the birds are shipped from the country of origin. Such birds from Canada must be accompanied by a certificate issued by a Canadian Government veterinarian. All such birds must be inspected at designated ports of entry by veterinarians of the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture.

(c) Psittacine birds as defined in paragraph (b)(4) of this section, not to exceed two such birds by members of a family comprising a single household in any 12-month period, may be imported under prescribed conditions (see 42 CFR 71.164(e)) without permit and without prior confinement and treatment, to be kept as pets by the owner, who will be required to comply with the Foreign Quarantine Regulations of the U.S. Public Health Service. Birds taken out of the United States and

being returned may be admitted, without permit, upon full compliance with prescribed conditions of those regulations for admission of birds imported as pets. No such birds shall be released until the importer has complied with applicable requirements of the Public Health regulations.

(d) Cats, dogs, and monkeys are subject to the Foreign Quarantine Regulations of the United States Public Health Service, Department of Health, Education, and Welfare, Washington, D.C. Such animals shall not be released until the Public Health regulations are complied with by the importer.

(e) If a shipment contains migratory birds for which a permit is required by the Fish and Wildlife Service of the Department of the Interior, and such permit is not at hand when the birds arrive, an examination thereof shall be made at once by the port director and any duties estimated to be due shall be collected. A stipulation shall be filed with the port director within 24 hours of the entry to produce the necessary permit within 30 days from the date of entry, whereupon final liquidation shall be suspended until the permit is produced or the 30-day period expires. The shipment may be immediately released if a bond is filed with the port director on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter, in an amount equal to the entered value plus estimated duties. If the bond conditions are violated the port director shall issue a claim for liquidated damages under the bond. In lieu of filing a bond the merchandise may be left in Customs custody at the risk and expense of the importer pending issuance of the permit.

(f) If the permit referred to in paragraph (e) of this section is refused by the Fish and Wildlife Service, or if the permit is not produced within the said 30 days, an authorized CBP official shall promptly recall the property, if delivered under bond, and shall require its immediate exportation at the expense of the importer or consignee.

(g)(1) All import shipments of fish and wildlife subject to the regulations or permit requirements of the U.S. Fish and Wildlife Service, published pursuant to the Endangered Species Act of 1973, 16 U.S.C. 1531, or other statutory authority, shall be subject to examination or inspection by that agency's officer serving the port of entry, for determination as to permissible release or such other disposition as he may direct. Customs officers performing examinations of such fish and wildlife in accordance with regulations of the U.S. Fish and Wildlife Service in 50 CFR part 10 and parts 13 through 17, shall release shipments only upon submission by the importer of evidence sufficient to establish compliance with those regulations, any applicable permit requirements, and compliance with applicable identification and package or container marking requirements as specified by 50 CFR 17.6(a) and 17.9. In case of doubt as to whether fish, birds, or other wildlife belong to prohibited or endangered species or subspecies or whether an entry permit is required, or in case of suspicion on the part of officers of the Customs that the species sought to be entered are prohibited or endangered species or subspecies imported under other names or descriptions, the importation shall be refused Customs release, and the importer shall be responsible for concluding arrangements acceptable to the regional director or other agent of the U.S. Fish and Wildlife Service for proper handling, custody, and care, at the importer's expense and risk, of the unreleased fish, birds, or other wildlife. No Customs disposition of the importation shall be concluded pending the determination by the U.S. Fish and Wildlife Service of the true nature of the species or subspecies. In case of refusal or neglect of the importer or consignee, or agent of either, to have the identity so established, final disposition of the importation shall be required as determined by the U.S. Fish and Wildlife Service. In addition to U.S. Fish and Wildlife Service Form 3–177, required to be filed as prescribed in 50 CFR 17.4 upon entry of importations of fish and wildlife, entrants shall present appropriate foreign export permits, other acceptable foreign documentary evidence of lawful taking, transportation, or sale, or appropriate American consular certificates upon importation of fish

and wildlife species or subspecies subject to such documentation requirements of 50 CFR 17.4 (c) and (d).

(2) Any antique article imported under §10.53(g) of this chapter shall be entered at one of the following ports:

Boston, Massachusetts
New York, New York
Baltimore, Maryland, Philadelphia, Pennsylvania
Miami, Florida, San Juan, Puerto Rico
New Orleans, Louisiana
Houston, Texas
Los Angeles, California
San Francisco, California
Anchorage, Alaska, Honolulu, Hawaii
O'Hare International Airport, Chicago, Illinois

(h) All invoices of animals and birds shall specify the species covered thereby and the number of each species. In the event of the return to the port director of any importation under the bond given under paragraph (e) of this section, if the number and species of birds does not correspond with the description stated in the invoice and if no satisfactory explanation of any discrepancy is furnished, a claim for liquidated damages shall be issued under the bond.

(i) The privilege of entry for immediate transportation granted by section 552, Tariff Act of 1930, shall not be allowed for importations of fish, birds, or other wildlife which are confirmed at the port of first arrival or discharge to be injurious prohibited species, or which require permits issued prior to importation, or which are subject to quarantine regulations or inspection at the ports of first arrival or discharge or other specified place of veterinary inspection. However, entry for immediate transportation properly is allowed for any importation of fish, birds, or other wildlife which at the place of first arrival or discharge is not confirmed to be an injurious prohibited specie and which, following compliance with any applicable quarantine regulations or required veterinary inspection, is being transported by means of an in-bond movement to a port of entry designated in 50 CFR part 17, appendix B, for Customs entry (see paragraphs (a) and (b) of this section). Ports of designated entry, inspection, quarantine, and related enforcement procedures covering certain animals and poultry and certain animal and poultry products imported into the United States are regulated by requirements and standards prescribed in regulations of the Secretary of Agriculture, Department of Agriculture (see 9 CFR parts 92–96; 19 CFR 12.8 and 12.24).

(j) Wild animals and birds shall be imported under humane and healthful conditions, due regard being given to the accommodations and facilities necessary for the species transported.

(k) When any Customs officer has good reason to believe that wild animals or birds have been imported under inhumane or unhealthful conditions in violation of 18 U.S.C. 42, an immediate investigation shall be made to ascertain whether they have in fact been transported under such conditions. The investigation shall determine the provisions made on the vessel or other conveyance for the accommodation of the animals or birds, the suitability of the boxes, cages, stalls, etc., the space, ventilation, and protection from the elements accorded the animals or birds, the facilities for cleaning, feeding, watering, bedding, and such other services as may be required for the species imported. The investigation shall also determine, the physical condition of such animals or birds and the ratio of dead, crippled, diseased, or starving animals or birds. If necessary, officers of the Animal and Plant Health Inspection Service, Veterinary Services, or Fish and Wildlife Service, or other officers or experts, may be called upon to assist customs officers in the matter.

(l) Unless the port director is satisfied that the provisions of 18 U.S.C. 42 have not been violated, he shall report the matter to the United States attorney for appropriate action.

[28 FR 14710, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §12.26, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 12.27 Importation or exportation of wild animals or birds, or the dead bodies thereof illegally captured or killed, etc.

Customs officers shall perform all duties required of them under statutory provisions that prohibit or restrict the

importation or exportation of wild animals or birds, or the dead bodies thereof, or the eggs of such birds, killed, captured, taken, transported, etc., contrary to law. Such laws and statutory provisions include 18 U.S.C. 43, 44, 3054, 3112.

[T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

§ 12.28 Importation of wild mammals and birds in violation of foreign law.

No imported wild mammal or bird, or part or product thereof, shall be released from Customs custody, except as permitted under § 12.26(i) relating to an in-bond movement to a port designated for wildlife entry, if the port director has knowledge of a foreign law or regulation obliging enforcement of section 527(a), Tariff Act of 1930 (19 U.S.C. 1527(a)), unless the importation is an excepted transaction entitled to entry under the provisions of section 527(c) of the Tariff Act or, in connection with the entry, there is presented documentation in the manner specified in 50 CFR 17.4(c) (1) or (2) required for import transactions subject to foreign laws or regulations regarding taking, transportation, or sale of wildlife including wild mammals and birds or parts or products thereof (see § 12.26).

[T.D. 70–242, 35 FR 17994, Nov. 24, 1970, as amended by T.D. 82–145, 47 FR 35476, Aug. 16, 1982]

§ 12.29 Plumage and eggs of wild birds.

(a) The provisions of Chapter 5, Additional U.S. Note 1, relating to the plumage of any bird, apply to all such plumage, whether imported separately or upon the bird itself, except (1) the feathers of birds specifically excepted by Additional U.S. Note 1 to Chapter 5, Harmonized Tariff Schedule of the United States (HTSUS), (2) plumage imported for scientific or educational purposes, (3) fully-manufactured artificial flies used for fishing, (4) plumage on game birds killed in foreign countries by residents of the United States and not imported for sale or other commercial purposes, and (5) plumage on live wild birds.

(b) The feathers or skins of certain birds may be imported for use in the manufacture of artificial flies used for fishing or for millinery purposes only under a permit issued by the Fish and Wildlife Service, United States Department of Interior, Washington DC 20240. No feathers or skins of the pro-species provided for by Additional U.S. Note 1, Chapter 5, HTSUS, shall be permitted to be entered, or withdrawn from warehouse, for consumption, unless the requisite permit is presented with the entry or withdrawal.

(c) The importation of the eggs of wild nongame birds is prohibited except as dead natural history specimens for museum or scientific collection purposes. The eggs of migratory birds may be imported for propagating purposes or for scientific and other limited purposes under permits issued by the Fish and Wildlife Service, U.S. Department of the Interior, Washington, DC 20240. State game departments, municipal game farms or parks, and public museums, zoological parks or societies, and scientific or educational institutions may import the eggs of migratory birds without a permit (50 CFR 16.3). The eggs of certain game or migratory birds imported for hatching, such as ducks, geese, swans, turkeys, pigeons, doves, pheasant, grouse, partridges, quail, guinea fowl, and pea fowl, are subject to the regulations of the Animal and Plant Health Inspection Service, Veterinary Services, U.S. Department of Agriculture, Washington, DC 20250. Such regulations require that permits, except for eggs from Canada offered for entry at certain land border ports, must be obtained before the eggs are shipped from the country of origin and that all eggs shall be accompanied by a certificate issued by a national government veterinarian of the country of origin and inspected at a designated port of entry.

(d) Upon the attempted importation of eggs of wild birds, the importation of which is prohibited by Chapter 4, Additional U.S. Note 26, the eggs shall be seized and the importer accorded an opportunity to assent to forfeiture. In the event the importer refuses or fails to

assent to the forfeiture of the prohibited eggs, the port director shall proceed to forfeit them under the provisions of the tariff act applicable to seizure and forfeiture of merchandise valued at less than $2,500.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 66–68, 31 FR 5358, Apr. 5, 1966; T.D. 78–99, 43 FR 13060, Mar. 29, 1978; T.D. 82–145, 47 FR 35476, Aug. 16, 1982; T.D. 89–1, 53 FR 51253, Dec. 21, 1988; T.D. 97–82, 62 FR 51770, Oct. 3, 1997]

§ 12.30 Whaling.

The importation and exportation of whales or whale products taken or processed in violation of the International Convention for the Regulation of Whaling signed at Washington under date of December 2, 1946 (Publication No. 3383, Department of State, Whaling Convention), or of the Whaling Convention Act of 1949 (16 U.S.C. 916 through 916(1)), or of any regulation issued under the Act (50 CFR part 351) is unlawful. Customs officers and employees shall perform all functions required of them by the above-mentioned convention, law and regulation.

[T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

§ 12.31 Plant pests.

The importation in a live state of insects which are injurious to cultivated crops, including vegetables, field crops, bush fruits, and orchard, forest or shade trees, and of the eggs, pupae, or larvae of such insects, except for scientific purposes under regulations prescribed by the Secretary of Agriculture, is prohibited. All packages containing live insects or their eggs, pupae, or larvae arriving from abroad, unless accompanied by a permit issued by the Department of Agriculture, shall be detained and submitted to the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs of that Department for inspection and determination of their admissibility into the United States.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 78–99, 43 FR 13060, Mar. 29, 1978; T.D. 82–145, 47 FR 35476, Aug. 16, 1982; T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

§ 12.32 Honeybees and honeybee semen.

(a) Honeybees from any country may be imported into the U.S. by the Department of Agriculture for experimental or scientific purposes. All other importations of honeybees are prohibited except those from a country which the Secretary of Agriculture has determined to be free of diseases dangerous to honeybees.

(b) Honeybee semen may be imported into the U.S. only from countries determined by the Secretary of Agriculture to be free of undesirable honeybees, and which take adequate precautions to prevent the importation of undersirable honeybees and their semen.

(c) The importation of honeybees and honeybee semen is governed by joint regulations of the Secretary of Agriculture and the Secretary of the Treasury published in Treasury Decisions and the FEDERAL REGISTER from time to time.

[T.D. 85–3, 50 FR 1044, Jan. 9, 1985, as amended by T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

TEA

§ 12.33 Importation of tea; entry; examination for customs purposes.

(a) The importation of any merchandise as tea which is inferior in purity, quality, and fitness for consumption to the standards prescribed by the Act of March 2, 1897, as amended (21 U.S.C. 41 through 50), is prohibited. Customs officers and employees shall perform all duties required of them by the said act and regulations.

(b) The importation of tea is subject also to the provisions of the Federal Food, Drug, and Cosmetic Act and the regulations thereunder. See §§ 12.1 to 12.5.

(c) [Reserved]

(d) The port director may order such an examination of packages containing tea as will satisfy him that no dutiable goods are packed therein. For this purpose the customary designation shall be made of packages for examination in public stores.

(e) If the invoice has not been received, the importer may use an additional copy of the chop list and release permit required by the regulations of

the Department of Health and Human Services as a pro forma invoice, marking ''Pro forma invoice'' across the face thereof.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 78–99, 43 FR 13060, Mar. 29, 1978; T.D. 82–145, 47 FR 35477, Aug. 16, 1982; T.D. 84–213, 49 FR 41167, Oct. 19, 1984; T.D. 89–1, 53 FR 51253, Dec. 21, 1988; T.D. 97–82, 62 FR 51770, Oct. 3, 1997]

WHITE PHOSPHORUS MATCHES

§ 12.34 Importation prohibited; certificate of inspection; importer's declaration.

(a) The importation into the United States of white phosphorus matches is prohibited.

(b) Invoices covering matches imported into the United States shall be accompanied by a certificate of official inspection of the Government of the country of manufacture, or its electronic equivalent, in the following form:

CERTIFICATE OF OFFICIAL INSPECTION OF MATCHES

I, _____ (Name), do hereby certify that I am the _____ (Official title), that according to the chemical analysis made by me the matches described below do not contain white or yellow phosphorus and that therefore they are not white phosphorus matches as defined in the Act of Congress of the United States of America approved April 9, 1912;

Number of case mark	Description of matches	Name and address of manufacturer	Name of consignee and address, vessel, and date of shipment
	.....	.....	.....
	.....	.....	.....
	.....	.....	.....

_____
(Signature)

_____
(Official title)

(c) In the absence of such certificate, the matches shall be detained until a certificate is produced or the importer submits satisfactory evidence to show that the matches were not in fact manufactured with the use of poisonous white or yellow phosphorus.

(d) The production of the above certificate shall not be required on the entry of matches manufactured in countries which prohibit the use of white or yellow phosphorus in the manufacture of matches.

(e) At the time of filing an entry for imported matches, the importer shall make a declaration, or its electronic equivalent, that to the best of his knowledge and belief no matches included in the invoice and entry are white phosphorus matches.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 82–145, 47 FR 35477, Aug. 16, 1982; T.D. 89–1, 53 FR 51253, Dec. 21, 1988; CBP Dec. 15–14, 80 FR 61285, Oct. 13, 2015]

§ 12.35 [Reserved]

NARCOTIC DRUGS

§ 12.36 Regulations of Bureau of Narcotics.

The importation and exportation of narcotic drugs are governed by regulations of the Drug Enforcement Administration Bureau of Narcotics. Customs officers and employees shall perform all duties imposed upon them by such regulations and the laws under which they are issued. Such regulations are in addition to, and not in lieu of, the Customs, internal-revenue, and other pertinent laws and regulations.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 78–99, 43 FR 13060, Mar. 29, 1978; T.D. 82–145, 47 FR 35477, Aug. 16, 1982; T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

LIQUORS

§ 12.37 Restricted importations.

(a) The basic permit requirements prescribed by the act of August 29, 1935 (27 U.S.C. 203), shall not be deemed applicable when the port director is satisfied that the liquor is for personal use or for experimental purposes in the making of analyses, tests, or comparisons.

(b) The production of a basic permit shall not be required when spirits are withdrawn from warehouse under any form of withdrawal entry.

(c) Blending or rectifying of wines or distilled spirits in class 6 manufacturing warehouses, or the bottling of imported distilled spirits in class 8 manipulation warehouses, shall not be permitted unless the proprietor has obtained an appropriate permit from the

Bureau of Alcohol, Tobacco and Firearms.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 78–329, 43 FR 43454, Sept. 26, 1978; T.D. 82–145, 47 FR 35477, Aug. 16, 1982; T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

§ 12.38 Labeling requirements; shipments.

All shipments of liquor not labeled as required by 18 U.S.C. 1263 and any vessel or vehicle, other than a common carrier, used in the transportation of such liquor shall be seized and disposed of in accordance with 18 U.S.C. 3615 .

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 70–249, 35 FR 18265, Dec. 1, 1970; T.D. 82–145, 47 FR 35477, Aug. 16, 1982; T.D. 89–1, 53 FR 51253, Dec. 21, 1988; CBP Dec. 04–28, 69 FR 52599, Aug. 27, 2004 ; CBP Dec. 08–25, 73 FR 40725, July 16, 2008]

UNFAIR COMPETITION

§ 12.39 Imported articles involving unfair methods of competition or practices.

(a) *Determinations of the International Trade Commission.* Under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), unfair methods of competition and unfair practices in the importation or sale of articles, the effect or tendency of which is to destroy, substantially injure, or prevent the establishment of an efficiently and economically operated United States industry, or to restrain or monopolize trade and commerce in the United States, are unlawful. After an investigation of an alleged violation of section 337, the U.S. International Trade Commission (''the Commission'') may determine that section 337 has been violated. The Commission also may determine during the course of its investigation that there is reason to believe that a violation of section 337 exists. The Commission's determination in either case is effective on the date of its publication in the FEDERAL REGISTER and is referred to the President, who may disapprove the determination for policy reasons on or before the close of a 60-day period beginning on the day after the day he receives a copy of the determination. A Commission determination disapproved by the President shall have no force or effect as of the date the Commission is notified of his disapproval. If the Commission's determination is not disapproved by the President during the 60-day period, or if he notifies the Commission before the close of the period that he approves the determination, the determination becomes final on the day after the close of the period or the day of the notification, whichever is earlier.

(b) *Exclusion from entry; entry under bond; notice of exclusion order.* (1) If the Commission finds a violation of section 337, or reason to believe that a violation exists, it may direct the Secretary of the Treasury to exclude from entry into the United States the articles concerned which are imported by the person violating or suspected of violating section 337. The Commission's exclusion order remains in effect until the Commission determines, and notifies the Secretary of the Treasury, that the conditions which led to the exclusion no longer exist, or until the determination of the Commission on which the order is based is disapproved by the President.

(2) During the period the Commission's exclusion order remains in effect, excluded articles may be entered under a single entry bond in an amount determined by the International Trade Commission to be sufficient to protect the complainant from any injury. On or after the date that the Commission's determination of a violation of section 337 becomes final, as set forth in paragraph (a) of this section, articles covered by the determination will be refused entry. If a violation of section 337 is found, the bond may be forfeited to the complainant under terms and conditions prescribed by the Commission. To enter merchandise that is the subject of a Commission exclusion order, importers must:

(i) File with CBP prior to entry a bond in the amount determined by the Commission that contains the conditions identified in the special importation and entry bond set forth in appendix B to part 113 of this chapter; and

(ii) Comply with the terms set forth in 19 CFR 210.50(d) in the event of a forfeiture of this bond.

(3) CBP shall notify each importer or consignee of articles released under bond pursuant to paragraph (b)(2) of

this section when the Commission's determination of a violation of section 337 becomes final and that entry of the articles is refused. The importer or consignee shall export or destroy the released articles under customs supervision within 30 days after the date of notification. The port director who released the articles shall assess liquidated damages in the full amount of the bond if the importer or consignee fails to export or destroy the released articles under Customs supervision within the 30-day period.

(4) In addition to the notice given to importers or consignees of articles released under bond, CBP shall provide written notice to all owners, importers or consignees of articles which are denied entry into the United States pursuant to an exclusion order that any future attempt to import such articles may result in the articles being seized and forfeited. Copies of all such notices are to be forwarded to the Executive Director, Commercial Targeting and Enforcement, Office of International Trade, at CBP Headquarters, and to the Office of The General Counsel, USITC, 500 E Street, SW., Washington, DC 20436.

(c) *Seizure and Forfeiture Orders.* (1) In addition to issuing an exclusion order under paragraph (b)(1) of this section, the Commission may issue an order providing that any article determined to be in violation of §337 be seized and forfeited to the United States. Such order may be issued if:

(i) The owner, importer, or consignee of the article previously attempted to import the article or like articles into the United States;

(ii) The article or like articles were previously denied entry into the United States by reason of an exclusion order issued under paragraph (b)(1) of this section; and

(iii) Upon such previous denial of entry, CBP had notified the owner, importer, or consignee of the article in writing of both the exclusion order and that seizure and forfeiture would result from any further attempt to import the article or like articles into the United States.

(2) Upon receipt of any seizure order issued by the Commission in accordance with this paragraph, Customs shall immediately notify all ports of entry of the property subject to the seizure order and identify the persons notified under paragraph (b)(4) of this section.

(3) The port director in the port in which the article was seized shall issue a notice of seizure to parties known to have an interest in the seized property. All interested parties to the property shall have an opportunity to petition for relief under the provisions of 19 CFR part 171. All petitions must be filed within 30 days of the date of issuance of the notice of seizure, and failure of a claimant to petition will result in the commencement of administrative forfeiture proceedings. All petitions will be decided by the appropriate Customs officer, based upon the value of the articles under seizure.

(4) If seized articles are found to be not includable in an order for seizure and forfeiture, then the seizure and the forfeiture shall be remitted in accordance with standard Customs procedures.

(5) Forfeited merchandise shall be disposed of in accordance with the Customs laws.

(d) *Certain importations by or for the United States.* Any exclusion from entry under section 337 based on claims of United States letters patent shall not apply to articles imported by and for the use of the United States, or imported for, and to be used for, the United States with the authorization or consent of the Government.

(e) *Importations of semiconductor chip products.* (1) In accordance with the Semiconductor Chip Protection Act of 1984 (17 U.S.C. 901 *et seq.*), if the owner of a mask work which is registered with the Copyright Office seeks to have CBP deny entry to any imported semiconductor chip products which infringe his rights in such mask work, the owner must obtain a court order enjoining, or an order of the U.S. International Trade Commission (USITC), under section 337, Tariff Act of 1930, as amended (19 U.S.C.1337), excluding, importation of such products. Exclusion orders issued by the USITC are enforceable by CBP under paragraph (b) of this section. Court orders or exclusion orders issued by the USITC shall be forwarded, for enforcement purposes, to

the Director, Border Security and Trade Compliance Division, Office of International Trade, U.S. Customs and Border Protection, Washington, DC 20229.

(2) CBP shall enforce any court order or USITC exclusion order based upon a mask work registration in accordance with the terms of such order. Court orders may require either denial of entry or the seizure of violative semiconductor chip products. Forfeiture proceedings in accordance with part 162 of this chapter shall be instituted against any such products so seized.

(3) This regulation will be effective against all importers regardless of whether they have knowledge that their importations are in violation of the Semiconductor Chip Protection Act of 1984 (17 U.S.C. 901 through 904).

[T.D. 79–231, 44 FR 49247, Aug. 22, 1979, as amended by T.D. 84–213, 49 FR 41167, Oct. 19, 1984; T.D. 87–132, 52 FR 39221, Oct. 21, 1987; T.D. 95–87, 60 FR 54941, Oct. 27, 1995; T.D. 99–27, 64 FR 13675, Mar. 22, 1999; T.D. 00–87, 65 FR 77815, Dec. 13, 2000; 65 FR 80497, Dec. 21, 2000; CBP Dec. 16–26, 81 FR 93014, Dec. 20, 2016]

IMMORAL ARTICLES

§ 12.40 Seizure; disposition of seized articles; reports to United States attorney.

(a) Any book, pamphlet, paper, writing, advertisement, circular, print, picture, or drawing containing any matter advocating or urging treason or insurrection against the United States or forcible resistance to any law of the United States, or containing any threat to take the life of or inflict bodily harm upon any person in the United States, seized under section 305, Tariff Act of 1930, shall be transmitted to the United States attorney for his consideration and action.

(b) Upon the seizure of articles or matter prohibited entry by section 305, Tariff Act of 1930 (with the exception of the matter described in paragraph (a) of this section), a notice of the seizure of such articles or matter shall be sent to the consignee or addressee.

(c) When articles of the class covered by paragraph (b) of this section are of small value and no criminal intent is apparent, a blank assent to forfeiture, Customs Form 4607, shall be sent with the notice of seizure. Upon receipt of the assent to forfeiture duly executed, the articles shall be destroyed if not needed for official use and the case closed.

(d) In the case of a repeated offender or when the facts indicate that the importation was made deliberately with intent to evade the law, the facts and evidence shall be submitted to the United States attorney for consideration of prosecution of the offender as well as an action in rem under section 305 for condemnation of the articles.

(e) All cases in which articles have been seized pursuant to 19 U.S.C. 1305(a) should be referred to the U.S. Attorney, for possible institution of condemnation proceedings, within 4 days, but in no event more than 14 days, after the date of Customs initial examination. The referral to the U.S. Attorney should be initiated simultaneously with the mailing to the importer of the seizure notice and the assent to forfeiture form. If the importer declines to execute an assent to forfeiture of the articles other than those mentioned in paragraph (a) of this section and fails to submit, within 30 days after being notified of his privilege to do so, a petition under section 618, Tariff Act of 1930 (19 U.S.C. 1618), for remission of the forfeiture and permission to export the seized articles, then the U.S. Attorney, who has already received information concerning the seizure pursuant to this paragraph, may proceed with the condemnation action.

(f) If seizure is made of books or other articles which do not contain obscene matter but contain information or advertisements relative to means of causing unlawful abortion, the procedure outlined in paragraphs (b), (c), (d), and (e) of this section shall be followed.

(g) In any case when a book is seized as being obscene and the importer declines to execute an assent to forfeiture on the ground that the book is a classic, or of recognized and established literary or scientific merit, a petition addressed to the Secretary of the Treasury with evidence to support the claim may be filed by the importer for release of the book. Mere unsupported statements or allegations will not be considered. If the ruling is favorable, release of such book shall be made only to the ultimate consignee.

(h) Whenever it clearly appears from information, instructions, advertisements enclosed with or appearing on any drug or medicine or its immediate or other container, or otherwise that such drug or medicine is intended for inducing unlawful abortion, such drug or medicine shall be detained or seized.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 71–165, 36 FR 12209, June 29, 1971; T.D. 76–261, 41 FR 39022, Sept. 14, 1976; T.D. 82–145, 47 FR 35477, Aug. 16, 1982; T.D. 85–186, 50 FR 47207, Nov. 15, 1985; T.D. 93–66, 58 FR 44130, Aug. 19, 1993]

§ 12.41 Prohibited films.

(a) Importers of films, shall certify on Customs Form 3291 that the imported films contain no obscene or immoral matter, nor any matter advocating or urging treason or insurrection against the United States or forcible resistance to any law of the United States, nor any threat to take the life or inflict bodily harm upon any person in the United States. When imported films are claimed to be free of duty as American goods returned, this certification may be made on Customs Form 3311, or its electronic equivalent, in the space designated ''Remarks'' in lieu of on Form 3291.

(b) Films exposed abroad by a foreign concern or individual shall be previewed by a qualified employee of the Customs Service before release. In case such films are imported as undeveloped negatives exposed abroad, the approximate number of feet shall be ascertained by weighing before they are allowed to be developed and printed and such film shall be previewed by a qualified employee of the Customs Service after having been developed and printed.

(c) Any objectionable film shall be detained pending instructions from Headquarters, U.S. Customs Service or a decision of the court as to its final disposition.

[28 FR 14710, Dec. 31, 1963, as amended by CBP Dec. 15–14, 80 FR 61285, Oct. 13, 2015]

MERCHANDISE PRODUCED BY CONVICT, FORCED, OR INDENTURED LABOR

§ 12.42 Findings of Commissioner of CBP.

(a) If any port director or other principal Customs officer has reason to believe that any class of merchandise that is being, or is likely to be, imported into the United States is being produced, whether by mining, manufacture, or other means, in any foreign locality with the use of convict labor, forced labor, or indentured labor under penal sanctions, including forced child labor or indentured child labor under penal sanctions, so as to come within the purview of section 307, Tariff Act of 1930, he shall communicate his belief to the Commissioner of CBP. Every such communication shall contain or be accompanied by a statement of substantially the same information as is required in paragraph (b) of this section, if in the possession of the port director or other officer or readily available to him.

(b) Any person outside CBP who has reason to believe that merchandise produced in the circumstances mentioned in paragraph (a) of this section is being, or is likely to be, imported into the United States may communicate his belief to any port director or the Commissioner of CBP. Every such communication shall contain, or be accompanied by:

(1) A full statement of the reasons for the belief;

(2) A detailed description or sample of the merchandise; and

(3) All pertinent facts obtainable as to the production of the merchandise abroad.

(c) If any information filed with a port director pursuant to paragraph (b) of this section does not conform with the requirements of that paragraph, the communication shall be returned promptly to the person who submitted it with detailed written advice as to the respects in which it does not conform. If such information is found to comply with the requirements, it shall be transmitted by the port director within 10 days to the Commissioner of CBP, together with all pertinent additional information available to the port director.

(d) Upon receipt by the Commissioner of CBP of any communication submitted pursuant to paragraph (a) or (b) of this section and found to comply with the requirements of the pertinent paragraph, the Commissioner will cause such investigation to be made as appears to be warranted by the circumstances of the case and the Commissioner or his designated representative will consider any representations offered by foreign interests, importers, domestic producers, or other interested persons.

(e) If the Commissioner of CBP finds at any time that information available reasonably but not conclusively indicates that merchandise within the purview of section 307 is being, or is likely to be, imported, he will promptly advise all port directors accordingly and the port directors shall thereupon withhold release of any such merchandise pending instructions from the Commissioner as to whether the merchandise may be released otherwise than for exportation.

(f) If it is determined on the basis of the foregoing that the merchandise is subject to the provisions of the said section 307, the Commissioner of CBP, with the approval of the Secretary of the Treasury, will publish a finding to that effect in a weekly issue of the Customs Bulletin and in the FEDERAL REGISTER.

(g) Any merchandise of a class specified in a finding made under paragraph (f) of this section, which is imported directly or indirectly from the locality specified in the findings and has not been released from CBP custody before the date of publication of such finding in the FEDERAL REGISTER shall be considered and treated as an importation prohibited by section 307, Tariff Act of 1930, unless the importer establishes by satisfactory evidence that the merchandise was not mined, produced, or manufactured in any part with the use of a class of labor specified in the finding.

(h) The following findings made under the authority of section 307, Tariff Act of 1930 are currently in effect with respect to the merchandise listed below:

Merchandise	Country	T.D.
Furniture, clothes hampers, and palm leaf bags.	Ciudad Victoria, Tamaulipas, Mexico.	53408 54725

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 89–1, 53 FR 51253, Dec. 21, 1988; T.D. 00–52, 65 FR 45875, July 26, 2000; CBP Dec. 17-04, 82 FR 26584, June 8, 2017]

§ 12.43 Proof of admissibility.

(a) If an importer of any article detained under § 12.42(e) or (g) desires to contend that the article was not mined, produced, or manufactured in any part with the use of a class of labor specified in section 307, Tariff Act of 1930, he shall submit to the port director or Commissioner of CBP within 3 months after the date the article was imported a certificate of origin, or its electronic equivalent, in the form set forth below, signed by the foreign seller or owner of the article. If the article was mined, produced, or manufactured wholly or in part in a country other than that from which it was exported to the United States, an additional certificate, or its electronic equivalent, in such form and signed by the last owner or seller in such other country, substituting the facts of transportation from such other country for the statements with respect to shipment from the country of exportation, shall be so submitted.

CERTIFICATE OF ORIGIN

I, _____, foreign seller or owner of the merchandise hereinafter described, certify that such merchandise, consisting of _____ (Quantity) of _____ (Description) in _____ (Number and kind of packages) bearing the following marks and numbers _____ was mined, produced, or manufactured by _____ (Name) at or near _____, and was laden on board _____ (Carrier to the United States) at _____ (Place of lading) (Place of final departure from country of exportation) which departed from on _____; (Date); and that _____ (Class of labor specified in finding) was not employed in any stage of the mining, production, or manufacture of the merchandise or of any component thereof.

Dated _____

_____

(Signature)

(b) The importer shall also submit to the port director or Commissioner of CBP within such 3-month period a statement, or its electronic equivalent, of the ultimate consignee of the merchandise, showing in detail that he had made every reasonable effort to determine the source of the merchandise and of every component thereof and to ascertain the character of labor used in the production of the merchandise and each of its components, the full results of his investigation, and his belief with respect to the use of the class of labor specified in the finding in any stage of the production of the merchandise or of any of its components.

(c) If the certificate or certificates and statements specified in paragraphs (a) and (b) of this section, or its electronic equivalent, are submitted within the time prescribed and the Commissioner finds that the merchandise is admissible, the port director concerned will be advised to that effect, whereupon he shall release the merchandise upon compliance with the usual entry requirements.

[28 FR 14710, Dec. 31, 1963, as amended by CBP Dec. 15–14, 80 FR 61285, Oct. 13, 2015; CBP Dec. 17-04, 82 FR 26584, June 8, 2017]

§ 12.44 Disposition.

(a) *Export and abandonment.* Merchandise detained pursuant to § 12.42(e) may be exported at any time prior to seizure pursuant to paragraph (b) of this section, or before it is deemed to have been abandoned as provided in this section, whichever occurs first. Provided no finding has been issued by the Commissioner of CBP under § 12.42(f) and the merchandise has not been exported within 3 months after the date of importation, the port director will ascertain whether the proof specified in § 12.43 has been submitted within the time prescribed in that section. If the proof has not been timely submitted, or if the Commissioner of CBP advises the port director that the proof furnished does not establish the admissibility of the merchandise, the port director will promptly advise the importer in writing that the merchandise is excluded from entry. Upon the expiration of 60 days after the delivery or mailing of such advice by the port director, the merchandise will be deemed to have been abandoned and will be destroyed, unless it has been exported or a protest has been filed as provided for in section 514, Tariff Act of 1930.

(b) *Seizure and summary forfeiture.* In the case of merchandise covered by a finding under § 12.42(f), if the Commissioner of CBP advises the port director that the proof furnished under § 12.43 does not establish the admissibility of the merchandise, or if no proof has been timely furnished, the port director shall seize the merchandise for violation of 19 U.S.C. 1307 and commence forfeiture proceedings pursuant to part 162, subpart E, of this chapter.

(c) *Prison-labor goods.* Nothing in this chapter precludes CBP from seizing for forfeiture merchandise imported in violation of 18 U.S.C. 1761 and 1762 concerning prison-labor goods.

[T.D. 00–52, 65 FR 45875, July 26, 2000, as amended by CBP Dec. 17-04, 82 FR 26584, June 8, 2017]

§ 12.45 Transportation and marketing of prison-labor products.

If any apparent violation of section 1761 or 1762, title 18, United States Code, with respect to any imported article comes to the attention of a port director, he shall detain the article and report the facts to the appropriate United States attorney. If the United States attorney advises the port director that action should be taken against the article, it shall be seized and held pending the receipt of further instructions from the United States attorney or the court.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

Counterfeit Coins, Obligations, and Other Securities; Illustrations or Reproductions of Coins or Stamps

§ 12.48 Importation prohibited; exceptions to prohibition of importation; procedure.

(a) In accordance with Chapter 25, Title 18, United States Code, any token, disk, or device in the likeness or similitude of any coin of the United States or of a foreign country; counterfeits of coins in circulation in the United States; counterfeited, forged, or altered obligations or other securities of the United States or of any foreign

government; or plates, dies, or other apparatus which may be used in making any of the foregoing, when brought into the United States, shall be seized, and delivered to the nearest representative of the United States Secret Service, together with a report of the facts, for appropriate disposition.

(b) In accordance with section 504 of title 18, United States Code, the printing, publishing, or importation or the making or importation of the necessary plates for such printing or publishing for philatelic, numismatic, educational, historical, or newsworthy purposes in articles, books, journals, newspapers, or albums (but not for advertising purposes, except illustrations of stamps and paper money in philatelic or numismatic advertising of legitimate numismatists and dealers in stamps or publishers of or dealers in philatelic or numismatic articles, books, journals, newspapers, or albums) of black and white illustrations of canceled and uncanceled United States postage stamps shall be permitted.

(c) The importation (but not for advertising purposes except philatelic advertising) of motion-picture films, microfilms, or slides, for projection upon a screen or for use in telecasting, of postage and revenue stamps and other obligations and securities of the United States and postage and revenue stamps, notes, bonds, and other obligations or securities of any foreign government, bank, or corporation shall be permitted.

(d) Printed matter of the character described in section 504, title 18, United States Code,[32] containing reproductions of postage or revenue stamps, executed in accordance with any exception stated in section 504, or colored reproductions of canceled foreign postage stamps may be admitted to entry. Printed matter containing illustrations or reproductions not executed in accordance with such exceptions shall be treated as prohibited importations. If no application for exportation or assent to forfeiture and destruction is received by the port director within 30 days from the date of notification to the importer that the articles are prohibited, the articles shall be reported

[32] Notwithstanding any other provision of this chapter, the following are permitted:

(1) The printing, publishing, or importation, or the making or importation of the necessary plates for such printing or publishing, of illustrations of:

(A) Postage stamps of the United States,

(B) Revenue stamps of the United States,

(C) Any other obligation or other security of the United States, and

(D) Postage stamps, revenue stamps, notes, bonds, and any other obligation or other security of any foreign government, bank, or corporation, for philatelic, numismatic, educational, historical, or newsworthy purposes in articles, books, journals, newspapers, or albums (but not for advertising purposes, except illustrations of stamps and paper money in philatelic or numismatic advertising of legitimate numismatists and dealers in stamps or publishers of or dealers in philatelic or numismatic articles, books, journals, newspapers, or albums). Illustrations permitted by the foregoing provisions of this section shall be made in accordance with the following conditions—

(i) All illustrations shall be in black and white, except that illustrations of postage stamps issued by the United States or by any foreign government may be in color;

(ii) All illustrations (including illustrations of uncanceled postage stamps in color) shall be of a size less than three-fourths or more than one and one-half, in linear dimension, of each part of any matter so illustrated which is covered by subparagraph (A), (B), (C), or (D) of this paragraph, except that black and white illustrations of postage and revenue stamps issued by the United States or by any foreign government and colored illustrations of canceled postage stamps issued by the United States may be in the exact linear dimension in which the stamps were issued; and

(iii) The negatives and plates used in making the illustrations shall be destroyed after their final use in accordance with this section.

(2) The making or importation, but not for advertising purposes except philatelic advertising, of motion-picture films, microfilms, or slides, for projection upon a screen or for use in telecasting, of postage and revenue stamps and other obligations and securities of the United States, and postage and revenue stamps, notes, bonds, and other obligations or securities of any foreign government, bank, or corporation. No prints or other reproductions shall be made from such films or slides, except for the purposes of paragraph (1), without the permission of the Secretary of the Treasury.

For the purposes of this section the term ''postage stamp'' includes ''postage meter stamps.'' (18 U.S.C. 504).

to the United States attorney for forfeiture.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 82–145, 47 FR 35477, Aug. 16, 1982; T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

CONSUMER PRODUCTS AND INDUSTRIAL EQUIPMENT SUBJECT TO ENERGY CONSERVATION OR LABELING STANDARDS

§ 12.50 Consumer products and industrial equipment subject to energy conservation or labeling standards.

(a) *Definitions.* For purposes of this section, the following terms have the meanings indicated:

Covered import. The term ''covered import'' means a consumer product or industrial equipment that is classified by the Department of Energy as covered by an applicable energy conservation standard, or by the Federal Trade Commission as covered by an applicable energy labeling standard, pursuant to the Energy Policy and Conservation Act of 1975, as amended (42 U.S.C. 6291–6317), and for which an entry for consumption has been filed, including products and equipment withdrawn from warehouse for consumption or foreign merchandise entered for consumption from a foreign trade zone.

DOE. The term ''DOE'' means the Department of Energy.

Energy conservation standard. The term ''energy conservation standard'' means any standard meeting the definitions of that term in 42 U.S.C. 6291(6) or 42 U.S.C. 6311(18).

FTC. The term ''FTC'' means the Federal Trade Commission.

Noncompliant covered import. The term ''noncompliant covered import'' means a covered import determined to be in violation of 42 U.S.C. 6302 or 42 U.S.C. 6316 as not in compliance with applicable energy conservation or energy labeling standards.

(b) *CBP action; refusal of admission.* CBP will refuse admission into the customs territory of the United States to any covered import found to be noncompliant with applicable energy conservation or energy labeling standards. If DOE or FTC notifies CBP that a covered import does not comply with an applicable energy conservation or energy labeling standard, CBP will refuse admission to the covered import, or pursuant to paragraph (d) of this section, CBP may allow conditional release of the covered import so that it may be brought into compliance. CBP may make a finding that a covered import is noncompliant without having received a prior written noncompliance notice from DOE or FTC. In such a situation, CBP will confer with DOE or FTC, as applicable, as to disposition of the import.

(c) *DOE or FTC notice.* Upon a determination that a covered import is not in compliance with applicable energy conservation or labeling standards, DOE or FTC, as applicable, will provide CBP with a written or electronic notice that identifies the importer and contains a description of the noncompliant covered import that is sufficient to enable CBP to identify the subject merchandise and refuse admission thereof into the customs territory of the United States.

(d) *Conditional release.* In lieu of immediate refusal of admission into the customs territory of the United States, CBP, pursuant to a written or electronic recommendation from DOE or FTC, may permit the release of a noncompliant covered import to the importer of record for purposes of reconditioning, re-labeling, or other modification. The release from CBP custody of any such covered import will be deemed conditional and subject to the bond conditions set forth in § 113.62 of this chapter. Conditionally released covered imports are subject to the jurisdiction of DOE and/or FTC.

(1) *Duration.* Unless extended in accordance with paragraph (d)(2) of this section, the conditional release period will terminate upon the earliest occurring of the following events:

(i) The date CBP issues a notice of refusal of admission to the importer;

(ii) The date DOE or FTC issues a notice to CBP stating that the covered import is in compliance and may proceed; or

(iii) At the conclusion of the 30-day period following the date of release.

(2) *Extension.* An importer may request an extension of the conditional release period from DOE or FTC if made within the initial 30-day conditional release period or any subsequent authorized extension thereof. CBP may

permit an extension of the conditional release period if recommended electronically or in writing, by DOE or FTC.

(3) *Issuance of redelivery notice and demand for redelivery*. If DOE or FTC notifies CBP in writing or electronically that noncompliant covered imports have not timely been brought into compliance, CBP will issue a refusal of admission notice to the importer and, in addition, CBP will demand the redelivery of the specified covered import to CBP custody. The demand for redelivery may be made concurrently with the notice of refusal of admission.

(4) *Liquidated damages*. A failure to comply with a demand for redelivery made under this paragraph (d) will result in the assessment of liquidated damages equal to three times the value of the covered product. Value as used in this provision means value as determined under 19 U.S.C. 1401a.

[78 FR 40390, July 5, 2013]

FUR-SEAL OR SEA-OTTER SKINS

§ 12.60 Importation prohibited.

The transportation, importation, sale, or possession of the skins of fur seals or sea otters is prohibited if such skins were taken contrary to the provisions of section 2 of the act of February 26, 1944 (58 Stat. 100–104) or, the case of such skins taken under the authority of the act or any fur-seal agreement, if the skins are not officially marked and certified as required by section 2 of the act. Section 16 makes the act inapplicable to skins taken for scientific purposes under a special permit.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

§ 12.61 Fur-seal or sea-otter skins permitted entry.

(a) Fur-seal or sea-otter skins taken by Indians, Aleuts, or other aborigines under the authority of section 3 of the act, fur-seal skins taken under the authority of the Canadian Government, and fur-seal skins taken on the Pribilof Islands and other specified areas under the authority of section 4 of the act shall be admitted to entry if officially marked and certified as having been lawfully taken and if accompanied by a declaration of the shipper identifying the skins by marks and numbers as those covered by the official certificate.

(b) Fur-seal or sea-otter skins taken in waters or on land not specified in the act or in the fur-seal agreement with Canada or other fur-seal agreement shall be admitted to entry upon the production of evidence satisfactory to the port director that they have been so taken.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

§ 12.62 Enforcement; duties of Customs officers.

(a) In accordance with the authority contained in sections 10 and 12 of the act, Customs officers shall arrest or cause to be arrested persons violating the provisions of the act or of any regulation made pursuant thereto; shall search vessels when there is reasonable cause to believe that such vessels are subject to seizure under the act, shall seize any vessel used or employed or which it appears has been or is about to be used or employed in violation of the act or any regulation made pursuant thereto; and shall seize fur seals and sea otters, or the skins thereof, killed, captured, transported, imported, offered for sale, or possessed by any person contrary to the provisions of the act or of any regulation made pursuant thereto.

(b) All articles, including vessels and equipment, seized by Customs officers for violation of the act shall be turned over to the nearest officer or agent of the Fish and Wildlife Service, Department of the Interior, for appropriate disposition under the act, receipts to be taken in duplicate therefor. One copy of each such receipt shall be transmitted to Headquarters, U.S. Customs Service with a detailed report of the facts in the particular case involved.

[28 FR 14710, Dec. 31, 1963, as amended by T.D. 89–1, 53 FR 51253, Dec. 21, 1988]

§ 12.63 Seal-skin or sea-otter-skin waste.

Seal-skin or sea-otter-skin waste composed of small pieces not large enough to be sewed together and utilized as dressed fur shall not be subject

to the requirements of the regulations in this part.

ENTRY OF MOTOR VEHICLES, ENGINES, AND EQUIPMENT CONTAINING ENGINES UNDER THE CLEAN AIR ACT, AS AMENDED

§ 12.73 Importation of motor vehicles and motor vehicle engines.

(a) *Applicability of EPA requirements.* This section is ancillary to the regulations of the U.S. Environmental Protection Agency (EPA) issued under the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*), and found in 40 CFR parts 85, 86, 1036, 1037, and 1068. The EPA regulations should be consulted for more detailed information concerning EPA emission requirements. This section applies to imported motor vehicles; this section also applies to separately imported engines only if they will be installed in highway motorcycles or heavy-duty motor vehicles. All references in this section to ''motor vehicles'' include these highway motorcycles and heavy-duty engines. Nothing in this section should be construed as limiting or changing in any way the applicability of the EPA regulations.

(b) *Importation of complying vehicles*—(1) *Labeled vehicles.* Vehicles which in their condition as imported are covered by an EPA certificate of conformity and which bear the manufacturer's label showing such conformity and other EPA-required information will be deemed in compliance with applicable emission requirements for the purpose of CBP admissibility and entry liquidation determinations. This paragraph does not apply to importations of Independent Commercial Importers covered by paragraph (d) of this section.

(2) *Pending certification.* Vehicles otherwise covered by paragraph (b)(1) of this section which were manufactured for compliance with applicable emission requirements, but for which an application for a certificate of conformity is pending with the EPA may be conditionally released from CBP custody pending production of the certificate of conformity within 120 days of release.

(c) *Importation of vehicles previously in compliance*—(1) *Vehicles of returning residents.* Vehicles of residents returning from Canada, Mexico or other countries as EPA may designate are not covered by this section.

(2) *Vehicles of commuting nonresidents and tourists.* A port director through the issuance of an appropriate means of identification to be affixed to a vehicle may waive all of the requirements of this section for a nonresident regularly crossing the Canadian or Mexican border, or waive the requirements for Mexico or Canadian-registered vehicles of tourists or other travelers.

(d) *Importation of vehicles by an Independent Commercial Importer (ICI).* An ICI is generally an importer that does not have a contract with a foreign or domestic motor vehicle manufacturer for distributing products into the United States market (*see* 40 CFR 85.1502). ICIs act independently of motor vehicle manufacturers, but are required to bring motor vehicles into compliance with all applicable emissions requirements found in 40 CFR part 86 and any other applicable requirements of the Clean Air Act. Before the vehicle is deemed to be in compliance with applicable emission requirements and finally admitted into the United States, the ICI must keep the vehicle in storage for a 15-business day period. This period follows notice to EPA of completion of the compliance work to give EPA the opportunity to conduct confirmatory testing and inspect the vehicle and records. The 15-business day period is part of the 120-day period in which an ICI must bring the vehicle into compliance with applicable emission requirements. A motor vehicle may also be conditionally admitted by an ICI if it meets the requirements in 40 CFR 85.1505 or 85.1509. Individuals and businesses not entitled to enter nonconforming motor vehicles may arrange for their importation through an ICI certificate holder. In these circumstances, the ICI will not act as an agent or broker for CBP transaction purposes unless it is otherwise licensed or authorized to do so.

(e) *Exemptions and exclusions from emission requirements based on age of vehicle.* The following motor vehicles may be imported by any person and do not have to be shown to be in compliance with emission requirements before they are entitled to admissibility:

(1) Gasoline-fueled light-duty trucks and light-duty motor vehicles manufactured before January 1, 1968;

(2) Diesel-fueled light-duty motor vehicles manufactured before January 1, 1975;

(3) Diesel-fueled light-duty trucks manufactured before January 1, 1976;

(4) Highway motorcycles manufactured before January 1, 1978;

(5) Gasoline-fueled and diesel-fueled heavy-duty engines manufactured before January 1, 1970; and

(6) Motor vehicles not otherwsie exempt from EPA emission requirements and more than 20 years old. Age is determined by subtracting the year of production (as opposed to model year) from the year of importation. The exemption under this subparagraph is available only if the vehicle is imported by an ICI.

(f) *Exemption for exports.* A new motor vehicle intended solely for export to a country not having the same emission standards applicable in the United States is not required to be covered by an EPA certificate of conformity if both the vehicle and its container bear a label or tag indicating that it is intended solely for export. 40 CFR 85.1709.

(g) *Exemptions for diplomats, foreign military personnel and nonresidents.* Subject to the condition that they are not resold in the United States, the following motor vehicles are exempt from applicable emission requirements:

(1) A motor vehicle imported solely for the personal use of a nonresident importer or consignee and the use will be for a period not to exceed one year; and

(2) A motor vehicle of a member of the armed forces of a foreign country on assignment in the United States, or of a member of the personnel of a foreign government on assignment in the United States or other individual who comes within the class of persons for whom free entry of motor vehicles has been authorized by the Department of State in accordance with general principles of international law. For special documentation requirements see paragraph (i)(6) of this section.

(h) *Other exemptions and exclusions.* EPA regulations in 40 CFR parts 85, 86 and 1068 allow for exempting or excluding vehicles from certification requirements. The following scenarios illustrate several examples of exemptions or exclusions that apply only if prior approval has been obtained in writing from EPA:

(1) *Importations for repairs.* A motor vehicle imported for repairs is any motor vehicle which is imported solely for repairs or alterations and which is not sold, leased, registered or licensed for use or operated on public roads or highways in the United States. 40 CFR 85.1511(b)(1);

(2) *Importations for testing.* A test vehicle is any motor vehicle imported solely for testing. Test vehicles may be operated on and registered for use on public roads or highways provided that the operation is an integral part of the test. 40 CFR 85.1511(b)(2). This exemption is limited to a period not exceeding one year from the date of importation unless a request is made under 40 CFR 85.1705(f) for a one-year extension;

(3) *Prototype vehicles.* A prototype vehicle is any motor vehicle imported for use as a prototype in applying for EPA certification. 40 CFR 85.1511(b)(3) and 85.1706. In the case of an ICI, unless the vehicle is brought into conformity within 180 days from the date of entry it will be exported or otherwise disposed of subject to paragraph (l) of this section;

(4) *Display vehicles.* A display vehicle is any motor vehicle which is imported solely for display and which will not be sold, leased, registered or licensed for use on or operated on the public roads or highways in the United States. 40 CFR 85.1511(b)(4);

(5) *Racing cars.* A racing car is any vehicle that meets one or more of the criteria found at 40 CFR 85.1703(a), and that will not be registered or licensed for use on or operated on public roads or highways in the United States. *See also* 40 CFR 85.1511(e).

(6) *National security importations.* A national security importation includes any motor vehicle imported for purposes of national security by a manufacturer. 40 CFR 85.1511(c)(1), 85.1702(a)(2) and 85.1708; and

(7) *Hardship exemption.* A hardship exemption includes any motor vehicle imported by anyone qualifying for a hardship exemption. 40 CFR 85.1511(c)(2).

(i) *Documentation requirements*—(1) *Exception for certain companies that manufacture and import motor vehicles.* The special documentation requirements of this paragraph do not apply to the importation of motor vehicles by the company that manufactures the motor vehicles if the motor vehicles are covered by a valid EPA Certificate of Conformity (COC) held by the manufacturer and the motor vehicles are labeled to show compliance with applicable emission requirements pursuant to paragraph (b)(1) of this section.

(2) *Release.* CBP will not release a motor vehicle from custody unless the importer has submitted all documents necessary to demonstrate compliance with all applicable laws and regulations.

(3) *Required EPA documentation.* Unless otherwise exempt, importers of motor vehicles must submit one of the following EPA declaration forms to CBP at the time of entry, or when filing a weekly entry from an FTZ in accordance with §146.63(c)(1) of this chapter at the time of entry summary:

(i) For heavy-duty motor vehicle engines, whether they are installed in a vehicle or separately imported as loose engines, submit EPA Declaration Form 3520–21, ''Importation of Engines, Vehicles, and Equipment Subject to Federal Air Pollution Regulations;''

(ii) For all other motor vehicles, submit EPA Declaration Form 3520–1, ''Importation of Motor Vehicles and Motor Vehicle Engines Subject to Federal Air Pollution Regulations.''

(4) *Filing method.* The EPA declaration forms required to be submitted to CBP pursuant to paragraph (i)(3) of this section must be filed with CBP electronically in the Automated Commercial Environment (ACE) or via any other CBP-authorized electronic data interchange system, or as a paper filing, at the time of entry, or when filing a weekly entry from an FTZ in accordance with §146.63(c)(1) of this chapter at the time of entry summary.

(5) *Recordkeeping.* Documents supporting the information required in EPA Declaration Form 3520–1 must be retained by the importer for a period of at least five (5) years in accordance with §163.4 of this chapter and must be provided to CBP upon request.

(6) *Documentation for diplomatic or foreign military personnel exemption.* In order for a diplomat or foreign military personnel to claim an exemption pursuant to paragraph (g)(2) of this section, CBP must receive a Department of State-approved form DS–1504 (''Request for Customs Clearance of Merchandise'') or its electronic equivalent.

(j) *Release under bond.* If an EPA declaration form filed in accordance with paragraph (i)(3) of this section states that the entry is being filed under one or more of the exemptions and exclusions identified in paragraph (h)(1), (2), (3), or (4) of this section, the entry will be accepted only if the importer, consignee, or surety, as appropriate, files a basic importation and entry bond containing the bond conditions set forth in §113.62 of this chapter, or files electronically in ACE or via any other CBP-authorized electronic data interchange system. The importer or consignee must deliver to CBP, either at the port of entry or electronically, documentation of EPA approval before the exemption or exclusion indicated on the EPA declaration form expires, or before some later deadline specified by the Center director based on good cause. If the EPA approval is not delivered to CBP, either to the port of entry or electronically, within the specified period, the importer or consignee must deliver or cause to be delivered to the port director those vehicles which were released under a bond required by this paragraph (j). In the event that the vehicle or engine is not redelivered within five (5) days following the date the exemption or exclusion indicated on the EPA declaration form expires, or any later deadline specified by the Center director, whichever is later, liquidated damages will be assessed in the full amount of the bond, if it is a single entry bond, or if a continuous bond is used, in the amount that would have been assessed under a single entry bond.

(k) *Notices of inadmissibility or detention.* If a motor vehicle is determined to be inadmissible before or after release from CBP custody, the importer or consignee will be notified in writing of the inadmissibility determination

and/or redelivery requirement. However, if a motor vehicle cannot be released from CBP custody merely because the importer has failed to attach to the entry the documentation required by paragraph (i) of this section, the vehicle will be held in detention by the port director for a period not to exceed 30-calendar days after filing of the entry at the risk and expense of the importer pending submission of the missing documentation. An additional 30-calendar day extension may be granted by the port director upon application for good cause shown. If the requisite EPA declaration form required pursuant to paragraph (i)(3) of this section has not been filed within this deadline, which must not exceed 60 days from the date of entry, CBP will issue a notice of inadmissibility.

(l) *Disposal of vehicles not entitled to admission.* A motor vehicle denied admission under any provision of this section will be disposed of in accordance with applicable CBP laws and regulations. However, a motor vehicle or engine will not be disposed of in a manner in which it may ultimately either directly or indirectly reach a consumer in a condition in which it is not in conformity with applicable EPA emission requirements.

(m) *Prohibited importations.* The importation of motor vehicles other than in accordance with this section and the EPA regulations in 40 CFR parts 85, 86, 600, 1036, 1037, and 1068 is prohibited.

[T.D. 88–40, 53 FR 26240, July 12, 1988, as amended by T.D. 01–14, 66 FR 8767, Feb. 2, 2001; CBP Dec. 16–26, 81 FR 93015, Dec. 20, 2016; CBP Dec. 16-29, 81 FR 94977, Dec. 27, 2016; CBP Dec. 19-11, 84 FR 46677, Sept. 5, 2019]

§ 12.74 Importation of nonroad and stationary engines, vehicles, and equipment.

(a) *Applicability of EPA regulations.* The requirements governing the importation of nonroad and stationary engines subject to conformance with applicable emission standards of the U.S. Environmental Protection Agency (EPA) are contained in 40 CFR parts 1033 through 1068. These EPA regulations should be consulted for detailed information as to the admission requirements for subject nonroad and stationary engines. EPA emission regulations also apply to vehicles and equipment with installed engines and all references in this section to nonroad or stationary engines include the vehicles and equipment in which the engines are installed. Nothing in this section may be construed as limiting or changing in any way the applicability of the EPA regulations.

(b) *Documentation requirements*—(1) *Exception for certain companies that manufacture and import nonroad or stationary engines, including engines incorporated into vehicles and equipment.* The special documentation requirements of this paragraph (b) do not apply to the importation of nonroad or stationary engines, including engines incorporated into vehicles or equipment, by the company that manufactures the engines, provided that the engines are covered by a valid EPA Certificate of Conformity (COC) held by the importing manufacturer and bear the manufacturer's label showing such conformity and other EPA-required information.

(2) *Release.* CBP will not release engines, vehicles, or equipment from custody unless the importer has submitted all required documents to demonstrate that the engines, vehicles, or equipment meet all applicable requirements.

(3) *Required EPA documentation.* Importers of nonroad or stationary engines, including engines incorporated into vehicles and equipment, must submit EPA Declaration Form 3520–21, ''Importation of Engines, Vehicles, and Equipment Subject to Federal Air Pollution Regulations,'' to CBP at the time of entry, or when filing a weekly entry from an FTZ in accordance with §146.63(c)(1) of this chapter at the time of entry summary.

(4) *Filing method.* EPA Declaration Form 3520–21 may be filed with CBP electronically in the Automated Commercial Environment (ACE) or via any other CBP-authorized electronic data interchange system, or as a paper filing, at the time of entry, or when filing a weekly entry from an FTZ in accordance with §146.63(c)(1) of this chapter at the time of entry summary.

(5) *Recordkeeping.* Documents supporting the information required in EPA Declaration Form 3520–21 must be retained by the importer for a period of

at least five (5) years in accordance with §163.4 of this chapter and must be provided to CBP upon request.

(c) *Release under bond*—(1) *Conditional admission*. If the EPA declaration form states that the entry for a nonconforming nonroad engine is being filed under one of the exemptions described in paragraph (c)(3) of this section, under which the engine may be conditionally admitted under bond, the entry will be accepted only if the importer, consignee, or surety, as appropriate, files a basic importation and entry bond containing the bond conditions set forth in §113.62(c) of this chapter, or files electronically in ACE or via any other CBP-authorized electronic data interchange system.

(2) *Final admission*. Should final admission be sought and granted pursuant to EPA regulations for an engine conditionally admitted initially under one of the exemptions described in paragraph (c)(3) of this section, the importer or consignee must deliver to the port director the prescribed statement. The statement must be delivered within the period authorized by EPA for the specific exemption, or such additional period as the port director of CBP may allow for good cause shown. Otherwise, the importer or consignee must deliver or cause to be delivered to the port director the subject engine, either for export or other disposition under applicable CBP laws and regulations (*see* paragraph (e) of this section). If such engine is not redelivered within five (5) days following the allotted period, liquidated damages will be assessed in the full amount of the bond, if a single entry bond, or if a continuous bond, the amount that would have been assessed under a single entry bond (*see* 40 CFR 1068.335).

(3) *Exemptions*. EPA regulations in 40 CFR parts 60 and 1033 through 1068 allow for exempting or excluding imported engines from certification requirements (see especially 40 CFR part 1068, subpart D). The specific exemptions under which a nonconforming nonroad engine may be conditionally admitted, and for which a CBP bond is required, are as follows:

(i) Repairs or alterations (*see* 40 CFR 1068.325(a)).

(ii) Testing (*see* 40 CFR 1068.325(b)).

(iii) Display (*see* 40 CFR 1068.325(c)).

(iv) Export (*see* 40 CFR 1068.325(d)).

(v) Diplomatic or military (*see* 40 CFR 1068.325(e)).

(vi) Delegated assembly (*see* 40 CFR 1068.325(f)).

(vii) Partially complete engines, vehicles, or equipment (*see* 40 CFR 1068.325(g)).

(d) *Notice of inadmissibility or detention*. If an engine is found to be inadmissible either before or after release from CBP custody, the importer or consignee will be notified in writing of the inadmissibility determination and/or redelivery requirement. If the inadmissibility is due to the fact that the importer or consignee did not file the EPA Declaration Form 3520–21 at the time of entry, or when filing a weekly entry from an FTZ in accordance with §146.63(c)(1) of this chapter at the time of entry summary, the port director may hold the subject engine in detention at the importer's risk and expense for up to 30 days from the entry filing date. The port director may grant the importer's request for a 30-day extension for good cause. The port director will issue a notice of inadmissibility if documentation is still incomplete after this deadline, which must not exceed 60 days from the filing date for importation.

(e) *Disposal of engines not entitled to admission; prohibited importations*. A nonroad or stationary engine denied admission under EPA regulations must be disposed of consistent with such EPA regulations and in accordance with applicable CBP laws and regulations. The importation of nonroad or stationary engines other than as prescribed under EPA regulations is prohibited.

[T.D. 98–50, 63 FR 29122, May 28, 1998, as amended by T.D. 01–14, 66 FR 8767, Feb. 2, 2001; CBP Dec. 10–29, 75 FR 52451, Aug. 26, 2010; CBP Dec. 16-29, 81 FR 94979, Dec. 27, 2016]

MOTOR VEHICLES AND MOTOR VEHICLE EQUIPMENT MANUFACTURED ON OR AFTER JANUARY 1, 1968

§ 12.80 Federal motor vehicle safety standards.

(a) *Standards prescribed by the Department of Transportation*. Motor vehicles

and motor vehicle equipment manufactured on or after January 1, 1968, offered for sale, or introduction or delivery for introduction in interstate Commerce, or importation into the United States are subject to Federal motor vehicle safety standards (''safety standards'') prescribed by the Secretary of Transportation under sections 103 and 119 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1392, 1407) (''the Act''), and set forth in 49 CFR part 571. A motor vehicle (''vehicle'') or item of motor vehicle equipment (''equipment item''), manufactured on or after January 1, 1968, is not permitted entry into the Customs territory of the United States unless (with certain exceptions set forth in paragraph (b) of this section) it is in conformity with applicable safety standards in effect at the time the vehicle or equipment item was manufactured.

(b) *Requirements for entry and release.* (1) Unless the requirement for filing is waived by the port director as provided for in paragraph (f) of this section, each vehicle or equipment item offered for introduction into the Customs territory of the United States shall be denied entry unless the importer or consignee files with the entry a declaration, in duplicate, which declares or affirms one of the following:

(i) The vehicle or equipment item was manufactured on a date when no applicable safety standards were in effect.

(ii) The vehicle or equipment item conforms to all applicable safety standards (or, the vehicle does not conform solely because readily attachable equipment items which will be attached to the vehicle before it is offered for sale to the first purchaser for purposes other than resale are not attached) and bears a certification label or tag to that effect permanently affixed by the original manufacturer to the vehicle or to the equipment item, or to the outside of the container in which the equipment item is delivered, in accordance with regulations issued by the Secretary of Transportation (49 CFR parts 555, 567, 568 and 571) under section 114 of the Act (15 U.S.C. 1403).

(iii) The vehicle or equipment item was not manufactured in conformity to all applicable safety standards, but it has been or will be brought into conformity. Within 120 days after entry, or within a period not to exceed 180 days after entry, if additional time is granted by the Administrator, National Highway Traffic Safety Administration (''Administrator, NHTSA''), the importer or consignee will submit a true and complete statement to the Administrator, NHTSA, identifying the manufacturer, contractor, or other person who has brought the vehicle or equipment item into conformity, describing the exact nature and extent of the work performed, and certifying that the vehicle or equipment item has been brought into conformity, and that the vehicle or equipment item will not be sold or offered for sale until the Administrator, NHTSA, issues an approval letter to the port director stating that the vehicle or equipment item described in the declaration has been brought into conformity with all applicable safety standards.

(iv) The vehicle or equipment item is intended solely for export, and the vehicle or equipment item, and the outside of the container of the equipment item, if any, bears a label or tag to that effect.

(v) The importer or consignee is a nonresident of the United States, is importing the vehicle or equipment item primarily for personal use for a period not exceeding 1 year from the date of entry, will not sell it in the United States during that period, and has stated his passport number and country of issue, if he has a passport, on the declaration.

(vi) The importer or consignee is a member of the armed forces of a foreign country on assignment in the U.S. or is a member of the personnel of a foreign government on assignment in the U.S. or other individual who is within the class of persons for whom free entry of vehicles has been authorized by the Department of State in accordance with general principles of international law, is importing the vehicle or equipment item for purposes other than resale; and a copy of his official orders, if any, is attached to the declaration (or, if a qualifying member of the personnel of a foreign government on assignment in the U.S., the

name of the Embassy to which he is accredited is stated on the declaration).

(vii) The vehicle or equipment item is imported solely for the purpose of show, test, experiment, competition (a vehicle the configuration of which at the time of entry is such that it cannot be licensed for use on the public roads is considered to be imported for the purpose of competition), repair or alteration, and the statement required by 19 CFR 12.80(c)(2) or (c)(3) is attached to the declaration.

(viii) The vehicle was not manufactured primarily for use on the public roads and is not a ''motor vehicle'' as defined in section 102 of the Act (15 U.S.C. 1391).

(ix) The vehicle is an ''incomplete vehicle'' as defined in 49 CFR part 568.

(2) A vehicle imported solely for the purpose of test or experiment which is the subject of a declaration filed under paragraph (b)(1)(vii) of this section may be licensed for use on the public roads for a period not to exceed 1 year from the date of importation if use on the public roads is an integral part of the test or experiment. The vehicle may be licensed for use on the public roads for one or more further periods which, when added to the initial 1 year period, shall not exceed a total of 3 years, upon application to and approval by the Administrator, NHTSA.

(c) *Declaration; contents.* (1) Each declaration filed under paragraph (b)(1) of this section shall include the name and address in the United States of the importer or consignee, the date and the entry number (if applicable), the make, model, and engine and body serial numbers, or other identification number (if a vehicle), or a description of the item (if an equipment item), and shall be signed by the importer or consignee.

(2) Each declaration filed under paragraph (b)(1)(vii) of this section which relates to a vehicle or equipment item reported for the purpose of show, competition, repair, or alteration shall have attached a statement fully describing the use to be made of the vehicle or equipment item and its ultimate disposition.

(3) Each declaration filed under paragraph (b)(1)(vii) of this section which relates to a vehicle imported solely for the purpose of test or experiment shall have attached a statement fully describing the test or experiment, the estimated period of time necessary to use the vehicle on the public roads, and the disposition to be made of the vehicle after completion of the test or experiment.

(4) Any declaration filed under paragraph (b)(1) of this section may, if appropriate, relate to more than one vehicle or equipment item imported on the same entry.

(d) *Declaration; disposition.* The port director shall forward the original of each declaration submitted to him under paragraph (b)(1) of this section as soon as practicable to the Director, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, Washington, DC 20590.

(e) *Release under bond.* (1) If a declaration is filed under paragraph (b)(1)(iii) of this section, the entry shall be accepted only if the importer or consignee gives a bond on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter. An approval letter shall be issued upon approval by the Administrator, NHTSA, of the conformity statement submitted by the importer or consignee as provided for in paragraph (b)(1)(iii) of this section. The approval letter shall be forwarded by the Administrator, NHTSA, to the port director with a copy to the importer or consignee. Upon receipt of the approval letter the port director shall cancel the charge against the bond.

(2) If the approval letter is not received by the port director within 180 days after entry, the port director shall issue a Notice of Redelivery, Customs Form 4647, or its electronic equivalent, requiring the redelivery to Customs custody of the vehicle or equipment item. If the vehicle or equipment item is not redelivered to Customs custody or exported under Customs supervision within the period allowed by the port director in the Notice of Redelivery, liquidated damages shall be assessed in the full amount of a bond if it is single entry bond or if a continuous bond is used, the amount that would have been taken under a single entry bond.

(f) *Waiver of declaration requirements.* The requirement that a declaration be filed under paragraph (b)(1)(i), (b)(1)(ii),

or (b)(1)(v) of this section as a condition to the introduction of a vehicle or equipment item into the Customs territory of the United States may be waived by the port director for a United States, Canadian, or Mexican registered vehicle arriving via land borders.

(g) *Vehicle or equipment item introduced by means of a fraudulent or false declaration.* Any person who enters, introduces, attempts to enter or introduce, or aids or abets the entry, introduction, or attempted entry or introduction, of a vehicle or equipment item into the Customs territory of the United States by means of a fraudulent entry declaration, or by means of a false entry declaration made without reasonable cause to believe the truth of the declaration, may incur liabilities under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).

(h) *Vehicle or equipment item denied entry.* If a vehicle or equipment item is denied entry under the provisions of paragraph (b) of this section, the port director shall refuse to release the vehicle or equipment item for entry into the Customs territory of the United States and shall issue a notice of that refusal to the importer or consignee.

(i) *Disposition of vehicle or equipment item denied entry; redelivery.* A vehicle or equipment item denied entry under paragraph (b) of this section, or redelivered to Customs custody under paragraph (e) of this section, which is not exported under Customs supervision within 90 days from the date of the notice of denial of entry or date of redelivery, shall be disposed of under applicable Customs laws and regulations, except that disposition shall not result in the introduction of the vehicle or equipment item into the Customs territory of the United States in violation of the Act.

[T.D. 78–478, 43 FR 56659, Dec. 4, 1978, as amended by T.D. 84–213, 49 FR 41167, Oct. 19, 1984; T.D. 86–203, 51 FR 42997, Nov. 28, 1986; CBP Dec. 15–14, 80 FR 61285, Oct. 13, 2015]

SAFETY STANDARDS FOR BOATS AND ASSOCIATED EQUIPMENT

§ 12.85 Coast Guard boat and associated equipment safety standards.

(a) *Applicability of standards or regulations prescribed by the Commandant, U.S. Coast Guard.* Boats and associated equipment (as hereinafter defined) are subject to U.S. Coast Guard safety regulations or standards when imported or, under certain conditions, brought into the United States after November 1, 1972. Those regulations or standards are prescribed by the Commandant, U.S. Coast Guard, pursuant to sections 5, 7, and 39, Federal Boat Safety Act of 1971 (46 U.S.C. 1454, 1456, 1488), as set forth in 33 CFR parts 181, 183.

(1) The term ''boats'' includes:

(i) All vessels manufactured or used primarily for noncommercial use.

(ii) All vessels leased, rented, or chartered to another for the latter's noncommercial use.

(iii) All vessels engaged in the carrying of six or fewer passengers (see section 4.80 of this chapter on prohibitions against foreign vessels transporting passengers in the coastwise trade).

(2) For purposes of §12.85 the term ''boat'' does not include:

(i) Foreign vessels temporarily using waters subject to U.S. jurisdiction.

(ii) Military or public vessels of the United States, except recreational type public vessels.

(iii) A vessel whose owner is a State or subdivision thereof, which is principally used for governmental purposes, and which is clearly identifiable as such.

(iv) Ships' lifeboats.

(3) The term ''associated equipment'' means:

(i) Any system, part, or component of a boat as originally manufactured, or a similar part or component manufactured or sold for replacement, repair, or improvement of such system, part, or component (excluding radio equipment).

(ii) Any accessory or equipment for, or appurtenance to, a boat (excluding radio equipment).

(iii) Any marine safety article, accessory, or equipment intended for use by

a person on board a boat (excluding radio equipment).

(4) The term ''product'' as used in this section, includes the terms ''boats'' and ''associated equipment'' as defined in paragraphs (a) (1), (2), and (3) of this section.

(b) *Evidence of compliance with boating standards or regulations as condition of* entry. A product for which entry is sought into the Customs territory of the United States will, subject to the exceptions specified in paragraph (c) of this section, be denied entry unless accompanied by evidence of compliance with standards or regulations as follows:

(1) A product subject to standards prescribed in 33 CFR part 183 will have affixed to it a compliance certification label in accordance with the requirements of subpart B, 33 CFR part 181.

(2) A boat hull subject to subpart C, 33 CFR part 181 will have affixed to it a hull identification number affixed by the importer or the original manufacturer. The number shall comply with the format requirements of subpart C, 33 CFR part 181.

(c) *Products not in compliance with standards or regulations: Alternative evidence required as condition of entry and release.* Certain products shall be permitted entry and release without a compliance certification label or hull identification number affixed, as is required by subparts B and C, 33 CFR part 181, if they fall within one of the following categories, and if the conditions for entry and release specified for each category of product are met:

(1) *Products manufactured before standards or regulations in effect.* For certain products manufactured before an applicable standard or regulation was in effect, a declaration, or its electronic equivalent, will be filed in accordance with the requirements of paragraph (d) of this section. The declaration, or its electronic equivalent, will state that the product was manufactured before the applicable standard or regulation was in effect. If the port director believes that it is necessary in a particular case, he may communicate with the nearest Coast Guard district commander by the most expedient means to request that the Coast Guard determine that alteration of the product is not required.

(2) *Products exempted from standards or regulations by Coast Guard Grant of Exemption.* For certain products specifically exempted from applicable standards or regulations by a Coast Guard Grant of Exemption, a declaration, or its electronic equivalent, will be filed in accordance with paragraph (d) of this section. The declaration, or its electronic equivalent, will state that the product has been specifically exempted from applicable standards or regulations by a U.S. Coast Guard Grant of Exemption, issued under the authority of section 9 of the Federal Boat Safety Act of 1971 (46 U.S.C. 1458), and in effect on the date the product was manufactured. The declaration, or its electronic equivalent, will also state that the product complies with all the terms and conditions of the exemption. A copy of the exemption, or its electronic equivalent, certified by the importer or consignee to be a true copy, shall be attached to each declaration, or its electronic equivalent.

(3) *Products to be brought into conformity.* In the case of products that are not in conformity at the time of entry but will be brought into conformity, a declaration, or its electronic equivalent, will be filed in accordance with paragraph (d) of this section. The declaration, or its electronic equivalent, will state that the product does not conform with applicable safety standards or regulations, but that the importer or consignee will bring the product into conformity with safety standards or regulations, and will also state that the product will not be sold or offered for sale, or used on waters subject to the jurisdiction of the United States and on the high seas beyond the territorial seas for a vessel owned in the United States except for the purpose of bringing it into conformity, until the bond has been satisfied with respect to this obligation. To secure entry under this provision, bond must be given in accordance with paragraph (e)(1) of this section.

(4) *Certain products entering the United States for repair or alteration.* In the case of a nonresident of the United States who wishes to enter a product for the

purpose of making repairs or alterations to it for a period not exceeding 1 year from the date of entry, a declaration, or its electronic equivalent, will be filed in accordance with paragraph (d) of this section. The declaration, or its electronic equivalent, shall state that the importer or consignee is a nonresident of the United States, that the product is being brought in for the purpose of making repairs or alterations to it, that it will not remain in the Customs territory of the United States for more than 1 year following the date of the entry, and that it will not be offered for sale, sold, or used for pleasure in waters subject to the jurisdiction of the United States during that time.

(5) *Products owned by certain foreign governments.* In the case of an importer or consignee employed in one of the capacities set forth in this subparagraph, a declaration, or its electronic equivalent, will be filed in accordance with paragraph (d) of this section. The declaration, or its electronic equivalent, shall state that the importer or consignee is either a member of the armed forces of a foreign country on assignment in the U.S. or is a member of the personnel of a foreign government on assignment in the U.S. or other individual who comes within the class of persons for whom free entry of boats has been authorized by the Department of State in accordance with general principles of international law, and that he is importing the product for purposes other than resale.

(6) *Certain products entered for tests, experiments, exhibits, or races.* An importer or consignee seeking to enter a product for period not to exceed 1 year, for tests, experiments, exhibits, or races but not for sale in the United States, shall file a declaration, or its electronic equivalent, in accordance with paragraph (d) of this section. The declaration, or its electronic equivalent, shall state that the importer or consignee is importing the product solely for the stated purpose and that it will not be sold or operated in the United States, unless the operation is an integral part of the stated use for which the product was imported. The importer or consignee shall attach to the declaration, or its electronic equivalent, a description of use for which the product is being imported, the time period estimated for completion, and disposition to be made of the product after completion. Entry under this paragraph may be authorized for a period not to exceed 1 year from the date of importation. However, this period may be extended at the discretion of the port director for one or more additional periods which, when added to the initial 1-year period, shall not exceed a total of 3 years.

(d) *Declaration requirements.* All declarations submitted must:

(1) Be filed at the time of entry, in duplicate on Form CG–5096, or its electronic equivalent.

(2) Be signed by the importer or consignee.

(3) State the name and U.S. address of the importer or consignee.

(4) State the entry number and date.

(5) Provide the make, model, and hull identification number, if affixed, or date of manufacture if hull identification number not affixed, of any boat, and a description of any equipment or component.

(6) Identify, if known, the city or state in which the product will be principally located.

(7) Be sent by the port director, to the Commandant (G-BBS-1/42), U.S. Coast Guard, Washington, D.C. 20593.

(e) *Release under bond*—(1) *When bond required.* A bond will be required of the importer or consignee on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter, in such amount as the port director deems appropriate, when a declaration is made that a product is to be brought into conformity. When the importer or consignee of a product declares that it will be brought into conformity before being sold or offered for sale, or before being used on waters subject to the jurisdiction of the United States and on the high seas beyond the territorial seas for a vessel owned in the United States and seeks entry of the product under paragraph (c)(3) of this section, the entry shall be accepted only if bond is given for the production of a statement by either the importer or the consignee that the product described in the declaration is in conformity with applicable safety

standards or regulations. The statement shall identify the person or firm who has brought the product into conformity with the standards or regulations and shall describe the nature and extent of the work performed.

(2) *Time limitation to produce statement for which bond is obligated.* Within 180 days after entry, the importer or consignee shall deliver to both the port director and the Commandant, U.S. Coast Guard, a copy of the statement for production of which the bond was obligated. If the statement is not delivered to the director of the port of entry of the product within 180 days after the date of entry, the importer or consignee shall deliver or cause to be delivered to the port director the product that was released in accordance with this paragraph.

(3) *Damages to be assessed against bond.* In the event that any product is not redelivered within 5 days following the date required by paragraph (e)(2) of this section, liquidated damages shall be assessed in the full amount of the bond if it is a single entry bond, or if a continuous bond is used, the amount that would have been taken under a single entry bond.

(f) *Products refused entry.* If a product is denied entry under the provisions of this section, the port director shall refuse to release the product for entry into the United States and shall issue a notice of the refusal to the importer or consignee.

(g) *Disposition of products refused entry into the United States; redelivered products.* Products which are denied entry under paragraph (b) of this section, or which are redelivered in accordance with paragraph (e)(2) of this section, and which are not exported under Customs supervision within 90 days from the date of notice of refusal of admission or date of redelivery, shall be disposed of under Customs laws and regulations. However, no such disposition shall result in an introduction into the United States of a product in violation of the Federal Boat Safety Act of 1971 (46 U.S.C. 1451–1489).

[T.D. 76–166, 41 FR 23398, June 10, 1976, as amended by T.D. 82–220, 47 FR 52138, Nov. 19, 1982; T.D. 84–213, 49 FR 41168, Oct. 19, 1984; T.D. 86–203, 51 FR 42997, Nov. 28, 1986; CBP Dec. 15–14, 80 FR 61285, Oct. 13, 2015]

ELECTRONIC PRODUCTS

§ 12.90 Definitions.

As used in §§ 12.90 and 12.91, the term ''the Act'' shall mean the Public Health Service Act (42 U.S.C. 201 *et seq.*), as amended by the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263b *et seq.*), and as further amended from time to time.

[T.D. 83–235, 48 FR 52436, Nov. 18, 1983]

§ 12.91 Electronic products offered for importation under the Act.

(a) *Standards prescribed by the Department of Health and Human Services.* Electronic products offered for importation into the customs territory of the United States are subject to standards prescribed under section 358 of the Act (42 U.S.C. 263f) unless intended solely for export. Prescribed standards shall not apply to any electronic product intended solely for export if:

(1) Such product and the outside of any shipping container used in the export of such product are labeled or tagged to show that it is intended for export, and

(2) Such product meets all the applicable requirements of the country to which it is intended for export.

(See 21 CFR, chapter I, subchapter J.)

(b) *Requirements for entry and release.* Electronic products subject to standards in effect under section 358 of the Act (42 U.S.C. 263f), when offered for importation into the customs territory of the United States, shall be refused entry unless there is filed with the entry, in duplicate, a declaration (FDA Form FD 2877) verified by the importer of record which identifies the products and affirms:

(1) That the electronic products were manufactured before the date of any applicable electronic product performance standard (the date of manufacture shall be specified); or

(2) That the electronic products comply with all standards in effect under section 358 of the Act (42 U.S.C. 263f), and chapter I, subchapter J, title 21, Code of Federal Regulations (21 CFR, chapter I, subchapter J), and that the certification required by section 360 of the Act (42 U.S.C. 263h) in the form of

a label or tag is attached to the product; or

(3)(i) That the electronic products do not comply with all standards in effect under section 358 of the Act (42 U.S.C. 263f), and chapter I, subchapter J, title 21, Code of Federal Regulations (21 CFR, chapter I, subchapter J), but are being imported for the purpose of research, investigations, studied, demonstrations, or training, (ii) that the products will not be introduced into commerce and when the use for which they were imported is completed they will be destroyed or exported under Customs supervision, and (iii) that an exemption for these products has been or will be requested from the National Center for Devices and Radiological Health, Food and Drug Administration, in accordance with section 360B(b) of the Act (42 U.S.C. 263j); or

(4) That the electronic products do not comply with all standards in effect under section 358 of the Act (42 U.S.C. 263f) and chapter I, subchapter J, Code of Federal Regulations (21 CFR, chapter I, subchapter J), but that a timely and adequate petition for permission to bring the products into compliance with applicable standards has been or will be filed with the Secretary of Health and Human Services in accordance with section 360 of the Public Health Service Act, as amended, and as implemented by 21 CFR 1005.21.

(c) *Notice of sampling.* When a sampling of a product offered for importation has been requested by the Secretary of Health and Human Services, as provided for in 21 CFR 1005.10, the port director having jurisdiction over the shipment from which the sample is procured shall give to its owner or importer of record prompt notice of delivery of, or intention to deliver, the sample. If the notice so requires, the owner or importer of record shall hold the shipment of which the sample is typical and not release the shipment until notice of the results of the tests of the sample from the Secretary of Health and Human Services stating the product fulfills the requirements of the Act.

(d) *Release under bond.* If a declaration filed in accordance with paragraph (b) of this section states that the entry is being made under circumstances described in paragraph (b)(4) of this section, the entry shall be accepted only if the owner or importer of record gives a bond on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter, for the production of a notification from the Secretary of Health and Human Services or his designee, in accordance with 21 CFR 1005.23, that the electronic product described in the declaration filed by the importer of record is in compliance with the applicable standards. The bond shall be in an amount deemed appropriate by the port director. Within 180 days after the entry of such additional period as the port director may allow for good cause shown, the importer of record shall take any action necessary to insure delivery to the port director of the notification described in this paragraph. If the notification is not delivered to the director of the port of entry of the electronic products within 180 days of the date of entry or such additional period as may be allowed by the port director, for good cause shown, the importer of record shall deliver or cause to be delivered to the port director those electronic products which were released. In the event that any electronic products are not redelivered to Customs custody or exported under Customs supervision within the period allowed by the port director in the Notice of Redelivery (Customs Form 4647, or its electronic equivalent), liquidated damages shall be assessed in the full amount of a bond if it is a single entry bond, or if a continuous bond is used, the amount that would have been taken under a single entry bond.

(e) *Release without bond—special exemptions.* For certain electronic products the Director, National Center for Devices and Radiological Health, has granted special exemptions from the otherwise applicable standards under the Act. Such exempted products may be imported and released without bond if they meet all the criteria of the special exemption. If a special exemption is granted after the product has been imported under bond in accordance with paragraph (d) of this section, the bond conditions pertaining to the notification of compliance from the Secretary of Health and Human Services shall be deemed to have been satisfied.

(f) *Merchandise refused entry.* If electronic products are denied entry under any provision of this section, the port director shall refuse to release the merchandise for entry into the United States.

(g) *Disposition of merchandise refused entry into the United States; redelivered merchandise.* Electronic products which are denied entry under paragraph (b) of this section, or which are redelivered in accordance with paragraph (d) of this section, and which are not exported under Customs supervision within 90 days from the date of notice of refusal of admission or date of redelivery, shall be disposed of under Customs laws and regulations. However, no such disposition shall result in an introduction into the United States of an electronic product in violation of the Act (42 U.S.C. 263f, 263h).

[T.D. 83–235, 48 FR 52436, Nov. 18, 1983, as amended by T.D. 84–213, 49 FR 41168, Oct. 19, 1984; CBP Dec. 15–14, 80 FR 61285, Oct. 13, 2015]

SWITCHBLADE KNIVES

§ 12.95 Definitions.

Terms as used in §§ 12.96 through 12.103 of this part are defined as follows:

(a) *Switchblade knife.* ''Switchblade knife'' means any imported knife, or components thereof, or any class of imported knife, including ''switchblade'', ''Balisong'', ''butterfly'', ''gravity'' or ''ballistic'' knives, which has one or more of the following characteristics or identities:

(1) A blade which opens automatically by hand pressure applied to a button or device in the handle of the knife, or any knife with a blade which opens automatically by operation of inertia, gravity, or both;

(2) Knives which, by insignificant preliminary preparation, as described in paragraph (b) of this section, can be altered or converted so as to open automatically by hand pressure applied to a button or device in the handle of the knife or by operation of inertia, gravity, or both;

(3) Unassembled knife kits or knife handles without blades which, when fully assembled with added blades, springs, or other parts, are knives which open automatically by hand pressure applied to a button or device in the handle of the knife or by operation of inertia, gravity, or both; or

(4) Knives with a detachable blade that is propelled by a spring-operated mechanism, and components thereof.

(b) *Insignificant preliminary preparation.* ''Insignificant preliminary preparation'' means preparation with the use of ordinarily available tools, instruments, devices, and materials by one having no special manual training or skill for the purpose of modifying blade heels, relieving binding parts, altering spring restraints, or making similar minor alterations which can be accomplished in a relatively short period of time.

(c) *Utilitarian use.* ''Utilitarian use'' includes but is not necessarily limited to use:

(1) For a customary household purpose;

(2) For usual personal convenience, including grooming;

(3) In the practice of a profession, trade, or commercial or employment activity;

(4) In the performance of a craft or hobby;

(5) In the course of such outdoor pursuits as hunting and fishing; and

(6) In scouting activities.

[T.D. 71–243, 36 FR 18859, Sept. 23, 1971, as amended by T.D. 90–50, 55 FR 28192, July 10, 1990]

§ 12.96 Imports unrestricted under the Act.

(a) *Common and special purpose knives.* Imported knives with a blade style designed for a primary utilitarian use, as defined in § 12.95(c), shall be admitted to unrestricted entry provided that in condition as entered the imported knife is not a switchblade knife as defined in § 12.95(a)(1). Among admissible common and special purpose knives are jackknives and similar standard pocketknives, special purpose knives, scout knives, and other knives equipped with one or more blades of such single edge nonweapon styles as clip, skinner, pruner, sheep foot, spey, coping, razor, pen, and cuticle.

(b) *Weapons with fixed blades.* Importations of certain articles having a fixed unexposed or exposed blade are

not within the prohibition of 15 U.S.C. 1241 through 1245. However, upon release by Customs, possession of these admissible articles which include such weapons as sword canes, camel whips, swords, sheath knives, machetes and similar devices that may be capable of use as weapons may be in violation of State or municipal laws.

[T.D. 71–243, 36 FR 18860, Sept. 23, 1971, as amended by T.D. 90–50, 55 FR 28192, July 10, 1990]

§ 12.97 Importations contrary to law.

Importations of switchblade knives, except as permitted by 15 U.S.C. 1244, are importations contrary to law and are subject to forfeiture under 19 U.S.C. 1595a(c).

[T.D. 90–50, 55 FR 28192, July 10, 1990]

§ 12.98 Importations permitted by statutory exceptions.

The importation of switchblade knives is permitted by 15 U.S.C. 1244, when:

(a) Imported pursuant to contract with a branch of the Armed Forces of the United States;

(b) Imported by a branch of the Armed Forces of the United States or any member or employee thereof acting in the performance of his duty; or

(c) A switchblade knife, other than a ballistic knife, having a blade not exceeding 3 inches in length is in the possession of and is being transported on the person of an individual who has only one arm.

[T.D. 71–243, 36 FR 18860, Sept. 23, 1971, as amended by T.D. 90–50, 55 FR 28192, July 10, 1990]

§ 12.99 Procedures for permitted entry.

(a) *Declaration required.* The entry of switchblade knives, the importation of which is permitted under § 12.98 shall be accompanied by a declaration, or its electronic equivalent, in duplicate, of the importer or consignee stating the facts of the import transaction as follows:

(1) *Importation pursuant to Armed Forces contract.* (i) The names of the contracting Armed Forces branch and its supplier;

(ii) The specific contract relied upon identified by its date, number, or other contract designation; and

(iii) A description of the kind or type of knife imported, the quantity entered, and the aggregate entered value of the importation.

(2) *Importation by a branch, member, or employee of the Armed Forces.* (i) The name of the Armed Forces branch by or for the account of which entry is made or the branch of the importing member or employee acting in performance of duty; and

(ii) The description, quantity, and aggregate entered value of the importation.

(3) *Importation by a one-armed person.* A statement that the knife has a blade not exceeding 3 inches in length and is possessed by and transported on the declarant's person solely for his necessary personal convenience, accommodation, and use as a one-armed individual.

(b) *Attachments to declaration.* Details for purposes of a declaration required under paragraph (a) of this section may be furnished by reference in the declaration, or its electronic equivalent, to attachment of the original or copy of the contract, or its electronic equivalent, or other documentation which contains the information.

(c) *Execution of declaration.* Declarations required by paragraph (a) of this section shall be executed as follows:

(1) *Contract supplier; Armed Forces branch; member or employee.* Declarations made under paragraph (a) or (b) of § 12.98 shall affirm that facts and data furnished are declared on knowledge, information, or belief of a signing officer, partner, or authorized representative of an importing contract supplier or of a commissioned officer, contracting officer, or employee authorized to represent an Armed Forces importing branch. The signature to a declaration shall appear over the declarant's printed or typewritten name, his title or rank, and the identity of the contract supplier or Armed Forces branch he represents or in which he has membership or employment.

(2) *One-armed person.* Declarations made under paragraph (c) of § 12.98, signed by the eligible person, shall be presented upon his arrival directly to a

Customs officer who shall visually confirm the facts declared. An eligible knife shall be released only to the declarant.

(d) *Verification of declared information*. The importer, consignee, or declarant of knives permitted entry under §12.98 upon request shall furnish Customs additional documentary evidence from an Armed Forces branch or other relevant source as Customs officers may require in order to:

(1) Verify declared statements;

(2) Resolve differences pertaining to quantity, description, value, or other discrepancy disclosed by the importation, entry, or related documentation;

(3) Establish the declarant's authority to act; or

(4) Authenticate a signature.

[T.D. 71–243, 36 FR 18860, Sept. 23, 1971, as amended by CBP Dec. 15–14, 80 FR 61285, Oct. 13, 2015]

§ 12.100 Importations in good faith; common or contract carriage.

(a) *Exportation in lieu of seizure*. Upon a claim that the importer acted in good faith without knowledge of applicable laws and regulations, Customs officers may authorize detained inadmissible knives to be exported otherwise than in the mails, at no expense to the Government, under the procedures of §§18.25 through 18.27 of this chapter.

(b) *Common or contract carriers*. In accordance with 15 U.S.C. 1244(1), excepted from the penalties of the Act are the shipping, transporting, or delivering for shipment in interstate commerce, in the ordinary course of business of common or contract carriage, of any switchblade knife. However, imported switchblade knives as defined in §12.95(a) so shipped or transported to a port of entry or place of Customs examination are prohibited importations subject to §§12.95–12.103 and disposition as therein required, authorized, or permitted.

[T.D. 71–243, 36 FR 18860, Sept. 23, 1971, as amended by T.D. 90–50, 55 FR 28192, July 10, 1990]

§ 12.101 Seizure of prohibited switchblade knives.

(a) *Importations contrary to law*. Inadmissible importations which are not exported in accordance with §12.100(a) shall be seized under 19 U.S.C. 1595a(c).

(b) *Notice of seizure*. Notice of Customs seizure shall be sent or given to the importer or consignee, which shall inform him of his right to file a petition under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), for remission of the forfeiture and permission to export the seized switchblade knives. (See part 171 of this chapter.)

[T.D. 71–243, 36 FR 18860, Sept. 23, 1971, as amended by T.D. 90–50, 55 FR 28192, July 10, 1990]

§ 12.102 Forfeiture.

If the importer or consignee fails to submit, within 60 days after being notified of his right to do so, a petition under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), for remission of the forfeiture and permission to export the seized importation, the seized prohibited knives shall be forfeited in accordance with applicable provisions of sections 602 through 611, Tariff Act of 1930, as amended (19 U.S.C. 1602 through 1611), and the procedures of part 162 of this chapter.

[T.D. 71–243, 36 FR 18860, Sept. 23, 1971, as amended by T.D. 78–99, 43 FR 13060, Mar. 29, 1978; T.D. 00–57, 65 FR 53574, Sept. 5, 2000]

§ 12.103 Report to the U.S. Attorney.

Should circumstances and facts of the import transaction show evidence of deliberate violation of 15 U.S.C. 1241 through 1245, so as to present a question of criminal liability, the evidence, accompanied by reports of investigative disclosures, findings, and recommendation, shall be transmitted to the U.S. Attorney for consideration of criminal prosecution. The port director shall hold the seized switchblade knives intact pending disposition of the case.

[T.D. 71–243, 36 FR 18860, Sept. 23, 1971, as amended by T.D. 72–81, 37 FR 5364, Mar. 15, 1972; T.D. 90–50, 55 FR 28192, July 10, 1990]

CULTURAL PROPERTY

SOURCE: Sections 12.104 through 12.104i issued by T.D. 86–52, 51 FR 6907, Feb. 27, 1986, unless otherwise noted.

§ 12.104 Definitions.

For purposes of §§ 12.104 through 12.104i:

(a) The term, *archaeological or ethnological material of the State Party* to the 1970 UNESCO Convention means—

(1) Any object of archaeological interest. No object may be considered to be an object of archaeological interest unless such subject—

(i) Is of cultural significance;

(ii) Is at least 250 years old; and

(iii) Was normally discovered as a result of scientific excavation, clandestine or accidental digging, or exploration on land or under water; or in addition to paragraphs (a)(1) (i) and (ii) of this section;

(iv) Meets such standards as are generally acceptable as archaeological such as, but not limited to, artifacts, buildings, parts of buildings, or decorative elements, without regard to whether the particular objects are discovered by exploration or excavation;

(2) Any object of ethnological interest. No object may be considered to be an object of ethnological interest unless such object—

(i) Is the product of a tribal or non-industrial society, and

(ii) Is important to the cultural heritage of a people because of its distinctive characteristics, comparative rarity, or its contribution to the knowledge of the origins, development or history of that people;

(3) Any fragment or part of any object referred to in paragraph (a) (1) or (2) of this section which was first discovered within, and is subject to export control by the State Party.

(b) The term *Convention* means the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property adopted by the General Conference of the United Nations Educational, Scientific, and Cultural Organization at its sixteenth session (823 U.N.T.S. 231 (1972)).

(c) The term *cultural property* includes articles described in Article 1 (a) through (k) of the Convention, whether or not any such article is specifically designated by any State Party for the purposes of Article 1. Article 1 lists the following categories:

(1) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;

(2) Property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;

(3) Products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;

(4) Elements of artistic or historical monuments or archaeological sites which have been dismembered;

(5) Antiquities more than 100 years old, such as inscriptions, coins and engraved seals;

(6) Objects of ethnological interest;

(7) Property of artistic interest, such as:

(i) Pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);

(ii) Original works of statuary art and sculpture in any material;

(iii) Original engravings, prints and lithographs;

(iv) Original artistic assemblages and montages in any material;

(8) Rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;

(9) Postage, revenue and similar stamps, singly or in collections;

(10) Archives, including sound, photographic and cinematographic archives;

(11) Articles of furniture more than 100 years old and old musical instruments.

(d) The term *designated archaeological or ethnological material* means any archaeological or ethnological material of the State Party which—

(1) Is—

(i) Covered by an agreement under 19 U.S.C. 2602 that enters into force with respect to the U.S., or

(ii) Subject to emergency action under 19 U.S.C. 2603 and

(2) Is listed by regulation under 19 U.S.C. 2604.

(e) The term *museum* means a public or private nonprofit agency or institution organized on a permanent basis for essentially educational or esthetic purposes, which, utilizing a professional staff, owns or utilizes tangible objects, cares for them, and exhibits them to the public on a regular basis (Museum Services Act; Pub. L. 94–462; 20 U.S.C. 968). For the purposes of these regulations, the term *recognized museum* under the Cultural Property Implementation Act shall be synonymous with *museum*.

(f) The term *Secretary* means the Secretary of the Treasury or his delegate, the Commissioner of Customs.

(g) The term *State Party* means any nation which has ratified, accepted, or acceded to the 1970 UNESCO Convention.

(h) The term *United States* or *U.S.*, includes the customs territory of the United States, the U.S. Virgin Islands and any territory or area the foreign relations for which the U.S. is responsible.

[T.D. 86–52, 51 FR 6907, Feb. 27, 1986; 51 FR 15316, Apr. 23, 1986; 51 FR 17332, May 12, 1986]

§ 12.104a Importations prohibited.

(a) No article of cultural property documented as appertaining to the inventory of a museum or religious or secular public monument or similar institution in any State Party which was stolen from such museum, monument, or institution after April 12, 1983, or after the date of entry into force of the Convention for the State Party, whichever date is later, may be imported into the U.S.

(b) No archaeological or ethnological material designated pursuant to 19 U.S.C. 2604 and listed in §12.104g, that is exported (whether or not such exportation is to the U.S.) from the State Party after the designation of such material under 19 U.S.C. 2604 may be imported into the U.S. unless the State Party issues a certificate or other documentation which certifies that such exportation was not in violation of the laws of the State Party.

§ 12.104b State Parties to the Convention.

(a) The following is a list of State Parties which have deposited an instrument of ratification, acceptance, accession or succession, the date of such deposit and the date of entry into force for each State Party:

State party	Date of deposit	Date of entry into force
Algeria	June 24, 1974 (R)	Sept. 24, 1974.
Angola	Nov. 7, 1991 (R)	Feb. 7, 1992.
Argentina	Jan. 11, 1973 (R)	Apr. 11, 1973.
Armenia, Republic of	Sept. 5, 1993 (S)	See Note 1.
Australia	Oct. 30, 1989 (Ac)	Jan. 30, 1990.
Bangladesh	Dec. 9, 1987 (R)	Mar. 9, 1988.
Belarus	Apr. 28, 1988 (R)	July 28, 1988.
Belize	Jan. 26, 1990 (R)	Apr. 26, 1990.
Bolivia	Oct. 4, 1976 (R)	Jan. 4, 1977.
Bosnia-Herzegovina	July 12, 1993 (S)	See Note 2.
Brazil	Feb. 16, 1973 (R)	May 16, 1973.
Bulgaria	Sept. 15, 1971 (R)	Apr. 24, 1972.
Burkina Faso	Apr. 7, 1987 (R)	July 7, 1987.
Cambodia	Sept. 26, 1972 (R)	Dec. 26, 1972.
Cameroon	May 24, 1972 (R)	Aug. 24, 1972.
Canada	Mar. 28, 1978 (Ac)	June 28, 1978.
Central African Republic	Feb. 1, 1972 (R)	May 1, 1972.
China, People's Republic of	Nov. 28, 1989 (Ac)	Feb. 28, 1990.
Colombia	May 24, 1988 (Ac)	Aug. 24, 1988.
Cote d'Ivoire	Oct. 30, 1990 (R)	Jan. 30, 1991.
Croatia	July 6, 1992 (S)	See Note 2.
Cuba	Jan. 30, 1980 (R)	Apr. 30, 1980.
Cyprus	Oct. 19, 1979 (R)	Jan. 19, 1980.
Czech Republic	Mar. 26, 1993 (S)	See Note 4.
Dominican Republic	Mar. 7, 1973 (R)	June 7, 1973.
Ecuador	Mar. 24, 1971 (Ac)	Apr. 24, 1972.
Egypt	Apr. 5, 1973 (Ac)	July 5, 1973.
El Salvador	Feb. 20, 1978 (R)	May 20, 1978.
Georgia, Republic of	Nov. 4, 1992 (S)	See Note 1.
Greece	June 5, 1981 (R)	Sept. 5, 1981.
Grenada	Sept. 10, 1992 (Ac)	Dec. 10, 1992.

State party	Date of deposit	Date of entry into force
Guatemala	Jan. 14, 1985 (R)	Apr. 14, 1985.
Guinea	Mar. 18, 1979 (R)	June 18, 1979.
Honduras	Mar. 19, 1979 (R)	June 19, 1979.
Hungary	Oct. 23, 1978 (R)	Jan. 23, 1979.
India	Jan. 24, 1977 (R)	Apr. 24, 1977.
Iran	Jan. 27, 1975 (Ac)	Apr. 27, 1975.
Iraq	Feb. 12, 1973 (Ac)	May 12, 1973.
Italy	Oct. 2, 1978 (R)	Jan. 2, 1979.
Jordan	Mar. 15, 1974 (R)	June 15, 1974.
Korea, Democratic People's Republic of	May 13, 1983 (R)	Aug. 13, 1983.
Korea, Republic of	Feb. 14, 1983 (Ac)	May 14, 1983.
Kuwait	June 22, 1972 (Ac)	Sept. 22, 1972.
Lebanon	Aug. 25, 1992 (R)	Nov. 25, 1992.
Libya	Jan. 9, 1973 (R)	Apr. 9, 1973.
Madagascar	June 21, 1989 (R)	Sept. 21, 1989.
Mali	Apr. 6, 1987 (R)	July 6, 1987.
Mauritania	Apr. 27, 1977 (R)	July 27, 1977
Mauritius	Feb. 27, 1978 (Ac)	May 27, 1978.
Mexico	Oct. 4, 1972 (Ac)	Jan. 4, 1973.
Mongolia	June 23, 1991 (Ac)	Aug. 23, 1991.
Nepal	June 23, 1976 (R)	Sept. 23, 1976.
Nicaragua	Apr. 19, 1977 (R)	July 19, 1977.
Niger	Oct. 16, 1972 (R)	Jan. 16, 1973.
Nigeria	Jan. 24, 1972 (R)	Apr. 24, 1972.
Oman	June 2, 1978 (Ac)	Sept. 2, 1978.
Pakistan	Apr. 30, 1978 (R)	July 30, 1981.
Panama	Aug. 13, 1973 (Ac)	Nov. 13, 1973.
Peru	Oct. 24, 1979 (Ac)	Jan. 24, 1980.
Poland	Jan. 31, 1974 (R)	Apr. 30, 1974.
Portugal	Dec. 9, 1985 (R)	Mar. 9, 1986.
Qatar	Apr. 20, 1977 (Ac)	July 20, 1977.
Romania	Dec. 6, 1993 (R)	Mar. 6, 1994.
Russian Federation	Apr. 28, 1988 (R)	See Note 3.
Saudi Arabia	Sept. 8, 1976 (Ac)	Dec. 8, 1976.
Senegal	Dec. 9, 1984 (R)	Mar. 9, 1985.
Slovak Republic	Mar. 31, 1993 (S)	See Note 4.
Slovenia, Republic of	Oct. 10, 1992 (S)	See Note 2.
Spain	Jan. 10, 1986 (R)	Apr. 10, 1986.
Sri Lanka	Apr. 7, 1981 (Ac)	July 7, 1981.
Syria	Feb. 21, 1975 (Ac)	May 21, 1975.
Tadjikistan, Republic of	Aug. 11, 1992 (S)	See Note 1.
Tanzania	Aug. 2, 1977 (R)	Nov. 2, 1977.
Tunisia	Mar. 10, 1975 (R)	June 10, 1975.
Turkey	Apr. 21, 1981 (R)	July 21, 1981.
Ukraine	Apr. 28, 1988 (R)	July 28, 1988.
United States of America	Sept. 2, 1983 (Ac)	Dec. 2, 1983.
Uruguay	Aug. 9, 1977 (R)	Nov. 9, 1977.
Yugoslavia	Oct. 3, 1972 (R)	Jan. 3, 1973.
Zaire	Sept. 23, 1974 (R)	Dec. 23, 1974.
Zambia	June 21, 1985 (R)	Sept. 21, 1985.

Code for reading second column: Ratification (R); Acceptance (Ac); Accession (A); Succession (S).

NOTES:

1. The Republic of Armenia, the Republic of Georgia, and the Republic of Tadjikistan each deposited a notification of succession in which each declared itself bound by the Convention as ratified by the USSR on April 28, 1988 and which entered into force on July 28, 1988.

2. Bosnia-Herzegovina, Croatia and the Republic of Slovenia each deposited notification of succession in which each declared itself bound by the Convention as ratified by Yugoslavia on Oct. 3, 1972 and entered into force on January 3, 1973.

3. The Government of the Russian Federation informed the Director General of UNESCO that the Russian Federation continues without interruption the participation of the USSR in all UNESCO Conventions. The instrument of ratification was deposited by the former USSR on April 28, 1988. and entered into force on July 28, 1988.

4. The Czech Republic and the Slovak Republic each deposited a notification of succession in which each declared itself bound by the Convention as accepted by Czechoslovakia on Feb. 14, 1977 and which entered into force on May 14, 1977.

(b) Additions to and deletions from the list of State Parties will be accomplished by FEDERAL REGISTER notice, from time to time, as the necessity arises.

[T.D. 86–52, 51 FR 6907, Feb. 27, 1986, as amended by T.D. 88–59, 53 FR 38287, Sept. 30, 1988; T.D. 90–13, 55 FR 4996, Feb. 13, 1990; T.D. 95–71, 60 FR 47467, Sept. 13, 1995 ; CBP Dec. 08–25, 73 FR 40725, July 16, 2008]

§ 12.104c Importations permitted.

Designated archaeological or ethnological material for which entry is sought into the U.S., will be permitted entry if at the time of making entry:

(a) A certificate, its electronic equivalent, or other documentation, issued by the Government of the country of origin of such material in a form acceptable to the Secretary is filed with the port director, such form being, but not limited to, an affidavit, license, or permit, or their electronic equivalents, from an appropriate, authorized State Party official under seal, certifying that such exportation was not in violation of the laws of that country, or

(b) Satisfactory evidence is presented to the port director that such designated material was exported from the State Party not less than 10 years before the date of such entry and that neither the person for whose account the material is imported (or any related person) contracted for or acquired an interest, directly or indirectly, in such material more than 1 year before that date of entry, or

(c) Satisfactory evidence is presented to the port director that such designated material was exported from the State Party on or before the date on which such material was designated under 19 U.S.C. 2604.

(d) The term ''satisfactory evidence'' means—

(1) For purposes of paragraph (b) of this section—

(i) One or more declarations under oath, or their electronic equivalents, by the importer, or the person for whose account the material is imported, stating that, to the best of his knowledge—

(A) The material was exported from the State Party not less than 10 years before the date of entry into the U.S., and

(B) Neither such importer or person (or any related person) contracted for or acquired an interest, directly or indirectly, in such material more than 1 year before the date of entry of the material; and

(ii) A statement, or its electronic equivalent, provided by the consignor, or person who sold the material to the importer, which states the date, or, if not known, his belief, that the material was exported from the State Party not less than 10 years before the date of entry into the U.S. and the reasons on which the statement is based; and

(2) For purposes of paragraph (c) of this section—

(i) One or more declarations under oath, or their electronic equivalents, by the importer or the person for whose account the material is to be imported, stating that, to the best of his knowledge, the material was exported from the State Party on or before the date such material was designated under 19 U.S.C. 2604, and

(ii) A statement, or its electronic equivalent, by the consignor or person who sold the material to the importer which states the date, or if not known, his belief, that the material was exported from the State Party on or before the date such material was designated under 19 U.S.C. 2604, and the reasons on which the statement is based.

(e) *Related persons.* For purposes of paragraphs (b) and (d) of this section, a person shall be treated as a related person to an importer, or to a person for whose account material is imported, if such person—

(1) Is a member of the same family as the importer or person of account, including, but not limited to, membership as a brother or sister (whether by whole or half blood), spouse, ancestor, or lineal descendant;

(2) Is a partner or associate with the importer or person of account in any partnership, association, or other venture; or

(3) Is a corporation or other legal entity in which the importer or person of account directly or indirectly owns, controls, or holds power to vote 20 percent or more of the outstanding voting stock or shares in the entity.

[T.D. 86-52, 51 FR 6907, Feb. 27, 1986, as amended by CBP Dec. 15–14, 80 FR 61285, Oct. 13, 2015]

§ 12.104d Detention of articles; time in which to comply.

In the event an importer cannot produce the certificate, documentation, or evidence, or the electronic equivalent, required in § 12.104c at the time of making entry, the port director

shall take the designated archaeological or ethnological material into Customs custody and send it to a bonded warehouse or public store to be held at the risk and expense of the consignee until the certificate, documentation, or evidence, or the electronic equivalent, is presented to such officer. The certificate, documentation, or evidence, or the electronic equivalent, must be presented within 90 days after the date on which the material is taken into Customs custody, or such longer period as may be allowed by the port director for good cause shown.

[T.D. 86-52, 51 FR 6907, Feb. 27, 1986, as amended by CBP Dec. 15–14, 80 FR 61285, Oct. 13, 2015]

§ 12.104e Seizure and forfeiture.

(a) Whenever any designated archaeological or ethnological material is imported into the U.S. in violation of 19 U.S.C. 2606, and the importer states in writing that he will not attempt to secure the certificate, documentation, or evidence, or the electronic equivalent, required by §12.104c, or such certificate, documentation, or evidence, or the electronic equivalent, is not presented to the port director before the expiration of the time provided in §12.104d, the material shall be seized and summarily forfeited to the U.S. in accordance with part 162 of this chapter.

(1) Any designated archaeological or ethnological material which is forfeited to the U.S. shall, in accordance with the provisions of Title III of Pub. L. 97–446, 19 U.S.C. 2609(b):

(i) First be offered for return to the State Party;

(ii) If not returned to the State Party be returned to a claimant with respect to whom the designated material was forfeited if that claimant establishes—

(A) Valid title to the material;

(B) That the claimant is a bona fide purchaser for value of the material; or

(iii) If not returned to the State Party under paragraph (a)(1)(i) of this section or to a claimant under paragraph (a)(1)(ii) of this section, be disposed of in the manner prescribed by law for articles forfeited for violation of the customs laws. No return of material may be made under paragraph (a)(1) (i) or (ii) of this section unless the State Party or claimant, as the case may be, bears the expenses incurred incident to the return and delivery, and complies with such other requirements relating to the return as the Secretary shall prescribe.

(b) Whenever any stolen article of cultural property is imported into the U.S. in violation of 19 U.S.C. 2607, such cultural property shall be seized and forfeited to the U.S. in accordance with part 162 of this chapter.

(1) Any stolen article of cultural property which is forfeited to the U.S. shall, in accordance with the provisions of Title III of Pub. L. 97–446, 2609(c):

(i) First be offered for return to the State Party in whose territory is situated the institution referred to in 19 U.S.C. 2607 and shall be returned if that State Party bears the expenses incident to such return and delivery and complies with such other requirements relating to the return as the Secretary prescribes; or

(ii) If not returned to such State Party, be disposed of in the manner prescribed by law for articles forfeited for violation of the customs laws.

[T.D. 86-52, 51 FR 6907, Feb. 27, 1986, as amended by CBP Dec. 15–14, 80 FR 61285, Oct. 13, 2015]

§ 12.104f Temporary disposition of materials and articles.

Pending a final determination as to whether any archaeological or ethnological material, or any article of cultural property, has been imported into the U.S. in violation of 19 U.S.C. 2606 or 19 U.S.C. 2607, the Secretary may permit such material or article to be retained at a museum or other cultural or scientific institution in the U.S. if he finds that sufficient safeguards will be taken by the museum or institution for the protection of such material or article; and sufficient bond is posted by the museum or institution to ensure its return to the Secretary.

§ 12.104g Specific items or categories designated by agreements or emergency actions.

(a) The following is a list of agreements imposing import restrictions on

the described articles of cultural property of State Parties. The listed Treasury Decision contains the Designated Listing with a complete description of specific items or categories of archaeological or ethnological material designated by the agreement as coming under the protection of the Convention on Cultural Property Implementation Act. Import restrictions listed below shall be effective for no more than five years beginning on the date on which the agreement enters into force with respect to the United States. This period may be extended for additional periods of not more than five years if it is determined that the factors which justified the initial agreement still pertain and no cause for suspension of the agreement exists. Any such extension is indicated in the listing.

State party	Cultural Property	Decision No.
Albania	Archaeological material of Albania ranging in date from approximately 300,000 B.C. to A.D. 1750, and ethnological material of Albania ranging in date from approximately A.D. 400 to 1913.	CBP Dec. 22–06
Algeria	Archaeological material representing Algeria's cultural heritage that is at least 250 years old, dating from the Paleolithic (approximately 2.4 million years ago), Neolithic, Classical, Byzantine, and Islamic periods and into the Ottoman period to A.D. 1750.	CBP Dec. 19–09
Belize	Archaeological material, representing Belize's cultural heritage that is at least 250 years old, dating from the Pre-Ceramic (from approximately 9000 B.C.), Pre-Classic, Classic, and Post-Classic Periods of the Pre-Columbian era through the Early and Late Colonial Periods.	CBP Dec. 13–05 extended by CBP Dec. 23–02
Bolivia	Archaeological and Ethnological Material from Bolivia	T.D. 01–86 extended by CBP Dec. 21–18
Bulgaria	Archaeological material from Bulgaria ranging in date from 7500 B.C. through approximately 1750 A.D. and ecclesiastical ethnological material from Bulgaria ranging in date from the beginning of the 4th century A.D. through approximately 1750 A.D.	CBP Dec. 19–01
Cambodia	Archaeological Material from Cambodia from the Bronze Age through the Khmer Era.	CBP Dec. 08–40 extended by CBP Dec. 18–11
Canada	Archaeological artifacts and ethnological material culture of Canadian origin.	T.D. 97–31
Chile	Archaeological material representing Chile's cultural heritage from the Paleoindian period (c. 31,000 B.C.) to the Huri Moai phase in Chile (A.D. 1680–1868).	CBP Dec. 20–16
Colombia	Pre-Columbian archaeological material ranging approximately from 1500 B.C. to 1530 A.D. and ecclesiastical ethnological material of the Colonial period ranging approximately from A.D. 1530 to 1830.	CBP Dec. 06–09 extended by CBP Dec. 21–05
Costa Rica	Archaeological material representing Costa Rica's cultural heritage from approximately 12,000 B.C. to A.D. 1550.	CBP Dec. 21–06
Cyprus	Archaeological material ranging approximately from the 11th millennium B.C. to A.D. 1770 and ethnological material ranging from approximately the 4th century A.D. to A.D. 1878.	CBP Dec. 22–15
Ecuador	Archaeological and ethnological material representing Ecuador's cultural heritage that is at least 250 years old, dating from the Pre-ceramic (approximately 12,000 B.C.), Formative, Regional development, Integration, Inka periods and into the Colonial period to A.D. 1769.	CBP Dec. 20–03
Egypt	Archaeological material representing Egypt's cultural heritage ranging approximately from 300,000 B.C. to A.D. 1750, and ethnological material ranging from A.D. 1517 to 1914.	CBP Dec. 21–17
El Salvador	Archaeological material representing El Salvador's Pre-Hispanic cultures ranging in date from approximately 8000 B.C. through A.D. 1550 and ecclesiastical ethnological material from the Colonial period through the first half of the twentieth century ranging in date from approximately A.D. 1525 to 1950.	CBP Dec. 20–04
Greece (Hellenic Republic)	Archeological materials representing Greece's cultural heritage ranging in date from approximately 3rd millennium B.C. to 15th century A.D., and ecclesiastical ethnological material from Greece from the early Christian, Byzantine, and post-Byzantine periods, including objects made from A.D. 324 through 1830.	CBP Dec. 21–16

State party	Cultural Property	Decision No.
Guatemala	Archaeological material, c. 12,000 B.C. to A.D. 1524, and Hispanic period ecclesiastical ethnological material, c. A.D. 1524 to 1821.	CBP Dec. 12–17 extended by CBP Dec. 22–24
Honduras	Archaeological material of Pre-Colombian cultures ranging approximately from 1200 B.C. to 1500 A.D, and ecclesiastical ethnological materials dating from the Colonial Period, c. A.D. 1502 to 1821.	CBP Dec. 14–03 extended by CBP Dec. 19–03
Italy	Archaeological Material of pre-Classical, Classical, and Imperial Roman periods ranging approximately from the 9th century B.C. to the 4th century A.D.	T.D. 01–06 extended by CBP Dec. 21–01
Jordan	Archaeological material representing Jordan's cultural heritage from the Paleolithic period (c. 1.5 million B.C.) to the middle of the Ottoman period in Jordan (A.D. 1750).	CBP Dec. 20–02
Libya	Archaeological material and ethnological material from Libya.	CBP Dec. 23–03
Mali	Archaeological material from Mali from the Paleolithic Era (Stone Age) to approximately the mid-eighteenth century, and ethnological materials dating between the twelfth and twentieth centuries.	CBP Dec. 22–23
Morocco	Archaeological material from Morocco ranging in date from approximately 1 million B.C. to A.D. 1750, and ethnological material from Morocco ranging in date from approximately A.D. 1549 to 1912.	CBP Dec. 21–02
Nicaragua	Archaeological material of pre-Columbian cultures ranging approximately from 8000 B.C. to 1500 A.D.	T.D. 00–75 extended by CBP Dec. 15–13
Nigeria	Archaeological material of Nigeria ranging from approximately B.C. 1500 to A.D. 1770, and ethnological material of Nigeria ranging from approximately A.D. 200 to the early 20th century A.D.	CBP Dec. 22–05
People's Republic of China	Archaeological materials representing China's cultural heritage from the Paleolithic Period (c. 75,000 B.C.) through the end of the Tang Period (A.D. 907) and monumental sculpture and wall art at least 250 years old as of January 14, 2009.	CBP Dec. 19–02
Peru	Archaeological artifacts and ethnological material from Peru ..	CBP Dec. 22–11
Turkey	Archaeological material representing Turkey's cultural heritage ranging from approximately 1,200,000 B.C. to A.D. 1770, and ethnological material ranging from the 1st century A.D. to A.D. 1923.	CBP Dec. 21–09

(b) The following is a list of emergency actions imposing import restrictions on the described articles of cultural property of State Parties. The listed decision contains a complete description of specific items or categories of archaeological or ethnological material designated by the emergency actions as coming under the protection of the Convention on Cultural Property Implementation Act. Import restrictions listed below shall be effective for no more than five years from the date on which the State Party requested those restrictions. This period may be extended for three more years if it is determined that the emergency condition continues to apply with respect to the archaeological or ethnological material. Any such extension is indicated in the listing.

State party	Cultural property	Decision No.
Afghanistan	Archaeological and ethnological material from Afghanistan	CBP Dec. 22–04
Yemen	Archaeological and ethnological material from Yemen	CBP Dec. 20–01

[T.D. 86–52, 51 FR 6907, Feb. 27, 1986]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §12.104g, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 12.104h Exempt materials and articles.

The provisions of these regulations shall not apply to—

(a) Any archaeological or ethnological material or any article of cultural property which is imported into the U.S. for temporary exhibition or display, if such material or article is rendered immune from seizure under judicial process by the U.S. Information Agency, Office of the General Counsel and Congressional Liaison, pursuant to the Act entitled ''An Act to render immune from seizure under judicial process certain objects of cultural significance imported into the United States for temporary display or exhibition, and for other purposes'', approved October 19, 1965 (22 U.S.C. 2459); or

(b) Any designated archaeological or ethnological material or any article of cultural property imported into the U.S. if such material or article—

(1) Has been held in the U.S. for a period of not less than 3 consecutive years by a recognized museum or religious or secular monument or similar institution, and was purchased by that institution for value, in good faith, and without notice that such material or article was imported in violation of these regulations, but only if—

(i) The acquisition of such material or article has been reported in a publication of such institution, any regularly published newspaper or periodical with a circulation of at least 50,000, or a periodical or exhibition catalog which is concerned with the type of article or materials sought to be exempted from these regulations,

(ii) Such material or article has been exhibited to the public for a period or periods aggregating at least 1 year during such 3-year period, or

(iii) Such article or material has been cataloged and the catalog material made available upon request to the public for at least 2 years during such 3-year period;

(2) If paragraph (b)(1) of this section does not apply, has been within the U.S. for a period of not less than 10 consecutive years and has been exhibited for not less than 5 years during such period in a recognized museum or religious or secular monument or similar institution in the U.S. open to the public;

(3) If paragraphs (b) (1) and (2) of this section do not apply, has been within the U.S. for a period of not less than 10 consecutive years and the State Party concerned has received or should have received during such period fair notice (through such adequate and accessible publication, or other means, as the Secretary or his designee shall prescribe) of its location within the U.S.; and

(4) If none of the preceding subparagraphs apply, has been within the U.S. for a period of not less than 20 consecutive years and the claimant establishes that it purchased the material or article for value without knowledge or reason to believe that it was imported in violation of law.

§ 12.104i Enforcement.

In the customs territory of the United States, and in the U.S. Virgin Islands, the provisions of these regulations shall be enforced by appropriate customs officers. In any other territory or area within the U.S., but not within such customs territory or the U.S. Virgin Islands, such provisions shall be enforced by such persons as may be designated by the President.

§ 12.104j Emergency protection for Iraqi cultural antiquities.

(a) *Restriction.* Importation of archaeological or ethnological material of Iraq is restricted pursuant to the Emergency Protection for Iraqi Cultural Antiquities Act of 2004 (title III of Pub. L. 108–429) and section 304 of the Convention on Cultural Property Implementation Act (19 U.S.C. 2603).

(b) *Description of restricted material.* The term ''archaeological or ethnological material of Iraq'' means cultural property of Iraq and other items of archaeological, historical, cultural, rare scientific, or religious importance illegally removed from the Iraq National Museum, the National Library of Iraq, and other locations in Iraq, since the adoption of United Nations Security Council Resolution 661 of 1990. CBP Decision 08–17 sets forth the Designated List of Archaeological and Ethnological Material of Iraq that describes the types of specific items or

categories of archaeological or ethnological material that are subject to import restrictions.

[73 FR 23342, Apr. 30, 2008]

§ 12.104k Emergency protection for Syrian cultural antiquities.

(a) *Restriction*. Importation of archaeological or ethnological material of Syria is restricted pursuant to the Protect and Preserve International Cultural Property Act (Pub. L. 114–151) and section 304 of the Convention on Cultural Property Implementation Act (19 U.S.C. 2603), unless a restriction is waived pursuant to section 3(c) of the Protect and Preserve International Cultural Property Act.

(b) *Description of restricted material*. The term ''archaeological or ethnological material of Syria'' means cultural property as defined in section 302 of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601) that is unlawfully removed from Syria on or after March 15, 2011. CBP Decision 16–10 sets forth the Designated List of Archaeological and Ethnological Material of Syria that describes the types of objects or categories of archaeological or ethnological material that are subject to import restrictions.

[CBP 16–10, 81 FR 53920, Aug. 15, 2016]

PRE-COLUMBIAN MONUMENTAL AND ARCHITECTURAL SCULPTURE AND MURALS

§ 12.105 Definitions.

For purposes of §§ 12.106 through 12.109:

(a) The term *pre-Columbian monumental or architectural sculpture or mural* means any stone carving or wall art listed in paragraph (b) of this section which is the product of a pre-Columbian Indian culture of Belize, Bolivia, Columbia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Peru, or Venezuela.

(b) The term *stone carving or wall art* includes:

(1) Such stone monuments as altars and altar bases, archways, ball court markers, basins, calendars, and calendrical markers, columns, monoliths, obelisks, statues, stelae, sarcophagi, thrones, zoomorphs;

(2) Such architectural structures as aqueducts, ball courts, buildings, bridges, causeways, courts, doorways (including lintels and jambs), forts, observatories, plazas, platforms, facades, reservoirs, retaining walls, roadways, shrines, temples, tombs, walls, walkways, wells;

(3) Architectural masks, decorated capstones, decorative beams of wood, frescoes, friezes, glyphs, graffiti, mosaics, moldings, or any other carving or decoration which had been part of or affixed to any monument or architectural structure, including cave paintings or designs;

(4) Any fragment or part of any stone carving or wall art listed in the preceding subparagraphs.

(c) The term *country of origin*, as applied to any pre-Columbian monumental or architectural sculpture or mural, means the country where the sculpture or mural was first discovered.

[T.D. 73–119, 38 FR 10807, May 2, 1973, as amended by T.D. 73–151, 38 FR 14677, June 4, 1973; T.D. 73–165, 38 FR 16044, June 20, 1973; 42 FR 42684, Aug. 24, 1977; T.D. 82–145, 47 FR 35477, Aug. 16, 1982]

§ 12.106 Importation prohibited.

Except as provided in section 12.107, no pre-Columbian monumental or architectural sculpture or mural which is exported (whether or not such exportation is to the United States) from its country of origin after June 1, 1973, may be imported into the United States.

[T.D. 78–273, 43 FR 36055, Aug. 15, 1978]

§ 12.107 Importations permitted.

Pre-Columbian monumental or architectural sculpture or mural for which entry is sought into the Customs territory of the United States will be permitted entry if at the time of making entry:

(a) A certificate, or its electronic equivalent, issued by the Government of the country of origin of such sculpture or mural, in a form acceptable to the Secretary, certifying that such exportation was not in violation of the laws of that country, is filed with the port director; or

(b) Satisfactory evidence is presented to the port director that such sculpture or mural was exported from the country of origin on or before June 1, 1973; or

(c) Satisfactory evidence is presented to the port director that such sculpture or mural is not an article listed in §12.105.

[T.D. 73–119, 38 FR 10807, May 2, 1973, as amended by T.D. 82–145, 47 FR 35477, Aug. 16, 1982; CBP Dec. 15–14, 80 FR 61285, Oct. 13, 2015]

§12.108 Detention of articles; time in which to comply.

If the importer cannot produce the certificate or evidence required in §12.107 at the time of making entry, the port director shall take the sculpture or mural into Customs custody and send it to a bonded warehouse or public store to be held at the risk and expense of the consignee until the certificate or evidence is presented to such officer. The certificate or evidence must be presented within 90 days after the date on which the sculpture or mural is taken into Customs custody, or such longer period as may be allowed by the port director for good cause shown.

[T.D. 73–119, 38 FR 10807, May 2, 1973]

§12.109 Seizure and forfeiture.

(a) Whenever any pre-Columbian monumental or architectural sculpture or mural listed in §12.105 is detained in accordance with §12.108 and the importer states in writing that he will not attempt to secure the certificate or evidence required, or such certificate or evidence is not presented to the port director prior to the expiration of the time provided in §12.108, the sculpture or mural shall be seized and summarily forfeited to the United States in accordance with part 162 of this chapter.

(b) Any pre-Columbian monumental or architectural sculpture or mural which is forfeited to the United States shall in accordance with the provisions of Title II of Pub. L. 92–587, 19 U.S.C. 2093(b):

(1) First be offered for return to the country of origin, and shall be returned if that country presents a request in writing for the return of the article and agrees to bear all expenses incurred incident to such return; or

(2) If not returned to the country of origin, be disposed of in accordance with law, pursuant to the provisions of section 609, Tariff Act of 1930, as amended (19 U.S.C. 1609), and §162.46 of this chapter.

[T.D. 73–119, 38 FR 10807, May 2, 1973, as amended by T.D. 82–145, 47 FR 35477, Aug. 16, 1982]

PESTICIDES AND DEVICES

§12.110 Definitions.

Except as otherwise provided below, the terms used in §§12.111 through 12.117 have the meanings set forth for those terms in the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*), hereinafter referred to as ''the Act.'' The term *Administrator* means the Administrator of the Environmental Protection Agency.

[T.D. 75–194, 40 FR 32321, Aug. 1, 1975, as amended by CBP Dec. 16-15, 81 FR 67143, Sept. 30, 2016]

§12.111 Registration.

Certain imported pesticides are required to be registered under the provisions of section 3 of the Act, and under the regulations (40 CFR part 152) promulgated thereunder by the Administrator before being permitted entry into the United States. Devices, although not required to be registered, must not bear any statement, design, or graphic representation that is false or misleading in any particular.

[T.D. 75–194, 40 FR 32321, Aug. 1, 1975, as amended by CBP Dec. 16-15, 81 FR 67143, Sept. 30, 2016]

§12.112 Notice of arrival of pesticides and devices.

(a) *General.* An importer or the importer's agent desiring to import pesticides or devices into the United States must submit to the Administrator, prior to the arrival of the shipment in the United States, a Notice of Arrival of Pesticides and Devices (Notice of Arrival) on U.S. Environmental Protection Agency (EPA) Form 3540–1. The Administrator will complete the Notice of Arrival and provide notification to the importer or the importer's

agent indicating the disposition to be made of a pesticide or device upon its entry into the United States. In the alternative, the importer or the importer's agent may file an electronic alternative to the Notice of Arrival, with the filing of the entry documentation, via any CBP-authorized electronic data interchange system.

(b) *Chemicals imported for use other than as pesticides.* Chemicals which can be used as pesticides but which are not imported for such use and are not shown on the Index of Pesticide Products located in the Environmental Protection Agency's handbook entitled Recognition and Management of Pesticide Poisonings, found at *http://www.epa.gov*, may be entered without the submission of the Notice of Arrival.

[T.D. 75–194, 40 FR 32321, Aug. 1, 1975, as amended by CBP Dec. 10–29, 75 FR 52451, Aug. 26, 2010; CBP Dec. 16-15, 81 FR 67143, Sept. 30, 2016]

§ 12.113 Arrival and entry of shipment of pesticides and devices.

(a) *Notice of Arrival form filed with CBP.* Upon entry of a shipment of pesticides or devices into the United States, and concurrent with the filing of the entry documentation, CBP must be in receipt of a completed Notice of Arrival of Pesticides and Devices (Notice of Arrival) on U.S. Environmental Protection Agency (EPA) Form 3540–1 or its electronic alternative submitted via any CBP-authorized electronic data interchange system. A completed Notice of Arrival must have been signed by the Administrator and indicate any action to be taken by CBP with respect to the shipment. CBP will compare entry information for the shipment of pesticides or devices with the information in the Notice of Arrival and notify the Administrator of any discrepancies.

(b) *EPA Notice of Arrival declaration form not presented.* When a shipment of pesticides or devices arrives and entry is attempted in the United States without a completed Notice of Arrival having been filed with CBP pursuant to paragraph (a) of this section, the shipment will be detained by CBP at the importer's risk and expense until the completed Notice of Arrival is presented to CBP or until other disposition is ordered by the Administrator. Such detention is not to exceed a period of 30-calendar days, or such additional extended 30-calendar day detention period as CBP may for good cause authorize. An importer or its agent may request an extension of the initial 30-calendar day detention period by filing a request with the director of the CBP port of entry.

(c) *Disposition of pesticides or devices remaining under detention.* A shipment of pesticides or devices that remains detained or undisposed of due to the failure to timely submit to CBP a completed Notice of Arrival will be treated as a prohibited importation. CBP will cause the destruction of any such shipment not exported by the consignee within 90-calendar days after the expiration of the detention period specified or authorized by paragraph (b) of this section.

[CBP Dec. 16-15, 81 FR 67143, Sept. 30, 2016]

§ 12.114 Release or refusal of delivery.

If the EPA directs the port director to release the shipment of pesticides or devices, the shipment will be released to the consignee. If the EPA directs the port director to refuse delivery of the shipment, the shipment will be refused delivery and treated as a prohibited importation. The port director will cause the destruction of any shipment refused delivery and not exported by the consignee within 90-calendar days after notice of such refusal of delivery.

[CBP Dec. 16-15, 81 FR 67143, Sept. 30, 2016]

§ 12.115 Release under bond of shipment detained for examination.

If the EPA so directs, a shipment of pesticides or devices will be detained at the importer's risk and expense by the port director pending an examination by the Administrator to determine whether the shipment complies with the requirements of the Act. However, a shipment detained for examination may be released to the consignee prior to a determination by the Administrator provided a bond is furnished on CBP Form 301, or its electronic equivalent, containing the bond conditions set forth in § 113.62 of this chapter, for the return of the merchandise to CBP

custody, and upon entry of the merchandise and the satisfaction of all other applicable laws. The bond will be in an amount deemed appropriate by CBP. When a shipment of pesticides or devices is released to the consignee under bond, the pesticides or devices must not be used or otherwise disposed of until the determination on compliance with the requirements of the Act is made by the Administrator.

[CBP Dec. 16-15, 81 FR 67143, Sept. 30, 2016]

§ 12.116 Samples.

Upon the request of the Administrator, either on the completed Notice of Arrival or otherwise, the port director will deliver to the Administrator samples of the imported pesticides or devices, together with all accompanying labels, circulars, and advertising matter pertaining to such merchandise. The port director will notify the consignee that the samples of imported pesticides or devices, together with all accompanying labels, circulars, and advertising matter pertaining to such merchandise have been delivered to the Administrator.

[T.D. 75–194, 40 FR 32322, Aug. 1, 1975, as amended by CBP Dec. 16-15, 81 FR 67143, Sept. 30, 2016]

§ 12.117 Procedure after examination.

(a) *Merchandise complying with the Act.* If, upon examination or analysis of a sample from a shipment of pesticides or devices, the sample is found to be in compliance with the Act, the Administrator will notify the port director that the shipment may be released to the consignee.

(b) *Merchandise not complying with the Act.* If, upon examination or analysis of a sample from a shipment of pesticides or devices, the sample is found to be in violation of the Act, the consignee will be notified promptly by the Administrator of the nature of the violation and be given a reasonable time, not to exceed 20 days, to submit written material or, at his option, to appear before the Administrator and introduce testimony, to show cause why the shipment should not be destroyed or refused entry. If, after consideration of all the evidence presented, it is still the opinion of the Administrator that the merchandise is in violation of the Act, the Administrator will notify the port director of this opinion and the port director will either (1) refuse delivery to the consignee, or (2) if the shipment has been released to the consignee under bond, demand redelivery of the shipment under the terms of the bond. If the merchandise is not redelivered within 30 days after the date of demand by the port director, the port director will issue a demand for liquidated damages in the full amount of the bond if it is a single entry bond, or if a continuous bond is used, the amount that would have been taken under a single entry bond. The port director will cause the destruction of any merchandise refused delivery to the consignee, or redelivered by the consignee pursuant to a demand therefor, and not exported by the consignee within 90 days after notice of such refusal of delivery or within 90 days after such redelivery, as applicable.

[T.D. 75–194, 40 FR 32322, Aug. 1, 1975, as amended by T.D. 84–213, 49 FR 41168, Oct. 19, 1984; CBP Dec. 16-15, 81 FR 67143, Sept. 30, 2016]

CHEMICAL SUBSTANCES IN BULK AND AS PART OF MIXTURES AND ARTICLES

SOURCE: Sections 12.118 through 12.127 issued by T.D. 83–158, 48 FR 34739, Aug. 1, 1983, unless otherwise noted.

§ 12.118 Toxic Substances Control Act.

The Toxic Substances Control Act (''TSCA'') (15 U.S.C. 2601 *et seq.*) governs the importation into the customs territory of the United States of a chemical substance in bulk form or as part of a mixture, and articles containing a chemical substance or mixture. Such importations are also governed by these regulations which are issued under the authority of section 13(b) of TSCA (15 U.S.C. 2612(b)).

[CBP Dec. 16-28, 81 FR 94985, Dec. 27, 2016]

§ 12.119 Scope.

Sections 12.120 through 12.127 apply to the importation into the customs territory of the United States of:

(a) Chemical substances in bulk form and as part of a mixture under TSCA;

(b) TSCA-excluded chemicals; and

(c) Articles containing a chemical substance or mixture if so required by the Administrator by specific rule under TSCA.

[CBP Dec. 16-28, 81 FR 94985, Dec. 27, 2016]

§ 12.120 Definitions.

Except as otherwise provided below, the terms used in §§ 12.121 through 12.127 have the meanings set forth for those terms in TSCA.

(a) *Article*—(1) *Article* means a manufactured item which:

(i) Is formed to a specific shape or design during manufacture,

(ii) Has end use functions dependent in whole or in part upon its shape or design during the end use, and

(iii) Has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article and that may occur as described in § 12.120(a)(2); except that fluids and particles are not considered articles regardless of shape or design.

(2) The allowable changes of composition, referred to in § 12.120(a)(1), are those which result from a chemical reaction that occurs upon the end use of other chemical substances, mixtures, or articles such as adhesives, paints, miscellaneous cleaners or other household products, fuels and fuel additives, water softening and treatment agents, photographic films, batteries, matches, and safety flares in which the chemical substance manufactured upon end use of the article is not itself manufactured for distribution in commerce or for use as an intermediate.

(b) *TSCA chemical substance in bulk form.* ''TSCA chemical substance in bulk form'' means a chemical substance as set forth in section 3(2) of TSCA, (15 U.S.C. 2602(2)) (other than as part of an article) in containers used for purposes of transportation or containment, provided that the chemical substance is intended to be removed from the container and has an end use or commercial purpose separate from the container.

(c) *TSCA chemical substance as part of a mixture.* ''TSCA chemical substance as part of a mixture'' means a chemical substance as set forth in section 3(2) of TSCA, (15 U.S.C. 2602(2)) that is part of a combination of two or more chemical substances as set forth in section 3(10) of TSCA.

(d) *TSCA-excluded chemicals.* ''TSCA-excluded chemicals'' means any chemicals that are excluded from the definition of TSCA chemical substance by section 3(2)(B) (ii)–(vi) of TSCA, (15 U.S.C. 2602(2) (B) (ii)–(vi)) (other than as part of a mixture), regardless of form.

(e) *Covered commodity.* ''Covered commodity'' means merchandise that meets the terms of one of the definitions specified in paragraph (a), (b), or (d) of this section or that is a mixture as defined in TSCA.

(f) *Administrator.* ''Administrator'' means the Administrator of the Environmental Protection Agency (EPA).

[T.D. 83-158, 48 FR 34739, Aug. 1, 1983, as amended by CBP Dec. 16-28, 81 FR 94985, Dec. 27, 2016]

§ 12.121 Reporting requirements.

(a) *Certification required.* (1) The importer or the authorized agent of such an importer of a TSCA chemical substance in bulk form or as part of a mixture, must certify in writing or electronically that the chemical shipment complies with all applicable rules and orders under TSCA by filing with CBP the following statement:

I certify that all chemical substances in this shipment comply with all applicable rules or orders under TSCA and that I am not offering a chemical substance for entry in violation of TSCA or any applicable rule or order thereunder.

(2) The importer or the authorized agent of such an importer of any TSCA-excluded chemical not clearly identified as such must certify in writing or electronically that the chemical shipment is not subject to TSCA by filing with CBP the following statement:

I certify that all chemicals in this shipment are not subject to TSCA.

(3) *Filing of certification.* (i) The appropriate certification required under paragraph (a) of this section must be filed with the director of the port of entry in writing or electronically to the Automated Commercial Environment (ACE) system or any other CBP-authorized EDI system prior to release of the shipment. For each entry subject

to certification under paragraph (a), the name, phone number, and email address of the certifier (the importer or the importer's authorized agent) shall be included.

(ii) Written certifications must appear as a typed or stamped statement:

(A) On an appropriate entry document or commercial invoice or on an attachment to that entry document or invoice; or

(B) In the event of release under a special permit for an immediate delivery as provided for in §142.21 of this chapter or in the case of an entry as provided for in §142.3 of this chapter, on the commercial invoice or on an attachment to that invoice.

(b) *TSCA chemical substances or mixtures as parts of articles*. An importer of a TSCA chemical substance or mixture as part of an article must comply with the certification requirements set forth in paragraph (a) of this section only if required to do so by a rule or order issued under TSCA.

(c) *Facsimile signatures*. The certification statements required under paragraph (a) of this section may be signed by means of an authorized facsimile signature.

[CBP Dec. 16-28, 81 FR 94985, Dec. 27, 2016]

§ 12.122 Detention of certain shipments.

(a) The director of the port of arrival will detain, at the importer's risk and expense, shipments of covered commodity:

(1) Which have been banned from the customs territory of the United States by a rule or order issued under section 5 or 6 of TSCA (15 U.S.C. 2604 or 2605) or

(2) Which have been ordered seized because of imminent hazards as specified under section 7 of TSCA (15 U.S.C. 2606).

(b) The director of the port of entry will detain shipments of covered commodity at the importer's risk and expense, in the following situations:

(1) Whenever the Administrator has reasonable grounds to believe that the shipment is not in compliance with TSCA and notifies the port director to detain the shipment.

(2) Whenever the port director has reasonable grounds to believe that the shipment is not in compliance with TSCA; or

(3) Whenever the importer fails to certify compliance with TSCA as required by §12.121.

(c) Upon detention of a shipment, the port director will give prompt notice to the Administrator and the importer. The notice will include the reasons for detention.

(d) A detained shipment will not be held in the custody of the port director for more than 48 hours after the date of detention. Thereafter, the shipment will be promptly turned over to the Administrator for storage or disposition as provided for in §§12.127 and 127.28(i), unless previously released to the importer under bond as provided in §12.123(b). Notice of intent to abandon the shipment by the importer will constitute a waiver of all time periods specified in parts 12 and 127.

[T.D. 83-158, 48 FR 34739, Aug. 1, 1983, as amended by CBP Dec. 16-28, 81 FR 94986, Dec. 27, 2016]

§ 12.123 Procedure after detention.

(a) *Submission of written documentation*. If a shipment is detained by a port director under §12.122, the importer may submit written documentation to the Administrator with a copy to the port director within 20 days from the date of notice of detention, to show cause why the shipment should not be refused entry. If an importer submits that documentation, the Administrator will allow or deny entry of the shipment within 10 days of receipt of the documentation, and in any case will allow or deny entry of the shipment within 30 days of the date of notice of detention.

(b) *Release under Bond*. The port director may release to the importer a shipment detained for any of the reasons given in §12.122 when the port director has reasonable grounds to believe that the shipment may be brought into compliance, or when the port director deems it appropriate under §141.66 of this chapter. Any such release will be conditioned upon furnishing a bond on CBP Form 301, containing the conditions set forth in §113.62 of this chapter for the return of

the shipment to CBP custody. If a shipment of a covered commodity is released to the importer under bond, the shipment will be held intact and will not be used or otherwise disposed of until the Administrator makes a final determination on entry as provided for in paragraph (c) of this section.

(c) *Determination by the Administrator.* After consideration of the available evidence and within 30 days from the notice of detention, the Administrator will notify the port director and the importer of his decision either to permit or refuse entry of the shipment. If the Administrator finds that the shipment is in compliance with TSCA, the port director will release the shipment to the importer. If the Administrator finds that the shipment is not in compliance, the port director will:

(1) Refuse delivery to the importer, giving reasons for such refusal, or

(2) If the shipment has been released on bond, demand its redelivery under the terms of the bond, giving reasons for such demand. If the merchandise is not redelivered within 30 days from the date of the redelivery notice, the port director will assess liquidated damages in the full amount of the bond.

[T.D. 83–158, 48 FR 34739, Aug. 1, 1983, as amended at CBP Dec. 10–29, 75 FR 52451, Aug. 26, 2010; CBP Dec. 16-28, 81 FR 94986, Dec. 27, 2016]

§ 12.124 Time limitations and extensions.

(a) *Time limitations.* The importer of a shipment of a covered commodity which has been detained under § 12.122 must bring the shipment into compliance with TSCA or export the shipment from the customs territory of the United States within 90 days after notice of detention or 30 days of demand for redelivery, whichever comes first.

(b) *Time extensions.* The port director, upon notification by the Administrator, may grant an extension of not more than 30 days if, due to delays caused by the Environmental Protection Agency or the CBP:

(1) The importer is unable, for good cause shown, to bring a shipment into compliance with the Act within the required time period; or

(2) The importer is unable to export the shipment from the customs territory of the United States within the required time period.

[T.D. 83-158, 48 FR 34739, Aug. 1, 1983, as amended by CBP Dec. 16-28, 81 FR 94986, Dec. 27, 2016]

§ 12.125 Notice of exportation.

Whenever the Administrator directs the port director to refuse entry under § 12.123 and the importer exports the non-complying shipment within the 30 day period of notice of refusal of entry or within 90 days of demand for redelivery, the importer must submit notice of the exportation either in writing to the port director or electronically to ACE or any other CBP-authorized EDI system. The importer must include the following information in the notice of exportation:

(a) The name and address of the exporter or his agent;

(b) A description of the covered commodity exported;

(c) The destination (country);

(d) The port of arrival at the destination;

(e) The carrier;

(f) The date of exportation; and

(g) The bill of lading or the air way bill number.

[T.D. 83-158, 48 FR 34739, Aug. 1, 1983, as amended by CBP Dec. 16-28, 81 FR 94986, Dec. 27, 2016]

§ 12.126 Notice of abandonment.

If the importer intends to abandon the shipment after receiving notice of refusal of entry, the importer must present a notice of intent to abandon in writing to the port director or electronically to ACE or any other CBP-authorized EDI system. Notification under this section is a waiver of any right to export the merchandise. The importer will remain liable for any expense incurred in the storage and/or disposal of abandoned merchandise.

[CBP Dec. 16-28, 81 FR 94986, Dec. 27, 2016]

§ 12.127 Decision to store or dispose.

A shipment detained under § 12.122 will be considered to be unclaimed or abandoned and will be turned over to the Administrator for storage or disposition as provided for in § 127.28(i) of this chapter if the importer has not brought the shipment into compliance

with TSCA and has not exported the shipment within the time limitations or extensions specified according to §12.124. The importer will remain liable for any expense in the storage and/or disposal of abandoned merchandise.

[CBP Dec. 16-28, 81 FR 94986, Dec. 27, 2016]

SOFTWOOD LUMBER

§ 12.140 Entry of softwood lumber products from Canada.

The requirements set forth in this section are applicable for as long as the Softwood Lumber Agreement (SLA 2006), entered into on September 12, 2006, by the Governments of the United States and Canada, remains in effect.

(a) *Definitions.* The following definitions apply for purposes of this section:

(1) *British Columbia Coast.* ''British Columbia Coast'' means the Coastal Forest Regions as defined by the existing *Forest Regions and Districts Regulation*, B.C. Reg. 123/2003.

(2) *British Columbia Interior.* ''British Columbia Interior'' means the Northern Interior Forest Region and the Southern Interior Forest Region as defined by the existing *Forest Regions and Districts Regulation*, B.C. Reg. 123/2003.

(3) *Date of shipment.* ''Date of shipment'' means, in the case of products exported by rail, the date when the railcar that contains the products is assembled to form part of a train for export; otherwise, the date when the products are loaded aboard a conveyance for export. If a shipment is transshipped through a Canadian reload center or other inventory location, the date of shipment is the date the merchandise leaves the reload center or other inventory location for final shipment to the United States.

(4) *Maritimes.* ''Maritimes'' means New Brunswick, Canada; Nova Scotia, Canada; Prince Edward Island, Canada; and Newfoundland and Labrador, Canada.

(5) *Region.* ''Region'' means British Columbia Coast or British Columbia Interior as defined in paragraphs (a)(1) and (2) of this section; Alberta, Canada; Manitoba, Canada; Maritimes, Canada; Northwest Territories, Canada; Nunavut Territory, Canada; Ontario, Canada; Saskatchewan, Canada; Quebec, Canada; or Yukon Territory, Canada.

(6) *Region of Origin.* ''Region of Origin'' means the Region where the facility at which the softwood lumber product was first produced into such a product is located, regardless of whether that product was further processed (for example, by planing or kiln drying) or was transformed from one softwood lumber product into another such product (for example, a remanufactured product) in another Region, with the following exceptions:

(i) The Region of Origin of softwood lumber products first produced in the Maritime Provinces from logs originating in a non-Maritime Region will be the Region, as defined above, where the logs originated; and

(ii) The Region of Origin of softwood lumber products first produced in the Yukon, Northwest Territories or Nunavut (the 'Territories') from logs originating outside the Territories will be the Region where the logs originated.

(7) *SLA 2006.* ''SLA 2006'' or ''SLA'' means the Softwood Lumber Agreement entered into between the Governments of Canada and the United States on September 12, 2006.

(8) *Softwood lumber products.* ''Softwood lumber products'' mean those products described as covered by the SLA 2006 in Annex 1A of the Agreement.

(b) *Reporting requirements.* In the case of softwood lumber products from Canada listed in Annex 1A of the SLA 2006 as covered by the scope of the Agreement, the following information must be included on the electronic entry summary documentation (CBP Form 7501, or its electronic equivalent) for each entry (except for entries of softwood lumber products whose Region of Origin is the Maritimes, in which case entry summary documentation must be submitted in paper as set forth in paragraph (c) of this section):

(1) *Region of Origin.* The letter code representing a softwood lumber product's Canadian Region of Origin, as posted on the Administrative Message Board in the Automated Commercial Environment (ACE) or any other CBP-authorized electronic data interchange system. (For example, the letter code

''XD'' designates softwood lumber products whose Region of Origin is British Columbia Coast. The letter code ''XE'' designates softwood lumber products whose Region of Origin is British Columbia Interior.)

(2) *Export Permit Number*—(i) *Export Permit Number issued by Canada at time of filing entry summary documentation.* The 8-digit Canadian-issued Export Permit Number, preceded by one of the following letter codes:

(A) The letter code assigned to represent the date of shipment (*i.e.*, ''A'' represents January, ''B'' represents February, ''C'' represents March, *etc.*), except for those softwood lumber products produced by a company listed in Annex 10 of the SLA 2006 or whose Region of Origin is the Maritimes, Yukon, Northwest Territories or Nunavut;

(B) The letter code ''X'', which designates a company listed in Annex 10 of the SLA 2006; or

(C) The letter code assigned to represent the Maritimes (code M); Yukon (code Y); Northwest Territories (code W); or Nunavut (code N), for softwood lumber products originating in these regions.

(ii) *No Export Permit Number required due to softwood lumber product's exempt status.* Where an Export Permit Number is not required because the imported softwood lumber product is specifically identified as exempt from SLA 2006 export measures pursuant to Annex 1A of the Agreement, notwithstanding the fact that the exempt goods are classifiable in residual Harmonized Tariff Schedule of the United States provisions otherwise listed as covered by the SLA 2006, the alpha-numeric code ''P88888888'' must be used in the Export Permit Number data entry field on the CBP Form 7501, or its electronic equivalent.

(c) *Original Maritime Certificate of Origin.* Where a softwood lumber product's Region of Origin is the Maritimes, the original paper copy of the Certificate of Origin issued by the Maritime Lumber Bureau must be submitted to CBP and the entry summary documentation for each such entry must be in paper and not electronic. The Certificate of Origin must specifically state that the corresponding CBP entries are for softwood lumber products first produced in the Maritimes from logs originating in the Maritimes or State of Maine.

(d) *Recordkeeping.* Importers must retain copies of export permits, certificates of origin, and any other substantiating documentation issued by the Canadian Government pursuant to the recordkeeping requirements set forth in part 163 of title 19 to the CFR.

[CBP Dec. 08–10, 73 FR 20784, Apr. 17, 2008, as amended by CBP Dec. 15–14, 80 FR 61285, Oct. 13, 2015]

§ 12.142 Entry of softwood lumber and softwood lumber products from any country into the United States.

(a) *In general.* This section, pursuant to the ''Softwood Lumber Act of 2008'' (''the Act'') (Title VIII of the Tariff Act of 1930, as amended (19 U.S.C. 1202 *et seq.*)), prescribes entry requirements applicable to certain imports of softwood lumber and softwood lumber products exported from any country into the United States.

(b) *Softwood lumber products covered.* The softwood lumber and softwood lumber products covered by this section are those products described in section 804(a) of Title VIII of the Tariff Act of 1930, as amended (19 U.S.C. 1202 *et seq.*).

(c) *Entry requirements for shipments subject to the importer declaration program.* For each shipment of softwood lumber or softwood lumber products described in section 804(a) of Title VIII to the Tariff Act of 1930, as amended, (19 U.S.C. 1202 *et seq.*) that is entered or withdrawn from warehouse for consumption, in the customs territory of the United States, the following information must be electronically submitted to CBP (except that, pursuant to 19 CFR 12.140(c), entries of softwood lumber and softwood lumber products for which a Certificate of Origin has been issued from Canada's Maritime Lumber Bureau must be submitted to CBP in paper):

(1) *Export price.* Each importer must provide the export price, expressed in U.S. dollars, on the entry summary in the designated space provided on the CBP Form 7501, or its electronic equivalent.

(i) For purposes of this section, ''export price'' means one of the following:

(A) In the case of softwood lumber or a softwood lumber product that has undergone only primary processing, the value that would be determined F.O.B. at the facility where the product underwent the last primary processing before export.

(B) In the case of softwood lumber or a softwood lumber product that underwent the last remanufacturing before export by a manufacturer who does not hold tenure rights provided by the country of export, did not acquire standing timber directly from the country of export, and is not related to the person who holds tenure rights or acquired standing timber directly from the country of export, the value that would be determined F.O.B. at the facility where the softwood lumber or softwood lumber product underwent the last primary processing.

(C) In the case of softwood lumber or a softwood lumber product that underwent the last remanufacturing before export by a manufacturer who holds tenure rights provided by the country of export, acquired standing timber directly from the country of export, or is related to the person who holds tenure rights or acquired standing timber directly from the country of export, the value that would be determined F.O.B. at the facility where the softwood lumber or softwood lumber product underwent the last processing before export.

(D) In the case of softwood lumber or a softwood lumber product described in paragraphs (c)(1)(i)(A), (B) or (C) of this section for which an F.O.B. value cannot be determined, the export price will be the market price for the identical softwood lumber or softwood lumber product sold in an arm's-length transaction in the country of export at approximately the same time as the exported softwood lumber or softwood lumber product. The market price will be determined in the following order of preference:

(*1*) The market price for the softwood lumber or softwood lumber product sold at substantially the same level of trade (as described in 19 CFR 351.412(c)) as the exported softwood lumber or softwood lumber product but in different quantities.

(*2*) The market price for the softwood lumber or softwood lumber product sold at a different level of trade (as defined in 19 CFR 351.412(c)) than the exported softwood lumber or softwood lumber product but in similar quantities.

(*3*) The market price for the softwood lumber or softwood lumber product sold at a different level of trade (as defined in 19 CFR 351.412(c)) than the exported softwood lumber or softwood lumber product and in different quantities.

(ii) For purposes of paragraph (c)(1) of this section, the following definitions apply:

(A) *F.O.B.* The term ''F.O.B.'' means a value consisting of all charges payable by a purchaser, including those charges incurred in the placement of merchandise on board of a conveyance for shipment, but does not include the actual shipping charges or any applicable export charges.

(B) *Related to the person.* The term ''related to the person'' means:

(*1*) A person bears a relationship to such other person described in section 152(a) of the Internal Revenue Code of 1986;

(*2*) A person bears a relationship to such person described in section 267(b) of the Internal Revenue Code of 1986, except that ''5 percent'' will be substituted for ''50 percent'' each place it appears;

(*3*) The person and such other person are part of a controlled group of corporations, as that term is defined in section 1563(a) of the Internal Revenue Code of 1986, except that ''5 percent'' will be substituted for ''80 percent'' each place it appears;

(*4*) The person is an officer or director of such other person; or

(*5*) The person is the employer of such other person.

(C) *Tenure rights.* The term ''tenure rights'' means rights to harvest timber from public land granted by the country of export.

(2) *Estimated export charge.* (i) Each importer must provide the estimated export charge, if any, to be collected by the country (including any political subdivision of the country) from which the softwood lumber or softwood lumber product was exported pursuant to an international agreement entered into by that country and the United

States as calculated by applying the percentage determined and published by the Under Secretary for International Trade of the Department of Commerce to the export price. Any applicable estimated export charge must be expressed in U.S. dollars and reported on the entry summary in the designated space.

(ii) For purposes of this paragraph, the terms ''estimated export charge'' or ''export charge'' mean any tax, charge, or other fee collected by the country from which softwood lumber or a softwood lumber product, as described in section 804(a) within Title VIII of the Tariff Act of 1930 (19 U.S.C. 1202 *et seq.*), as amended, is exported pursuant to an international agreement entered into by that country and the United States.

(3) *Importer declaration.* (i) Each importer, except as provided in paragraph (c)(3)(ii) of this section, must provide a softwood lumber declaration on the electronic entry summary by entering the letter code ''Y'' in the first space of the field designated for the estimated export charge data.

(ii) Each importer of softwood lumber and softwood lumber products for which a Certificate of Origin has been issued from Canada's Maritime Lumber Bureau must provide a softwood lumber declaration on the paper entry summary by entering the letter code ''Y'' in the first space of the field designated for the estimated export charge. *See* 19 CFR 12.140(c),

(iii) The letter code ''Y'' represents the importer's declaration to CBP that:

(A) The importer has made appropriate inquiry, including seeking appropriate documentation from the exporter and consulting the determinations published by the Under Secretary for International Trade of the Department of Commerce pursuant to section 805(b) of Title VIII of the Tariff Act of 1930, as amended (19 U.S.C. 1202 *et seq.*); and

(B) To the best of the person's knowledge and belief:

(*1*) The export price provided is determined in accordance with the definition set forth in section 802(5) of Title VIII of the Tariff Act of 1930, as amended (19 U.S.C. 1202 *et seq.*);

(*2*) The export price provided is consistent with the export price provided on the export permit, if any, granted by the country of export; and

(*3*) The exporter has paid, or committed to pay, all export charges due in accordance with the volume, export price, and export charge rate or rates, if any, as calculated under an international agreement entered into by the country of export and the United States and consistent with the export charge determinations published by the Under Secretary for International Trade of the Department of Commerce.

(iv) Any substantiating documentation that supports an importer's softwood lumber declaration is subject to the recordkeeping provisions set forth in part 163 of title 19 to the CFR.

(d) *Entry requirements for home packages and kits*—(1) *Declaration and required documentation.* Home packages and kits as described in section 804(c)(7)(A)(i) through (iv) of the Title VIII of the Tariff Act of 1930, as amended (19 U.S.C. 1202 *et seq.*) are not subject to the entry requirements set forth in paragraph (c) of this section. However, the importer is required to make a declaration pursuant to section 804(c)(7)(B) and is required to retain and produce upon demand by CBP, the following documentation:

(i) A copy of the appropriate home design, plan, or blueprint matching the customs entry in the United States.

(ii) A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer.

(iii) A listing of all parts in the package or kit being entered into the United States that conforms to the home design, plan, or blueprint for which such parts are being imported.

(iv) If a single contract involved multiple entries, an identification of all the items required to be listed under paragraph (d)(1)(iii) of this section that are included in each individual shipment.

(2) *Records and retention.* There is no requirement to present physical copies of the softwood lumber home packages and kits documentation to CBP at the

time of filing the entry summary; however copies must be maintained in accordance with the applicable recordkeeping provisions set forth in part 163 of title 19 to the CFR.

(e) *Other softwood lumber entry requirements.* Other entry requirements may be applicable to certain imports of softwood lumber or softwood lumber from Canada. Importers are advised to refer to §12.140 (19 CFR 12.140) of this chapter for information regarding applicability and entry requirements.

[CBP Dec. 08–32, 73 FR 49937, Aug. 25, 2008, as amended at CBP Dec. 10–27, 75 FR 52453, Aug. 26, 2010; CBP Dec. 15–14, 80 FR 61285, Oct. 13, 2015]

STEEL PRODUCTS

§ 12.145 Entry or admission of certain steel products.

In any case in which a steel import license number is required to be obtained under regulations promulgated by the U.S. Department of Commerce, that license number must be included:

(a) On the entry summary, Customs Form 7501, or on an electronic equivalent, at the time of filing, in the case of merchandise entered, or withdrawn from warehouse for consumption, in the customs territory of the United States; or

(b) On Customs Form 214, at the time of filing under part 146 of this chapter, in the case of merchandise admitted into a foreign trade zone.

[T.D. 03–13, 68 FR 13839, Mar. 21, 2003]

MERCHANDISE SUBJECT TO ECONOMIC SANCTIONS

§ 12.150 Merchandise prohibited by economic sanctions; detention; seizure or other disposition; blocked property.

(a) *Generally.* Merchandise from certain countries designated by the President as constituting a threat to the national security, foreign policy, or economy of the United States shall be detained until the question of its release, seizure, or other disposition has been determined under law and regulations issued by the Treasury Department's Office of Foreign Assets Control (OFAC) (31 CFR Chapter V).

(b) *Seizure.* When an unlicensed importation of merchandise subject to OFAC's regulations is determined to be prohibited, no entry for any purpose shall be permitted and, unless the immediate reexportation or other disposition of such merchandise under Customs supervision has previously been authorized by OFAC, the merchandise shall be seized.

(c) *Licenses.* OFAC's regulations may authorize OFAC to issue licenses on a case-by-case basis authorizing the importation of otherwise prohibited merchandise under certain conditions. If such a license is issued subsequent to the attempted entry and seizure of the merchandise, importation shall be conditioned upon the importer:

(1) Agreeing in writing to hold the Government harmless, and

(2) Paying any storage and other Customs fees, costs, or expenses, as well as any mitigated forfeiture amount or monetary penalty imposed or assessed by Customs or OFAC, or both.

(d) *Blocked property.* Merchandise which constitutes property in which the government or any national of certain designated countries has an interest may be blocked (frozen) pursuant to OFAC's regulations and may not be transferred, sold, or otherwise disposed of without an OFAC license.

(e) *Additional information.* For further information concerning importing merchandise prohibited under economic sanctions programs currently in effect, the Office of Foreign Assets Control of the Department of the Treasury should be contacted. The address of that office is 1500 Pennsylvania Ave., NW., Annex 2nd Floor, Washington, DC 20220.

[T.D. 96–42, 61 FR 24889, May 17, 1996]

§ 12.151 [Reserved]

§ 12.152 Prohibitions and conditions on the importation and exportation of rough diamonds.

(a) *General.* The Clean Diamond Trade Act (Pub. L. 108–19) requires the President, subject to certain waiver authorities, to prohibit the importation into, or exportation from, the United States, of any rough diamond, from whatever source, that has not been controlled through the Kimberley

Process Certification Scheme. By Executive Order 13312 dated July 29, 2003, published in the FEDERAL REGISTER (68 FR 45151) on July 31, 2003, the President implemented the Clean Diamond Trade Act, effective for rough diamonds imported into, or exported from, the United States on or after July 30, 2003. Pursuant to Executive Order 13312 and other authorities, the Office of Foreign Assets Control (OFAC), Department of the Treasury, promulgated the Rough Diamonds Control Regulations (see 31 CFR part 592). Any persons importing into or exporting from the United States a shipment of rough diamonds must comply with the requirements of CBP, OFAC, and the U.S. Census Bureau (15 CFR part 30).

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Controlled through the Kimberley Process Certification Scheme.* ''Controlled through the Kimberley Process Certification Scheme'' means meeting the requirements set forth in 31 CFR 592.301;

(2) *Kimberley Process Certificate.* ''Kimberley Process Certificate'' means a forgery resistant document that meets the minimum requirements listed in Annex I of the Kimberley Process Certification Scheme, as well as the requirements listed in 31 CFR 592.307;

(3) *Rough diamond.* ''Rough diamond'' means any diamond that is unworked or simply sawn, cleaved, or bruted and classifiable under subheading 7102.10, 7102.21, or 7102.31 of the Harmonized Tariff Schedule of the United States;

(4) *United States.* ''United States'', when used in the geographic sense, means the several states, the District of Columbia, and any commonwealth, territory, or possession of the United States; and

(5) *United States person.* ''United States person'' means:

(i) Any United States citizen or any alien admitted for permanent residence into the United States;

(ii) Any entity organized under the laws of the United States or any jurisdiction within the United States (including its foreign branches); and

(iii) Any person in the United States.

(c) *Original Kimberley Process Certificate.* A shipment of rough diamonds imported into, or exported from, the United States must be accompanied by an original Kimberley Process Certificate.

(d) *Formal Entry Required.* Formal entry is required when importing a shipment of rough diamonds. Formal entry procedures are prescribed in part 142 of this chapter.

(e) *Report of Kimberley Process Certificate Unique Identifying Number.* Customs brokers, importers, and filers making entry of a shipment of rough diamonds must either submit through CBP's Automated Broker Interface (ABI) system the unique identifying number of the Kimberley Process Certificate accompanying the shipment or, for non-ABI entries, indicate the certificate number on the CBP Form 7501, Entry Summary, on each applicable line item.

(f) *Maintenance of Kimberley Process Certificate*—(1) *Ultimate consignee.* The ultimate consignee identified on the CBP Form 7501, Entry Summary, or its electronic equivalent filed with CBP in connection with an importation of rough diamonds must retain the original Kimberley Process Certificate for a period of at least five years from the date of importation and must make the certificate available for examination at the request of CBP.

(2) *Importer.* The U.S. person that imports into the United States a shipment of rough diamonds must retain a copy of the Kimberley Process Certificate accompanying the shipment for a period of at least five years from the date of importation and must make the copy available for examination at the request of CBP.

(3) *Exporter.* The U.S. person that exports from the United States a shipment of rough diamonds must retain a copy of the Kimberley Process Certificate accompanying the shipment for a period of at least five years from the date of exportation and must make the copy available for examination at the request of CBP.

[78 FR 40629, July 8, 2013]

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

Subpart A—General Provisions

Subpart B—Immediate Transportation Without Appraisement

Subpart C—Shipment of Baggage In-Bond

Subpart D—Transportation and Exportation

Subpart E—Immediate Exportation

Subpart F—Merchandise Transported by Pipeline

Subpart G—Merchandise Not Otherwise Subject to CBP Control Exported Under Cover of a TIR Carnet

Subpart H—Importer Security Filings

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1623, 1624; Section 18.1 also issued under 19 U.S.C. 1484, 1557, 1490; Section 18.2 also issued under 19 U.S.C. 1551a; Section 18.3 also issued under 19 U.S.C. 1565; Section 18.4 also issued under 19 U.S.C. 1322, 1323; Section 18.7 also issued under 19 U.S.C. 1490, 1557; 1646a; Section 18.11 also issued under 19 U.S.C. 1484; Section 18.12 also issued under 19 U.S.C. 1448, 1484, 1490; Section 18.13 also issued under 19 U.S.C. 1498(a); Section 18.14 also issued under 19 U.S.C. 1498. Section 18.25 also issued under 19 U.S.C. 1490. Section 18.26 also issued under 19 U.S.C. 1490. Section 18.31 also issued under 19 U.S.C. 1553a.

SOURCE: CBP Dec. 17–13, 82 FR 45394, Sept. 28, 2017, unless otherwise noted.

Subpart A—General Provisions

§ 18.0 Scope; definitions.

(a) *Scope.* Except as provided in parts 122 (Air commerce) and 123 (CBP relations with Canada and Mexico) of this chapter, this part sets forth the requirements and procedures pertaining to the transportation of merchandise in-bond, as authorized by §§ 551, 552, and 553 of the Tariff Act of 1930, as amended (19 U.S.C 1551, 1552, and 1553).

(b) *Definitions.* As used in this part, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular part or portion thereof:

Bonded carrier. ''Bonded carrier'' means a carrier of merchandise whose bond under § 113.63 of this chapter is obligated for the transportation and delivery of merchandise.

Common carrier. ''Common carrier'' means a common carrier of merchandise owning or operating a railroad, steamship, pipeline, truck line, or other transportation line or route.

Origination port. ''Origination port'' is the U.S. port at which the transportation of merchandise in-bond commences.

Port of destination. ''Port of destination'' is the U.S. port at which merchandise is delivered after being shipped in-bond from the origination port where it was entered as an immediate transportation entry.

Port of diversion. ''Port of diversion'' is the U.S. port to which merchandise is diverted while in transit from the origination port to the port of destination or the port of exportation.

Port of exportation. ''Port of exportation'' is the U.S. port at which in-bond merchandise entered for transportation and exportation or for immediate exportation is delivered for exportation from the United States.

§ 18.1 In-bond application and entry; general rules.

(a) *General requirement.* In order to transport merchandise in-bond (transport imported merchandise, secured by a bond, from one port to another prior to the appraisement of the merchandise and without the payment of duties), an in-bond application as described in paragraph (d) of this section is required. An in-bond application consists of a transportation entry and a manifest. A transportation entry as described in paragraph (b) of this section may be made for any imported merchandise upon its arrival at a port of entry, subject to the prohibitions and restrictions provided in this part.

(b) *Types of transportation entries and withdrawals.* The following types of transportation entries and withdrawals may be made for merchandise to be transported in-bond:

(1) Entry for immediate transportation (IT).

(2) Warehouse withdrawal for immediate transportation.

(3) Warehouse withdrawal for immediate exportation or for transportation and exportation.

(4) Entry for transportation and exportation (T&E).

(5) Entry for immediate exportation (IE).

(6) Entry of vessel and aircraft supplies for immediate exportation (IE).

(7) Entry of vessel and aircraft supplies for transportation and exportation (T&E).

(c) *Who may file.* A transportation entry may be filed by:

(1) The carrier, or authorized agent of the carrier, that brings the merchandise to the origination port;

(2) The carrier, or authorized agent of the carrier, that is to accept the merchandise under its bond or a carnet for transportation to the port of destination or the port of exportation; or

(3) Any person or the authorized agent of any person, who has a sufficient interest in the merchandise as shown by the bill of lading or manifest, a certificate of the importing carrier (such as a power of attorney or letter of authorization), or by any other document. CBP may request evidence to demonstrate sufficient interest.

(d) *In-bond application.* An in-bond application consisting of a transportation entry and manifest must be transmitted to CBP via a CBP-approved EDI system as specified in paragraph (d)(2) of this section in order to transport merchandise in-bond.

(1) *Contents.* Except for the other identifying information described in paragraph (d)(1)(iii) of this section which is optional, the in-bond application must contain the following information:

(i) *Commodity HTSUS number.* The six-digit Harmonized Tariff Schedule of the United States (HTSUS) number of the merchandise must be provided.

(ii) *Description of merchandise subject to regulation by another government agency.* Merchandise subject to regulation by a U.S. government agency other than CBP must contain a sufficient description of the merchandise to enable the agency concerned to determine the contents of the shipment.

(iii) *Other identifying information.* If a visa, permit, license, entry number, or other similar number or identifying information has been issued by the U.S. Government, foreign government or other issuing authority, relating to the merchandise, the visa, permit, license, entry number, or other similar number or identifying information may be provided.

(iv) *Quantity.* The quantity of the cargo laden aboard the conveyance must be provided. This means the quantity of the smallest external packing unit. Containers and pallets do not constitute acceptable information. For example, a container holding 10 pallets

with 200 cartons should be described as 200 cartons. If the reported quantity is not correct or if it changes, the in-bond record must be updated or amended in accordance with paragraph (h) of this section. The updating of the quantity of the merchandise does not relieve the carrier whose bond is obligated from liquidated damages for any shortage.

(v) *Container number and seals.* The container number of the container in which the merchandise is being transported and the seal number of the seal that seals the container (see §18.4) must be provided. If the seal number is not known when the in-bond application is filed, the in-bond application must be updated with the seal number within two business days from the date the initial carrier takes possession of the sealed merchandise.

(vi) *Destination.* For IT shipments, the port of destination in the United States must be provided. For T&E and IE shipments, the port of exportation and the first foreign port must be provided. If any of this information changes, the in-bond record must be updated or amended in accordance with paragraph (h) of this section.

(2) *Method of submission.* The in-bond application must be electronically transmitted to CBP via a CBP-approved EDI system, except as described in §18.31 relating to the in-bond transportation of merchandise by pipeline, or air (see 19 CFR part 122) or under a TIR carnet (see 19 CFR part 115). In the event that EDI functionality is unavailable for filing an in-bond application, or any related in-bond filing, the Commissioner or his designee may authorize an alternative method.

(3) *Timing.* The in-bond application may be submitted at any time prior to the merchandise departing the origination port.

(e) *Bond required.* A custodial bond on CBP Form 301, containing the bond conditions set forth in §113.63 of this chapter, is required in order to transport merchandise in-bond under the provisions of this part.

(f) *Movement authorization required.* Authorization from CBP is required before merchandise can be transported in-bond. Authorization for the movement of merchandise will be transmitted by CBP via a CBP-approved EDI system.

(g) *Supervision*—(1) *Generally.* When merchandise is delivered to a bonded carrier for transportation in-bond, CBP may, in its discretion, require that the merchandise be laden on the conveyance only under CBP supervision.

(2) *Merchandise delivered from warehouse.* When merchandise is delivered from a warehouse to a bonded carrier for transportation in-bond, supervision of lading will be accomplished in accordance with the procedure set forth in §19.6(b) of this chapter.

(3) *Merchandise delivered from foreign trade zone.* When merchandise is delivered from a foreign trade zone to a bonded carrier for transportation in-bond, supervision of lading will be accomplished in accordance with the procedure set forth in §146.71(a) of this chapter.

(h) *Updating and amending the in-bond record.* The filer of the in-bond application or any other party named in paragraph (c) of this section, with authorization of the party whose bond is obligated, must update and/or amend the in-bond record as required under the provisions of this part via a CBP-approved EDI system. The in-bond record must be updated or amended within two business days of the event that requires updating and/or amending of the in-bond record.

(i) *In-transit time*—(1) *Maximum in-transit time.* Except for merchandise to be transported via barge, merchandise to be transported in-bond must be delivered to CBP at the port of destination or port of exportation within 30 days from the date of conveyance arrival at the origination port (if the in-bond application has been received and approved prior to conveyance arrival), or the date CBP provides movement authorization to the in-bond applicant, whichever is later. Merchandise to be transported via barge for all or part of the in-bond movement, must be delivered to CBP at the port of destination or port of exportation within 60 days from the date of conveyance arrival at the origination port (if the in-bond application has been received and approved prior to conveyance arrival), or the date CBP provides movement authorization to the in-bond applicant,

whichever is later. If the merchandise is subject to examination or inspection by CBP or another government agency, the time that the merchandise is held due to the examination or inspection will not be considered part of the 30-day or 60-day in-transit time. Neither the diversion to another port nor the filing of a new in-bond application extends the maximum in-transit time. Failure to deliver the merchandise within the prescribed period constitutes an irregular delivery. In-bond merchandise transported by pipeline is not subject to the time limits in this section.

(2) *Extension of in-transit time.* The in-transit requirement may be extended by CBP upon a written request to the port director of the port of destination or port of exportation. The decision to extend the in-transit time period is within the discretion of CBP. Factors that may be considered, among any others deemed applicable by CBP, include extraordinary circumstances such as major transportation network disruptions, natural disasters, and other emergencies beyond the control of the party requesting the extension.

(3) *Restriction of in-transit time.* CBP or any other government agency with jurisdiction over the merchandise may shorten the in-transit time to less than 30 or 60 days. CBP will provide notice of a government-shortened in-transit time with the movement authorization.

(j) *Report of arrival.* Within two business days after the arrival of any portion of an in-bond shipment at the port of destination or the port of exportation, CBP must be notified via a CBP-approved EDI system that the merchandise has arrived. The notification must include the Facilities Information and Resources Management System (FIRMS) code of the location of the merchandise within the port. Failure to report the arrival or the FIRMS code for the physical location of the merchandise transported in-bond within the prescribed period constitutes an irregular delivery.

(k) *General order merchandise; exportation.* Any merchandise covered by an in-bond shipment that has arrived at the port of destination or the port of exportation must be entered, exported, or admitted to a foreign-trade zone pursuant to this part within 15 calendar days from the date of arrival of the entire in-bond shipment at the port of destination or port of exportation. Sixteen days after in-bond merchandise arrives in the port of destination or port of exportation, the merchandise will become subject to general order requirements pursuant to § 4.37, § 122.50, or § 123.10 of this chapter, as applicable.

(l) *Special classes of merchandise*—(1) *Health, safety and conservation.* CBP may determine that merchandise not in compliance with an applicable rule, regulation, law, standard or ban, relating to health, safety or conservation, will not be released for transportation in-bond without the authorization of the governmental agency administering such rule, regulation, law, standard or ban.

(2) *Plants and plant products.* Merchandise subject upon importation to examination, disinfection, or further treatment under the USDA Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine program, will only be released for transportation in-bond with the authorization of APHIS under regulations issued by that program. (See §§ 12.10 to 12.15 of this chapter).

(3) *Prohibited articles.* Articles prohibited admission into the commerce of the United States may not be entered for transportation in-bond. Any such merchandise offered for entry for that purpose may either be denied entry or be seized. However, CBP may permit exportation or transportation and exportation either with authorization from the governmental agency having regulatory authority over the prohibited articles or in compliance with the regulations of such agency.

(4) *Narcotics and other drugs, medicines, or chemicals*—(i) *Narcotics.* Narcotics prohibited admission into the commerce of the United States may not be entered for transportation in-bond and any such merchandise offered for entry for that purpose will be seized, except that exportation or transportation and exportation may be permitted with authorization from the Drug Enforcement Agency (DEA) and/or compliance with the regulations of the DEA.

(ii) *Other drugs, medicines, or chemicals.* Articles entered for transportation in-bond that are manifested merely as drugs, medicines, or chemicals, without evidence to satisfy the port director that they are non-narcotic, will be detained and subjected, at the carrier's risk and expense, to such examination as may be necessary to satisfy the port director that they are not of a narcotic character. A properly verified certificate of the shipper, specifying the items in the shipment and stating that they are not narcotic, may be accepted by the port director to establish the character of such a shipment.

(5) *Explosives.* Explosives may not be transported in-bond unless the importer has first obtained a license or permit from the proper governmental agency. In such case the explosives may be entered for immediate transportation, for transportation and exportation, or for immediate exportation as specified by the approving government agency. Governmental agencies with regulatory authority over explosives include the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the Department of Transportation (DOT), and the U.S. Coast Guard (USCG).

(6) *Livestock.* Carload shipments of livestock will not be entered for in-bond transportation unless they will arrive at the port of destination named in the in-bond application before it becomes necessary to remove the seals for the purpose of watering and feeding the animals, or unless the route is such that the removal of the seals and the watering, feeding, and reloading of the stock may be done under CBP supervision.

(m) *Divided shipments.* After reaching the destination port, the port to which the merchandise has been diverted under §18.5(a), in-bond merchandise may be divided into multiple shipments with a portion of the initial in-bond shipment being entered for consumption or warehouse, and the remainder shipped under a new in-bond application. The carrier or any of the parties named in paragraph (c) of this section must, in accordance with the filing requirements of this section, submit a new in-bond application for each portion of the original shipment to be transported in-bond. Divided shipments for merchandise being transported under cover of a carnet are prohibited.

§ 18.2 Carriers, cartmen, and lightermen.

(a) *Transportation of merchandise in-bond by bonded carriers*—(1) *Generally.* Except as provided for in paragraph (b) of this section, merchandise to be transported from one port to another in the United States in-bond must be delivered to a common carrier, contract carrier, freight forwarder, or private carrier, each of which must be bonded for that purpose. Such merchandise delivered to a bonded common carrier, contract carrier, or freight forwarder may be transported with the use of facilities of other bonded or non-bonded carriers; however, the responsibility for the merchandise will remain with the common carrier, contract carrier, or freight forwarder that obligated its bond for that purpose. Only vessels entitled to engage in the coastwise trade (see §4.80 of this chapter) will be entitled to transport merchandise under this section.

(2) *Merchandise transported under a TIR carnet.* Merchandise to be transported from one port to another in the United States under cover of a TIR carnet (see part 114 of this chapter), except merchandise not otherwise subject to CBP control, as provided in §§18.41 through 18.45, must be delivered to a common carrier or contract carrier bonded for that purpose, but the merchandise thereafter may be transported with the use of other bonded or non-bonded common or contract carriers. The TIR carnet will be responsible for liability incurred in the carriage of merchandise under the carnet, and the carrier's bond will be responsible as provided in §114.22(c) of this chapter.

(3) *Merchandise transported under an A.T.A. or a TECRO/AIT carnet.* Merchandise to be transported from one port to another in the United States under cover of an A.T.A. or TECRO/AIT carnet (see part 114 of this chapter) must be delivered to a common carrier or contract carrier bonded for that purpose, but the merchandise thereafter may be transported with the use of other bonded or non-bonded common or

contract carriers. The A.T.A. or TECRO/AIT carnet will be responsible for liability incurred in the carriage of merchandise under the carnet, and the carrier's bond will be responsible as provided in §114.22(d) of this chapter.

(b) *Transportation of merchandise in-bond between certain ports by bonded cartmen or lighterman.* Pursuant to Public Resolution 108, of June 19, 1936, (19 U.S.C. 1551, 1551a) and subject to compliance with all other applicable provisions of this part, CBP, upon the request of a party named in §18.1(c), may permit merchandise that has been entered and subject to CBP examination to be transported in-bond between the ports of New York, Newark, and Perth Amboy, by bonded cartmen or lightermen duly qualified in accordance with the provisions of part 112 of this chapter, if CBP is satisfied that the transportation of such merchandise in this manner will not endanger the revenue and does not pose a risk to health, safety or security.

§18.3 Transfers.

(a) *Transfer to another conveyance.* Merchandise being transported in-bond may be transferred to another conveyance at any time. CBP notification is not required. The transfer to one or more conveyances will not extend the maximum in-transit time set forth in §18.1(i).

(b) *Transfer to another bonded carrier.* Except as provided in §18.31(d)(3), when merchandise is transferred to a bonded carrier that assumes the liability for the in-bond shipment, a report of arrival for the merchandise must be filed by the original bonded carrier and a new in-bond application must be filed by the subsequent bonded carrier pursuant to §18.1.

(c) *Transfer of merchandise covered by a TIR Carnet generally prohibited.* Merchandise covered by a TIR carnet may not be transferred except in cases in which the unlading of the merchandise from a container or road vehicle is necessitated by casualty en route. In the event of transfer, a TIR approved container or road vehicle must be used if available. If the transfer takes place under CBP supervision, the CBP officer must execute a certificate of transfer on the appropriate TIR carnet voucher.

(d) *Transfer by bonded cartmen.* All transfers to or from the conveyance or warehouse of merchandise being transported in-bond must be made under the provisions of part 125 of this chapter and at the expense of the parties in interest, unless the bond of the carrier on CBP Form 301, containing the bond conditions set forth in §113.63 of this chapter or a TIR carnet, is liable for the safekeeping and delivery of the merchandise while it is being transferred.

§18.4 Sealing conveyances, compartments, and containers.

(a) *Requirements, waiver, and TIR carnets*—(1) *Seals required.* Conveyance, compartments, or containers transporting in-bond merchandise must be sealed and the seals must remain intact until the merchandise arrives at the port of destination or the port of exportation. The seals to be used and the method for sealing conveyances, compartments, or containers must meet the requirements of §§24.13 and 24.13a of this chapter.

(2) *Waiver.* (i) CBP may waive the sealing of a conveyance, compartment, or container in which bonded merchandise is transported if CBP determines that the sealing of the conveyance, compartment, or container is unnecessary to protect the revenue or to prevent violations of the customs laws and regulations.

(ii) Examples of situations where CBP may waive the waiver of the sealing requirement are when the conveyance, compartment, or container cannot be effectively sealed, as in the case of merchandise shipped in open cars or barges or on the decks of vessels, when it is known that any seals would necessarily be removed outside the jurisdiction of the United States for the purpose of discharging or taking on cargo, or when it is known that the breaking of the seals will be necessary to ventilate the hatches.

(3) *TIR carnets.* The port director will cause a CBP seal to be affixed to a container or road vehicle that is being used to transport merchandise under cover of a TIR carnet unless the container or road vehicle bears a customs seal (domestic or foreign). The port director will likewise cause a CBP seal or

label to be affixed to heavy or bulky goods being so transported. If, however, the port director has reason to believe that there is a discrepancy between the merchandise listed on the Goods Manifest of the carnet and the merchandise that is to be transported, the port director may cause a CBP seal or label to be affixed only when the listing of the merchandise in the carnet and a physical inventory agree.

(b) *Commingled merchandise*—(1) *Transported in a sealed conveyance, compartment, or container.* Merchandise that is not covered by a bond may be transported in a sealed conveyance, compartment, or container that contains bonded merchandise if the merchandise is destined for the same or subsequent port as the bonded merchandise.

(2) *Transported in a conveyance, compartment, or container that is not sealed.* Merchandise that is not covered by a bond may be transported with bonded merchandise in a conveyance, compartment, or container that is not sealed, if the in-bond merchandise is corded and sealed, or affixed with a warning label or tag as described in paragraph (b)(3) of this section.

(3) *Warning label or tag*—(i) *Warning label.* The required warning label for in-bond merchandise described in paragraph (b)(2) of this section, must be on bright red paper, not less than 5 by 8 inches in size, unless the size of the package renders the use of a 5 by 8 inch warning label impracticable because of lack of space; then a 3 by 5 inch label may be used. Alternatively, a high visibility, permanently affixed warning label, whether as a continuous series in tape form or otherwise, but not less than 1½ by 3 inches, and not to be removed until the in-bond movement is completed, may be used on any size package. The warning label must contain the following words in black or white lettering of a conspicuous size:

U.S. Customs and Border Protection

This package is under bond and must be delivered intact to the CBP officer in charge at the port of destination or to such other place as authorized by CBP.

Warning. Two years' imprisonment, a fine, or both, is the penalty for unlawful removal of this package or any of its contents.

(ii) *Tag.* When it is impossible to attach the warning label by pasting, a bright red shipping tag of convenient size, large enough to be conspicuous and containing the same legend as the label, shall be used in lieu of a label. Such tag shall be wired or otherwise securely fastened to the packages in such manner as not to damage the merchandise.

(4) *Merchandise transported under carnet.* Merchandise moving under cover of a carnet may not be consolidated with other merchandise.

(c) *Removal and replacement of seals.* If it becomes necessary at any point in transit to remove seals from a conveyance, compartment, or container containing bonded merchandise for the purpose of transferring its contents to another conveyance, compartment, or container, or to gain access to the shipment because of casualty or for other good reason, such as when required by law enforcement or another government agency, a responsible agent of the carrier may remove the seals, supervise the transfer or handling of the merchandise, and seal the conveyance, compartment, or container in which the shipment goes forward. Updated seal numbers must be transmitted to CBP pursuant to §18.1(h) and general recordkeeping requirements under 19 CFR part 163 apply.

(d) *Containers or road vehicles accepted for transport under customs seal; requirements*—(1)(i) *Containers covered by the Customs Convention on Containers.* Containers covered by the Customs Convention on Containers will be accepted for transport under customs seal if:

(A) Durably marked with the name and address of the owner, particulars of tare, and identification marks and numbers, and

(B) Constructed and equipped as outlined in Annex 1 to the Customs Convention on Containers, as evidenced by an accompanying unexpired certificate of approval in the form prescribed by Annex 2 to that Convention or by a metal plate showing design type approval by a competent authority.

(ii) *Containers carrying merchandise covered by a TIR carnet.* Containers carrying merchandise covered by a TIR carnet will be accepted for transport under customs seal if:

(A) Durably marked with the name and address of the owner, particulars of tare, and identification marks and numbers,

(B) Constructed and equipped as outlined in Annex 6 to the TIR Convention, as evidenced by an accompanying unexpired certificate of approval in the form prescribed by Annex 8 to that Convention, or by a metal plate showing design type approval by a competent authority, and

(C) If the container or road vehicle hauling the container has affixed to it a rectangular plate bearing the letters ''TIR'' in accordance with Article 31 of the TIR Convention.

(2) *Road vehicles carrying merchandise covered by a TIR carnet.* Road vehicles carrying merchandise covered by a TIR carnet will be accepted for transport under customs seal if:

(i) Durably marked with the name and address of the owner, particulars of tare, and identification marks and numbers,

(ii) Constructed and equipped as outlined in Annex 3 to the TIR Convention, as evidenced by an accompanying unexpired certificate of approval in the form prescribed by Annex 5 to that Convention, or by a metal plate showing design type approval by a competent authority, and

(iii) If the road vehicle has affixed to it a rectangular plate bearing the letters ''TIR'' in accordance with Article 31 of the TIR Convention.

(3) *CBP refusal.* The port director may refuse to accept for transport under customs seal a container or road vehicle bearing evidence of approval if, in the port director's opinion, the container or road vehicle no longer meets the requirements of the applicable Convention.

(4) *CBP acceptance for transport.* Containers or road vehicles that are not approved under the provisions of a Customs Convention may be accepted for transport under customs seal only if the port director at the origination port is satisfied that the container or road vehicle can be effectively sealed and no goods can be removed from or introduced into the container or road vehicle without obvious damage to it or without breaking the seal. A container or road vehicle so accepted shall not carry merchandise covered by a TIR carnet.

§ 18.5 Diversion.

(a) *Procedure.* In order to change the port of destination or the port of exportation of an in-bond movement, the filer of the in-bond application must submit a request to divert merchandise via a CBP-approved EDI system. Permission for the diversion and movement of merchandise will be transmitted via a CBP-approved EDI system. If the request to divert merchandise is denied, such merchandise must be delivered to the original port of destination or port of exportation that was named in the in-bond application. The decision to grant or deny permission to divert merchandise is within the discretion of CBP. Denials may result from, for example, restrictions placed upon the movement of goods by government agencies.

(b) *In-transit time.* The approval of a request to divert merchandise for transportation in-bond does not extend the in-transit time specified in §18.1(i)(1) of this part. The diverted merchandise must be delivered to the port of diversion within the in-transit time specified in §18.1(i)(1) from the date CBP first authorized the in-bond movement, unless an extension is granted pursuant to §18.1(i)(2).

(c) *Diversion of cargo subject to restriction, prohibition or regulation by other federal agency or authority.* Merchandise subject to a law, regulation, rule, standard or ban that requires permission or authorization by another federal agency or authority before importation may be restricted from being diverted on behalf of the authorizing agency.

§ 18.6 Short shipments; shortages; entry and allowance.

(a) *Notification of short shipment.* When an in-bond shipment arrives at the port of destination or the port of exportation and the cargo covered by the original in-bond application is short, the arriving carrier must notify CBP of the shortage when submitting the notice of arrival via a CBP-approved EDI system.

(b) *New in-bond application required.* The carrier or any of the parties named

in §18.1(c) must, in accordance with the filing requirements of §18.1, submit a new in-bond application to transport short shipped packages that have been located or recovered to the port of destination or port of exportation provided in the in-bond application. Reference must be made in the new in-bond application to the original transportation entry.

(c) *Demand for redelivery; entry.* When a shipment or a portion of a shipment is not delivered, or when delivery is to an unauthorized location or is delivered to the consignee without the permission of CBP, CBP may demand return (redelivery) of the merchandise to CBP custody. The demand must be made no later than 30 days after the shortage, delivery, or failure to deliver is discovered by CBP. The demand for the redelivery of the merchandise to CBP custody must be made to the bonded carrier, cartman, or lighterman identified in the in-bond application. The demand for the redelivery of the merchandise will be made on CBP Form 4647, Notice of Redelivery, other appropriate form or letter, or by an electronic equivalent thereof. A copy of the demand or electronic equivalent thereof, with the date of mailing or delivery noted thereon, must be retained by the port director and made part of the in-bond entry record. Entry of the merchandise may be accepted if the merchandise can be recovered intact without any of the packages having been opened. In such cases, any shortage from the invoice quantity will be presumed to have occurred while the merchandise was in the possession of the bonded carrier.

(d) *Failure to redeliver; entry.* If the merchandise cannot be recovered intact, entry will be accepted in accordance with §141.4 of this chapter for the full manifested quantity, unless a lesser amount is otherwise permitted in accordance with subpart A of part 158. Except as provided in paragraph (e) of this section, if the merchandise is not returned to CBP custody within 30 days of the date of mailing of the demand for redelivery, if mailed, or within 30 days of the date of transmission, if transmitted by a method other than by mail, there shall be sent to the party whose bond is obligated on the transportation entry a demand for liquidated damages on CBP Form 5955–A. CBP will also seek the payment of duties, taxes, and fees, where appropriate, pursuant to §18.8(c).

(e) *Failure to redeliver merchandise covered by a carnet.* If merchandise covered by a carnet cannot be recovered intact as specified in paragraph (c) of this section, entry will not be accepted; there will be sent to the appropriate guaranteeing association a demand for liquidated damages, duties, and taxes as prescribed in §18.8(d); and, if appropriate, there will also be sent to the initial bonded carrier a demand for any excess, as provided in §114.22(e) of this chapter. Demands must be made on the forms specified in paragraph (d) of this section.

(f) *Allowance.* An allowance in duty on merchandise reported short at destination, including merchandise found by the appraising officer to be damaged and worthless, and animals and birds found by the discharging officer to be dead on arrival at destination, must be made in in accordance with law.

(g) *Rail and seatrain.* In the case of shipments arriving in the United States by rail or seatrain, which are forwarded under CBP in-bond seals under the provisions of subpart D of part 123 of this chapter, and §18.11, or §18.20, a notation must be made by the carrier or shipper in the in-bond application, to show whether the shipment was transferred to the car designated in the manifest and whether it was laden in the car in the foreign country. If laden on the car in a foreign country, the country must be identified in the notation.

§ 18.7 Lading for exportation; notice and proof of exportation; verification.

(a) *Exportation*—(1) *Notice.* Within two business days after the arrival at the port of exportation of any portion of an in-bond shipment, CBP must be notified via a CBP approved EDI of the arrival of the merchandise pursuant to §18.1(j). Failure to report the arrival of bonded merchandise within the prescribed period will constitute an irregular delivery.

(2) *Time to export.* Within 15 calendar days after arrival of the last portion of

a shipment arriving at the port of exportation under a transportation and exportation entry, the entire shipment of merchandise must be exported. On the 16th day the merchandise will become subject to general order requirements under § 4.37, § 122.50, or § 123.10 of this chapter, as applicable.

(3) *Notice and proof of exportation.* Within two business days after exportation, the in-bond record must be updated via a CBP approved EDI system to reflect that the merchandise has been exported. The principal on any bond filed to guarantee exportation may be required by the port director to provide evidence of exportation in accordance with § 113.55 of this chapter.

(b) *Supervision.* The port director will require such supervision of the lading for exportation of merchandise covered by an entry or withdrawal for exportation or for transportation and exportation only as is reasonably necessary to satisfy the port director that the merchandise has been laden on the exporting conveyance.

(c) *Verification.* CBP may verify export entries and withdrawals against the records of the exporting carriers. Such verification may include an examination of the carrier's records of claims and settlement of export freight charges and any other records that may relate to the transaction. The exporting carrier must maintain these records for five years from the date of exportation of the merchandise.

§ 18.8 Liability for not meeting in-bond requirements; liquidated damages; payment of taxes, duties, fees, and charges.

(a) *Liability.* The party whose bond is obligated on the transportation entry will be liable for breach of any of the requirements found in this part, any other regulations governing the movement of merchandise in bond, and any of the other conditions specified in the bond. This includes, but is not limited to shortages, irregular delivery, or non-delivery, at the port of destination or port of exportation of the merchandise transported in-bond; the failure to export merchandise transported in bond pursuant to a transportation and exportation or immediate exportation entry; and, the failure to maintain intact seals or the unauthorized removal of seals. Appropriate commercial or government documentation may be provided to CBP as proof of delivery and/or exportation. Any loss found to exist at the port of destination or port of exportation will be presumed to have occurred while the merchandise was in the possession of the party whose bond was obligated under the transportation entry, unless conclusive evidence to the contrary is produced.

(b) *Liquidated damages.* (1) The party whose bond is obligated on the transportation entry is liable for payment of liquidated damages if there is a failure to comply with any of the requirements found in this part, any other regulations governing the movement of merchandise in bond, and any of the other conditions specified in the bond.

(2) *Petition for relief.* In any case in which liquidated damages are imposed in accordance with this section and CBP is satisfied by the evidence submitted with a petition for relief filed in accordance with the provisions of part 172 of this chapter that any violation of the terms and conditions of the bond occurred without any intent to evade any law or regulation, CBP may cancel such claim upon the payment of any lesser amount or without the payment of any amount as may be deemed appropriate under the law and in view of the circumstances.

(c) *Taxes, duties, fees, and charges.* In addition to the liquidated damages described in paragraph (b) of this section, the party whose bond is obligated on the transportation entry will be liable for any duties, taxes, and fees accruing to the United States on the missing merchandise, together with all costs, charges, and expenses, caused by the failure to make the required transportation, report, delivery, entry and/or exportation. The amount of duties, taxes, fees, and charges owed to the United States under this paragraph is not limited to the amount of the bond obligated on the transportation entry.

(d) *Carnets*—(1) *TIR carnets.* (i) The domestic guaranteeing association will be jointly and severally liable with the initial bonded carrier for duties, taxes, and fees accruing to the U.S., and any other charges imposed, in lieu thereof, as the result of any shortage, irregular

delivery, or nondelivery at the port of destination or port of exportation of merchandise covered by a TIR carnet. The liability of the domestic guaranteeing association is limited to $50,000 per TIR carnet for duties, taxes, and sums collected in lieu thereof. Penalties imposed as liquidated damages against the initial bonded carrier, and sums assessed against the guaranteeing association in lieu of duties and taxes for any shortage, irregular delivery, or nondelivery will be in accordance with this section. If a TIR carnet has not been discharged or has been discharged subject to a reservation, the guaranteeing association will be notified within one year of the date upon which the carnet is taken on charge, including time for receipt of the notification, except that if the discharge was obtained improperly or fraudulently the period will be two years. However, in cases that become the subject of legal proceedings during the above-mentioned period, no claim for payment will be made more than one year after the date when the decision of the court becomes enforceable.

(ii) Within three months from the date demand for payment is made by the port director as provided by §18.6(e), the guaranteeing association must pay the amount claimed, except that if the amount claimed exceeds the liability of the guaranteeing association under the carnet (see §114.22(d) of this chapter), the carrier must pay the excess. The amount paid will be refunded if, within a period of one year from the date on which the claim for payment was made, it is established to the satisfaction of the Commissioner of CBP that no irregularity occurred. CBP may cancel liquidated damages assessed against the guaranteeing association to the extent authorized by paragraph (b) of this section.

(2) *A.T.A. or TECRO/AIT carnets.* The domestic guaranteeing association is jointly and severally liable with the initial bonded carrier for pecuniary penalties, liquidated damages, duties, fees, and taxes accruing to the United States and any other charges imposed as the result of any shortage, irregular delivery, failure to comply with sealing requirements in this part, and any nondelivery at the port of destination or port of exportation of merchandise covered by an A.T.A. or TECRO/AIT carnet. However, the liability of the guaranteeing association must not exceed the amount of the import duties by more than 10 percent. If an A.T.A. or TECRO/AIT carnet is unconditionally discharged with respect to certain goods, the guaranteeing association will no longer be liable on the carnet with respect to those goods unless it is subsequently discovered that the discharge of the carnet was obtained fraudulently or improperly or that there has been a breach of the conditions of temporary admission or of transit. No claim for payment will be made more than one year following the date of expiration of the validity of the carnet. The guaranteeing association will be allowed a period of six months from the date of any claim by the port director in which to furnish proof of the reexportation of the goods or of any other proper discharge of the A.T.A. or TECRO/AIT carnet. If such proof is not furnished within the time specified, the guaranteeing association must either deposit or provisionally pay the sums. The deposit or payment will become final three months after the date of the deposit or payment, during which time the guaranteeing association may still furnish proof of the reexportation of the goods to recover the sums deposited or paid.

§18.9 New in-bond movement for forwarded or returned merchandise.

The carrier or any of the parties named in §18.1(c) must, in accordance with the filing requirements of §18.1, submit a new in-bond application in order to forward or return merchandise from the port of destination or port of exportation named in the original in-bond application, or from the port of diversion, to any another port. If the merchandise is moving under cover of a carnet, the carnet may be accepted as a transportation entry.

§18.10 Special manifest.

(a) *General.* Merchandise for which no other type of bonded movement is appropriate (e.g., prematurely discharged or overcarried merchandise and other such types of movements whereby the

normal transportation-in-bond procedures are not applicable) may be shipped in-bond from the port of unlading to the port of destination, port of exportation or port of diversion where applicable, upon approval by CBP.

(b) *Filing requirements.* The carrier or any of the parties named in §18.1(c) may, in accordance with the filing requirements of §18.1, submit an in-bond application, requesting permission to transport merchandise described in paragraph (a) of this section in-bond as a special manifest. Authorization for the movement of merchandise will be transmitted via a CBP-approved EDI system. The party submitting the in-bond application must identify the relevant merchandise and also identify the date and entry number of any entry made at the port of destination covering the merchandise to be returned, if known. For diversion of cargo, see §§4.33, 4.34, and 18.5 of this chapter. When no entry is identified, the port director may approve the shipment pursuant to this section.

Subpart B—Immediate Transportation Without Appraisement

§18.11 General rules.

(a) *Delivery outside port limits.* Merchandise covered by an entry for immediate transportation, including a TIR carnet, or a manifest of baggage shipped in-bond (other than baggage to be forwarded in-bond to a CBP station—see §18.13(a)), may be delivered to a place outside a port of entry for examination and release as contemplated by 19 U.S.C. 1484(c), and in accordance with the provisions of §151.9 of this chapter.

(b) *Divided shipments.* One or more entire packages of merchandise covered by an invoice from one consignor to one consignee may be entered for consumption or warehouse at the port of first arrival, and the remainder entered for immediate transportation, provided that all of the merchandise covered by the invoice is entered and a TIR carnet which may cover such merchandise is discharged as to that merchandise.

(c) *Consolidated loads and combined shipments.* Several importations may be consolidated into one immediate transportation entry when bills of lading or carrier's certificates name only one consignee at the port of first arrival. However, merchandise moving under cover of a TIR carnet may not be consolidated with other merchandise.

(d) *Textiles.* Textiles and textile products subject to §204, Agricultural Act of 1956, as amended (7 U.S.C. 1854) must be described in such detail as to enable the port director to estimate the duties and taxes, if any, due. The port director may require evidence to satisfy him or her of the approximate correctness of the value and quantity stated in the entry (e.g., detailed quantity description: 14 cartons, 2 dozen per carton); detailed description of the textiles or textile products including type of commodity and chief fiber content (e.g., men's cotton jeans or women's wool sweaters); net weight of the textiles or textile products (including immediate packing but excluding pallet); total value of the textiles or textile products; manufacturer or supplier; country of origin; and name(s) and address(es) of the person(s) to whom the textiles and textile products are consigned.

§18.12 Entry at port of destination.

(a) *Arrival procedures.* Merchandise received under an immediate transportation entry at the port of destination may be admitted to a FTZ, entered into a bonded warehouse, entered for consumption, transportation and exportation, immediate exportation, immediate transportation, or any other form of entry, within 15 calendar days from the date of arrival at the port of destination and is subject to all the conditions pertaining to merchandise entered at a port of first arrival.

(b) *Entry.* The right to make entry at the port of destination will be determined in accordance with the provisions of 19 U.S.C. 1484 and the regulations promulgated thereunder.

(c) *Entry at subsequent ports.* When a portion of a shipment is entered at the port of first arrival and the remainder of the shipment is entered for consumption or warehouse at one or more subsequent ports, the entry at each subsequent port may be made on an extract of the invoice as provided for in §141.84 of this chapter.

(d) *General order merchandise.* All merchandise included in an immediate transportation entry not entered pursuant to §18.12(a) within 15 calendar days from the date of arrival at the port of destination will become subject on the 16th day to general order requirements pursuant to §4.37, §122.50, or §123.10 of this chapter, as applicable.

Subpart C—Shipment of Baggage In-Bond

§18.13 Procedure; manifest.

(a) *In-bond application required.* Baggage may be forwarded in-bond to another port of entry, or to a Customs station listed in §101.4 of this chapter without examination or assessment of duty at the port or station of first arrival at the request of the passenger, the transportation company, or the agent of either, by filing an in-bond application in accordance with the provisions of §18.1.

(b) *Coast to coast transportation.* Baggage arriving in-bond or otherwise at a port on the Atlantic or Pacific coast, destined to a port on the opposite coast, may be laden under CBP supervision, without examination and without being placed in-bond, on a vessel proceeding to the opposite coast, provided the vessel will proceed to the opposite coast without stopping at any other port on the first coast.

§18.14 Shipment of baggage in transit to foreign countries.

The baggage of any person in transit through the United States from one foreign country to another may be shipped over a bonded route for exportation. Such baggage must be shipped under the regulations prescribed in §18.13. See §123.64 of this chapter for the regulations applicable to baggage shipped in transit through the United States between points in Canada or Mexico.

Subpart D—Transportation and Exportation

§18.20 General rules.

(a) *Classes of goods for which a transportation and exportation entry is authorized.* Entry for transportation and exportation may be made under §553, Tariff Act of 1930, as amended (19 U.S.C. 1553), for any merchandise, except as provided under §18.1(l).

(b) *Filing requirement.* Transportation and exportation entries must be filed via a CBP-approved EDI system and in accordance with §18.1.

(c) *Entry procedures.* Except as provided for in subparts D, E, F and G of part 123 of this chapter (relating to merchandise in transit through the United States between two points in contiguous foreign territory), when merchandise is entered for transportation and exportation, a (TIR) carnet, three copies of an air waybill (see §122.92 of this chapter), or the in-bond application must be submitted to CBP (see §18.1). The port director may require the carrier to provide to CBP additional information and documentation related to the delivery of the merchandise to the bonded carrier.

(d) *No bonded common carrier facilities available.* Except for merchandise covered by a carnet (see §18.2(a)(2) and (3)), in places where no bonded common carrier facilities are reasonably available and merchandise is permitted to be transported otherwise than by a bonded common carrier, the port director may permit entry in accordance with the procedures outlined in this section if he or she is satisfied that the revenue will not be endangered. A bond on CBP Form 301, containing the bond conditions set forth in §113.62 of this chapter in an amount equal to double the estimated duties that would be owed will be required when the port director deems such action necessary. The principal on any bond filed to guarantee exportation may be required by the port director to provide evidence of exportation in accordance with §113.55 of this chapter within 30 days of exportation.

(e) *Electronic Export Information.* Filing of Electronic Export Information (EEI) is not required for merchandise entered for transportation and exportation, provided the merchandise has not been entered for consumption or warehousing, or admitted into an FTZ. If the merchandise requires an export license, the merchandise is subject to the filing requirements of the licensing

Federal agency. See 15 CFR part 30, subpart A.

(f) *Time to export.* Any portion of an in-bond shipment entered for transportation and exportation must be exported within 15 calendar days from the date of arrival of the last portion of the shipment at the port of exportation, unless an extension has been granted by CBP pursuant to §18.24. On the 16th day, the merchandise will become subject to general order requirements under §4.37, §122.50, or §123.10 of this chapter, as applicable.

(g) *Notice of arrival and proof of exportation.* Arrival must be reported within two business days after the arrival at the port of exportation, in accordance with §18.1. Within two business days after exportation, the in-bond record must be updated via a CBP approved EDI system to reflect that the merchandise has been exported. The principal on any bond filed to guarantee exportation may be required by the port director to provide evidence of exportation in accordance with §113.55 of this chapter.

§18.21 [Reserved]

§18.22 Procedure at port of exportation.

(a) *Transfer of bonded merchandise to another conveyance.* If in-bond merchandise must be transferred to another conveyance at the port of exportation, the procedure will be as prescribed in §§18.3 and 18.4(c).

(b) *Transfer of baggage by express shipment.* An express consignment carrier that is bonded as a common carrier and is responsible under its bond for delivery to the CBP officer in charge of the exporting conveyance of articles shown to be baggage in the in-bond record may transfer the baggage by express shipment without a permit from the port director and without the use of a transfer ticket or other CBP formality from its terminal to the exporting conveyance for lading under CBP supervision. The in-bond record must be updated to reflect the name of the owner of the baggage or article and the name of the conveyance transporting the owner of the baggage. See §18.1.

§18.23 Change of port of exportation or first foreign port; change of entry.

(a) *Change of port of exportation or first foreign port.* The carrier or any of the parties provided for in §18.1(c) must notify CBP of a change of the port of exportation or first foreign port that was provided in the original in-bond application by updating the in-bond record via a CBP-approved EDI system within two business days of learning of the change in accordance with §18.1(h).

(b) *Change of entry.* Merchandise received at the anticipated port of exportation may, in lieu of export, be admitted into an FTZ, entered for consumption, warehouse, or any other form of entry, and is subject to all the conditions pertaining to merchandise entered at a port of first arrival.

§18.24 Retention of goods within port limits; dividing of shipments.

(a) *Retention of goods within port limits.* Upon receipt of a written request by the carrier or any of the parties provided for in §18.1(c), the port director, in his or her discretion, may allow in-transit merchandise, including merchandise covered by a (TIR) carnet, to remain within the port limits of the port of exportation under CBP supervision without extra expense to the Government for a period not exceeding 90 days. Upon obtaining CBP approval, the carrier or any of the parties provided for in §18.1(c) must submit an immediate exportation in-bond application pursuant to §§18.1 and 18.25 of this chapter. Upon further requests, additional extensions of 90 days or less may be granted by the port director, but the merchandise may not remain in the port limits for more than one year from the date of arrival of the importing conveyance at the port of first arrival. Any merchandise that remains in the port limits without authorization is subject to general order requirements under §4.37, §122.50, or §123.10 of this chapter, as applicable.

(b) *Divided shipments at the port of exportation.* The dividing of an in-bond shipment after it has arrived at the port of exportation will be permitted when exportation in its entirety is not

possible by reason of the different destinations to which portions of the shipment are destined, when the exporting vessel cannot properly accommodate the entire quantity, or in similar circumstances. The carrier or any of the parties named in §18.1(c) must update the in-bond record with the new information regarding the divided shipment within two business days of the dividing of the shipment. In the case, however, of merchandise being transported under cover of a carnet, the dividing of a shipment is not permitted.

Subpart E—Immediate Exportation

§18.25 Direct exportation.

(a) *Merchandise*—(1) *General.* Except for exportations by mail as provided for in subpart F of part 145 of this chapter (see also §158.45 of this chapter), an in-bond application must be transmitted as provided under §18.1, for the following merchandise when it is to be directly exported without transportation to another port:

(i) Merchandise in CBP custody for which no entry has been made or completed;

(ii) Merchandise covered by an unliquidated consumption entry; or

(iii) Merchandise that has been entered in good faith but is found to be prohibited under any law of the United States.

(2) *Carnets.* If a TIR carnet covers the merchandise that is to be exported directly without transportation, the carnet will be discharged or canceled, as appropriate (see part 114 of this chapter), and an in-bond application must be transmitted, as provided by this part. If an A.T.A. carnet covers the merchandise that is to be exported directly without transportation, the carnet must be discharged by the certification of the appropriate transportation and reexportation vouchers by CBP officers as necessary.

(b) *Restriction on immediate exportation by truck.* Trucks arriving at a U.S. port of entry, carrying shipments for which an immediate exportation entry is presented as the sole means of entry, may be denied authorization to proceed. The port director may require the truck to return to the country from which it came or may allow the filing of a new entry.

(c) *Time to export.* Any portion of an in-bond shipment entered for immediate exportation pursuant to an in-bond entry must be exported within 15 calendar days from the date of arrival at the port of exportation, unless an extension has been granted by CBP pursuant to §18.24(a). On the 16th day, the merchandise will become subject to general order requirements under §4.37, §122.50, or §123.10 of this chapter, as applicable.

(d) *Electronic Export Information.* Filing of Electronic Export Information (EEI) is not required for merchandise entered under an Immediate Exportation entry provided that the merchandise has not been entered for consumption, for warehousing, or admitted to a FTZ. If the merchandise requires an export license, the merchandise is subject to the filing requirements of the licensing Federal agency. See 15 CFR part 30, subpart A.

(e) *Exportation without landing, vessels.* If the merchandise is exported on the arriving vessel without landing, a representative of the vessel who has knowledge of the facts must certify that the merchandise entered for exportation was not discharged during the vessel's stay in port. A charge will be made against the continuous bond on CBP Form 301, containing the bond conditions set forth in §113.64 of this chapter, if on file. If a continuous bond is not on file, a single entry bond containing the bond conditions set forth in §113.64 will be required. If the merchandise is covered by a TIR carnet, the carnet must not be taken on charge (see §114.22(c)(2) of this chapter).

(f) *Notice and proof of exportation.* Within two business days after exportation of merchandise described in paragraph (a) of this section, the in-bond record must be updated via a CBP-approved EDI system to reflect that the merchandise has been exported. The principal on any bond filed to guarantee exportation may be required by the port director to provide evidence of exportation in accordance with §113.55 of this chapter within 30 days of exportation.

(g) *Explosives.* Gunpowder and other explosive substances, the deposit of

which in any public store or bonded warehouse is prohibited by law, may be entered on arrival from a foreign port for immediate exportation in-bond by sea, but must be transferred directly from the importing to the exporting vessel.

(h) *Transfer by express shipment.* The transfer of articles by express shipment must be in accordance with the procedures set forth in §18.22.

§18.26 Indirect exportation.

(a) *Indirect exportation, vessels.* Merchandise that had been intended to be exported without landing from an importing vessel in accordance with §18.25(e) may instead be transported in-bond to another port for exportation and entered for transportation and exportation in accordance with the procedure in §18.20, upon the transmission of an in-bond application to CBP pursuant to §18.1, via a CBP-approved EDI system. Upon acceptance of the entry by CBP and acceptance of the merchandise by the bonded carrier, the bonded carrier assumes liability for the transportation and exportation of the merchandise. If the merchandise was prohibited entry by any Government agency, that fact must be noted in the in-bond application.

(b) *Carnets.* If merchandise to be transported in-bond to another port for exportation was imported under cover of a TIR carnet, the carnet must be discharged or canceled at the port of importation and the merchandise transported under an electronic in-bond application (see §18.20). If merchandise to be transported in-bond to another port for exportation was imported under cover of an A.T.A. carnet, the appropriate transit voucher will be accepted in lieu of an electronic in-bond application. One transit voucher will be certified by CBP officers at the port of importation and a second transit voucher, together with the reexportation voucher, will be certified at the port of exportation.

(c) *Transfer at selected port of exportation.* If the merchandise is to be transferred to another conveyance after arrival at the port selected for exportation pursuant to paragraph (a) of this section, the procedure prescribed in §18.4(c) will be followed. The provisions of §§18.23 and 18.24 will also be followed in applicable cases.

(d) *Time to export.* Any portion of an in-bond shipment entered for indirect exportation following an in-bond entry must be exported within 15 calendar days from the date of arrival at the port of exportation, unless an extension has been granted by CBP pursuant to §18.24(a). On the 16th day, the merchandise will become subject to general order requirements under §4.37, §122.50, or §123.10 of this chapter, as applicable.

(e) *Notice and proof of exportation.* Within two business days after exportation, the in-bond record must be updated via a CBP-approved EDI system to reflect that the merchandise has been exported. The principal on any bond filed to guarantee exportation may be required by the port director to provide evidence of exportation in accordance with §113.55 of this chapter within 30 days of exportation.

§18.27 Port marks.

Port marks may be added by authority of the port director and under the supervision of a CBP officer. The original marks and the port marks must appear in all documentation or the electronic equivalent must appear in electronic records pertaining to the exportation.

Subpart F—Merchandise Transported by Pipeline

§18.31 Pipeline transportation of bonded merchandise.

(a) *General procedures*—(1) *Applicability.* Merchandise may be transported by pipeline under the procedures in this part, as appropriate, and unless otherwise specifically provided for in this section.

(2) *In-bond application.* For purposes of this section, the in-bond application will be made by submitting a CBP Form 7512 or by electronic submission via a CBP-approved EDI system.

(b) *Bill of lading to account for merchandise.* Unless CBP has reasonable cause to suspect fraud, CBP will accept a bill of lading or equivalent document of receipt issued by the pipeline operator to the shipper and accepted by the consignee to account for the quantity

of merchandise transported by pipeline and to maintain the identity of the merchandise.

(c) *Procedures when pipeline is only carrier.* When a pipeline is the only carrier of the in-bond merchandise and there is no transfer to another carrier, the bill of lading or equivalent document of receipt issued by the pipeline operator to the shipper must be submitted with the in-bond application. If there are no discrepancies between the bill of lading or equivalent document of receipt and the in-bond application for the merchandise, and provided that CBP has no reasonable cause to suspect fraud, the bill of lading or equivalent document of receipt will be accepted by CBP as establishing the quantity and identity of the merchandise transported. The pipeline operator is responsible for any discrepancies, including shortages, irregular deliveries, or nondeliveries at the port of destination or exportation (see §18.8).

(d) *Procedures when there is more than one carrier (i.e., transfer of the merchandise)*—(1) *Pipeline as initial carrier.* When a pipeline is the initial carrier of merchandise to be transported in-bond and the merchandise is transferred to another conveyance (either a different mode of transportation or a pipeline operated by another operator), the procedures for transfers in §18.3 and paragraph (c) of this section must be followed, except that—

(i) When the merchandise is to be transferred to one conveyance, a copy of the bill of lading or equivalent document issued by the pipeline operator to the shipper must be delivered to the person in charge of the conveyance for transmission to CBP; or

(ii) When the merchandise is to be transferred to more than one conveyance, a copy of the bill of lading or equivalent document issued by the pipeline operator to the shipper must be delivered to the person in charge of each additional conveyance, for transmission to CBP.

(2) *Transfer to pipeline from initial carrier other than a pipeline.* When merchandise initially transported in-bond by a carrier other than a pipeline is transferred to a pipeline, the procedures in §18.3 and paragraph (c) of this section must be followed, except that the bill of lading or other equivalent document of receipt issued by the pipeline operator to the shipper must be transmitted to CBP.

(3) *Initial carrier liable for discrepancies.* In the case of either paragraph (d)(1) or (2) of this section, the initial carrier will be responsible for any discrepancies, including shortages, irregular deliveries, or nondeliveries, at the port of destination or failure to export at the port of exportation (see generally §18.8).

(e) *Recordkeeping.* The shipper, pipeline operator, and consignee are subject to the recordkeeping requirements in 19 U.S.C. 1508 and 1509, as provided for in part 163 of this chapter.

Subpart G—Merchandise Not Otherwise Subject to CBP Control Exported Under Cover of a TIR Carnet

§ 18.41 Applicability.

The provisions of §§18.41 through 18.45 apply only to merchandise to be exported under cover of a TIR carnet for the convenience of the U.S. exporter or other party in interest and do not apply to merchandise otherwise required to be transported in bond under the provisions of this chapter. Merchandise to be exported under cover of a TIR carnet for the convenience of the U.S. exporter or other party in interest may be transported with the use of the facilities of either bonded or non-bonded carriers.

§ 18.42 Direct exportation.

At the port of exportation, the container or road vehicle, the merchandise, and the TIR carnet shall be made available to the port director. Any required Electronic Export Information (EEI) shall be filed in accordance with the applicable regulations of the Bureau of the Census (15 CFR part 30). The port director shall examine the merchandise to the extent he believes necessary to determine that the carnet has been properly completed and shall verify that the container or road vehicle has the necessary certificate of approval or approval plate intact and is in satisfactory condition. After completion of any required examination

and supervision of loading, the port director will seal the container or road vehicle with customs seals and ascertain that the TIR plates are properly affixed and sealed. See §18.4(d). In the case of heavy or bulky goods moving under cover of a TIR carnet, the port director shall cause a customs seal or label, as appropriate, to be affixed. He shall also remove two vouchers from the carnet, execute the appropriate counterfoils, and return the carnet to the carrier or agent to accompany the merchandise.

§ 18.43 Indirect exportation.

(a) *Filing of Electronic Export Information.* When merchandise is to move from one U.S. port to another for actual exportation at the second port, any Electronic Export Information (EEI) required to be validated shall be filed in accordance with the procedures described in the applicable regulations of the Bureau of the Census (15 CFR part 30).

(b) *Origination port procedure.* The port director shall follow the procedure provided in §18.42 in respect to examination of the merchandise, supervision of loading, sealing or labeling, and affixing of TIR plates. The port director will remove one voucher from the carnet, execute the appropriate counterfoil, and return the carnet to the carrier or agent to accompany the container or road vehicle to the port of actual exportation.

(c) *Port of exportation procedure.* At the port of actual exportation, the carnet and the container (or heavy or bulky goods) or road vehicle shall be presented to the port director who shall verify that seals or labels are intact and that there is no evidence of tampering. After verification, the port director shall remove the appropriate voucher from the carnet, execute the counterfoil, and return the carnet to the carrier or agent.

§ 18.44 Abandonment of exportation.

In the event that exportation is abandoned at any time after merchandise has been placed under cover of a TIR carnet, the carrier or agent shall deliver the carnet to the nearest CBP office or to the CBP office at the origination port for cancellation (see §114.26(c) of this chapter). When the carnet has been canceled, the carrier or agent may remove customs seals or labels and unload the container (or heavy or bulky goods) or road vehicle without customs supervision.

§ 18.45 Supervision of exportation.

The provisions of §§18.41 through 18.44 do not require the director of the port of actual exportation to verify that merchandise moving under cover of a TIR carnet is loaded on board the exporting carrier.

Subpart H—Importer Security Filings

§ 18.46 Changes to Importer Security Filing information.

For merchandise transported in bond, which at the time of transmission of the Importer Security Filing as required by §149.2 of this chapter is intended to be entered as an immediate exportation (IE) or transportation and exportation (T&E) shipment, permission from the port director of the origination port is needed to change the in-bond entry into a consumption entry. Such permission will only be granted upon receipt by CBP of a complete Importer Security Filing as required by part 149 of this chapter.

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

Sec.

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624; Section 19.1 also issued under 19 U.S.C. 1311, 1312, 1555, 1556, 1557, 1560, 1561, 1562; Section 19.6 also issued under 19 U.S.C. 1555, 1557; Section 19.7 also issued under 19 U.S.C. 1555, 1556; Section 19.11 also issued under 19 U.S.C. 1556, 1562; Section 19.15 also issued under 19 U.S.C. 1311; Sections 19.17–19.25 also issued under 19 U.S.C. 1312; Sections Sections 19.35–19.39 also issued under 19 U.S.C. 1555; Section 19.40(a) also issued under 19 U.S.C. 1450, 1499, 1623; Sections 19.41–19.43 also issued under 19 U.S.C. 1499; Section 19.44 also issued under 19 U.S.C. 1448; Section 19.45 also issued under 19 U.S.C. 1551, 1565; Section 19.48 also issued under 19 U.S.C. 1499, 1623; Section 19.49 also issued under 19 U.S.C. 1484.

SOURCE: 28 FR 14763, Dec. 31, 1963, unless otherwise noted.

§ 19.1 Classes of customs warehouses.

(a) *Classifications.* Customs warehouses shall be designated according to the following classifications:

(1) *Class 1.* Premises that may be owned or leased by the Government, when the exigencies of the service as determined by the port director so require, and used for the storage of merchandise undergoing examination by Customs, under seizure, or pending final release from Customs custody. Merchandise will be stored in such premises only at Customs direction and will be held under ''general order.''

(2) *Class 2.* Importers' private bonded warehouses used exclusively for the storage of merchandise belonging or consigned to the proprietor thereof. A warehouse of class 4 or 5 may be bonded exclusively for the storage of goods imported by the proprietor thereof, in which case it shall be known as a private bonded warehouse.

(3) *Class 3.* Public bonded warehouses used exclusively for the storage of imported merchandise.

(4) *Class 4.* Bonded yards or sheds for the storage of heavy and bulky imported merchandise; stables, feeding pens, corrals, or other similar buildings or limited enclosures for the storage of imported animals; and tanks for the storage of imported liquid merchandise in bulk. If the port director deems it necessary, the yards shall be enclosed by substantial fences with entrances and exit gates capable of being secured by the proprietor's locks. The inlets and outlets to tanks shall be secured by means of seals or the proprietor's locks.

(5) *Class 5.* Bonded bins or parts of buildings or of elevators to be used for the storage of grain. The bonded portions shall be effectively separated from the rest of the building.

(6) *Class 6.* Warehouses for the manufacture in bond, solely for exportation, of articles made in whole or in part of imported materials or of materials subject to internal-revenue tax; and for the manufacture for home consumption or exportation of cigars in whole of tobacco imported from one country.

(7) *Class 7.* Warehouses bonded for smelting and refining imported metal-bearing materials for exportation or domestic consumption.

(8) *Class 8.* Bonded warehouses established for the purpose of cleaning, sorting, repacking, or otherwise changing in condition, but not manufacturing, imported merchandise, under Customs supervision and at the expense of the proprietor.

(9) *Class 9.* Bonded warehouse, known as ''duty-free stores'', used for selling, for use outside the Customs territory, conditionally duty-free merchandise owned or sold by the proprietor and delivered from the Class 9 warehouse to an airport or other exit point for exportation by, or on behalf of, individuals departing from the Customs territory for destinations other than foreign trade zones. Pursuant to 19 U.S.C. 1555(b)(8)(C), ''Customs territory'', for purposes of duty-free stores, means the Customs territory of the U.S. as defined in §101.1(e) of this chapter, and foreign trade zones (see part 146 of this chapter). All distribution warehouses used exclusively to provide individual duty-free sales locations and storage cribs with conditionally duty-free merchandise are also Class 9 warehouses.

(10) [Reserved]

(11) *Class 11.* Bonded warehouses, known as ''general order warehouses,'' established for the storage and disposition exclusively of general order merchandise as described in §127.1 of this chapter.

(b) *Manipulation.* The whole or a part of any warehouse of class 1, 2, 3, 4, 5, 6, 7, or 11 may be designated a constructive manipulation (class 8) warehouse when the exigencies of the service so require.

(c) *General order.* General order merchandise as described in §127.1 of this chapter may be stored and disposed of in a class 11 warehouse or a warehouse of class 3, 4, or 5, provided the class 3, 4, or 5 warehouse has also been certified by the port director as meeting the criteria for a class 11 warehouse, following an application under §19.2. So far as such warehouses are used for the purpose of handling general order goods, they will also be considered general order (class 11) warehouses. If there is no space at a warehouse of any of these classes available, the proprietor of such a warehouse, with the approval of the port director of the port nearest to where the warehouse is located, may rent or lease additional suitable premises for the storage of general order merchandise.

[T.D. 76–277, 41 FR 42649, Sept. 28, 1976, as amended by T.D. 82–204, 47 FR 49368, Nov. 1, 1982; T.D. 89–1, 53 FR 51254, Dec. 21, 1988; T.D. 92–81, 57 FR 37696, Aug. 20, 1992; T.D. 97–19, 62 FR 15834, Apr. 3, 1997; T.D. 02–65, 67 FR 68032, Nov. 8, 2002]

GENERAL PROVISIONS

§19.2 Applications to bond.

(a) *Application.* An owner or lessee desiring to establish a bonded warehouse facility shall make written application to the director of the port nearest to where the warehouse is located, describing the premises, giving its location, and stating the class of warehouse desired. If required by the port director, the applicant shall provide a list of names and addresses of all officers and managing officials of the

warehouse and all persons who have a direct or indirect financial interest in the operation of the warehouse facility. Except in the case of a class 2 or class 7 warehouse, the application shall state whether the warehouse facility is to be operated only for the storage or treatment of merchandise belonging to the applicant or whether it is to be operated as a public bonded warehouse. If the warehouse facility is to be operated as a private bonded warehouse, the application also shall state the general character of the merchandise to be stored therein, and provide an estimate of the maximum duties and taxes which will be due on all merchandise in the bonded warehouse at any one time. A warehouse facility will be determined by street address, location, or both. For example, if a proprietor has two warehouses located at one street address and three warehouses located at three different street addresses the two located at one address would be considered as one warehouse facility and the three located at three different addresses would each be considered as separate warehouses facilities. The applicant must prepare and have available at the warehouse a procedures manual describing the inventory control and recordkeeping system that will be used in the warehouse. A certification by the proprietor that the inventory control and recordkeeping system meets the requirements of §19.12 will be submitted with the application. The physical security of the facility must meet the approval of the port director.

(b) The applicant shall submit evidence of fire insurance coverage on the proposed warehouse. If the applicant does not have fire insurance for the proposed warehouse, he shall submit a certificate signed by an officer or agent of each of two insurance companies stating that the building is acceptable for fire-insurance purposes. The application shall also be accompanied by a blueprint showing measurements, openings, etc., of the building or space to be bonded. If the warehouse to be bonded is a tank, the blueprint shall show all outlets, inlets, and pipe liles and shall be certified as correct by the proprietor of the tank. A gauge table showing the capacity of the tank in United States gallons per inch or fraction of an inch of height, certified by the proprietor to be correct, shall accompany the application. When a part or parts of a building are to be used as the warehouse, there shall be given a detailed description of the materials and construction of all partitions. When the proprietor is the lessee of the premises covered by the application and bond, he shall furnish a stipulation concurred in by the sureties, agreeing that, prior to the expiration of the lease covering the premises without renewal thereof, he will transfer any merchandise remaining in the bonded warehouse to an approved bonded warehouse, pay all duties, charges, or exactions due on such merchandise, or otherwise dispose of such merchandise in accordance with the Customs laws and regulations. If the application is for a Class 9 warehouse (duty-free store), the applicant shall furnish the following documents:

(1) A map showing the location of the facilities to be bonded in respect to the port of entry and distances to all exit points of purchasers of conditionally duty-free merchandise;

(2) A description of the store's procedures, which includes inventory control, recordkeeping, and delivery methods. These procedures must be set forth in the proprietor's procedures manual. Such manual and subsequent changes therein must be furnished to the port director upon request. The procedures in the manual shall provide reasonable assurance that conditionally duty-free merchandise sold therein will be exported;

(3) If an airport duty-free store, a description of the store's procedures for restricting sales of conditionally duty-free merchandise to personal-use quantities; and

(4) A statement by an authorized official of the appropriate state, local or other governmental authority administering the exit point facility that the applicant duty-free store is authorized to deliver conditionally duty-free merchandise to purchasers at or through that exit point facility. A separate statement shall be required for each governments authority having jurisdiction over exit point facilities through

which the duty-free store intends to deliver merchandise to purchasers. If the merchandise will be delivered through an exit point which is not under the jurisdiction of a governmental authority, the applicant will provide a statement to that effect.

(c) On approval of the application to bond a warehouse of any class, except class 1, a bond shall be executed on Customs Form 301, containing the bond conditions set forth in §113.63 of this chapter.

(d) An applicant desiring to establish a general order warehouse may need to establish, as a condition of approval of the application, that the warehouse will meet minimum space requirements imposed by the port director to accommodate the storage of general order merchandise. Any space requirements will be posted by written notice at the customhouse and on the appropriate Customs-authorized electronic data interchange system. An applicant will not be subject to any minimum space requirements that are posted after the filing of his application.

(e) Any proprietor of a bonded warehouse may be required on 10 days' notice from the port director to furnish a new bond on Customs Form 301, containing the bond conditions set forth in §113.63 of this chapter; and if he fails to do so, no more goods shall be sent to the warehouse and those therein shall be removed at the expense of such proprietor. A new bond is required if the bonded warehouse is substantially altered or rebuilt.

(f) As a condition of approval of the application, the port director may order an inquiry by a Customs officer into the qualification, character, and experience of the applicant (e.g. personal history, financial and business data, credit and personal references), and into the security, suitability, and fitness of the facility. The port director may require an individual applicant to submit fingerprints on form FD 258 or electronically at the time of filing the application, or in the case of applications from a business entity, may require the fingerprints, on form FD 258 or electronically, of all employees of the business entity.

(g) The port director shall promptly notify the applicant in writing of his decision to approve or deny the application to bond the warehouse. If the application is denied the notification shall state the grounds for denial. The decision of the port director will be the final Customs administrative determination in the matter.

[28 FR 14763, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §19.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 19.3 Bonded warehouses; alterations; relocation; suspensions; discontinuance.

(a) *Alterations or relocation.* Alterations to or relocation of a warehouse may be made with the permission of the director of the port nearest to where the facility is located.

(b) *Suspensions.* The use of all or part of a bonded warehouse or bonded floor space may be temporarily suspended by the port director of a period not to exceed one year on written application of the proprietor if there are no bonded goods in the area. Upon written application of the proprietor and upon the removal of all nonbonded goods, if any, the premises may again be used for the storage of bonded goods. If the application is approved, the port director shall indicate the approval by endorsement on the application. Rebonding will not be necessary as long as the original bond remains in force.

(c) *Discontinuance.* If a proprietor wishes to discontinue the bonded status of the warehouse, he shall make written application to the port director. The port director shall not approve the application until all goods in the warehouse are transferred to another bonded warehouse without expense to the Government. To reestablish the bonded warehouse, application shall be made and approved under the provision of §19.2 of this chapter.

(d) *Employee lists.* The port director may make a written demand upon the proprietor to submit, within 30 days after the date of demand, a written list of the names, addresses, social security numbers, and dates and places of birth of all persons employed by the proprietor in the carriage, receiving, storage, or delivery of any bonded merchandise.

If a list has been previously furnished the proprietor shall advise the port director in writing of the names, addresses, social security numbers, and dates and places of birth of any new personnel employed by him in the carriage, receiving, storage, or delivery of bonded merchandise within 10 days after such employment. For the purpose of this part a person shall not be deemed to be employed by a warehouse proprietor if he is an officer or employee of an independent contractor engaged by the warehouse proprietor to load, unload, transport, or otherwise handle bonded merchandise.

(e) *Revocation or suspension for cause.* The port director may revoke or suspend for cause the right of a proprietor to continue the bonded status of the warehouse for any ground specified in this paragraph. An action to suspend or revoke the right to operate a bonded warehouse shall be taken in accordance with the procedures set forth in paragraph (f) of this section. If the bonded status is revoked or suspended for cause, the port director shall require all goods in the warehouse to be transferred to a bonded warehouse without expense to the Government. The bonded status of a warehouse may be revoked or suspended for cause if:

(1) The approval of the application to bond the warehouse was obtained through fraud or the misstatement of a material fact;

(2) The warehouse proprietor refuses or neglects to obey any proper order of a Customs officer or any Customs order, rule, or regulation relative to the operation or administration of a bonded warehouse;

(3) The warehouse proprietor or an officer of a corporation which has been granted the right to operate a bonded warehouse is convicted of or has committed acts which would constitute a felony, or a misdemeanor involving theft, smuggling, or a theft-connected crime. Any change in the employment status of the corporate officer, (e.g., discharge, resignation, demotion, or promotion) prior to conviction of a felony or prior to conviction of a misdemeanor involving theft, smuggling, or a theft-connected crime, resulting from acts committed while a corporate officer, will not preclude application of this provision;

(4) The warehouse proprietor does not provide secured facilities or properly safeguard merchandise within the bonded warehouse;

(5) The warehouse proprietor fails to furnish a current list of names, addresses, and other information required by § 19.3(d);

(6) The bond required by § 19.2(c) or (d) of this chapter is determined to be insufficient in amount or lacking sufficient sureties, and a satisfactory new bond with goods and sufficient sureties is not furnished within a reasonable time;

(7) Bonded merchandise has not been stored in the warehouse for a period of 2 year; or

(8) The warehouse proprietor or an employee of the warehouse proprietor discloses proprietary information in, or proprietary information contained on, documents to be included in the permit file folder to an unauthorized person.

(9) The proprietor of a Class 9 warehouse is or has been unable to provide reasonable assurance that conditionally duty-free merchandise is or was exported in compliance with the regulations of this part.

(f) *Procedure for revocation or suspension for cause.* The port director may at any time serve notice in writing upon any proprietor of a bonded warehouse to show cause why his right to continue the bonded status of his warehouse should not be revoked or suspended for cause. Such notice shall advise the proprietor of the grounds for the proposed action and shall afford the proprietor an opportunity to respond in writing within 30 days. Thereafter, the port director shall consider the allegations and responses made by the proprietor unless the proprietor in his response requests a hearing. If a hearing is requested, it shall be held before a hearing officer designated by the Commissioner of Customs or his designee within 30 days following the proprietor's request. The proprietor may be represented by counsel at such hearing, and all evidence and testimony of witnesses in such proceedings, including substantiation of the allegations and the responses thereto shall be

presented, with the right of cross-examination to both parties. A stenographic record of any such proceeding shall be made and a copy thereof shall be delivered to the proprietor of the warehouse. At the conclusion of the hearing, the hearing officer shall promptly transmit all papers and the stenographic record of the hearing to the Assistant Commissioner, Office of Field Operations or designee together with his recommendation for final action. The proprietor may submit in writing additional views or arguments to the Assistant Commissioner, Office of Field Operations or designee following a hearing on the basis of the stenographic record, within 10 days after delivery to him of a copy of such record. The Assistant Commissioner, Office of Field Operations or designee shall thereafter render his decision in writing, stating his reasons therefor. Such decision shall be served on the proprietor of the warehouse, and shall be considered the final administrative action.

(g) *Review by the Court of International Trade.* Any proprietor adversely affected by a decision of the Assistant Commissioner, Office of Field Operations or designee may appeal the decision in the Court of International Trade.

[T.D. 82–204, 47 FR 49369, Nov. 1, 1982, as amended by T.D. 85–90, 50 FR 21431, May 24, 1985; T.D. 88–63, 53 FR 40219, Oct. 14, 1988; T.D. 92–81, 57 FR 37697, Aug. 20, 1992; T.D. 95–99, 60 FR 62733, Dec. 7, 1995; T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 19.4 CBP and proprietor responsibility and supervision over warehouses.

(a) *Customs supervision.* The character and extent of Customs supervision to be exercised in connection with any warehouse facility or transaction provided for in this part shall be in accordance with §101.2(c) of this chapter. Independent of any need to appraise or classify merchandise, the port director may authorize a Customs officer to supervise any transaction or procedure at the bonded warehouse facility. Such supervision may be performed through periodic audits of the warehouse proprietor's records, quantity counts of goods in warehouse inventories, spot checks of selected warehouse transactions or procedures or reviews of conditions of recordkeeping, storage, security, or safety in a warehouse facility.

(b) *Proprietor responsibility and supervision*—(1) *Supervision.* The proprietor shall supervise all transportation, receipts, deliveries, sampling, recordkeeping, repacking, manipulation, destruction, physical and procedural security, conditions of storage, and safety in the warehouse as required by law and regulations. Supervision by the proprietor shall be that which a prudent manager of a storage and manipulation facility would be expected to exercise.

(2) *Customs access.* The warehouse proprietor shall permit access to the warehouse and present merchandise within a reasonable time after request by any Customs officer.

(3) *Safekeeping of merchandise and records.* The proprietor is responsible for safekeeping of merchandise and records concerning merchandise entered in Customs bonded warehouses. The proprietor or his employees shall safeguard and shall not disclose proprietary information contained in or on related documents to anyone other than the importer, importer's transferee, or owner of the merchandise to whom the document relates or their authorized agent.

(4) *Records maintenance*—(i) *Maintenance.* The proprietor shall:

(A) Maintain the inventory control and recordkeeping system in accordance with the provisions of §19.12 of this part;

(B) Retain all records required in this part and defined in §163.1(a) of this chapter, pertaining to bonded merchandise for 5 years after the date of the final withdrawal under the entry; and

(C) Protect proprietary information in its custody from unauthorized disclosure.

(ii) *Availability.* Records shall be readily available for Customs review at the warehouse. In addition, a proprietor may keep records at another location for Customs review, but only if the proprietor first receives written approval for such storage from the port director.

(5) *Record retention in lieu of originals.* A warehouse proprietor may, in accordance with §163.5 of this chapter, utilize alternative storage methods in lieu of maintaining records in their original formats.

(6) *Warehouse and merchandise security.* The warehouse proprietor shall maintain the warehouse facility in a safe and sanitary condition and establish procedures adequate to ensure the security of all merchandise under Customs custody stored in the facility. The warehouse construction will be a factor that will be considered by the port director in deciding whether to approve the application. The facility shall be built in such a manner as to render it impossible for unauthorized personnel to enter the premises without such violence as to make the entry easy to detect. If a portion of the facility is to be used for the storage of nonbonded merchandise, the port director shall designate the means for effective separation of the bonded and non-bonded merchandise, such as a wall, fence, or painted line. All inlets and outlets to bonded tanks shall be secured with locks and/or in-bond seals.

(7) *Storage conditions.* Merchandise in the bonded area shall be stored in a safe and sanitary manner to minimize damage to the merchandise, avoid hazards to persons, and meet local, state, and Federal requirements applicable to specific kinds of goods. Doors and entrances shall be left unblocked for access by Customs officers and warehouse proprietor personnel.

(8) *Manner of storage.* Packages shall be received in the warehouse and recorded in the proprietor's inventory and accounting records according to their marks and numbers. Packages containing weighable or gaugeable merchandise not bearing shipping marks and numbers shall be received under the weigher's or gauger's numbers. Packages with exceptions due to damage or loss of contents, or not identical as to quantity or quality of contents shall be stored separately until the discrepancy is resolved with Customs. Merchandise received in the warehouse shall be stored in a manner directly identifying the merchandise with the entry, general order, or seizure number; using a unique identifier for inventory categories composed of fungible merchandise accounted for on a First-In-First-Out (FIFO) basis; or using a unique identifier for inventory categories composed of fungible merchandise accounted for using another approved alternative inventory method.

(i) *Direct identification.* The warehouse proprietor shall mark all shipments for identification, showing the general order or warehouse entry number or seizure number and the date of the general order, entry, or delivery ticket in the case of seizures. Containers covered by a given warehouse entry, general order or seizure shall not be mixed with goods covered by any other entry, general order or seizure. Merchandise covered by a given warehouse entry, general order or seizure may be stored in multiple locations within the warehouse if the proprietor's inventory control system specifically identifies all locations where merchandise for each entry, general order or seizure is stored and the quantity in each location. The proprietor must provide, upon request by a Customs officer, a record balance of goods, specifying the quantity in each storage location, covered by any warehouse entry, general order, or seizure so a physical count can be made to verify the accuracy of the record balance.

(ii) *FIFO.* A proprietor may account for fungible merchandise on a First-In-First-Out (FIFO) basis instead of specific identification by warehouse entry number, provided the merchandise meets the criteria for fungibility and the recordkeeping requirements contained in §19.12 of this part are met. As of the beginning date of FIFO procedures, each kind of fungible merchandise in the warehouse under FIFO shall constitute a separate inventory category. Each inventory category shall be assigned a unique number or other identifier by the proprietor to distinguish it from all other inventory categories under FIFO. All of the merchandise in a given inventory category shall be physically placed so as to be segregated from merchandise under other inventory categories or merchandise accounted for under other inventory methods. The unique identifier shall be marked on the merchandise,

its container, or the location where it is stored so as to clearly show the inventory category of each article under FIFO procedures. Merchandise covered by a given unique identifier may be stored in multiple locations within the warehouse if the proprietor's inventory control system specifically identifies all locations where merchandise for a specific unique identifier is stored and the quantity in each location. The proprietor must provide, upon request by a Customs officer, a record balance of goods, specifying the quantity in each storage location, covered by any warehouse entry, general order, seizure, or unique identifier so a physical count can be made to verify the accuracy of the record balance.

(iii) *Other alternative inventory methods.* Other alternative inventory systems may be used, if CBP approval is obtained. Importers or proprietors who wish to use an alternative inventory method other than FIFO must apply to CBP Headquarters, Regulations and Rulings, Office of International Trade, for approval.

(9) *Miscellaneous responsibilities.* The proprietor is responsible for complying with requirements for transport to his warehouse, deposit, manipulation, manufacture, destruction, shortage or overage, inventory control and recordkeeping systems, and other requirements as specified in this part.

[T.D. 97–19, 62 FR 15834, Apr. 3, 1997, as amended by T.D. 98–22, 63 FR 11825, Mar. 11, 1998; T.D. 98–56, 63 FR 32944, June 16, 1998]

§ 19.5 [Reserved]

§ 19.6 Deposits, withdrawals, blanket permits to withdraw and sealing requirements.

(a)(1) *Deposit in warehouse.* The port director may authorize the deposit of merchandise in designated bonded warehouses, without physical supervision by a CBP officer. Goods for which a warehouse or rewarehouse entry has been accepted, according to the procedures in part 144, subpart B, of this chapter, will be examined or inspected at the place of unlading, bonded warehouse, or other location as ordered by the port director. When merchandise is deposited in a proprietor's warehouse or is accepted and receipted for by a proprietor or his agent for transport to the proprietor's warehouse, the proprietor will be responsible for the quantity and condition of merchandise reflected on entry documentation adjusted by (i) any allowance made under part 158, subparts A and B, of this chapter by the port director, and (ii) any discrepancy report made jointly on the appropriate cartage documents as set forth in §125.31 of this chapter by the warehouse proprietor and the bonded carrier or licensed cartman or lighterman delivering the goods to the warehouse, or an independent weigher, gauger, measurer, and signed by an authorized representative of the above within 15 calendar days after deposit. A copy of any joint report of discrepancy must be made within five business days of agreement and provided to the port director on the appropriate cartage documents as set forth in §125.31 of this chapter. If the proprietor of the bonded warehouse transports the goods to the warehouse, no discrepancy report will be necessary.

(2) *Allowance after deposit.* After merchandise has been deposited in the warehouse the proprietor's liability may be further modified by any adjustment for duties allowed by the port director for concealed shortages (i.e., §158.5(a)), casualty loss (i.e., part 158, subpart C), destruction (i.e., §158.43), or manipulation (i.e, §19.11, 19 U.S.C. 1562).

(b)(1) *Withdrawal and removal from warehouse.* The port director may authorize the withdrawal and removal of merchandise, without physical supervision or examination by a CBP officer under permit issued under the procedure set forth in §144.39 of this chapter. When a withdrawal or removal is not physically supervised by a CBP officer, the warehouse proprietor will be relieved of responsibility only for the merchandise in its warehouse in the condition and quantity as shown on the application for withdrawal or removal. In the case of merchandise to be carted or transported in bond from the warehouse, the proprietor will be relieved of responsibility only if it receives the signed receipt on the withdrawal or removal document of the carrier named

in the document. The proprietor's responsibility may be adjusted by any discrepancy report made jointly by the warehouse proprietor, and the licensed cartman or lighterman, bonded carrier, weigher, gauger, or measurer and signed by the authorized representative of the above within 15 calendar days after removal from the warehouse. The adjustments must be noted on the permit copy of the withdrawal or removal document. A copy of any joint report of discrepancy must be promptly provided to the port director.

(2) *Retention in warehouse after withdrawal.* Merchandise for which a permit for withdrawal has been issued, whether duty-paid or not, need not be physically removed from the warehouse. However, such merchandise must be segregated or physically marked to maintain its identity as merchandise for which a withdrawal permit has been issued. Duty-paid or unconditionally duty-free merchandise which has been withdrawn, but not removed, from a warehouse is no longer deemed to be in CBP custody. All other goods which have been withdrawn, but not removed, remain in CBP custody until the end of the warehouse entry bond period (see § 144.5 of this chapter).

(c) *CBP determination of liability.* When a CBP officer physically supervises the deposit or removal of merchandise under paragraphs (a)(1) or (b)(1) of this section, the CBP officer's report of merchandise received or removed will be determinative of the quantity and condition of merchandise received or removed from the warehouse for CBP purposes.

(d) *Blanket permits to withdraw*—(1) *General.* (i) Blanket permits may be used to withdraw merchandise from bonded warehouses for:

(A) Delivery to individuals departing directly from the customs territory for exportation under the sales ticket procedure of § 144.37(h) of this chapter (Class 9 warehouses only);

(B) Aircraft or vessel supplies under § 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317); or

(C) The personal or official use of personnel of foreign governments and international organizations set forth in subpart I, part 148 of this chapter; or

(D) A combination of the foregoing.

(ii) Except as provided in paragraph (d)(1)(iii) of this section, blanket permits to withdraw may be used only for delivery at the port where withdrawn and not for transportation in bond to another port. Blanket permits to withdraw may not be used for delivery to a location for retention or splitting of shipments under the provisions of § 18.24 of this chapter. A withdrawer who desires a blanket permit must state on the warehouse entry, or on the warehouse entry/entry summary when used as an entry, that ''Some or all of the merchandise will be withdrawn under blanket permit per § 19.6(d), CBP Regulations.'' CBP's acceptance of the entry will constitute approval of the blanket permit. A copy of the entry will be delivered to the proprietor, whereupon merchandise may be withdrawn under the terms of the blanket permit. The permit may be revoked by the port director in favor of individual applications and permits if the permit is found to be used for other purposes, or if necessary to protect the revenue or properly enforce any law or regulation CBP is charged with administering. Merchandise covered by an entry for which a blanket permit was issued may be withdrawn for purposes other than those specified in this paragraph if a withdrawal is properly filed as required in subpart D, part 144, of this chapter.

(iii) Blanket permits to withdraw may be used for a withdrawal for transportation to another port by a duty-free sales enterprise which meets the requirements for exemption as stated in § 144.34(c) of this chapter. In addition, blanket permits to withdraw may be used for a withdrawal from a Class 9 warehouse for transportation in bond to another port of duty-free merchandise intended for passengers' on-board purchases when expressly authorized in writing by the appropriate Director, Field Operations, provided that both the Class 9 warehouse and port of destination are under that Director's authority and the vessel is destined for a foreign destination.

(2) *Withdrawals under blanket permit.* Withdrawals may be made under blanket permit without any further CBP approval, and must be documented by

placing a copy of the withdrawal document in the proprietor's permit file folder. Each withdrawal must be filed on CBP Form 7501, or its electronic equivalent, and must be consecutively numbered, prefixed with the letter''B''. The withdrawal must specify the quantity and value of each type of merchandise to be withdrawn. Each copy must bear the summary statement described in §144.32(a) of this chapter, reflecting the balance of merchandise covered by the warehouse entry. Any joint discrepancy report of the proprietor and the bonded carrier, licensed cartman or lighterman, or weigher, gauger, or measurer for a supplementary withdrawal must be made on the copy and reported to the port director as provided in paragraph (b)(1) of this section. A copy of the withdrawal must be retained in the records of the proprietor as provided in §19.12(d)(4) of this part. Merchandise must not be removed from the warehouse prior to the preparation of the supplementary withdrawal. If merchandise is so removed, the proprietor will be subject to liquidated damages as if it were removed without a CBP permit.

(3) *Withdrawals under blanket permit from duty-free stores.* Withdrawals under blanket permit from duty-free stores must be made on the sales ticket described in §144.37(h) of this chapter. The sales ticket need not contain the summary statement described in §144.32(a) of this chapter, since the information required is included in the sales ticket register. The sales ticket must be serially numbered as provided in §144.37(h)(2) of this chapter.

(4) *Withdrawals under blanket permit for aircraft or vessel supplies.* Multiple withdrawals under a blanket permit for aircraft or vessel supplies, if consigned to the same daily aircraft flight number or vessel sailing, may be filed on one CBP Form 7512; however, an attachment form, developed by the warehouse proprietor and approved by the port director may be used for all withdrawals. This attachment form must provide a sufficient summary of the goods being withdrawn, and must include the warehouse entry number, the quantity and weight being withdrawn, the Harmonized Tariff Schedule of the United States number(s), the value of the goods, import and export lading information, the duty rate and amount, and any applicable Internal Revenue tax calculation, for each warehouse entry being withdrawn. A copy of CBP Form 7512 and the summary attachment must be attached to each permit file folder unless the warehouse proprietor qualifies for the permit file folder exemption under §19.12(d)(4)(iii) of this part.

(5) *Blanket permit summary.* When all of the merchandise covered by an entry on which a blanket permit to withdraw was issued has been withdrawn, including withdrawals made for purposes other than duty-free store delivery, vessel or aircraft supply, or diplomatic use, the proprietor must prepare a report on a copy of CBP Form 7501, or its electronic equivalent, or a form on the letterhead of the proprietor, which provides an account of the disposition of the merchandise covered by the blanket permit. The form must bear the words ''BLANKET PERMIT SUMMARY'' in capital letters conspicuously printed or stamped in the top margin. On the form, the proprietor must certify that the merchandise listed thereunder was withdrawn in compliance with §19.6(d), and must account for all of the merchandise withdrawn under blanket permit by HTSUS (Harmonized Tariff Schedule of the United States) number, HTSUS quantity (where applicable) and value. If applicable, the account must separately list and identify merchandise withdrawn for

(i) Duty-free store exportation,

(ii) Vessel or aircraft supply use, and

(iii) Personal or official use of persons and organizations set forth in subpart I, part 148, of this chapter. If all of the merchandise was withdrawn under the sales ticket procedure of §144.37(h) of this chapter, the sales ticket register may be substituted for the blanket permit summary. The form will be placed in the permit file folder and treated as provided in §19.12(a) of this part.

(e) *Affixing or breaking of seals.* The port director may authorize a warehouse proprietor to: (1) Break CBP in bond seals affixed under §18.4 of this chapter, or under any CBP order or directive, on any vehicle or container of

goods entered for warehouse upon arrival of the vehicle or container at the warehouse: or (2) affix CBP in bond seals to any vehicle or container of goods for which a withdrawal document has been approved for movement in bond. The affixing or breaking of seals so authorized, will be deemed to have been done under CBP supervision. The proprietor must report to the port director any seal found, upon arrival of the vehicle or container at the warehouse, to be broken, missing, or improperly affixed, and hold the vehicle or container and its contents intact pending instructions from the port director.

[T.D. 82–204, 47 FR 49370, Nov. 1, 1982, as amended by T.D. 84–149, 49 FR 28698, July 16, 1984; T.D. 92–81, 57 FR 37697, Aug. 20, 1992; T.D. 94–81, 59 FR 51494, Oct. 12, 1994; T.D. 95–81, 60 FR 52295, Oct. 6, 1995; T.D. 97–19, 62 FR 15836, Apr. 3, 1997; CBP Dec. 09–48, 74 FR 68684, Dec. 29, 2009; CBP Dec. 15–14, 80 FR 61286, Oct. 13, 2015]

§ 19.7 Expenses of labor and storage.

(a) All merchandise deposited in public stores or in bonded warehouses shall be held liable for the expenses of labor and storage chargeable thereon at the customary rates and for all other expenses accruing upon the goods.

(b) The rates of storage and labor shall be agreed upon between the importer and the warehouse proprietor, but in case of disagreement the port director may, with the consent of all parties in interest, determine the rates to be charged.

(c) Except in cases provided for by §141.102(d) of this chapter, when merchandise is stored in a public store under a warehouse entry, general order, or otherwise, the charges for storage due the Government shall be paid before the packages are delivered. The charges shall be based upon the existing bonded warehouse tariff of the port for storage and labor.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 73–175, 38 FR 17446, July 2, 1973]

§ 19.8 Examination of goods by importer; sampling; repacking; examination of merchandise by prospective purchasers.

Importers may, upon application approved by the port director on Customs Form 3499 examine, sample, and repack[12] or transfer merchandise in bonded warehouse. Where there will be no interference with the orderly conduct of Customs business and no danger to the revenue prospective purchaser may be permitted to examine merchandise in bonded warehouses upon the written request of the owner, importer, consignee, or transferee.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 82–204, 47 FR 49371, Nov. 1, 1982]

§ 19.9 General order, abandoned, and seized merchandise.

(a) *Acceptance of merchandise.* The arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry). A joint determination will be made by the warehouse proprietor and the bonded carrier of the quantity and condition of the goods or articles so delivered to the warehouse. Within two working days of the joint determination, the warehouse proprietor will report to the port director any discrepancy between the quantity and condition of the goods and that reported on CF 6043, or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs.

(b) *Recording and storing.* General order, abandoned, and seized goods and articles shall be recorded and stored in the warehouse as prescribed by §19.12.

(c) *Release of merchandise.* Merchandise in general order may be released

[12] Repacking shall be considered a manipulation within the purview of sec. 562, Tariff Act of 1930, as amended.

by the warehouse proprietor, after Customs inspection or examination as ordered by the port director, to the person named in a release order under §141.11 of this chapter. The release may only be made by the proprietor upon presentation of a permit to release or delivery authorization signed by the appropriate Customs officer on Customs Form 3461, or its electronic equivalent, 7501, or its electronic equivalent, 368 or 368A or other Customs form as designated by the port director. General order goods which have been unclaimed under §127.11 of this chapter, voluntarily abandoned, or seized and forfeited may be released for transfer to the place of sale upon presentation to the warehouse proprietor of an approved copy of Customs Form 5251 (Order to Transfer Merchandise for Public Auction (Sale)), and an approved copy of Customs Form 6043 (Delivery Ticket). The quantity and condition of the goods so transferred shall be determined jointly by the proprietor and the cartman or lighterman picking up the goods for delivery to the place of sale. Any discrepancies shall be noted on the delivery ticket, a copy of which shall be sent to the port director within two business days of agreement. Seized goods that are released for a purpose other than sale may be released from warehouse only upon such written terms and conditions as directed by the port director.

[T.D. 82–204, 47 FR 49371, Nov. 1, 1982, as amended by T.D. 92–56, 57 FR 24944, June 12, 1992; T.D. 02–65, 67 FR 68032, Nov. 8, 2002; CBP Dec. 15–14, 80 FR 61286, Oct. 13, 2015]

§ 19.10 Examination packages.

Merchandise sent from a bonded warehouse to the appraiser's stores for examination shall be returned by the port director to the warehouse for delivery unless the warehouse proprietor endorses the duty-paid permit to authorize delivery to another person.

[T.D. 82–204, 47 FR 49371, Nov. 1, 1982]

MANIPULATION IN BONDED WAREHOUSES AND ELSEWHERE

§ 19.11 Manipulation in bonded warehouses and elsewhere.

(a) So far as applicable, the general provisions of the regulations governing warehouses bonded for the storage of imported merchandise shall apply to bonded manipulation warehouses and to other designated places of manipulation.

(b) Merchandise to be manipulated under section 562, Tariff Act of 1930, as amended, may be entered on Customs Form 7501, or its electronic equivalent, and sent directly to a storage-manipulation warehouse.

(c) Warehouse proprietors shall not allow manipulation of any merchandise without a prior permit issued by the port director, except as provided in paragraph (h) of this section. Merchandise entered for warehouse may be transferred to a storage-manipulation warehouse; or merchandise entered for storage-manipulation warehouse may be transferred after manipulation to the storage portion of the same warehouse, to another storage warehouse, or to a manufacturing warehouse of class 6.

(d) The application to manipulate, which shall be filed on Customs Form 3499 with the port director having jurisdiction of the warehouse or other designated place of manipulation, shall describe the contemplated manipulation in sufficient detail to enable the port director to determine whether the imported merchandise is to be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, within the meaning of section 562, Tariff Act of 1930, as amended. If the port director is satisfied that the merchandise is to be so manipulated, he may issue a permit on Customs Form 3499, making any necessary modification in such form. The port director may approve a blanket application to manipulate on Customs Form 3499, for a period of up to one year, for a continuous or a repetitive manipulation. The warehouse proprietor must maintain a running record of manipulations performed under a blanket application, indicating the quantities before and after each manipulation. The record must show what took place at each manipulation describing marks and numbers of packages, location within the facility, quantities, and description of goods before and after manipulation. The port director is authorized to revoke a blanket approval to manipulate

and require the proprietor to file individual applications if necessary to protect the revenue, administer any law or regulation, or both. Manipulation resulting in a change in condition of the merchandise, which will make it subject to a lower rate of duty or free of duty upon withdrawal for consumption, is not precluded by the provisions of such section 562.

(e) No merchandise shall be manipulated elsewhere than in a bonded warehouse unless the merchandise has been regularly entered for consumption or warehouse and is of a class entitled to the warehousing privilege under section 557, Tariff Act of 1930, as amended.

(f) Upon compliance with the provisions of paragraph (d) of this section, manipulated merchandise may be further manipulated before withdrawal in cases where the port director is satisfied that this will not endanger the revenue or interfere with the efficient conduct of Customs business. The merchandise remaining in the warehouse shall be properly repacked after each manipulation.

(g) Except as provided in §144.38 of this chapter, manipulated merchandise may be withdrawn under any form of withdrawal, but no withdrawal shall be accepted for less than an entire repacked package. Each type of withdrawal filed shall contain a summary statement indicating the quantity in the warehouse account after manipulation and immediately before the withdrawal, the quantity withdrawn on the particular withdrawal, and the quantity remaining in the warehouse after the withdrawal. When merchandise covered by a consumption entry is manipulated elsewhere than in a bonded warehouse and thereafter withdrawn for consumption, the withdrawal shall be on Customs Form 7501, or its electronic equivalent, and shall be liquidated in accordance with §159.9 of this chapter.

(h) Merchandise which has been entered for warehouse and placed in a Class 9 warehouse (duty-free store) may be unpacked into its smallest irreducible unit for sale without a prior permit issued by the port director. The port director may issue a blanket permit to a duty-free store for up to one year permitting the destruction of merchandise covered by any entry and found to be nonsaleable, if the merchandise to be destroyed is valued at less than 5 percent of the value of the merchandise at time of entry or $1,250, whichever is less, in its undamaged condition. Such permit may be revoked in favor of a permit for each entry and/or destruction whenever necessary to assure proper destruction and protection of the revenue. The proprietor shall maintain a record of unpacking merchandise into saleable units and destruction of nonsaleable merchandise in its inventory and accounting records.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 82–204, 47 FR 49371, Nov. 1, 1982; T.D. 84–129, 49 FR 23166, June 5, 1984; T.D. 84–171, 49 FR 31253, Aug. 3, 1984; T.D. 84–213, 49 FR 41169, Oct. 19, 1984; T.D. 85–38, 50 FR 8723, Mar. 5, 1985; T.D. 89–1, 53 FR 51254, Dec. 21, 1988; T.D. 92–81, 57 FR 37698, Aug. 20, 1992; T.D. 95–81, 60 FR 52295, Oct. 6, 1995; T.D. 97–19, 62 FR 15836, Apr. 3, 1997; CBP Dec. 15–14, 80 FR 61286, Oct. 13, 2015]

ACCOUNTS

§ 19.12 Inventory control and recordkeeping system.

(a) *Systems capability*. The proprietor of a class 11 general order warehouse as described in §19.1 must have an automated inventory control and recordkeeping system. Proprietors of existing class 3, 4, or 5 warehouses as described in §19.1 certified before December 9, 2002, to receive general order merchandise must have automated inventory control and recordkeeping systems in place with respect to general order merchandise after a period of 2 years from December 9, 2002. All other warehouse proprietors have a choice of maintaining manual or automated inventory control and recordkeeping systems or a combination of manual and automated systems. All inventory control and recordkeeping systems must be capable of:

(1) Accounting for all merchandise transported, deposited, stored, manipulated, manufactured, smelted, refined, destroyed in or removed from the bonded warehouse and all merchandise collected by a proprietor or his agent for transport to his warehouse. The records must provide an audit trail from deposit through manipulation,

manufacture, destruction, and withdrawal from the bonded warehouse either by specific identification or other CBP authorized inventory method. The records to be maintained are those which a prudent businessman in the same type of business can be expected to maintain. The records are to be kept in sufficient detail to permit effective and efficient determination by CBP of the proprietor's compliance with these regulations and correctness of his annual submission or reconciliation;

(2) Producing accurate and timely reports and documents as required by this part; and

(3) Identifying shortages and overages of merchandise in sufficient detail to determine the quantity, description, tariff classification and value of the missing or excess merchandise so that appropriate reports can be filed with CBP on a timely basis.

(b) *Procedures manual.* (1) The proprietor must have available at the warehouse an English language copy of its written inventory control and recordkeeping systems procedures manual in accordance with the requirements of this part.

(2) The proprietor must keep current its procedures manual and must submit to the port director a new certification at the time any change in the system is implemented.

(c) *Entry of merchandise into a warehouse*—(1) *Identification.* All merchandise collected by a proprietor or his agent for transport to his warehouse shall be receipted. In addition, all merchandise entered in a warehouse will be recorded in a receiving report or document using a customs entry number or unique identifier if an alternate inventory control method has been approved. All merchandise will be traceable to a customs entry and supporting documentation.

(2) *Quantity verification.* Quantities received will be reconciled to a receiving report or document such as an invoice with any discrepancy reported to the port director as provided in §19.6(a).

(3) *Recordation.* Merchandise received will be accurately recorded in the accounting and inventory system records from the receiving report or document using the customs entry number or unique identifier if an alternative inventory control method has been approved.

(d) *Accountability for merchandise in a warehouse*—(1) *Identification of merchandise.* The customs entry number or unique identifier, as applicable under §19.4(b)(8), will be used to identify and trace merchandise.

(2) *Inventory records.* The inventory records will specify by customs entry number or unique identifier if an alternative inventory control method is approved:

(i) The location of the merchandise within the warehouse;

(ii) Except for merchandise in general order, the cost or value of the merchandise, unless the proprietor's financial records maintain cost or value and the records are made available for CBP review; and

(iii) The beginning balance, cumulative receipts and withdrawals, adjustments, destructions, and current balance on hand by date and quantity.

(3) *Theft, shortage, overage or damage*—(i) *General.* Except as otherwise provided in paragraph (d)(3)(ii) of this section, any theft or suspected theft or overage or any extraordinary shortage or damage (equal to one percent or more of the value of the merchandise in an entry or covered by a unique identifier; or if the missing merchandise is subject to duties and taxes in excess of $100) must be immediately brought to the attention of the port director, and confirmed in writing within five business days after the shortage, overage, or damage has been brought to the attention of the port director. An entry for warehouse must be filed for all overages by the person with the right to make entry within five business days of the date of discovery. The responsible party must pay the applicable duties, taxes and interest on thefts and shortages reported to CBP within 20 calendar days following the end of the calendar month in which the shortage is discovered. The port director may allow the consolidation of duties and taxes applicable to multiple shortages into one payment; however, the amount applicable to each warehouse entry is to be listed on the submission and must specify the applicable duty,

tax and interest. These same requirements apply when cumulative thefts, shortages or overages under a specific entry or unique identifier total one percent or more of the value of the merchandise or if the duties and taxes owed exceed $100. Upon identification, the proprietor must record all shortages and overages in its inventory control and recordkeeping system, whether or not they are required to be reported to the port director at the time. The proprietor must also record all shortages and overages as required in the CBP Form 300 or annual reconciliation report under paragraphs (g) or (h) of this section, as appropriate. Duties and taxes applicable to any non-extraordinary shortage or damage and not required to be paid earlier must be reported and submitted to the port director no later than the date the certification of preparation of CBP Form 300 is due or at the time the certification of preparation of the annual reconciliation report is due, as prescribed in paragraphs (g) or (h) of this section.

(ii) *Class 9 warehouses.* With respect to Class 9 warehouses, any theft or suspected theft or overage or any extraordinary shortage or damage (equal to one percent or more of the merchandise in an entry or covered by a unique identifier; or if the missing merchandise is subject to duties and taxes in excess of $100) must be immediately brought to the attention of the port director, and confirmed in writing within 20 calendar days after the shortage, overage, or damage has been brought to the attention of the port director. An entry for warehouse must be filed for all overages by the person with the right to make entry within 20 calendar days of the date of discovery. The responsible party must pay the applicable duties, taxes and interest on thefts and shortages reported to CBP within 20 calendar days following the end of the calendar month in which the shortage is discovered. The port director may allow the consolidation of duties and taxes applicable to multiple shortages into one payment; however, the amount applicable to each warehouse entry is to be listed on the submission and must specify the applicable duty, tax and interest. These same requirements apply when cumulative thefts, shortages or overages under a specific entry or unique identifier total one percent or more of the value of the merchandise or if the duties and taxes owed exceed $100. Upon identification, the proprietor must record all shortages and overages in its inventory control and recordkeeping system, whether or not they are required to be reported to the port director at the time. The proprietor must also record all shortages and overages as required in the CBP Form 300 or annual reconciliation report under paragraphs (g) or (h) of this section, as appropriate. Duties and taxes applicable to any non-extraordinary shortage or damage and not required to be paid earlier must be reported and submitted to the port director no later than the date the certification of preparation of CBP Form 300 is due or at the time the certification of preparation of the annual reconciliation report is due, as prescribed in paragraphs (g) or (h) of this section. Discrepancies found in a Class 9 warehouse with integrated locations as set forth in §19.35(c) will be the net discrepancies for a unique identifier (see §19.4(b)(8)(ii) of this part) such that overages within one sales location will be offset against shortages in another location that is within the integrated location. A Class 9 proprietor who transfers merchandise between facilities in different ports without being required to file a rewarehouse entry in accordance with §144.34 of this chapter may offset overages and shortages within the same unique identifier for merchandise located in stores in different ports (see §19.4(b)(8)(ii) of this part).

(4) *Permit file folders*—(i) *Maintenance.* Permit file folders must be maintained and kept up to date by filing all receipts, damage or shortage reports, manipulation requests, withdrawals, removals and blanket permit summaries within five business days after the event occurs. The permit file folders must be kept in a secure area and must be made available for inspection by CBP at all reasonable hours.

(ii) *Review.* When the final withdrawal of merchandise relating to a specific warehouse entry, general order or seizure occurs, the warehouse proprietor must: review the permit file

folder to ensure that all necessary documentation is in the file folder accounting for the merchandise covered by the entry; notify CBP of any merchandise covered by the warehouse entry, general order or seizure which has not been withdrawn or removed; and file the permit file folder with CBP within 30 calendar days after final withdrawal, except as allowed by paragraph (d)(4)(iv) of this section. The permit file folder for merchandise not withdrawn during the general order period must be submitted to the port director upon receipt from CBP of the CBP Form 6043.

(iii) *Exemption to maintenance requirement.* Maintenance of permit file folders will not be required, if the proprietor has an automated system capable of: satisfactorily summarizing all actions by CBP warehouse entry; providing upon demand by CBP an entry activity summary report which lists all individual receipts, withdrawals, destructions, manipulations and adjustments by warehouse entry and is cross-referenced to the source documents for each transaction; and maintaining source documents so that the documents can be readily retrieved upon request. Failure to provide the entry activity summary report or documentation supporting the entry activity summary report upon demand by the port director or the field director of regulatory audit could result in reinstatement by the port director of the requirement to maintain the permit file folder for all warehouse entries. When final withdrawal is made, the proprietor must submit the entry activity summary report to CBP. Prior to submission, the proprietor must ensure the accuracy of the summary report and assure that all supporting documentation is on file and available for review if requested by CBP.

(iv) *Exemption to submission requirement.* At the discretion of the port director, a proprietor may be allowed to furnish formal notification of final withdrawal in lieu of the requirement to submit the permit file folder or entry activity summary within 30 calendar days of each final withdrawal. If approved to use this procedure the proprietor could be required by the port director to submit permit file folders or entry activity summaries on a selective basis. Failure to promptly provide the permit file folder or entry activity summary upon request by the port director or the field director of regulatory audit could result in withdrawal of this privilege.

(5) *Physical inventory.* The proprietor must take at least an annual physical inventory of all merchandise in the warehouse, or periodic cycle counts of selected categories of merchandise such that each category is counted at least once during the year, with prior notification of the date(s) given to CBP so that CBP personnel may observe or participate in the inventory if deemed necessary. If the proprietor of a Class 2 or Class 9 warehouse has merchandise covered by one warehouse entry, but stored in multiple warehouse facilities as provided for under §144.34 of this chapter, the facility where the original entry was filed must reconcile the on-hand balances at all locations with the record balance for those entries with merchandise in multiple locations. The proprietor must notify the port director of any discrepancies, record appropriate adjustments in the inventory control and recordkeeping system, and make required payments and entries to CBP, in accordance with paragraph (d)(3) of this section.

(e) *Withdrawal of merchandise from a warehouse.* All bonded merchandise withdrawn from a warehouse will be accurately recorded within the inventory control and recordkeeping system. The inventory control and recordkeeping system must have the capability to trace all withdrawals back to a customs entry and to ultimate disposition of the merchandise by the proprietor.

(f) *Special provisions for use of FIFO inventory procedures*—(1) *Notification.* A proprietor who wishes to use FIFO procedures for all or part of the merchandise in a bonded warehouse must provide the port director a written certification that: The proprietor has read and understands CBP FIFO procedures set forth in this section; the proprietor's procedures are in accordance with CBP FIFO procedures, and the proprietor agrees to abide by those procedures; and the proprietor of a public

warehouse will obtain the written consent of any importer using the warehouse before applying FIFO procedures to their merchandise.

(2) *Qualifying merchandise.* FIFO inventory procedures may be used only for fungible merchandise. For purposes of this section, ''fungible merchandise'' means merchandise which is identical and interchangeable for all commercial purposes. While commercial interchangeability is usually decided between buyer and seller or between proprietor and importer, CBP is the final arbiter of fungibility in bonded warehouses. The criteria for determining whether merchandise is fungible include, but are not limited to, Governmental and recognized industrial standards, part numbers, tariff classification, value, brand name, unit of quantity (such as barrels, gallons, pounds, pieces), model number, style and same kind and quality. Fungible textile and textile products which are withdrawn from a Class 9 warehouse may be accounted for using FIFO inventory procedures, inasmuch as such articles would be exempt from textile quotas.

(3) *Merchandise specifically excluded.* FIFO procedures cannot be applied to the following merchandise, as well as any other merchandise which does not comply with the requirements of paragraph (f)(2) of this section:

(i) Merchandise subject to quota, visa or export restrictions chargeable to different countries of origin;

(ii) Textile and textile products of different quota categories;

(iii) Merchandise with different tariff classifications or rates of duty, except where the difference is within the merchandise itself (such as kits, merchandise in unusual containers) or where the tariff classification or dutiability is determined only by conditions upon withdrawal (for example, withdrawal for vessel supplies, bonded wool transactions);

(iv) Merchandise with different legal requirements for marking, labeling or stamping;

(v) Merchandise with different trademarks;

(vi) Merchandise of different grades or qualities;

(vii) Merchandise with different importers of record;

(viii) Damaged or deteriorated merchandise;

(ix) Restricted merchandise; or

(x) General order, abandoned or seized merchandise.

(4) *Maintenance of FIFO.* FIFO procedures used for merchandise in any inventory category, must be used consistently throughout the warehouse storage and recordkeeping practices and procedures for the merchandise. For example, merchandise may not be added to inventory by FIFO but withdrawn by bypassing certain inventory layers to reach a specific warehouse entry other than the oldest one. However, this does not preclude the use of specific identification for some merchandise in a warehouse entry and FIFO for other merchandise, so long as they are segregated in physical storage and clearly distinguished in the inventory and accounting records.

(5) *FIFO recordkeeping.* In the inventory and accounting records, the proprietor must establish an inventory layer for each warehouse entry represented in each inventory category. The layers must be established in the order of time of acceptance of the entry or by the date of importation of merchandise covered by each applicable warehouse entry. There must be no mixing of layering both by time of acceptance and date of importation in the same warehouse. Records for each layer must, as a minimum, show the warehouse entry number, date of acceptance, date of importation, quantity and unit of quantity. They must also show for each entry the type of warehouse withdrawal number or other specific removal event charged against the entry, by date and quantity. Each addition to or deduction from the inventory category must be posted in the appropriate inventory category within 2 business days after the event occurs. All FIFO records and documentation must consistently use the same unit of quantity within each inventory category.

(6) *Entry requirements.* Warehouse entries covering any merchandise to be accounted for under FIFO must be prominently marked ''FIFO'' on the face of the entry document. The entry

document or an attachment thereto must show the unique identifier of each inventory category to be accounted for under FIFO, the quantity in each inventory category and the unit of quantity.

(7) *Receipts.* Any shortages, overages, or damage found upon receipt must be attributed to the entry under which the merchandise was received. FIFO procedures will not take effect until the merchandise is physically placed in the storage location for the inventory category represented in the entry.

(8) *Manipulation.* When manipulation results in a product with a different unique identifier, the inventory and accounting records must show the quantities of merchandise in each inventory category appearing in the product covered by the new unique identifier. The withdrawal must show the unique identifiers of both the materials used in the manipulation and the product as manipulated. The quantities of the original unique identifiers will be deducted from their respective warehouse entries on a FIFO basis when the resultant product is withdrawn.

(9) *Discontinuance of FIFO.* A proprietor may voluntarily discontinue the use of FIFO procedures for all or part of the merchandise currently under FIFO by providing written notification to the port director. The notification must clearly describe the merchandise, by commercial names and unique identifiers, to be removed from FIFO. Following notification, the merchandise must be segregated in both the recordkeeping system and the physical location by warehouse entry number and the quantities so removed must be deducted from the appropriate FIFO inventory category balances. Merchandise so removed must be maintained under the specific identification inventory method. FIFO procedures which were voluntarily discontinued may be reinstated, but not for merchandise covered by any warehouse entry for which FIFO was discontinued.

(g) *Warehouse proprietor submission.* Except as otherwise provided in paragraph (h) of this section or §19.19(b) of this part, the warehouse proprietor must prepare a Warehouse Proprietor's Submission on CBP Form 300 within 45 calendar days from the end of the business year and maintain the Submission on file for 5 years from the end of the business year covered by the Submission. The proprietor must submit to the port director, within 10 business days after preparation of the CBP Form 300, a letter signed by the proprietor certifying that the CBP Form 300 has been prepared, is available for CBP review, and is accurate. If the proprietor of a Class 2 or Class 9 warehouse has merchandise covered by one warehouse entry, but stored in multiple warehouse facilities as provided for under §144.34 of this chapter, the CBP Form 300 must cover all locations and warehouses of the proprietor. An alternative format may be used for providing the information required on the CBP Form 300.

(h) *Annual reconciliation*—(1) *Report.* Instead of preparing CBP Form 300 as required under paragraph (g) of this section, the proprietor of a class 2, importers' private bonded warehouse, and proprietors of classes 4, 5, 6, 7, 8, and 9 warehouses if the warehouse proprietor and the importer are the same party, must prepare a reconciliation report within 90 days after the end of the fiscal year unless the port director authorizes an extension for reasonable cause. The proprietor shall retain the annual reconciliation report for 5 years from the end of the fiscal year covered by the report. The report must be available for a spot check or audit by CBP, but need not be furnished to CBP unless requested. There is no form specified for the preparation of the report.

(2) *Information required*—(i) *General.* Except as otherwise provided in paragraph (h)(2)(ii) of this section, the report must contain the company name; address of the warehouse; class of warehouse; date of inventory or information on cycle counts; a description of merchandise for each entry or unique identifier, quantity on hand at the beginning of the year, cumulative receipts and transfers (by unit), quantity on hand at the end of the year, and cumulative positive and negative adjustments (by unit) made during the year.

(ii) *Class 9 warehouses.* If the proprietor of a Class 9 warehouse successfully demonstrates, by application to the appropriate port director, that shortages

will be reported within 20 calendar days of discovery, the port director may approve the submission of a report that contains the company name; address of the warehouse; class of warehouse; date of inventory or information on cycle counts; date when resulting shortages and overages are reported to CBP; a description of merchandise for each entry or unique identifier; and a listing of all entries open at the beginning of the year, added during the year, and closed during the year.

(iii) *Multiple facilities*. If the proprietor of a Class 2 or Class 9 warehouse has merchandise covered by one warehouse entry, but stored in multiple warehouse facilities as provided for under §144.34 of this chapter, the annual reconciliation report must cover all locations and warehouses of the proprietor at the same port. If the annual reconciliation report includes entries for which merchandise was transferred to a warehouse without filing a rewarehouse entry, as allowed under §144.34, the annual reconciliation report must contain sufficient detail to show all required information by location where the merchandise is stored. For example, if merchandise covered by a single entry is stored in warehouses located in 3 different ports, the annual reconciliation report should specify individually the beginning and ending inventory balances, cumulative receipts, transfers, and positive and negative adjustments for each location.

(3) *Certification*. The proprietor must submit to the port director within 10 business days after preparation of the annual reconciliation report, a letter signed by the proprietor certifying that the annual reconciliation has been prepared, is available for CBP review, and is accurate. The certification letter must contain the proprietor's IRS number; date of fiscal year end; the name and street address of the warehouse; the name, title, and telephone number of the person having custody of the records; and the address where the records are stored. Reporting of shortages and overages based on the annual reconciliation will be made in accordance with paragraph (d)(3) of this section. Any previously unreported shortages and overages should be reported to the port director and any unpaid duties, taxes and fees should be paid at this time.

(i) *System review*. The proprietor must perform an annual internal review of the inventory control and recordkeeping system and must prepare and maintain on file a report identifying any deficiency discovered and corrective action taken, to ensure that the system meets the requirements of this part.

(j) *Special requirements*. A warehouse proprietor submission (CBP Form 300) or annual reconciliation must be prepared for each facility or location as defined in §§19.2(a) and 19.35(c) of this part. When merchandise is transferred from one facility or location to another without filing a rewarehouse entry, as provided for in §144.34(c) of this chapter, the submission/reconciliation for the warehouse where the entry was originally filed should account for all merchandise under the warehouse entry, indicating the quantity in each location.

[T.D. 97–19, 62 FR 15836, Apr. 3, 1997, as amended by T.D. 99–78, 64 FR 57565, Oct. 26, 1999; T.D. 02–65, 67 FR 68033, Nov. 8, 2002; CBP Dec. 04–28, 69 FR 52599, Aug. 27, 2004; CBP Dec. 09–48, 74 FR 68684, Dec. 29, 2009]

MANUFACTURING WAREHOUSES

§ 19.13 Requirements for establishment of warehouse.

(a) Buildings or parts of buildings and other enclosures may be designated as bonded manufacturing warehouses if the port director is satisfied that their location, construction, and arrangement afford adequate protection to the revenue. Such warehouses shall be used solely and exclusively for the purpose for which they are bonded. The general provisions pertaining to warehouses for the storage of bonded merchandise shall, so far as relevant, apply to bonded manufacturing warehouses.

(b) Application for the establishment of such a warehouse shall be made to the director of the port where the premises are situated, setting forth the size, construction, and location of the premises, the manufacture proposed to

be carried on, and the kinds of materials intended to be stored and used therein.

(c) The procedure outlined in §19.2 with respect to the application to bond the premises and the execution of the bond shall be followed.

(d) A list of all articles intended to be manufactured in the warehouse shall be filed with the port director. Such list shall set forth the specific names under which the articles are to be exported and under which they will be known to the trade, and shall show the names of all the ingredients entering into the manufacture of such articles, with the quantities of such ingredients or materials as may be dutiable or taxable.

(e) Proprietors of such warehouses are required to conform strictly to the formulas filed with the bond, or subsequently, and in no instance shall an article be permitted to be manufactured in or withdrawn from the warehouse which does not contain all the ingredients and in the quantities specified in the formula for the manufacture of such article, or which contains any ingredient not specified in the formula.

(f) Manufactured articles shall be marked with the trade name of the goods and may be marked, in addition, with the formulas and with such insignia or name as may be indicated or desired by the purchaser, if such additional marking will in no manner conflict with the requirements of the formula or present or create a false or misleading statement or impression.

(g) *Secure storage.* Each bonded manufacturing warehouse shall have a secured area separated from the remainder of the premises to be used exclusively for the storage of imported merchandise, domestic spirits, and merchandise subject to internal-revenue tax transferred into the warehouse for manufacture. A like area shall be provided to be used exclusively for the storage of products manufactured in the warehouse. The area shall be secured to prevent any unauthorized person from having access thereto and the goods therein shall be arranged in a manner to assist a Customs officer in making the required examination or taking samples for analysis. The areas for storage of bonded material and manufactured products shall be secured in accordance with the standards prescribed in §19.4(b)(6) of this part. The proprietor shall mark each package with the correct warehouse entry number and date until manufacturing takes place. After manufacture, the proprietor shall mark each package of the finished product with the warehouse entry number and date.

(h) Entry shall be made and duties paid, where applicable, on any imported machinery or other equipment or apparatus that is for the construction of the warehouse or for the pursuit of its business.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 82–204, 47 FR 49372, Nov. 1, 1982; T.D. 84–213, 49 FR 41169, Oct. 19, 1984; T.D. 89–1, 53 FR 51254, Dec. 21, 1988; T.D. 97–19, 62 FR 15839, Apr. 3, 1997]

§19.13a Recordkeeping requirements.

The proprietor of a manufacturing warehouse shall comply with the recordkeeping requirements of §§19.4(b) and 19.12. In addition, the proprietor shall:

(a) Record all transfers from any storage area to a manufacturing area, and record all transfers from a manufacturing area to a finished product storage area, in the proprietor's inventory control and accounting records;

(b) Take an annual physical inventory of the merchandise as provided in §19.12(d)(5) in conjunction with the annual submission required by §19.12(g); and

(c) Record all manufacturing operations performed within the warehouse with sufficient detail to determine whether there has been compliance with the manufacturing formula filed with Customs and to permit Customs to audit use and disposition of the merchandise.

[T.D. 84–213, 49 FR 41169, Oct. 19, 1984, as amended by T.D. 97–19, 62 FR 15839, Apr. 3, 1997]

§19.14 Materials for use in manufacturing warehouse.

(a) Imported merchandise to be used in a bonded manufacturing warehouse shall be entered on Customs Form 7501, or its electronic equivalent, at the port at which such warehouse is located. Such form shall be prepared in 5 copies

and shall contain all of the statistical information as provided in §141.61(e) of this chapter. If the merchandise has been imported or entered for warehouse at another port, it may be forwarded to the port at which the manufacturing warehouse is located under an immediate transportation without appraisement entry or warehouse withdrawal for transportation, whichever is applicable.

(b) *Bond required.* Before the transfer of the merchandise to the manufacturing warehouse is permitted, a bond on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter shall be required.

(c) *Domestic merchandise.* When the proprietor of any bonded manufacturing warehouse desires to receive therein any domestic merchandise, except merchandise subject to internal-revenue tax, to be used in connection with the manufacturer of articles permitted to be manufactured in such warehouse, including packages, coverings, vessels, and labels used in putting up such articles, an application in the following form shall be sent to the port director for approval and after approval retained by the warehouse proprietor:

APPLICATION TO RECEIVE FREE MATERIALS

Port of _____

_____, 19____.

To the Port Director:

Application is hereby made to receive into the bonded manufacturing warehouse known as _____, situated at _____ the following described articles and materials:

Marks	Nos.	Description	Quantity	Value
.....	.....	.....	.....	
.....	.....	.....	.....	
.....	.....	.....	.....	

(Signature) _____

Port _____

_____, 19____.

To the warehouse proprietor in charge of the bonded manufacturing warehouse specified above:

The above described articles and materials are hereby permitted to be received into the warehouse in your charge, to be used therein in connection with the manufacture of articles as authorized by law.

Port Director _____

(d) *Domestic spirits and wines.* For the transfer of domestic spirits from the bonded premises of a distilled spirits plant to a bonded manufacturing warehouse, or for the transfer of domestic wines from a bonded wine cellar to a bonded manufacturing warehouse, a bond on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter, shall be required.

(e) *Monthly statement.* At the end of each month, the proprietor shall file with the port director a statement of all imported merchandise on which Internal Revenue tax has not been paid which was used by the proprietor in the manufacture of articles. The statement shall report this information for each warehouse entry represented in the manufacturing process.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 73–312, 38 FR 30882, Nov. 8, 1973; T.D. 82–204, 47 FR 49373, Nov. 1, 1982; T.D. 84–129, 49 FR 23166, June 5, 1984; T.D. 84–213, 49 FR 41169, Oct. 19, 1984; T.D. 85–123, 50 FR 29953, July 23, 1985; CBP Dec. 15–14, 80 FR 61286, Oct. 13, 2015]

§ 19.15 Withdrawal for exportation of articles manufactured in bond; waste or byproducts for consumption.

(a) Except cigars manufactured in bond and supplies for vessels, no articles or materials received into a bonded manufacturing warehouse or articles manufactured therefrom shall be withdrawn or removed therefrom except for direct exportation or transportation and exportation in bond to a foreign country. The exportation or shipment shall in every case be under the supervision of Customs.

(b) The coverings or containers of imported articles or materials, whether or not subject to duty apart from their contents, are not ''articles or materials'' within the meaning of section 311, Tariff Act of 1930, as amended, and need not be exported, but may be withdrawn from the warehouse for consumption under Customs Form 7501, or its electronic equivalent, upon payment of the duties applicable to such coverings or containers in their condition as withdrawn.

(c) Labels, coverings, and empty containers imported to be used in putting up the manufactured articles, if subject to duty or tax, constitute ''articles or

materials'' within the meaning of section 311, Tariff Act of 1930, as amended, but may be withdrawn for consumption upon payment of all applicable duties and taxes.

(d) When waste or a byproduct is withdrawn for consumption, Customs Form 7501, or its electronic equivalent, shall be used, modified as necessary and describing in detail the waste or byproduct and the imported material from which it was produced. Such waste or byproduct shall be appraised at its wholesale value at the time of withdrawal in the principal markets of the country from which the material was imported, determined in accordance with the provisions of section 402, Tariff Act of 1930, as amended. Upon payment of the duty, the withdrawal permit shall be issued for delivery and a proper credit given upon the manufacturer's bond.

(e) Each withdrawal covering the items which are permitted to be withdrawn for consumption shall contain a summary statement thereon, showing for each class of merchandise the quantity on hand in the account, the quantity covered by the withdrawal presented, and the quantity remaining in the warehouse account, if any.

(f) The general procedure covering warehouse withdrawals for exportation must be followed in the case of articles withdrawn for exportation from a bonded manufacturing warehouse.

(g)(1) Articles may be withdrawn for transportation and delivery to a bonded storage warehouse at an exterior port under the provisions of section 311, Tariff Act of 1930, as amended (19 U.S.C. 1311), for the sole purpose of immediate exportation, except for distilled spirits which may be withdrawn under the provisions of §311 for transportation and delivery to any bonded storage warehouse for the sole purpose of immediate exportation or may be withdrawn pursuant to section 309(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1309(a)). To make a withdrawal an in-bond application must be filed (see part 18 of this chapter), as provided for in §144.36 of this chapter. A rewarehouse entry shall be made in accordance with §144.34(b) of this chapter, supported by a bond on CBP Form 301, containing the bond conditions set forth in §113.63 of this chapter.

(2) Domestic distilled spirits transferred from a Customs bonded manufacturing warehouse, class 6, to a Customs bonded storage warehouse, class 2 or 3, in accordance with section 311, Tariff Act of 1930, as amended (19 U.S.C. 1311), shall be rewarehoused in accordance with the procedure for withdrawal and rewarehousing set forth in paragraph (g)(1) of this section. For other regulations concerning the entry and withdrawal of distilled spirits, see §144.15 of this chapter.

(h) No merchandise manufactured in a bonded manufacturing warehouse may be withdrawn by a person other than the manufacturer either from the manufacturing warehouse or from a warehouse where the merchandise is stored awaiting direct exportation, unless an authorization of the manufacturer is endorsed on the face of the withdrawal, or the manufacturer previously and in writing has transferred the right of withdrawal.

(i) When spirits and wines are withdrawn for shipment to Puerto Rico under section 311, Tariff Act of 1930, as amended, the procedure outlined in §7.1 of this chapter shall be followed.

(j) As proof of manufacture and exportation, the manufacturer, within 6 months from the date of demand by the port director, shall file in the case of each transaction or period of manufacture a statement certified by the warehouse proprietor showing the date and number of the bond, the quantity and identity of the dutiable or taxable merchandise used, and the quantity and description of the articles into which it has been manufactured, together with the quantities of any byproducts and waste produced. In the case of articles manufactured with the use of distilled spirits, the statement shall also be verified by the foreman or chemist of the factory and shall show the number of packages of spirits used, the marks and numbers, the number of wine, proof and taxable gallons, and the degree of proof.

(k) The same proofs of exportation shall be required as in the case of other warehouse withdrawals for exportation.

(l) When the fact of exportation of all the products has been established by such proofs and any byproducts and waste have been exported or released for consumption, the bond given by the manufacturer, or the charges against his bond, shall be canceled.

(m) Shortage, irregular delivery, and nondelivery occurring with respect to merchandise withdrawn from bonded manufacturing warehouse while it is under transportation in bond shall be charged against the bonded carrier.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 73–62, 38 FR 5630, Mar. 2, 1973; T.D. 73–175, 38 FR 17446, July 2, 1973; T.D. 78–298, 43 FR 38382, Aug. 28, 1978; T.D. 80–271, 45 FR 75641, Nov. 17, 1980; T.D. 82–204, 47 FR 49373, Nov. 1, 1982; T.D. 84–213, 49 FR 41170, Oct. 19, 1984; T.D. 89–1, 53 FR 51254, Dec. 21, 1988; T.D. 95–81, 60 FR 52295, Oct. 6, 1995; CBP Dec. 15–14, 80 FR 61286, Oct. 13, 2015; CBP Dec. 17–13, 82 FR 45404, Sept. 28, 2017]

§ 19.16 [Reserved]

SMELTING AND REFINING WAREHOUSES

§ 19.17 Application to establish warehouse; bond.

(a) *Application.* Application for the bonding of a plant of a manufacturer engaged in the smelting or refining, or both, of metal-bearing materials as provided for in section 312, Tariff Act of 1930, as amended, to reduce the metal content thereof to an unwrought metal, or metal in the form of oxides or other compounds which are obtained directly from the treatment of the dutiable materials provided for in chapters 26 and 71 through 83, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), shall be made by the manufacturer, to the director of the port nearest in which such plant is situated, giving the location of the premises and setting forth the work proposed to be carried on therein.

(b) [Reserved]

(c) *Discontinuance.* At the request of the proprietor the bonded status of the warehouse may be discontinued at any time provided the port director approves such discontinuance and the proprietor complies with directions of the port director with respect to the disposition of merchandise which may remain in the warehouse. The number of warehouses covered by a blanket smelting and refining bond may be reduced by discontinuance without necessitating a new bond unless the proprietor so desires.

(d) Upon the importation at any seaboard or frontier port of the United States of metal-bearing materials in any form intended for a bonded smelting or refining warehouse situated at some other port of entry, they may be forwarded under an immediate transportation without appraisement entry.

(e) *Bond.* Upon the arrival of imported metal-bearing material in any form for the purpose of being smelted or refined, or both, in bond at a port where a bonded smelting or refining warehouse is established, it shall be entered for warehouse. A bond on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter shall be on file. The port director shall thereupon issue a permit to the inspector to send such metal bearing materials from the importing vessel or vehicle by designated bonded vessels or vehicles to the smelting and refining warehouse named in the entry.

(f) Bonded metal-bearing materials shall be kept separate and distinct from nonbonded material until they have been sampled and weighed. The proprietor shall maintain a report of sampling, weighing, and assay of each shipment of bonded materials received into the warehouse for 5 years after liquidation of the warehouse entry for shipment.

(g) *Statement of inventory and bond charges.* Where two or more smelting or refining warehouses are included under one blanket smelting and refining bond, an overall statement must be prepared and maintained by the principal named in the bond by the 28th of each month, showing the inventory as of the close of the preceding month, of all metals on hand at each plant covered by the blanket bond and the total of bonded charges for all plants. If the warehouses covered by an overall statement are located in more than one port, each port director may choose to verify the accuracy of the inventory report only with respect to that portion of the report that relates to amounts held at a plant that is located within that port director's jurisdiction. All

discrepancies which cannot be reconciled by the port director shall be reported to Headquarters, U.S. Customs Service. If Headquarters finds that the aggregate quantity of dutiable metal at the several plants does not equal the quantity charged against the blanket bond, duties shall be collected for the quantity determined to be deficient.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 74–247, 39 FR 34650, Sept. 27, 1974; T.D. 82–204, 47 FR 49373, Nov. 1, 1982; T.D. 84–213, 49 FR 41170, Oct. 19, 1984; T.D. 89–1, 53 FR 51254, Dec. 21, 1988; T.D. 90–78, 55 FR 40166, Oct. 2, 1990; T.D. 95–99, 60 FR 62733, Dec. 7, 1995; T.D. 99–78, 64 FR 57565, Oct. 26, 1999]

§ 19.18 Smelting and refining; allowance for wastage; withdrawal for consumption.

(a) Except where absolute deductions have been allowed in the liquidation of the entry for losses on copper, lead, and zinc content of metal-bearing materials, pursuant to Chapter 26, Additional U.S. Note 1, Harmonized Tariff Schedule of the United States (see §151.55 of this chapter), the actual percentage of losses by weight shall be allowed if more than 90 percent by weight of:

(1) The zinc content initially treated at any lead plant, (2) the copper content of the imported materials treated at any zinc plant, or (3) the copper, lead, or zinc content of the imported material initially treated at any plant other than a copper, lead, or zinc plant is lost in processing such materials. Such actual percentage of losses by weight of the metal content shall be that shown by the manufacturer's annual statement. Such losses shall be applied in the liquidation of the entry to materials entered for consumption or for warehouse, during a 12-month period beginning on the first day of the month nearest to 90 days after the close of the manufacturer's fiscal year immediately preceding such 90-day period, provided the importer makes claim therefor in writing at the time the merchandise is entered. No further wastage shall be allowed. The full dutiable contents of such metal-bearing materials, as ascertained by commercial assay made by the Government chemists, less the wastage allowance (including dutiable metals entirely lost in smelting or refining, or both), shall constitute the quantity of dutiable metal which must be either exported, duty-paid, or transferred to another bonded warehouse in order to secure the cancellation of the charge made against the proprietor's bond as shown by the warehouse or rewarehouse entry account.

(b) Upon the withdrawal for consumption of metal so smelted or refined, or both, duty shall be collected thereon without the allowance for wastage, except where the metal was transferred to a bonded Customs warehouse other than a smelting warehouse and withdrawn therefrom for consumption. However, duty-paid warehouse withdrawals for consumption may be filed with regard to metal which will be physically withdrawn in the form of smelted or refined products whether at the time of the filing of the withdrawal papers the dutiable metal covered by the bond charge being cancelled by the withdrawal is in the form of ores, concentrates, crude metals, or intermediate products. If the warehouse withdrawal for consumption covers a product which does not sustain the full wastage allowable (see §19.22) prior to being physically released from Customs custody, a proportionate part only of such wastage may be allowed. The warehouse withdrawal and delivery permit shall state the estimated amount of the dutiable metal contained in the products, and the warehouse withdrawal shall specify the applicable wastage. A quantity of dutiable metal equivalent to the smelted or refined products covered by each withdrawal for consumption must be actually on hand at the plant or plants covered by the bond at the time of filing the withdrawals; but neither the actual ability to withdraw smelted or refined products from the warehouse nor the actual physical condition described in the withdrawal will be required at the time of filing the withdrawal.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 73–175, 38 FR 17446, July 2, 1973; T.D. 82–90, 47 FR 20753, May 14, 1982; T.D. 89–1, 53 FR 51254, Dec. 21, 1988]

§ 19.19 Manufacturers' records; annual statement.

(a) Every manufacturer engaged in smelting or refining, or both, shall immediately notify the director of the port nearest which the plant is located of any material change in the character of the metal-bearing materials smelted or refined and of any change in the methods of smelting or refining. Each plant for which any of the deductions provided for in Chapter 26, Additional U.S. Note 1, Harmonized Tariff Schedule of the United States, is to be claimed shall maintain complete smelting and refining records showing the receipts and disposition of each shipment of materials received in the plant. If losses are to be claimed under paragraph (c) of said headnote, a record shall be kept which will become a part of the annual statement described in paragraph (b) of this section. These records shall be retained for a period of not less than 5 years. In the case of records forming the basis of such an annual statement, the period for retention shall run from the date of the related annual statement. All such records shall be made available to the port director for such inspection and verification as he may deem advisable.

(b) Every manufacturer engaged in smelting or refining, or both, must prepare and submit to the port director at the port nearest which the plant is located an annual statement for the fiscal year for the plant involved not later than 60 days after the termination of that fiscal year. The annual statement for the smelting or refining warehouse or both, shall be in lieu of the warehouse proprietors submission required by §19.12. No specific form is prescribed in which such statement shall be prepared. As basic information, the statement shall show the quantities of metal-bearing materials on hand at the beginning of the period and the dutiable contents thereof; the quantities of metal-bearing materials received during the period and the dutiable contents thereof; the total metal-bearing materials to be accounted for and the dutiable contents thereof; the quantities of metal-bearing materials on hand at the end of the period and the dutiable contents thereof; and the quantities of metal-bearing materials worked during the period and the dutiable contents thereof. The statement of the quantity of metal-bearing materials worked during the period shall show the quantity of foreign material and the quantity of domestic material put in process during the smelting operations. The statement shall contain such further information concerning the quantities and kinds of metals and intermediary products produced at the plant as will show the wastage sustained in the smelting and refining operation.

[T.D. 67–139, 32 FR 8134, June 6, 1967, as amended by T.D. 82–204, 47 FR 49374, Nov. 1, 1982; T.D. 89–1, 53 FR 51254, Dec. 21, 1988; T.D. 99–78, 64 FR 57565, Oct. 26, 1999]

§ 19.20 Withdrawal of products from bonded smelting or refining warehouses.

(a) *For exportation.* The general procedure governing warehouse withdrawals for exportation shall be followed in the case of the withdrawal for exportation of dutiable metal from a bonded smelting or refining warehouse.

(b) *For transfer to another bonded warehouse.* (1) Withdrawal for transfer to another bonded warehouse shall be at the risk and expense of the applicant, and the general regulations governing the transfer of bonded merchandise from one warehouse to another or the transfer of imported materials from a bonded storage warehouse to a bonded manufacturing warehouse shall be followed so far as applicable.

(2) In the case of transportation to another port, the transportation entry shall show the quantity of metal withdrawn the wastage applicable thereto, and the imported material from which such metal was produced, together with any dutiable metal charged on entry.

§ 19.21 Smelting and refining in separate establishments.

(a) If the operations of smelting and refining are not carried on in the same establishment, the smelted and unrefined products obtained from the smelting of imported materials in a bonded smelting warehouse may be removed therefrom for shipment to a bonded refining warehouse located at the same or another port under the

general procedure for transfer from one bonded warehouse to another.

(b) When the transfer is to a bonded refining warehouse located at another port, the smelted and unrefined products or bullion obtained from the smelting of the imported material shall be weighed, sampled, and assayed before withdrawal, the sampling to be performed under Government supervision in accordance with §19.4 and the commercial practice in effect at the plant. A report of sampling, weight, and assay of transferred material shall be maintained for 5 years after liquidation of the warehouse entry.

(c) The withdrawal for transportation shall show the gross weight of the smelted and unrefined products withdrawn, the weight of the dutiable metal contained therein, the wastage applicable thereto and the duties properly chargeable on the withdrawn products as shown by the import entry.

(d) The rewarehouse entry covering the smelted and unrefined products at the bonded refining warehouse to which they are transferred shall be made out in accordance with the weights and duties shown on the withdrawal for transportation.

(e) Upon withdrawal of the metal from the bonded refining warehouse for export, the warehouse account of the refining warehouse shall be credited with the amount of metal so withdrawn, plus the refining wastage prescribed for said refining warehouse, plus the smelting wastage prescribed for the bonded smelting warehouse in which the smelted and unrefined products were produced, together with the amount of any dutiable metals entirely lost in the smelting or refining, or both. However, when the metal is withdrawn for consumption, duty shall be collected on an amount of metal-bearing materials in their condition as imported equivalent to that from which such metal would be producible. No allowance for either smelting or refining wastage shall be permitted, except where the metal is withdrawn from a Customs warehouse other than a bonded smelting and refining warehouse.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 82–204, 47 FR 49374, Nov. 1, 1982; T.D. 84–213, 49 FR 41170, Oct. 19, 1984]

§ 19.22 Withdrawal of metal refined in part from imported crude metal and in part from crude metal produced from imported materials.

Upon withdrawal for exportation of metal from a bonded warehouse engaged in refining, or smelting and refining, part of which metal was obtained from imported crude metal and part from crude metal produced by smelting imported materials, the warehouse account shall be credited with the quantity of metal so withdrawn, plus (a) the refining wastage allowance prescribed for that establishment, and (b) the smelting wastage allowance prescribed for the establishment in which the imported materials were smelted, and (c) any dutiable metals shown on the warehouse entry or the rewarehouse entry filed at the first-mentioned warehouse which have been lost and are attributable to the exported product. However, upon withdrawal of such refined metal for consumption, no allowance shall be made for wastage except where the withdrawal is made from a bonded Customs warehouse other than a bonded smelting and refining warehouse.

§ 19.23 Withdrawal for exportation from one port to be credited on warehouse entry account at another port.

On exportation of metal pursuant to the provisions of section 312(b)(1), Tariff Act of 1930, as amended, the general procedure covering warehouse withdrawals for exportation shall be followed. The proprietor of the plant from which the withdrawal is made shall prepare a sufficient number of copies of withdrawals on Customs Form 7512, in addition to any other copies required by the regulations, to enable the director of the port of withdrawal to forward a copy to the director of each other port where credit is to be applied. Such withdrawals shall designate the plant or plants which are to receive the credit, shall specify the warehouse entry number or numbers to which the credit is to be applied, and shall state the quantity of dutiable metal which is to be applied to each warehouse entry specified, and when any of the credits specified represent the last withdrawal against a particular warehouse entry,

the words ''final withdrawal'' shall be shown on the withdrawal. When two or more plants nearest a given port are designated to receive credit, sufficient copies of the withdrawals shall be prepared to cover each such plant and entry. If at the time of withdrawal the warehouse proprietor does not know the plants or warehouse entry numbers which are to be credited with the withdrawal, or the metallic content of the dutiable metal being exported, the preparation of the before-mentioned copies of Customs Form 7512 may be postponed for a period of not longer than 30 days from the date of the movement of the dutiable metal from the plant. In such cases, a so-called memorandum withdrawal, in the number of copies provided for in §144.37 of this chapter, may be used in the first instance for the purpose of obtaining the required Customs record of the exportation of the dutiable metal under Customs supervision. All memorandum withdrawals shall be conspicuously endorsed ''Memorandum Withdrawal.''

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 73–175, 38 FR 17447, July 2, 1973; T.D. 89–1, 53 FR 51254, Dec. 21, 1988]

§ 19.24 Theoretical transfer without physical shipment of dutiable metal.

(a) Transfer may be made from one port of entry to another by a withdrawal for transportation and rewarehouse executed in regular form without physical shipment of the metal, provided enough like metal in any form is on hand at the establishment to which the theoretical transfer is made to satisfy the new bond obligations.

(b) The wastage allowance established for the plant from which the original withdrawal for transportation was made shall be shown on the transfer withdrawal and set up as a part of the charge against the bond at the plant to which the metal was theoretically transferred. Such wastage shall govern and be the basis for allowance when metal is withdrawn from the plant where the theoretical rewarehousing was affected.

§ 19.25 Credit to be applied under various forms of withdrawals.

(a) The warehouse entry account of the plant designated in the withdrawal to receive credit for the exportation shall be credited with the following:

(1) The quantity of dutiable metal exported.

(2) The wastage in effect on the date of entry at the plant of initial treatment of such materials.

(3) The proportion of any other dutiable metals in the importation being credited which were lost at the said plant in the production of a quantity of dutiable metal equal to that exported.

(b) If credit is being applied to a charge set up by a theoretical transfer under §19.24 at the plant designated in the withdrawal to receive the credit, the wastages to be applied shall be those set up at such plant in connection with the theoretical transfer, irrespective of the date of the withdrawal.

(c) On the transfer of dutiable metal to a bonded storage warehouse, credit shall be applied at the plant designated in the withdrawal to receive the credit in the manner provided for in paragraph (a) of this section with respect to withdrawals for exportation. The charge so credited at the plant shall be set up on the warehouse entry account of the storage warehouse to which the dutiable metal has been transferred. In the case of the withdrawal of dutiable metal for transfer to a bonded manufacturing warehouse, credit shall be applied in the same manner at the plant designated in the withdrawal to receive the credit, but the charge set upon the warehouse entry account of the bonded manufacturing warehouse shall be limited to the quantity of dutiable metal transferred to such warehouse.

SPACE BONDED FOR THE STORAGE OF WHEAT

§ 19.29 Sealing of bins or other bonded space.

The outlets to all bins or other space bonded for the storage of imported wheat shall be sealed by affixing locks or in bond seals to the rope or chain which controls the gear mechanism for opening the outlets, or such other method which will effectively prevent the removal of, or access to, the wheat

in the bonded space except under such supervision as required by §§19.4 and 101.2(c) of this chapter.

[T.D. 82–204, 47 FR 49374, Nov. 1, 1982, as amended by T.D. 98–22, 63 FR 11825, Mar. 11, 1998]

§ 19.30 Domestic wheat not to be allowed in bonded space.

The presence of domestic wheat in space bonded for the storage of imported wheat shall not be permitted.

§ 19.31 Bulk wheat of different classes and grades not to be commingled in storage.

All wheat shall be stored by class and grade according to the Official Grain Standards of the United States or the official standards of the Canadian Board of Grain Commissioners, in bins, compartments, or other enclosed spaces identified by clearly distinguishable insignia securely affixed thereto, so as to facilitate the maintenance of identity of the wheat. There shall be no mixing or commingling of different classes or grades of wheat in the same bin, battery of bins, or other bonded space. If the wheat is stored in bags or other transportation containers, such bags or containers shall be so marked and so placed in the warehouse that the identity of the wheat will not be lost while in storage, to permit easy access to all lots, and to facilitate inspecting, sampling, and the identification of each lot.

CROSS REFERENCE: For regulations relating to the Official U.S. Standards for Grain, see 7 CFR part 810.

§ 19.32 Wheat manipulation; reconditioning.

(a) The mixing, blending, or commingling of imported wheat and domestic wheat, or of imported wheat of different classes and grades, as an incident of transportation or as an incident of exportation under transportation and exportation entries, direct export entries, or withdrawals for exportation shall not be permitted. Applications for permission to manipulate wheat under the provisions of section 562, Tariff Act of 1930, as amended, shall be approved only after the concurrence of all interested Federal agencies has been furnished by the applicant.

(b) Where it is found that elevating, screening, blowing, fumigating, or drying of the wheat is essential to keep it in condition, the proprietor of the warehouse shall submit an application in writing to the port director. All such operations shall be performed under Customs supervision adequate to preclude unauthorized access to the wheat.

§ 19.33 General order; transportation in bond.

The provisions of §§19.29 through 19.32 shall be applicable to those parts of any premises in which imported wheat is stored in a general-order status, or stored pending exportation under an entry for exportation or for transportation and exportation.

§ 19.34 Customs supervision.

Port directors shall exercise such supervision and control over the transactions covered by §§19.29 through 19.32 as will insure that there will be no unauthorized access to the imported wheat and no unauthorized mixing, blending, or commingling of such imported wheat. Importers, exporters, proprietors of Customs bonded warehouses, bonded common carriers, and others handling imported wheat in continuous Customs custody shall maintain such records as will enable Customs officers to verify the handling to which the imported wheat has been subjected, and to establish whether there has been a proper accounting to Customs for any increase in the quantity of the wheat or shortages resulting from shrinkage or other factors. These records shall be retained for a period of 5 years from the date of the transaction. Port directors shall from time to time request the appropriate Customs officer to examine such records of importers, exporters, warehouse proprietors, bonded common carriers, and others handling such wheat in continuous Customs custody as may be deemed necessary to ascertain whether there has been any failure to comply

with the applicable Customs laws and regulations.

[28 FR 14763, Dec. 31, 1963, as amended by T.D. 79–159, 44 FR 31968, June 4, 1979; T.D. 82–204, 47 FR 49374, Nov. 1, 1982]

DUTY-FREE STORES

SOURCE: Sections 19.35 through 19.39 issued by T.D. 92–81, 57 FR 37698, Aug. 20, 1992, unless otherwise noted.

§ 19.35 Establishment of duty-free stores (Class 9 warehouses).

(a) *General.* A class 9 warehouse (duty-free store) may be established for exportation of conditionally duty-free merchandise by individuals departing the Customs territory, inclusive of foreign trade zones, by aircraft, vessel, or departing directly by vehicle or on foot to a contiguous country. Such articles must accompany the individual on his person or in the same aircraft, vessel, or vehicle in which the individual departs. ''Conditionally duty-free merchandise'' means merchandise sold by a duty-free store on which duties and/or internal revenue taxes (where applicable) have not been paid. Except insofar as the provisions of this section and §§ 19.36–19.39 are more specific, the procedures for bonded warehouses apply to duty-free stores (Class 9 warehouses).

(b) *Location.* A duty-free store (class 9 warehouse) may be established or located only:

(1) Within the same port of entry from which a purchaser of duty-free store merchandise departs the Customs territory;

(2) Within 25 statute miles from the exit point through which a purchaser of duty-free store merchandise departs the Customs territory; or

(3) In the case of an airport store, within any staffed port of entry, or within 25 statute miles from any staffed port of entry.

(c) *Integrated locations.* A Class 9 warehouse with multiple noncontiguous sales and crib locations (see § 19.37(a) of this part) containing conditionally duty-free merchandise and requested by the proprietor may be treated by Customs as one location if:

(1) The proprietor can provide Customs upon demand with the proper on-hand balance of each inventory item in each storage location, sales room, crib, mobile crib, delivery cart, or other conveyance or noncontiguous location; and

(2) The recordkeeping system is centralized up to the point where a sale is made so as to automatically reduce the sale quantity by location from centralized inventory or inventory records must be updated no less frequently than at the end of each business day to reflect that day's activity.

(d) *Exit point.* The exit point referred to in paragraph (b) of this section means an area in close proximity to an actual exit for departing from the Customs territory, including the gate holding area in the case of an airport, but only if there is reasonable assurance that conditionally duty-free merchandise delivered in the gate holding area will be exported from the Customs territory. The exit point in the case of a land border or seaport duty-free store is the point at which a departing individual has no practical alternative to continuing on to a foreign country or to returning to Customs territory by passing through a U.S. Customs inspection facility. The port director's decision as to what constitutes the exit point or reasonable assurance of exportation in a given situation is final.

(e) *Notice to customers.* Class 9 warehouse proprietors shall display in prominent places where they will be noticed and read by customers signs which state clearly that any conditionally duty-free merchandise purchased from the store:

(1) Has not been subjected to any U.S. Federal duty or tax;

(2) If brought back to the United States must be declared and is subject to U.S. Federal duty and tax with personal exemption; and,

(3) Is subject to the customs laws and regulations, including possible duties and taxes, of any foreign country to which it is taken.

(f) *Security of sales rooms and cribs.* The physical and procedural security requirements of § 19.4(b)(6) of this part shall be applied to the security of the sales rooms and cribs by the port director. The proprietor shall establish procedures to safeguard the merchandise so as to accommodate the movement of purchasers and prospective purchasers

of conditionally duty-free merchandise contained in duty-free sales rooms and cribs.

(g) *Approval of governmental authority.* If a state or local or other governmental authority, incident to its jurisdiction over any airport, seaport, or other exit point facility, requires that a concession or other form of approval be obtained from that authority with respect to the operation of a duty-free store under which merchandise is delivered to or through such facility for exportation, merchandise incident to such operation may not be withdrawn for exportation and transferred to or through such facility unless the operator of the duty-free store demonstrates to the port director that the concession or approval required for the enterprise has been obtained.

[T.D. 92–81, 57 FR 37698, Aug. 20, 1992, as amended by T.D. 97–19, 62 FR 15839, Apr. 3, 1997; T.D. 00–33, 65 FR 31261, May 17, 2000]

§ 19.36 Requirements for duty-free store operations.

(a) *Withdrawals.* Merchandise withdrawn under the sales ticket procedure in §144.37(h) of this chapter may be delivered only to individuals departing from the customs territory for exportation or to persons and organizations for use as specified in subpart I, part 148, of this chapter. Withdrawals of other kinds may be made from Class 9 warehouses, but only through separate withdrawals (or withdrawals under blanket permit for vessel or aircraft supplies) under an approved permit of the port director as provided in §144.39 of this chapter.

(b) *Procedures required.* Each duty-free store must establish, maintain, and follow written procedures to provide reasonable assurance to the port director that conditionally duty-free merchandise purchased therein will be exported from the customs territory. A copy of any change in the procedure will be provided to the port director before it is implemented. However, receipt by CBP of the procedures of any change thereto must not be construed as approval by CBP of the procedures. The port director is responsible for ensuring that each enterprise has established guidelines with CBP and is complying with those guidelines, giving assurance that proper supervision exists when delivery is made to the purchaser at or before the exit point. The port director may at any time require any change in the procedures deemed necessary for assurance of exportation.

(c) *Personal-use restrictions.* Any duty-free store which delivers conditionally duty-free merchandise to purchasers at an airport exit point must establish, maintain, and enforce written restrictions on the sale of conditionally duty-free merchandise to any one individual to personal-use quantities. Personal-use quantities means quantities that are only suitable for uses other than resale, and includes reasonable quantities for household or family consumption as well as for gifts to others. Proprietors will not knowingly sell or deliver conditionally duty-free merchandise in any quantity to any individual for the purpose of resale. A copy of the restrictions and of any change thereto must be provided to the port director prior to implementation. However, receipt of the written restrictions by CBP will not be construed as approval by CBP of the restrictions. The port director may require any change in the restrictions deemed necessary to conform to the personal-use quantity restriction of this section.

(d) *Reimported merchandise.* Merchandise purchased in a duty-free store is not eligible for exemption from duty, or tax where applicable, under chapter 98, subchapter IV, Harmonized Tariff Schedule, if it is brought back to the United States after exportation. To enforce this restriction, the port director may require the proprietor to mark or otherwise place a distinguishing identifier on individual items of merchandise to indicate the items were sold in a U.S. duty-free store, if a pattern is disclosed in which such items are being brought back to the United States without declaration. A pattern of undeclared reimportations means a number of instances over a period of time and not isolated instances of unrelated violations. Any such marking required by the port director will be inconspicuous to the purchaser and will not detract from the value of the merchandise. The marking requirement will be limited to the items or types of merchandise noted in the pattern, and

will not be extended to all merchandise of the responsible store proprietor unless all or most items are part of the pattern.

(e) *Merchandise eligible for warehousing in duty-free stores (Class 9 Warehouses)*—(1) *In general.* Conditionally duty-free merchandise and other merchandise (domestic merchandise and merchandise which was previously entered or withdrawn for consumption and brought into a duty-free store (Class 9 warehouse) for display and sale or for delivery to purchasers can be warehoused in a duty-free store (Class 9 warehouse), but the conditionally duty-free merchandise and other merchandise must be physically segregated from one another, unless one of the following exceptions apply.

(2) *Marking exception to physical segregation.* Merchandise may be identified or marked ''DUTY-PAID'' or ''U.S.-ORIGIN'', or similar markings, as applicable, to enable CBP officers to easily distinguish conditionally duty-free merchandise from other merchandise in the sales or crib area.

(3) *Electronic inventory exception to physical segregation.* If the proprietor has an electronic inventory system capable of immediately identifying conditionally duty-free merchandise from other merchandise, the proprietor need not physically separate conditionally duty-free merchandise from other merchandise or mark the merchandise.

(f) *Sale of merchandise.* Conditionally duty-free merchandise for exportation at airport or seaport exit points may be sold and delivered only to purchasers who display valid tickets, or in the case of chartered or for-hire flights that have not issued tickets, other proof of impending departure from the customs territory, and to crewmembers who have been engaged for a flight or voyage departing directly from the customs territory with no intermediate stops in the U.S.

(g) *Inventory procedure.* Duty-free store proprietors must maintain, at the duty-free store or at another location approved by the port director, a current inventory separately for each storage area, crib, and sales area containing conditionally duty-free merchandise by warehouse entry, or by unique identifier where permitted by the port director. Proprietors must assure that CBP has ready access to those records, and that the records are stored in such a way as to keep transactions of multiple facilities separated. The inventory must be reconcilable with the accounting and inventory records and the permit file folder requirements of §19.12 (d), (e) and (f) of this part. Proprietors are subject also to the recordkeeping requirements of other paragraphs of §19.12, as well as those of §§19.6(d), 19.37(d), 19.39(d) of this part, and 144.37(h)(3) of this chapter.

[T.D. 92–81, 57 FR 37698, Aug. 20, 1992, as amended by T.D. 97–19, 62 FR 15840, Apr. 3, 1997; CBP Dec. 09–48, 74 FR 68685, Dec. 29, 2009]

§ 19.37 Crib operations.

(a) *Crib.* A crib means a bonded area, separate from the storage area of a Class 9 warehouse, for the retention of a supply of articles for delivery to persons departing from the United States. It shall be located beyond the exit point, unless exception has been made under §19.39 (a) and (b) of this part. The crib may be a permanent location or a mobile facility which is periodically moved to a location beyond the exit point. The quantity of goods in the crib may be an amount requested by the proprietor which is commercially necessary for the delivery operations for a period, if approved by the port director. The port director may increase or decrease the quantity as deemed necessary for the protection of the revenue and proper administration of U.S. laws and regulations, or may order the return to the storage area of goods remaining unsold.

(b) *Delivery and removal of merchandise.* Conditionally duty-free merchandise shall be delivered to the crib, or removed from the crib for return to the storage area, under the procedures in subpart D, part 125, and §144.34(a), of this chapter, or under a local control system approved by the port director wherein any discrepancy found in the merchandise will be treated as if it occurred in the bonded warehouse. If delivery is made by licensed cartman, cartage vehicles shall be conspicuously marked as provided in §112.27 of this chapter.

(c) *Delivery vehicles.* Vehicles, including mobile cribs, containing conditionally duty-free merchandise for delivery to or from a crib shall carry a listing of the articles contained therein. The proprietor shall provide, upon request by Customs, a transfer document sufficient to account for each movement of inventory among its locations. The merchandise in the vehicles shall be subject to inspection by Customs.

(d) *Retention of records.* Class 9 warehouse proprietors shall maintain records of conditionally duty-free merchandise transported beyond the exit point and returned therefrom, and Customs permits for such movements, for not less than 5 years after exportation of the articles. Such records need not be placed in permit file folders but must be filed by date of movement, destination site and warehouse entry number or by unique identifier where permitted by the port director (see §19.36(g)).

[T.D. 92–81, 57 FR 37698, Aug. 20, 1992, as amended by T.D. 97–19, 62 FR 15840, Apr. 3, 1997]

§19.38 Supervision of exportation.

(a) *Sales ticket withdrawals.* Conditionally duty-free merchandise withdrawn under the sales ticket procedure for exportation shall be exported only under Customs supervision as provided in this section and §19.39 of this part. General Customs supervision shall be exercised as provided in §19.4 of this part and §101.2(c) of this chapter, and may consist of spot checks of exportation transactions, examination of articles being exported, and audits of the proprietor's records.

(b) *Supervision of ATF bonded exports.* Customs officers may conduct general supervision of exportations of cigarettes and cigars from ATF export bonded warehouses (see 27 CFR part 290) in conjunction with exportation from duty-free stores.

[T.D. 92–81, 57 FR 37698, Aug. 20, 1992, as amended by T.D. 98–22, 63 FR 11825, Mar. 11, 1998]

§19.39 Delivery for exportation.

(a) *Delivery to land border locations*—(1) *Land border locations. Land border location* means an exit point (see §19.35(d)) from which individuals depart to a contiguous country by vehicle or on foot by bridge, tunnel, highway, walkway, or by ferry across a boundary lake or river, but not including departure to a contiguous country by air or sea. Deliveries from a duty-free store for exportation from such locations shall be made to the purchaser only beyond the exit point, except as specified in paragraph (a)(2) of this section.

(2) *Delivery at or before exit point.* Delivery of such merchandise may be made at or before the exit point of any location approved by Customs as of August 23, 1988. In such cases, delivery shall be done under the physical supervision of a Customs officer, or in accordance with established guidelines as required by §19.36(b) of this part. The officer shall sign the sales ticket certifying exportation and return it to the proprietor for retention in the files. The port director may also require that the warehouse proprietor have the person receiving the article sign the same copy to certify receipt.

(b) *Delivery to seaport locations*—(1) *Seaport location. Seaport location* means an exit point (see §19.35(d)) from which conditionally duty-free merchandise is delivered to departing individuals for exportation by vessel of more than 5 net tons which is departing directly from the Customs territory to touch and trade in a foreign country. Deliveries for exportation from such locations may be made only beyond the exit point, except as specified in paragraph (b)(2) of this section.

(2) *Delivery at or before exit point.* Delivery of such merchandise may be made at or before the exit point in the case of any locations approved by Customs as of August 23, 1988. In such cases, delivery shall be done under the physical supervision of a Customs officer, or in accordance with established guidelines as required by §19.36(b) of this part. The officer shall sign the sales ticket certifying exportation and return it to the proprietor for retention in the files. The port director may also require that the warehouse proprietor have the person receiving the article sign the same copy to certify receipt.

(c) *Delivery to airport locations. Airport location* means an exit point from

which conditionally duty-free merchandise is delivered to departing individuals for exportation on a scheduled, chartered, or ''for-hire'' airline. Delivery of conditionally duty-free merchandise to be exported from such locations may be made by one of the following five procedures:

(1) *Delivery in sterile area.* A sterile area is an area that is within the airport and to which access is restricted to those passengers departing from Customs territory. In such cases, delivery will be made directly to the purchaser (or a family member or companion travelling with the purchaser) for carrying aboard the aircraft. This method of delivery is not authorized if there is any mixture in the sterile area of individuals arriving from a foreign country, or individuals arriving or departing on a domestic flight, with individuals departing for foreign;

(2) *Passenger delivery.* Merchandise may be delivered by the cartman or duty-free store operator to the purchaser (or a family member or companion travelling with the purchaser) at or beyond the exit point for the flight. The port director may require the exit point to be delimited by marking of its boundaries, or require proper supervision in accordance with established guidelines as required by §19.36(b) of this part, if needed for reasonable assurance that conditionally duty-free merchandise will be exported with the purchaser or a family member or companion.

(3) *Aircraft delivery.* The merchandise will be delivered by a licensed cartman for lading as baggage directly on the aircraft on which the passenger will depart. The airline will release the merchandise to the purchaser when the aircraft has departed for its foreign destination;

(4) *Unit-load delivery.* Merchandise may be sold to passengers departing from the United States at a prior port of boarding on flights proceeding to a foreign destination which are required to clear with intermediate stops in the United States, provided that all of the following conditions are met:

(i) Sales may be made only to passengers holding a through ticket on the same flight, with no stopover privileges in the United States, to a foreign destination;

(ii) Merchandise shall be placed on the aircraft on which the passenger departs the United States for carriage as passenger baggage;

(iii) Merchandise shall be placed in a container sealed with Customs seals. The sealed container(s) may be placed in the baggage compartment or on the passenger deck of the aircraft. Containers stowed in baggage compartments may, with Customs permission, be transferred to the passenger deck at an intermediate or final stop in the United States. The seal numbers shall be placed on the face of the aircraft general declaration;

(iv) A lading manifest list, in duplicate, of conditionally duty-free merchandise sold to passengers aboard the particular flight will be prepared by the proprietor. An authorized airline representative will sign for receipt, with one copy to be retained by the airline for presentation to Customs as requested at the intermediate or final port, and the duplicate copy to be returned to and retained by the proprietor for record purposes;

(v) The seals shall not be broken nor shall any of the purchases be delivered until the aircraft is secured for departure to its foreign destination at the last port. In the event that the seals are broken before that time, or the merchandise is not exported for any reason and not returned to Customs custody, demand shall be made against the importation and entry bond of the importer of record;

(5) *Cancelled or aborted flights or no-show passengers*—(i) *Cancelled or aborted flights.* The proprietor shall, upon request, make available to Customs the purchaser's name, the purchaser's airline ticket number and the identity and quantity of the merchandise delivered by the proprietor to the purchaser (if the merchandise was delivered to the airline rather than the passenger, the name of the airline employee to whom the merchandise was delivered), and the date and time of that delivery in lieu of retrieving the merchandise for safekeeping until the purchaser actually departs.

(ii) *No-show passengers.* A proprietor who delivers merchandise directly to

an airline for delivery to a passenger who does not board the flight shall establish a procedure to obtain redelivery of that merchandise from the airline.

(d) *Lading manifest lists; certificate of exportation*. The proprietor shall retain copies of lading manifest lists and certificates of lading for exportation in its files for not less than 5 years after exportation by warehouse entry number or by unique identifier where permitted by the port director (see §19.36(g)).

(e) *Delivery method*. Delivery of conditionally duty-free merchandise to persons for exportation will be made by licensed cartmen or bonded carriers under the procedures in subpart D, part 125, and §144.34(a), of this chapter, or under a local control system approved by the port director wherein any discrepancy found in the merchandise will be treated as if it occurred in the bonded warehouse.

(f) *Return of merchandise to stock*. Whenever merchandise is withdrawn under the sales ticket procedure of §144.37(h) of this chapter, but is undeliverable or is rejected by the purchaser, the merchandise may be returned to the duty-free store and the records, including the sales ticket and sales ticket register, amended to reflect the quantity returned to stock.

[T.D. 92–81, 57 FR 37698, Aug. 20, 1992, as amended by T.D. 97–19, 62 FR 15840, Apr. 3, 1997]

CONTAINER STATIONS

SOURCE: Sections 19.40 through 19.49 issued by T.D. 72–68, 37 FR 4186, Feb. 29, 1972, unless otherwise noted.

§19.40 Establishment, relocation or alteration of container stations.

(a) A container station, independent of the importing carrier, may be established at any port or portion of a port, or any other area under the jurisdiction of a port director upon the filing of an application therefore and its approval by the port director and the posting of a bond on Customs Form 301, containing the bond conditions set forth in §113.63 of this chapter in such amount as the port director shall require.

(b) Alterations to or relocation of a container station may be made with the permission of the director of the port in which the facility is located, or if not within a port's limits, nearest to where the facility is located. An application to alter or relocate a container station shall be accompanied by the fee required by paragraph (c) of this section.

(c)(1) Customs shall charge a fee to establish, relocate or alter a container station, and publish a general notice in the FEDERAL REGISTER and Customs Bulletin setting forth a fee schedule, to be revised periodically to reflect increased costs, to establish, relocate or alter the container station. The published revised fee schedule shall remain in effect until changed.

(2) The fee, rounded off to the nearest dollar, shall be calculated in accordance with §24.17(d) of this chapter. The fee shall be based upon the amount of time the average service requires of the Customs officers performing the service.

[T.D. 72–68, 37 FR 4186, Feb. 29, 1972, as amended by T.D. 82–135, 47 FR 32416, July 27, 1982; T.D. 83–56, 48 FR 9854, Mar. 9, 1983; T.D. 84–213, 49 FR 41170, Oct. 19, 1984; T.D. 85–72, 50 FR 15885, Apr. 23, 1985; T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§19.41 Movement of containerized cargo to a container station.

Containerized cargo may be moved from the place of unlading to a designated container station, or may be received directly at the container station from a bonded carrier after transportation in-bond, before the filing of an entry of merchandise therefor or the permitting thereof (see subpart A of part 158 of this chapter) for the purpose of breaking bulk and redelivery of the cargo. In either circumstance, excess loose cargo, as part of containerized cargo, may accompany the container to the container station.

[T.D. 82–135, 47 FR 32416, July 27, 1982]

§19.42 Application for transfer of merchandise.

The container station operator may file an application for the transfer of a container intact to the station. The application shall be in duplicate in the

following or substantially similar format:

U.S. CUSTOMS SERVICE

APPLICATION AND PERMIT TO TRANSFER CONTAINERIZED CARGO TO A CONTAINER STATION

Date _____

Application is made to transfer the containers and their contents listed below which arrived on _____ (Carrier) on _____ (Date) at Pier ____ to the _____ (Container station)

An abstract of the carrier's manifest covering the containers by B/L No., marks, numbers, contents, consignee, etc., is attached hereto.

LIST OF CONTAINERS BY MARKS AND NUMBERS ONLY

_____

_____

_____

_____

(Signature of authorized agent of container station)

We concur: _____

(Signature of agent of importing carrier)

transfer record

Delivered to _____ (cartman), C.H.L. No. ____ in apparent good order and condition except as noted:

Truck No.	Container numbers	Date	Signature of inspector	Signature of cartman	Received signature container operator

§ 19.43 Filing of application.

The application, listing the containers by marks and numbers, may be filed at the customhouse or with the Customs inspector at the place where the container is unladen, or for merchandise transported in-bond, at the bonded carrier's facility, as designated by the port director.

[T.D. 82–135, 47 FR 32416, July 27, 1982]

§ 19.44 Carrier responsibility.

(a) If merchandise is transferred directly to a container station from an importing carrier, the importing carrier shall remain liable under the terms of its bond for the proper safekeeping and delivery of the merchandise until it is formally receipted for by the container station operator.

(b) If merchandise is transferred directly from a bonded carrier's facility to a container station or is delivered directly to the container station by a bonded carrier, the bonded carrier shall remain liable under the terms of his bond for the proper safekeeping and delivery of the merchandise until it is formally receipted for by the container station operator.

(c) In either case under paragraph (a) or (b) of this section, the importing carrier and the bonded carrier, as applicable, shall be responsible for assuring that the provisions of subpart A, part 158 of this chapter, relating to quantity determinations, and discrepancy reporting and accountability are followed.

(d) The importing carrier and the bonded carrier, as applicable, shall indicate concurrence in the transfer of the merchandise either by signing the application for transfer or by physically turning the merchandise over to the operator.

(e) The importing carrier and the bonded carrier, as applicable, shall be responsible for ascertaining that the person to whom a container is delivered for transfer to the container station is an authorized representative of the operator.

(f) The importing carrier and the bonded carrier, as applicable, shall furnish an abstract manifest showing the bill of lading number, the marks and numbers of the container, and the usual manifest description for each shipment in the container.

(g) If a container station operator chooses to collect merchandise from within the boundaries of the district (see definition of ''district'' at §112.1) in which the container station is located and transport the merchandise to his container station, the container station operator must formally receipt for the merchandise at the time of collection, and he becomes liable under his bond for proper safekeeping of the merchandise at that time.

[T.D. 82–135, 47 FR 32416, July 27, 1982, as amended by T.D. 94–81, 59 FR 51494, Oct. 12, 1994; T.D. 95–77, 60 FR 50010, Sept. 27, 1995]

§ 19.45 Transfer of merchandise, approval and method.

Approval of the application by the port director shall serve as a permit to transfer the container and its contents to the station. Except when the container station operator is moving the merchandise to his own station by his own vehicle, the merchandise may only be transferred to a container station by a bonded cartman or bonded carrier. The station operator, cartman or carrier shall receipt for the merchandise on both copies of the application.

[T.D. 74–54, 39 FR 4876, Feb. 18, 1974]

§ 19.46 Employee lists.

A permit shall not be granted to an operator to transfer a container or containers to a container station, if the operator, within 30 calendar days after the date of receipt of a written demand by the port director, does not furnish a written list of names, addresses, social security numbers, and dates and places of birth of persons employed by him in connection with the movement, receipt, storage or delivery of imported merchandise. Having furnished such a list, no new permit shall be issued to an operator who has not within 10 calendar days after the employment of any new personnel employed in connection with the movement, receipt, storage, or delivery of imported merchandise, advised the port director in writing of the names, addresses, social security numbers, and dates and places of birth of such new employees. The operator shall, within 10 calendar days, advise the port director if the employment of any employee is terminated. A person shall not be deemed to be employed by an operator if he is an officer or employee of an independent contractor engaged by the operator to move, receive, store, deliver, or otherwise handle imported merchandise.

§ 19.47 Security.

The space to be used for the purposes of breaking bulk and delivering cargo shall be properly secured against access by unauthorized persons, including persons not on the list of current employees furnished to the port director by the container station operator, the principal on the bond, as required by §19.46. A suitable working and office space for the use of Customs officers and employees performing functions in the area shall also be provided.

§ 19.48 Suspension or revocation of the privilege of operating a container station; hearings.

(a) *Grounds for suspension or revocation.* The port director may revoke or suspend the privilege of operating a container station if:

(1) The privilege was obtained through fraud or the misstatement of a material fact;

(2) The container station operator refuses or neglects to obey any proper order of a Customs officer or any Customs order, rule, or regulation relative to the operation of a container station;

(3) The container station operator or an officer of a corporation which has been granted the privilege of operating a container station is convicted of or has committed acts which would constitute a felony, or a misdemeanor involving theft, smuggling, or a theft-connected crime. Any change in the employment status of the corporate officer (e.g., discharge, resignation, demotion, or promotion) prior to conviction of a felony or prior to conviction of a misdemeanor involving theft, smuggling, or a theft-connected crime, resulting from acts committed while a

corporate officer, will not preclude application of this provision;

(4) The container station operator fails to retain merchandise which has been designated for examination;

(5) The container station operator does not provide secure facilities or properly safeguard merchandise within the container station;

(6) The container station operator fails to furnish a current list of names, addresses, and other information required by §19.46; or

(7) The bond required by §19.40 is determined to be insufficient in amount or lacking sufficient sureties, and a satisfactory new bond with good and sufficient sureties is not furnished within a reasonable time.

(b) *Notice and appeal.* The port director shall suspend or revoke the privilege of operating a container station by serving notice of the proposed action in writing upon the container station operator. The notice shall be in the form of a statement specifically setting forth the grounds for revocation or suspension of the privilege and shall be final and conclusive upon the container station operator unless he shall file with the port director a written notice of appeal. The container station operator may file a written notice of appeal from the revocation or suspension within 10 days following receipt of the notice of revocation or suspension. The notice of appeal shall be filed in duplicate and shall set forth the response of the container station operator to the statement of the port director. The container station operator, in his notice of appeal, may request a hearing.

(c) *Hearing on appeal.* If a hearing is requested, it shall be held before a hearing officer designated by the Secretary of the Treasury or his designee within 30 days following application therefor. The container station operator shall be notified of the time and place of the hearing at least 5 days prior thereto. The container station operator may be represented by counsel at the revocation or suspension hearing. All testimony in the proceeding shall be subject to cross-examination. A stenographic record of any such proceeding shall be made and a copy thereof shall be delivered to the container station operator. At the conclusion of such proceeding or review of a written appeal, the hearing officer or the port director, as the case may be, shall forthwith transmit all papers and the stenographic record of any hearing, to the Commissioner of Customs, together with his recommendation for final action. Following a hearing and within 10 calendar days after delivery of a copy of the stenographic record, the container station operator may submit to the Commissioner of Customs, in writing, additional views and arguments on the basis of such record. If neither the container station operator nor his attorney appear for a scheduled hearing, the hearing officer shall conclude the hearing and transmit all papers with his recommendation to the Commissioner of Customs. The Commissioner shall thereafter render his decision, in writing, stating his reasons therefor, with respect to the action proposed by the hearing officer or the port director. Such decision shall be transmitted to the port director and served by him on the container station operator.

[T.D. 73–286, 38 FR 28289, Oct. 12, 1973, as amended by T.D. 88–63, 53 FR 40219, Oct. 14, 1988]

§19.49 Entry of containerized merchandise.

Merchandise not entered within the lay order period, or extension thereof, shall be placed in general order. The importing carrier shall issue carrier's certificates for individual shipments in a container. Entries covering merchandise transferred to a container station shall clearly show that the merchandise is at the container station.

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

Sec.

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 3717, 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

Section 24.1 also issued under 19 U.S.C. 197, 198, 1648;

Section 24.1a also issued under 19 U.S.C. 1318;

Section 24.4 also issued under 19 U.S.C. 1623, 26 U.S.C. 5007, 5054, 5061, 7805;

Section 24.11 also issued under 19 U.S.C. 1485(d);

Section 24.12 also issued under 19 U.S.C. 1524, 46 U.S.C. 31302;

Section 24.14 also issued under 19 U.S.C. 1;

Section 24.16 also issued under 19 U.S.C. 261, 267, 1450, 1451, 1452, 1623; 46 U.S.C. 2111, 2112;

Section 24.17 also issued under 19 U.S.C. 261, 267, 1450, 1451, 1452, 1456, 1524, 1557, 1562; 46 U.S.C. 2110, 2111, 2112;

Section 24.22 also issued under Sec. 892, Pub. L. 108–357, 118 Stat. 1418 (19 U.S.C. 58c); Sec. 32201, Pub. L. 114–94, 129 Stat. 1312 (19 U.S.C. 58c); Pub. L. 115–271, 132 Stat. 3895 (19 U.S.C. 58c).

Section 24.23 also issued under 19 U.S.C. 3332; Sec. 892, Pub. L. 108–357, 118 Stat. 1418 (19 U.S.C. 58c); Sec. 32201, Pub. L. 114–94, 129 Stat. 1312 (19 U.S.C. 58c); Pub. L. 115–271, 132 Stat. 3895 (19 U.S.C. 58c).

Section 24.32 also issued under 5 U.S.C. 5582, 5583;

Section 24.36 also issued under 26 U.S.C. 5001(c)(4), 5041(c)(7), 5051(a)(6), 6423; Pub. L. 115–97; Pub. L. 116–260; 134 Stat. 3046.

SOURCE: 28 FR 14808, Dec. 31, 1963, unless otherwise noted.

§ 24.1 Collection of Customs duties, taxes, fees, interest, and other charges.

(a) Except as provided in paragraph (b) of this section, the following procedure shall be observed in the collection of Customs duties, taxes, fees, interest, and other charges (see §§ 111.29(b) and 141.1(b) of this chapter):

(1) Any form of United States currency or coin legally current at time of acceptance shall be accepted.

(2) Any bank draft, cashier's check, or certified check drawn on a national or state bank or trust company of the United States or a bank in Puerto Rico or any possession of the United States if such draft or checks are acceptable for deposit by a Federal Reserve bank, branch Federal Reserve bank, or other designated depositary shall be accepted.

(3)(i) An uncertified check drawn by an interested party on a national or state bank or trust company of the United States or a bank in Puerto Rico or any possession of the United States if such checks are acceptable for deposit by a Federal Reserve bank, branch Federal Reserve bank, or other designated depositary shall be accepted if there is on file with CBP a bond to secure the payment of the duties, taxes, fees, interest, or other charges, or if a bond has not been filed, the organization or individual drawing and tendering the uncertified check has been approved by an authorized CBP official to make payment in such manner. In determining whether an

uncertified check shall be accepted in the absence of a bond, an authorized CBP official shall use available credit data obtainable without cost to the Government, such as that furnished by banks, local business firms, better business bureaus, or local credit exchanges, sufficient to satisfy him of the credit standing or reliability of the drawer of the check. For purposes of this paragraph, a customs broker is an interested party for the purpose of CBP's acceptance of such broker's own check, provided the broker has on file the necessary power of attorney for the performance of ministerial acts. CBP may look to the principal (importer) or to the surety should the check be dishonored.

(ii) If, during the preceding 12-month period, an importer or interested party has paid duties or any other obligation by check and more than one check is returned dishonored by the debtor's financial institution, an authorized CBP official shall require a certified check, money order or cash from the importer or interested party for each subsequent payment until such time that an authorized CBP official is satisfied that the debtor has the ability to consistently present uncertified checks that will be honored by the debtor's financial institution.

(4) A U.S. Government check endorsed by the payee to the U.S. Customs Service, a domestic traveler's check, or a U.S. postal, bank, express, or telegraph money order shall be accepted. Before accepting this form of payment the Customs cashier or other employee authorized to receive Customs collections shall require such identification in the way of a current driver's license issued by a state of the United States, or a current passport properly authenticated by the Department of State, or a current credit card issued by one of the numerous travel agencies or clubs, or other credit data, etc., from which he can verify the identity and signature of the person tendering such check or money order.

(5) The face amount of a bank draft, cashier's check, certified check, or uncertified check tendered in accordance with this paragraph shall not exceed the amount due by more than $1 and any required change is authorized to be made out of any available cash funds on hand.

(6) The face amount of a U.S. Government check, traveler's check, or money order tendered in accordance with this paragraph shall not exceed the amount due by more than $50 and any required change is authorized to be made out of any available cash funds on hand.

(7) Credit or charge cards, which have been authorized by the Commissioner of Customs, may be used for the payment of duties, taxes, fees, and/or other charges at designated Customs-serviced locations. Payment by this manner is limited to non-commercial entries and is subject to ultimate collection from the credit card company. Persons paying by charge or credit card will remain liable for all such charges until paid. Information as to those credit card companies authorized by Customs may be obtained from Customs officers.

(8) Participants in the Automated Broker Interface may use statement processing as described in § 24.25 of this part. Statement processing allows entry/entry summaries and entry summaries to be grouped by either importer or by filer, and allows payment of related duties, taxes and fees by a single payment, rather than by individual checks for each entry. The preferred method of payment for users of statement processing is by Automated Clearinghouse.

(b) At piers, terminals, bridges, airports and other similar places, in addition to the methods of payment prescribed in paragraph (a) of this section, a personal check drawn on a national or state bank or trust company of the United States shall be accepted by Customs inspectors and other Customs employees authorized to receive Customs collections in payment of duties, taxes, fees, interest, and other charges on noncommercial importations, subject to the identification requirements of paragraph (a)(4) of this section and this paragraph. Where the amount of the check is over $25, the Customs cashier or other employee authorized to receive Customs collections will ensure that the payor's name, home and business telephone number (including area code), and date of birth are recorded on the face (front) side of the monetary

instrument. In addition, one of the following will be recorded on the face side of the instrument: preferably, the payor's social security number or, alternatively, a current passport number or current driver's license number (including issuing state). A personal check received under this paragraph and a United States Government check, traveler's check, or money order received under paragraph (a) of this section by such Customs inspectors and other Customs employees shall also be subject to the following conditions:

(1) Where the amount is less than $100 and the identification requirements of paragraph (a)(4) of this section have been met, the Customs employee accepting the check or money order will place his name and badge number on the collection voucher and place the serial number or other form of voucher identification on the face side of the check or money order so that the check or money order can be easily associated with the voucher.

(2) Where the amount is $100 or more, in addition to the requirements of paragraph (b)(1) of this section the Customs employee accepting the check or money order shall obtain the approval of the Customs officer in charge who also shall personally verify the identification data and indicate his approval by initialing the collection voucher below the signature of the Customs employee who approved the receipt of the check or money order.

(3) A personal check tendered in accordance with this paragraph shall be accepted only when drawn for the amount of the duties, taxes, fees, and other charges to be paid by such check.

(c) Checks on foreign banks, foreign travelers' checks, and commercial drafts or bills of exchange subject to acceptance by the drawees shall not be accepted.

(d) Checks and other negotiable papers covering duties, taxes, fees, interest, and other Customs charges shall be made payable to the United States Customs Service.

(e) Any person who pays by check any duties, taxes, fees, interest, or other charges or obligations due the Customs Service which are not guaranteed by a Customs bond shall be assessed a charge of $30.00 for each check which is returned unpaid by a financial institution for any reason, except the charge will not be assessed if it is shown that the maker of the check was not at fault in connection with the return of the check. This charge shall be in addition to any unpaid duties, taxes, fees, interest, and other charges.

[28 FR 14808, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 24.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 24.1a Temporary postponement of deadline to deposit certain estimated duties, taxes, and fees because of the COVID–19 national emergency.

(a) *General.* Pursuant to the authority of 19 U.S.C. 1318(a), subject to the conditions in paragraphs (a)(1) through (4) of this section, the deadline for the deposit of estimated duties, taxes, and fees that an importer of record would ordinarily be obligated to pay as of the date of entry, or withdrawal from warehouse, for consumption, of imported merchandise into the United States is postponed for a period of 90 days from the date that the deposit would otherwise have been due. No interest will accrue for the delayed deposit of such estimated duties, taxes, and fees during this 90-day temporary postponement.

(1) This temporary postponement applies only to entries, or withdrawals from warehouse, for consumption, made on or after March 1, 2020, and no later than April 30, 2020, by importers of record with a significant financial hardship. This temporary postponement does not permit return of any deposits of estimated duties, taxes, and/or fees that have been paid.

(2) An importer will be considered to have a significant financial hardship if the operation of such importer is fully or partially suspended during March or April 2020 due to orders from a competent governmental authority limiting commerce, travel, or group meetings because of COVID–19, and as a result of such suspension, the gross receipts of such importer for March 13–31,

2020, or April 2020 are less than 60 percent of the gross receipts for the comparable period in 2019. An eligible importer need not file additional documentation with CBP to be eligible for this relief but must maintain documentation as part of its books and records establishing that it meets the requirements for relief.

(3) No penalty, liquidated damages claim, or other sanction will be imposed for the delayed deposit of estimated duties, taxes, and fees in accordance with a deadline postponed under this section.

(4) This temporary postponement does not apply to any entry, or withdrawal from warehouse, for consumption, or any deposit of estimated duties, taxes, or fees for the entry, or withdrawal from warehouse, for consumption, where the entry summary includes any merchandise subject to one or more of the following: Antidumping duties (assessed pursuant to 19 U.S.C. 1673 *et seq.*), countervailing duties (assessed pursuant to 19 U.S.C. 1671 *et seq.*), duties assessed pursuant to Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862), duties assessed pursuant to Section 201 of the Trade Act of 1974 (19 U.S.C. 2251 *et seq.*), and duties assessed pursuant to Section 301 of the Trade Act of 1974 (19 U.S.C. 2411 *et seq.*).

(b) *Time of entry.* For entries eligible for the temporary postponement of deposits under paragraph (a) of this section, the requirement to deposit estimated duties, taxes, and fees for the purpose of establishing the time of entry stated in 19 CFR 141.68 is waived.

[CBP Dec. 20-05, 85 FR 22352, Apr. 22, 2020]

§ 24.2 Persons authorized to receive Customs collections.

Center directors, port directors, CBP cashiers, CBP officers, CBP dock tellers, and such other officers and employees as the Center director or port director will designate will receive Customs collections.

[CBP Dec. 16–26, 81 FR 93015, Dec. 20, 2016]

§ 24.3 Bills and accounts; receipts.

(a) Any bill or account for money due the United States shall be rendered by an authorized Customs officer or employee on an official form.

(b) A receipt for the payment of estimated Customs duties, taxes, fees, and interest, if applicable, shall be provided a payer at the time of payment if he furnishes with his payment an additional copy of the documentation submitted in support of the payment. The appropriate Customs official shall validate the additional copy as paid and return it to the payer. Otherwise, a copy of the document filed by the payer and the payer's cancelled check shall constitute evidence of payment.

(c) A copy of a Customs bill validated as paid will not normally be provided a payer. If a bill is paid by check, the copy of the Customs bill identified as ''Payer's Copy'' and the payer's cancelled check shall constitute evidence of such payment to Customs. Should a payer desire evidence of receipt, both the ''U.S. Customs Service Copy'' and the ''Payer's Copy'' of the bill and, in the case of payments by mail, a stamped, self-addressed envelope, shall be submitted. The ''Payer's Copy'' of the bill shall then be marked paid by the appropriate Customs official and returned to the payer.

(d) Every payment which is not made in person shall be accompanied by the original bill or by a communication containing sufficient information to identify the account or accounts to which it is to be applied.

(e) Except for bills resulting from dishonored checks or dishonored Automated Clearinghouse (ACH) transactions, all other bills for duties, taxes, fees, interest, or other charges are due and payable within 30 days of the date of issuance of the bill. Bills resulting from dishonored checks or dishonored ACH transactions are due within 15 days of the date of issuance of the bill.

[28 FR 14808, Dec. 31, 1963, as amended by T.D. 74–73, 39 FR 7782, Feb. 28, 1974; T.D. 79–221, 44 FR 46813, Aug. 9, 1979; T.D. 86–178, 51 FR 34959, Oct. 1, 1986; T.D. 99–75, 64 FR 56437, Oct. 20, 1999]

§ 24.3a CBP bills; interest assessment on bills; delinquency; notice to principal and surety.

(a) *Due date of CBP bills.* CBP bills for supplemental duties, taxes and fees(increased or additional duties,

taxes, and fees assessed upon liquidation or reliquidation), or vessel repair duties, together with interest thereon, reimbursable services (such as provided for in §§ 24.16 and 24.17), and miscellaneous amounts (bills other than duties, taxes, reimbursable services, liquidated damages, fines, and penalties) are due as provided for in § 24.3(e).

(b) *Assessment of interest charges*—(1) *Bills for vessel repair duties, reimbursable services and miscellaneous amounts.* If payment is not received by CBP on or before the late payment date appearing on the bill, interest charges will be assessed upon the delinquent principal amount of the bill. The late payment date is the date 30 calendar days after the interest computation date. The interest computation date is the date from which interest is calculated and is initially the bill date.

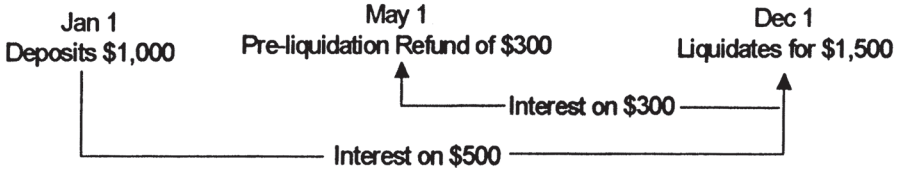
(2) *Interest on supplemental duties, taxes, fees, and interest*—(i) *Initial interest accrual.* Except as otherwise provided in paragraphs (b)(2)(i)(A) through (b)(2)(i)(C) of this section, interest assessed due to an underpayment of duties, taxes, fees, or interest will accrue from the date the importer of record is required to deposit estimated duties, taxes, fees, and interest to the date of liquidation or reliquidation of the applicable entry or reconciliation. An example follows:

Example: Entry underpaid as determined upon liquidation

Importer owes $500 plus interest as follows: The importer makes a $1,000 initial deposit on the required date (January 1) and the entry liquidates for $1,500 (December 1). Upon liquidation, the importer will be billed for $500 plus interest. The interest will accrue from the date payment was due (January 1) to date of liquidation (December 1).

(A) If a refund of duties, taxes, fees, or interest was made prior to liquidation or reliquidation and is determined upon liquidation or reliquidation to be excessive, in addition to any other interest accrued under this paragraph (b)(2)(i), interest also will accrue on the excess amount refunded from the date of the refund to the date of liquidation or reliquidation of the applicable entry or reconciliation. An example follows:

Example: Pre-liquidation refund but entry liquidates for an increase

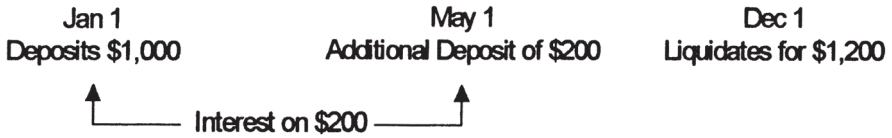


Importer owes $800 plus interest as follows: The importer makes a $1,000 initial deposit on the required date (January 1) and receives a pre-liquidation refund of $300 (May 1) and the entry liquidates for $1,500 (December 1). Upon liquidation, the importer will be billed for $800 plus interest. The interest accrues in two segments: (1) On the original underpayment ($500) from the date of deposit (January 1) to the date of liquidation (December 1); and (2) on the pre-liquidation refund ($300) from the date of the refund (May 1) to the date of liquidation (December 1).

(B) The following rules will apply in the case of an additional deposit of duties, taxes, fees, or interest made prior to liquidation or reliquidation:

(*1*) If the additional deposit is determined upon liquidation or reliquidation of the applicable entry or reconciliation to constitute the correct remaining balance that was required to be deposited on the date the deposit was due, interest shall accrue on the amount of the additional deposit only from the date of the initial deposit until the date the additional deposit was made. An example follows:

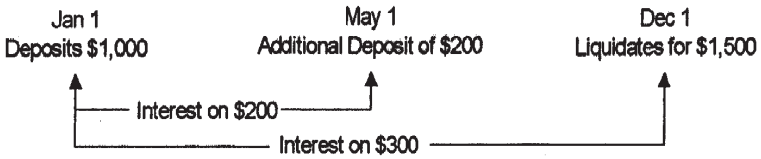
Example: Additional deposit made and entry liquidates for total amount deposited



Importer owes interest on $200 as follows: The importer makes a $1,000 initial deposit on the required date (January 1) and an additional pre-liquidation deposit of $200 (May 1) and the entry liquidates for $1,200 (December 1). Upon liquidation, the importer will be billed for interest on the original $200 underpayment from the date of the initial deposit (January 1) to the date of the additional deposit (May 1).

(*2*) If the additional deposit is determined upon liquidation or reliquidation of the applicable entry or reconciliation to be less than the full balance owed on the amount initially required to be deposited, in addition to any other interest accrued under this paragraph (b)(2)(i), interest also will accrue on the remaining unpaid balance from the date deposit was initially required to the date of liquidation or reliquidation. An example follows:

Example: Additional deposit made and entry underpaid as determined upon liquidation

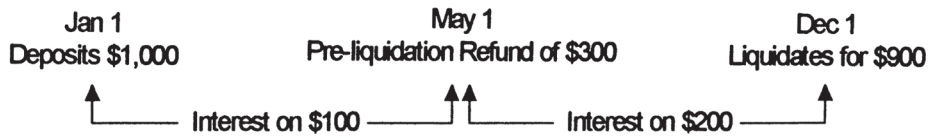


Importer owes $300 plus interest as follows:

The importer makes a $1,000 initial deposit on the required date (January 1) and an additional pre-liquidation deposit of $200 (May 1) and the entry liquidates for $1,500 (December 1). Upon liquidation, the importer will be billed for $300 plus interest. The interest accrues in two segments: (1) on the additional deposit ($200), from the date deposit was required (January 1) to the date of the additional deposit (May 1); and (2) on the remaining underpayment ($300), from the date deposit was required (January 1), to the date of liquidation (December 1).

(*3*) If an entry or reconciliation is determined upon liquidation or reliquidation to involve both an excess deposit and an excess refund made prior to liquidation or reliquidation, interest in each case will be computed separately and the resulting amounts shall be netted for purposes of determining the final amount of interest to be reflected in the underpaid amount. An example follows:

Example: Excess pre-liquidation deposit and excess pre-liquidation refund



Importer owes $200 plus or minus net interest as follows:

The importer makes a $1,000 initial deposit on the required date (January 1) and receives a pre-liquidation refund of $300 (May 1) and the entry liquidates for $900 (December 1). Upon liquidation, the importer will be billed for $200 plus or minus net interest. The interest accrues in two segments: (1) Interest accrues in favor of the importer on the initial overpayment ($100) from the date of deposit (January 1) to the date of the refund (May 1); and (2) interest accrues in favor of the Government on the refund overpayment ($200) from the date of the refund (May 1) to the date of liquidation (December 1).

(*4*) If the additional deposit or any portion thereof is determined upon liquidation or reliquidation of the applicable entry or reconciliation to constitute a payment in excess of the amount initially required to be deposited, the excess deposit will be treated as a refundable amount on which interest also may be payable (see § 24.36).

(C) If a depository bank notifies CBP by a debit voucher that a CBP account is being debited due to a dishonored check or dishonored Automated Clearinghouse (ACH) transaction, interest will accrue on the debited amount from the date of the debit voucher to either the date of payment of the debt represented by the debit voucher or the date of issuance of a bill for payment, whichever date is earlier.

(ii) *Interest on overdue bills.* If duties, taxes, fees, and interest are not paid in full within the applicable period specified in § 24.3(e), any unpaid balance will be considered delinquent and shall bear interest until the full balance is paid.

(c) *Interest rate and applicability.* (1) The percentage rate of interest to be charged on such bills will be based upon the quarterly rate(s) established under sections 6621 and 6622 of the Internal Revenue Code of 1954 (26 U.S.C. 6621, 6622). The current rate of interest will appear on the CBP bill and may be obtained from the IRS or the CBP's Revenue Division, Office of Administration. For the convenience of the importing public and CBP personnel, CBP publishes the current interest rate(s) in the *Customs Bulletin and Decisions* and FEDERAL REGISTER on a quarterly basis.

(2) The percentage rate of interest applied to an overdue bill will be adjusted as necessary to reflect any change in the annual rate of interest.

(3) Interest on overdue bills will be assessed on the delinquent principal amount by 30-day periods. No interest charge will be assessed for the 30-day period in which the payment is actually received at the ''Send Payment To'' location designated on the bill.

(4) In the case of any late payment, the payment received will first be applied to the interest charge on the delinquent principal amount and then to payment of the delinquent principal amount.

(5) The date to be used in crediting the payment is the date on which the payment is received by CBP.

(d) *Notice*—(1) *Principal.* The principal will be notified at the time of the initial billing, and every 30 days after the due date until the bill is paid or otherwise closed. Where the notification is returned to CBP due to an incorrect mailing address, the bill may be stopped. The following elements will normally appear on the bill:

(i) Principal amount due;

(ii) Interest computation date;

(iii) Late payment date;

(iv) Accrual of interest charges if payment is not received by the late payment date;

(v) Applicable current interest rate;

(vi) Amount of interest owed;

(vii) CBP office where requests for administrative adjustments due to billing errors may be addressed; and

(viii) Transaction identification (e.g., entry number, reimbursable assignment number).

(2) *Surety.* (i) CBP will report outstanding bills on a Formal Demand on

Surety for Payment of Delinquent Amounts Due, for bills more than 30 days past due (approximately 60 days after bill due date), and every month thereafter until the bill is paid or otherwise closed. The following elements will normally appear on the report:

(A) Principal amount due;

(B) Interest computation date;

(C) Late payment date;

(D) Accrual of interest charges if payment is not received by the late payment date;

(E) Applicable current interest rate;

(F) Amount of interest owed;

(G) Principal's name and address;

(H) CBP office where requests for administrative adjustments due to billing errors may be addressed; and

(I) Transaction identification (e.g., entry number, reimbursable assignment number).

(ii) Upon the written request of a surety, CBP will provide the surety a notice containing the billing information at the time of the initial billing to its principal.

[T.D. 86–178, 51 FR 34958, Oct. 1, 1986, as amended by T.D. 99–75, 64 FR 56437, Oct. 20, 1999 ; CBP Dec. 08–25, 73 FR 40726, July 16, 2008; CBP Dec. 12–04, 77 FR 17332, Mar. 26, 2012]

§ 24.4 Optional method for payment of estimated import taxes on alcoholic beverages upon entry, or withdrawal from warehouse, for consumption.

(a) *Application to defer*. An importer, including a transferee of alcoholic beverages in a Customs bonded warehouse who wishes to pay on a semi-monthly basis the estimated import taxes on alcoholic beverages entered, or withdrawn from warehouse, for consumption by him during such a period may apply by letter to the Center director, either at a port of entry or electronically. If the importer desires the additional privilege of depositing estimated tax payments on an extended deferred basis, it must be specifically requested. An importer who receives approval from the Center director to defer such payments may, however, continue to pay the estimated import taxes due at the time of entry, or withdrawal from warehouse, for consumption.

(b) *Deferred payment periods*. A period shall commence on October 24 and run through October 31, 1965; thereafter the periods shall run from the 1st day of each month through the 15th day of that month, and from the 16th day of each month through the last day of that month. An importer may begin the deferral of payments of estimated tax to a Customs port in the first deferral period beginning after the date of the written approval by the Center director. An importer may use the deferred payment system until the Center director advises such importer that he is no longer eligible to defer the payment of such taxes.

(c) *Content of application and supporting documents*. (1) An importer must state his estimate of the largest amount of taxes to be deferred in any semimonthly period based on the largest amount of import taxes on alcoholic beverages deposited with CBP in such a period during the year preceding his application. He must also identify any existing bond or bonds that he has on file with CBP and shall submit in support of his application the approval of the surety on his bond or bonds to the use of the procedure and to the increase of such bond or bonds to such larger amount or amounts as may be found necessary by the Center director.

(2) Each application must include a declaration in substantially the following language:

> I declare that I am not presently barred by CBP from using the deferred payment procedure for payment of estimated taxes upon imports of alcoholic beverages, and that if I am notified by a Center director to such effect I shall advise any future Center director where approval has been given to me to use such procedure.

(d) *Use of deferred payment method*. (1) The Center director will notify the importer, or his authorized agent if requested, of approval.

(2) An importer who has received approval to make deferred payments retains the option of deferring or depositing the estimated tax on imported alcoholic beverages until the entry or withdrawal is presented to the cashier for payment of estimated duties. At the time the importer presents his entry or withdrawal for consumption to the cashier together with the estimated duty, he must either pay the estimated tax or indicate on the entry or

withdrawal that he elects to defer the tax payment.

(e) *Tax deferment procedure.* If the importer elects to defer the tax payments, he shall enter on each copy of the entry or withdrawal the words ''Tax Payment Deferred,'' adjacent to the amount shown on the documents as estimated taxes, before presentation to the cashier.

(f) *Payment procedure*—(1) *Billing.* Each importer who has deferred tax payments on imported alcoholic beverages will be billed on Customs Form 6084, United States Customs Service Bill, at the end of each tax deferred period for all taxes deferred during the period. Each bill will identify each tax amount deferred and the related entry numbers. These bills must be paid in fully by the last day of the next succeeding deferral period.

(2) *Interest on overdue accounts.* When any bill for deferred taxes is not paid within the period specified in subparagraph (f)(1) of this section, interest thereon from the date following the end of the specified period to the date of payment of the bill shall be assessed, collected, and paid in the same manner as the basic tax. The rate of interest to be assessed shall be 7 percent per annum or such other rate as is established by the Secretary of the Treasury or his delegate in accordance with 26 U.S.C. 6621(b).

(g) *Restrictions on deferring tax deposits.* An importer may not on one entry, or withdrawal from warehouse for consumption, deposit part of the estimated tax and defer the balance of the tax. The estimated tax on each entry or withdrawal must be either fully paid or deferred.

(h) *Termination of deferred payment privilege.* (1) When any bill on Customs Form 6084 for deferred taxes is not paid within the period specified in paragraph (f) of this section, a demand for payment shall be made to the surety on the importer's bond. If in the opinion of the customs officer concerned such failure to make timely payment of estimated deferred taxes warrants the withdrawal of the tax deferral privilege, he will advise the importer of the withdrawal of such privilege. In all instances of failure to pay timely the deferred taxes on alcoholic beverages withdrawn from warehouse for consumption, further withdrawals from the warehouse entry on which the tax is delinquent will be refused until payment is made of the amount delinquent.

(2) The termination at any port of the tax deferral privilege for failure to pay timely any deferred estimated tax shall be at the discretion of the Customs officer concerned. Termination of the privilege for any other reason shall be subject to the approval of the Commissioner of Customs. Notice of termination of the tax deferral privilege at any port will be disseminated to all other Customs ports.

(3) Renewal of the tax deferral privilege after it has been withdrawn at any port may be made only upon approval of the Commissioner of Customs.

(i) *Duration of deferred payment privilege.* The deferred payment privilege once approved by the port director or Center director before January 19, 2017, or the Center director on or after January 19, 2017, will remain in effect until terminated under the provisions of paragraph (h) or the importer or surety requests termination.

(j) *Entries for consumption or warehouse after an importer is delinquent.* An importer who is delinquent in paying deferred taxes may make entries for consumption or for warehousing, or withdrawals for consumption from warehouse entries on which no delinquency exists, upon deposit of all estimated duties or taxes.

(k) *Rate of tax.* The estimated taxes must be paid on the basis of the rates in effect upon entry, or withdrawal from warehouse, for consumption, unless in accordance with section 315 of the Tariff Act of 1930, as amended, another date is applicable and not on the basis of the rates of tax in effect on the date deferred payment is made.

[28 FR 14808, Dec. 31, 1963, as amended by T.D. 56510, 30 FR 13359, Oct. 21, 1965; T.D. 67–31, 32 FR 493, Jan. 18, 1967; T.D. 75–278, 40 FR 51420, Nov. 5, 1975; T.D. 76–258, 41 FR 38767, Sept. 13, 1976; T.D. 84–213, 49 FR 41170, Oct. 19, 1984; T.D. 95–77, 60 FR 50011, Sept. 27, 1995; T.D. 99–27, 64 FR 13675, Mar. 22, 1999; CBP Dec. 16–26, 81 FR 93015, Dec. 20, 2016]

§ 24.5 Filing identification number.

(a) *Generally*. Each person, business firm, Government agency, or other organization shall file Customs Form 5106, Notification of Importer's Number or Application for Importer's Number, or Notice of Change of Name or Address, with the first formal entry which is submitted or the first request for services that will result in the issuance of a bill or a refund check upon adjustment of a cash collection. A Customs Form 5106 shall also be filed for the ultimate consignee for which such entry is being made. Customs Form 5106 may be obtained from any Customs Office.

(b) *Preparation of Customs Form 5106*. (1) The identification number to be used when filing Customs Form 5106 shall be:

(i) The Internal Revenue Service employer identification number, or

(ii) If no Internal Revenue Service employer identification number has been assigned, the Social Security number.

(2) If neither an Internal Revenue Service employer identification number nor a Social Security number has been assigned, the word ''None'' shall be written on the line provided for each of these numbers on Customs Form 5106 and the form shall be filed in duplicate.

(c) *Assignment of importer identification number*. Upon receipt of a Customs Form 5106 without an Internal Revenue Service employer identification number or a Social Security number, an importer identification number shall be assigned and entered on the Customs Form 5106 by the Customs office where the entry or request for services is received. The duplicate copy of the form shall be returned to the filing party. This identification number shall be used in all future Customs transactions when an importer number is required. If an Internal Revenue Service employer identification number, a Social Security number, or both, are obtained after an importer number has been assigned by Customs, a new Customs Form 5106 shall not be filed unless requested by Customs.

(d) *Optional additional identification*. Customs Form 5106 contains blocks for a two-digit suffix code which may be written in as an addition to the Internal Revenue Service employer identification number to provide optional additional identification. The two-digit suffix code may be used by a business firm having branch office operations to permit the firm to identify transactions originating in its branch offices, or by vessel owners to permit them to identify transactions associated with particular vessels. A separate Customs Form 5106 shall be required to report the specific suffix code and the name and address for each branch office or vessel to be identified. Transactions may be associated with a specific branch office or vessel by reporting the appropriate identification number, including the two-digit suffix code, on Customs Form 7501, or its electronic equivalent, or the request for services. Suffix codes may be either numeric, alphabetic, or a combination of both numeric and alphabetic, except that the letters O, Z, and I may not be used. The blocks may be left blank if the firm or vessel owner has no use for them and a ''00'' suffix will be automatically assigned.

(e) *Retention of importer identification number*. An importer identification number shall remain on file until 1 year from the date on which it is last used on Customs Form 7501, or its electronic equivalent, or a request for services. If not used for 1 year and there is no outstanding transaction to which it must be associated, the importer identification number will be removed from Customs files. To engage in future transactions described in paragraph (a) of this section, the person, business firm, Government agency, or other organization, previously covered by an importer identificatign number, must file another Customs Form 5106.

(f) *''Freezing'' importer identification information*. Those importers identifying Customs transactions through the procedure specified in paragraph (d) of this section and desiring to ensure that they receive such Customs transaction notifications as may be issued may request Customs to ''freeze'' the name and address information, regardless of what is shown on the Customs Form 5106 or request for services, by designating the name and title/position of the individual in their

company authorized to effect name/address changes to the Importer's Record Number (IRN) identification information, and specifying the IRNs and suffixes to be frozen and the mailing address and/or physical location address of the company where Customs notifications are to be directed. The request must be made in a separate writing on letterhead paper signed by the importer of record or his agent, whose name and title are clearly indicated. Participation in the ''Freeze'' Program is voluntary. Requests to participate should be sent to: the National Finance Center, U.S. Customs and Border Protection, Office of Administration, Revenue Division, 6650 Telecom Drive, Suite 100, Indianapolis, IN 46278, Attn: Freeze Program.

[T.D. 78–7, 42 FR 64681, Dec. 28, 1977, as amended by T.D. 84–129, 49 FR 23166, June 5, 1984; T.D. 93–43, 58 FR 34367, June 25, 1993; CBP Dec. 12–21, 77 FR 73308, Dec. 10, 2012; CBP Dec. 15–14, 80 FR 61286, Oct. 13, 2015]

§ 24.11 Notice to importer or owner of increased or additional duties, taxes, fees and interest.

Any increased or additional duties, taxes, fees or interest found due upon liquidation or reliquidation shall be billed to the importer of record, or to the actual owner if the following have been filed with Customs:

(a) A declaration of the actual owner in accordance with section 485(d), Tariff Act of 1930, as amended (19 U.S.C. 1485(d)), and § 141.20 of this chapter; and

(b) A bond on Customs Form 301 in accordance with § 141.20 of this chapter.

[T.D. 99–75, 64 FR 56439, Oct. 20, 1999]

§ 24.12 Customs fees; charges for storage.

(a) The following schedule of fees prescribed by law or hereafter in this paragraph shall be made available to the public at all Customs offices. When payment of such fee is received by a Customs employee a receipt therefor shall be issued.

(1) [Reserved]

(2) No fee will be charged for furnishing an official certificate if the request is made to Customs at the time the entry summary is filed. However, Customs shall charge and collect a fee of $10.00 for each hour or fraction thereof for time spent by each clerical, professional or supervisor in finding the documents and furnishing an official certification if the request is made after the entry documents are filed, plus a charge of 15 cents per page for photcopying. The fee may be revised periodically by publication of a general notice in the FEDERAL REGISTER and *Customs Bulletin* setting forth the revised fee. The published revised fee shall remain in effect until changed.

(b) [Reserved]

(c) The rates charged for storage in Government-owned or rented buildings shall not be less than the charges made at the port by commercial concerns for the storage and handling of merchandise. Except as to an examination package covered by an application for an entry by appraisement, storage shall be charged on any examination package for any period it remains in the appraiser's store after 2 full working days following the day on which the permit to release or transfer was issued. As to an examination package covered by an application for an entry by appraisement, storage shall be charged for any period it remains in the appraiser's store after 2 full working days following the day of issuance to the importer of oral or written notice of the amount of duties or taxes required to be deposited or that the package is ready for delivery. If the port director finds that circumstances make it impractical to remove examination packages from the appraiser's store within the 2-day period, he may extend the period for not to exceed 3 additional working days, without storage charges. In computing the 2 working days, and any authorized extension, (1) the day on which the permit to release or transfer is issued, or the day on which the notice is issued of the amount of duties or taxes that shall be deposited or that the package is ready for delivery, whichever is applicable, (2) Saturdays, (3) Sundays, and (4) National holidays, shall be excluded.

(d) Pursuant to the progressive clearance procedures set forth in § 122.88 of this chapter, when airlines commingle domestic (stopover) passengers who have already cleared Customs at their port of arrival and are continuing on to

another U.S. destination, with international passengers who are arriving at their port of arrival and have not yet cleared Customs, a progressive clearance fee of $2.00 per domestic (stopover) passenger reinspection in the U.S. will be charged by Customs to the affected airlines to offset the additional cost to Customs of reinspecting passengers who have already been cleared. The fee is in addition to any other charges currently incurred, such as overtime services, but will not apply to passengers reinspected on an overtime basis if the cost of performing such reinspection is reimbursed to Customs in accordance with 19 U.S.C. 1451. The fee will not apply to the reinspection of non-revenue producing passengers, including but not limited to, employees of the carrier and their dependents, deadhead crew, employees of other carriers who may be assessed a service charge by the transporting carrier, and other persons to whom the carrier is authorized to provide free transportation pursuant to 14 CFR part 233. The airline industry will be notified at least 90 days in advance of the date of any change in the amount of the fee necessitated by either an increase or decrease in costs to Customs, but no new fee shall take effect before January 1, 1986.

[28 FR 14808, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 24.12, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 24.13 Car, compartment, and package seals; kind, procurement.

(a) Customs seals accepted pursuant to § 24.13a of this chapter shall be used in sealing openings, packages, conveyances, or articles requiring the security provided by such sealing.

(b) Red in-bond and high security red in-bond seals used for sealing imported merchandise shipped between ports in the United States shall be stamped ''U.S. Customs in Bond.'' Uncolored seals used to seal containers of commercial traveler's samples transiting the United States as provided by § 123.52 of this chapter shall be stamped ''Canada-United States Customs.'' [U.S. Transit], and uncolored seals used to seal containers of commercial traveler's samples transiting the United States as provided by § 123.52 of this chapter shall be stamped ''Canada-United States Customs.'' Blue in-transit seals used to seal merchandise transiting foreign territory or waters between ports in the United States as provided in § 123.24 of this chapter shall be stamped ''U.S. Customs In-Transit.'' Yellow in-transit seals used on rail shipments of merchandise and on containers of commercial traveler's samples transiting Canada between U.S. ports as provided in §§ 123.24 and 123.51 of this chapter shall be stamped [U.S. Customs]

[Can. Transit] for use on railroad cars, and ''United States-Canada Customs'' for use on samples. Uncolored seals used for Customs purposes other than for (1) shipping in bond, (2) shipping by other than a bonded common carrier in accordance with section 553, Tariff Act of 1930, as amended, or (3) shipping in transit shall be stamped ''U.S. Customs.'' All seals (except uncolored in-transit seals on containers of commercial traveler's samples and seals for use on airline liquor kits) shall be stamped with the name of the port for which they are ordered. Each strap seal shall be stamped with a serial number. Each automatic metal seal shall be stamped with a symbol number and, when required, with a serial number.

(c) *Purchase of seals.* Bonded carriers of merchandise, commercial associations representing the foregoing or comparable organizations approved by the port director under paragraph (f) of this section, a foreign trade zone operator and bonded warehouse proprietors may purchase quantity supplies of in-bond and in-transit seals from manufacturers approved under the provisions of § 24.13a. The order shall be prepared by the purchaser and, except as hereinafter noted, shall be confined to seals for use at one port and shall specify the kind and quantity of seals desired, the name of the port at which they are to be used, and the name and address of the consignee to whom they are to be shipped. Seals for use on airline liquor kits need not specify the name of the port at which they are to be used, and orders for such seals need not be confined to seals for use at one

port. Carriers and bonded warehouse proprietors may purchase small emergency supplies of in-bond and in-transit seals from port directors, who will keep a supply of such seals for this purpose. An order for green or uncolored in-transit seals shall be submitted to the office of the Director of Customs-Excise Inspection, Ottowa, Canada, for approval and forwarding to the manufacturer. An order for green strap-in bond seals for use on railroad cars must stipulate that the seals are to be consigned to the collector of customs and excise in Canada at the port indicated on the seals for entry purposes and storage under Customs lock and key.

(d) The manufacturer or supplier shall ship the seals to the consignee named in the order and shall advise the director of the port to which the seals are shipped as to the kind and quantity of seals shipped, the name of the port (where required), serial numbers, and symbol number (where required) stamped thereon, the name and address of the consignee, and the date of shipment.

(e) [Reserved]

(f) *Port director approval required.* In-bond seals may be purchased only by a foreign trade zone operator or Customs bonded warehouse proprietor, a customs bonded carrier, a nonbonded carrier permitted to transport articles in accordance with section 553, Tariff Act of 1930, as amended (19 U.S.C. 1553) or in the case of red in-bond and high security red in-bond seals, the carrier's commercial association or comparable representative approved by the port director. In-transit seals may be purchased by a bonded or other carrier of merchandise or, in the case of blue in-transit seals, by the carrier's commercial association or comparable representative approved by the port director. Except for uncolored in-transit seals, uncolored Customs seals may not be purchased by private interests and shall be furnished by port directors for authorized use without charge. In-bond and in-transit seals sold by port directors shall be charged for at the rate of 10 cents per seal, except for high security red in-bond seals which shall be charged for at the current manufacturer's list price for the quantity purchased.

[28 FR 14808, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 24.13, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 24.13a Car, compartment, and package seals; and fastenings; standards; acceptance by Customs.

(a) *General standards.* The seals and fastenings, together, shall

(1) Be strong and durable;

(2) Be capable of being affixed easily and quickly;

(3) Be capable of being checked readily and identified by unique marks (such as a logotype) and numbers;

(4) Not permit removal or undoing without breaking, or tampering without leaving traces;

(5) Not permit use more than once; and

(6) Be made as difficult as possible to copy or counterfeit.

(b) *Seal specifications.* (1) The shape and size of the seal shall be such that any identifying marks are readily legible.

(2) Each eyelet in a seal shall be of a size corresponding to that of the fastening used, and shall be positioned so that the fastening will be held firmly in place when the seal is closed.

(3) The material used shall be sufficiently strong to prevent accidental breakage, early deterioration (due to weather conditions, chemical action, etc.) or undetectable tampering under normal usage.

(4) The material used shall be selected with reference to the sealing system used.

(c) *Fastening specifications.* (1) The fastening shall be strong and durable and resistant to weather and corrosion.

(2) The length of the fastening used shall not enable a sealed aperture to be opened or partly opened without the seal or fastening being broken or otherwise showing obvious damage.

(3) The material used shall be selected with reference to the sealing system used.

(d) *Identification marks.* (1) If the seal is to be purchased and used by U.S.

Customs, the seal or fastening, as appropriate, shall be marked to show that it is a U.S. Customs seal by application of the words ''U.S. Customs'' and a unique identification number on the seal.

(2) If the seal is to be used by private industry (i.e., a shipper, manufacturer, or carrier), it must be clearly and legibly marked with a unique company name (or logotype) and identification number.

(e) *Customs acceptance.* Seals will be considered as acceptable for use and/or purchase by U.S. Customs as soon as the manufacturer attests that the seals have been tested and meet or exceed the standards provided in paragraphs (a) through (d) of this section, and will continue to be considered acceptable until such time as it is demonstrated that they do not meet the standards. A manufacturer may attest to the qualification of a specific seal, or to an entire product line of seals as of a certain date. Any addition of a seal to a group of seals attested to as a group would require specific acceptance of that seal by Customs.

(f) *Testing.* All testing of seals deemed necessary before Customs acceptance will be done by the manufacturer or by a private laboratory, and not by Customs. However, Customs reserves the right to test, or to have tested, seals that have been accepted by Customs.

(g) *Records.* The manufacturer's attestation that a seal meets or exceeds the standards specified in this section and, if deemed necessary by Customs, the seal test record shall be sent to the Assistant Commissioner, Field Operations, Headquarters, U.S. Customs Service, Washington DC 20229.

[T.D. 81–185, 46 FR 36842, July 16, 1981, as amended by T.D. 91–77, 56 FR 46114, Sept. 10, 1991]

§ 24.14 Salable Customs forms.

(a) Customs forms for sale to the general public shall be designated by the Commissioner of Customs, or his delegate. Customs forms which are designated as salable shall meet the following conditions: (1) The form is distributed to private parties for use in completing customs transactions; (2) the quantity used nationwide annually is sufficient to justify the administrative costs involved in selling the form and accounting for the collections involved therein, or the form is primarily for the use of a special group; (3) distribution is or can generally be made in lots of 100 or more; (4) the form is normally distributed to commercial concerns (customhouse brokers, freight forwarders, vessel agents, carriers, regular commercial importers, etc.) rather than to or for the use of individuals or others (tourists, churches, schools, occasional importers, etc.) for noncommercial purposes.

(b) The price of each salable Customs form shall be established by the Commissioner of Customs, or his delegate, and shall be adjusted periodically as the varying costs of printing and distribution require. A list of salable customs forms showing the price at which each is sold shall be prominently posted in each customhouse in a location accessible to the general public.

(c) Customs forms for sale to the general public, except unusually large or otherwise unsuitable forms, shall normally be prepared in units containing 100 copies. If a completely prepared bill or receipt is presented by the purchaser at the time of the purchase, the CBP's paid stamp shall be impressed thereon; otherwise, no receipt shall be given.

[28 FR 14808, Dec. 31, 1963, as amended by T.D. 75–132, 40 FR 24519, June 9, 1975; CBP Dec. 16–26, 81 FR 93015, Dec. 20, 2016]

§ 24.16 Overtime services; overtime compensation and premium pay for Customs Officers; rate of compensation.

(a) *General.* Customs services for which overtime compensation is provided for by section 5 of the Act of February 13, 1911, as amended (19 U.S.C. 267), or section 451, Tariff Act of 1930, as amended (19 U.S.C. 1451), shall be furnished only upon compliance with the requirements of those statutes for applying for such services and giving security for reimbursement of the overtime compensation, unless the compensation is nonreimbursable under the said section 451, or section 53 of the Airport and Airway Development Act

of 1970, as amended (49 U.S.C. 1741). Reimbursements of overtime compensation shall be collected by the port director from the applicants for the services. Customs Officers entitled to overtime compensation and premium pay, pursuant to the provisions of the Customs Officer Pay Reform legislation (19 U.S.C. 261 and 267, as amended), shall not receive pay or other compensation for that work under any other provision of law. Reimbursable overtime services shall not be furnished to an applicant who fails to cooperate with the Customs Service by filing a timely application therefor during regular hours of business when the need for the services can reasonably by foreseen, nor in any case until the maximum probable reimbursement is adequately secured.

(b) *Definitions.* For purposes of this section, the following words and phrases have the meanings indicated:

(1) *The Act* refers to part II, subchapter D of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66.

(2) *Administrative workweek* means a period of seven consecutive calendar days beginning Sunday and continuing through the following Saturday.

(3) *Base pay* means the rate of pay fixed by law or administrative action for the position held by the Customs Officer.

(4) *Callback* means the irregular or occasional overtime work performed by a Customs Officer either on a day when work was not regularly scheduled for that officer or which begins at least one hour after the end of the officer's regularly-scheduled tour of duty and ends at least one hour before the beginning of the following regularly-scheduled assignment and requires the officer to return to a place of work.

(5) ''Commute compensation'' means the compensation which a Customs Officer is entitled to receive, in excess of the officer's base pay, for returning to work, under certain conditions, to perform an overtime work assignment. Commute compensation, within the limits prescribed by the Act, shall be treated as overtime compensation, and is includable for Federal retirement benefit purposes.

(6) *Continuous assignment* means the grouping of multiple overtime assignments, performed by the same Customs Officer(s), which are separated by periods of non-work, into a single unit for computation of pay purposes.

(7) *Customs Officer* means only those individuals assigned to position descriptions entitled ''Customs Inspector,'' ''Supervisory Customs Inspector,'' ''Canine Enforcement Officer,'' ''Supervisory Canine Enforcement Officer,'' ''Customs and Border Protection Officer,'' ''Supervisory Customs and Border Protection Officer,'' ''Customs and Border Protection Agriculture Specialist,'' or ''Supervisory Customs and Border Protection Agriculture Specialist.''

(8) *Fiscal year pay cap* refers to the statutory maximum, in effect for the year involved, in overtime and premium pay a Customs Officer shall receive in that fiscal year. This aggregate limit may be waived by the Commissioner of Customs or his/her designee in individual cases in order to prevent excessive costs or to meet emergency requirements of the Customs Service.

(9) *Holiday* means any day designated as a holiday by a Federal statute or declared by an Executive order.

(10) *Intermittent employee* is a non-full-time employee who does not have a regularly-scheduled tour of duty.

(11) *Majority of hours,* within the context of night work differentials, means more than half of the hours of the daily regularly-scheduled tour of duty.

(12) *Night work* means regularly-scheduled work performed by a Customs Officer on tours of duty, in which a majority of the hours worked occur between the hours of 3:00 p.m. and 8:00 a.m.

(13) *Overtime pay* means the compensation which a Customs Officer is entitled to receive, in excess of the officer's base pay, for performing officially-assigned work in excess of the 40 hours of the officer's regularly-scheduled administrative workweek or in excess of 8 hours in a day, which may include commute compensation as defined at paragraph (b)(5) of this section. Overtime pay, within the limits prescribed by the Act, is includable for Federal retirement benefit purposes.

(14) *Premium pay differential* means the compensation which a Customs Officer is entitled to receive, in excess of the officer's base pay, for performing officially-assigned work on holidays, Sundays and at night. Premium pay is not includable for Federal retirement benefit purposes.

(15) *Regularly-scheduled administrative workweek* means, for a full-time employee, the 40 hour period within an administrative workweek within which the employee is regularly scheduled to work, exclusive of any overtime; for a part-time employee, it means the officially prescribed days and hours within an administrative workweek during which the employee is regularly scheduled to work.

(c) *Application and bond.* (1) Except as provided for in paragraphs (c)(2) and (4) of this section, an application for inspectional services of Customs Officers at night or on a Sunday or holiday, Customs Form 3171, supported by the required cash deposit or bond, shall be filed in the office of the port director before the assignment of such officers for reimbursable overtime services. The cash deposit to secure reimbursement shall be fixed by the port director or authorized representative in an amount sufficient to pay the maximum probable compensation and expenses of the Customs Officers, or the maximum amount which may be charged by law, whichever is less, in connection with the particular services requested. The bond to secure reimbursement shall be on Customs Form 301, containing the appropriate bond conditions set forth in subpart G, part 113 of this chapter (see §§ 113.62, 113.63, 113.64 and 113.73), and in an amount to be fixed by the port director, unless another bond containing a provision to secure reimbursement is on file. A bond given on Customs Form 301, containing the appropriate bond conditions set forth in subpart G, part 113 of this chapter (see §§ 113.62, 113.63, 113.64 and 113.73), to secure the payment of overtime services rendered private aircraft and private vessels shall be taken without surety or cash deposit in lieu of surety, and the bond shall be modified to so indicate.

(2) Prior to the expected arrival of a pleasure vessel or private aircraft the port director may designate a Customs Officer to proceed to the place of expected arrival to receive an application for night, Sunday, or holiday services in connection with the arrival of such vessel or aircraft, together with the required cash deposit or bond. In each such case the assignment to perform services shall be conditional upon the receipt of the appropriate application and security. Where the security is a cash deposit, the receipt may be properly inscribed to make it serve as a combined receipt for cash deposit in lieu of bond and request for overtime services, in lieu of filing a request for overtime services on Customs Form 3171.

REQUEST FOR OVERTIME SERVICES

Permit Number _____

I hereby request overtime services on _____, 19___;, at ____ a.m., p.m., in connection with the entry of my aircraft (vessel).

_____

(Pilot, Owner, or Person in Charge)

(3) An application on Customs Form 3171 for overtime services of Customs Officers, when supported by the required cash deposit or a continuous bond, may be granted for a period not longer than for 1 year. In such a case, the application must show the exact times when the overtime services will be needed, unless arrangements are made so that the proper Customs Officer will be notified timely during official hours in advance of the services requested as to the exact times that the services will be needed.

(4) Inspectional services will be provided to owners or operators of aircraft without charge for overtime on Sundays and holidays between the hours of 8:00 a.m. and 5:00 p.m. Applications for inspectional services for aircraft during those hours shall be filed as set forth in paragraph (c)(1) of this section, but without cash deposit or bond.

(d) *Work assignment priorities.* The establishment of regularly-scheduled administrative tours of duty and assignments of Customs Officers to overtime work under this section shall be made in accordance with the following priorities, listed below in priority order:

(1) *Alignment.* Tours of duty should be aligned with the Customs workload.

(2) *Least cost.* All work assignments should be made in a manner which minimizes the cost to the government or party in interest. Decisions, including, but not limited to, what hours should be covered by a tour of duty or whether an assignment should be treated as a continuous assignment or subject to commute compensation, should be based on least cost considerations. However, base pay comparison of eligible employees shall not be used in the determination of staffing assignments.

(3) *Annuity integrity.* For Customs Officers within 3 years of their statutory retirement eligibility, the amount of overtime that can be worked is limited to the average yearly number of overtime hours the Customs Officer worked during his/her career with the Customs Service. If the dollar value of the average yearly number of overtime hours worked by such Customs Officer exceeds 50 percent of the applicable statutory pay cap, then no overtime earning limitation based on this annuity integrity provision would apply. Waivers concerning this annuity integrity limitation may be granted by the Commissioner of Customs or the Commissioner's designee in individual cases in order to prevent excessive costs or to meet emergency requirements of Customs.

(e) *Overtime pay.* (1) A Customs Officer who is officially assigned to perform work in excess of the 40 hours in the officer's regularly-scheduled administrative workweek or in excess of 8 hours in a day shall be compensated for such overtime work performed at 2 times the hourly rate of the officer's base pay, including any locality pay, but not including any premium pay differentials for holiday, Sunday, or night work.

(2) The computation of the amount of overtime worked by a Customs Officer is subject to the following conditions:

(i) *Overtime that is less than one hour.* A quarter of an hour shall be the smallest fraction of an hour used for paying overtime under this subpart.

(ii) *Absence during overtime.* Except as expressly authorized by statute, regulation, or court order (i.e., military leave, court leave, continuation of pay under the workers compensation law, and back pay awards), a Customs Officer shall be paid for overtime work only when the officer reports as assigned.

(f) *Special provisions relating to overtime work on a callback basis*—(1) *Minimum duration and callback requirements.* Any work for which overtime pay is authorized and for which the Customs Officer is required to return to a place of work shall be treated as being at least 2 hours in duration, but only if such work begins at least 1 hour after the end of any previous regularly-scheduled work assignment and ends at least 1 hour before the beginning of the following regularly-scheduled work assignment. An unpaid meal period shall not be considered a break in service for purposes of callback.

(2) *Commute compensation—Eligibility.* A Customs Officer shall be compensated for overtime when the officer is called back and officially assigned to perform work that:

(i) Is in excess of the 40 hours in the officer's regularly-scheduled administrative workweek or in excess of 8 hours in a day;

(ii) Begins at least 1 hour after the end of any previous regularly-scheduled work assignment;

(iii) Commences more than 2 hours prior to the start of the officer's next regularly-scheduled work assignment;

(iv) Ends at least 1 hour before the beginning of the officer's next regularly-scheduled work assignment; and,

(v) Commences less than 16 hours after the officer's last regularly-scheduled work assignment. The 16 hours shall be calculated from the end of the Customs Officer's last regularly-scheduled work assignment.

(3) *Commute compensation—Amount.* Commute compensation under this section shall be in an amount equal to 3 times the hourly rate of the Customs Officer's base pay for a one hour period, which includes applicable locality pay, but does not include any premium pay differentials for holiday, Sunday or night work. The Customs Officer shall be entitled to this amount for an eligible commute regardless of the actual commute time. However, an unpaid meal period shall not be considered a break in service for purposes of commute compensation.

(4) *Maximum compensation for multiple assignments.* If a Customs Officer is assigned to perform more than one overtime assignment, in which the officer is required to return to a place of work more than once in order to complete the assignment, and otherwise satisfies the callback requirements of paragraph (f)(1) of this section, then the officer shall be entitled to commute compensation each time the officer returns to the place of work provided that each assignment commences less than 16 hours after the officer's last regularly-scheduled work assignment. However, in no case shall the compensation be greater than if some or all of the assignments were treated as one continuous callback assignment.

(g) *Premium pay differentials.* Premium pay differentials may only be paid for non-overtime work performed on holidays, Sundays, or, at night (work performed, in whole or in part, between the hours of 3:00 p.m. and 8:00 a.m.). A Customs Officer shall receive payment for only one of the differentials for any one given period of work. The order of precedence for the payment of premium pay differentials is holiday, Sunday, and night work.

(1) *Holiday differential.* A Customs Officer who performs any regularly-scheduled work on a holiday shall receive pay for that work at the officer's hourly rate of base pay, which includes authorized locality pay, plus premium pay amounting to 100 percent of that base rate. Holiday differential premium pay will be paid only for time worked. Intermittent employees are not entitled to holiday differentials.

(i) When a holiday is designated by a calendar date, for example, January 1, July 4, November 11, or December 25, the holiday will be observed on that date regardless of Saturdays and Sundays. Customs Officers who perform regularly-scheduled, non-overtime, tours of duty on those days shall be paid the holiday differential. Holidays not designated by a specific calendar date, such as President's Day (the third Monday in February), shall be observed on that date, and Customs Officers who perform regularly-scheduled, non-overtime, work on those days shall be paid the holiday differential.

(ii) Inauguration Day (January 20 of each fourth year after 1965), is a legal public holiday for the purpose of the Act. Customs Officers whose duty locations are in the District of Columbia, or Montgomery and Prince George counties in Maryland, or Arlington and Fairfax counties in Virginia, or in the cities of Alexandria and Falls Church in Virginia, who perform regularly-scheduled, non-overtime, work on that day shall be paid the holiday differential. When Inauguration Day falls on Sunday, the next succeeding day selected for the public observance of the inauguration of the President is the legal public holiday.

(iii) If a legal holiday falls on a Customs Officer's regularly-scheduled day off, the officer shall receive a holiday ''in lieu of'' that day. Holidays ''in lieu of'' shall not be granted for Inauguration Day. A Customs Officer who works on an ''in lieu of'' holiday shall be paid the holiday differential.

(iv) If a Customs Officer is assigned to a regularly-scheduled, non-overtime, tour of duty which contains hours within and outside the 24-hour calendar day of a holiday—for example, a tour of duty starting at 8 p.m. on a Monday holiday following a scheduled day off on Sunday and ending at 4 a.m. on Tuesday—the Customs Officer shall receive the holiday differential (up to 8 hours) for work performed during that shift. If the Customs Officer is assigned more than one regularly-scheduled, non-overtime, tour of duty which contains hours within and outside the 24-hour calendar day of a holiday—for example, a tour of duty starting at 8 p.m. on the Wednesday before a Thursday holiday and ending at 4 a.m. on Thursday with another regularly-scheduled, non-overtime, tour of duty starting at 8 p.m. on the Thursday holiday and ending at 4 a.m. on Friday—the management official in charge of assigning work shall designate one of the tours of duty as the officer's holiday shift and the officer shall receive holiday differential (up to 8 hours) for work performed during the entire period of the designated holiday shift. The Customs Officer shall not receive holiday differential for any of the work performed on the tour of duty which has not been designated as the holiday shift but will

be eligible for Sunday or night differential as appropriate.

(v) Customs Officers who are regularly scheduled, but not required, to work on a holiday shall receive their hourly rate of base pay for that 8-hour tour plus any Sunday or night differential they would have received had the day not been designated as a holiday. To receive holiday pay under this paragraph, the Customs Officer must be in a pay status (at work or on paid leave), either the last work day before the holiday or the first work day following the holiday.

(vi) A Customs Officer who works only a portion of a regularly-scheduled, non-overtime, holiday shift will be paid the holiday differential for the actual hours worked and the appropriate differential (Sunday or night) for the remaining portion of the shift such officer was not required to work. The night differential premium pay shall be calculated based on the rate applicable to the entire shift.

(2) *Sunday differential.* A Customs Officer who performs any regularly-scheduled work on a Sunday that is not a Federal holiday shall receive pay for that work at the officer's hourly rate of base pay, which includes authorized locality pay, plus premium pay amounting to 50 percent of that base rate. Sunday differential premium pay will be paid only for time worked and is not applicable to overtime work performed on a Sunday. A Customs Officer whose regularly-scheduled work occurs in part on a Sunday, that is not a Federal holiday, and in part on the preceding or following day, will receive the Sunday differential premium pay for the hours worked between 12:01 a.m. and 12 Midnight on Sunday. Intermittent employees are not entitled to Sunday differentials.

(3) *Night work differentials.* A Customs Officer who performs any regularly-scheduled night work shall receive pay for that work at the officer's hourly rate of base pay, including locality pay as authorized, plus the applicable premium pay differential, as specified below, but shall not receive such night differential for work performed during overtime assignments. When all or the majority of the hours of a Customs Officer's regularly-scheduled work occur between 3 p.m. and 8 a.m., the officer shall receive a night differential premium for all the hours worked during that assignment. Intermittent employees are not entitled to night differentials.

(i) *3 p.m. to Midnight.* If more than half of the hours of a Customs Officer's regularly-scheduled shift occur between the hours of 3 p.m. and 12 Midnight, the officer shall be paid at the officer's hourly rate of base pay and shall also be paid a premium of 15 percent of that hourly rate of base pay for all the hours worked.

(ii) *11 p.m. to 8 a.m.* If more than half of the hours of a Customs Officer's regularly-scheduled shift occur between the hours of 11 p.m. and 8 a.m., the officer shall be paid at the officer's hourly rate of base pay and shall also be paid a premium of 20 percent of that hourly rate of base pay for all the hours worked.

(iii) *7:30 p.m. to 3:30 a.m. Shift.* If the regularly-scheduled shift of a Customs Officer is 7:30 p.m. to 3:30 a.m., the officer shall be paid at the officer's hourly rate of base pay and shall also be paid a premium of 15 percent of that hourly rate of base pay for the work performed between 7:30 p.m. and 11:30 p.m. and 20 percent of that hourly rate of base pay for the work performed between 11:30 p.m. and 3:30 a.m.

(iv) *Work scheduled during two differential periods.* A Customs Officer shall only be paid one night differential rate per regularly-scheduled shift, except as provided for in paragraph (iii) above. A Customs Officer whose regularly-scheduled work occurs during two separate differential periods shall receive the night differential premium rate which applies to the majority of hours scheduled.

(v) *Night work which occurs in part on a Sunday.* When a Customs Officer's regularly-scheduled shift occurs in part on a Sunday, the officer shall receive Sunday differential pay for those hours of the work which are performed during the 24 hour period of the Sunday, and the night differential pay for those hours which do not fall on the Sunday. For example, a Customs Officer who is assigned and works a shift which starts at 8 p.m. Sunday and ends at 4 a.m.

Monday, shall receive 4 hours of Sunday premium pay and 4 hours of night pay. The night differential pay shall be calculated based on the rate applicable to the particular tour of duty.

(h) *Limitations.* Total payments for overtime/commute, and differentials for holiday, Sunday, and night work that a Customs Officer is paid shall not exceed any applicable fiscal year pay cap established by Congress. The Commissioner of Customs or the Commissioner's designee may waive this limitation in individual cases to prevent excessive costs or to meet emergency requirements of the Customs Service. However, compensation awarded to a Customs Officer for work not performed, which includes overtime awards during military leave or court leave, continuation of pay under workers compensation law, and awards made in accordance with back pay settlements, shall not be applied to any applicable pay cap calculations.

[28 FR 14808, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 24.16, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 24.17 Reimbursable services of CBP employees.

(a) Amounts of compensation and expenses chargeable to parties-in-interest in connection with services rendered by CBP employees during regular hours of duty or on Customs overtime assignments (19 U.S.C. 267, 1451), under one or more of the following circumstances shall be collected from such parties-in-interest and deposited by port directors as repayments to the appropriation from which paid.

(1) When a CBP employee is assigned on board a vessel or vehicle under authority of section 457, Tariff Act of 1930, to protect the revenue, the owner or master of such vessel or vehicle shall be charged the full compensation and authorized travel and subsistence expenses of such employee from the time he leaves his official station until he returns thereto.

(2) When a CBP employee is assigned on board a vessel under authority of section 458, Tariff Act of 1930, to supervise the unlading of such vessel, the master or owner of such vessel shall be charged the full compensation of such employee for every day consumed in unlading after the expiration of 25 days after the date of the vessel's entry.

(3) When a CBP employee is assigned under authority of section 304, Tariff Act of 1930, as amended, to supervise the exportation, destruction, or marking to exempt articles from the duty provided for in such section, the importer of such merchandise shall be charged the full compensation and authorized travel and subsistence expenses of such employee from the time he leaves his official station until he returns thereto.

(4) When a CBP employee is assigned pursuant to § 101.4 of this chapter to a Customs station or other place which is not a port of entry for service in connection with the entry or clearance of a vessel, the owner, master, or agent of the vessel shall be charged the full compensation and authorized travel and subsistence expenses of such employee from the time he leaves his official station until he returns. When a CBP employee is so assigned to render service in connection with the entry or delivery of merchandise only, the private interest shall be charged only for the authorized travel and subsistence expenses incurred by such employee from the time he leaves his official station until he returns thereto except that no collection need be made if the total amount chargeable against one importer for one day amounts to less than 50 cents (see § 101.4(b) of this chapter). Where the amount chargeable is 50 cents or more, but less than $1, a minimum charge of $1 shall be made.

(5) When a CBP employee is assigned under authority of section 447, Tariff Act of 1930, to make entry of a vessel at a place other than a port of entry or to supervise the unlading of cargo, the private interest shall be charged the full compensation and authorized travel and subsistence expenses of such employee from the time he leaves his official station until he returns thereto.

(6) [Reserved]

(7) When a CBP employee is assigned on any vessel or vehicle, under authority of section 456, Tariff Act of 1930,

while proceeding from one port to another, the master or owner of such vessel or vehicle shall be charged the full compensation and authorized travel and subsistence expenses of such employee from the time he leaves his official station until he returns thereto, or, in lieu of such expenses, the master or owner may furnish such employee the accommodations usually supplied to passengers.

(8) When a CBP employee is assigned under authority of section 562, Tariff Act of 1930, as amended, to supervise the manipulation of merchandise at a place other than a bonded warehouse, the compensation and expenses of such employee shall be reimbursed to the Government by the party in interest. A Customs officer so assigned is not acting as a customs warehouse officer, since the services have no connection with a customs bonded warehouse.

(9) When a CBP employee is assigned to supervise the destruction of merchandise pursuant to section 557(c), Tariff Act of 1930, as amended, at a place where a CBP employee is not regularly assigned, the full compensation and expenses of such employee shall be reimbursed to the Government by the party in interest.

(10) When a CBP employee is assigned to supervise the labeling of imported merchandise in accordance with the provisions of §§ 11.12(b), 11.12a(b), 11.12b(b) of the regulations of this chapter or the removal or obliteration of prohibited markings and trade marks from merchandise which has been detained or seized in accordance with the provisions of §§ 11.13(c) and 11.17(b) of the regulations of this chapter or to supervise the exportation or destruction of any such merchandise, the compensation and expenses of such CBP employee shall be reimbursed to the Government by the party in interest.

(11) When a CBP employee is assigned to supervise examination, sampling, weighing, repacking, segregation, or other operation on merchandise in accordance with §§ 151.4, 151.5, 158.11, 158.14, and 158.42 of this chapter, the compensation and other expenses of such employee shall be reimbursed to the Government by the party-in-interest except when a warehouse proprietor is liable therefor.

(12) When a CBP employee is assigned to provide Customs services at an airport or other facility under 19 U.S.C. 58b, the facility shall reimburse to the Government an amount equal to the salary and expenses of such employee (including overtime) plus any other expenses incurred in providing those Customs services at the facility.

(b) When a CBP employee is assigned to render services the nature of which is such that the private interest is required to reimburse the Government for his compensation and on the same assignment performs services for which compensation is not reimbursable, a charge shall be made to the private interest for the full compensation of the CBP employee unless the time devoted to each class of service can be clearly segregated.

(c) The charge for any service enumerated in this section for which expenses are required to be reimbursed shall include actual transportation expenses of a CBP employee within the port limits and any authorized travel expenses of a CBP employee, including per diem, when the services are performed outside the port limits irrespective of whether the services are performed during a regular tour of duty or during a Customs overtime assignment. No charge shall be made for transportation expenses when a CBP employee is reporting to as a first daily assignment, or leaving from as a last daily assignment, a place within or outside the port limits where he is assigned to a regular tour of duty. No charge shall be made for transportation expenses within the port limits or travel expenses, including per diem, outside the port limits in connection with a Customs overtime assignment for which reimbursement of expenses is not covered by this section.

(d) *Computation charge for reimbursable services.* The charge to be made for the services of a CBP employee on a regular workday during his basic 40-hour workweek shall be computed at a rate per hour equal to 137 percent of the hourly rate of regular pay of the particular employee with an addition equal to any night pay differential actually payable under 5 U.S.C. 5545. The

rate per hour equal to 137 percent of the hourly rate of regular pay is computed as follows:

	Hours	Hours
Gross number of working hours in 52 40-hour weeks	.....	2,080
Less:		
9 Legal public holidays—New Years Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day ..	72	.....
Annual Leave—26 days	208	.....
Sick Leave—13 days	104	384
Net number of working hours	.....	1,696
Gross number of working hours in 52 40-hour weeks		2,080
Working hour equivalent of Government contributions for employee uniform allowance, retirement, life insurance and health benefits computed at 11½ percent of annual rate of pay of employee		239
Equivalent annual working hour charge to Customs appropriation		2,319
Ratio of annual number of working hours charged to Customs appropriation to net number of annual working hours 2,319/1,696 = 137 percent.		

(1) The charge to be made for the reimbursable services of a CBP employee to perform on a holiday or outside the established basic workweek shall be the amount actually payable to the employee for such services under the Federal Employees Pay Act of 1945, as amended (5 U.S.C. 5542(a), 5546), or the Customs overtime laws (19 U.S.C. 267, 1451), or both, as the case may be. When such services are performed by an intermittent when-actually-employed employee, the charge for such services shall be computed at a rate per hour equal to 108 percent of the hourly rate of the regular pay of such employee to provide for reimbursement of the Government's contribution under the Federal Insurance Contributions Act, as amended (25 U.S.C. 3101, *et seq.),* and employee uniform allowance. The time charged shall include any time within the regular working hours of the employee required for travel between the duty assignment and the place where the employee is regularly employed excluding lunch periods, charged in multiples of 1 hour, any fractional part of an hour to be charged as 1 hour when the services are performed during the regularly scheduled tour of duty of the officer or between the hours of 8 a.m. and 5 p.m. on weekdays when the officer has no regularly scheduled tour of duty. In no case shall the charge be less than $1.

(2) The necessary transportation expenses and any authorized per diem expenses of a CBP employee assigned to perform reimbursable services at a location at which he is not regularly assigned shall be reimbursed by the responsible party.

(3) When a CBP employee is regularly assigned to duty at more than one location, the charge for his compensation and transportation expenses in going from one location to another shall be equitably apportioned among the parties concerned. However, no charge shall be made for transportation expenses when a CBP employee is reporting to as a first assignment, or leaving from as a last assignment, a place where he is regularly assigned to duty.

(4) Upon a failure to pay such charges when due, or to comply with the applicable laws and regulations, the port director shall report the facts to the Accounting Services—Accounts Receivable, which shall take appropriate action to collect the charges.

(e) The reimbursable charge for customs overtime compensation shall be computed in accordance with § 24.16.

(f) *Medicare compensation costs.* In addition to other expenses and compensation chargeable to parties-in-interest as set forth in this section, such persons shall also be required to reimburse Customs in the amount of 1.35 percent of the reimbursable compensation expenses incurred. Such payment will reimburse Customs for its share of Medicare costs.

[28 FR 14808, Dec. 31, 1963]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 24.17, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov.*

§ 24.18 Preclearance of air travelers in a foreign country; reimbursable cost.

(a) Preclearance is the tentative examination and inspection of air travelers and their baggage at foreign places where U.S. Customs personnel are stationed for that purpose.

(b) At the request of an airline, travelers on a direct flight to the United States from a foreign place described in paragraph (a) of this section may be precleared prior to departure from such place. A charge based on the excess cost to Customs of providing preclearance services as defined in paragraph (c) of this section shall be made to the airline.

(c) The reimbursable excess cost is the difference between the cost of examining and inspecting air travelers and their baggage upon arrival in the United States assuming no preclearance was provided, and the cost of providing preclearance for air travelers at the place of departure. Such excess cost shall include all items attributable to the preclearance operation. This does not include the salary of personnel regularly assigned to a preclearance station other than approved salary differentials related to the foreign assignment and the salary of relief details made necessary by reason of the nature of the operation. In addition, such cost shall include the following allowances and expenses:

(1) Housing allowances;

(2) Post of duty allowances;

(3) Education allowances;

(4) Transportation cost incident to the assignment to the foreign station and return, including transportation of family and household effects;

(5) Home leave and associated transportation costs; and

(6) Equipment, supplies and administrative costs including costs of supervising the preclearance installation.

(d) The reimbursable excess cost described in paragraph (c) of this section shall be determined for each preclearance installation. On the basis of the excess cost figure for each installation, the excess cost of providing preclearance service for a biweekly pay period shall be determined. The initial schedule of biweekly excess cost will be based on the actual excess cost for fiscal year 1969. Thereafter, a quarterly (ending with the pay period closely corresponding to June 30, September 30, December 31, and March 31) cost analysis will be conducted and the schedule of biweekly excess costs will be adjusted so that the current biweekly excess cost schedule will reflect the actual excess costs of the previous quarter. Such schedules of biweekly costs for each installation shall be published in the FEDERAL REGISTER. The biweekly excess cost in effect at an installation at the time the charge is made shall be used in calculating the prorated charge for preclearance service for each airline in accordance with paragraph (e) of this section.

(e) The charge to each airline for preclearance service shall be its prorated share of the applicable excess cost prorated to the aircraft receiving such services during the billing period on the following basis:

(1) Five percent shall be distributed equally among the airlines serviced.

(2) Ten percent shall be distributed proportionately as the number of clearances serviced bears to the total number of clearances.

(3) Eighty-five percent shall be distributed proportionately as the number of passengers and/or crew serviced for each airline bears to the total number of passengers and/or crew serviced.

(f) Customs services for which overtime compensation is provided for by section 5 of the Act of February 13, 1911, as amended (19 U.S.C. 267), and the expenses recovered thereunder are governed by § 24.16 and are in no way affected by this section. (63 Stat. 290; 31 U.S.C. 483a)

[T.D. 70–34, 35 FR 1161, Jan. 29, 1970, as amended by T.D. 85–123, 50 FR 29953, July 23, 1985]

§ 24.21 Administrative overhead charges.

(a) *Reimbursable and overtime services.* An additional charge for administrative overhead costs shall be collected from parties-in-interest who are required to reimburse Customs for compensation and/or expenses of Customs officers performing reimbursable and overtime services for the benefit of such parties under §§ 24.17 and 24.16, respectively, of this part. The cost of the charge for administrative overhead shall be 15 percent of the compensation and/or expenses of the Customs officers performing the service.

(b) *Other services.* An additional charge for administrative overhead costs shall be collected from parties-in-interest who are required to reimburse

Customs for compensation and/or expenses of Customs officers performing various services for the benefit of such parties. The cost of the charge for administrative overhead shall be 15 percent of the compensation and/or expenses of the Customs officers performing the service. The fees, whether billed or not, include, but are not limited to:

(1) Navigation fees for vessel services in § 4.98;

(2) [Reserved]

(3) Fee to establish container stations in § 19.40;

(4) Fee for furnishing the names and addresses of importers of merchandise appearing to infringe a registered patent in § 24.12(a)(3);

(5) Charge for storing merchandise in a Government-owned or rented building in § 24.12(c);

(6) Charge for the sale of in-bond and in-transit seals in § 24.13(f);

(7) Charge for the sale of Customs forms in § 24.14(b);

(8) Charge for preclearing aircraft in a foreign country in § 24.18;

(9) Fee for issuing a customhouse broker's license in § 111.12(a);

(10) Fee for designating a carrier or freight forwarder as a carrier of Customs bonded merchandise in § 112.12(a);

(11) Fee for issuing a Customs bonded cartman's license in § 112.22(a)(2);

(12) Fee for recording of trademarks in § 133.3;

(13) Fee for renewing, or recording a change in name of owner, or of ownership of, a trademark in §§ 133.5(d), 133.6(b), 133.7(a)(3);

(14) Fee for recording of trade name in § 133.13(b);

(15) Fee for recording a copyright in § 133.33(b); and

(16) Fee for renewing, or recording a change in name of owner, or of ownership of, a copyright in §§ 133.35(b)(2), 133.36(b), 133.37(a)(3);

(c) *No administrative overhead charge.* No additional charge for administrative overhead costs discussed in paragraphs (a) and (b) of this section shall be collected if (1) imposition of such charge is precluded by law; (2) there is a formal accounting system for determining administrative overhead for a service, in which case that system shall be used for determining the cost of the charge for administrative overhead; or (3) the charge for administrative overhead for a service is specifically provided for elsewhere in this chapter.

[T.D. 84–231, 49 FR 46122, Nov. 23, 1984, as amended by T.D. 95–99, 60 FR 62733, Dec. 7, 1995; T.D. 99–64, 64 FR 43266, Aug. 10, 1999]

§ 24.22 Fees for certain services.

This section sets forth the terms and conditions for when the fees and corresponding limitations for certain services are required. Except as provided in paragraph (l)(1)(i) of this section, the specific customs user fee amounts and corresponding limitations that appear in this section are not the actual fees or limitations but represent the base year amounts that are subject to adjustment each fiscal year in accordance with the Fixing America's Surface Transportation Act (FAST Act) using Fiscal Year 2014 as the base year for comparison. (*See* appendix A to part 24 for a table setting forth the fees and limitations subject to adjustment along with the corresponding statutory authority, the regulatory citation, the name of the fee or limitation, and the Fiscal Year 2014 base amount which reflects the statutory amounts that were adjusted by the American Jobs Creation Act of 2004 (Pub. L. 108–357).) The methodology for adjusting the fees and limitations to reflect the percentage, if any, of the increase in the average of the Consumer Price Index—All Urban Consumers, U.S. All items, 1982–84 (CPI–U) for the preceding 12-month period (June through May) compared to the Consumer Price Index for fiscal year 2014 is set forth in paragraph (k) of this section. CBP will determine annually whether an adjustment to the fees and limitations is necessary and a notice specifying the amount of the fees and limitations will be published in the FEDERAL REGISTER annually for each fiscal year at least 60 days prior to the effective date of the new fees and limitations. The fees and the limitations will also be maintained for the public's convenience on the CBP Web site at *www.cbp.gov*. If a customs user has pre-paid or met the calendar year limit prior to the effective date of the new fees and limitations, no additional fees will be required for that calendar

year. If the customs user has not prepaid or met the calendar year limit prior to the effective date of the new fees and limitations, the customs user will be subject to the adjusted limitation or prepayment amount.

(a) *Definitions.* For purposes of this section:

(1) The term *vessel* includes every description of watercraft or other contrivance used or capable of being used as a means of transportation on water but does not include any aircraft.

(2) The term *arrival* means arrival at a port of entry in the customs territory of the United States or at any place serviced by any such port of entry.

(3) The expression *calendar year* means the period from January 1 to December 31 of any particular year.

(4) The term *ferry* means any vessel which is being used to provide transportation only between places that are no more than 300 miles apart and which is being used to transport only:

(i) Passengers, and/or

(ii) Vehicles, or railroad cars, which are being used, or have been used, in transporting passengers or goods.

(5) The term *Inbound Express Mail service* or *Inbound EMS* means the service described in the mail classification schedule referred to in section 3631 of title 39, United States Code and 39 CFR 3040.104.

(b) *Fee for arrival of certain commercial vessels*—(1) *Vessels of 100 net tons or more*—(i) *Fee.* Except as provided in paragraphs (b)(2) and (b)(4) of this section, a processing fee in the amount of $437, as adjusted in accordance with the terms of paragraph (k) of this section, must be tendered by the master, licensed deck officer, or purser upon arrival of any commercial vessel of 100 net tons or more which is required to enter under § 4.3 of this chapter or upon arrival of any U.S.-flag vessel of 100 net tons or more proceeding coastwise under § 4.85 of this chapter. The fee will be collected for each arrival regardless of the number of arrivals taking place in the course of a single voyage.

(ii) *Fee limitation.* No fee or portion thereof will be collected under paragraph (b)(1)(i) of this section for the arrival of a vessel during any calendar year after a total of $5,955 in fees, as adjusted in accordance with the terms of paragraph (k) of this section, has been paid under paragraphs (b)(1)(i) and (b)(2)(i) of this section for all arrivals of such vessel during such calendar year, provided that adequate proof of such total payment is submitted to CBP.

(2) *Barges and other bulk carriers from Canada or Mexico*—(i) *Fee.* A processing fee of $110, as adjusted in accordance with the terms of paragraph (k) of this section, must be tendered upon arrival of any barge or other bulk carrier which arrives from Canada or Mexico either in ballast or transporting only cargo laden in Canada or Mexico. The fee will be collected for each arrival regardless of the number of arrivals taking place in the course of a single voyage. For purposes of this paragraph, the term ''barge or other bulk carrier'' means any vessel, other than a ferry, which is not self-propelled or which transports fungible goods that are not packaged in any form.

(ii) *Fee limitation.* No fee or portion thereof will be collected under paragraph (b)(2)(i) of this section for the arrival of a barge or other bulk carrier during any calendar year after a total of $1,500 in fees, as adjusted in accordance with the terms of paragraph (k) of this section, has been paid under paragraphs (b)(1)(i) and (b)(2)(i) of this section for all arrivals of such vessel during such calendar year, provided that adequate proof of such total payment is submitted to CBP.

(3) *Prepayment.* The vessel operator, owner, or agent may at any time prepay the maximum calendar year amount specified in paragraph (b)(1)(ii) or (b)(2)(ii) of this section, or any remaining portion of that amount if individual arrival fees have already been paid on the vessel for that calendar year. Prepayment must be made at a CBP port office. When prepayment is for the remaining portion of a maximum calendar year amount, certified copies of receipts (CBP Form 368 or 368A) issued for individual arrival fee payments during the calendar year must accompany the payment.

(4) *Exceptions.* The following vessels are exempt from payment of the fees specified in paragraphs (b)(1) and (b)(2) of this section:

(i) Foreign passenger vessels making at least three trips a week from a port in the United States to the high seas and returning to the same U.S. port without having touched any foreign port or place, even though formal entry is still required;

(ii) Any vessel which, at the time of arrival, is being used solely as a tugboat;

(iii) Any government vessel for which no report of arrival or entry is required as provided in § 4.5 of this chapter; and

(iv) A ferry except for a ferry that began operations on or after August 1, 1999, and operates south of 27 degrees latitude and east of 89 degrees longitude.

(c) *Fee for arrival of a commercial truck*—(1) *Fees.* The fees for the arrival of a commercial truck consist of two separate fees. A CBP fee of $5.50, as adjusted by the terms of paragraph (k) of this section, but if the adjusted amount is not evenly divided by 0.05 (*e.g.*, $5.74) then adjusted down to the next lower $0.05 (*e.g.*, $5.70), and an Animal and Plant Health Inspection Service/Agricultural Quarantine Inspection (APHIS/AQI) fee set forth in 7 CFR 354.3 for the services provided that CBP collects on behalf of APHIS. Upon arrival at a CBP port of entry, the driver or other person in charge of a commercial truck must tender the fees to CBP unless they have been prepaid as provided for in paragraph (c)(3) of this section. The fees will not apply to any commercial truck which, at the time of arrival, is being transported by any vessel other than a ferry. For purposes of this paragraph, the term ''commercial truck'' means any self-propelled vehicle, including an empty vehicle or a truck cab without a trailer, which is designed and used for the transportation of commercial merchandise or for the transportation of non-commercial merchandise on a for-hire basis.

(2) *CBP fee limitation.* No CBP fee will be collected under paragraph (c)(1) of this section for the arrival of a commercial truck during any calendar year once a prepayment of $100, as adjusted by the terms of paragraph (k) of this section, has been made and a transponder has been affixed to the vehicle windshield as provided in paragraph (c)(3) of this section.

(3) *Prepayment.* The owner, agent, or person in charge of a commercial vehicle may at any time prepay the commercial truck fee as defined in paragraph (c)(1) for all arrivals of that vehicle during a calendar year or any remaining portion of a calendar year. Prepayment of the $100 CBP fee, as adjusted in accordance with the terms of paragraph (k) of this section, and the APHIS/AQI fee set forth in 7 CFR 354.3 must be made in accordance with the procedures and payment methods set forth in this paragraph and paragraph (i) of this section. The transponder request and prepayment by credit card or ACH debit may be made via the Internet through the ''Travel'' link on the CBP Web site located at *http://www.cbp.gov*. Alternatively, prepayment may be sent by mail with credit card information, check, or money order made payable to U.S. Customs and Border Protection, along with a completed CBP Form 339C (Annual User Fee Decal Request—Commercial Vehicle) for each commercial truck to the following address: U.S. Customs and Border Protection, Attn: DTOPS Program Administrator, 6650 Telecom Drive, Suite 100, Indianapolis, IN 46278. Once the prepayment has been made under this paragraph, a transponder will be issued to be permanently affixed by adhesive to the lower left hand corner of the vehicle windshield in accordance with the accompanying instructions, to show that the vehicle is exempt from payment of the fees for individual arrivals during the applicable calendar year or any remaining portion of that year. If any of the information provided on the CBP Form 339C or the online application changes during the calendar year, the owner, agent, or person in charge of the commercial truck must inform the CBP Decal and Transponder Online Procurement System (DTOPS) Program Administrator of the changed information in writing, or update the information on the CBP Web site referenced above, no later than 15 days from the date of the change. Failure to timely notify CBP of changed information may result in the commercial truck being stopped for secondary inspection, assessment of liquidated damages, or other sanctions.

(d) *Fee for arrival of a railroad car*—(1) *Fee.* Except as provided in paragraph (d)(6) of this section, a fee of $8.25, as adjusted in accordance with the terms of paragraph (k) of this section, will be charged for the arrival of each loaded or partially loaded passenger or commercial freight railroad car. The railroad company receiving a railroad car in interchange at a port of entry or, barring interchange, the company moving a car in line haul service into the customs territory of the United States,will be responsible for payment of the fee. Payment of the fee must be made in accordance with the procedures set forth in paragraph (d)(3) or (d)(4) of this section. For purposes of this paragraph, the term ''railroad car'' means any carrying vehicle, measured from coupler to coupler and designed to operate on railroad tracks, other than a locomotive or a caboose.

(2) *Fee limitation.* No feewill be collected under paragraph (d)(1) of this section for the arrival of a railroad car during any calendar year once a prepayment of $100, as adjusted in accordance with the terms of paragraph (k) of this section, has been made as provided in paragraph (d)(3) of this section, provided that adequate records are maintained to enable CBP to verify any such prepayment.

(3) *Prepayment.* As an alternative to the payment procedures set forth in paragraph (d)(4) of this section, a railroad company may at any time prepay a fee of $100, as adjusted in accordance with the terms of paragraph (k) of this section, to cover all arrivals of a railroad car during a calendar year or any remaining portion of a calendar year. The prepayment, accompanied by a letter setting forth the railroad car number(s) covered by the payment, the calendar year to which the payment applies, a return address, and any additional information required under paragraph (i) of this section, must made in accordance with the procedures and payment methods set forth in this paragraph and paragraph (i) of this section.

(4) *Statement filing and payment procedures.* (i) The Association of American Railroads (AAR), the National Railroad Passenger Corporation (AMTRAK), and any railroad company preferring to act individually, must file monthly statements with CBP, and must make payment of the arrival fees to CBP, in accordance with the procedures set forth in paragraphs (d)(4) (ii) and (i) of this section. Each monthly statement must indicate:

(A) The number of railroad cars subject to the arrival fee during the relevant period;

(B) The number of such railroad cars pulled by each carrier; and

(C) The total processing fees due from each carrier for the relevant period.

(ii) AMTRAK and railroad companies acting individually must file each monthly statement within 60 days after the end of the applicable calendar month, and the fees covered by each statement must be remitted with the statement. Monthly statements prepared by the AAR on behalf of individual railroad companies must be filed within 60 days after the end of the applicable calendar month, and each railroad company must remit the fees as calculated for it by the AAR within 60 days after the end of that calendar month. In cases of conflict between the AAR and an individual railroad company regarding calculation of the fees, the railroad company must timely remit the amount as calculated by the AAR even if the dispute is unresolved. Subsequent settlements may be accounted for by an explanation in, and adjustment of, the next payment to CBP. Payment must be made in accordance with the procedures and payment methods set forth in this paragraph and paragraph (i) of this section.

(5) *Maintenance of records.* The AAR, AMTRAK, and each railroad company preparing and filing its own statements must maintain all documentation necessary for CBP to verify the accuracy of the fee calculations and to otherwise determine compliance under the law. Such documentation must be maintained in the United States for a period of 5 years from the date of fee calculation. The AAR, AMTRAK, and each railroad company preparing and filing its own statements must provide to CBP the name, address, and telephone number of a responsible officer who is able to verify any statements or

records required to be filed or maintained under this section, and must promptly notify CBP of any changes in identifying information previously submitted.

(6) *Exceptions.* The following railroad cars are exempt from payment of the fee specified in paragraph (d)(1) of this section:

(i) Any railroad car whose journey originates and terminates in the same country, provided that no passengers board or disembark from the train and no cargo is loaded or unloaded from the car while the car is within any country other than the country in which the car originates and terminates, including any such railroad car which is set out for repairs outside the United States and then returned to on-line service without having undergone loading or unloading of passengers or cargo during the repair period;

(ii) Any railroad car transporting only containers, bins, racks, dunnage and other fixed or loose equipment or materials which have been used for enclosing, supporting or protecting commercial freight; and

(iii) Any railroad car which, at the time of arrival, is being transported by any vessel other than a ferry.

(e) *Fee for arrival of a private vessel or private aircraft*—(1) *Fee.* Except as provided in paragraph (e)(3) of this section, the master or other person in charge of a private vessel or private aircraft must, upon first arrival in any calendar year, proceed to CBP and tender the sum of $27.50, as adjusted in accordance with the terms of paragraph (k) of this section, to cover services provided in connection with all arrivals of that vessel or aircraft during that calendar year. Either a properly completed CBP Form 339V (Annual User Fee Decal Request—Vessels) or CBP Form 339A (Annual User Fee Decal Request—Aircraft), must accompany the payment. Upon payment of the annual fee, a decal will be issued to be permanently affixed by adhesive to the vessel or aircraft, in accordance with accompanying instructions, as evidence that the fee has been paid. Except in the case of private aircraft, and aircraft landing at user fee airports authorized under 19 U.S.C. 58b, all overtime charges provided for in this part remain payable notwithstanding payment of the fee specified in this paragraph.

(2) *Prepayment.* A private vessel or private aircraft owner or operator may, at any time during the calendar year, prepay the $27.50 annual fee specified in paragraph (e)(1) of this section, as adjusted in accordance with the terms of paragraph (k) of this section. Prepayment must be made in accordance with the procedures and payment methods set forth in this paragraph and paragraph (i) of this section. The decal request and prepayment by credit card or ACH debit may be made via the Internet through the ''Travel'' link at the CBP Web site located at *http://www.cbp.gov.* Alternatively, prepayment may be sent by mail with credit card information, check, or money order made payable to U.S. Customs and Border Protection, along with a properly completed CBP Form 339V (Annual User Fee Decal Request—Vessels) or CBP Form 339A (Annual User Fee Decal Request—Aircraft), to the following address: U.S. Customs and Border Protection, Attn: DTOPS Program Administrator, 6650 Telecom Drive, Suite 100, Indianapolis, IN 46278.

(3) *Exceptions.* The following are exempt from payment of the fee specified in paragraph (e)(1) of this section:

(i) Private pleasure vessels of less than 30 feet in length, so long as they are not carrying any goods required to be declared to CBP;

(ii) Any private pleasure vessel granted a cruising license under §4.94 of this chapter, during the term of the license; and

(iii) Any private vessel which, at the time of arrival, is being transported by any vessel other than a ferry.

(f) *Fee for dutiable mail*—(1) *Dutiable mail other than Inbound EMS items.* Except as provided in paragraph (f)(2) of this section, the addressee of each item of dutiable mail for which a CBP officer prepares documentation will be assessed a processing fee in the amount of $5.50, as adjusted in accordance with the terms of paragraph (k) of this section. When the merchandise is delivered by the Postal Service, the fee will be shown as a separate item on the entry and collected at the time of delivery of the merchandise along with

any duty and taxes due. When CBP collects the fee directly from the importer or his agent, the fee will be included as a separate item on the informal entry or entry summary document.

(2) *Dutiable Inbound EMS items.* The fee specified in paragraph (f)(1) of this section does not apply to dutiable Inbound EMS items.

(g) *Fees for arrival of passengers aboard commercial vessels and commercial aircraft*—(1) *Fees.* (i) Subject to paragraphs (g)(1)(ii) and (g)(3) of this section, a fee of $5.50, as adjusted by the terms of paragraph (k) of this section, must be collected and remitted to CBP for services provided in connection with the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States except:

(A) When the journey of the arriving passenger originates in a territory or possession of the United States;

(B) When the journey of the arriving passenger originates in the United States and was limited to the territories and possessions of the United States; or

(C) When arriving from one of the territories or possessions of the United States.

(ii) Subject to paragraph (g)(3) of this section, a fee of $1.93, as adjusted by the terms of paragraph (k) of this section, must be collected and remitted to CBP for services provided in connection with the arrival of each passenger aboard a commercial vessel from a territory or possession of the United States, regardless of whether the journey of the arriving passenger originates in a place outside the United States or in the United States.

(iii) For the purposes of this paragraph (g), the term ''territories and possessions of the United States'' includes American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

(iv) For purposes of this paragraph (g), a journey, which may encompass multiple destinations and more than one mode of transportation, will be deemed to originate in the location where the person's travel begins under cover of a transaction which includes the issuance of a ticket or travel document for transportation into the customs territory of the United States.

(v) For purposes of this paragraph (g), the term ''passenger'' means a natural person for whom transportation is provided and includes an infant whether a separate ticket or travel document is issued for the infant or the infant occupies a seat or is held or carried by another passenger.

(vi) For purposes of paragraph (g)(1)(ii) of this section, the term ''commercial vessel'' includes any ferry that began operations on or after August 1, 1999, and operates south of 27 degrees latitude and east of 89 degrees longitude.

(vii) In the case of a commercial vessel making a single voyage involving two or more United States ports, the applicable fee prescribed under paragraph (g)(1)(i) or (g)(1)(ii) of this section is required to be charged only one time for each passenger.

(2) *Fee chart.* The chart set forth below outlines the application of the fees specified in paragraphs (g)(1)(i) and (ii) of this section with reference to the place where the passenger's journey originates and with reference to the place from which the passenger arrives in the United States (that is, the last stop on the journey prior to arrival in the United States). In the chart:

(i) SL stands for ''Specified Location'' and means territories and possessions of the United States;

(ii) The single asterisk (*) means that the journey originating in the United States is limited to travel to one or more Specified Locations;

(iii) The double asterisk (**) means that the journey originating in the United States includes travel to at least one place other than a Specified Location and/or the United States; and

(iv) N/A indicates that the facts presented in the chart preclude application of the fee.

Place where journey originates (see (g)(1)(iv))	Fee status for arrival from SL		Fee status for arrival from other than SL	
	Vessel	Aircraft	Vessel	Aircraft
SL	$1.93, as adjusted by the terms of paragraph (k) of this section.	No fee	No fee	No fee
Other than SL or U.S.	$1.93, as adjusted by the terms of paragraph (k) of this section.	No fee	$5.50, as adjusted by the terms of paragraph (k) of this section.	$5.50, as adjusted by the terms of paragraph (k) of this section
U.S.	$1.93, as adjusted by the terms of paragraph (k) of this section.	No fee	N/A	N/A
U.S.	$1.93, as adjusted by the terms of paragraph (k) of this section.	No fee	$5.50, as adjusted by the terms of paragraph (k) of this section.	$5.50, as adjusted by the terms of paragraph (k) of this section

(3) *Exceptions.* The fees specified in paragraph (g)(1) of this section will not apply to the following categories of arriving passengers:

(i) Crew members and persons directly connected with the operation, navigation, ownership or business of the vessel or aircraft, provided that the crew member or other person is traveling for an official business purpose and not for pleasure;

(ii) Diplomats and other persons in possession of a visa issued by the United States Department of State in class A–1, A–2, C–2, C–3, G–1 through G–4, or NATO 1–6;

(iii) Persons arriving as passengers on any aircraft used exclusively in the governmental service of the United States or a foreign government, including any agency or political subdivision of the United States or foreign government, so long as the aircraft is not carrying persons or merchandise for commercial purposes. Passengers on commercial aircraft under contract to the U.S. Department of Defense are exempted if they have been precleared abroad under the joint DOD/CBP Military Inspection Program;

(iv) Persons arriving on an aircraft due to an emergency or forced landing when the original destination of the aircraft was a foreign airport;

(v) Persons who are in transit to a destination outside the United States and for whom CBP inspectional services are not provided;

(vi) Persons departing from and returning to the same United States port as passengers on board the same vessel without having touched a foreign port or place; and

(vii) Persons arriving as passengers on board a commercial vessel traveling only between ports that are within the customs territory of the United States.

(4) *Fee collection procedures.* (i) Each air or sea carrier, travel agent, tour wholesaler, or other party issuing a ticket or travel document for transportation into the customs territory of the United States is responsible for collecting from the passenger the applicable fee specified in paragraph (g)(1) of this section, including the fee applicable to any infant traveling without a separate ticket or travel document. The fee must be separately identified with a notation ''Federal inspection fees'' on the ticket or travel document issued to the passenger to indicate that the required fee has been collected. A fee relative to an infant traveling without a ticket or travel document may be identified instead with the notation on a receipt or other document issued for that purpose or to record the infant's travel. If the ticket or travel document, or a receipt or other document issued relative to an infant traveling without a ticket or travel document, is not so marked and was issued in a foreign country, the fee must be collected by the departing carrier upon departure of the passenger from the United States. If the fee is collected at the time of departure from the United States, the carrier making the collection must issue a receipt to the passenger. U.S.-based tour wholesalers who contract for passenger space and issue non-carrier tickets or travel documents must collect the fee in the same manner as a carrier.

(ii) Collection of the fee under paragraph (g)(1)(i) of this section will include the following circumstances:

(A) When a through ticket or travel document is issued covering (or a receipt or other document issued for an infant traveling without a ticket or travel document indicates that the infant's journey is covering) a journey into the customs territory of the United States which originates in and arrives from a place outside the United States other than one of the territories and possessions of the United States;

(B) When a return ticket or travel document is issued (or a receipt or other document that indicates an infant traveling without a return ticket or travel document is issued) in connection with a journey which originates in the United States, includes a stop in a place other than one of the territories and possessions of the United States and the return arrival to the United States is from a place other than the territories and possessions of the United States; and

(C) When a passenger on a journey through the United States to a foreign destination arrives in the customs territory of the United States from a place other than one of the territories or possessions of the United States, is processed by CBP, and the journey does not originate in the territories and possessions of the United States.

(iii) Collection of the fee under paragraph (g)(1)(ii) of this section will include the following circumstances:

(A) When a through ticket or travel document is issued covering (or a receipt or other document issued for an infant traveling without a ticket or travel document indicates that the infant's journey is covering) a journey into the customs territory of the United States from one of the territories and possessions of the United States;

(B) When a return ticket or travel document is issued (or a receipt or other document that indicates an infant traveling without a return ticket or travel document is issued) in connection with a journey which originates in the United States and the return arrival to the United States is from one of the territories and possessions of the United States; and

(C) When a passenger on a journey through the United States to a foreign destination arrives in the customs territory of the United States from one of the territories and possessions of the United States and is processed by CBP.

(5) *Quarterly payment and statement procedures.* Payment to CBP of the fees required to be collected under paragraph (g)(1) of this section must be made no later than 31 days after the close of the calendar quarter in which the fees were required to be collected from the passenger. Payment of the fees must be made to the party required to collect the fee under paragraph (g)(4)(i) of this section, and must be made in accordance with the procedures and payment methods set forth in this paragraph and paragraph (i) of this section. Overpayments and underpayments may be accounted for by an explanation with, and adjustment of, the next due quarterly payment to CBP. The quarterly payment must be accompanied by a statement that includes the following information:

(i) The name and address of the party remitting payment;

(ii) The taxpayer identification number of the party remitting payment;

(iii) The calendar quarter covered by the payment;

(iv) The total number of tickets for which fees were required to be collected, the total number of infants traveling without a ticket or travel document for which fees were required to be collected, and the total amount of fees collected and remitted; and

(v) For commercial vessel passengers, the total number of tickets for which fees were required to be collected, the total number of infants traveling without a ticket or travel document for which fees were required to be collected, the total amount of fees collected and remitted to CBP, and a separate breakdown of the foregoing information relative to the $5.50 vessel passenger fee, as adjusted in accordance with the terms of paragraph (k) of this section, collected and remitted under paragraph (g)(1)(i) of this section and the $1.93 vessel passenger fee, as adjusted in accordance with the terms of paragraph (k) of this section, collected and remitted under paragraph (g)(1)(ii) of this section.

(6) Each carrier contracting with a U.S.-based tour wholesaler is responsible for notifying CBP of each flight or voyage so contracted, the number of spaces contracted for on each flight or voyage, and the name, address and taxpayer identification number of the tour wholesaler, within 31 days after the close of the calendar quarter in which such a flight or voyage occurred.

(7) *Maintenance of records.* Each air or sea carrier, travel agent, tour wholesaler, or other party affected by this paragraph must maintain all such documentation necessary for CBP to verify the accuracy of fee calculations and to otherwise determine compliance under the law. Such documentation must be maintained in the United States for a period of 5 years from the date of fee calculation. Each such affected party must provide to CBP the name, address, and telephone number of a responsible officer who is able to verify any statements or records required to be filed or maintained under this section, and must promptly notify CBP of any changes in the identifying information previously submitted.

(8) *Limitation on charges.* Except in the case of costs reimbursed under §24.17(a)(14) of this part, customs services provided to passengers arriving in the United States on scheduled airline flights (as defined in §122.1(k) of this chapter and operating within the requirements of subpart D of part 122 of this chapter) will be provided at no cost to airlines and airline passengers other than the fee specified in paragraph (g)(1) of this section.

(h) *Annual customs broker permit user fee.* Customs brokers are subject to an annual user fee of $138, as adjusted by the terms of paragraph (k) of this section, for a national permit held by an individual, partnership, association, or corporation. The annual user fee for a national permit must be submitted to the processing Center (see §111.1) through which the broker's license is delivered.

(i) *Information submission and fee remittance procedures.* In addition to any information specified elsewhere in this section, each payment made by mail must be accompanied by information identifying the person or organization remitting the fee, the type of fee being remitted (for example, railroad car, commercial truck, private vessel), and the time period to which the payment applies and must be mailed to the following address: U.S. Customs and Border Protection, Revenue Division, Attn: User Fee Team, 6650 Telecom Drive, Suite 100, Indianapolis, IN 46278. All fee payments required under this section in U.S. dollars, and must be paid in accordance with the provisions of §24.1. The fees may be made using any payment method authorized by §24.1 and for which the CBP location receiving the payment is equipped to process, and are subject to any restrictions as described elsewhere in this section. To pay railroad user fees on *Pay.gov,* an email must be sent to the Office of Administration, Revenue Division to establish a *Pay.gov* account. The email address for this purpose is *CUFIUFHelp@cbp.dhs.gov*. Once the *Pay.gov* account is established, payments may be made directly on *Pay.gov* without a further need to contact CBP. Where payment is made at a CBP port, credit cards will be accepted only where the port is equipped to accept credit cards for the type of payment being made. Check or money orders must be made payable to U.S. Customs and Border Protection and must be annotated with the appropriate class code. The applicable class codes and payment locations for each fee are as follows:

(1) Fee under paragraph (b)(1) of this section (commercial vessels of 100 net tons or more other than barges and other bulk carriers from Canada or Mexico): class code 491. Payment location: port of arrival for each individual arrival (fee to be collected by CBP at the time of arrival) or prepayment at the port in accordance with paragraph (b)(3) of this section;

(2) Fee under paragraph (b)(2) of this section (barges and other bulk carriers from Canada or Mexico): class code 498. Payment location: port of arrival for each individual arrival (fee to be collected by CBP at the time of arrival) or prepayment at the port in accordance with paragraph (b)(3) of this section;

(3) Fee under paragraph (c) of this section (commercial vehicles): for each individual arrival, class code 492 for the CBP fee and class code 482 for the

APHIS/AQI fee; for prepayment of the maximum calendar year fee, class code 902 for the CBP fee and class code 483 for the APHIS/AQI fee. Payment location: port of arrival for each individual arrival (fee to be collected by CBP at the time of arrival) or prepayment in accordance with paragraph (c)(3) of this section;

(4) Fee under paragraph (d) of this section (railroad cars): for each individual arrival (under the monthly payment and statement filing procedure), class code 493; for prepayment of the maximum calendar year fee, class code 903. Payment location: for individual arrivals (monthly payment and statement filing), see paragraph (d)(4)(ii) of this section; for prepayment, see paragraph (d)(3) of this section;

(5) Fee under paragraph (e) of this section (private vessels and aircraft): for private vessels, class code 904; for private aircraft, class code 494. Payment location: port of arrival for each individual arrival (fee to be collected by CBP at the time of arrival) or prepayment in accordance with paragraph (e)(2) of this section;

(6) Fee under paragraph (f) of this section (dutiable mail): class code 496. Payment location: see paragraph (f) of this section;

(7) Fee under paragraph (g)(1)(i) of this section (the $5.50 fee for commercial vessel and commercial aircraft passengers, as adjusted in accordance with the terms of paragraph (k) of this section): class code 495. Payment location: see paragraph (g)(5) of this section;

(8) Fee under paragraph (g)(1)(ii) of this section (the $1.93 fee for commercial vessel passengers, as adjusted in accordance with the terms of paragraph (k) of this section): class code 484. Payment location: see paragraph (g)(5) of this section; and

(9) Fee under paragraph (h) of this section (customs broker permits): for national permits, class code 997. Payment location: see paragraph (h) of this section.

(j) *Treatment of fees as customs duty*—(1) *Administration and enforcement.* Unless otherwise specifically provided in this chapter, all administrative and enforcement provisions under the customs laws and regulations, other than those laws and regulations relating to drawback, will apply with respect to any fee provided for under this section, and with respect to any person liable for the payment of such fee, as if such fee is a customs duty. For purposes of this paragraph, any penalty assessable in relation to an amount of customs duty, whether or not any such duty is in fact due and payable, will be assessed in the same manner with respect to any fee required to be paid under this section.

(2) *Jurisdiction.* For purposes of determining the jurisdiction of any court or agency of the United States, any fee provided for under this section will be treated as if such fee is a Customs duty.

(k) *Adjustment for inflation of Customs Consolidated Omnibus Budget Reconciliation Act (COBRA) user fees*—(1) *Fee amounts.* CBP will determine annually whether an adjustment to the fees and limitations is necessary and a notice specifying the amount of the fees and limitations, as adjusted, will be published in the FEDERAL REGISTER annually for each fiscal year at least 60 days prior to the effective date of the new fees and limitations. The fee and limitation amounts will also be maintained for the public's convenience on the CBP Web site at *www.cbp.gov*.

(2) *Methodology for annual adjustments of fees and limitation amounts for inflation.* CBP will determine the adjustments, if any, by making the following calculations:

(i) Calculate the arithmetic average of the Consumer Price Index—All Urban Consumers, U.S. All items, 1982–84 = 100 (CPI–U) for the current year based on the most recent June-May period. This figure is referred to as (A).

(ii) Calculate the arithmetic average of the CPI–U for FY 2014. This figure is referred to as (B).

(iii) State the arithmetic average of CPI–U for the comparison year which will be either (B) if the fees have never been adjusted in accordance with this paragraph (k), or the arithmetic average of the CPI–U for the last year in which fees were adjusted in accordance with this paragraph (k) as set forth in the FEDERAL REGISTER notice that last adjusted the fee. This figure is referred to as (C).

(iv) Calculate the difference between the arithmetic averages of the CPI–U of the comparison year (C) and the current year (A). This difference is referred to as (D). (D) = (A) − (C).

(v) Round the difference (D) to the nearest whole number. This figure is referred to as (E).

(vi) Calculate the percentage change in the arithmetic averages of the CPI–U of the comparison year (C) and the current year (A) which is referred to as (F). (F) = ((E) ÷ (C)) × 100%.

(vii) If (F) is one percent or more, proceed to the next step (viii). If (F) is less than one percent, no adjustment will be made.

(viii) Calculate the difference in the arithmetic average of the CPI–U between the current year (the most recent June through May period) and the base year (FY 2014). This difference is referred to as (G). (G) = (A) − (B).

(ix) Calculate the percentage change in the CPI–U from the base year to the current year. This figure is referred to as (H). (H) = ((G) ÷ (B)) × 100%.

(x) Increase the fees and limitations that are subject to the rules of this paragraph by (H), calculating fees and limitations to the second decimal.

(l) *Fees for Inbound Express Mail service (Inbound EMS) items*—(1) *Amounts.* As provided in subsection (b)(9)(D) of section 13031 of the Consolidated Omnibus Budget Reconciliation Act (COBRA), as amended by section 8002 of the Synthetics Trafficking and Overdose Prevention Act of 2018 (STOP Act of 2018) (19 U.S.C. 58c(b)(9)(D)), with respect to the processing of items that are sent to the United States through the international postal network by 'Inbound Express Mail service' or 'Inbound EMS', the following payments are required:

(i) $1 per Inbound EMS item, as adjusted in accordance with the terms of paragraph (l)(3) of this section, and

(ii) If an Inbound EMS item is formally entered, the fee provided for under § 24.23(b)(1).

(2) *Remittances from United States Postal Service to CBP.* As provided in subsection (b)(9)(D) of section 13031 of the COBRA, as amended by section 8002 of the STOP Act of 2018 (19 U.S.C. 58c(b)(9)(D)), United States Postal Service must remit to CBP on a quarterly basis 50 percent of the payments required by paragraph (l)(1)(i) of this section, to reimburse CBP for customs services provided in connection with the processing of Inbound EMS items. United States Postal Service will retain 50 percent of the amounts of the payments required by paragraph (l)(1)(i) of this section, to reimburse the Postal Service for services provided in connection with the processing of Inbound EMS items.

(i) *Method of remittance.* United States Postal Service must remit to CBP, on a quarterly basis, 50 percent of the payments required by paragraph (l)(1)(i) of this section for which settlement with foreign postal operators has occurred. Except for the first remittance, United States Postal Service must make such remittances to CBP every calendar quarter to cover preceding calendar quarters. The first remittance to CBP, due no later than July 31, 2020, must at a minimum cover the first calendar quarter of 2020.

(ii) *Supporting documentation.* United States Postal Service must maintain documentation necessary for CBP to verify the accuracy of the fee calculations. With each quarterly remittance to CBP, United States Postal Service must provide a supporting document that shows:

(A) The total quantity of Inbound EMS items for which 50 percent of the payments required by paragraph (l)(1)(i) of this section are being remitted;

(B) The receiving international mail facility location of each Inbound EMS item for which 50 percent of the payments required by paragraph (l)(1)(i) of this section are being remitted;

(C) The total amount of payments required by paragraph (l)(1)(i) of this section for which settlement with foreign postal operators has occurred; and

(D) For any Inbound EMS items sent to the United States through the international postal network in preceding calendar quarters for which settlement with foreign postal operators concerning the payments required by paragraph (l)(1)(i) of this section has not occurred, the receiving international

mail facility location of each such Inbound EMS item and the total quantity of any such Inbound EMS items received at each affected international mail facility location.

(3) *Adjustment of user fee for Inbound Express Mail items.* Beginning in fiscal year 2021, the Secretary of the Treasury, in consultation with the Postmaster General, may adjust by regulation, not more frequently than once each fiscal year, the amount described in paragraph (l)(1)(i) of this section to an amount not to exceed the costs of services provided in connection with the customs processing of Inbound EMS items, consistent with the obligations of the United States under international agreements.

[T.D. 93–85, 58 FR 54282, Oct. 21, 1993, as amended by T.D. 94–1, 58 FR 69470, Dec. 30, 1993; 59 FR 8853, Feb. 24, 1994; T.D. 98–56, 63 FR 32944, June 16, 1998; CBP Dec. 03–13, 68 FR 43627, July 24, 2003; 72 FR 3733, Jan. 26, 2007; CBP Dec. 13–03, 78 FR 5136, Jan. 24, 2013; CBP Dec. 17-16, 82 FR 50526, Nov. 1, 2017; CBP Dec. 20-13, 85 FR 47026, Aug. 4, 2020; CBP Dec. 22–22, 87 FR 63267, Oct. 18, 2022]

§ 24.23 Fees for processing merchandise.

This section sets forth the terms and conditions for when the fees for processing merchandise are required. The specific merchandise processing fee amounts and corresponding limitations that appear in this section are not the actual fees or limitations, but represent the base year amounts that are subject to adjustment each fiscal year in accordance with the Fixing America's Surface Transportation Act (FAST Act) using Fiscal Year 2014 as the base year for comparison. (*See* appendix B to part 24 for a table setting forth the fees and limitations subject to adjustment along with the corresponding statutory authority, the regulatory citation, the name of the fee or limitation, and the Fiscal Year 2014 base amount which reflects the statutory amounts that were adjusted by the American Jobs Creation Act of 2004 (Pub. L. 108–357).) The methodology for adjusting the fees and limitations to reflect the percentage, if any, of the increase in the average of the Consumer Price Index—All Urban Consumers, U.S. All items, 1982–84 (CPI–U) for the preceding 12-month period (June through May) compared to the Consumer Price Index for fiscal year 2014 is set forth in § 24.22(k) of this part. CBP will determine annually whether an adjustment to the fees and limitations is necessary and a notice specifying the amount of the fees and limitations will be published in the FEDERAL REGISTER annually for each fiscal year at least 60 days prior to the effective date of the new fees and limitations. The fees and the limitations will also be maintained for the public's convenience on the CBP Web site at *www.cbp.gov*.

(a) *Definitions.* The following definitions apply for the purposes of this section:

(1) *Centralized hub facility.* A *centralized hub facility* is a separate, unique, single purpose facility normally operating outside of CBP operating hours approved by the port director for entry filing, examination, and release of express consignment shipments, as provided for in part 128 of this chapter on July 30, 1990.

(2) *Entered or released.* Merchandise is *entered or released* if the merchandise is:

(i) Released under a special permit for immediate delivery under 19 U.S.C. 1448(b);

(ii) Entered or released from CBP custody under 19 U.S.C. 1484(a)(1)(A); or

(iii) Withdrawn from warehouse for consumption.

(3) *Express consignment carrier facility.* An *express consignment carrier facility* is a separate or shared specialized facility approved by the port director solely for the examination and release of express consignment shipments, as provided for in part 128 of this chapter on July 30, 1990.

(4) *Manual entry or release.* Any reference to a *manual* formal or informal entry or release must not include:

(i) Any formal or informal entry or release filed by an importer or broker who is operational for cargo release through the Automated Broker Interface (ABI) of the CBP Automated Commercial System (ACS) or any other CBP-authorized electronic data interchange system at any port within the United States;

(ii) Any formal or informal entry or release filed at a port where cargo selectivity is not fully implemented if

filed by an importer or broker who is operational for ABI entry summary; or

(iii) Any informal entry or any Line Release filed at a part where cargo selectivity is fully implemented if filed by an importer or broker who is operational for ABI entry summary.

(5) *Small airport or other facility.* A *small airport or other facility* is any airport or other facility which has been designated as a user fee facility under 19 U.S.C. 58b and at which more than 25,000 informal entries were processed during the preceding fiscal year.

(6) *Inbound Express Mail service* or *Inbound EMS. Inbound Express Mail service* or *Inbound EMS* means the service described in the mail classification schedule referred to in section 3631 of title 39, United States Code and 39 CFR 3040.104.

(b) *Fees*—(1) *Formal entry or release*—(i) *Ad valorem fee*—(A) *General.* Except as provided in paragraph (c) of this section, merchandise that is formally entered or released is subject to the payment to CBP of an *ad valorem* fee of 0.3464 percent. The 0.3464 *ad valorem* fee is due and payable to CBP by the importer of record of the merchandise at the time of presentation of the entry summary and is based on the value of the merchandise as determined under 19 U.S.C. 1401a. In the case of an express consignment carrier facility or centralized hub facility, each shipment covered by an individual air waybill or bill of lading that is formally entered and valued at $2,500 or less is subject to a $1.00 per individual air waybill or bill of lading fee, as adjusted in accordance with the terms of § 24.22(k) of this part, and, if applicable, to the 0.3464 percent *ad valorem* fee in accordance with paragraph (b)(4) of this section.

(B) *Maximum and minimum fees.* Subject to the provisions of paragraphs (b)(1)(ii) and (d) of this section relating to the surcharge and to aggregation of the ad valorem fee respectively, the ad valorem fee charged under paragraph (b)(1)(i)(A) of this section must not exceed $485, as adjusted in accordance with the terms of § 24.22(k) of this part, and must not be less than $25, as adjusted in accordance with the terms of § 24.22(k) of this part.

(ii) *Surcharge for manual entry or release.* In the case of any formal manual entry or release of merchandise, a surcharge of $3, as adjusted in accordance with the terms of § 24.22(k) of this part, will be assessed and will be in addition to any ad valorem fee charged under paragraphs (b)(1)(i)(A) and (B) of this section.

(2) *Informal entry or release.* Except in the case of merchandise covered by paragraph (b)(3) or paragraph (b)(4) of this section, and except as otherwise provided in paragraph (c) of this section, merchandise that is informally entered or released is subject to the payment to CBP of a fee of:

(i) $2, as adjusted in accordance with the terms of § 24.22(k) of this part, if the entry or release is automated and not prepared by CBP personnel;

(ii) $6, as adjusted in accordance with the terms of § 24.22(k) of this part, if the entry or release is manual and not prepared by CBP personnel; or

(iii) $9, as adjusted in accordance with the terms of § 24.22(k) of this part, if the entry or release, whether automated or manual, is prepared by CBP personnel.

(3) *Small airport or other facility.* With respect to the processing of letters, documents, records, shipments, merchandise, or any other item that is valued at $2,500 or less, or any higher amount prescribed for purposes of informal entry in § 143.21 of this chapter, a small airport or other facility must pay to CBP an amount equal to the reimbursement (including overtime) which the facility is required to make during the fiscal year under § 24.17.

(4) *Express consignment carrier and centralized hub facilities*—(i) *General.* Each carrier or operator using an express consignment carrier facility or a centralized hub facility must pay to CBP a fee in the amount of $1.00, as adjusted in accordance with the terms of paragraph (k) of § 24.22 of this chapter, per individual air waybill or individual bill of lading for the processing of airway bills for shipments arriving in the United States. In addition, if merchandise is formally entered and valued at $2,500 or less, the importer of record must pay to CBP the ad valorem fee specified in paragraph (b)(1) of this section, if applicable. An individual air waybill or individual bill of lading is the individual document issued by the

carrier or operator for transporting and/or tracking an individual item, letter, package, envelope, record, document, or shipment. An individual air waybill is not a consolidation of several air waybills, and is not a master bill or other consolidated document. An individual air waybill or bill of lading is a bill representing an individual shipment that has its own unique bill number and tracking number, where the shipment is assigned to a single ultimate consignee, and no lower bill unit exists. Payment must be made to CBP on a quarterly basis and must cover the individual fees for all subject transactions that occurred during a calendar quarter.

(ii) *Maximum and minimum fees.* Subject to the provisions of paragraph (b)(1)(i)(A) and (b)(4) of this section relating to the express consignment carrier facility or centralized hub facility fee, the fee per individual air waybill or bill of lading charged under paragraph (b)(1)(i)(A) of this section must not exceed $1, as adjusted in accordance with the terms of § 24.22(k) of this part, and must not be less than $0.35, as adjusted by § 24.22(k) of this part.

(iii) *Quarterly payments.* The following additional requirements and conditions apply to each quarterly payment made under this section:

(A) The quarterly payment must conform to the requirements of § 24.1 of this part, must be submitted electronically via Fedwire or *pay.gov,* or mailed to Customs and Border Protection, Revenue Division/Attention: Reimbursables, 6650 Telecom Drive, Suite 100, Indianapolis, Indiana 46278, and must be received by CBP no later than the last day of the month that follows the close of the calendar quarter to which the payment relates.

(B) The following information must be included with the quarterly payment:

(*1*) The identity of the calendar quarter to which the payment relates;

(*2*) The identity of the facility for which the payment is made and the port code that applies to that location and, if the payment covers multiple facilities, the identity of each facility and its port code and the portion of the payment that pertains to each port code; and

(*3*) The total number of individual air waybills and individual bills of lading covered by the payment, and a breakdown of that total for each facility covered by the payment according to the number covered by formal entry procedures, the number covered by informal entry procedures specified in §§ 128.24(e) and 143.23(j) of this chapter, and the number covered by other informal entry procedures.

(C) Overpayments or underpayments may be accounted for by an explanation in, and adjustment of, the next due quarterly payment to CBP. In the case of an overpayment or underpayment that is not accounted for by an adjustment of the next due quarterly payment to CBP, the following procedures apply:

(*1*) In the case of an overpayment, the carrier or operator may request a refund by writing to Customs and Border Protection, Revenue Division/Attention: Reimbursables, 6650 Telecom Drive, Suite 100, Indianapolis, Indiana 46278. The refund request must specify the grounds for the refund and must be received by CBP within one year of the date the fee for which the refund is sought was paid to CBP; and

(*2*) In the case of an underpayment, interest will accrue on the amount not paid from the date payment was initially due to the date that payment to CBP is made.

(D) The underpayment or failure of a carrier or operator using an express consignment carrier facility or a centralized hub facility to pay all applicable fees owed to CBP pursuant to paragraph (b)(4) of this section may result in the assessment of penalties under 19 U.S.C. 1592, liquidated damages, and any other action authorized by law.

(c) *Exemptions and limitations.* (1) The ad valorem fee, surcharge, and specific fees provided for under paragraphs (b)(1) and (b)(2) of this section will not apply to:

(i) Except as provided in paragraph (c)(2) of this section, articles provided for in chapter 98, Harmonized Tariff Schedule of the United States (HTSUS; 19 U.S.C. 1202);

(ii) Products of insular possessions of the U.S. (General Note 3(a)(iv), HTSUS);

(iii) Products of beneficiary countries under the Caribbean Basin Economic Recovery Act (General Note 7, HTSUS);

(iv) Products of least-developed beneficiary developing countries (General Note 4(b)(i), HTSUS); and

(v) Merchandise described in General Note 19, HTSUS, merchandise released under 19 U.S.C. 1321, and merchandise imported by mail, other than Inbound EMS items that are formally entered on or after September 3, 2020.

(2) In the case of any article provided for in subheading 9802.00.60 or 9802.00.80, HTSUS:

(i) The surcharge and specific fees provided for under paragraphs (b)(1)(ii) and (b)(2) of this section will remain applicable; and

(ii) The ad valorem fee provided for under paragraph (b)(1)(i) of this section will be assessed only on that portion of the cost or value of the article upon which duty is assessed under subheadings 9802.00.60 and 9802.00.80.

(3) The ad valorem, surcharge, and specific fees provided for under paragraphs (b)(1) and (b)(2) of this section will not apply to goods originating in Canada or Mexico within the meaning of General Note 12, HTSUS (see also 19 U.S.C. 3332), where such goods qualify to be marked, respectively, as goods of Canada or Mexico pursuant to Annex 311 of the North American Free Trade Agreement and without regard to whether the goods are marked. For qualifying goods originating in Mexico, the exemption applies to goods entered or released (as defined in this section) after June 29, 1999. Where originating goods as described above are entered or released with other goods that are not originating goods, the ad valorem, surcharge, and specific fees will apply only to those goods which are not originating goods.

(4) In the case of agricultural products of the U.S. that are processed and packed in a foreign trade zone, the ad valorem fee provided for under paragraph (b)(1)(i) of this section will be applied only to the value of any material used to make the container for such merchandise, but only if that merchandise is subject to entry and the container is of a kind normally used for packing such merchandise.

(5) The ad valorem fee, surcharge, and specific fees provided for under paragraphs (b)(1) and (b)(2) of this section will not apply to products of Israel that are entered, or withdrawn from warehouse for consumption, on or after September 16, 1998 (the effective date of a determination published in the FEDERAL REGISTER on September 1, 1998, under section 112 of the Customs and Trade Act of 1990).

(6) The ad valorem fee, surcharge, and specific fees provided under paragraphs (b)(1) and (b)(2)(i) of this section will not apply to goods that qualify as originating goods under § 202 of the United States-Singapore Free Trade Agreement Implementation Act (*see also* General Note 25, HTSUS) that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2004.

(7) The ad valorem fee, surcharge, and specific fees provided under paragraphs (b)(1) and (b)(2)(i) of this section will not apply to goods that qualify as originating goods under § 202 of the United States-Chile Free Trade Agreement Implementation Act (see also General Note 26, HTSUS) that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2004.

(8) The ad valorem fee, surcharge, and specific fees provided under paragraphs (b)(1) and (b)(2)(i) of this section will not apply to goods that qualify as originating goods under § 203 of the United States-Australia Free Trade Agreement Implementation Act (*see also* General Note 28, HTSUS) that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2005.

(9) The ad valorem fee, surcharge, and specific fees provided under paragraphs (b)(1) and (b)(2)(i) of this section will not apply to goods that qualify as originating goods under § 202 of the United States-Bahrain Free Trade Agreement Implementation Act (see also General Note 30, HTSUS) that are entered, or withdrawn from warehouse for consumption, on or after August 1, 2006.

(10) The ad valorem fee, surcharge, and specific fees provided under paragraphs (b)(1) and (b)(2)(i) of this section will not apply to goods that qualify as

originating goods under section 203 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (*see also* General Note 29, HTSUS) that are entered, or withdrawn from warehouse for consumption, on or after March 1, 2006.

(11) The ad valorem fee, surcharge, and specific fees provided under paragraphs (b)(1) and (b)(2)(i) of this section will not apply to goods that qualify as originating goods under § 202 of the United States—Oman Free Trade Agreement Implementation Act (see also General Note 31, HTSUS) that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2009.

(12) The ad valorem fee, surcharge, and specific fees provided under paragraphs (b)(1) and (b)(2)(i) of this section will not apply to goods that qualify as originating goods under § 203 of the United States-Peru Trade Promotion Agreement Implementation Act (*see also* General Note 32, HTSUS) that are entered, or withdrawn from warehouse for consumption, on or after February 1, 2009.

(13) The ad valorem fee, surcharge, and specific fees provided under paragraphs (b)(1) and (b)(2)(i) of this section will not apply to goods that qualify as originating goods under § 203 of the United States-Korea Free Trade Agreement (*see also* General Note 33, HTSUS) that are entered, or withdrawn from warehouse for consumption, on or after March 15, 2012.

(14) The ad valorem fee, surcharge, and specific fees provided under paragraphs (b)(1) and (b)(2)(i) of this section will not apply to goods that qualify as originating goods under section 203 of the United States-Colombia Trade Promotion Agreement Implementation Act (*see also* General Note 34, HTSUS that are entered, or withdrawn from warehouse for consumption, on or after May 15, 2012.

(15) The ad valorem fee, surcharge, and specific fees provided under paragraphs (b)(1) and (b)(2)(i) of this section will not apply to goods that qualify as originating goods under section 203 of the United States-Panama Trade Promotion Agreement Implementation Act (*see also* General Note 35, HTSUS) that are entered, or withdrawn from warehouse for consumption, on or after October 29, 2012.

(d) *Aggregation of ad valorem fee.* (1) Notwithstanding any other provision of this section, in the case of entries of merchandise made under any temporary monthly entry program established by CBP before July 1, 1989, for the purpose of testing entry processing improvements, the ad valorem fee charged under paragraph (b)(1)(i) of this section for each day's importations at an individual port will be the lesser of the following, provided that those importations involve the same importer and exporter:

(i) $400; or

(ii) The amount determined by applying the ad valorem rate under paragraph (b)(1)(i)(A) of this section to the total value of such daily importations.

(2) The fees as determined under paragraph (d)(1) of this section must be paid to CBP at the time of presentation of the monthly entry summary. Interest will accrue on the fees paid monthly in accordance with section 6621 of the Internal Revenue Code of 1986.

(e) *Treatment of fees as customs duty*—(1) *Administration and enforcement.* Unless otherwise specifically provided in this chapter, all administrative and enforcement provisions under the customs laws and regulations, other than those laws and regulations relating to drawback, will apply with respect to any fee provided for under this section, and with respect to any person liable for the payment of such fee, as if such fee is a customs duty. For purposes of this paragraph, any penalty assessable in relation to an amount of customs duty, whether or not any such duty is in fact due and payable, will be assessed in the same manner with respect to any fee required to be paid under this section.

(2) *Jurisdiction.* For purposes of determining the jurisdiction of any court or agency of the United States, any fee provided for under this section will be treated as if such fee is a customs duty.

[T.D. 91–33, 56 FR 15039, Apr. 15, 1991]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 24.23, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 24.24 Harbor maintenance fee.

(a) *Fee*. Commercial cargo loaded on or unloaded from a commercial vessel is subject to a port use fee of 0.125 percent (.00125) of its value if the loading or unloading occurs at a port within the definition of this section, unless exempt under paragraph (c) of this section or one of the special rules in paragraph (d) of this section is applicable.

(b) *Definitions*. For the purpose of this section:

(1) *Port* means any channel or harbor (or component thereof) in the customs territory of the United States which is not an inland waterway and is open to public navigation and at which Federal funds have been used since 1977 for construction, maintenance or operation. It does not include channels or harbors deauthorized by Federal law before 1985. A complete list of the ports subject to the harbor maintenance fee is set forth below:

PORT CODES, NAMES, AND DESCRIPTIONS OF PORTS SUBJECT TO HARBOR MAINTENANCE FEE

[Section 1402 of Pub. L. 99–662, as amended]

Port code, port name and state	Port descriptions and notations
Alabama	
1901—Mobile	
Alaska	
3126—Anchorage	Includes Seldovia Harbor, and Homer. Movements between these points are intraport.
3106—Dalton Cache	Includes Haines Harbor.
3101—Juneau	Includes only Hoonah Harbor. Fee does not apply to Juneau Harbor.
3102—Ketchikan	Includes Metlakatla Harbor. Fee does not apply to Wades Cove.
3127—Kodiak	
3112—Petersburg	Includes Wrangell Narrows.
3125—Sand Point	Includes Humboldt, King Cove and Iliuliuk Harbor. Fee does not apply to Dutch Harbor.
3115—Sitka	Includes Sergius-Whitestone Narrows.
—St. Paul	
California	
2802—Eureka	Includes Crescent City.
Los Angeles/Long Beach Ports.	Includes Ventura, Port Hueneme, Channel Islands Harbor, Santa Barbara, Marina Del Ray, Los Angeles and Long Beach. Movements between these points are intraport.
2709—Long Beach Harbor	
2704—Los Angeles	
2713—Port Hueneme	
2712—Ventura	
2805—Monterrey	
2719—Moro Bay	Includes only Moro Bay.
2501—San Diego	Includes San Diego River and Mission Bay, and Oceanside Harbor.
2707—San Luis	
San Francisco Bay Area Ports*.	Includes all points inshore of the Golden Gate Bridge on the bays and the straits and on the Napa, Sacramento and San Joaquin Rivers, and on the deep water channels to Sacramento and Stockton. Movements between points above Suisun Bay (Longitude 122 degrees West at Port Chicago) are intraport. Movements between points below Longitude 122 degrees West and the Golden Bridge are all intraport. All other movements are interport.
2813—Alameda	
2830—Carquinez Strait	
2815—Crockett	
2820—Martinez	
2811—Oakland	
2821—Redwood City	
2812—Richmond	
2816—Sacramento	
2809—San Francisco	
2828—San Joaquin	
2829—San Pablo Bay	
2827—Selby	
2810—Stockton	
2831—Suisun Bay	
Connecticut	
0410—Bridgeport	Includes Housatonic River, and Stamford Harbor, and Wilson Point Harbor. Movements between these points are intraport.
0411—Hartford	Includes all points on the Connecticut River between Hartford and Long Island Sound. Movements within this area are intraport.
0412—New Haven	
0413—New London	Includes all points on the Thames River from the mouth to, and including Norwich, CT. Also includes Groton, CT.

PORT CODES, NAMES, AND DESCRIPTIONS OF PORTS SUBJECT TO HARBOR MAINTENANCE FEE—Continued

[Section 1402 of Pub. L. 99–662, as amended]

Port code, port name and state	Port descriptions and notations
Delaware	
Delaware River Ports, DE, NJ, PA*. 1102—Chester, PA 1107—Camden, NJ 1113—Gloucester, NJ 1118—Marcus Hook, PA 1105—Paulsboro, NJ 1101—Philadelphia, PA 1103—Wilmington, DE	Includes all points on the Delaware River from Trenton to the sea at a line between Cape Henlopen and Cape May, all points on the lower four miles of the Christina River, Delaware, and all points on the lower six miles of Schuylkill River, Pennsylvania. Fee applies to all movements on the Chesapeake and Delaware Canal east of U.S. Highway 13. Includes Absecon Inlet (Atlantic City) and Cold Spring Inlet. Movements within this area are intraport.
District of Columbia	
Potomac River Ports, DC, MD, VA*. 5402—Alexandria, VA 5401—Washington, DC	Includes all points on the Potomac River (see Chesapeake Bay Ports map) from a line between Point Lookout and the Little Wicomico River at Chesapeake Bay to and including Washington and Alexandria. Movements between these points are intraport.
Florida	
1807—Boca Grande	
1805—Fernandina Beach	
5205—Fort Pierce	
1803—Jacksonville	
5202—Key West	
5201—Miami	
1818—Panama City 1819—Pensacola 1816—Port Canaveral 5203—Port Everglades	For HMF purposes, also includes Carrabelle and Port St. Joe.
Tampa Bay Ports* 1814—St Petersburg 1801—Tampa	Includes Alafia River, Port Manatee, Port Sutton, Port Tampa Weedon Island, and all other points on or approached using the Tampa Harbor Channel inshore of the Sunshine Skyway Bridge. Movements between these points are intraport.
5204—West Palm Beach	
Georgia	
1701—Brunswick	Includes St. Marys River.
1703—Savannah	
Hawaii	
3202—Hilo	Includes Kawaihae.
3201—Honolulu	Includes Barbers Point Harbor.
3203—Kahului	Includes Kaunakakai Harbor.
3204—Nawiliwili-Port Allen	Includes both Nawiliwili and Port Allen.
Illinois	
Southern Lake Michigan Ports 3901—Chicago, IL 3904—East Chicago, IN 3905—Gary, IN	Includes Waukegan Harbor, IL, Indiana Harbor (East Chicago, IN) Calumet Harbor, the Chicago River (up to the North Avenue Bridge) and the Chicago Harbor. Fee applies at the ports of Michigan City and Burns Waterway Harbor, IN. Fee does not apply at Buffington Harbor or Gary Harbor. Movements within an area from Waukegan, IL to Michigan City, IN are intraport.
Indiana	
Southern Lake Michigan Ports 3901—Chicago, IL 3904—East Chicago, IN 3905—Gary, IN	Includes Waukegan Harbor, IL. Indiana Harbor (East Chicago, IN) Calumet Harbor, the Chicago River (up to the North Avenue Bridge) and the Chicago Harbor. Fee applies at the ports of Michigan City and Burns Waterway Harbor, IN. Fee does not apply at Buffington Harbor or Gary Harbor. Movements within an area from Waukegan, IL to Michigan City, IN are intraport.
Louisiana	
2017—Lake Charles	Includes all points on the Calcasieu River and Pass. Also includes Mermentau River from Catfish Point Control Structure to the Gulf.
Mississippi River Ports/Baton Rouge and Vicinity*. 2004—Baton Rouge 2010—Gramercy	Includes all river points from River Mile 115 Above Head of Passes (AHP) at the St. Charles Parish-Jefferson Parish line, to River Mile 233.9 AHP at Baton Rouge. Includes Destrehan, Good Hope, and St. Rose. Movements between these points are intraport.
Mississippi River Ports/New Orleans and Vicinity*. 2002—New Orleans 2005—Port Sulphur	Includes all river points from River mile 115 Above Head of Passes (AHP) to Mile 21.6 Below Head of Passes (BHP) via Southwest Pass and to Mile 14.7 BHP via South Pass. Also includes all points on the Inner Harbor Navigation Canal, Avondale, and the Mississippi River Gulf Outlet. Movements between these points are intraport.
2001—Morgan City*	Includes Atchafalaya River from Morgan City to the Gulf. Includes all points on the Houma Navigation Canal, and points on the Gulf Intra-coastal Waterway between Mile 49.8 West and Mile 107.0 West. Movements between these points are intraport.

PORT CODES, NAMES, AND DESCRIPTIONS OF PORTS SUBJECT TO HARBOR MAINTENANCE FEE—Continued

[Section 1402 of Pub. L. 99–662, as amended]

Port code, port name and state	Port descriptions and notations
Maine	
0102—Bangor 0111—Bath 0131—Portsmouth, NH	
0132—Belfast	Includes all Penobscot River points (Bucksport and Winterport), and Georges River. Fee does not apply at Belfast, Searsport, Sandy Point, or Castine Harbor.
0101—Portland	
Maryland	
Chesapeake Bay Ports, MD* 1303—Baltimore 1302—Cambridge 1301—Annapolis	Includes all Maryland points on the Chesapeake Bay and its tributary waters except for the Potomac Rivers. Also includes the Waterway from the Delaware River to the Chesapeake Bay west of U.S. 13 highway bridge. Movements between these points are intraport. (Also see Chesapeake Bay Ports: VA.)
Massachusetts	
0401—Boston	Includes all of the Port of Boston inshore of Castle Island on the Inner Harbor and Chelsea and Mystic River and all points on the Weymouth Fore, and Town and Black Rivers, and Dorchester Bay. Also includes Plymouth Harbor. Movements between points on the Saugus River in the North and Plymouth Harbor in the South are intraport.
0404—Gloucester 0407—Fall River	
Michigan	
3843—Alpena	Fee does not apply to Stoneport.
Monroe/Detroit/Harbor Beach 3801—Detroit 3802—Port Huron	Includes Monroe, Detroit, and the Detroit River, St. Clair River, Port Huron and all points on the Rouge and Black Rivers. Fee also applies at Harbor Beach, MI. All movements within this area between Monroe and Harbor Beach, MI are intraport.
3808—Escanaba	Fee applies at all points on the little Bay de Noc above Escanaba, including Gladstone and Kipling. Movements within an area from Escanaba to the Mackinac Bridge are intraport. Fee does not apply at Escanaba.
South Central Lake Superior Ports. 3809—Marquette 3842—Presque Isle	Includes Ontonagon Harbor, all points on the Harbor, all points on the Keweenaw Waterway, Presque Isle Harbor and Marquette and Grand Marais. Movements between all Michigan ports on Lake Superior are intraport.
Eastern Lake Michigan Ports 3815—Muskegon 3816—Grand Haven 3844—Ferrysburg	Fee applies at Charlevoix, Frankfort, Portage Lake, Manatee, Ludington, Pentwater Harbor, Ferrysburg, White Lake Harbor, Muskegon, Grand Haven, and South Haven, Holland, and St. Joseph/Benton Harbor, MI. All movements between Eastern Lake Michigan ports are intraport.
Upper Lake Huron Ports 3803—Sault Ste. Marie 3804—Saginaw-Flint-Bay City 3843—Alpena	Includes all points on the St. Mary's River, the ports of Cheyboygan, Alpena, Bay City, and Saginaw River. Does not include Alabaster, Cacit, Port Dolomite, Port Inland, Port Gypum or Stoneport. Movements within an area from Sault Ste. Marie and the Saginaw River are intraport.
Minnesota	
Duluth/Superior Area Ports 3601—Duluth 3602—Ashland 3608—Superior 3614—Silver Bay	Fee applies at Two Harbors and Duluth, MN, and Superior, WI. Fee also applies at Ashland and Port Wing, WI and Grand Marais, MN. Fee does not apply at Taconite, or Silver Bay, MN. All movements between Silver Bay, MN and Ashland, WI are considered intraport.
Mississippi	
1902—Gulfport	Does not include Bienville.
1903—Pascagoula	
New Hampshire	
0131—Portsmouth, NH	
New Jersey	
Delaware River Ports, DE, NJ, PA*. 1102—Chester, PA 1107—Camden, NJ 1113—Gloucester, NJ 1118—Marcus Hook, PA 1105—Paulsboro, NJ 1101—Philadelphia, PA 1103—Wilmington, DE	Includes all points on the Delaware River from Trenton to the sea at a line between Cape Henlopen and Cape May, all points on the lower four miles of the Christina River, Delaware, and all points on the lower six miles of the Schuylkill River, PA. Fee applies to all movements on the Chesapeake and Delaware Canal east of U.S. Highway 13. Includes Absecon Inlet (Atlantic City) and Cold Spring Inlet. Movements between these points are intraport.
1003—Newark	See New York Harbor.

PORT CODES, NAMES, AND DESCRIPTIONS OF PORTS SUBJECT TO HARBOR MAINTENANCE FEE—Continued

[Section 1402 of Pub. L. 99–662, as amended]

Port code, port name and state	Port descriptions and notations
1004—Perth Amboy	See New York Harbor.
New York	
New York Harbor, NY, NJ * ... 1001—New York 1003-Newark 1004—Perth Amboy	Includes all points in New York and New Jersey with the Port of New York on the waters inshore of a line between Sandy Hook and Rockaway Point and south of Tappan Zee Bridge on the Hudson and west of Throgs Neck Bridge of the East River. Movements between these and all points within the New York Port District boundaries described in New York Code (Chapter 154, Laws of New York, 1921), are intraport.
1002—Albany *	Includes all points on the Hudson River between Tappan Zee Bridge and the Troy Lock and Dam. Movements between points within this area are intraport.
0901—Buffalo-Niagara Falls ..	Includes Buffalo Harbor, Black Rock Channel and Tonawanda Harbor, and all points on Cattaraugus Creek, and Dunkirk Harbor. Movements between these points are intraport.
0706—Cape Vincent 0701—Ogdensburg 0904—Oswego 0903—Rochester	
0905—Sodus Point	Includes Little Sodus Bay Harbor, and Great Sodus Bay Harbor.
North Carolina	
1511—Beaufort-Morehead City.	Includes Ocracoke Inlet. Movements within this area are intraport.
1501—Wilmington	Includes all points on the Cape Fear and Northeast Cape Fear Rivers inshore of the Atlantic Ocean entrance. Movements within this area are intraport.
Ohio	
Lake Erie Ports 4108—Ashtabula 4101—Cleveland 4109—Conneaut 4106—Erie, PA 4111—Fairport 4117-Huron 4121—Lorain 4105—Toledo-Sandusky	Includes Toledo, Sandusky, Huron, Lorain, Cleveland, Fairport, Ashtabula, Conneaut and Erie. Movements between these points are intraport. Fee does not apply at Marblehead.
Oregon	
Columbia River Ports, OR, WA. 2901—Astoria, OR 2904—Portland, OR 2909—Kalama, WA 2905—Longview, WA 2908—Vancouver, WA	Includes all points on the Columbia River downstream of Bonneville Dam, and all points on the Willamette River downstream of River Mile 21. Includes the Multnoma Channel, the Skipanon Channel, and Oregon Slough. Movements between points within this area are intraport.
2903—Coos Bay	Includes Port Orford, the Siuslaw River, and Umpaqua River. Movements between these points are intraport.
2902—Newport	Includes Tillamook Bay, and Yaguina Bay and Harbor.
Pennsylvania	
Delaware River Ports, DE, NJ, PA *. 1102—Chester, PA 1107—Camden, NJ 1113—Gloucester, NJ 1118—Marcus Hook, PA 1105—Paulsboro, NJ 1101—Philadelphia, PA 1103—Wilmington, DE	Includes all points on the Delaware River from Trenton to the sea at a line between Cape Henlopen and Cape May, all points on the lower four miles of the Christina River, Delaware, and all points on the lower six miles of the Schuykill River, Pennsylvania. Fee applies to all movements on the Chesapeake and Delaware Canal east of U.S. Highway 13. Includes Absecon Inlet (Atlantic City) and Cold Spring Inlet. Movements between these points are intraport.
Puerto Rico	
4907—Mayaguez	
4908—Ponce	Does not include Guayanilla and Tallaboa.
4909—San Juan	Includes Arecibo.
Rhode Island	
0502—Providence	Federal project limit: Providence River East of Prudence Island just above Dyer Island and ending at Hurricane Barrier at Fox Point. The areas west of Prudence Island, including Quonset Point, Patience Island, Warwick Neck and Greenwich Bay are not subject to the fee.

PORT CODES, NAMES, AND DESCRIPTIONS OF PORTS SUBJECT TO HARBOR MAINTENANCE FEE—Continued

[Section 1402 of Pub. L. 99–662, as amended]

Port code, port name and state	Port descriptions and notations
South Carolina	
1601—Charleston	Includes the Ashley River, Cooper River, Shipyard River, and Port Royal Harbor. Movements within this area are intraport.
1602—Georgetown	
Texas	
2301—Brownsville	Includes Port Isabel and Brazos Island Harbor. Movements between these points are intraport.
5312—Corpus Christi	
5311—Freeport	
Galveston Bay Ports*	Includes Port Bolivar and all points on Galveston Bay in Galveston County. Movements between points within this area are intraport.
5310—Galveston	
5306—Texas City	
5301—Houston*	Includes Bayport, Baytown, and all other points on or accessed via the Houston Ship Channel from the Liberty/Chambers county line on the north to the Chambers/Galveston county line to the south. Movements within this area are intraport.
5313—Port Lavaca	Includes Matagorda Ship Channel.
Sabine Ports*	Includes Port Neches, Sabine Pass and all other points on the Sabine-Neches Waterway. Movements between these points are intraport.
2104—Beaumont	
2103—Orange	
2101—Port Arthur	
2102—Sabine	
Virginia	
Potomac River Ports, DC, MD, VA*.	Includes all points on the Potomac River (see Chesapeake Bay Ports map) from a line between Point Lookout and the Little Wicomico River at Chesapeake Bay to and including Washington and Alexandria. Movements between these points are intraport.
5402—Alexandria, VA	
5401—Washington, DC	
Chesapeake Bay Ports,VA*	Includes all Virginia points on the Chesapeake Bay inshore of a line from Cape Henry to Cape Charles, and tributary waters including the ports of Hampton Roads. Does not include the Potomac River or the James River above the James River Bridge at Newport News. Movements between points within this area are intraport. (Also see Chesapeake Bay Ports, MD.)
1406—Cape Charles	
1402—Newport News	
1401—Norfolk	
James River Ports, VA	Includes all points on the James River above the James River Bridge at Newport News. Movements between these points are intraport.
1408—Hopewell	
1404—Richmond/Petersburg	
Washington	
3003—Aberdeen	Includes Grays Harbor and Yaguina Bay and Harbor. Movements between these points are intraport.
Puget Sound Ports, WA*	Fee applies only at ports listed. Bellingham includes all of Bellingham Bay and tributary waters north of Chuchanut Bay on the east, and Portage Island on the west. Port Everett includes all of Port Dardner (an arm of Possession Sound) between Elliott Point on the south to, and including, the Snahomish River on the north. The port of Olympia includes all points on Budd Inlet extending from Cooper and Dofflemyer Point on the north to, and including, the city of Olympia on the south. The fee applies to all points within the Inner Harbor of the Port of Seattle, including Salmon Bay, Lakes Union and Washington, the Lake Washington Ship Canal, and Kenmore Navigation Channel. Includes all points on Elliott Bay and tributary waters between West Point on the north and Duwamish Head on the south. Fee applies at all points within Tacoma Harbor including all of Commensement Bay and tributary waters between Browns Point on the east and Point Defiance on the west. Movements between these ports and any other U.S. points on Puget Sound or the Strait of Juan de Fuca east of Cape Flattery are intraport.
3005—Bellingham	
3006—Everett	
3007—Port Angeles	
3001—Seattle	
3002—Tacoma	
3026—Olympia	
3010—Anacortes	Includes only access channel and berthing areas adjacent to Anacortes Industrial Park off 30th Street.
Columbia River Ports, WA, OR.	Includes all points on the Columbia River downstream of Bonneville Dam, and all points on the Willamette River downstream of River mile 21. Includes the Multnoma Channel, the Skipanon Channel, and Oregon Slough. Movements between points within this area are intraport.
2901—Astoria, OR	
2904—Portland, OR	
2909—Kalama, WA	
2905—Longview, WA	
2908—Vancouver, WA	
Wisconsin	
3602—Ashland	See Duluth/Superior Area Ports, MN.

PORT CODES, NAMES, AND DESCRIPTIONS OF PORTS SUBJECT TO HARBOR MAINTENANCE FEE—Continued

[Section 1402 of Pub. L. 99–662, as amended]

Port code, port name and state	Port descriptions and notations
Green Bay/Marinette Area Ports. 3703—Green Bay 3702—Marinette	Fee applies to all movements between points along the Sturgeon Bay and Lake Michigan Ship Canal. Fee also applies to Green Bay, Oconto, and Menominee/Marinette. Movements between points from Menominee and points along the Sturgeon Bay and Lake Michigan Ship Canal are intraport.
Western Lake Michigan Ports 3701—Milwaukee 3708—Racine 3707—Sheboygan	Includes the ports of Milwaukee, Racine, and Sheboygan, MN. All movements between these points are intraport.

*Indicates that a map of this area is available from the Budget Division, Office of Finance, U.S. Customs Service, Room 6328, 1301 Constitution Ave., NW., Washington, DC 20229; tel. 202–927–0034.

(2) *Commercial cargo* means, unless exempted by paragraphs (c) (1) and (2) of this section, merchandise transported on a commercial vessel and passengers transported for compensation or hire. Whenever the term ''cargo'' is used, it means merchandise, but not passengers.

(3) *Commercial vessel* means, unless exempted by paragraph (c)(3) of this section, any vessel used in transporting commercial cargo by water for compensation or hire, or in transporting commercial cargo by water in the business of the owner, lessee or operator of the vessel.

(4) *Ferry* means any vessel which arrives in the U.S. on a regular schedule during its operating season at intervals of at least once each business day.

(5) *Humanitarian assistance* is considered to be assistance which is required for the survival of the affected population in cases of, or in preparation for, emergencies of all kinds. Such relief assistance would include, but is not limited to: food items, shelter, clothing, basic home utensil kits, and small electric generators.

(6) *Development assistance* is considered to be assistance similar to that provided for pursuant to chapter 1 of part 1 of the 1961 Foreign Assistance Act, as amended, 22 U.S.C. 2151–1(b). Such development assistance would include, but is not limited to, aid to promote: Agricultural productivity, reduction of infant mortality, reduction of rates of unemployment and underemployment, and an increase in literacy.

(7) *Non-profit* means an organization or cooperative exempt from income taxation pursuant to 26 U.S.C. 501(c)(3).

(c) *Exemptions.* The following are not subject to the fee:

(1) Bunker fuel, ship's stores, sea stores and vessel equipment.

(2) Fish or other aquatic animal life, caught and not previously landed on shore.

(3) Ferries engaged primarily in the transport of passengers and their vehicles between points within the U.S. or between the U.S. and contiguous countries.

(4) Certain loadings and unloadings of cargo in Alaska, Hawaii, or the possessions of the U.S. as defined in this paragraph.

(i) Descriptions of exempt loadings/unloadings:

(A) Cargo loaded on a vessel in a port in the U.S. mainland for transportation to Alaska, Hawaii, or any possession of the U.S. for ultimate use or consumption in Alaska, Hawaii, or any possession of the U.S.

(B) Cargo loaded on a vessel in Alaska, Hawaii, or any possession of the U.S. for transportation to the U.S. mainland for ultimate use or consumption in the U.S. mainland.

(C) Cargo described in paragraph (c)(4)(i)(A) of this section unloaded in Alaska, Hawaii, or any possession of the U.S.

(D) Cargo described in paragraph (c)(4)(i)(B) of this section unloaded in the U.S. mainland.

(E) Cargo loaded on a vessel in Alaska, Hawaii, or a possession of the U.S. and unloaded in the state or possession in which loaded.

(ii) For purposes of paragraph (c)(4) of this section:

(A) *Cargo* does not include crude oil with respect to Alaska.

(B) *U.S. mainland* means the continental U.S. excluding Alaska.

(C) *Possessions* of the U.S. means Puerto Rico, Guam, American Samoa, U.S. Virgin Islands, the Northern Mariana Islands and the Pacific Trust Territories.

(5) Commercial vessels, if any fuel used to move the cargo is subject to the Inland Waterway Fuel Tax (See section 4042, Internal Revenue Code of 1954, as amended by Pub. L. 95–502 and Pub. L. 99–662).

(6) Cargo entering the U.S. in bond for transportation and direct exportation to a foreign country, unless, with respect to cargo exported to Canada or Mexico;

(i) The Secretary of the Treasury determines that Canada or Mexico has imposed a substantially equivalent port use fee on commercial vessels or commercial cargo using ports of their countries; or

(ii) A study made pursuant to the Water Resources Development Act of 1986 (Pub. L. 99–662) finds that the fee is not likely to cause significant economic loss to a U.S. port or diversion of a significant amount of cargo to a port in a contiguous country.

(7) Cargo or vessels of the U.S. or any agency or instrumentality of the U.S.

(8) Cargo owned or financed by nonprofit organizations or cooperatives which is certified by the CBP as intended for use in humanitarian or development assistance overseas, including contiguous countries.

(i) The donated cargo is required to be certified as intended for use in humanitarian or development assistance overseas by CBP. Subsequent to payment of the fee, a refund request may be made by electronically submitting to CBP the Harbor Maintenance Fee Amended Quarterly Summary Report (CBP Form 350), as well as the Harbor Maintenance Fee Quarterly Summary Report (CBP Form 349) for the quarter covering the payment to which the refund request relates, using the Automated Clearinghouse (ACH) via an Internet account established by the payer and located at *http://www.pay.gov*. In the alternative, the requisite forms may be mailed to the Office of Administration, Revenue Division, Customs and Border Protection, using the current address posted at Forms.CBP.gov. Upon request by CBP, the party requesting the refund must also submit to CBP, via mail, any supporting documentation deemed necessary by CBP to certify that the entity donating the cargo is a nonprofit organization or cooperative and that the cargo was intended for humanitarian or development assistance overseas (including contiguous countries). A description of the cargo listed in the shipping documents and a brief summary of the intended use of the goods, if such use in not reflected in the documents, are acceptable evidence for certification purposes. Approved HMF refund payments will be made via ACH to those payers who are enrolled in the ACH refund program; all others will receive HMF refund payments via mail.

(ii) Each nonprofit organization or cooperative claiming the exemption under this subpart must maintain documentation pertaining to the exemption for a period of 5 years. The documentation must be made available for inspection by CBP in accordance with the provisions of §§ 162.1a through 162.1i of this chapter.

(d) *Special rules*—(1) *Intraport.* The fee is not to be assessed on the mere movement of commercial cargo within a port.

(2) *Same vessel, same cargo.* If a fee is assessed when cargo is loaded on a vessel, the unloading of the same cargo from that vessel is not subject to the fee. If a fee is assessed when cargo is unloaded from a vessel, the reloading of the same cargo on that vessel is not subject to the fee.

(3) *De minimis for individual shipments.* The fee will not be assessed on loadings or unloadings of cargo in which:

(i) *For imported cargo:* The shipment would be entitled to be entered under informal entry procedures as provided for in § 143.21 of this chapter.

(ii) *For domestic cargo:* The value of the shipment does not exceed $1,000.

(4) *De minimis for quarterly payments.* Quarterly payment is not required if the total value of all shipments for

which a fee was assessed for the quarter does not exceed $10,000.

(e) *Collections, supplemental payments, and refunds*—(1) *Domestic vessel movements*—(i) *Time and place of liability.* Subject to the exemptions and special rules of this section, when cargo is loaded on a commercial vessel at a port within the definition of this section to be transported between ports in the U.S. or is unloaded from a commercial vessel at a port within the definition of this section after having been transported between ports in the U.S., the shipper (the person or corporation who pays the freight) of that cargo is liable for the payment of the port use fee at the time of unloading. The fee will be imposed only once on a movement pursuant to paragraph (d)(2) of this section. The fee is to be based upon the value of the cargo as determined by standard commercial documentation where such documentation is available. Otherwise, the value is to be determined under 19 U.S.C. 1401a as if it were imported merchandise. The Vessel Operation Report (Army Corps of Engineers Form 3925) is to be completed and submitted to the Army Corps of Engineers in accordance with the procedures set forth in 33 CFR Ch. II, part 207. The shipper's name, either the internal revenue service or social security number of the shipper and the tax exemption code (as it appears in the Vessel Operation Report instructions) claimed for the shipment are to be included on the Vessel Operation Report.

(ii) *Fee payment.* The shipper whose name appears on the Vessel Operation Report must pay all accumulated fees for which he is liable on a quarterly basis in accordance with paragraph (f) of this section by submitting to CBP a Harbor Maintenance Fee Quarterly Summary Report, CBP Form 349. The CBP Form 349 must either be submitted electronically to CBP using the Automated Clearinghouse (ACH) via an Internet account established by the payer and located at *http://www.pay.gov* or, alternatively, mailed with a single check or money order payable to U.S. Customs and Border Protection to the Office of Administration, Revenue Division, Customs and Border Protection, using the current address posted at Forms.CBP.gov.

(2) *Import vessel movements*—(i) *Time and place of liability.* Subject to the exemptions and special rules of this section, when imported cargo is unloaded from a commercial vessel at a port within the definition of this section, and destined for either consumption, warehousing, or foreign trade zone admission, the importer of that cargo, or in the case of foreign trade zones, the person or corporation responsible for bringing merchandise into the zone, is liable for the payment of the port use fee at the time of unloading. The fee is based on the CBP appraised value of the shipment pursuant to 19 U.S.C. 1401a, the same basis as that used for duty payment. The fee will be collected on all formal entries, including warehouse entries and temporary importation under bond entries, and admissions into foreign trade zones.

(ii) *Fee payment.* The port use fee on unloading of imported cargo must be paid in accordance with the normal CBP collection procedures set forth in §§ 24.1 and 141.1 of this chapter, except as provided for merchandise admitted into foreign trade zones in paragraph (e)(2)(iii) of this section. The CBP Entry Summary Form (CBP Form 7501, or its electronic equivalent), is to be completed with the amount of the fee shown and identified on the form. The fee must be paid by the importer by adding it to any normal duty, tax or fee payable at the time of formal entry processing.

If no other duty, tax, or fee is imposed on the shipment, and the fee exceeds $3, a check or money order for the amount of the fee must be attached to the CBP entry forms submitted.

(iii) *Foreign Trade Zones.* In cases where imported cargo is unloaded from a commercial vessel at a port within the definition of this section and admitted into a foreign trade zone, the applicant for admission (the person or corporation responsible for bringing merchandise into the zone) who becomes liable for the fee at the time of unloading pursuant to paragraph (e)(3)(i) of this section, must pay all fees for which he is liable on a quarterly basis in accordance with paragraph (f) of this section by submitting to CBP a Harbor Maintenance Fee Quarterly Summary Report, CBP Form

349. The CBP Form 349 must either be submitted electronically to CBP using the Automated Clearinghouse (ACH) via an Internet account established by the payer and located at *http://www.pay.gov* or, alternatively, mailed with a single check or money order payable to U.S. Customs and Border Protection to the Office of Administration, Revenue Division, Customs and Border Protection, using the current address posted at Forms.CBP.gov. Fees must be paid for all shipments unloaded and admitted to the zone, or in the case of direct deliveries under §§ 146.39 and 146.40 of this chapter, unloaded and received in the zone under the bond of the foreign trade zone operator.

(3) *Passengers*—(i) *Time and place of liability*. Subject to the exemptions and special rules of this section, when a passenger boards or disembarks a commercial vessel at a port within the definition of this section, the operator of that vessel is liable for the payment of the port use fee. The fee is to be based upon the value of the actual charge for transportation paid by the passenger or on the prevailing charge for comparable service if no actual charge is paid. The vessel operator on each cruise is liable only once for the port use fee for each passenger.

(ii) *Fee payment*. The operator of the passenger-carrying vessel must pay the accumulated fees for which he is liable on a quarterly basis in accordance with paragraph (f) of this section by submitting to CBP a Harbor Maintenance Fee Quarterly Summary Report, CBP Form 349. The CBP Form 349 must either be submitted electronically to CBP using the Automated Clearinghouse (ACH) via an Internet account established by the payer and located at *http://www.pay.gov* or, alternatively, mailed with a single check or money order payable to U.S. Customs and Border Protection to the Office of Administration, Revenue Division, Customs and Border Protection, using the current address posted at Forms.CBP.gov.

(4) *Refunds and supplemental payments*—(i) *General*. To make supplemental payments or seek refunds of harbor maintenance fees paid relative to the unloading of imported cargo, the procedures applicable to supplemental payments or refunds of ordinary duties must be followed. To seek refunds of quarterly-paid harbor maintenance fees pertaining to export movements, the procedures set forth in paragraph (e)(4)(iv) of this section must be followed. To make supplemental payments on any quarterly-paid harbor maintenance fee or seek refunds of quarterly-paid harbor maintenance fees pertaining to other than export movements, the procedures set forth in paragraph (e)(4)(iii) must be followed.

(ii) *Time limit for refund requests*. A refund request must be received by CBP within one year of the date the fee for which the refund is sought was paid to CBP or, in the case of fees paid relative to imported merchandise admitted into a foreign trade zone and subsequently withdrawn from the zone under 19 U.S.C. 1309, within one year of the date of withdrawal from the zone.

(iii) *For fees paid on other than export movements*. If a supplemental payment is made for any quarterly-paid harbor maintenance fee or a refund is requested relative to quarterly fee payments previously made regarding the loading or unloading of domestic cargo, the unloading of cargo destined for admission into a foreign trade zone, or the boarding or disembarking of passengers, the refund request or supplemental payment must be accompanied by a Harbor Maintenance Fee Amended Quarterly Summary Report, CBP Form 350, along with a copy of the Harbor Maintenance Fee Quarterly Summary Report, CBP Form 349, for the quarter(s) covering the payment to which the refund request or supplemental payment relates. A request for a refund must specify the grounds for the refund. Supplemental payments and HMF refund requests, accompanied by the requisite CBP Forms 350 and 349 and, if applicable, supporting documentation, must be submitted electronically to CBP using the Automated Clearinghouse (ACH) via an Internet account established by the payer and located at *http://www.pay.gov* or, alternatively, mailed to the Office of Administration, Revenue Division, Customs and Border Protection, using the current address posted at Forms.CBP.gov. If a supplemental payment is mailed, a single check or money order payable to U.S.

Customs and Border Protection must be attached to each CBP Form 350. Approved HMF refund payments will be made via ACH to those payers who are enrolled in the ACH refund program; all others will receive HMF refund payments via mail.

(iv) *For fees paid on export movements.* CBP will process refund requests relative to fee payments previously made regarding the loading of cargo for export as follows:

(A) *Refund request.* For export fee payments made prior to July 1, 1990, the exporter (the name that appears on the SED or equivalent documentation authorized under 15 CFR 30.39(b)) or its agent must submit a letter of request for a refund specifying the grounds for the refund and identifying the specific payments made. The letter must be accompanied by the proof of payment set forth in paragraph (e)(4)(iv)(C) of this section. For export fee payments made on or after July 1, 1990, supporting documentation is not required with the refund request. For these payments, the request must specify the grounds for the refund, identify the quarters for which a refund is sought, and contain the following additional information: the exporter's name, address, and employer identification number (EIN); the name and EIN of any freight forwarder or other agent that made export fee payments on the exporter's behalf; and a name, telephone number, and facsimile number of a contact person. Refund requests must either be submitted electronically to CBP using the Automated Clearinghouse (ACH) via an Internet account established by the payer and located at *http://www.pay.gov* or, alternatively, mailed to the Office of Administration, Revenue Division, Customs and Border Protection, using the current address posted at Forms.CBP.gov. Approved HMF refund payments will be made using the ACH to those payers who are enrolled in the ACH refund program; all others will receive HMF refund payments via mail.

(B) *Refund procedure—(1) Processing order; power of attorney.* Generally, a properly filed refund request will be processed in the chronological order of its receipt. A refund request filed on behalf of an exporter by an agent other than a freight forwarder must be supported by a power of attorney or letter signed by the exporter authorizing the representation. A refund request filed by an agent other than a freight forwarder that lacks a power of attorney or authorization letter will not be processed unless one or the other is submitted. A refund request filed by a freight forwarder does not require a power of attorney or authorization letter to be processed; however, if CBP has not received a power of attorney or authorization letter for an exporter covered in a freight forwarder's refund request and that exporter has filed a separate refund request on its own behalf, that freight forwarder's entire refund request will be removed from the chronological processing order and processed after the processing of all exporter refund requests is completed.

(*2*) *HMT Payment Report and Report/Certification.* In processing a request for a refund, CBP will conduct a search of its records (CBP electronic database and paper document sources) and produce for issuance to the exporter (or its agent, as appropriate) a ''Harbor Mantenance Tax Payment Report'' (HMT Payment Report) that lists all payments reflected in those records for the entire period the fee was in effect. CBP will also produce for issuance to the exporter a ''Harbor Maintenance Tax Refund Report and Certification'' (Report/Certification) that lists all payments supported by paper documentation, either retained by CBP (relative to payments made on and after July 1, 1990) or submitted by the exporter with its refund request (relative to payments made at any time the fee was in effect). Where a refund request was filed on the exporter's behalf by an agent other than a freight forwarder, a power of attorney or authorization letter must be filed with CBP before CBP will issue these reports. The Report/Certification sets forth the total amount of the refund that CBP believes it owes the exporter for the payments listed in that report (minus any previous refunds). Pre-July 1, 1990, payments listed in the HMT Payment Report for which paper documentation has not been provided by the exporter will not be listed in the Report/Certification. The exporter has 120 days from the date the HMT Payment Report and

the Report/Certification are issued (the 120-day period) to sign and return to CBP the Report/Certification in order to receive the refund set forth in that report and/or to submit to CBP a request for a Revised Report/Certification. Where the exporter chooses to receive the refund set forth in the Report/Certification, the exporter must sign and return the report to CBP. CBP will issue the refund upon receipt of the signed report.

(*3*) *Revised Report/Certification*. A request for a Revised Report/Certification must be accompanied by documentation to support any payments not listed in the Report/Certification or corrections to listed payments. See paragraph (e)(4)(iv)(C) of this section regarding acceptable documentation. If an exporter (or its agent, as appropriate) both signs and returns to CBP a Report/Certification and requests a Revised Report/Certification, CBP will not, when reviewing the request for a Revised Report/Certification, approve for refund any corrections to the payments that were listed in the signed Report/Certification; CBP will, however, in that circumstance, consider approving any additional payments that were not listed in the signed Report/Certification. If an exporter does not sign and return to CBP a Report/Certification, but requests a Revised Report/Certification, CBP will consider approving for refund corrections to the payments listed in the Report/Certification and additional payments. Where the exporter requests a Revised Report/Certification, CBP will review the documentation submitted with the request, make a determination, and, within 60 days of the request's receipt, issue a Revised Report/Certification that lists all payments approved for refund and the total amount of the refund owed. In order to receive the refund set forth in a Revised Report/Certification, the exporter must sign and return it to CBP. CBP will issue the refund upon its receipt of the signed report. An exporter, within the 120-day period, may submit additional requests for a Revised Report/Certification, with appropriate documentation, to cover any payments not approved for refund in a Revised Report/Certification previously issued by CBP.

(*4*) *Protest*. For purposes of filing a protest under 19 U.S.C. 1514 (and 19 CFR part 174), unless issuance of a Revised Report/Certification is pending, any payments not approved for refund in a Report/Certification or a Revised Report/Certification issued by CBP within the 120-day period will be considered denied as of the date the period expires; a protest covering such payments must be filed within 180 days of that date. For any payments not approved for refund in a Revised Report/Certification issued after expiration of the 120-day period, a protest may be filed within 180 days of that report's issuance.

(*5*) *Significance of signed Report/Certification and Revised Report/Certification*. A Report/Certification or Revised Report/Certification must be signed by an officer of the company duly authorized to bind the company or by an agent (such as a broker or freight forwarder) representing the exporter in seeking a refund under this section. A Report/Certification or Revised Report/Certification signed by the exporter or its agent and received by CBP constitutes the exporter's agreement that the amount of the refund set forth in the report is accurate and CBP's payment of that refund amount is in full accord and satisfaction of all payments approved for refund in the report. The signed Report/Certification or Revised Report/Certification also represents the exporter's release, waiver, and abandonment of all claims, excluding claims for interest, against the Government, its officers, agents, and assigns for costs, attorney fees, expenses, compensatory damages, and exemplary damages arising out of the payments approved for refund in the report. When an agent, including a freight forwarder, signs a Report/Certification or Revised Report/ Certification on behalf of an exporter(s), the agent certifies that it is acting on the exporter's behalf and will use due diligence to forward the refund to the exporter, and, in the event the agent does not forward the refund to the exporter, will notify CBP and return the refund to CBP within one year of its receipt of the refund.

Upon receipt of the signed Report/Certification or Revised Report/Certification, CBP releases, waives, and abandons all claims other than fraud against the exporter, its officers, agents, or employees arising out of all payments approved for refund in the report.

(C) *Documentation.* For payments made prior to July 1, 1990, supporting documentation is required to obtain a refund and must be submitted in accordance with paragraphs (e)(4)(iv)(A) and/or (B)(*3*) of this section. For payments made on and after July 1, 1990, supporting documentation is not required to obtain a refund, unless the exporter seeks to prove corrections of payments listed in the Report/Certification (if the exporter did not sign and return it to CBP) and/or additional payments not listed in a Report/Certification, in accordance with paragraph (e)(4)(iv)(B)(*3*) of this section. The supporting documentation that CBP will accept as establishing entitlement to a refund, whether submitted with a refund request or a request for a Revised Report/Certification, is whichever of the following documents CBP accepted with the payment at the time it was made: a copy of the Export Vessel Movement Summary Sheet; where an Automated Summary Monthly Shipper's Export Declaration was filed, a copy of a letter containing the exporter's identification, its employer identification number (EIN), the Census Bureau reporting symbol, and, the quarter for which the payment was made; or a copy of a Harbor Maintenance Fee Quarterly Summary Report, CBP Form 349, for the quarter covering the refund requested. CBP also will consider other documentation offered as proof of payment of the fee, such as cancelled checks and/or affidavits from exporters attesting to the fact that all quarterly harbor maintenance tax payments made by the exporter were made exclusively for exports, and will accept that other documentation as establishing entitlement for a refund only if it clearly proves the payments were made for export harbor maintenance fees in the amounts sought to be refunded and were made by the party requesting the refund or the party on whose behalf the refund was requested.

(f) *Quarterly payments.* All quarterly payments required by this section must be received no later than 31 days after the close of the quarter being paid. Quarterly periods end on the last day of March, June, September, and December.

(g) *Maintenance of records.* Each importer, applicant for admission of cargo into a foreign trade zone, shipper and cruise vessel operator affected by this section must maintain all such documentation necessary for CBP to verify the accuracy of fee computations and to otherwise determine compliance under the law. Such documentation must be maintained for a period of 5 years from the date of fee calculation. The affected parties must advise the Director, Revenue Division, U.S. Customs and Border Protection, at the current address posted at Forms.CBP.gov, of the name, address, email and telephone number of a responsible officer who is able to verify any records required to be maintained under this paragraph. The Director, Revenue Division, must be promptly notified of any changes in the identifying information submitted. The records must be maintained and made available for inspection, copying, reproduction or other official use by CBP in accordance with the provisions of part 163 of this chapter.

(h) *Penalties/liquidated damages for failure to pay harbor maintenance fee and file summary sheet*—(1) *Amount of penalty or damages.* Any party (including the importer, or shipper) who fails to pay the harbor maintenance fee and file the summary sheet at the time specified by regulation will incur a penalty equal to the amount of liquidated damages assessable for late filing of an entry summary pursuant to the provisions of §142.15 of this chapter. An importer will be liable for payment of liquidated damages under the basic importation and entry bond, for failure to pay the harbor maintenance fee, as provided in such bond.

(2) *Application for relief.* The party must follow the procedures set forth in part 171 of this chapter in filing an application for relief. Any application to cancel liquidated damages incurred must be made in accordance with part 172 of this chapter.

(3) *Mitigation*. Any penalty assessed under this provision will be mitigated in a manner consistent with guidelines relating to cancellation of claims for liquidated damages for late filing of entry summaries. Any liquidated damages assessed under this provision will be mitigated in a manner consistent with guidelines published by the authority of the Commissioner of CBP for cancellation of claims for untimely payment of estimated duties, taxes and charges.

(i) *Privacy Act notice*. Whenever an identification number is requested on the summary sheets provided for in paragraph (e) of this section, the disclosure of the social security number is mandatory when an internal revenue service number is not disclosed. Identification numbers are solicited under the authority of Executive Order 9397 and Pub. L. 99–662. The identification number provides unique identification of the party liable for the payment of the harbor maintenance fee. The number will be used to compare the information on the summary sheets with information submitted to the government on other forms required in the course of shipping or importing merchandise, which contain the identification number, *e.g.*, Vessel Operation Report, to verify that the information submitted is accurate and current. Failure to disclose an identification number may cause a penalty pursuant to paragraph (h) of this section. The above information is set forth pursuant to the Privacy Act of 1974 (Pub. L. 93–579).

[T.D. 87–44, 52 FR 10201, Mar. 30, 1987]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 24.24, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 24.25 Statement processing and Automated Clearinghouse.

(a) *Description*. Statement processing is a voluntary automated program for participants in the Automated Broker Interface (ABI), allowing the grouping of entry/entry summaries and entry summaries on a daily basis. The related duties, taxes, fees, and interest may be paid with a single payment. The preferred method of payment is by Automated Clearinghouse (ACH) debit or ACH credit, except where the importer of record has provided a separate check payable to the ''U.S. Customs and Border Protection'' for customs charges (duties, taxes, or other debts owed CBP (see § 111.29(b) of this chapter)). A particular statement payment must be accomplished entirely through ACH or completely by check or cash. A mixing of payment methods for a single statement will not be accepted. ACH debit (see paragraph (b)(2) of this section) is an arrangement in which the filer electronically provides payment authorization for the Treasury-designated ACH processor to perform an electronic debit to the payer's bank account; ACH credit is described in § 24.26. The payment amount will then be automatically credited to the account of the Department of the Treasury. If a filer chooses to use statement processing for entries of quota-class merchandise and other special classes of merchandise designated by CBP Headquarters under § 142.13(b) of this chapter, he must also use statement processing as a normal course of business for the largest possible portion (see § 24.25(d)) of his eligible nonspecial class entries; further, he must use the ACH payment mechanism to pay all his ABI statements containing entries for quota-class merchandise. In no circumstance will check or cash be acceptable for payment of ABI statements containing entries for quota-class merchandise.

(b) *How to elect participation*—(1) *Statement processing*. An ABI filer must notify CBP in writing of the intention to utilize statement processing.

(2) *Automated Clearinghouse debit*. If an ABI filer pays his statements through ACH debit, rather than by check, he must provide to CBP the bank routing number and the bank account number for each account from which ACH payments are to be electronically debited. Upon the determination by CBP that the ABI filer has the necessary software to participate and otherwise qualifies to participate in ACH, CBP shall assign a unique identifying payer's unit number to the participant and the Treasury-designated ACH processor. This unique number assigned by CBP will alert the

ACH processor as to which bank and account to issue the electronic debit. If a client of a ABI filer opts to pay CBP charges from his own account through an ABI filer, the client must provide directly to CBP the bank transit routing number and the bank account number for each of his accounts from which ACH payments can be electronically debited. CBP will then assign a unique payer's unit number to each of his accounts and provide the assigned unit number directly to the client and the Treasury-designated ACH processor. The client would then provide the appropriate payer's unit number to his broker to pay his statements through ABI. It is the responsibility of the participant to ensure that all bank account information is accurate and that the correct unique payer's unit number is utilized for each ACH transaction.

(c) *Procedure for filer.* (1) The filer shall transmit entry/entry summary and entry summary data through ABI indicating whether payment for a particular entry summary will be by individual check or by using statement processing. If statement processing is indicated, the filer shall designate whether the entry summary is to be grouped by importer or broker, and shall provide a valid scheduled statement date (within 10 days of entry, but not a Saturday, Sunday or holiday).

(2) CBP shall provide a preliminary statement to the ABI filer on the scheduled statement date. The preliminary statement shall contain all entry/entry summaries and entry summaries scheduled for that statement date. The preliminary statement shall be printed by the filer, who will review the statement entries and the statement totals, assemble the required entry summaries as listed in the statement, and present them to CBP with the preliminary statement. This presentation must be made within 10 working days after entry of the merchandise. If a filer elects to perform deletions from the preliminary statement (other than items related to special classes of merchandise provided for in §142.13(b) of this chaper), the filer shall notify CBP in such manner as designated by CBP Headquarters. Any entry number deleted from a statement may be paid by an individual check or scheduled for another statement by transmitting the entry summary data through ABI with a future payment date.

(3) The ABI filer using statement processing is responsible for ensuring that payment is made within 10 days of the entry of the related merchandise.

(4) Payments made through ACH are processed as follows:

(i) *Payment date; interest and liquidated damages.* The date of acceptance of the ACH debit payment authorization or ACH credit payment for the preliminary statement is the payment date when determining compliance with the due date for scheduled statements and for purposes of §24.3a of this part, and subject to the provisions of §113.62(a)(1)(i) and (m)(4) of this chapter.

(ii) *Issuance of final statement.* CBP shall, upon confirmation from the Department of the Treasury that funds are available and transferred to CBP, identify the final statement as paid and post the appropriate amounts to the related entries.

(iii) *Evidence of payment.* The final statement generally shall be available to the filer the day following the receipt of the ACH payment by CBP. The final statement may be utilized as evidence that statement payment has occurred through an ACH transaction. In other instances, a cancelled check may serve as evidence of payment.

(d) *Choice of excluding certain entries from statement processing.* An ABI filer using statement processing, generally, has the right to inform CBP electronically whether he desires that a particular entry summary be paid by individual payment or through statement processing. If a filer opts to use statement processing for entry/entry summaries for quota-class and other special classes of merchandise defined in §142.13(b) of this chapter, he shall use statement processing in the normal course of business for the largest possible portion of his eligible non-special class entries also; further, he shall pay for these entry/entry summaries through ACH. If a filer opts to use statement processing and, therefore, ACH for entry/entry summaries for special classes of merchandise defined in §142.13(b) of this chapter, these entry/entry summaries cannot be deleted

from a statement. A filer who excludes or deletes entries from the statement process and ACH should be prepared to articulate a sound business reason why these exclusions or deletions have occurred. If CBP believes that a broker is using ACH for his quota-class entries and not using statement processing and ACH for the largest possible portion of his eligible non-special class entries, the ABI participant may be consulted by CBP as to why he has not used statement processing and ACH for certain entries. If CBP is not satisfied, after such consultation, that there were sound articulable business reasons for the exclusion or deletion of non-special class entries, CBP may disqualify the participant from using statement processing/ACH for quota-class entries.

(e) *Scheduled statement date.* Entry/entry summaries and entry summaries must be designated for statement processing within 10 working days after the date of entry. It is the responsibility of the ABI filer using statement processing to ensure that the elected scheduled statement date is within that 10-day timeframe. CBP will not warn the filer if the scheduled statement date given is late.

[T.D. 89–104, 54 FR 50497, Dec. 7, 1989, as amended by T.D. 98–51, 63 FR 29125, May 28, 1998; T.D. 99–75, 64 FR 56439, Oct. 20, 1999; CBP Dec. 03–13, 68 FR 43630, July 24, 2003; CBP Dec. 19–10, 84 FR 46680, Sept. 5, 2019; 84 FR 49651, Sept. 23, 2019]

§ 24.26 Automated Clearinghouse credit.

(a) *Description.* Automated Clearinghouse (ACH) credit is an optional payment method that allows a payer to transmit statement processing payments (see § 24.25) or deferred tax payments (see § 24.4) or bill payments (see § 24.3) electronically, through its financial institution, directly to the CBP account maintained by the Department of the Treasury.

(b) *Enrollment procedure.* A payer interested in enrolling in the ACH credit program must indicate such interest by providing the following information to the National Finance Center, U.S. Customs and Border Protection, Office of Administration, Revenue Division, 6650 Telecom Drive, Suite 100, Indianapolis, IN 46278: Payer name and address; payer contact name(s); payer telephone number(s) and facsimile number; payer identification number (importer number or Social Security number or CBP assigned number); and 3-digit filer code.

(c) *Routing and format instructions.* Following receipt of the enrollment information, the National Finance Center will provide the payer with specific ACH credit routing and format instructions and will advise the payer that the following information must be provided to its financial institution when originating its payments: Company name; company contact person name and telephone number; company identification number (coded Internal Revenue Service employer identification number or DUNS number or CBP assigned number); company payment description; effective date; receiving company name; transaction code; CBP transit routing number and CBP account number; payment amount; payer identifier (importer number or Social Security number or CBP assigned number or filer code if the payer is a broker who is the importer of record); document number (daily statement number, entry or warehouse withdrawal number for a deferred tax payment, or bill number); payment type code; settlement date; and document payment amount.

(d) *Prenotification procedure.* Before effecting any payments of funds through the ACH credit process, the payer must follow a prenotification procedure, involving a non-funds message transmission through its financial institution to the CBP account, in order to validate the routing instructions. When the routing instructions are validated, the National Finance Center will notify the payer that the prenotification transaction has been accepted and that payments may be originated on or after the tenth calendar day following the prenotification acceptance date.

(e) *Payment origination procedures*—(1) *General.* Once the payer has received authorization to begin originating ACH credit payments under paragraph (d) of this section, the payer, through its financial institution, must originate each payment transaction to the CBP

account no later than one business day prior to the payment due date. The payer's account will be charged by the financial institution on the settlement date identified in the transaction. The payer is responsible for following the routing and format instructions provided by CBP and for ensuring the accuracy of the information when originating each payment. Improperly formatted or erroneous information provided by the payer will delay the prompt posting of the payment to the receivable.

(2) *Procedures for daily statement filers.* The procedures set forth in § 24.25(c) for ABI filers using statement processing remain applicable when payment is effected through ACH credit. However, when the ABI filer is a customs broker who is not the importer of record and thus is not responsible for the payment, the ABI filer must provide the statement number and statement amount to the importer of record at least one business day prior to the due date so that the importer of record can originate the payment.

(f) *Date of collection.* The date that the ACH credit payment transaction is received by CBP shall be the collection date which equates to the settlement date. The appropriate daily statement or entry or warehouse withdrawal or bill shall be identified as paid as of that collection date.

(g) *Removal from the ACH credit program.* If a payer repeatedly provides improperly formatted or erroneous information when originating ACH credit payments, the National Finance Center may advise the payer in writing to refrain from using ACH credit and to submit its payments by bank draft or check pursuant to § 24.1 or, in the case of daily statement payments, to use the ACH debit payment method under § 24.25.

[T.D. 98–51, 63 FR 29125, May 28, 1998, as amended by CBP Dec. 12–21, 77 FR 73308, Dec. 10, 2012]

§ 24.32 Claims; unpaid compensation of deceased employees and death benefits.

(a) A claim made by a designated beneficiary or a surviving spouse for unpaid compensation due an officer or employee at the time of his death shall be executed on standard Form 1153, Claim of Designated Beneficiary and/or Surviving Spouse for Unpaid Compensation of Deceased Civilian Employee. A claim made by anyone other than a designated beneficiary or surviving spouse for unpaid compensation due an officer or employee at the time of his death shall be executed on standard Form 1155, Claim for Unpaid Compensation of Deceased Civilian Employee. The claims shall be forwarded to the Customs office where the deceased was employed.

(b) Claims for death benefits, either in the form of an annuity or lump-sum payment of the amount to the credit of the deceased officer or employee in the Retirement and Disability Fund shall be executed on standard Form 100, Application for Death Benefit, and forwarded together with a certified copy of the public record of death directly to the Office of Personnel Management, Washington, DC 20415.

[28 FR 14808, Dec. 31, 1963, as amended by T.D. 91–77, 56 FR 46114, Sept. 10, 1991]

§ 24.34 Vouchers; vendors' bills of sale; invoices.

(a) Vouchers or invoices for transportation and related services which are intended for payment from official funds shall contain the following certification signed by the claimant:

> I certify that the above bill is correct and just and that payment has not been received.

Vouchers, vendors' bills of sale, or invoices for purchases or services other than personal do not require the foregoing certification.

(b) Every voucher shall be in the name of the person or persons furnishing the service or supplies, except in the case of a service or supplies paid for in an emergency by a Customs officer or employee, in which case the voucher may be in the name of the officer or employee who made the payment.

(c) The signature of a claimant made by a mark shall be attested in each case by a disinterested witness.

(d) The dates appearing on vouchers and on receipts filed in support thereof shall always be the actual dates of the transactions recorded or action taken

thereon. As many copies in memorandum form, duly authenticated if desired, may be prepared as administrative or other requirements demand.

(e) When an erasure, interlineation, or change of any kind is made in a voucher after it has been certified by the claimant, such correction or change shall be initialed and dated by the claimant.

(f)(1) Vouchers for passenger transportation furnished Customs officers or employees on Government transportation requests, standard Form 1169, and vouchers for transportation of freight and express furnished on Government bills of lading, standard Form 1103, issued by Customs officers or employees shall be rendered on Public Voucher for Transportation Charges, standard Form 1171 or 1113, respectively, to the Customs office to be billed as indicated on the transportation request or bill of lading.

(2) Charges for freight or express must not be included on the same vouchers with charges for passenger transportation. The words ''Passenger,'' ''Freight,'' or ''Express,'' as the case may be, should be printed or otherwise placed by the carrier immediately above the title of the voucher form. Original Government bills of lading, standard Form 1103, or transportation requests, standard Form 1169, or certificates in lieu thereof, standard Forms 1108 or 1172, respectively, shall be attached to these vouchers.

§ 24.36 Refunds of excessive duties, taxes, etc.

(a) When it is found upon, or prior to, liquidation or reliquidation of an entry or reconciliation that a refund of excessive duties, taxes, fees or interest (at the rate determined in accordance with § 24.3a(c)(1)) is due, a refund shall be prepared in the name of the person to whom the refund is due, as determined under paragraphs (b) and (c) of this section. If an authority to mail checks to someone other than the payee, Customs Form 4811, is on file, the address of the payee shall be shown as in care of the address of the authorized persons. If a power of attorney is on file, the address of the payee may be shown as in care of the address of such attorney, if requested. A Form 4811 received by Customs will not be effective if a Customs transaction requiring the use of the owner's importer number has not been made within 3 years from the date the Form 4811 was filed or if there is no unliquidated entry on file to which such number is to be associated. For purposes of this section:

(1) Except as otherwise provided in paragraphs (a)(1)(i) through (a)(1)(iii) of this section, the refund shall include interest on the excess moneys deposited with Customs, and such interest shall accrue from the date the duties, taxes, fees or interest were deposited or, in a case in which a proper claim is filed under 19 U.S.C. 1520(d) and subpart D of Part 181 of this chapter, from the date such claim is filed, to the date of liquidation or reliquidation of the applicable entry or reconciliation. An example follows:

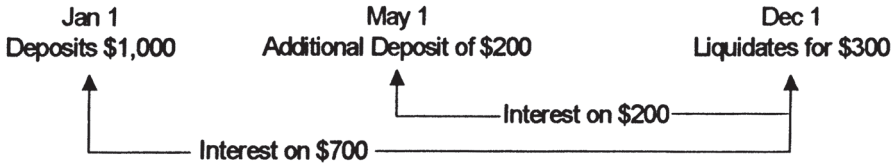
Example: Entry liquidates for a refund

Importer is owed a refund of $600 plus interest as follows:
The importer makes a $1,000 initial deposit (January 1) and the entry liquidates for $400 (December 1). Upon liquidation, the importer will be owed a refund of $600 plus interest. The interest will accrue from the date of deposit (January 1) to the date of liquidation (December 1).

(i) If an additional deposit of duties, taxes, fees or interest was made prior to liquidation or reliquidation and if any portion of that additional deposit

was in excess of the amount required to be deposited, in addition to any other interest accrued under this paragraph (a)(1), the refund also shall include interest accrued on the excess additional deposit from the date of the additional deposit to the date of liquidation or reliquidation of the applicable entry or reconciliation. An example follows:

Example: Additional deposit made and entry liquidates for a refund

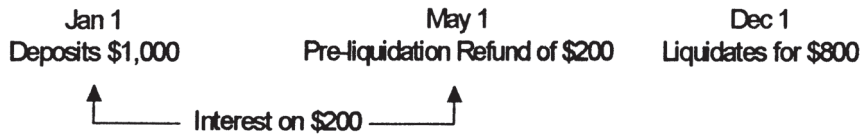


Importer is owed a refund of $900 plus interest as follows:
The importer makes a $1,000 initial deposit (January 1) and an additional pre-liquidation deposit of $200 (May 1) and the entry liquidates for $300 (December 1). Upon liquidation, the importer will be refunded $900 plus interest. The interest accrues in two segments: (1) On the additional deposit overpayment ($200), from the date of the additional deposit (May 1) to the date of liquidation (December 1); and (2) on the initial deposit overpayment ($700), from the date of deposit (January 1) to the date of liquidation (December 1).

(ii) In the case of a refund of duties, taxes, fees or interest made prior to liquidation, such a refund will include only principal amounts and not any interest thereon. Interest on such principal amounts will be computed at the time of liquidation or reliquidation and shall accrue as follows:

(A) Interest shall only accrue on the amount refunded from the date the duties, taxes, fees or interest were deposited to the date of the refund if the amount refunded is determined upon liquidation or reliquidation of the applicable entry or reconciliation to constitute the true excess amount deposited with Customs. An example follows:

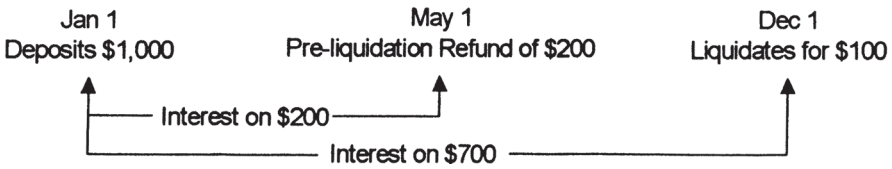
Example: Pre-liquidation refund and entry liquidates for net amount collected



Importer is owed a refund of interest on $200 as follows:
The importer makes a $1,000 initial deposit (January 1) and receives a pre-liquidation refund of $200 (May 1) and the entry liquidates for $800 (December 1). Upon liquidation, the importer will be refunded interest on the $200 overpayment from the date of the initial deposit (January 1) to the date of the pre-liquidation refund (May 1).

(B) If the amount refunded is determined upon liquidation or reliquidation of the applicable entry or reconciliation to constitute less than the true excess amount deposited with Customs, in addition to any other interest accrued under this paragraph (a)(1), interest also shall accrue on the remaining excess deposit from the date the duties, taxes, fees or interest were deposited to the date of liquidation or reliquidation. An example follows:

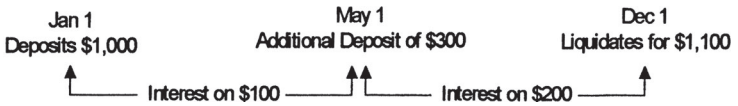
Example: Pre-liquidation refund and entry liquidates for an additional refund



Importer is owed a refund of $700 plus interest as follows:
The importer makes a $1,000 initial deposit (January 1) and receives a pre-liquidation refund of $200 (May 1) and the entry liquidates for $100 (December 1). Upon liquidation, the importer will be refunded $700 plus interest. The interest accrues in two segments: (1) On the pre-liquidation refund ($200), from the date of deposit (January 1) to the date of the pre-liquidation refund (May 1); and (2) on the remaining overpayment ($700), from the date of deposit (January 1) to the date of liquidation (December 1).

(C) If an entry or reconciliation is determined upon liquidation or reliquidation to involve both an initial underpayment and an additional excess deposit, interest in each case shall be computed separately and the resulting amounts shall be netted for purposes of determining the final amount of interest to be reflected in the refund. An example follows:

Example: Additional deposit made and entry liquidates for a refund



Importer is owed a refund of $200 plus or minus net interest as follows:
The importer makes a $1,000 initial deposit on the required date (January 1) and an additional pre-liquidation deposit of $300 (May 1) and the entry liquidates for $1,100 (December 1). Upon liquidation, the importer will be refunded $200 plus or minus net interest. The interest accrues in two segments: (1) Interest accrues in favor of the Government on the initial underpayment ($100) from the date deposit was required (January 1) to the date of the additional deposit (May 1); and (2) interest accrues in favor of the importer on the overpayment ($200) from the date of the additional deposit (May 1) to the date of liquidation (December 1).

(D) If the amount refunded or any portion thereof exceeds the amount properly refundable as determined upon liquidation or reliquidation of the applicable entry or reliquidation, the excess amount refunded shall be treated as an underpayment of duties, taxes, fees or interest on which interest shall accrue as provided in § 24.3a.

(2) A refund determined to be due upon liquidation or reliquidation, including a refund consisting only of interest that has accrued in accordance with paragraph (a)(1)(ii) of this section, shall be paid within 30 days of the date of liquidation or reliquidation of the applicable entry or reconciliation.

(3) If a refund, including any interest thereon, is not paid in full within the applicable 30-day period specified in paragraph (a)(2) of this section, the refund shall be considered delinquent thereafter and interest shall accrue on the unpaid balance by 30-day periods until the full balance is paid. However, no interest will accrue during the 30-day period in which the refund is paid.

(b) Refunds of excessive duties, taxes, fees or interest shall be certified for payment to the importer of record unless a transferee of the right to withdraw merchandise from bonded warehouse is entitled to receive the refund under section 557(b), Tariff Act of 1930, as amended, or an owner's declaration has been filed in accordance with section 485(d), Tariff Act of 1930, or a surety submits evidence of payment to Customs, upon default of the principal, of amounts previously determined to be due on the same entry or transaction. The certification of a refund for

payment to a nominal consignee may be made prior to the expiration of the 90-day period within which an owner's declaration may be filed as prescribed in section 485(d) of the Tariff Act, provided the nominal consignee waives in writing his right to file such declaration. If an owner's declaration has been duly filed, the refund shall be certified for payment to the actual owner who executed the declaration, except that, irrespective of whether an owner's declaration has been filed, refunds shall be certified for payment to a transferee provided for in section 557(b), Tariff Act of 1930, as amended, if the moneys with respect to which the refund was allowed were paid by such transferee. If a surety submits evidence of payment to Customs, upon default of the principal, for an amount previously determined to be due on an entry or transaction the refund shall be certified to that surety up to the amount paid by it or shall be applied to other obligations of the surety.

(c) If the nominal consignee has become bankrupt, refunds of duties, taxes, fees or interest on merchandise entered in the name of such nominal consignee for the account of the actual owner shall be withheld from payment pending the receipt of a claim therefor and the establishment of rights thereto, unless the declaration of the actual owner has been filed with the port director under section 485(d), Tariff Act of 1930.

(d) The authority of CBP to make refunds pursuant to paragraphs (a), (b), and (c) of this section of excessive deposits of alcohol or tobacco taxes, as defined in section 6423(d)(1), Internal Revenue Code of 1986, as amended (26 U.S.C. 6423(d)(1)), is confined to cases of the types which are excepted from the application of section 6423, Internal Revenue Code of 1986, as amended (26 U.S.C. 6423), and which are not administered by the Department of the Treasury under section 107(e) of Public Law 116–260, div. EE, title I (December 27, 2020). The excepted types of cases and, therefore, the types in which CBP is authorized to make refunds of such taxes are those in which:

(1) The tax was paid or collected on an article imported for the personal or household use of the importer;

(2) The refund is made pursuant to provisions of laws and regulations for drawback;

(3) The tax was paid or collected on an imported article withdrawn from the market, returned to bond, or lost or destroyed, when any law expressly provides for refund in such case;

(4) The tax was paid or collected on an imported article which has been lost, where a suit or proceeding was instituted before June 15, 1957;

(5) The refund of tax is pursuant to a claim based solely on errors of computation of the quantity of the imported article, or on mathematical errors in computation of the tax due;

(6) The tax was paid or collected on an imported article seized and forfeited, or destroyed, as contraband;

(7) The tax was paid or collected on an imported article refused admission to Customs territory and exported or destroyed in accordance with section 558, Tariff Act of 1930, as amended;

(8) The refund of tax is pursuant to a reliquidation of an entry under section 520(c)(1), Tariff Act of 1930, as amended, and does not involve a rate of tax applicable to an imported article;

(9) The tax was paid or collected on a greater quantity of imported articles than that actually imported and the fact of the deficiency is established to the port directors' satisfaction before liquidation of the entry becomes final; or

(10) For alcohol excise taxes imposed under the Internal Revenue Code for goods entered or withdrawn from warehouse for consumption on or before December 31, 2022, the refund of tax is claimed pursuant to the assignment of a reduced tax rate or tax credit to an importer by a foreign producer in accordance with CBP implementation of sections 13801–13808 of Public Law 115–97 (December 22, 2017), as amended. For goods entered or withdrawn from warehouse for consumption after December 31, 2022, see the procedures provided in paragraph (e)(2) of this section.

(e) In any instance in which a refund of an alcohol or tobacco tax is not of a type covered by paragraph (d) of this section the following procedures will apply:

(1) Except as provided in paragraph (e)(2), a claim for refund of any overpayment of internal revenue tax on an entry must be filed with the Alcohol and Tobacco Tax and Trade Bureau (TTB), in accordance with TTB regulations found in Part 70 of Title 27 of the Code of Federal Regulations.

(2) A claim for refund of alcohol excise taxes based on the assignment of a reduced tax rate or tax credit to an importer by a foreign good producer for goods entered or withdrawn from warehouse for consumption on or after January 1, 2023, and submitted pursuant to 26 U.S.C. 5001(c)(4), 5041(c)(7), and 5051(a)(6), must be filed with TTB, in accordance with TTB regulations found in part 27, subpart P, of Title 27 of the Code of Federal Regulations.

[28 FR 14808, Dec. 31, 1963, as amended by T.D. 67–33, 32 FR 494, Jan. 18, 1967; T.D. 71–289, 36 FR 23150, Dec. 4, 1971; T.D. 89–1, 53 FR 51254, Dec. 21, 1988; T.D. 99–27, 64 FR 13675, Mar. 22, 1999; T.D. 99–75, 64 FR 56439, Oct. 20, 1999; CBP Dec. 18-09, 83 FR 40676, Aug. 16, 2018; CBP Dec. 22–26, 87 FR 80443, Dec. 30, 2022]

§ 24.70 Claims; deceased or incompetent public creditors.

(a) Claims for amounts due individual deceased public creditors of the United States (except civilian officers and employees subject to the provisions of section 61f–61k, Title 5, United States Code), should be made on standard Form No. 1055—Revised. Such claims include claims for payments due deceased contractors for articles furnished or services performed, and claims for payments due deceased importers or owners of merchandise on account of refunds of excessive duties, or taxes, or for payment of drawback, etc. Claims for payment of Government checks drawn on the Treasurer of the United States or other authorized Government depositary to the order of such public creditors, which cannot be paid because of the death of the payee, should be stated on standard Form 1055—Revised. Information should be furnished regarding the disposition of these checks in case they are not in possession of the claimant, otherwise they should accompany the claim.

(b) No form is prescribed for use of a guardian or committee of an estate of an incompetent in making claim for sums due from the United States. Such guardian or committee may submit in letter form, over his address and signature, an application for amounts due an estate of an incompetent, setting forth the incompetent's connection with the United States Customs Service. This application should be supported by a short certificate of the court showing the appointment and qualification of the claimant as guardian or committee. In case the total amount due the estate of the incompetent is small, and no guardian or committee of the estate has been or will be appointed, the application may be submitted by the person or persons having care or custody of the incompetent, or by close relatives who will hold any amount found due for the use and benefit of the incompetent. Applications for recurring payments need not be accompanied by an additional certificate of the court, but should be supported by a statement that the appointment is still in full force and effect. All Government checks drawn on the Treasurer of the United States or other authorized Government depository to the order of individuals which cannot be paid because of incompetency of the payee should accompany the claim, otherwise an explanation should be given as to the disposition of the check.

(c) Claims for payments due deceased or incompetent contractors should be submitted to the Customs field officer at whose order the articles were furnished or services performed. Claims for refunds of excessive duties, or taxes, or for payment of drawback and other similar claims due deceased or incompetent public creditors shall be submitted to the port director. The Customs field officer may grant necessary assistance to claimants to insure proper execution of standard Form 1055—Revised in the case of deceased public creditors, and in the case of incompetent public creditors to insure submission of the application in proper form. The port director shall settle the claim unless there is a doubtful question of fact or law, in which case the claim shall be forwarded to the Accounting Services Division, Accounts Receivable Group, Indianapolis, Indiana, with originals or certified copies

of any necessary documents and with an appropriate report and recommendation.

[28 FR 14808, Dec. 31, 1963, as amended by T.D. 68–142, 33 FR 8225, June 1, 1968; T.D. 91–77, 56 FR 46114, Sept. 10, 1991]

§ 24.71 Claims for personal injury or damages to or loss of privately owned property.

Procedures for the settlement of claims arising from actions of Treasury Department employees are published in 31 CFR part 3.

§ 24.72 Claims; set-off.

When an importer of record or other party has a judgment or other claim allowed by legal authority against the United States, and he is indebted to the United States, either as principal or surety, for an amount which is legally fixed and undisputed, the port director shall set off so much of the judgment or other claim as will equal the amount of the debt due the Government.

[T.D. 56388, 30 FR 4671, Apr. 10, 1965]

§ 24.73 Miscellaneous claims.

Every claim of whatever nature arising under the Customs laws which is not otherwise provided for shall be forwarded directly to Headquarters, U.S. Customs Service, together with all supporting documents and information available.

APPENDIX A TO PART 24—CUSTOMS COBRA USER FEES AND LIMITATIONS IN 19 CFR 24.22

19 U.S.C. 58c	19 CFR 24.22	Customs COBRA user fee/limitation	FY14 Base fee/ limitation (subject to adjustment in accordance with the FAST Act)
(a)(1)	(b)(1)(i)	Fee: Commercial Vessel Arrival Fee	$437
(b)(5)(A)	(b)(1)(ii)	Limitation: Calendar Year Maximum for Commercial Vessel Arrival Fees.	5,955
(a)(8)	(b)(2)(i)	Fee: Barges and Other Bulk Carriers Arrival Fee	110
(b)(6)	(b)(2)(ii)	Limitation: Calendar Year Maximum for Barges and Other Bulk Carriers Arrival Fees.	1,500
(a)(2)	(c)(1)	Fee: Commercial Truck Arrival Fee	5.50
(b)(2)	(c)(2) and (3)	Limitation: Commercial Truck Calendar Year Prepayment Fee.	100
(a)(3)	(d)(1)	Fee: Railroad Car Arrival Fee	8.25
(b)(3)	(d)(2) and (3)	Limitation: Railroad Car Calendar Year Prepayment Fee.	100
(a)(4)	(e)(1) and (2)	Fee and Limitation: Private Vessel or Private Aircraft First Arrival/Calendar Year Prepayment Fee.	27.50
(a)(6)	(f)(1)	Fee: Dutiable Mail Fee	5.50
(a)(5)(A)	(g)(1)(i)	Fee: Commercial Vessel or Commercial Aircraft Passenger Arrival Fee.	5.50
(a)(5)(B)	(g)(1)(ii)	Fee: Commercial Vessel Passenger Arrival Fee (from one of the territories and possessions of the United States).	1.93
(a)(7)	(h)	Fee: Customs Broker Permit User Fee	138

[CBP Dec. 17-16, 82 FR 50529, Nov. 1, 2017, as amended by CBP Dec. 20-13, 85 FR 47027, Aug. 4, 2020]

APPENDIX B TO PART 24—CUSTOMS COBRA USER FEES AND LIMITATIONS IN 19 CFR 24.23

19 U.S.C. 58c	19 CFR 24.23	Customs COBRA user fee/limitation	FY14 Base fee/ limitation (subject to adjustment in accordance with the FAST Act)
(b)(9)(A) (ii)	(b)(1)(i)(A)	Fee: Express Consignment Carrier/Centralized Hub Facility Fee, Per Individual Waybill/Bill of Lading Fee.	$1
(b)(9)(B)(i)	(b)(1)(i)(B)(2)	Limitation: Minimum Express Consignment Carrier/ Centralized Hub Facility Fee.	0.35

19 U.S.C. 58c	19 CFR 24.23	Customs COBRA user fee/limitation	FY14 Base fee/ limitation (subject to adjustment in accordance with the FAST Act)
(b)(9)(B)(i)	(b)(1)(i)(B)(2)	Limitation: Maximum Express Consignment Carrier/ Centralized Hub Facility Fee.	1
(a)(9)(B)(i); (b)(8)(A)(i)	(b)(1)(i)(B)(1)	Limitation: Minimum Merchandise Processing Fee	25
(a)(9)(B)(i); (b)(8)(A)(i)	(b)(1)(i)(B)(1)	Limitation: Maximum Merchandise Processing Fee	485
(b)(8)(A)(ii)	(b)(1)(ii)	Fee: Surcharge for Manual Entry or Release	3
(a)(10)(C)(i)	(b)(2)(i)	Fee: Informal Entry or Release; Automated and Not Prepared by CBP Personnel.	2
(a)(10)(C)(ii)	(b)(2)(ii)	Fee: Informal Entry or Release; Manual and Not Prepared by CBP Personnel.	6
(a)(10)(C)(iii)	(b)(2)(iii)	Fee: Informal Entry or Release; Automated or Manual; Prepared by CBP Personnel.	9
(b)(9)(A)(ii)	(b)(4)	Fee: Express Consignment Carrier/Centralized Hub Facility Fee, Per Individual Waybill/Bill of Lading Fee.	1

[CBP Dec. 17-16, 82 FR 50529, Nov. 1, 2017]

PART 54—CERTAIN IMPORTATIONS TEMPORARILY FREE OF DUTY

METAL ARTICLES IMPORTED TO BE USED IN REMANUFACTURE BY MELTING, OR TO BE PROCESSED BY SHREDDING, SHEARING, COMPACTING, OR SIMILAR PROCESSING WHICH RENDERS THEM FIT ONLY FOR THE RECOVERY OF THE METAL CONTENT

Sec.

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 3(i); Section XV, Note 5, Harmonized Tariff Schedule of the United States), 1623, 1624.

METAL ARTICLES IMPORTED TO BE USED IN REMANUFACTURE BY MELTING, OR TO BE PROCESSED BY SHREDDING, SHEARING, COMPACTING, OR SIMILAR PROCESSING WHICH RENDERS THEM FIT ONLY FOR THE RECOVERY OF THE METAL CONTENT

§ 54.5 Scope of exemptions; nondeposit of estimated duty.

(a) Except as otherwise provided in this section, articles predominating by weight of metal to be used in remanufacture by melting, or to be processed by shredding, shearing, compacting, or similar processing which renders them fit only for the recovery of the metal content, and actually so used, shall be entitled to free entry upon compliance with § 54.6, if entered, or withdrawn from warehouse for consumption, during the effective period of subheadings 9817.00.80 and 9817.00.90, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202). This provision does not apply to:

(1) Articles of lead, zinc, or tungsten;

(2) Metal-bearing materials provided for in section VI, Chapter 26 or subheading 8548.10, HTSUS; or

(3) Unwrought metal provided for in Section XV, HTSUS.''

(b) No deposit of estimated duty shall be required upon the entry, or withdrawal from warehouse for consumption, of the articles described in paragraph (a) of this section if the Center director is satisfied at the time of entry, or withdrawal, by written declaration of the importer, or its electronic equivalent, that the merchandise is being imported to be used in remanufacture by melting, or to be processed by shredding, shearing, compacting, or similar processing which renders it fit only for the recovery of the metal content.

[T.D. 80–151, 45 FR 38041, June 6, 1980, as amended by T.D. 87–75, 52 FR 20067, May 29, 1987; T.D. 89–1, 53 FR 51254, Dec. 21, 1988; T.D. 98–4, 62 FR 68165, Dec. 31, 1997; CBP Dec. 15–14, 80 FR 61286, Oct. 13, 2015; CBP Dec. 16–26, 81 FR 93016, Dec. 20, 2016]

§ 54.6 Proof of intent; bond; proof of use; liquidation.

Articles predominating by weight of metal, described in § 54.5(a) shall be admitted free of duty upon compliance with the following conditions:

(a) There shall be filed in connection with the entry a statement of the importer, or its electronic equivalent, consistent with the requirements of § 10.134 of this chapter.

(b) If the articles are entered for consumption or warehouse, a bond shall be filed on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. Withdrawals from warehouse shall be made on Customs Form 7501, or its electronic equivalent. The liquidation of the consumption or warehouse entry shall be suspended pending proof of use or other disposition of the articles within the time prescribed in paragraph (c) of this section.

(c) Within 3 years from the date of entry, or withdrawal from warehouse for consumption, the importer shall submit to CBP, either at the port of entry or electronically, a statement from the superintendent or manager of the plant at which the articles were used in remanufacture by melting, or were processed by shredding, shearing, compacting, or similar processing which rendered them fit only for the recovery of the metal content, showing:

(1) The name and location of the plant;

(2) The entry number, date, and port of entry (if the person making the statement is not in possession of this information, a reference to invoices, purchase orders, or other documents which will identify the shipment with the entry may be substituted);

(3) The date or inclusive dates of the remanufacture or processing of the articles; and

(4) A description of the remanufacture or processing in sufficient detail to enable the Center director to determine whether it constituted a use in remanufacture by melting, or processing by shredding, shearing, compacting, or similar processing which rendered the articles fit only for the recovery of the metal content. In appropriate cases, the remanufacture or processing of the articles covered by more than one entry may be included in one statement. The statement shall be based on adequate and carefully kept plant and import records which shall be available during normal business hours to any Customs officer. The importer and plant manager shall maintain the import and plant records for 5 years from the date of the related entry of the merchandise. The burden shall be on the importer or plant manager to keep these records so that the claim of actual use can be established readily.

(d) If satisfactory proof of use of the articles in remanufacture by melting, or in processing by shredding, shearing, compacting, or similar processing which rendered them fit only for the recovery of the metal content, is furnished within the prescribed time, the entry shall be liquidated without the assessment of duty on the covered articles. If proof is not filed within 3 years from the date of entry, or withdrawal from warehouse for consumption, or the use does not warrant the classification claimed, the entry shall be liquidated without any exemption from duty under subheading 9817.00.80 or 9817.00.90, HTSUS.

As used in this section, the phrase ''in connection with the entry'' means any time before liquidation of the entry or within the period during which a reliquidation may be completed (§ 113.43(c)). Therefore, a claim for free entry under subheading 9817.00.80 or 9817.00.90, HTSUS, supported by a statement of intent may be filed at any time before liquidation of the entry or within the period during which a valid reliquidation may be completed.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 80–151, 45 FR 38041, June 6, 1980, as amended by T.D. 84–213, 49 FR 41170, Oct. 19, 1984; T.D. 87–75, 52 FR 20067, May 29, 1987; T.D. 89–1, 53 FR 51255, Dec. 21, 1988; T.D. 95–81, 60 FR 52295, Oct. 6, 1995; CBP Dec. 15–14, 80 FR 61286, Oct. 13, 2015; CBP Dec. 16–26, 81 FR 93016, Dec. 20, 2016]

PART 101—GENERAL PROVISIONS

Sec.

AUTHORITY: 5 U.S.C. 301; 6 U.S.C. 101, *et. seq.;* 19 U.S.C. 2, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

Section 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

Section 101.5 also issued under 19 U.S.C. 1629;

Section 101.9 also issued under 19 U.S.C. 1411–1414.

SOURCE: T.D. 77–241, 42 FR 54937, Oct. 12, 1977, unless otherwise noted.

§ 101.0 Scope.

This part sets forth general regulations governing the authority of Customs officers, and the location of Customs ports of entry, service ports and Customs stations. It further sets forth regulations concerning the entry and clearance of vessels at Customs stations and a listing of Customs preclearance offices in foreign countries. In addition, this part contains provisions concerning the hours of business of Customs offices, the Customs seal, and the identification cards issued to Customs officers and employees.

[T.D. 77–241, 42 FR 54937, Oct. 12, 1977, as amended by T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 101.1 Definitions.

As used in this chapter, the following terms shall have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular part or portion thereof:

Business day. A ''business day'' means a weekday (Monday through Friday), excluding national holidays as specified in § 101.6(a).

CBP. The term ''CBP'' means U.S. Customs and Border Protection.

Center director. The term ''Center director'' means the person who manages their designated Center and is responsible for certain trade decisions and functions concerning that Center and the importers that are processed by that Center.

Centers of Excellence and Expertise or *Centers*. The terms ''Centers of Excellence and Expertise'' or ''Centers'' refer to national CBP offices that are responsible for performing certain trade functions and making certain determinations as set forth in particular regulatory provisions regarding importations by importers that are considered by CBP to be in the industry sector, regardless of the ports of entry at which the importations occur. Industry sectors are categorized by the Harmonized Tariff Schedule of the United States (HTSUS) numbers representing an industry sector. The list of HTSUS numbers will be published in a FEDERAL REGISTER document and any change made to that list will be announced in a subsequent FEDERAL REGISTER document.

Commissioner or *Commissioner of Customs*. The terms ''Commissioner'' or ''Commissioner of Customs'' mean Commissioner of U.S. Customs and Border Protection.

Customs or *U.S. Customs Service*. The terms ''Customs'' or ''U.S. Customs Service'' mean U.S. Customs and Border Protection.

Customs regulations or CBP regulations. The terms ''Customs regulations'' or ''CBP regulations'' mean chapter 1 of title 19 of the Code of Federal Regulations (19 CFR chapter 1).

Customs station. A ''Customs station'' is any place, other than a port of entry, at which Customs officers or employees are stationed, under the authority contained in article IX of the President's Message of March 3, 1913 (T.D. 33249), to enter and clear vessels, accept entries of merchandise, collect duties, and enforce the various provisions of the Customs and navigation laws of the United States.

Customs territory of the United States. ''Customs territory of the United States'' includes only the States, the District of Columbia, and Puerto Rico.

Date of entry. The ''date of entry'' or ''time of entry'' of imported merchandise shall be the effective time of entry of such merchandise, as defined in §141.68 of this chapter.

Date of exportation. ''Date of exportation'' or ''time of exportation'' shall be as defined in §152.1(c) of this chapter.

Date of importation. ''Date of importation'' means, in the case of merchandise imported otherwise than by vessel, the date on which the merchandise arrives within the Customs territory of the United States. In the case of merchandise imported by vessel, ''date of importation'' means the date on which the vessel arrives within the limits of a port in the United States with intent then and there to unlade such merchandise.

Duties. ''Duties'' means Customs duties and any internal revenue taxes which attach upon importation.

Entry or withdrawal for consumption. ''Entry or withdrawal for consumption'' means entry for consumption or withdrawal from warehouse for consumption.

Exportation. ''Exportation'' means a severance of goods from the mass of things belonging to this country with the intention of uniting them to the mass of things belonging to some foreign country. The shipment of merchandise abroad with the intention of returning it to the United States with a design to circumvent provisions of restriction or limitation in the tariff laws or to secure a benefit accruing to imported merchandise is not an exportation. Merchandise of foreign origin returned from abroad under these circumstances is dutiable according to its nature, weight, and value at the time of its original arrival in this country.

Importer. ''Importer'' means the person primarily liable for the payment of any duties on the merchandise, or an authorized agent acting on his behalf. The importer may be:

(1) The consignee, or

(2) The importer of record, or

(3) The actual owner of the merchandise, if an actual owner's declaration and superseding bond has been filed in accordance with §141.20 of this chapter, or

(4) The transferee of the merchandise, if the right to withdraw merchandise in a bonded warehouse has been transferred in accordance with subpart C of part 144 of this chapter.

Port and *port of entry.* The terms ''port'' and ''port of entry'' refer to any place designated by Executive Order of the President, by order of the Secretary of the Treasury, or by Act of Congress, at which a U.S. Customs and Border Protection (''CBP'') officer is authorized to accept entries of merchandise to collect duties, and to enforce the various provisions of the customs and navigation laws. The terms ''port'' and ''port of entry'' incorporate the geographical area under the jurisdiction of a port director. (The customs ports in the Virgin Islands, although under the jurisdiction of the Secretary of the Treasury, have their own customs laws (48 U.S.C. 1406(i)). These ports, therefore, are outside the customs territory of the United States and the ports thereof are not ''ports of entry'' within the meaning of these regulations).

Port director. The term ''port director'' means the person who has jurisdiction within the geographical boundaries of their port of entry unless the regulations provide that particular trade functions or determinations are exclusively within the purview of a Center Director or other CBP personnel.

Principal field officer. A ''principal field officer'' is an officer in the field service whose immediate supervisor is located at Customs Service Headquarters.

Service port. The term ''service port'' refers to a Customs location having a full range of cargo processing functions, including inspections, entry, collections, and verification.

Shipment. ''Shipment'' means the merchandise described on the bill of lading or other document used to file or support entry, or in the oral declaration when applicable.

[T.D. 77–241, 42 FR 54937, Oct. 12, 1977, as amended by T.D. 84–213, 49 FR 41170, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984; T.D. 94–51, 59 FR 30294, June 13, 1994; T.D. 95–77, 60 FR 50011, Sept. 27, 1995; T.D. 99–57, 64 FR 40987, July 28, 1999; CBP Dec. 15–15, 80 FR 70162, Nov. 13, 2015; CBP Dec. 16–26, 81 FR 93016, Dec. 20, 2016]

§ 101.2 Authority of Customs officers.

(a) *Supremacy of delegated authority.* Action taken by any person pursuant to authority delegated to him by the Secretary of the Treasury, whether directly or by subdelegation, shall be valid despite the existence of any statute or regulation, including any provision of this chapter, which provides that such action shall be taken by some other person. Any person acting under such delegated authority shall be deemed to have complied with any statute or regulation which provides or indicates that it shall be the duty of some other person to perform such action.

(b) *Consolidation of functions.* Any reorganization of the Customs Service or consolidation of the functions of two or more persons into one office which results in the failure of a designated Customs officer to perform an action required by statute or regulation, shall not invalidate the performance of that action by any other Customs officer.

(c) *Customs supervision.* Whenever anything is required by the regulations in this chapter or by any provision of the customs or navigation laws to be done or maintained under the supervision of Customs officers, such supervision shall be carried out as prescribed in the regulations of this chapter or by instructions from the Secretary of the Treasury or the Commissioner of Customs in particular cases. In the absence of a governing regulation or instruction, supervision shall be direct and continuous or by such occasional verification as the principal Customs field officer shall direct if such officer shall determine that less intensive supervision will ensure proper enforcement of the law and protection of the revenue. Nothing in this section shall be deemed to warrant any failure to direct and furnish required supervision or to excuse any failure of a party in interest to comply with prescribed procedures for obtaining any required supervision.

[T.D. 77–241, 42 FR 54937, Oct. 12, 1977, as amended by T.D. 98–22, 63 FR 11825, Mar. 11, 1998]

§ 101.3 Customs service ports and ports of entry.

(a) *Designation of Customs field organization.* The Deputy Assistant Secretary (Regulatory, Tariff, and Trade Enforcement), pursuant to authority delegated by the Secretary of the Treasury, is authorized to establish, rearrange or consolidate, and to discontinue Customs ports of entry as the needs of the Customs Service may require.

(b) *List of Ports of Entry and Service Ports.* The following is a list of Customs Ports of Entry and Service Ports. Many of the ports listed were created by the President's message of March 3, 1913, concerning a reorganization of the Customs Service pursuant to the Act of August 24, 1912 (37 Stat. 434; 19 U.S.C. 1). Subsequent orders of the President or of the Secretary of the Treasury which affected these ports, or which created (or subsequently affected) additional ports, are cited following the name of the ports.

(1) *Customs ports of entry.* A list of Customs ports of entry by State and the limits of each port are set forth below:

Ports of entry	Limits of port
Alabama	
Birmingham	
Huntsville	T.D. 83–196.
Mobile	Including territory described in T.D. 76–259.
Alaska	
Alcan	T.D. 71–210.
Anchorage	T.D.s 55295 and 68–50.
Dalton Cache	T.D. 79–74.
Fairbanks	E.O. 8064, Mar. 9, 1939 (4 FR 1191).
Juneau	
Ketchikan	Including territory described in T.D. 74–100.
Kodiak	T.D. 98–65.
Sitka	Including territory described in T.D. 55609.
Skagway	
Valdez	Including territory described in T.D. 79–201.

Ports of entry	Limits of port
Wrangell	Including territory described in T.D. 56420.
Arizona	
Douglas	Including territory described in E.O. 9382, Sept. 25, 1943 (8 FR 13083).
Lukeville	E.O. 10088, Dec. 3, 1949 (14 FR 7287).
Naco	
Nogales	Including territory described in T.D. 77–285.
Phoenix	T.D. 71–103.
San Luis	E.O. 5322, Apr. 9, 1930.
Sasabe	E.O. 5608, Apr. 22, 1931.
Tucson	Including territory described in T.D. 89–102.
Arkansas	
Little Rock-North Little Rock	T.D. 70–146. (Restated in T.D. 84–126).
California	
Andrade	E.O. 4780, Dec. 13, 1927.
Calexico	
Eureka	
Fresno	Including territory described in T.D. 74–18.
Los Angeles-Long Beach	Including territory described in T.D. 78–130.
Port Hueneme	T.D. 92–10.
Port San Luis	T.D. 35546.
Sacramento	CBP Dec. 06–23.
San Diego	T.D. 85–163.
+ San Francisco-Oakland	CBP Dec. 06–23.
San Jose	95–80
Tecate	E.O. 4780, Dec. 13, 1927.
Colorado	
Denver	T.D. 80–180.
Connecticut	
Bridgeport	Including territory described in T.D. 68–224.
Hartford	Including territory described in T.D. 68–224.
New Haven	Including territory described in T.D. 68–224.
New London	Including territory described in T.D. 68–224.
Delaware	
Wilmington	Included in the Consolidated Port of the Delaware River and Bay described in T.D. 96–4.
District of Columbia	
Washington	Including territory described in T.D. 68–67.
Florida	
Fernandina Beach	Including St. Mary's, GA; T.D. 53033.
Fort Myers	T.D. 99–9
Jacksonville	T.D. 69–45.
Key West	Including territory described in T.D. 53994.
Miami	Including territory described in T.D. 53514.
Orlando	T.D. 76–306.
Orlando-Sanford Airport	T.D. 97–64.
Panama City	E.O. 3919, Nov. 1, 1923.
Pensacola	
Port Canaveral	Including territory described in T.D. 66–212.
Port Everglades	E.O. 5770, Dec. 31, 1931; including territory described in T.D. 53514. Mail: Fort Lauderdale, FL.
Port Manatee	T.D. 88–14.
St. Petersburg	E.O. 7928, July 14, 1938 (3 FR 1749); including territory described in T.D. 53994.
Tampa	Including territory described in T.D. 68–91.
West Palm Beach	E.O. 4324, Oct. 15, 1925; including territory described in T.D. 53514.
Georgia	
Atlanta	Including territory described in T.D. 55548.
Brunswick	Including territory described in T.D. 86–162.
Fernandina Beach, FL	Including St. Mary's, GA; T.D. 53033.

Ports of entry	Limits of port
Savannah	CBP Dec. 18–03.
Hawaii	
Hilo	T.D. 95–11.
Honolulu	Including territory described in T.D. 90–59.
Kahului	T.D. 95–11.
Nawiliwili-Port Allen	E.O. 4385, Feb. 25, 1926; including territory described in T.D. 56424.
Idaho	
Boise	Pub.L. 98–573; T.D. 85–22.
Eastport	
Porthill	
Illinois	
+ Chicago	Including territory described in CBP Dec. 04–24.
Davenport, IA-Moline and Rock Island, IL.	T.D.s 86–76 and 89–10.
Peoria	Including territory described in T.D.72–130.
Rockford	CBP Dec. 05–38.
Indiana	
Cincinnati, OH-Lawrenceburg, IN	Consolidated port, T.D. 84–91.
Indianapolis	CBP Dec. 13–13.
Owensboro, KY-Evansville, IN	Consolidated port, T.D. 84–91.
Iowa	
Davenport,IA-Moline and Rock Island, IL.	T.D.s 86–76 and 89–10.
Des Moines	T.D. 75–104.
Kansas	
Wichita	T.D. 74–93.
Kentucky	
Louisville	Including territory described in T.D. 77–232.
Owensboro, KY-Evansville, IN	Consolidated port, T.D. 84–91.
Louisiana	
Baton Rouge	E.O. 5993, Jan. 13, 1933; including territory described in T.D.s 53514 and 54381. (Restated in T.D. 84–126).
Gramercy	T.D. 82–93.
Lake Charles	E.O. 5475, Nov. 3, 1930; including territory described in T.D. 54137.
Morgan City	T.D. 54682; including territory described in T.D.s 66–266 and 94–77. (Restated in T.D. 84–126).
New Orleans	E.O. 5130, May 29, 1929; including territory described in T.D. 74–206. (Restated in T.D. 84–126).
Shreveport-Bossier City	Including territory described in T.D. 86–145.
Maine	
Bangor	Including Brewer, ME, E.O. 9297, Feb. 1, 1943 (8 FR 1479).
Bar Harbor	Including Mount Desert Island, the city of Ellsworth, and the townships of Hancock, Sullivan, Sorrento, Gouldsboro, and Winter Harbor and Trenton, E.O. 4572, Jan. 27, 1927, and T.D. 78–130.
Bath	Including Booth Bay and Wiscasset, E.O. 4356, Dec. 15, 1925.
Belfast	Including Searsport, E.O. 6754, June 28, 1934.
Bridgewater	E.O. 8079, Apr. 4, 1939 (4 FR 1475).
Calais	Including townships of Calais, Robbinston, and Baring, E.O. 6284, Sept. 13, 1933.
Eastport	Including Lubec and Cutler, E.O. 4296, Aug. 26, 1925.
Fort Fairfield	
Fort Kent	
Houlton	E.O. 4156, Feb. 14, 1925.
Jackman	Including townships of Jackman, Sandy Bay, Bald Mountain, Holeb, Attean, Lowelltown, Dennistown, and Moose River, T.D. 54683.
Jonesport	Including towns (townships) of Beals, Jonesboro, Roque Bluffs, and Machiasport, E.O. 4296, Aug. 26, 1925; E.O. 8695, Feb. 25, 1941 (6 FR 1187).
Limestone	

Ports of entry	Limits of port
Madawaska	
Portland	Including territory described in CBP Dec. 03–08.
Portsmouth, N.H	Including Kittery, ME.
Rockland	
Van Buren	
Vanceboro	
Maryland	
Annapolis	
Baltimore	Including territory described in T.D. 68–123.
Cambridge	E.O. 3888, Aug. 13, 1923; Crisfield.
Massachusetts	
Boston	Including territory and waters adjacent thereto described in T.D. 56493.
Fall River	Including territory described in T.D. 54476.
Gloucester	
Lawrence	E.O. 5444, Sept. 16, 1930; E.O. 10088, Dec. 3, 1949 (14 FR 7287); including territory described in T.D. 71–12.
New Bedford	
Plymouth	
Salem	Including Beverly, Marblehead, and Lynn; including Peabody, E.O. 9207, July 29, 1942 (7 FR 5931).
Springfield	T.D. 69–189.
Worcester	
Michigan	
Battle Creek	T.D. 72–233.
Detroit	Including territory described in E.O. 9073, Feb. 25, 1942 (7 FR 1588), and T.D. 53738.
Grand Rapids	T.D. 77–4.
Marinette, WI	Including Menominee, MI.
Muskegon	E.O. 8315, Dec. 22, 1939 (4 FR 4941); including territory described in T.D. 56230.
Port Huron	Including territory described in T.D. 87–117.
Saginaw-Bay City-Flint	Consolidated port, T.D. 79–74; including territory described in T.D. 82–9.
Sault Ste. Marie	Including territory described in T.D. 79–74.
Minnesota	
Baudette	E.O. 4422, Apr. 19, 1926.
Duluth, MN and Superior, WI	Including territory described in T.D. 55904.
Grand Portage	T.D. 56073.
International Falls-Ranier	Including territory described in T.D. 66–246.
Minneapolis-St. Paul	Including territory described in T.D. 69–15.
Pinecreek	E.O. 7632, June 15, 1937 (2 FR 1245).
Roseau	E.O. 7632, June 15, 1937 (2 FR 1245).
Warroad	
Mississippi	
Greenville	T.D. 73–325. (Restated in T.D. 84–126).
Gulfport	
Pascagoula	Including territory described in T.D. 86–68.
Vicksburg	T.D. 72–123; including territory described in T.D. 93–32. (Restated in T.D. 84–126).
Missouri	
Kansas City	Including Kansas City, KS and North Kansas City, MO, E.O. 8528, Aug. 27, 1940 (5 FR 3403); including territory described in T.D. 67–56.
Spirit of St. Louis Airport	Including territory described in T.D. 97–7.
Springfield	Including all territory within Greene and Christian Counties, T.D. 84–84.
St. Joseph	
St. Louis	CBP Dec. 09–16.
Montana	
Butte	T.D. 73–121.
Del Bonita	E.O. 7947, Aug. 9, 1938 (3 FR 1965); Mail: Cut Bank, MT.
Great Falls	
Morgan	E.O. 7632, June 15, 1937 (2 FR 1245); Mail: Loring, MT.
Opheim	E.O. 7632, June 15, 1937 (2 FR 1245).
Piegan	E.O. 7632, June 15, 1937 (2 FR 1245); Mail: Babb, MT.
Raymond	E.O. 7632, June 15, 1937 (2 FR 1245).
Roosville	E.O. 7632, June 15, 1937 (2 FR 1245); Mail: Eureka, MT.

Ports of entry	Limits of port
Scobey	E.O. 7632, June 15, 1937 (2 FR 1245).
Sweetgrass	
Turner	E.O. 7632, June 15, 1937 (2 FR 1245).
Whitlash	E.O. 7632, June 15, 1937 (2 FR 1245).
Nebraska	
Omaha	Including territory described in T.D. 73–228.
Nevada	
Las Vegas	Including territory described in T.D. 79–74.
Reno	Including territory described in T.D. 73–56.
New Hampshire	
Portsmouth	Including Kittery, ME.
New Jersey	
Camden, Gloucester City, and Salem.	Included in the Consolidated Port of the Delaware River and Bay described in T.D. 96–4.
Perth Amboy	
New Mexico	
Albuquerque	Including territory described in T.D. 74–304.
Columbus	
Santa Teresa	T.D. 94–34.
New York	
Albany	
Alexandria Bay	Including territory described in E.O. 10042, Mar. 10, 1949 (14 FR 1155).
Buffalo-Niagara Falls	T.D. 56512.
Cape Vincent	
Champlain-Rouses Point	Including territory described in T.D. 67–68.
Clayton	
Massena	T.D. 54834.
+ New York	Including territory described in E.O. 4205, Apr. 15, 1925 (T.D. 40809).
Ogdensburg	
Oswego	
Rochester	
Sodus Point	
Syracuse	
Trout River	Consolidated port includes Chateaugay and Fort Covington, T.D. 83–253.
Utica	
North Carolina	
Beaufort-Morehead City	Including territory described in T.D. 87–76.
Charlotte	T.D. 56079.
Durham	E.O. 4876, May 3, 1928; including territory described in E.O. 9433, Apr. 4, 1944 (9 FR 3761), and T.D. 82–9.
Reidsville	E.O. 5159, July 18, 1929; including territory described in E.O. 9433, Apr. 6, 1944 (9 FR 3761).
Wilmington	Including townships of Northwest, Wilmington, and Cape Fear, E.O. 7761, Dec. 3, 1937 (2 FR 2679); including territory described in E.O. 10042, Mar. 10, 1949 (14 FR 1155).
Winston-Salem	Including territory described in T.D. 87–64.
North Dakota	
Ambrose	E.O. 5835, April 13, 1932.
Antler	
Carbury	E.O. 5137, June 17, 1929.
Dunseith	E.O. 7632, June 15, 1937 (2 FR 1245).
Fargo	CBP Dec. 03–09.
Fortuna	E.O. 7632, June 15, 1937 (2 FR 1245).
Hannah	
Hansboro	
Maida	E.O. 7632, June 15, 1937 (2 FR 1245).
Neche	
Noonan	E.O. 7632, June 15, 1937 (2 FR 1245).
Northgate	T.D. 37386, T.D. 37439
Pembina	CBP Dec. 06–15.

Ports of entry	Limits of port
Portal	
Sarles	
Sherwood	
St. John	E.O. 5835, Apr. 13, 1932.
Walhalla	
Westhope	E.O. 4236, June 1, 1925.
Ohio	
Ashtabula/Conneaut	Consolidated port, T.D. 77–232.
Cincinnati, OH-Lawrenceburg, IN	Consolidated port, T.D. 84–91.
Cleveland	Including territory described in T.D. 77–232; consolidated port, T.D. 87–123.
Columbus	CBP Dec. 09–35.
Dayton	CBP Dec. 09–19.
Toledo-Sandusky	Consolidated port, T.D. 84–89.
Oklahoma	
Oklahoma City	Including territory described in T.D. 66–132.
Tulsa	T.D. 69–142.
Oregon	
Astoria	Including territory described in T.D. 73–338.
Coos Bay	E.O. 4094, Oct. 28, 1924; E.O. 5193, Sept. 14, 1929; E.O. 5445, Sept. 16, 1930; E.O. 9533, Mar. 23, 1945 (10 FR 3173).
Newport	
Portland	
Pennsylvania	
Chester	Included in the Consolidated Port of the Delaware River and Bay described in T.D. 96–4.
Erie	Including territory described in T.D. 77–5.
Harrisburg	T.D. 71–233.
Lehigh Valley	T.D. 93–75.
Philadelphia	Included in the Consolidated Port of the Delaware River and Bay described in T.D. 96–4.
Pittsburgh	Including territory described in T.D. 67–197.
Wilkes-Barre/Scranton	T.D. 75–64.
Puerto Rico	
Aguadilla	T.D. 22305.
Fajardo	
Guanica	
Humacao	Including territory described in T.D. 70–157.
Jobos	E.O. 9162, May 13, 1942 (7 FR 3569).
Mayaguez	T.D. 22305.
Ponce	Including territory described in T.D. 54017.
San Juan	Including territory described in T.D. 54017.
Rhode Island	
Newport	
Providence	Including territory described in T.D. 67–3.
South Carolina	
Charleston	Including territory described in T.D. 76–142.
Columbia	Including all territory in Richland and Lexington Counties, T.D. 82–239.
Georgetown	
Greenville-Spartanburg	T.D. 70–148.
South Dakota	
Sioux Falls	T.D. 96–3.
Tennessee	
Chattanooga	(Restated in T.D. 84–126).
Knoxville	T.D. 75–128. (Restated in T.D. 84–126).
Memphis	CBP Dec. 04–22.
Nashville	(Restated in T.D. 84–126).
Tri-Cities, TN/VA	CBP Dec. 06–14.

Ports of entry	Limits of port
Texas	
Amarillo	T.D. 75–129.
Austin	T.D. 81–170.
Beaumont, Orange, Port Arthur, Sabine.	Consolidated port, T.D. 74–231; including territory described in T.D. 81–160.
Brownsville	Including territory described in T.D. 79–254.
Corpus Christi	E.O. 8288, Nov. 22, 1939 (4 FR 4691), and territory described in T.D. 78–130.
Dallas-Fort Worth	T.D. 73–297; T.D. 79–232; T.D. 81–170.
Del Rio	
Eagle Pass	Including territory described in T.D. 91–93.
El Paso	T.D. 54407, including territory described in T.D. 78–221.
Fabens	E.O. 4869, May 1, 1928.
Freeport	E.O. 7632, June 15, 1937 (2 FR 1245).
Hidalgo	T.D. 85–164.
+ Houston-Galveston	Consolidated port includes territory lying within corporate limits of both Houston and Galveston, and remaining territory in Harris and Galveston Counties, T.D.s 81–160 and 82–15.
Laredo	Including territory described in T.D. 90–69.
Lubbock	T.D. 76–79.
Port Lavaca-Point Comfort	T.D. 56115.
Presidio	E.O. 2702, Sept. 7, 1917.
Progreso	T.D. 85–164.
Rio Grande City	Including territory described in T.D. 92–43.
Roma	E.O. 4830, Mar. 14, 1928.
San Antonio	
Utah	
Salt Lake City	T.D. 69–76.
Vermont	
Beecher Falls	
Burlington	Including town of South Burlington, T.D. 54677.
Derby Line	
Highgate Springs/Alburg	E.O. 7632, June 15, 1937 (2 FR 1245); includes territory described in T.D. 77–165.
Norton	T.D. 73–249.
Richford	
St. Albans	Including township of St. Albans, E.O. 3925, Nov. 13, 1923; E.O. 7632, June 15, 1937 (2 FR 1245); T.D. 77–165.
Virginia	
Alexandria, VA	T.D. 68–67.
Front Royal	T.D. 89–63.
New River Valley	CBP Dec. 06–10.
Norfolk-Newport News	Consolidated port includes waters and shores of Hampton Roads.
Richmond-Petersburg	Consolidated port, T.D. 68–179.
Virgin Islands, U.S.	
Charlotte Amalie, St. Thomas Christiansted, St. Croix Coral Bay, St. John Cruz Bay, St. John Frederiksted, St. Croix	
Washington	
Aberdeen	Including territory described in T.D.s 56229, 79–169, and 84–90.
Blaine	E.O. 5835, Apr. 13, 1932.
Boundary	T.D. 67–65.
Danville	
Ferry	
Frontier	T.D. 67–65.
Laurier	
Longview	Including territory described in T.D. 73–338.
Lynden	E.O. 7632, June 15, 1937 (2 FR 1245).
Metaline Falls	E.O. 7632, June 15, 1937 (2 FR 1245).
Nighthawk	T.D. 39882
Oroville	E.O. 5206, Oct. 11, 1929.
Point Roberts	T.D. 78–272.
Puget Sound	Consolidated port includes Seattle, Anacortes, Bellingham, Everett, Friday Harbor, Neah Bay, Olympia, Port Angeles, Port Towsend, and Tacoma, T.D. 00–35.
Spokane	

Ports of entry	Limits of port
Sumas	
West Virginia	
Charleston	T.D. 73–170 and including territory described in T.D. 73–212.
Wisconsin	
Ashland	
Duluth, MN and Superior, WI	Including territory described in T.D. 55904.
Green Bay	CBP Dec. 13–2.
Manitowoc	
Marinette	Including Menominee, MI.
Milwaukee	Including territory described in T.D. 72–105.
Racine	Including city of Kenosha and townships of Mount Pleasant and Somers, T.D. 54884.
Sheboygan	

+ Indicates Drawback unit/office.

(2) *Customs service ports.* A list of Customs service ports and the States in which they are located is set forth below:

State	Service ports
Alabama	Mobile.
Alaska	Anchorage.
Arizona	Nogales.
California	Los Angeles.
	LAX.
	San Diego.
	San Francisco.
Colorado	Denver.
Florida	Miami.
	Tampa.
Georgia	Savannah.
Hawaii	Honolulu.
Illinois	Chicago.
Louisiana	New Orleans.
Maine	Portland.
Maryland	Baltimore.
Massachusetts	Boston.
Michigan	Detroit.
Minnesota	Duluth.
	Minneapolis.
Missouri	St. Louis.
Montana	Great Falls.
New Jersey	New York/Newark.
New York	Buffalo.
	Champlain.
	JFK.
	New York/Newark.
North Carolina	Charlotte.
North Dakota	Pembina.
Ohio	Cleveland.
Oregon	Portland.
Pennsylvania	Philadelphia.
Puerto Rico	San Juan.
Rhode Island	Providence.
South Carolina	Charleston.
Texas	Dallas.
	El Paso.
	Houston.
	Laredo.
Vermont	St. Albans.
Virginia	Dulles.
	Norfolk.
Virgin Islands	Charlotte Amalie.
Washington	Blaine.
	Seattle.
Wisconsin	Milwaukee.

[T.D. 95–77, 60 FR 50011, Sept. 27, 1995]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §101.3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 101.4 Entry and clearance of vessels at Customs stations.

(a) *Entry at Customs station.* A vessel shall not be entered or cleared at a Customs station, or any other place that is not a port of entry, unless entry or clearance is authorized by the director of the port under whose jurisdiction the station or place falls pursuant to the provisions of section 447, Tariff Act of 1930, as amended (19 U.S.C. 1447).

(b) *Authorization to enter.* Authorization to enter or be cleared at a Customs station shall be granted by the director of the port under whose jurisdiction the station or place falls provided the port director is notified in advance of the arrival of the vessel concerned and the following conditions are met:

(1) Such Customs supervision as may be necessary can be provided.

(2) All applicable Customs and navigation laws and regulations are complied with.

(3) The owner, master or agent of a vessel sought to be entered at a Customs station reimburses the Government for the salary and expenses of the Customs officer or employee stationed at or sent to such Customs station or other place which is not a port of entry for services rendered in connection with the entry or clearance of such vessel, and

(4) Except as otherwise provided by these regulations, the Government is reimbursed by the interested parties for the expenses, including any per diem allowed in lieu of subsistence, but not the salary of a Customs officer or employee for services rendered in connection with the entry or delivery of merchandise.

(c) *Customs stations designated.* The Customs stations and the ports of entry having supervision thereof are listed below:

Customs station	Supervisory port of entry
Alaska	
Barrow	Fairbanks.
Dutch Harbor	Anchorage.
Eagle	Alcan.
Fort Yukon	Fairbanks.
Haines	Dalton Cache.
Hyder	Ketchikan.
Kaktovik (Barter Island)	Fairbanks.
Kenai (Nikiski)	Anchorage.
Northway	Alcan.
Pelican	Juneau.
Petersburg	Wrangell.
California	
Campo	Tecate.
Otay Mesa	San Diego.
San Ysidro	San Diego.
Colorado	
Colorado Springs	Denver.
Delaware	
Lewes	Philadelphia, PA.
Florida	
Fort Pierce	West Palm Beach.
Green Cove Springs	Jacksonville.
Port St. Joe	Panama City.
Indiana	
Fort Wayne	Indianapolis.
Maine	
Bucksport	Belfast.
Coburn Gore	Jackman.
Daaquam	Jackman.
Easton	Fort Fairfield.
Estcourt	Fort Kent.
Forest City	Houlton.
Hamlin	Van Buren.
Maryland	
Salisbury	Baltimore.
Massachusetts	
Provincetown	Plymouth.
Michigan	
Alpena	Saginaw-Bay City-Flint.
Detour	Sault Ste. Marie.
Escanaba	Sault Ste. Marie.
Grand Haven	Muskegon.
Houghton	Sault Ste. Marie.
Marquette	Sault Ste. Marie.
Rogers City	Saginaw-Bay City-Flint.
Minnesota	
Crane Lake	Duluth, MN-Superior, WI.
Ely	Duluth, MN-Superior, WI.
Lancaster	Noyes.
Oak Island	Warroad.
Mississippi	
Biloxi	Mobile, AL.
Montana	
Wild Horse	Great Falls.
Willow Creek	Great Falls.
New Jersey	
Atlantic City	Philadelphia-Chester, PA and Wilmington, DE.
Port Norris	Philadelphia-Chester, PA and Wilmington, DE.
Tuckerton	Philadelphia-Chester, PA and Wilmington, DE, PA.
New York	
Cannons Corners	Champlain-Rouses Point.
Churubusco	Trout River.
New Hampshire	
Pittsburg	Beecher Falls, VT.
Monticello	Houlton, ME.
Orient	Houlton, ME.
Ste. Aurelie	Jackman, ME.
St. Pamphile	Jackman, ME.
New Mexico	
Antelope Wells (Mail: Hachita, NM).	Columbus, NM.
North Dakota	
Grand Forks	Pembina.
Minot	Pembina.
Ohio	
Akron	Cleveland.
Fairport Harbor	Ashtabula/Conneaut.
Lorain	Sandusky.
Marblehead-Lakeside	Sandusky.
Put-in-Bay	Sandusky.
Oklahoma	
Muskogee	Tulsa.
Texas	
Amistad Dam	Del Rio.
Boquillas	Presidio.
Falcon Dam	Roma.

Customs station	Supervisory port of entry
Fort Hancock	Fabens.
Los Ebanos	Rio Grande City.
Marathon	El Paso.
Vermont	
Beebe Plaine	Derby Line.
Canaan	Beecher Falls.
East Richford	Richford.
Newport	Derby Line.
North Troy	Derby Line.
West Berkshire	Richford.

(d) *Temporary Customs stations.* Customs stations may be designated for a temporary time only, to provide Customs facilities where needed because of certain large-scale operations. Because these designations change from time to time they are not listed. However, current information as to the existence of such stations may be obtained from the local port director.

[T.D. 77–241, 42 FR 54937, Oct. 12, 1977]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §101.4, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 101.5 CBP preclearance offices in foreign countries.

Listed below are the preclearance offices in foreign countries where CBP Officers are located. A Director, Preclearance, located in the Office of Field Operations at CBP Headquarters, is the responsible CBP Officer exercising supervisory control over all preclearance offices.

Country	CBP office
Aruba	Oranjestad.
The Bahamas	Freeport.
	Nassau.
Bermuda	Kindley Field.
Canada	Calgary, Alberta.
	Edmonton, Alberta.
	Halifax, Nova Scotia.
	Montreal, Quebec.
	Ottawa, Ontario.
	Toronto, Ontario.
	Vancouver, British Columbia.
	Winnipeg, Manitoba.
Ireland	Dublin.
	Shannon.
United Arab Emirates	Abu Dhabi.

[CBP Dec. 14–09, 79 FR 46349, Aug. 8, 2014]

§ 101.6 Hours of business.

Except as specified in paragraphs (a) through (g) of this section, each CBP office shall be open for the transactions of general CBP business between the hours of 8:30 a.m. and 5 p.m. on all days of the year:

(a) *Saturdays, Sundays and national holidays.* In addition to Saturdays, Sundays, and any other calendar day designated as a holiday by Federal statute or Executive Order, CBP offices shall be closed on the following national holidays:

(1) The first day of January.
(2) The third Monday of January.
(3) The third Monday of February.
(4) The last Monday of May.
(5) The fourth day of July.
(6) The first Monday of September.
(7) The second Monday of October.
(8) The eleventh day of November.
(9) The fourth Thursday of November.
(10) The twenty-fifth day of December.

If a holiday falls on Saturday, the day immediately preceding such Saturday will be observed. If a holiday falls on Sunday, the day immediately following such Sunday will be observed. (5 U.S.C. 6103(b)(1)); (E.O. No. 11582, Jan. 1, 1971; 34 FR 2957; 3 CFR Ch. 11)

(b) *Local conditions requiring different hours.* If, because of local conditions, different but equivalent hours are required to maintain adequate service, such hours shall be observed provided the Commissioner of Customs and Border Protection approves them and provided further that a notice of business hours is prominently displayed at the principal entrance and in each public room of the CBP office.

(c) *Fixing of hours.* At each port or station where there is no full-time CBP employee, the port director shall fix the hours during which the CBP office will be open for the transaction of general CBP business. Notice of such hours shall be prominently displayed at the principal entrance of the office.

(d) *State and local holidays.* Each CBP office shall be open for the transaction of business on all State and local holidays occurring on days other than Saturdays, Sundays, and national holidays listed in paragraph (a) of this section. The appropriate principal field officer may excuse any employee(s) without charge to leave when a state or local holiday interferes with the performance of his work in a CBP office.

(e) *Services performed outside a CBP office.* CBP services required to be performed outside a CBP office shall be furnished between the hours of 8 a.m. and 5 p.m. (or between the corresponding hours at ports where different but equivalent hours are required for the maintenance of adequate service) on all days when the CBP office is open for the transaction of general CBP business.

(f) *CBP services not within prescribed hours.* Where there is a regularly recurring need for CBP services outside the hours prescribed in paragraphs (a) through (e) of this section and the volume and duration of the required services are uniformly such as to require, of themselves or in immediately consecutive combination with other essential CBP activities of the port, the full time of one or more CBP employees, the necessary number of regular tours of duty to furnish such services on all days of the year except Sundays and national holidays may be established with the approval of the Commissioner of CBP.

(g) *CBP services furnished private interests.* Other than as specified in this section. CBP services shall be furnished private interests only in accordance with the provisions of §24.16 of this chapter.

[T.D. 77–241, 42 FR 54937, Oct. 12, 1977, as amended by T.D. 82–145, 47 FR 35478, Aug. 16, 1982; T.D. 95–77, 60 FR 50019, Sept. 27, 1995; CBP Dec. 08–25, 73 FR 40726, July 16, 2008]

§ 101.7 Customs seal.

(a) *Design.* According to the design furnished by the Department of the Treasury, the Customs seal of the United States shall consist of the seal of the Department of the Treasury surrounded by an outer circle in which appear the words ''Treasury'' at the top and ''U.S. Customs Service'' at the bottom.

(b) *Use of the Customs seal.* The Customs seal currently in official use, including the dies, rolls, plates, and like devices now in the possession of the Bureau of Engraving and Printing, shall continue to be equally effective as the official seal of the United States Customs Service and shall continue to be so used by each Customs officer and employee having possession of the seal until that particular device requires replacing and is replaced. Use of the United States Customs seal shall be restricted in the following manner:

(1) The Customs seal of the United States shall be impressed upon all official documents requiring the impress of a seal. It shall be impressed upon all marine documents and landing certificates, certificates of weight, gauge, or measure, and similar classes of documents for outside interests.

(2) The impress of the seal is not necessary on documents passing within the Customs Service nor shall the seal be used in the manner of a notary seal to indicate authority to administer oaths.

§ 101.8 Identification cards.

Each Customs employee shall be issued an appropriate identification card with that employee's photograph and signature, signed by the appropriate issuing officer.

§ 101.9 Test programs or procedures; alternate requirements.

(a) *General testing.* For purposes of conducting a test program or procedure designed to evaluate the effectiveness of new technology or operational procedures regarding the processing of passengers, vessels, or merchandise, the Commissioner of CBP may impose requirements different from those specified in the CBP Regulations, but only to the extent that such different requirements do not affect the collection of the revenue, public health, safety, or law enforcement. The imposition of any such different requirements will be subject to the following conditions:

(1) *Defined purpose.* The test is limited in scope, time, and application to such relief as may be necessary to facilitate the conduct of a specified program or procedure;

(2) *Prior publication requirement.* Whenever a particular test allows for deviation from any regulatory requirements, notice will be published in the FEDERAL REGISTER not less than thirty days prior to implementing such test, followed by publication in the Customs Bulletin. The notice will invite public comments concerning the methodology of the test program or procedure, and

inform interested members of the public of the eligibility criteria for voluntary participation in the test and the basis for selecting participants.

(b) *NCAP testing.* For purposes of conducting an approved test program or procedure designed to evaluate planned components of the National Customs Automation Program (NCAP), as described in section 411(a)(2) of the Tariff Act of 1930, as amended (19 U.S.C. 1411), the Commissioner of CBP may impose requirements different from those specified in the CBP Regulations, but only to the extent that such different requirements do not affect the collection of the revenue, public health, safety, or law enforcement. In addition to the requirement of paragraph (a)(1) of this section, the imposition of any such different requirements will be subject to the following conditions:

(1) *Prior publication requirement.* For tests affecting the NCAP, notice will be published in the FEDERAL REGISTER not less than thirty days prior to implementing such test, followed by publication in the Customs Bulletin. The notice will invite public comments concerning any aspect of the test program or procedure, and inform interested members of the public of the eligibility criteria for voluntary participation in the test and the basis for selecting participants; and,

(2) *Post publication requirement.* Within a reasonable time period following the completion of the test, a complete description of the results will be published in both the FEDERAL REGISTER and the Customs Bulletin.

[T.D. 95–21, 60 FR 14214, Mar. 16, 1995, as amended by CBP Dec. 12–21, 77 FR 73309, Dec. 10, 2012]

§ 101.10 Centers of Excellence and Expertise.

(a) *Center Management Offices.* The Centers of Excellence and Expertise (Centers) (see definition in §101.1) are managed out of the following locations:

Centers of Excellence and Expertise (Centers)	Management offices
Agriculture & Prepared Products.	Miami, Florida.
Apparel, Footwear & Textiles	San Francisco, California.
Automotive & Aerospace	Detroit, Michigan.
Base Metals	Chicago, Illinois.
Consumer Products & Mass Merchandising.	Atlanta, Georgia.
Electronics	Long Beach, California.
Industrial & Manufacturing Materials.	Buffalo, New York.
Machinery	Laredo, Texas.
Petroleum, Natural Gas & Minerals.	Houston, Texas.
Pharmaceuticals, Health & Chemicals.	New York, New York.

(b) *Assignment of importers to the Centers.* Generally, each importer will be assigned to an industry-category administered by a specific Center based on the tariff classification in the HTSUS of the predominant number of goods imported. The list of HTSUS numbers that will be used by CBP for the importer's placement in a Center is the same list of HTSUS numbers that are referenced in the definition for Centers (see §101.1). Factors that may cause CBP to place an importer in a Center not based on the tariff classification of the predominant number of goods imported include the importer's associated business practices within an industry, the intended use of the predominant number of goods imported, or the high relative value of goods imported.

(c) *Appeal of Center assignment.* An importer may appeal the Center assignment at any time by submitting a written appeal, with a subject line identifier reading ''Appeal Regarding Center Assignment'', to U.S. Customs and Border Protection, Office of Field Operations, Executive Director, Cargo and Conveyance Security (CCS), 1300 Pennsylvania Ave. NW., Suite 2.3D, Washington, DC 20229–1015 or by email to *CEE@cbp.dhs.gov*. Appeals must include the following information:

(1) Current Center assignment;

(2) Preferred Center assignment;

(3) All affected Importer of Record (IOR) numbers and associated bond numbers;

(4) Written justification for the change in Center assignments; and

(5) Import data:

(i) *For new importers.* Projected importations at the four (4) digit HTSUS heading level during the current year; or

(ii) *For importers with less than one year of prior import history.* Projected importations and prior import data with entry summary lines and value at the four (4) digit HTSUS heading level; or

(iii) *For importers with more than one year of prior import history.* One year of prior import data with entry summary lines and value at the four (4) digit HTSUS heading level.

[CBP Dec. 16–26, 81 FR 93016, Dec. 20, 2016]

PART 102—RULES OF ORIGIN

Sec.

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3592, 4513.

SOURCE: T.D. 94–4, 59 FR 113, Jan. 3, 1994, unless otherwise noted.

§ 102.0 Scope.

With the exception of §§ 102.21 through 102.25, this part sets forth rules for determining the country of origin of imported goods for the purposes specified in paragraph 1 of Annex 311 of the North American Free Trade Agreement (''NAFTA''). Under NAFTA, these specific purposes are: country of origin marking; determining the rate of duty and staging category applicable to originating textile and apparel products as set out in Section 2 (Tariff Elimination) of Annex 300–B (Textile and Apparel Goods); and determining the rate of duty and staging category applicable to an originating good as set out in Annex 302.2 (Tariff Elimination). The rules set forth in §§ 102.1 through 102.18 and 102.20 also determine the country of origin for marking purposes of imported goods under the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA). The rules set forth in §§ 102.1 through 102.21 of this part will also apply for purposes of determining whether an imported good is a new or different article of commerce under § 10.769 of the United States-Morocco Free Trade Agreement regulations and § 10.809 of the United States-Bahrain Free Trade Agreement regulations. The rules for determining the country of origin of textile and apparel products set forth in § 102.21 apply for the foregoing purposes and for the other purposes stated in that section. Section 102.22 sets forth rules for determining whether textile and apparel products are considered products of Israel for purposes of the customs laws and the administration of quantitative limitations. Sections 102.23 through 102.25 set forth certain procedural requirements relating to the importation of textile and apparel products.

[CBP Dec. 05–32; 70 FR 58013, Oct. 5, 2005, as amended by CBP Dec. 07–81, 72 FR 58522, Oct. 16, 2007; CBP Dec. 08–29, 73 FR 45354, Aug. 5, 2008; CBP Dec. 21-10, 86 FR 35581, July 6, 2021]

Subpart A—General

§ 102.1 Definitions.

(a) *Advanced in value.* ''Advanced in value'' means an increase in the value of a good as a result of production with respect to that good, other than by means of those ''minor processing'' operations described in paragraphs (n)(5), (n)(6), and (n)(7) of this section.

(b) *Commingled.* ''Commingled'' means physically combined or mixed.

(c) *Direct physical identification.* ''Direct physical identification'' means identification by visual or other organoleptic examination.

(d) *Domestic material.* ''Domestic material'' means a material whose country of origin as determined under these

rules is the same country as the country in which the good is produced.

(e) *Foreign material.* ''Foreign material'' means a material whose country of origin as determined under these rules is not the same country as the country in which the good is produced.

(f) *Fungible goods or fungible materials.* ''Fungible goods or fungible materials'' means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical.

(g) *A good wholly obtained or produced.* A good ''wholly obtained or produced'' in a country means:

(1) A mineral good extracted in that country;

(2) A vegetable or plant good harvested in that country;

(3) A live animal born and raised in that country;

(4) A good obtained from hunting, trapping or fishing in that country;

(5) A good (fish, shellfish and other marine life) taken from the sea by vessels registered or recorded with that country and flying its flag;

(6) A good produced on board factory ships from the goods referred to in paragraph (g)(5) of this section, provided such factory ships are registered or recorded with that country and fly its flag;

(7) A good taken by that country or a person of that country from the seabed or beneath the seabed outside territorial waters, provided that country has rights to exploit such seabed;

(8) A good taken from outer space, provided they are obtained by that country or a person of that country;

(9) Waste and scrap derived from:

(i) Production in a country, or

(ii) Used goods collected in that country provided such goods are fit only for the recovery of raw materials; and

(10) A good produced in that country exclusively from goods referred to in paragraphs (g)(1) through (10) of this section or from their derivatives, at any stage of production.

(h) *Harmonized System.* ''Harmonized System'' means the Harmonized Commodity Description and Coding System, including its general rules of Interpretation, Section Notes and Chapter Notes, as adopted and implemented by the United States.

(i) *Improved in condition.* ''Improved in condition'' means the enhancement of the physical condition of a good as a result of production with respect to that good, other than by means of those ''minor processing'' operations described in paragraphs (n)(5), (n)(6), and (n)(7) of this section.

(j) *Incorporated.* ''Incorporated'' means physically incorporated into a good as a result of production with respect to that good.

(k) *Indirect materials.* ''Indirect materials'' means a good used in the production, testing or inspection of another good but not physically incorporated into that other good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of that other good, including:

(1) Fuel and energy;

(2) Tools, dies and molds;

(3) Spare parts and materials used in the maintenance of equipment and buildings;

(4) Lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings;

(5) Gloves, glasses, footwear, clothing, safety equipment and supplies;

(6) Equipment, devices, and supplies used for testing or inspecting the goods;

(7) Catalysts and solvents; and

(8) Any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production.

(l) *Inventory management method.* ''Inventory management method'' means:

(1) Averaging;

(2) ''Last-in, first-out;''

(3) ''First-in, first-out;'' or

(4) Any other method that is recognized in the Generally Accepted Accounting Principles (GAAP) of the country in which the production is performed or is otherwise accepted by that country.

(m) *Material.* ''Material'' means a good that is incorporated into another good as a result of production with respect to that other good, and includes

parts, ingredients, subassemblies, and components.

(n) *Minor processing*. ''Minor processing'' means the following:

(1) Mere dilution with water or another substance that does not materially alter the characteristics of the good;

(2) Cleaning, including removal of rust, grease, paint, or other coatings;

(3) Application of preservative or decorative coatings, including lubricants, protective encapsulation, preservative or decorative paint, or metallic coatings;

(4) Trimming, filing or cutting off small amounts of excess materials;

(5) Unloading, reloading or any other operation necessary to maintain the good in good condition;

(6) Putting up in measured doses, packing, repacking, packaging, repackaging;

(7) Testing, marking, sorting, or grading;

(8) Ornamental or finishing operations incidental to textile good production designed to enhance the marketing appeal or the ease of care of the product, such as dyeing and printing, embroidery and appliques, pleating, hemstitching, stone or acid washing, permanent pressing, or the attachment of accessories notions, findings and trimmings; or

(9) Repairs and alterations, washing, laundering, or sterilizing.

(o) *Production*. ''Production'' means growing, mining, harvesting, fishing, trapping, hunting, manufacturing, processing or assembling a good.

(p) *Simple assembly*. ''Simple assembly'' means the fitting together of five or fewer parts all of which are foreign (excluding fasteners such as screws, bolts, etc.) by bolting, gluing, soldering, sewing or by other means without more than minor processing.

(q) *Value*. ''Value'' means, with respect to §102.13:

(1) In the case of a good under NAFTA, its customs value or transaction value within the meaning of the appendix to part 181 of this chapter; or

(2) In the case of a material under NAFTA, its customs value or value within the meaning of the appendix to part 181 of this chapter.

(3) In the case of a good or material under the USMCA, its customs value or transaction value within the meaning of appendix A to part 182 of this chapter.

[T.D. 96–48, 61 FR 28955, June 6, 1996, as amended by CBP Dec. 21-10, 86 FR 35581, July 6, 2021]

Subpart B—Rules of Origin

§ 102.11 General rules.

The following rules shall apply for purposes of determining the country of origin of imported goods other than textile and apparel products covered by §102.21.

(a) The country of origin of a good is the country in which:

(1) The good is wholly obtained or produced;

(2) The good is produced exclusively from domestic materials; or

(3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in §102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

(b) Except for a good that is specifically described in the Harmonized System as a set, or is classified as a set pursuant to General Rule of Interpretation 3, where the country of origin cannot be determined under paragraph (a) of this section:

(1) The country of origin of the good is the country or countries of origin of the single material that imparts the essential character to the good, or

(2) If the material that imparts the essential character to the good is fungible, has been commingled, and direct physical identification of the origin of the commingled material is not practical, the country or countries of origin may be determined on the basis of an inventory management method.

(c) Where the country of origin cannot be determined under paragraph (a) or (b) of this section and the good is specifically described in the Harmonized System as a set or mixture, or classified as a set, mixture or composite good pursuant to General Rule of Interpretation 3, the country of origin of the good is the country or countries of origin of all materials that

merit equal consideration for determining the essential character of the good.

(d) Where the country of origin of a good cannot be determined under paragraph (a), (b) or (c) of this section, the country of origin of the good shall be determined as follows:

(1) If the good was produced only as a result of minor processing, the country of origin of the good is the country or countries of origin of each material that merits equal consideration for determining the essential character of the good;

(2) If the good was produced by simple assembly and the assembled parts that merit equal consideration for determining the essential character of the good are from the same country, the country of origin of the good is the country of origin of those parts; or

(3) If the country of origin of the good cannot be determined under paragraph (d)(1) or (d)(2) of this section, the country of origin of the good is the last country in which the good underwent production.

[T.D. 96–48, 61 FR 28956, June 6, 1996, as amended by CBP Dec. 21-10, 86 FR 35581, July 6, 2021]

§ 102.12 Fungible goods.

When fungible goods of different countries of origin are commingled the country of origin of the goods:

(a) Is the countries of origin of those commingled goods; or

(b) If the good is fungible, has been commingled, and direct physical identification of the origin of the commingled good is not practical, the country or countries of origin may be determined on the basis of an inventory management method.

[T.D. 94–4, 59 FR 113, Jan. 3, 1994, as amended by CBP Dec. 21-10, 86 FR 35581, July 6, 2021]

§ 102.13 De Minimis.

(a) Except as otherwise provided in paragraphs (b) and (c) of this section, foreign materials that do not undergo the applicable change in tariff classification set out in § 102.20 or satisfy the other applicable requirements of that section when incorporated into a good shall be disregarded in determining the country of origin of the good if the value of those materials is no more than 7 percent of the value of the good or 10 percent of the value of a good of Chapter 22, Harmonized System.

(b) Paragraph (a) of this section does not apply to a foreign material incorporated in a good provided for in Chapter 1, 2, 3, 4, 7, 8, 11, 12, 15, 17, or 20 of the Harmonized System.

(c) Foreign components or materials that do not undergo the applicable change in tariff classification set out in § 102.21 or satisfy the other applicable requirements of that section when incorporated into a textile or apparel product covered by that section shall be disregarded in determining the country of origin of the good if the total weight of those components or materials is not more than 7 percent of the total weight of the good.

[T.D. 96–48, 61 FR 28956, June 6, 1996]

§ 102.15 Disregarded materials.

(a) The following materials shall be disregarded when determining whether the good undergoes the applicable change in tariff classification set out in § 102.20 or § 102.21, or satisfies the other applicable requirements of those sections:

(1) Packaging materials and containers in which a good is packaged for retail sale that are classified with the good;

(2) Accessories, spare parts or tools delivered with the good that are classified with the good and shipped with the good;

(3) Packing materials and containers in which a good is packed for shipment; and

(4) Indirect materials.

(b) [Reserved]

[T.D. 96–48, 61 FR 28956, June 6, 1996]

§ 102.17 Non-qualifying operations.

A foreign material shall not be considered to have undergone an applicable change in tariff classification specified in § 102.20 or § 102.21 or to have met any other applicable requirements of those sections merely by reason of one or more of the following:

(a) A change in end-use;

(b) Dismantling or disassembly;

(c) Simple packing, repacking or retail packaging without more than minor processing;

(d) Mere dilution with water or another substance that does not materially alter the characteristics of the material; or

(e) Collecting parts that, as collected, are classifiable in the same tariff provision as an assembled good pursuant to General Rule of Interpretation 2(a), without any additional operation other than minor processing.

[T.D. 96–48, 61 FR 28956, June 6, 1996]

§ 102.18 Rules of interpretation.

(a) When General Rule of Interpretation (GRI) 2(a) is referred to in § 102.20 as an exception to an allowed change in tariff classification, this means that such change will not be acceptable for purposes of that section if the change results from the assembly of parts into an incomplete or unfinished good which is classifiable in the same manner as a complete or finished good pursuant to GRI 2(a).

(b) (1) For purposes of identifying the material that imparts the essential character to a good under § 102.11, the only materials that shall be taken into consideration are those domestic or foreign materials that are classified in a tariff provision from which a change in tariff classification is not allowed under the § 102.20 specific rule or other requirements applicable to the good. For purposes of this paragraph (b)(1):

(i) The materials to be considered must be classified in a tariff provision from which a change in tariff classification is not allowed under the specific rule or other requirements applicable to the good under consideration. For example, in the case of a good classified in HTSUS subheading 8607.11 (the rule for which specifies a change to subheading 8607.11 from any other subheading, except from subheading 8607.12, and except from subheading 8607.19 when that change is pursuant to GRI 2(a)), the only materials that may be considered for purposes of identifying the materials that impart the essential character to the good are those that are classified in subheadings 8607.11, 8607.12 and, if the tariff shift is pursuant to GRI 2(a), 8607.19;

(ii) Materials that may be considered include materials produced by the producer of the good and incorporated in the good. For example, if a producer of a good purchases raw materials and converts those raw materials into a component that is incorporated in the good, that component is a material that may be considered for purposes of identifying the materials that impart the essential character to the good, provided that the component is classified in a tariff provision from which a change in tariff classification is not allowed under the specific rule or other requirements applicable to the good; and

(iii) If there is only one material that is classified in a tariff provision from which a change in tariff classification is not allowed under the § 102.20 specific rule or other requirements applicable to the good, then that material will represent the single material that imparts the essential character to the good under § 102.11.

(2) For purposes of determining which one of two or more materials described in paragraph (b)(1) of this section imparts the essential character to a good under § 102.11, various factors may be examined depending upon the type of good involved. These factors include, but are not limited to, the following:

(i) The nature of each material, such as its bulk, quantity, weight or value; and

(ii) The role of each material in relation to the use of the good.

[T.D. 96–48, 61 FR 28957, June 6, 1996]

§ 102.19 NAFTA preference override.

(a) Except in the case of goods covered by paragraph (b) of this section, if a good which is originating within the meaning of § 181.1(q) of this chapter is not determined under § 102.11(a) or (b) or § 102.21 to be a good of a single NAFTA country, the country of origin of such good is the last NAFTA country in which that good underwent production other than minor processing, provided that a Certificate of Origin (see § 181.11 of this chapter) has been completed and signed for the good.

(b) If, under any other provision of this part, the country of origin of a good which is originating within the

meaning of §181.1(q) of this chapter is determined to be the United States and that good has been exported from, and returned to, the United States after having been advanced in value or improved in condition in another NAFTA country, the country of origin of such good for Customs duty purposes is the last NAFTA country in which that good was advanced in value or improved in condition before its return to the United States.

(c) Paragraphs (a) and (b) of this section apply only to goods entered for consumption, or withdrawn from warehouse for consumption, prior to July 1, 2020.

[T.D. 96–48, 61 FR 28957, June 6, 1996, as amended by CBP Dec. 21-10, 86 FR 35582, July 6, 2021]

§ 102.20 Specific rules by tariff classification.

The following rules are the rules specified in §102.11(a)(3) and other sections of this part. Where a rule under this section permits a change to a subheading from another subheading of the same heading, the rule will be satisfied only if the change is from a subheading of the same level specified in the rule.

HTSUS	Tariff shift and/or other requirements
(a)	**Section I: Chapters 1 through 5**
0101–0106	A change to heading 0101 through 0106 from any other chapter.
0201–0209	A change to heading 0201 through 0209 from any other chapter.
0210.11–0210.20	A change to subheading 0210.11 through 0210.20 from any other chapter.
0210.91–0210.99	A change to subheading 0210.91 through 0210.99 from any other chapter; or A change to edible meals and flours of subheading 0210.91 through 0210.99 from any product other than edible meals and flours of Chapter 2.
0301–0303	A change to heading 0301 through 0303 from any other chapter.
0304	A change to heading 0304 from any other chapter; or A change to fillets of heading 0304 from any other heading.
0305.20	A change to subheading 0305.20 from any other chapter.
0305.31–0305.39	A change to subheading 0305.31 through 0305.39 from any other subheading outside that group, except from fillets of heading 0304.
0305.41–0305.79	A change to subheading 0305.41 through 0305.79 from any other chapter.
0306	A change to heading 0306, other than a change to smoked goods of heading 0306, from any other chapter; or A change to smoked goods of heading 0306 from other goods of chapter 3 or from any other chapter, except from chapter 16; or A change to any good of heading 0306 from a smoked good of heading 0306.
0307	A change to heading 0307, other than a change to smoked goods of heading 0307, from any other chapter; or A change to smoked goods of heading 0307 from other goods of chapter 3 or from any other chapter, except from chapter 16; or A change to any good of heading 0307 from a smoked good of heading 0307.
0308	A change to heading 0308, other than a change to smoked goods of heading 0308, from any other chapter; or A change to smoked goods of heading 0308 from any other good of chapter 3 or from any other chapter, except from chapter 16; or A change to any good of heading 0308 from a smoked good of heading 0308.
0309.10	A change to subheading 0309.10 from any other subheading.
0309.90	A change to subheading 0309.90, from any other chapter; or A change to edible meals and flours from within chapter 3; or A change to a good of subheading 0309.90 from a smoked good of heading 0306, 0307 or 0308.
0401	A change to heading 0401 from any other chapter.
0402.10–0402.29	A change to subheading 0402.10 through 0402.29 from any other chapter.
0402.91–0402.99	A change to subheading 0402.91 through 0402.99 from any other chapter.
0403.20	A change to subheading 0403.20 from any other heading.
0403.90	A change to subheading 0403.90 from any other chapter; or A change to sour cream or kephir from any other product of Chapter 4.
0404	A change to heading 0404 from any other heading.
0405.10	A change to subheading 0405.10 from any other heading.
0405.20	A change to subheading 0405.20 from any other chapter, except from subheading 1901.90; or A change to subheading 0405.20 from any other subheading, provided that the good contains no more than 50 percent by weight of milk solids.
0405.90	A change to subheading 0405.90 from any other heading.
0406	A change to heading 0406 from any other heading.
0407–0409	A change to heading 0407 through 0409 from any other chapter.
0410.10	A change to subheading 0410.10 from any other chapter; or A change to edible meals and flours of subheading 0410.10 from any product other than edible meals and flours of Chapter 2.
0410.90	A change to subheading 0410.90 from any other chapter.

HTSUS	Tariff shift and/or other requirements
0501–0511	A change to heading 0501 through 0511 from any other chapter.
(b)	**Section II: Chapters 6 through 14**
Note: Notwithstanding the specific rules of this section, an agricultural or horticultural good grown in the territory of a country shall be treated as a good of that country even if grown from seed or bulbs, root stock, cuttings, slips or other live parts of plants, or from whole plants, imported from a foreign country.	
0601–0602	A change to heading 0601 through 0602 from any other heading, including another heading within that group.
0603–0604	A change to heading 0603 through 0604 from any other heading, including another heading within that group, except from heading 0602.
0701–0709	A change to heading 0701 through 0709 from any other chapter.
0710	A change to heading 0710 from any other chapter.
0711	A change to heading 0711 from any other chapter.
0712	A change to heading 0712 from any other chapter; or A change to powdered vegetables of heading 0712 from any other product of Chapter 7, if put up for retail sale.
0713–0714	A change to heading 0713 through 0714 from any other chapter.
0801–0810	A change to heading 0801 through 0810 from any other chapter.
0811	A change to heading 0811 from any other chapter.
0812	A change to heading 0812 from any other chapter.
0813	A change to heading 0813 from any other chapter.
0814	A change to heading 0814 from any other chapter.
0901.11–0901.12	A change to subheading 0901.11 through 0901.12 from any other chapter.
0901.21–0901.22	A change to subheading 0901.21 through 0901.22 from any subheading outside that group.
0901.90	A change to subheading 0901.90 from any other chapter.
0902–0903	A change to heading 0902 through 0903 from any other chapter.
0904–0910	A change to heading 0904 through 0910 from any other chapter; or A change to crushed, ground, or powdered products of heading 0904 through 0910 from within Chapter 9, if put up for retail sale; or A change to subheading 0910.91 from any other subheading, provided that a single spice ingredient of foreign origin constitutes no more than 60 percent by weight of the good.
1001–1008	A change to heading 1001 through 1008 from any other chapter.
1101–1106	A change to heading 1101 through 1106 from any other chapter.
1107	A change to heading 1107 from any other chapter.
1108–1109	A change to heading 1108 through 1109 from any other heading, including another heading within that group.
1201–1207	A change to heading 1201 through 1207 from any other chapter.
1208	A change to heading 1208 from any other heading.
1209–1214	A change to heading 1209 through 1214 from any other chapter.
1301–1302	A change to heading 1301 through 1302 from any other chapter, except from concentrates of poppy straw of subheading 2939.11.
1401–1404	A change to heading 1401 through 1404 from any other chapter.
(c)	**Section III: Chapter 15**
1501–1516	A change to heading 1501 through 1516 from any other chapter.
1517.10	A change to subheading 1517.10 from any other heading.
1517.90	A change to subheading 1517.90 from any other chapter, except from heading 3823; or A change to subheading 1517.90 from any other heading, provided that no single oil ingredient of foreign origin constitutes more than 60 percent by weight of the good.
1518	A change to heading 1518 from any other heading.
1520	A change to heading 1520 from any other heading, except from subheading 2905.45 and heading 3823.
1521–1522	A change to heading 1521 through 1522 from any other chapter, except from heading 3823.
(d)	**Section IV: Chapters 16 through 24**
1601–1602.50	A change to heading 1601 through 1602.50 from any other chapter, except from smoked products of heading 0306 through 0308.
1602.90	A change to subheading 1602.90 from any other chapter, except from smoked products of heading 0306 through 0308; or A change to subheading 1602.90 from any other subheading, except from Chapter 4, Chapter 17, heading 1006, heading 2009, wild rice of subheading 1008.90, subheading 1901.90 or subheading 2202.91 through 2202.92; or A change to subheading 1602.90 from Chapter 4 or subheading 1901.90, provided that the good contains no more than 50 percent by weight of milk solids; or A change to subheading 1602.90 from Chapter 17, provided that the good contains less than 65 percent by dry weight of sugar; or A change to subheading 1602.90 from heading 2009 or subheading 2202.91 through 2202.92, provided that a single juice ingredient of foreign origin, or juice ingredients from a single foreign country, constitute in single strength form no more than 60 percent by volume of the good.
1603–1605	A change to heading 1603 through 1605 from any other chapter, except from smoked products of heading 0306 through 0308.

HTSUS	Tariff shift and/or other requirements
1701–1702	A change to heading 1701 through 1702 from any other chapter.
1703	A change to heading 1703 from any other chapter.
1704.10	A change to heading 1704.10 from any other heading.
1704.90	A change to subheading 1704.90 from any other heading, except from subheading 0306.93 or goods containing more than 20% by weight of edible insects of subheading 1602.90.
1801–1803	A change to heading 1801 through 1803 from any other chapter.
1804	A change to heading 1804 from any other heading, except from heading 1803.
1805	A change to heading 1805 from any other heading, except from subheading 1803.20.
1806.10	A change to subheading 1806.10 from any other heading, except from heading 1805 or from Chapter 17; or A change to subheading 1806.10 from Chapter 17, provided that the good contains less than 65 percent by dry weight of sugar.
1806.20	A change to subheading 1806.20 from any other heading, except from Chapter 17; or A change to subheading 1806.20 from Chapter 17, provided that the good contains less than 65 percent by dry weight of sugar.
1806.31	A change to subheading 1806.31 from any other subheading.
1806.32	A change to subheading 1806.32 from any other subheading.
1806.90	A change to subheading 1806.90 from any other subheading, except from goods containing more than 20% by weight of edible insects of subheading 1602.90.
1901.10	A change to subheading 1901.10 from any other subheading.
1901.20	A change to subheading 1901.20 from any other subheading.
1901.90	A change to subheading 1901.90 from any other heading, except from goods containing more than 20% by weight of edible insects of subheading 1602.90.
1902.11–1902.19	A change to subheading 1902.11 through 1902.19 from any other heading.
1902.20	A change to subheading 1902.20 from any other subheading.
1902.30–1902.40	A change to subheading 1902.30 through 1902.40 from any other heading.
1903	A change to heading 1903 from any other heading.
1904.10	A change to subheading 1904.10 from any other heading.
1904.20	A change to subheading 1904.20 from any other subheading.
1904.30	A change to subheading 1904.30 from any other heading.
1904.90	A change to subheading 1904.90 from any other heading, except from heading 1006, wild rice of subheading 1008.90, or goods containing more than 20% by weight of edible insects of subheading 1602.90.
1905	A change to heading 1905 from any other heading.
Chapter 20 Note: Notwithstanding the specific rules of this chapter, fruit, nut and vegetable preparations of Chapter 20 that have been prepared or preserved merely by freezing, by packing (including canning) in water, brine or natural juices, or by roasting, either dry or in oil (including processing incidental to freezing, packing, or roasting), shall be treated as a good of the country in which the fresh good was produced.	
2001–2007	A change to heading 2001 through 2007 from any other chapter.
2008.11	A change to subheading 2008.11 from any other chapter, provided that the change is not the result of mere blanching of peanuts.
2008.19–2008.99	A change to subheading 2008.19 through 2008.99 from any other chapter, provided that the change is not the result of mere blanching of nuts.
2009.11–2009.39	A change to subheading 2009.11 through 2009.39 from any other chapter.
2009.41–2009.80	A change to subheading 2009.41 through 2009.89 from any other chapter.
2009.90	A change to subheading 2009.90 from any other chapter; or A change to subheading 2009.90 from any other subheading, provided that a single juice ingredient of foreign origin, or juice ingredients from a single foreign country, constitute in single strength form no more than 60 percent by volume of the good.
2101	A change to heading 2101 from any other heading.
2102	A change to heading 2102 from any other heading.
2103.10	A change to subheading 2103.10 from any other heading.
2103.20	A change to subheading 2103.20 from any other heading.
2103.30	A change to subheading 2103.30 from any other subheading; or A change to prepared mustard of subheading 2103.30 from mustard flour or meal.
2103.90	A change to subheading 2103.90 from any other subheading.
2104.10	A change to subheading 2104.10 from any other subheading.
2104.20	A change to subheading 2104.20 from any other subheading.
2105	A change to heading 2105 from any other heading.
2106.10	A change to subheading 2106.10 from any other subheading.
2106.90	A change to a good of subheading 2106.90, other than to compound alcoholic preparations, from any other subheading, except from Chapter 4, Chapter 17, heading 2009, subheading 2404.91, subheading 3006.93, subheading 1602.90, subheading 1901.90, subheading 2202.91 or subheading 2202.99; or A change to subheading 2106.90 from Chapter 4 or subheading 1901.90, provided that the good contains no more than 50 percent by weight of milk solids; or A change to subheading 2106.90 from Chapter 17, provided that the good contains less than 65 percent by dry weight of sugar; or A change to subheading 2106.90 from heading 2009, subheading 2202.91 or subheading 2202.99, provided that a single juice ingredient of foreign origin, or juice ingredients from a single foreign country, constitute in single strength form no more than 60 percent by volume of the good; or A change to compound alcoholic preparations of subheading 2106.90 from any other subheading, except from subheading 2208.20 through 2208.50.
2201	A change to heading 2201 from any other chapter.

HTSUS	Tariff shift and/or other requirements
2202.10	A change to sweetened and/or flavored waters of subheading 2202.10 from any other chapter; or A change to other beverages of subheading 2202.10 from any other heading.
2202.91–2202.99	A change to subheading 2202.91 through 2202.99 from any other subheading, except from Chapter 4 or heading 1901, 2009, or 2106; or A change to subheading 2202.91 through 2202.99 from Chapter 4 or heading 1901, provided that the good contains no more than 50 percent by weight of milk solids; or A change to subheading 2202.91 through 2202.99 from heading 2009 or subheading 2106.90, provided that a single juice ingredient of foreign origin, or juice ingredients from a single foreign country, constitute in single strength form no more than 60 percent by volume of the good.
2203	A change to heading 2203 from any other heading.
2204.10–2204.29	A change to subheading 2204.10 through 2204.29 from any other subheading outside that group.
2204.30	A change to subheading 2204.30 from any other heading.
2205	A change to heading 2205 from any other heading, except from heading 2204; or A change to vermouth of heading 2205 from heading 2204.
2206	A change to heading 2206 from any other heading.
2207	A change to heading 2207 from any other heading, except from compound alcoholic preparations of subheading 2106.90 or heading 2208.
2208.20–2208.70	A change to subheading 2208.20 through 2208.70 from any other subheading outside that group, except from subheading 2106.90; or A change to liqueurs or cordials of subheading 2208.70 from any other product.
2208.90	A change to subheading 2208.90 from any other subheading, except from subheading 2106.90; or A change to kirschwasser or ratafia of subheading 2208.90 from any other product.
2209	A change to heading 2209 from any other heading.
2301–2308	A change to heading 2301 through 2308 from any other chapter.
2309.10	A change to subheading 2309.10 from any other heading.
2309.90	A change to subheading 2309.90 from any other heading, except from Chapter 4 or heading 1901; or A change to subheading 2309.90 from Chapter 4 or heading 1901, provided that the good contains no more than 50 percent by weight of milk solids.
2401	A change to heading 2401 from any other chapter.
2402–2403	A change to heading 2402 through 2403 from any other heading, including another heading within that group.
2404.11	A change to subheading 2404.11 from any other subheading, except from heading 2403 and except from subheading 2404.19.
2404.12	A change to subheading 2404.12 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from subheading 3824.99.
2404.19	A change to subheading 2404.19 from any other subheading, except from heading 2403, subheading 2404.11, and subheading 3824.99.
2404.91	A change to subheading 2404.91 from any other subheading, except from subheading 2106.90, except from Chapter 4, Chapter 17, heading 2009, subheading 3006.93, subheading 1602.90, subheading 1901.90, subheading 2202.91 or subheading 2202.99; or A change to subheading 2404.91 from Chapter 4 or subheading 1901.90, provided that the good contains no more than 50 percent by weight of milk solids; or A change to subheading 2404.91 from Chapter 17, provided that the good contains less than 65 percent by dry weight of sugar; or A change to subheading 2404.91 from heading 2009, subheading 2202.91 or subheading 2202.90, provided that a single juice ingredient of foreign origin, or juice ingredients from a single foreign country, constitute in single strength form no more than 60 percent by volume of the good; except from subheading 2208.20 through 2208.50.
2404.92–2404.99	A change to subheading 2404.92 through 2404.99 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance, except from subheading 3824.99.
(e)	**Section V: Chapters 25 through 27**
2501–2516	A change to heading 2501 through 2516 from any other heading, including another heading within that group.
2517.10–2517.20	A change to subheading 2517.10 through 2517.20 from any other heading.
2517.30	A change to subheading 2517.30 from any other subheading.
2517.41–2517.49	A change to subheading 2517.41 through 2517.49 from any other heading.
2518–2530	A change to heading 2518 through 2530 from any other heading, including another heading within that group.
2601–2621	A change to heading 2601 through 2621 from any other heading, including another heading within that group.
Chapter 27 Note: For purposes of this chapter, a ''chemical reaction'' is defined as a process in which chemical bonds in molecules are broken and new chemical bonds are formed between the fragmented molecules and/or added elements so that one or more of the original bond/s no longer link the same chemical element/s or functional group/s.	
2701–2706	A change to heading 2701 through 2706 from any other heading, including any heading within that group.
2708–2709	A change to heading 2708 through 2709 from any other heading, including another heading within that group.
2710	A change to heading 2710 from any other heading; or A change to any good of heading 2710 from any other good of heading 2710, provided that the good resulting from such change is the product of a chemical reaction.

HTSUS	Tariff shift and/or other requirements
2711.11	A change to subheading 2711.11 from any other subheading, except from subheading 2711.21.
2711.12–2711.19	A change to subheading 2711.12 through 2711.19 from any other subheading, including another subheading within that group, except from subheading 2711.29.
2711.21	A change to subheading 2711.21 from any other subheading, except from subheading 2711.11.
2711.29	A change to subheading 2711.29 from any other subheading, except from subheading 2711.12 through 2711.21.
2712–2714	A change to heading 2712 through 2714 from any other heading, including another heading within that group.
2715	A change to heading 2715 from any other heading, except from heading 2714 or subheading 2713.20.
2716	A change to heading 2716 from any other heading.
(f)	**Section VI: Chapters 28 through 38**

Notes: 1. Chemical reaction origin rule—

Any good of Chapters 28, 29, 31, 32 or 38, except a good of heading 3823, that is the product of a chemical reaction shall be considered to be a good of the country in which the reaction occurred.

A chemical reaction is defined as a process in which chemical bonds in molecules are broken and new chemical bonds are formed between the fragmented molecules and/or added elements so that one or more of the original bonds no longer link the same chemical element/s or functional group/s.

Notwithstanding any of the line-by-line rules, the ''chemical reaction'' rule may be applied to any good classified in the above chapters.

2. Separation prohibition—

A foreign material/component will not be deemed to have satisfied all applicable requirements of these rules by reason of a change from one classification to another merely as the result of the separation of one or more individual materials or components from a man-made mixture unless the isolated material/component, itself, also underwent a chemical reaction.

2801.10–2801.30	A change to subheading 2801.10 through 2801.30 from any other subheading, including another subheading within that group.
2802	A change to heading 2802 from any other heading, except from heading 2503.
2803	A change to heading 2803 from any other heading.
2804.10–2804.50	A change to subheading 2804.10 through 2804.50 from any other subheading, including another subheading within that group.
2804.61–2804.69	A change to subheading 2804.61 through 2804.69 from any other subheading outside that group.
2804.70–2804.90	A change to subheading 2804.70 through 2804.90 from any other subheading, including another subheading within that group.
2805	A change to heading 2805 from any other heading.
2806.10–2806.20	A change to subheading 2806.10 through 2806.20 from any other subheading, including another subheading within that group.
2807–2808	A change to heading 2807 through 2808 from any other heading, including another heading within that group.
2809.10–2809.20	A change to subheading 2809.10 through 2809.20 from any other subheading, including another subheading within that group.
2810	A change to heading 2810 from any other heading.
2811.11	A change to subheading 2811.11 from any other subheading.
2811.12–2811.19	A change to subheading 2811.12 through 2811.19 from any other subheading, except from subheading 2811.12 or 2811.22.
2811.21	A change to subheading 2811.21 from any other subheading.
2811.22	A change to subheading 2811.22 from any other subheading, except from subheading 2505.10, 2506.10, or 2811.19.
2811.29	A change to sulphur dioxide of subheading 2811.29 from any other good of subheading 2811.29 or from any other subheading; or A change to any other good of subheading 2811.29 from sulphur dioxide of subheading 2811.29 or from any other subheading.
2812.11–2813.90	A change to subheading 2812.11 through 2813.90 from any other subheading, including another subheading within that group, except from subheading 2812.11 through 2812.19.
2814	A change to heading 2814 from any other heading.
2815.11–2815.12	A change to subheading 2815.11 through 2815.12 from any other subheading outside that group.
2815.20–2815.30	A change to subheading 2815.20 through 2815.30 from any other subheading, including another subheading within that group.
2816.10	A change to subheading 2816.10 from any other subheading.
2816.40	A change to subheading 2816.40 from any other subheading, except a change to oxides, hydroxides and peroxides of strontium of subheading 2816.40 from subheading 2530.90.
2817	A change to heading 2817 from any other heading, except from heading 2608.
2818.10–2818.30	A change to subheading 2818.10 through 2818.30 from any other subheading, including another subheading within that group, except from heading 2606 or subheading 2620.40.
2819.10–2819.90	A change to subheading 2819.10 through 2819.90 from any other subheading, including another subheading within that group.
2820.10–2820.90	A change to subheading 2820.10 through 2820.90 from any other subheading, including another subheading within that group, except from subheading 2530.90 or heading 2602.
2821.10	A change to subheading 2821.10 from any other subheading.
2821.20	A change to subheading 2821.20 from any other subheading, except from earth color mineral substances of 2530.90 or from subheading 2601.11 through 2601.20.
2822	A change to heading 2822 from any other heading, except from heading 2605.
2823	A change to heading 2823 from any other heading.

HTSUS	Tariff shift and/or other requirements
2824.10–2824.90	A change to red lead or to orange lead of subheading 2824.90 from any other good of subheading 2824.90 or from any other subheading, except from heading 2607; or A change to any other good of subheading 2824.90 from red lead or from orange lead of subheading 2824.90 or from any other subheading, except from heading 2607; or A change to subheading 2824.10 through 2924.90 from any other subheading, including another subheading within that group, except from heading 2607.
2825.10–2825.40	A change to subheading 2825.10 through 2825.40 from any other subheading, including another subheading within that group.
2825.50	A change to subheading 2825.50 from any other subheading, except from heading 2603.
2825.60	A change to subheading 2825.60 from any other subheading, except from subheading 2615.10.
2825.70	A change to subheading 2825.70 from any other subheading, except from subheading 2613.10.
2825.80	A change to subheading 2825.80 from any other subheading, except from subheading 2617.10.
2825.90	A change to subheading 2825.90 from any other subheading, provided that the good classified in subheading 2825.90 is the product of a ''chemical reaction'' as defined in Note 1.
2826.12–2833.19	A change to fluorides of ammonium or of sodium of subheading 2826.19 from any other good of subheading 2826.19 or from any other subheading; or A change to any other good of subheading 2826.19 from fluorides of ammonium or of sodium of subheading 2826.19 or from any other subheading; or A change to fluorosilicates of sodium or of potassium of subheading 2826.90 from any other good of subheading 2826.90 or from any other subheading; or A change to any other good of subheading 2826.90 from fluorosilicates of sodium or of potassium of subheading 2826.90 or from any other subheading; or A change to chlorides of iron of subheading 2827.39 from any other good of subheading 2827.39 or from any other subheading; or A change to chlorides of cobalt of subheading 2827.39 from any other good of subheading 2827.39 or from any other subheading; or A change to chlorides of zinc of subheading 2827.39 from any other good of subheading 2827.39 or from any other subheading; or A change to any other good of subheading 2827.39 from chlorides of iron, of cobalt, or of zinc of subheading 2827.39 or from any other subheading; or A change to zinc sulphide of subheading 2830.90 from any other good of subheading 2830.90 or from any other subheading; or A change to cadmium sulphide of subheading 2830.90 from any other good of subheading 2830.90 or from any other subheading; or A change to any other good of subheading 2830.90 from zinc sulphide or cadmium sulphide of subheading 2830.90 or from any other subheading; or A change to subheading 2826.12 through 2833.19 from any other subheading, including another subheading within that group, except for a change from sulphides and polysulphides, of subheading 2852.90 to subheading 2830.90.
2833.21	A change to subheading 2833.21 from any other subheading, except from subheading 2530.20.
2833.22–2833.25	A change to subheading 2833.22 through 2833.25 from any other subheading, including another subheading within that group.
2833.27	A change to subheading 2833.27 from any other subheading, except from subheading 2511.10.
2833.29	A change to chromium sulphate of subheading 2833.29 from any other good of subheading 2833.29 or from any other subheading; or A change to zinc sulphate of subheading 2833.29 from any other good of subheading 2833.29 or from any other subheading; or A change to any other good of subheading 2833.29 from chromium sulphate or zinc sulphate of subheading 2833.29 or from any other subheading, except from heading 2520.
2833.30–2833.40	A change to subheading 2833.30 through 2833.40 from any other subheading, including another subheading within that group.
2834.10–2834.29	A change to subheading 2834.10 through 2834.29 from any other subheading, including another subheading within that group.
2835.10–2835.25	A change to subheading 2835.10 through 2835.25 from any other subheading, including another subheading within that group.
2835.26	A change to subheading 2835.26 from any other subheading, except from heading 2510.
2835.29–2835.39	A change to phosphates of trisodium of subheading 2835.29 from any other good of subheading 2835.29 or from any other subheading; or A change to any other good of subheading 2835.29 from phosphates of trisodium of subheading 2835.29 or from any other subheading; or A change to subheading 2835.29 through 2835.39 from any other subheading, including another subheading within that group, except for a change from phosphinates (hypophosphites), phosphonates (phosphites) and phosphates, and polyphosphates of subheading 2852.90 to subheading 2835.39
2836.20	A change to subheading 2836.20 from any other subheading, except from subheading 2530.90.
2836.30–2836.40	A change to subheading 2836.30 through 2836.40 from any other subheading, including another subheading within that group.
2836.50	A change to subheading 2836.50 from any other subheading, except from heading 2509, subheading 2517.41 or 2517.49, heading 2521, or subheading 2530.90.
2836.60	A change to subheading 2836.60 from any other subheading, except from subheading 2511.20.
2836.91	A change to subheading 2836.91 from any other subheading.
2836.92	A change to subheading 2836.92 from any other subheading, except from subheading 2530.90.
2836.99	A change to bismuth carbonate of subheading 2836.99 from commercial ammonium carbonate or other ammonium carbonates or from lead carbonates of subheading 2836.99 or from any other subheading, except from subheading 2617.90; or

HTSUS	Tariff shift and/or other requirements
	A change to commercial ammonium carbonate or to other ammonium carbonates of subheading 2836.99 from any other good of subheading 2836.99 or from any other subheading; or A change to lead carbonates of subheading 2836.99 from any other good of subheading 2836.99 or from any other subheading, except from heading 2607; or A change to any other good of subheading 2836.99 from commercial ammonium carbonate or other ammonium carbonates or from lead carbonates of subheading 2836.99 or from any other subheading, provided that the good classified in subheading 2836.99 is the product of a ''chemical reaction'' as defined in Note 1.
2837.11–2837.20	A change to subheading 2837.11 through 2837.20 from any other subheading, including another subheading within that group.
2839.11–2839.19	A change to subheading 2839.11 through 2839.19 from any other subheading outside that group.
2839.90	A change to silicates of potassium of subheading 2839.90 from any other good of subheading 2839.90 or from any other subheading; or A change to any other good of subheading 2839.90 from silicates of potassium of subheading 2839.90 or from any other subheading.
2840.11–2840.20	A change to subheading 2840.11 through 2840.20 from any other subheading outside that group, except from subheading 2528.10.
2841.30	A change to subheading 2841.30 from any other subheading.
2841.50	A change to chromates of zinc or of lead from any other good of subheading 2841.50 or from any other subheading; or
2841.61–2841.69	A change to subheading 2841.61 through 2841.69 from any other subheading outside that group.
2841.70	A change to subheading 2841.70 from any other subheading, except from subheading 2613.90.
2841.80	A change to subheading 2841.80 from any other subheading, except from heading 2611.
2841.90	A change to aluminates from any other good of subheading 2841.90 or from any other subheading; or A change to any other good of subheading 2841.90 from aluminates of subheading 2841.90 or from any other subheading, provided that the good classified in subheading 2841.90 is the product of a ''chemical reaction'' as defined in Note 1.
2842.10	A change to subheading 2842.10 from any other subheading, except for a change from double or complex silicates, including aluminosilicates, of subheading 2852.90 to subheading 2842.10
2842.90	A change to fulminates, cyanates and thiocyanates of subheading 2842.90 from any other good of subheading 2842.90 or from any other subheading; or A change to any other good of subheading 2842.90 from fulminates, cyanates and thiocyanates of subheading 2842.90 or from any other subheading, provided that the good classified in subheading 2842.90 is the product of a ''chemical reaction'' as defined in Note 1.
2843.10	A change to subheading 2843.10 from any other subheading, except from heading 7106, 7108, 7110, or 7112.
2843.21–2843.29	A change to subheading 2843.21 through 2843.29 from any other subheading, including another subheading within that group.
2843.30–2843.90	A change to subheading 2843.30 through 2843.90 from any other subheading, including another subheading within that group, except from subheading 2616.90.
2844.10	A change to subheading 2844.10 from any other subheading, except from subheading 2612.10.
2844.20	A change to subheading 2844.20 from any other subheading.
2844.30	A change to subheading 2844.30 from any other subheading, except from subheading 2844.20.
2844.41–2844.44	A change to subheading 2844.41 through 2844.44 from any other subheading outside that group.
2844.50	A change to subheading 2844.50 from any other subheading.
2845	A change to heading 2845 from any other heading.
2846	A change to heading 2846 from any other heading, except from subheading 2530.90.
2847	A change to heading 2847 from any other heading.
2849.10–2849.90	A change to subheading 2849.10 through 2849.90 from any other subheading, including another subheading within that group, except for a change from carbides of 2852.90.
2850	A change to heading 2850 from any other heading, except for a change from hydrides, nitrides, azides, silicides, and borides (other than compounds which are also carbides of heading 28.49) of subheading 2852.90.
2852	A change to other metal oxides, hydroxides or peroxides of heading 2852 from any other good of heading 2852 or from any other heading, provided that the good is the product of a ''chemical reaction'', as defined in Note 1, except from subheading 2825.90; or A change to other fluorides of heading 2852 from any other good of heading 2852 or from any other heading, except from subheading 2826.19; or A change to other chlorides of heading 2852 from any other good of heading 2852 or from any other heading, except from subheading 2827.39; or A change to other bromides or to bromide oxides from any other good of heading 2852 or from any other heading, except from subheading 2827.59; or A change to iodides or to iodide oxides of heading 2852 from any other good of heading 2852 or from any other heading, except from subheading 2827.60; or A change to other chlorates of heading 2852 from any other good of heading 2852 or from any other heading, except from subheading 2829.19; or A change to other perchlorates, bromotes, perbromates, iodates or periodates of heading 2852 from any other good of heading 2852 or from any other heading, except from subheading 2829.90; or A change to other sulphides or polysulphides, whether or not chemically defined, of heading 2852 from any other good of heading 2852 (except for sulphides or polysulphides of subheading 2852.90) or from any other heading, except from subheading 2830.90; or A change to other sulfates of heading 2852 from any other good of heading 2852 or from any other heading, except from heading 2520 or from subheading 2833.29; or

HTSUS	Tariff shift and/or other requirements
	A change to other nitrates of heading 2852 from any other good of heading 2852 or from any other heading, except from subheading 2834.29; or
	A change to other phosphates from any other good of heading 2852 or from any other heading, except from subheading 2835.29; or
	A change to polyphosphates other than those of sodium triphosphate (sodium tripolyphosphate) of subheading 2852.90 from any other good of heading 2852 or from any other heading, except from subheading 2835.39; or
	A change to other cyanides or to cyanide oxides of heading 2852 from any other good of heading 2852 or from any other heading, except from subheading 2837.19; or
	A change to complex cyanides of heading 2852 from any other good of heading 2852 or from any other heading, except from subheading 2837.20; or
	A change to fulminates, cyanates or thiocyanates of heading 2852 from any other good of heading 2852 or from any other heading; or
	A change to any other good of subheading 2852.90 from fulminates, cyanates, and thiocyanates of subheading 2852.90 or from any other subheading, provided that the good classified in subheading 2852.90 is the product of a ''chemical reaction'' as defined in Note 1; or
	A change to other chromates, dichromates or peroxochromates of heading 2852 from any other good of heading 2852 or any other heading, except from heading 2610, or from subheading 2841.50; or
	A change to double or complex silicates, including aluminosilicates, of subheading 2852.90 from any other good of heading 2852 or from any other heading, except from subheading 2842.10; or
	A change to other salts of inorganic acids or to peroxoacids, other than azides, of heading 2852 from any other good of heading 2852 or from any other heading, provided that the good classified in heading 2852 is the product of a ''chemical reaction'' as defined in Note 1, except from subheading 2842.90; or
	A change to other silver compounds of heading 2852 from any other good of heading 2852 or from any other heading, except from subheading 2843.29; or
	A change to phosphides, excluding ferrophosphorus, of subheading 2852.90 from any other good of heading 2852 or any other heading, except from subheading 2853.90; or
	A change to carbides of subheading 2852.90 from any other good of heading 2852 or any other heading, except from subheading 2849.90; or
	A change to hydrides, nitrides, azides, silicides and borides, other than compounds which are also carbides of heading 2849, of subheading 2852.90 from any other good of heading 2852 or any other heading, except from heading 2850; or
	A change to derivatives containing only sulpho groups, their salts and esters from any other good of heading 2852 or from any other heading, except from heading 2908; or
	A change to palmitic acid, stearic acid, their salts or their esters from any other good of heading 2852 or from any other heading, except from subheading 2915.70; or
	A change to oleic, linolenic or linolenic acids, their salts or their esters from any other good of heading 2852 or from any other heading, except from subheading 2916.15; or
	A change to benzoic acid, its salts or its esters from any other good of heading 2852 or from any other heading, except from subheading 3301.90 or subheading 2916.31; or
	A change to lactic acid, its salts or its esters from any other good of heading 2852 or from any other heading, except 2918.11; or
	A change to other organo-inorganic compounds of heading 2852 from any other good of heading 2852 or from any other heading, except from heading 2931; or
	A change to nucleic acids and their salts or other heterocyclic compounds of subheading 2852.90 from any other good of heading 2852 or any other heading, except from subheading 2934.92 through 2934.99; or
	A change to tanning extracts of vegetable origin or tannins and their salts, ethers, esters, and other derivatives of 2852.90 from any other good of heading 2852 or any other heading, except from subheading 3201.90; or
	A change to caseinate and other casein derivatives or casein glues of subheading 2852.90 from any other good of heading 2852 or any other heading, except from subheading 3501.90; or
	A change to albumins, albuminates, and other albumin derivatives of subheading 2852.90 from any other good of heading 2852 or any other heading, except from subheading 3502.90; or
	A change to peptones and their derivatives, other protein substances and their derivatives, not elsewhere specified or included, or hide powder of subheading 2852.90 from any other good of heading 2852 or any other heading, except from heading 3504; or
	A change to naphthenic acids, their water-insoluble salts, or their esters of subheading 2852.90 from any other good of heading 2852 or any other heading; or
	A change to prepared binders for foundry moulds or cores or chemical products and preparations of the chemical or allied industries of subheading 2852.90 from naphthenic acids, their water-insoluble salts, or their esters of subheading 2852.90 or any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 3827.11 through 3827.14 or 3827.31 through 3827.90; or
	A change to prepared binders for foundry moulds or cores or chemical products and preparations of the chemical or allied industries of subheading 2852.90 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound.
2853.10–2853.90	A change to subheading 2853.10 through 2853.90 from any other heading.

HTSUS	Tariff shift and/or other requirements
2901.10–2901.29	A change to subheading 2901.10 through 2901.29 from any other subheading, including another subheading within that group, except from acyclic petroleum oils of heading 2710 or from subheading 2711.13, 2711.14, 2711.19, or 2711.29.
2902.11	A change to subheading 2902.11 from any other subheading.
2902.19	A change to subheading 2902.19 from any other subheading, except from non-aromatic cyclic petroleum oils of subheading 2707.50, 2707.99, or heading 2710.
2902.20	A change to subheading 2902.20 from any other subheading, except from subheading 2707.10, 2707.50, or 2707.99.
2902.30	A change to subheading 2902.30 from any other subheading, except from subheading 2707.20, 2707.50, or 2707.99.
2902.41–2902.44	A change to subheading 2902.41 through 2902.44 from any other subheading, including another subheading within that group, except from subheading 2707.30, 2707.50 or 2707.99.
2902.50	A change to subheading 2902.50 from any other subheading.
2902.60	A change to subheading 2902.60 from any other subheading, except from subheading 2707.30, 2707.50, 2707.99, or heading 2710.
2902.70–2902.90	A change to subheading 2902.70 through 2902.90 from any other subheading, including another subheading within that group, except from subheading 2707.50, 2707.99, or heading 2710.
2903.41–2903.69	A change to subheading 2903.41 through 2903.69 from any subheading outside that group; or A change to any other good of subheading 2903.41 through 2903.69 from any other subheading, including another subheading within that group.
2903.71–2903.79	A change to subheading 2903.71 through 2903.79 from any other subheading outside that group.
2903.82–2904.99	A change to aldrin (ISO), chlordane (ISO) or heptachlor (ISO) of subheading 2903.82 from any other subheading, except from subheading 2903.83 through 2903.89; or A change to any other good of subheading 2903.83 through 2903.89 from any other subheading outside that group, except from subheading 2903.82; or A change to subheading 2903.81 through 2904.99 from any other subheading within that group.
2905.11–2905.19	A change to pentanol (amyl alcohol) and isomers thereof of subheading 2905.19 from any other good of subheading 2905.19 or from any other subheading; or A change to any other good of subheading 2905.19 from pentanol (amyl alcohol) and isomers thereof of subheading 2905.19 or from any other subheading; or A change to any other good of subheading 2905.11 through 2905.19 from any other subheading, including another subheading within that group.
2905.22–2905.29	A change to subheading 2905.22 through 2905.29 from any other subheading, including another subheading within that group, except from subheading 1301.90, 3301.90, or 3805.90.
2905.31–2905.44	A change to subheading 2905.31 through 2905.44 from any other subheading, including another subheading within that group.
2905.45	A change to subheading 2905.45 from any other subheading, except from heading 1520.
2905.49–2905.59	A change to subheading 2905.49 through 2905.59 from any other subheading, including another subheading within that group.
2906.11	A change to subheading 2906.11 from any other subheading, except from subheading 3301.24 or 3301.25.
2906.12–2906.13	A change to subheading 2906.12 through 2906.13 from any other subheading, including another subheading within that group.
2906.19	A change to terpineols of subheading 2906.19 from any other good of subheading 2906.19 or from any other subheading, except from heading 3805; or A change to any other good of subheading 2906.19 from terpineols of subheading 2906.19 or from any other subheading, except from subheading 3301.90 or 3805.90.
2906.21	A change to subheading 2906.21 from any other subheading.
2906.29	A change to subheading 2906.29 from any other subheading, except from subheading 2707.60 or 3301.90.
2907.11	A change to subheading 2907.11 from any other subheading, except from subheading 2707.60.
2907.12–2907.22	A change to xylenols or their salts of subheading 2907.19 from any other good of subheading 2907.19 or from any other subheading, except from subheading 2707.99; or A change to any other good of subheading 2907.19 from xylenols and their salts of subheading 2907.19 or from any other subheading, except from subheading 2707.99; or A change to any other good of subheading 2907.12 through 2907.22 from any other subheading, including another subheading within that group, except from subheading 2707.99.
2907.23	A change to subheading 2907.23 from any other subheading.
2907.29	A change to subheading 2907.29 from any other subheading, including a change to phenol-alcohols of subheading 2907.29, from polyphenols of subheading 2907.29, or a change to polyphenols of subheading 2907.29 from phenol-alcohols of subheading 2907.29, except a change from subheading 2707.99.
2908	A change to heading 2908 from any other heading.
2909.11–2909.49	A change to monomethyl ethers of ethylene glycol or of diethylene glycol of subheading 2909.44 through 2909.49 from any other good of subheading 2909.44 through 2909.49 or from any other subheading; or A change to any other good of subheading 2909.44 through 2909.49 from monomethyl ethers of ethylene glycol or of diethylene glycol of subheading 2909.44 through 2909.49 or from any other subheading; or A change to any other good of subheading 2909.11 through 2909.49 from any other subheading, including another subheading within than group.
2909.50	A change to subheading 2909.50 from any other subheading, except from subheading 3301.90.
2909.60	A change to subheading 2909.60 from any other subheading.

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2910.10–2910.90	A change to dieldrin (ISO, INN) of subheading 2910.40 from any other subheading, except from subheading 2910.50 through 2910.90; or A change to subheading 2910.50 through 2910.90 from any other subheading outside that group, except from subheading 2910.40; or A change to any other good of subheading 2910.10 through 2910.90 from any other subheading, including another subheading within that group.
2912.11–2912.12	A change to subheading 2912.11 through 2912.12 from any other subheading, including another subheading within that group.
2912.19–2912.49	A change to butanal (butyraldehyde, normal isomer) of subheading 2912.19 from any other good of subheading 2912.19 or from any other subheading; or A change to any other good of subheading 2912.19 from butanal (butyraldehyde, normal isomer) of subheading 2912.19 or from any other subheading, except from subheading 3301.90; or A change to any other good of subheading 2912.19 through 2912.49 from any other subheading, including another subheading within that group, except from subheading 3301.90.
2912.50–2912.60	A change to subheading 2912.50 through 2912.60 from any other subheading, including another subheading within that group.
2913	A change to heading 2913 from any other heading.
2914.11–2914.19	A change to subheading 2914.11 through 2914.19 from any other subheading, including another subheading within that group, except from subheading 3301.90.
2914.22	A change to subheading 2914.22 from any other subheading, including another subheading within that group.
2914.23	A change to subheading 2914.23 from any other subheading, except from subheading 3301.90.
2914.29	A change to subheading 2914.29 from any other subheading, except from subheading 3301.90 or 3805.90.
2914.31–2914.39	A change to subheading 2914.31 through 2914.39 from any other subheading outside that group, except from subheading 3301.90.
2914.40–2914.61	A change to subheading 2914.40 through 2914.61 from any other subheading, including another subheading within that group, except from subheading 3301.90.
2914.62–2914.69	A change to subheading 2914.62 through 2914.69 from any other subheading outside that group, except from subheading 3301.90.
2914.71–2914.79	A change to subheading 2914.71 through 2914.79 from any other subheading outside that group, except from subheading 3301.90.
2915.11–2915.33	A change to sodium acetate of subheading 2915.29 from any other good of subheading 2915.29 or from any other subheading; or A change to cobalt acetates of subheading 2915.29 from any other good of subheading 2915.29 or from any other subheading; or A change to any other good of subheading 2915.29 from sodium acetate or cobalt acetates of subheading 2915.29 or from any other subheading; or A change to any other good of subheading 2915.11 through 2915.33 from any other subheading, including another subheading within that group.
2915.36	A change to subheading 2915.36 from any other subheading, except from subheading 2915.90.
2915.39	A change to isobutyl acetate of subheading 2915.39 from any other good of subheading 2915.39 or from any other subheading; or A change to 2-Ethoxyethyl acetate of subheading 2915.39 from any other good of subheading 2915.39 or from any other subheading; or A change to any other good of subheading 2915.39 from isobutyl acetate or 2-Ethoxyethyl acetate of subheading 2915.39 or from any other subheading, except from subheading 3301.90.
2915.39	A change to subheading 2915.39 from any other subheading, except from subheading 3301.90.
2915.40–2915.90	A change to subheading 2915.40 through 2915.90 from any other subheading, including another subheading within that group.
2916.11–2916.20	A change to subheading 2916.11 through 2916.20 from any other subheading, including another subheading within that group.
2916.31–2916.39	A change to subheading 2916.31 through 2916.39 from any other subheading, including another subheading within that group, except from subheading 3301.90.
2917.11–2917.39	A change to dibutyl orthophthalates of subheading 2917.34 from any other good of subheading 2917.34 or from any other subheading; or A change to any other good of subheading 2917.34 from dibutyl orthophthalates of subheading 2917.34 or from any other subheading; or A change to any other good of subheading 2917.11 through 2917.39 from any other subheading, including another subheading within that group.
2918.11–2918.22	A change to subheading 2918.18 from any other subheading, except from subheading 2918.17 or 2918.19; or A change to any other good of subheading 2918.17 or 2918.19 from any other subheading outside that group, except from subheading 2918.18; or A change to subheading 2918.11 through 2918.22 from any other subheading, including another subheading within that group.
2918.23	A change to subheading 2918.23 from any other subheading, except from subheading 3301.90.
2918.29–2918.30	A change to subheading 2918.29 through 2918.30 from any other subheading, including another subheading within that group.
2918.91–2918.99	A change to subheading 2918.91 through 2918.99 from any other subheading outside that group, except from subheading 3301.90.
2919	A change to heading 2919 from any other heading.
2920.11–2926.90	A change to subheading 2920.11 through 2920.19 from any subheading outside that group; or

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	A change to diethylamine and its salts of subheading 2921.12 through 2921.19 from any other good of subheading 2921.19 through 2921.19 or any other subheading; or
	A change to any other good of subheading 2921.12 through 2921.19 from diethylamine and its salts of subheading 2921.12 through 2921.19 or from any other subheading; or
	A change to anisidines, dianisidines, phenetidines, and their salts of subheading 2922.29 from any other good of subheading 2922.29 or any other subheading; or
	A change to any other good of subheading 2922.29 from anisidines, dianisidines, phenetidines, and their salts of subheading 2922.29 or from any other subheading; or
	A change to subheading 2924.12 from any other subheading, except from subheading 2924.19; or
	A change to subheading 2924.19 from any other subheading, except from subheading 2924.12; or
	A change to subheading 2925.21 through 2925.29 from any subheading outside that group; or
	A change to any other good of subheading 2920.11 through 2926.90 from any other subheading, including another subheading within that group.
2927–2928	A change to heading 2927 through 2928 from any other heading, including another heading within that group.
2929.10–2930.90	A change to subheading 2930.80 from any other subheading, except from subheading 2930.10 through 2930.90; or
	A change to dithiocarbonates (xanthates) of subheading 2930.90 from any other good of subheading 2930.10 through 2930.90 or from any other subheading;
	A change to any other good of subheading 2930.10 through 2930.90 from dithiocarbonates (xanthates) of subheading 2930.90 or from any other subheading, except from subheading 2930.80; or
	A change to any other good of subheading 2929.10 through 2930.90 from any other subheading, including another subheading within that group.
2931	A change to heading 2931 from any other heading.
2932.11–2932.99	A change to subheading 2932.11 through 2932.99 from any other subheading, including another subheading within that group, except from subheading 3301.90.
2933.11–2934.99	A change to subheading 2933.11 through 2934.99 from any other subheading, including another subheading within that group, except for a change to subheading 2933.29 from heterocyclic compounds with nitrogen hetero-atom(s) only of subheading 3002.12 through 3002.15, subheading 3822.11 through 3822.12 or subheading 3822.19 and except for a change to subheading 2934.99 from nucleic acids and their salts or other heterocyclic compounds of subheading 2852.90 or subheading 3002.12 through 3002.15, subheading 3822.11 through 3822.12 or subheading 3822.19.
2935	A change to heading 2935 from any other heading.
2936.21–2936.29	A change to subheading 2936.21 through 2936.29 from any other subheading, including another subheading within that group.
2936.90	A change to unmixed provitamins of subheading 2936.90 from any other good of subheading 2936.90 or from any other subheading; or
	A change to any other good of subheading 2936.90 from any other subheading, except from subheading 2936.21 through 2936.29.
2937–2941	A change to heading 2937 through 2941 from any other heading, including another heading within that group, except a change to concentrates of poppy straw of subheading 2939.11 from poppy straw extract of subheading 1302.19 and except for a change to subheading 2937.90 from other hormones, prostagladins, thromboxanes and leukotrienes, natural or reproduced by synthesis, derivatives and structural analogues thereof, including chain modified polypeptides, used primarily as hormones of subheading 3002.13 through 3002.15.
2942	A change to heading 2942 from any other chapter.
3001.10–3001.90	A change to subheading 3001.20 through 3001.90 from any other subheading, including another subheading within that group, except a change from subheading 3006.92.
3001.20–3001.90	A change to glands and other organs, dried, whether or not powdered, of subheading 3001.90 from any other good of subheading 3001.90 or from any other subheading, except from subheading 0206.10 through 0208.90 or 0305.20, heading 0504 or 0510, or subheading 0511.99 if the change from these provisions is not to a gland or other organ powder classified in subheading 3001.90, and except a change from subheading 3006.92; or
	A change to any other good of subheading 3001.90 from glands and other organs, dried, whether or not powdered, of subheading 3001.90 or from any other subheading, except from subheading 3006.92; or
	A change to any other good of subheading 3001.20 through 3001.90 from any other subheading, including another subheading within that group, except a change from subheading 3006.92.
3002.12–3002.90	A change to subheading 3002.12 through 3002.15 from any other subheading outside that group, except a change from subheading 3006.92, subheading 3822.11 through 3822.12 or subheading 3822.19;
	A change to subheading 3002.20 through 3002.90 from any other subheading, except a change from subheading 3006.92; or
	A change to imines and their derivatives, and salts thereof, other than chlordimeform (ISO) of subheading 3002.12 through 3002.15, subheading 3822.11 through 3822.12 or subheading 3822.19 from any other subheading outside that group, except subheading 2925.21 through 2925.29;
	A change to compounds containing an unfused imidazole ring (whether or not hydrogenated) in the structure of subheading 3002.12 through 3002.15, subheading 3822.11 through 3822.12 or subheading 3822.19 from any other subheading outside that group, except from subheading 2933.29; or

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	A change to nucleic acids and their salts or other heterocyclic compounds (other than those classified in subheading 2934.10 through 2934.91) of subheading 3002.12 through 3002.15, subheading 3822.11 through 3822.12 or subheading 3822.19 from any other subheading outside that group, except from subheading 2934.92 through 2934.99; or A change to hormones, prostaglandins, thromboxanes and leukotrienes, natural or reproduced by synthesis or derivatives, and structural analogues thereof, including chain modified polypeptides, used primarily as hormones (other than those classified in subheading 2937.11 through 2937.50) of subheading 3002.12 through 3002.15, subheading 3822.11 through 3822.12 or subheading 3822.19 from any other heading, except from heading 2937; or A change to other polyethers of subheading 3002.12 through 3002.15, subheading 3822.11 through 3822.12 or subheading 3822.19 from any other heading, except from heading 3907, provided that the domestic polymer content is no less than 40 percent by weight of the total polymer count.
3003.10	A change to subheading 3003.10 from any other subheading, except from subheading 2941.10, 2941.20, 3003.20, or 3006.92.
3003.20	A change to subheading 3003.20 from any other subheading, except from subheading 2941.30 through 2941.90, or 3006.92.
3003.31	A change to subheading 3003.31 from any other subheading, except from subheading 2937.12 or 3006.92.
3003.39	A change to subheading 3003.39 from any other subheading, except from hormones or their derivatives classified in Chapter 29, or except from subheading 3006.92.
3003.41–3003.49	A change to subheading 3003.41 through 3003.49 from any other subheading outside that group, except from heading 1211, subheading 1302.11, 1302.14, 1302.19, 1302.20, 1302.39, or 3006.92, or alkaloids or derivatives thereof classified in Chapter 29.
3003.60–3003.90	A change to subheading 3003.60 through 3003.90 from any other subheading outside that group, provided that the domestic content of the therapeutic or prophylactic component is no less than 40 percent by weight of the total therapeutic or prophylactic content, or except from subheading 3006.92.
3004.10	A change to subheading 3004.10 from any other subheading, except from subheading 2941.10, 2941.20, 3003.10, 3003.20, or 3006.92.
3004.20	A change to subheading 3004.20 from any other subheading, except from subheading 2941.30 through 2941.90, 3003.20, or 3006.92.
3004.31	A change to subheading 3004.31 from any other subheading, except from subheading 2937.12, 3003.31, 3003.39, or 3006.92.
3004.32	A change to subheading 3004.32 from any other subheading, except from subheading 3003.39 or 3006.92, or from adrenal corticosteroid hormones classified in Chapter 29.
3004.39	A change to subheading 3004.39 from any other subheading, except from subheading 3003.39 or 3006.92, or from hormones or derivatives thereof classified in Chapter 29.
3004.41–3004.49	A change to subheading 3004.41 through 3004.49 from any other subheading outside that group, except from heading 1211, subheading 1302.11, 1302.14, 1302.19, 1302.20, 1302.39, 3003.40, or 3006.92, or alkaloids or derivatives thereof classified in Chapter 29.
3004.50	A change to subheading 3004.50 from any other subheading, except from subheading 3003.60 through 3003.90, subheading 3006.92 or vitamins classified in Chapter 29 or products classified in heading 2936.
3004.60–3004.90	A change to subheading 3004.60 through 3004.90 from any other subheading outside that group, except from subheading 3003.60 through 3003.90 or 3006.92, and provided that the domestic content of the therapeutic or prophylactic component is no less than 40 percent by weight of the total therapeutic or prophylactic content.
3005.10	A change to subheading 3005.10 from any other subheading, except from subheading 3006.92 or 3825.30.
3006.10	A change to subheading 3006.10 from any other subheading, except from subheading 1212.20, 3006.92, 3825.30, or from articles of catgut of heading 4206.
3006.30–3006.60	A change to subheading 3006.30 through 3006.60 from any other subheading, including another subheading within that group, except from subheading 3006.92, 3822.13 or 3825.30.
3006.70	A change to subheading 3006.70 from any other subheading, except from subheading 3006.92 or 3825.30, and provided no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound.
3006.91	A change to subheading 3006.91 from any other subheading, except from heading 3926.
3006.92	A change to subheading 3006.92 from any other chapter.
3006.93	A change to subheading 3006.93 from any other subheading, except from subheading 3003.90 or 3006.92, and provided that the domestic content of the therapeutic or prophylactic component is no less than 40 percent by weight of the total therapeutic or prophylactic content; or A change to a good of subheading 3006.93, from any other subheading, except from Chapter 4, Chapter 17, heading 2009, subheading 1901.90, subheading 2202.91 or subheading 2202.99; or A change to subheading 3006.93 from Chapter 17, provided that the good contains less than 65 percent by dry weight of sugar.
3101	A change to heading 3101 from any other heading, except from subheading 2301.20 or from powders and meals of subheading 0506.90, heading 0508, or subheading 0511.91 or 0511.99.
3102.10–3102.21	A change to subheading 3102.10 through 3102.21 from any other subheading, including another subheading within that group.
3102.29	A change to subheading 3102.29 from any other subheading, except from subheading 3102.21 or 3102.30.
3102.30	A change to subheading 3102.30 from any other subheading.
3102.40	A change to subheading 3102.40 from any other subheading, except from subheading 3102.30.
3102.50	A change to subheading 3102.50 from any other subheading.

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3102.60	A change to subheading 3102.60 from any other subheading, except from subheading 2834.29 or 3102.30.
3102.80	A change to subheading 3102.80 from any other subheading, except from subheading 3102.10 or 3102.30.
3102.90	A change to subheading 3102.90 from any other subheading, except from subheading 3102.10 through 3102.80.
3102.90	A change to calcium cyanamide of subheading 3102.90 from any other subheading or from any other good of subheading 3102.90; or A change to any other good of subheading 3102.90 from calcium cyanamide of subheading 3102.90 or from any other subheading, except from subheading 3102.10 through 3102.80.
3103.11–3103.19	A change to subheading 3103.11 through 3103.19 from any other subheading outside that group.
3103.90	A change to basic slag of subheading 3103.90 from any other good of subheading 3103.90 or from any other subheading; or A change to any other good of subheading 3103.90 from basic slag of subheading 3103.90 or from any other subheading, except from subheading 3103.10.
3104.20–3104.30	A change to subheading 3104.20 through 3104.30 from any other subheading, including another subheading within that group.
3104.90	A change to carnallite, sylvite or other crude natural potassium salts of subheading 3104.90 from any other good of subheading 3104.90 or from any other subheading; or A change to any other good of subheading 3104.90 from any other subheading, except from subheading 3104.20 through 3104.30.
3104.90	A change to subheading 3104.90 from any other subheading, except from subheading 3104.10 through 3104.30.
3105.10	A change to subheading 3105.10 from any other subheading, except from Chapter 31.
3105.20	A change to subheading 3105.20 from any other heading, except from heading 3102 through 3104.
3105.30–3105.40	A change to subheading 3105.30 through 3105.40 from any other subheading, including another subheading within that group.
3105.51–3105.59	A change to subheading 3105.51 through 3105.59 from any other subheading, including another subheading within that group, except from subheading 3102.10 through 3103.90 or 3105.30 through 3105.40.
3105.60	A change to subheading 3105.60 from any other subheading, except from heading 3103 through 3104.
3105.90	A change to subheading 3105.90 from any other chapter, except from subheading 2834.21.
3201.10–3202.90	A change to subheading 3201.10 through 3202.90 from any other subheading, including another subheading within that group, except for a change to subheading 3201.90 from tanning extracts of vegetable origin or tannins and their salts, ethers, esters, and other derivatives, of subheading 2852.90.
3203	A change to heading 3203 from any other heading.
3204.11–3204.17	A change to subheading 3204.11 through 3204.17 from any other subheading, including another subheading within that group.
3204.18–3204.19	A change to subheading 3204.18 through 3204.19 from any other subheading outside that group, except from subheading 3204.11 through 3204.17.
3204.20–3204.90	A change to subheading 3204.20 through 3204.90 from any other subheading, including another subheading within that group.
3205	A change to heading 3205 from any other heading.
3206.11–3206.19	A change to subheading 3206.11 through 3206.19 from any other subheading outside that group.
3206.20–3209.90	A change to pigments and preparations based on cadmium compounds of subheading 3206.49 from any other good of subheading 3206.49 or from any other subheading; or A change to pigments and preparations based on hexacyanoferrates (ferrocyanides and ferricyanides) from any other good of subheading 3206.49 or from any other subheading; or A change to any other good of subheading 3206.49 from pigments and preparations based on cadmium compounds or hexacyanoferrates (ferrocyanides and ferricyanides) of subheading 3206.49 or from any other subheading; or A change to any other good of subheading 3206.20 through 3209.90 from any other subheading, including another subheading within that group.
3210	A change to heading 3210 from any other heading.
3211	A change to heading 3211 from any other heading, except from subheading 3806.20.
3212.10–3212.90	A change to subheading 3212.10 through 3212.90 from any other subheading, including another subheading within that group.
3213	A change to heading 3213 from any other heading.
3214.10–3214.90	A change to subheading 3214.10 through 3214.90 from any other subheading, including another subheading within that group, except from subheading 3824.50.
3215	A change to heading 3215 from any other heading.
3301.12–3301.90	A change to oil of bergamot of subheading 3301.19 from any other good of subheading 3301.19 or from any other subheading; or A change to oil of lime of subheading 3301.19 from any other good of subheading 3301.19 or from any other subheading; or A change to any other good of subheading 3301.19 from oil of bergamot or of lime of subheading 3301.19 or from any other subheading; or A change to oil of geranium of subheading 3301.29 from any other good of subheading 3301.29 or from any other subheading; or A change to oil of jasmin of subheading 3301.29 from any other good of subheading 3301.29 or from any other subheading; or

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	A change to oil of lavender or of lavandin of subheading 3301.29 from any other good of subheading 3301.29 or from any other subheading; or A change to oil of vetiver of subheading 3301.29 from any other good of subheading 3301.29 or from any other subheading; or A change to any other good of subheading 3301.29 from oil of geranium, jasmine, lavender or lavandin, or of vetiver of subheading 3301.29 or from any other subheading; or A change to any other good of subheading 3301.12 through 3301.90 from any other subheading, including another subheading within that group.
3302	A change to heading 3302 from any other heading, except from subheading 2106.90 or heading 2207, 2208, or 3301.
3303	A change to heading 3303 from any other heading, except from subheading 3302.90.
3304.10–3306.10	A change to subheading 3304.10 through 3306.10 from any other subheading, including another subheading within that group.
3306.20	A change to subheading 3306.20 from any other subheading, except from Chapter 54.
3306.90–3307.90	A change to subheading 3306.90 through 3307.90 from any other subheading, including another subheading within that group.
3401	A change to heading 3401 from any other heading.
3402.31–3402.39	A change to subheading 3402.31 through 3402.39 from any other subheading outside that group, except from mixed alkylbenzenes of heading 3817.
3402.41–3402.50	A change to subheading 3402.41 through 3402.50 from any other subheading, including another subheading within that group.
3402.90	A change to subheading 3402.90 from any other heading.
3403.11–3403.19	A change to subheading 3403.11 through 3403.19 from any other subheading, including another subheading within that group, except from heading 2710 or 2712.
3403.91–3403.99	A change to subheading 3403.91 through 3403.99 from any other subheading, including another subheading within that group.
3404.20	A change to subheading 3404.20 from any other subheading.
3404.90	A change to artificial waxes and prepared waxes of chemically modified lignite of subheading 3404.90 from any other good of subheading 3404.90 or from any other subheading; or
3405.10–3405.90	A change to subheading 3405.10 through 3405.90 from any other subheading, including another subheading within that group.
3406–3407	A change to heading 3406 through 3407 from any other heading, including another heading within that group.
3501.10–3501.90	A change to subheading 3501.10 through 3501.90 from any other subheading, including another subheading within that group, except for a change to subheading 3501.90 from caseinates and other casein derivatives or casein glues of subheading 2852.90.
3502.11–3502.19	A change to subheading 3502.11 through 3502.19 from any other subheading outside that group, except from heading 0407.
3502.20–3502.90	A change to subheading 3502.20 through 3502.90 from any other subheading, including another subheading within that group, except for a change to subheading 3502.90 from albumins (including concentrates of two or more whey proteins, containing by weight more than 80 percent whey proteins, calculated on the dry matter), albuminates, and other albumin derivatives of 2852.90.
3503–3504	A change to heading 3503 through 3504 from any other heading, including another heading within that group, except for a change to subheading 3504.00 from peptones and their derivatives or other protein substances and their derivatives or hide powder of 2852.90.
3505.10	A change to subheading 3505.10 from any other subheading.
3505.20	A change to subheading 3505.20 from any other subheading, except from heading 1108.
3506.10	A change to subheading 3506.10 from any other subheading, except from heading 3503 or subheading 3501.90.
3506.91–3506.99	A change to subheading 3506.91 through 3506.99 from any other subheading, including another subheading within that group.
3507	A change to heading 3507 from any other heading.
3601–3606	A change to heading 3601 through 3606 from any other heading, including any other heading within that group.
3701–3703	A change to heading 3701 through 3703 from any other heading outside that group.
3704–3706	A change to heading 3704 through 3706 from any other heading, including another heading within that group.
3707.10–3707.90	A change to subheading 3707.10 through 3707.90 from any other subheading, including another subheading within that group.
3801.10	A change to subheading 3801.10 from any other subheading.
3801.20	A change to subheading 3801.20 from any other subheading, except from heading 2504 or subheading 3801.10.
3801.30	A change to subheading 3801.30 from any other subheading.
3801.90	A change to subheading 3801.90 from any other subheading, except from heading 2504.
3802–3805	A change to heading 3802 through 3805 from any other heading, including another heading within that group.
3806.10–3806.90	A change to subheading 3806.10 through 3806.90 from any other subheading, including another subheading within that group.
3807	A change to heading 3807 from any other heading.
3808.52–3808.59	A change to insecticides from any other subheading, except from vegetable saps or extracts of pyrethrum or of the roots of plants containing rotenone of subheading 1302.19 or from subheading 3808.61 through 3808.91 or from any insecticide classified in Chapter 28 or 29; or A change to fungicides from any other subheading, except from fungicides classified in Chapter 28 or 29 or from subheading 3808.92; or

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	A change to herbicides, anti-sprouting products and plant-growth regulators from any other subheading, except from herbicides, anti-sprouting products and plant-growth regulators classified in Chapter 28 or 29 or from subheading 3808.93; or A change to a mixture of herbicides, anti-sprouting products and plant-growth regulators from any other subheading, provided that the mixture is made from two or more active ingredients and a domestic active ingredient constitutes no less than 40 percent by weight of the total active ingredients; or A change to disinfectants from any other subheading, except from subheading 3808.94; or A change to any other good of subheading 3808.52 through 3808.59 from any other good of subheading 3808.52 through 3808.59 or from any other subheading, except from rodenticides and other pesticides classified in Chapter 28 or 29 or from subheading 3808.99; or A change to a mixture of subheading 3808.52 through 3808.59 from any other subheading outside that group, provided that the mixture is made from two or more active ingredients and a domestic active ingredient constitutes no less than 40 percent by weight of the total active ingredients, except from subheading 3808.99.
3808.61–3808.91	A change to subheading 3808.61 through 3808.91 from any other subheading outside that group, except from vegetable saps or extracts of pyrethrum or of the roots of plants containing rotenone of subheading 1302.19 or from any insecticide classified in Chapter 28 or 29 or subheading 3808.52 through 3808.59.
3808.92	A change to subheading 3808.92 from any other subheading, except from fungicides classified in Chapter 28 or 29, or subheading 3808.52 through 3808.59.
3808.93	A change to subheading 3808.93 from any other subheading, except from herbicides, anti-sprouting products or plant-growth regulators classified in Chapter 28 or 29 or subheading 3808.52 through 3808.59; or A change to a mixture of subheading 3808.93 from any other subheading, provided that the mixture is made from two or more active ingredients and a domestic active ingredient constitutes no less than 40 percent by weight of the total active ingredients.
3808.94	A change to subheading 3808.94 from any other subheading, except from disinfectants of subheading 3808.52 through 3808.59.
3808.99	A change to subheading 3808.99 from any other subheading, except from rodenticides or other pesticides classified in Chapter 28 or 29 or subheading 3808.52 through 3909.59; or A change to a mixture of subheading 3808.99 from any other subheading, provided that the mixture is made from two or more active ingredients and a domestic active ingredient constitutes no less than 40 percent by weight of the total active ingredients, except from rodenticides or other pesticides classified in Chapter 28 or 29 or subheading 3808.52 through 3808.59.
3809.10	A change to subheading 3809.10 from any other subheading, except from subheading 3505.10.
3809.91–3809.93	A change to subheading 3809.91 through 3809.93 from any other subheading, including another subheading within that group.
3808.99	A change to subheading 3808.99 from any other subheading, except from rodenticides or other pesticides classified in chapter 28 or 29 or subheading 3808.50; or A change to a mixture of subheading 3808.99 from any other subheading, provided that the mixture is made from two or more active ingredients and a domestic active ingredient constitutes no less than 40 percent by weight of the total active ingredients, except from rodenticides or other pesticides classified in chapter 28 or 29 or subheading 3808.50.
3810–3816	A change to heading 3810 through 3816 from any other heading, including another heading within that group.
3817	A change to heading 3817 from any other heading, including changes from one product to another within that heading, except from subheading 2902.90.
3818	A change to heading 3818 from any other heading.
3819	A change to heading 3819 from any other heading, except from heading 2710.
3820	A change to heading 3820 from any other heading, except from subheading 2905.31.
3821	A change to heading 3821 from any other heading.
3822	A change to heading 3822 from any other heading, except from subheading 3002.12 through 3002.15, 3502.90, heading 3504, subheading 3822.11 through 3822.12, or subheading 3822.19.
3823.11–3823.13.....	A change to subheading 3823.11 through 3823.13 from any other subheading, including another subheading within that group, except from heading 1520.
3823.19.....	A change to subheading 3823.19 from any other subheading.
3823.70.....	A change to subheading 3823.70 from any other subheading, except from heading 1520.
3824.10.....	A change to subheading 3824.10 from any other subheading, except from heading 3505, subheading 3806.10 or 3806.20, or heading 3903, 3905, 3906, 3909, 3911, or 3913.
3824.30.....	A change to subheading 3824.30 from any other subheading, except from heading 2849.
3824.40.....	A change to subheading 3824.40 from any other subheading.
3824.50.....	A change to subheading 3824.50 from any other subheading, except from subheading 3214.90.
3824.60.....	A change to subheading 3824.60 from any other subheading.
3825.10–3825.69	A change to subheading 3825.10 through 3825.69 from any other chapter, except from Chapter 28 through 38, 40 or 90.
3825.90	A change to subheading 3825.90 from any other subheading, except from subheading 3824.84 through 3824.99, and provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound.

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3826	A change to biodiesel and mixtures, not containing or containing less than 70 percent by weight of petroleum oils or oils obtained from bituminous materials of subheading 3826.00 from naphthenic acids, their water-insoluble salts, or their esters of subheading 3824.99 or any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 3827.11 through 3827.14 or 3827.31 through 3827.90; or
	A change to biodiesel and mixtures, not containing or containing less than 70 percent by weight of petroleum oils or oils obtained from bituminous materials of subheading 3826.00 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound.
3826.00	A change to prepared binders for foundry moulds or cores or chemical products and preparations of the chemical or allied industries of subheading 3826.00 from naphthenic acids, their water-insoluble salts, or their esters of subheading 3826.00 or any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 3824.71, or 3824.73 through 3824.79; or
	A change to prepared binders for foundry moulds or cores or chemical products and preparations of the chemical or allied industries of subheading 3826.00 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound.
3827.11–3827.90	A change to subheading 3827.11 from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 3827.11 or from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound; or
	A change to other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included of subheading 3827.11 from any other good of subheading 3827.11 or from any other subheading, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 2852.90, 3827.12 through 3827.14, 3827.31 through 3827.90, 3824.84 through 3824.99, or 3826.00.
	A change to subheading 3827.20 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens of subheading 3827.12 through 3827.14, or 3827.31 through 3827.90; or
	A change to other mixtures of halogenated hydrocarbons of subheading 3827.12 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 2852.90, 3827.11, 3827.31 through 3827.90, 3824.84 through 3824.99, or 3826.00; or
	A change to other mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens of subheading 3827.12 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens of subheading 3827.20, or 3827.31 through 3827.90; or
	A change to other mixtures of halogenated hydrocarbons of subheading 3827.31 through 3827.39 from any other subheading outside that group, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 2852.90, 3827.11 through 3827.14, 3827.40 through 3827.90, or 3826.00, and except from subheading 3824.84 through 3824.99; or
	A change to other mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens of subheading 3827.12 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens of subheading 3827.13 through 3827.20, or 3827.31 through 3827.90; or
	A change to other mixtures of halogenated hydrocarbons of subheading 3827.31 through 3827.39 from any other subheading outside that group, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 2852.90, 3827.11 through 3827.14, 3827.31 through 3827.90, or 3826.00, and except from subheading 3824.90; or

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	A change to other mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens of subheading 3827.31 through 3827.39 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens of subheading 3827.12 through 3827.20 and 3827.40 through 3827.90; or A change to subheading 3827.13 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 2852.90, 3827.11 through 3827.12, 3827.14, 3827.31 through 3827.39, 3827.40 through 3827.90, 3824.84 through 3824.99, or 3826.00; or A change to subheading 3827.14 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 2852.90, 3827.11 through 3827.13, 3827.31 through 3827.90, 3824.94 through 3824.99, or 3826.00; or A change to subheading 3827.40 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 2852.90, 3827.11 through 3827.14, 3827.31 through 3827.39, 3827.51 through 3827.90, 3824.84 through 3824.99, or 3826.00; or A change to subheading 3827.51 through 3827.69 from any other subheading outside that group, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens of subheading 3827.12 through 3827.40 or 3827.90; or A change to mixtures of halogenated hydrocarbons of subheading 3827.90 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included of subheading 2852.90, 3827.11 through 3827.14, 3827.31 through 3827.69 or 3826.00, and except from subheading 3824.84 through 3824.90; or A change to other mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens of subheading 3827.90 from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other mixtures containing perhalogenated derivatives of acyclic hydrocarbons containing two or more different halogens of subheading 3827.12 through 3827.69; A change to naphthenic acids, their water-insoluble salts or their esters of subheading 3824.99 from any other good of subheading 3824.84 through 3824.99 or from any other subheading; or A change to any other good of subheading 3824.84 through 3824.99 from naphthenic acids, their water-insoluble salts or their esters of subheading 3824.99 or from any other subheading, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound, except from other chemical products or preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included, of subheading 3827.11 through 3827.14, or 3827.31 through 3824.90; or A change to any other good of subheading 3824.81 through 3824.99 from any other subheading, including another subheading within that group, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound; or A change to any other good of subheading 3827.11 through 3827.90 from any other subheading, including another subheading within that group, provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound.
(g)	**Section VII: Chapters 39 through 40**

Chapter 39 Note: The country of origin of goods classified in subheadings 3921.12.15, 3921.13.15, and 3921.90.2550 shall be determined under the provisions of § 102.21.

3901–3915	A change to heading 3901 through 3915 from any other heading, including another heading within that group, except a change to 3907 from other polyethers of subheading 3002.12 through 3002.15, subheading 3822.11 through 3822.12 or subheading 3822.19, provided that the domestic polymer content is no less than 40 percent by weight of the total polymer content.
3916.10–3918.90	A change to subheading 3916.10 through 3918.90 from any other subheading, including another subheading within that group.
3919.10–3919.90	A change to subheading 3919.10 through 3919.90 from any other subheading outside that group.
3920.10–3921.90	A change to other plates, sheets, film, foil or strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials of cellulose or its chemical derivatives, of vulcanized fiber, of subheading 3920.79 from any other good of subheading 3920.79 or from any other subheading; or A change to any other good of subheading 3920.79 from plates, sheets, film, foil or strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials of cellulose or its chemical derivatives, of vulcanized fiber, of subheading 3920.79 or from any other subheading; or

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	A change to any other good of subheading 3920.10 through 3921.90 from any other subheading, including another subheading within that group.
3922–3926	A change to heading 3922 through 3926 from any other subheading, including another heading within that group, except for a change to heading 3926 from articles of apparel and clothing accessories, other articles of plastics, or articles of other materials of headings 3901 to 3914 of heading 9619.
4001.10–4001.22	A change to subheading 4001.10 through 4001.22 from any other subheading, including another subheading within that group.
4001.29	A change to subheading 4001.29 from any other subheading, except from subheading 4001.21 or 4001.22.
4001.30	A change to subheading 4001.30 from any other subheading.
4002.11–4002.70	A change to subheading 4002.11 through 4002.70 from any other subheading, including another subheading within that group.
4002.80–4002.99	A change to subheading 4002.80 through 4002.99 from any other subheading, including another subheading within that group, provided that the domestic rubber content is no less than 40 percent by weight of the total rubber content.
4003–4004	A change to heading 4003 through 4004 from any other heading, including another heading within that group.
4005	A change to heading 4005 from any other heading, except from heading 4001 or 4002.
4006–4010	A change to heading 4006 through 4010 from any other heading, including another heading within that group.
4011.10–4012.90	A change to subheading 4011.10 through 4012.90 from any other subheading, including another subheading within that group.
4013	A change to heading 4013 from any other heading.
4014.10–4014.90	A change to subheading 4014.10 through 4014.90 from any other subheading, including another subheading within that group.
4015	A change to heading 4015 from any other heading.
4016.10–4016.99	A change to subheading 4016.10 through 4016.99 from any other subheading, including another subheading within that group.
4017	A change to heading 4017 from any other heading.
(h)	**Section VIII: Chapters 41 through 43**
4101	A change to hides or skins of heading 4101 which have undergone a tanning (including a pre-tanning) process which is reversible from any other good of heading 4101 or from any other chapter; or A change to any other good of heading 4101 from any other chapter.
4102	A change to hides or skins of heading 4102 which have undergone a tanning (including a pre-tanning) process which is reversible from any other good of heading 4102 or from any other chapter; or A change to any other good of heading 4102 from any other chapter.
4103	A change to hides or skins of heading 4103 which have undergone a tanning (including a pre-tanning) process which is reversible from any other good of heading 4103 or from any other chapter; or A change to any other good of heading 4103 from any other chapter.
4104–4106	A change to heading 4104 through 4106 from any other heading, including another heading within that group, except from hides or skins of heading 4101 through 4103 which have undergone a tanning (including a pre-tanning) process which is reversible, or from heading 4107, 4112 or 4113.
4107	A change to heading 4107 from any other heading except from hides or skins of heading 4101 which have undergone a tanning (including a pre-tanning) process which is reversible, or from heading 4104.
4112	A change to heading 4112 from any other heading except from hides or skins of heading 4102 which have undergone a tanning (including a pre-tanning) process which is reversible, or from heading 4105.
4113	A change to heading 4113 from any other heading except from hides or skins of heading 4103 which have undergone a tanning (including a pre-tanning) process which is reversible, or from heading 4106.
4114.10–4115.20	A change to subheading 4114.10 through 4115.20 from any other subheading, including a subheading within that group.

Chapter 42 Note: The country of origin of goods classified in subheadings 4202.12.40 through 4202.12.89, 4202.22.40 through 4202.22.80, 4202.32.40 through 4202.32.99, 4202.92.05, 4202.92.15 through 4202.92.30, and 4202.92.60 through 4202.92.97 shall be determined under the provisions of § 102.21.

4201	A change to heading 4201 from any other heading.
4202.11	A change to subheading 4202.11 from any other heading.
4202.12–4202.22	A change to subheading 4202.12 through 4202.22 from any other heading, provided that the change does not result from the assembly of foreign cut components.
4202.29	A change to subheading 4202.29 from any other heading.
4202.31–4202.32	A change to subheading 4202.31 through 4202.32 from any other heading, provided that the change does not result from the assembly of foreign cut components.
4202.39	A change to subheading 4202.39 from any other heading.
4202.91–4202.99	A change to subheading 4202.91 through 4202.99 from any other heading, provided that the change does not result from the assembly of foreign cut components.
4203–4206	A change to articles of leather or of composition leather, of a kind used in machinery or mechanical appliances or for other technical uses of heading 4205 from any other good of heading 4205 or from any other heading; or

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	A change to any other good of heading 4205 from articles of leather or of composition leather, of a kind used in machinery or mechanical appliances or for other technical uses of heading 4205 or from any other heading; or
	A change to any other good of heading 4203 through 4206 from any other heading, including another heading within that group.
4301	A change to heading 4301 from any other chapter.
4302.11–4302.20	A change to subheading 4302.11 through 4302.20 from any other heading.
4302.30	A change to subheading 4302.30 from any other subheading, provided that the change does not result from the assembly of foreign cut fur components.
4303–4304	A change to heading 4303 through 4304 from any other heading, including another heading within that group.
(i)	**Section IX: Chapters 44 through 46**
4401–4411	A change to heading 4401 through 4411 from any other heading, including another heading within that group; or
	A change to strips continuously shaped along the ends and also continuously shaped along the edges or faces of heading 4409 from strips continuously shaped only along the edges or faces of heading 4409.
4412	A change to heading 4412 from any other heading, except from plywood of subheading 4418.73 through 4418.79; or
	A change to surface-covered plywood of heading 4412 from any other plywood that is not surface covered or is surface-covered only with a clear or transparent material which does not obscure the grain, texture, or markings of the face ply.
4413–4421	A change to plywood of subheading 4418.71 through 4418.79 from any other good of heading 4418 or from any other heading, except from heading 4412; or
	A change to any other good of subheading 4418.71 through 4418.79 from plywood of subheading 4418.71 through 4418.79 or from any other heading; or
	A change to any other good of heading 4413 through 4421 from any other heading, including another heading within that group.
4441–4421	A change to plywood of subheading 4418.73 through 4418.79 from any other good of heading 4418 or from any other heading, except from heading 4412; or
	A change to any other good of subheading 4418.73 through 4418.79 from plywood of subheading 4418.73 through 4418.79 or from any other heading; or
	A change to any other good of heading 4413 through 4421 from any other heading, including another heading within that group.
4501	A change to heading 4501 from any other heading.
4502	A change to heading 4502 from any other heading, except from heading 4501.
4503–4504	A change to heading 4503 through 4504 from any other heading, including another heading within that group.
4601.21–4601.99	A change to subheading 4601.21 through 4601.29 from any subheading outside that group; or
	A change to subheading 4601.92 through 4601.94 from any subheading outside that group; or
	A change to subheading 4601.99 from any other subheading.
4602	A change to heading 4602 from any other heading.
(j)	**Section X: Chapters 47 through 49**
4701–4702	A change to heading 4701 through 4702 from any other heading, including another heading within that group.
4703.11–4704.29	A change to subheading 4703.11 through 4704.29 from any other subheading, including another subheading within that group.
4705–4707	A change to heading 4705 through 4707 from any other heading, including another heading within that group.
4801–4807	A change to heading 4801 through 4807 from any other heading, including another heading within that group.
4808.10	A change to subheading 4808.10 from any other heading.
4808.40	A change to subheading 4808.40 from any other heading, except from heading 4804.
4808.90	A change to subheading 4808.90 from any other chapter.
4809	A change to heading 4809 from any other heading.
4810	A change to heading 4810 from any other heading.
4811	A change to paper or paperboard in strips or rolls of a width not exceeding 15 cm of heading 4811 from strips or rolls of a width exceeding 15 cm of heading 4811 or any other heading, except from heading 4817 through 4823;
	A change to paper or paperboard in rectangular (including square) sheets with the larger dimension not exceeding 36 cm or the other dimension not exceeding 15 cm in the unfolded state of heading 4811 from strips or rolls of a width exceeding 15 cm of heading 4811, paper or paperboard in rectangular (including square) sheets with the larger dimension exceeding 36 cm and the other dimension exceeding 15 cm in the unfolded state of heading 4811 or any other heading, except from heading 4817 through 4823; or
	A change to any other good of heading 4811 from any other chapter.
4812–4814	A change to heading 4812 through 4814 from any other heading, including another heading within that group.
4816	A change to heading 4816 from any other heading, except from heading 4809.

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4817–4822	A change to heading 4817 through 4822 from any other heading, including another heading within that group, except for a change to heading 4818 from sanitary towels and tampons, napkin and napkin liners for babies, and similar sanitary articles, of paper pulp, paper, cellulose wadding, or webs of cellulose fibers, of heading 9619.
4823.20–4823.40	A change to subheading 4823.20 through 4823.40 from any other chapter.
4823.61–4823.70	A change to subheading 4823.61 through 4823.69 from any subheading outside that group; or A change to any other good of subheading 4823.61 through 4823.70 from any other subheading, including another subheading within that group.
4823.90	A change to floor coverings on a base of paper or of paperboard, whether or not cut to size, from any other good of subheading 4823.90 or from any other subheading; or A change to self-adhesive paper, in strips or rolls, from any other good of subheading 4823.90 or from any other subheading; or A change to other gummed or adhesive paper, in strips or rolls, from any other good of subheading 4823.90 or from any other subheading; or A change to cards not punched and for punchcard machines from any other chapter; or A change to any other good of subheading 4823.90 from floor covering on base paper or of paperboard, self-adhesive paper, other gummed or adhesive paper, or from cards not punched and for punchcard machines of subheading 4823.90, or from any other subheading.
4901–4908	A change to heading 4901 through 4908 from any other heading, including another heading within that group.
4909	A change to heading 4909 from any other heading, except from heading 4911 when the change is a result of adding text.
4910–4911	A change to heading 4910 through 4911 from any other heading, including another heading within that group.
(k)	**Section XII: Chapters 64 through 67**
Chapter 64 Note: For purposes of this chapter, the term ''formed uppers'' means uppers, with closed bottoms, which have been shaped by lasting, molding, or otherwise but not by simply closing at the bottom. The country of origin of goods classified in subheadings 6405.20.60, 6406.10.77, 6406.10.90, and 6406.90.15 will be determined under the provisions of § 102.21.	
6401–6405	A change to heading 6401 through 6405 from any other heading outside that group, except from formed uppers.
6406.10	A change to subheading 6406.10 from any other subheading.
6406.20–6406.90	A change to subheading 6406.20 through 6406.90 from any other chapter.
Chapter 65 Note: The country of origin of goods classified in subheading 6505.00, other than hairnets, will be determined under the provisions of § 102.21.	
6505.00	A change to hair-nets of subheading 6505.00 from any other subheading.
6506	A change to heading 6506 from any other heading, except from heading 6501 through 6502; or A change to heading 6506 from heading 6501 by means of a blocking process; or A change to heading 6506 from heading 6502, provided that the change is the result of at least three processing steps (e.g. dyeing, blocking, trimming, or adding a sweatband).
6507	A change to heading 6507 from any other heading.
6602	A change to heading 6602 from any other heading.
6603.20	A change to subheading 6603.20 from any other heading; or A change to subheading 6603.20 from subheading 6603.90, except when that change is pursuant to General Rule of Interpretation 2(a).
6603.90	A change to subheading 6603.90 from any other heading.
6701	A change to heading 6701 from any other heading; or A change to articles of feather or down of heading 6701 from feathers or down.
6702–6704	A change to heading 6702 through 6704 from any other heading, including another heading within that group.
(l)	**Section XIII: Chapters 68 through 70**
6801–6808	A change to heading 6801 through 6808 from any other heading, including another heading within that group.
6809.11	A change to subheading 6809.11 from any other heading.
6809.19	A change to subheading 6809.19 from any other heading.
6809.90	A change to subheading 6809.90 from any other subheading.
6810.11–6810.19.	A change to subheading 6810.11 through 6810.19 from any other heading.
6810.91	A change to subheading 6810.91 from any other subheading.
6810.99	A change to subheading 6810.99 from any other heading.
6811.40	A change to subheading 6811.40 from any other heading.
6811.81	A change to subheading 6811.81 from any other heading.
6811.82	A change to subheading 6811.82 from any other heading.
6811.89	A change to subheading 6811.89 from any other heading.
6812.80	A change to clothing, clothing accessories, footwear or headgear of subheading 6812.80 or from any other good of subheading 6812.80 or from any other subheading, except from subheading 6812.91; or A change to paper, millboard or felt of subheading 6812.80 from any other subheading or from any other good of subheading 6812.80, except from compressed asbestos fiber jointing of subheading 6812.80 or from subheading 6812.99; or A change to compressed asbestos fiber jointing, in sheets or rolls, of subheading 6812.80 from any other subheading or from any other good of subheading 6812.80, except from paper, millboard or felt of subheading 6812.80 or from subheading 6812.99; or

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	A change to other fabricated asbestos fibers, mixtures with a basis of asbestos and magnesium carbonate, or to articles of such mixtures or of asbestos, whether or not reinforced, other than goods of heading 6811 or 6813 from any other heading; or A change to yarn or thread of subheading 6812.80 from any other subheading including from any other good of subheading 6812.80; or A change to cords or string, whether or not plaited, of subheading 6812.80 from any other subheading or from any other good of subheading 6812.80, except from yarn or thread of subheading 6812.80; or A change to woven or knitted fabric of subheading 6812.80 from any other subheading including from any other good of subheading 6812.80.
6812.91	A change to subheading 6812.91 from any other subheading, except from other clothing, clothing accessories or headgear of subheading 6812.80.
6813	A change to heading 6813 from any other heading.
6814.10	A change to subheading 6814.10 from any other heading.
6814.90	A change to subheading 6814.90 from any other heading.
6815.11–6815.19	A change to subheading 6815.11 through 6815.19 from any other subheading outside that group.
6815.20–6815.99	A change to subheading 6815.20 through 6815.99 from any other subheading.
6901–6914	A change to heading 6901 through 6914 from any other chapter.
Chapter 70 Note: The country of origin of goods classified in subheadings 7019.13.15 and 7019.13.28 shall be determined under the provisions of § 102.21.	
7001	A change to heading 7001 from any other heading.
7002	A change to heading 7002 from any other heading.
7003–7006	A change to heading 7003 through 7006 from any other heading outside that group.
7007	A change to heading 7007 from any other heading.
7008	A change to heading 7008 from any other heading.
7009.10	A change to subheading 7009.10 from any other subheading.
7009.91–7009.92	A change to subheading 7009.91 through 7009.92 from any other heading.
7010	A change to heading 7010 from any other heading.
7011	A change to heading 7011 from any other heading, except from subheading 7003.30.
7013–7018	A change to heading 7013 through 7018 from any other heading, including another heading within that group; or A change from uncut and unpolished glassware blanks classified in heading 7013 to cut and polished glassware classified in heading 7013, provided that there has been a substantial amount of both cutting and polishing operations in a single country.
7019.11–7019.13	A change to subheading 7019.11 through 7019.13 from any other heading.
7019.11–7019.19	A change to subheading 7019.11 through 7019.19 from any other heading.
7019.14–7019.19	A change to subheading 7019.14 through 7019.19 from any other subheading outside that group, except subheading 7019.71.
7019.61	A change to subheading 7019.61 from any other subheading, except subheading 7019.72 through 7019.73.
7019.62	A change to subheading 7019.62 from any other subheading, except subheading 7019.69 or subheading 7019.72 through 7019.90.
7019.63–7019.66	A change to subheading 7019.63 through 7019.66 from any other subheading outside that group, except subheading 7019.61, 7019.62, 7019.69, 7019.72 through 7019.73, 7019.80, and 7019.90.
7019.69	A change to subheading 7019.69 from any other subheading, except subheading 7019.62 or subheading 7019.72 through 7019.90.
7019.71	A change to subheading 7019.71 from any other subheading, except subheading 7019.14 through 7019.19.
7019.72–7019.73	A change to subheading 7019.72 through 7019.73 from any other subheading outside that group, except subheading 7019.61 through 7019.69, subheading 7019.80 and subheading 7019.90.
7019.80	A change to glass wool and articles of glass wool of subheading 7019.80 from any other heading; or A change to subheading 7019.80 from any other subheading, except subheading 7019.61, 7019.62, 7019.63, 7019.64, 7019.65, 7019.66, 7019.69, 7019.72, 7019.73, and 7019.90.
7019.90	A change to subheading 7019.90 from any other heading; or A change to subheading 7019.90 from any other subheading, except from glass wool and articles of glass wool of subheading 7019.80 or subheading 7019.61, 7019.62, 7019.63, 7019.64, 7019.65, 7019.66, 7019.69, 7019.72, and 7019.73.
7020	A change to glass inners for vacuum flasks or for other vacuum vessels of heading 7020 from any other good of heading 7020 or from any other heading; or A change to any other good of heading 7020 from any other heading, except from heading 7010 through 7018.
(m)	**Section XIV: Chapter 71**
7101	A change to heading 7101 from any other heading, except from heading 0307.
7102–7103	A change to heading 7102 through 7103 from any other chapter.
7104–7105	A change to heading 7104 through 7105 from any other heading, including another heading within that group.
7106	A change to heading 7106 from any other chapter.
7107	A change to heading 7107 from any other chapter, except from Chapter 72 through 76 or Chapter 78 through 83.
7108	A change to heading 7108 from any other chapter.
7109	A change to heading 7109 from any other chapter, except from Chapter 72 through 76 or Chapter 78 through 83.

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7110	A change to heading 7110 from any other chapter.
7111	A change to heading 7111 from any other chapter, except from Chapter 72 through 76 or Chapter 78 through 83.
7112	A change to heading 7112 from any other heading.
7113.11–7115.90	A change to subheading 7113.11 through 7115.90 from any other subheading, including another subheading within that group.
7116	A change to heading 7116 from any other heading, except that pearls strung but without the addition of clasps or other ornamental features of precious metals or stones, shall have the origin of the pearls.
7117–7118	A change to heading 7117 through 7118 from any other heading, including another heading within that group.
(n)	**Section XV: Chapters 72 through 83**
Chapter 72 Note: Notwithstanding the specific rules of this chapter, hot-rolled flat-rolled steel which is cold-reduced (by cold rolling) shall be treated as a good of the country in which the cold-rolled steel is produced.	
7201–7206	A change to heading 7201 through 7206 from any other heading, including another heading within that group.
7207	A change to heading 7207 from any other heading, except from heading 7206.
7208	A change to heading 7208 from any other heading.
7209	A change to heading 7209 from any other heading, except from heading 7208 or 7211.
7210	A change to heading 7210 from any other heading, except from heading 7208 through 7212.
7211	A change to heading 7211 from any other heading, except from heading 7208 through 7209.
7212	A change to heading 7212 from any other heading, except from heading 7208 through 7211.
7213	A change to heading 7213 from any other heading.
7214	A change to heading 7214 from any other heading, except from heading 7213.
7215	A change to heading 7215 from any other heading, except from heading 7213 through 7214.
7216	A change to heading 7216 from any other heading, except from heading 7208 through 7215.
7217	A change to heading 7217 from any other heading, except from heading 7213 through 7215.
7218	A change to heading 7218 from any other heading.
7219–7220	A change to heading 7219 through 7220 from any other heading outside that group.
7221–7222	A change to heading 7221 through 7222 from any other heading outside that group.
7223	A change to heading 7223 from any other heading, except from heading 7221 through 7222.
7224	A change to heading 7224 from any other heading.
7225–7226	A change to heading 7225 through 7226 from any other heading outside that group.
7227–7228	A change to heading 7227 through 7228 from any other heading outside that group.
7229	A change to heading 7229 from any other heading, except from heading 7227 through 7228.
7301–7307	A change to heading 7301 through 7307 from any other heading, including another heading within that group, or a change within heading 7307 from fitting forgings or flange forgings to fittings or flanges made ready for commercial use by: (a) At least one of the following processes: (1) Beveling; (2) Threading of the bore; (3) Center or step boring; and (b) At least two of the following processes: (1) Heat treating; (2) Recoining or resizing; (3) Taper boring; (4) Machining ends or surfaces other than a gasket face; (5) Drilling bolt holes; or (6) Burring or shot blasting.
7308	A change to heading 7308 from any other heading, except for changes resulting from the following processes performed on angles, shapes, or sections classified in heading 7216: (a) drilling, punching, notching, cutting, cambering, or sweeping, whether performed individually or in combination; (b) adding attachments or weldments for composite construction; (c) adding attachments for handling purposes; (d) adding weldments, connectors or attachments to H-sections or I-sections; provided that the maximum dimension of the weldments, connectors, or attachments is not greater than the dimension between the inner surfaces of the flanges of the H-sections or I-sections; (e) painting, galvanizing, or otherwise coating; or (f) adding a simple base plate without stiffening elements, individually or in combination with drilling, punching, notching, or cutting, to create an article suitable as a column.
7309–7314	A change to heading 7309 through 7314 from any other heading, including another heading within that group.
7315.11–7315.12	A change to subheading 7315.11 through 7315.12 from any other heading; or A change to subheading 7315.11 through 7315.12 from subheading 7315.19 or 7315.90, except when that change is pursuant to General Rule of Interpretation 2(a).
7315.19	A change to subheading 7315.19 from any other subheading.
7315.20–7315.89	A change to subheading 7315.20 through 7315.89 from any other heading; or A change to subheading 7315.20 through 7315.89 from subheading 7315.90, except when that change is pursuant to General Rule of Interpretation 2(a).
7315.90	A change to subheading 7315.90 from any other subheading.
7316	A change to heading 7316 from any other heading, except from heading 7312 or 7315.

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7317–7318	A change to heading 7317 through 7318 from any other heading, including another heading within that group.
7319	A change to heading 7319 from any other heading.
7320	A change to heading 7320 from any other heading.
7321.11–7321.89	A change to subheading 7321.11 through 7321.89 from any other heading; or A change to subheading 7321.11 through 7321.89 from subheading 7321.90, except when that change is pursuant to General Rule of Interpretation 2(a).
7321.90	A change to subheading 7321.90 from any other heading.
7322–7323	A change to heading 7322 through 7323 from any other heading, including another heading within that group.
7324.10–7324.29	A change to subheading 7324.10 through 7324.29 from any other subheading, including another subheading within that group.
7324.90	A change to subheading 7324.90 from any other subheading.
7325–7326	A change to heading 7325 through 7326 from any other heading, including another heading within that group.
7401–7407	A change to heading 7401 through 7407 from any other heading, including another heading within that group.
7408	A change to heading 7408 from any other heading, except from heading 7407.
7409	A change to heading 7409 from any other heading.
7410	A change to heading 7410 from any other heading, except from plate, sheet, or strip classified in heading 7409 of a thickness less than 5mm.
7411–7418	A change to cooking or heating apparatus of a kind used for domestic purposes, non-electric and parts thereof, of copper, of subheading 7418.10 from any other good of subheading 7418.10 or from any other subheading; or A change to any other good of subheading 7418.10 from cooking or heating apparatus of a kind used for domestic purposes, non-electric and parts thereof, of copper, of subheading 7418.10 or from any other subheading; or A change to any other good of heading 7411 through 7418 from any other heading, including another heading within that group.
7419.20–7419.80	A change to cloth, grill or netting of copper wire or to expanded metal of copper of subheading 7419.80 from any other good of subheading 7419.80 or from any other subheading; or A change to any other good of subheading 7419.80 from cloth, grill or netting of copper wire or expanded metal of copper of subheading 7419.80; or A change to copper springs of subheading 7419.80 from any other good of subheading 7419.80 or from any other subheading; or A change to any other good of subheading 7419.80 from copper springs of subheading 7419.80; or A change to any other good of subheading 7419.20 through 7419.80 from any other subheading, including another subheading within that group.
7501	A change to heading 7501 from any other heading.
7502	A change to heading 7502 from any other heading.
7503	A change to heading 7503 from any other heading.
7504	A change to heading 7504 from any other heading.
7505	A change to heading 7505 from any other heading.
7506	A change to heading 7506 from any other heading; or A change to foil, not exceeding 0.15 mm in thickness, from any other good of heading 7506, provided that there has been a reduction in thickness of no less than 50 percent.
7507.11–7508.90	A change to subheading 7507.11 through 7508.90 from any other subheading, including another subheading within that group.
7601–7604	A change to heading 7601 through 7604 from any other heading, including another heading within that group.
7605	A change to heading 7605 from any other heading, except from heading 7604.
7606–7615	A change to heading 7606 through 7615 from any other heading, including another heading within that group.
7616.10–7616.99	A change to subheading 7616.10 through 7616.99 from any other subheading, including another subheading within that group.
7801–7802	A change to heading 7801 through 7802 from any other heading, including another heading within that group.
7804.11–7804.20	A change to subheading 7804.11 through 7804.20 from any other subheading, including another subheading within that group; or A change to any of the following goods classified in subheading 7804.11 through 7804.20, including from materials also classified in subheading 7804.11 through 7804.20: powder except from flakes; flakes except from powder; plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate.
7806	A change to any of the following goods classified in heading 7806 from materials also classified in heading 7806: tubes except from pipes; pipes except from tubes; tube or pipe fittings except from tubes or pipes; cables/stranded wire/plaited bands; or A change to lead bars, rods, profiles, or wire of heading 7806 from any other good of heading 7806 or from any other heading; or A change to any other good of heading 7806 from lead bars, rods, profiles, or wire of heading 7806 or from any other heading.

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7901–7905	A change to any of the following goods classified in heading 7901 through 7905, including from materials also classified in heading 7901 through 7905: Matte; unwrought; powder, except from flakes; flakes except from powder; bars except from rods or profiles; rods except from bars or profiles; profiles except from rods or bars; wire except from rod; plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate; foil except from sheet or strip; or A change to any other good of heading 7901 through 7905 from any other heading, including another heading within that group.
7907	A change to any of the following goods classified in heading 7907 from materials also classified in heading 7907: tubes except from pipes; pipes except from tubes; tube or pipe fittings except from tubes or pipes; or A change to tubes, pipes and tube or pipe fittings of heading 7907 from any other good of heading 7907; or A change to any other good of heading 7907 from tubes, pipes or tube or pipe fittings of heading 7907 or from any other heading.
8001	A change to heading 8001 from any other heading.
8002–8003	A change to any of the following goods classified in heading 8002 through 8003, from materials also classified in heading 8002 through 8003: Bars except from rods or profiles; rods except from bars or profiles; profiles except from rods or bars; wire except from rod; or A change to heading 8002 through 8003 from any other heading, including another heading within that group.
8007	A change to any of the following goods classified in heading 8007 from other materials also classified in heading 8007: Tubes except from pipes; pipes except from tubes; tube or pipe fittings except from tubes or pipes; cables/stranded wire/ plaited bands; plates except from sheets or strip; sheets except from plate or strip; strip except from sheet or plate; or A change to any of the following goods classified in heading 8007 from other materials also classified in heading 8007: foil from powder or flakes; powder from foil; flakes from foil; or A change to foil, powder or flakes from any other good of heading 8007 or from any other heading; or A change to plates, sheet or strip from any other good of heading 8007 or from any other heading; or A change to any other good of heading 8007 from plates, sheet, strip, foil, powder or flakes of heading 8007 or from any other heading.
Chapter 81 Note: Waste and scrap are products of the country in which they are collected.	
8101.10–8101.94	A change to subheading 8101.10 through 8101.94 from any other subheading, including another subheading within that group; or A change to any of the following goods classified in subheading 8101.10 through 8101.94 from materials also classified in subheading 8101.10 through 8101.94: Matte; unwrought.
8101.96	A change to subheading 8101.96 from any other subheading, except from bars and rods, other than those obtained by simple sintering, profiles, plates, sheets, strip or foil of subheading 8101.99.
8101.99	A change to any of the following goods classified in subheading 8101.99, including from materials also classified in subheading 8101.99: Tubes except from pipes; pipes except from tube; tube or pipe fittings except from tubes or pipes; cables/stranded wire/ plaited bands; bars, other than those obtained simply by sintering, except from rods, other than those obtained simply by sintering, or profiles; rods, other than those obtained simply by sintering, except from bars, other than those obtained simply by sintering, or profiles; profiles except from rods or bars, other than those obtained simply by sintering; plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate; foil except from sheet or strip; or A change to any other good of subheading 8101.99 from bars or rods, other than those obtained simply by sintering, profiles, plates, sheet, strip or foil or from any other subheading.
8102.10–8102.95	A change to subheading 8102.10 through 8102.95 from any other subheading, including another subheading within that group; or A change to any of the following goods classified in subheading 8102.10 through 8102.95, including from materials also classified in subheading 8102.10 through 8102.95: Matte; unwrought; bars except from rods or profiles; rods except from bars or profiles; profiles except from rods or bars; plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate; foil except from sheet or strip.
8102.96	A change to subheading 8102.96 from any other subheading, except from subheading 8102.95.
8102.99	A change to subheading 8102.99 from any other subheading.
8103.20–8113.00	A change to germanium of subheading 8112.92 through 8112.99 from any other good of subheading 8112.31 through 8112.49, 8112.92 through 8112.99 or from any other subheading; or A change to vanadium of subheading 8112.92 through 8112.99 from any other good of subheading 8112.31 through 8112.49, 8112.92 through 8112.99 or from any other subheading; or A change to any other good of subheading 8112.92 through 8112.99 from germanium or vanadium of subheading 8112.92 through 8112.99 or from any other subheading; or A change to any other good of subheading 8112.31 through 8112.49 from germanium or vanadium of subheading 8112.92 through 8112.99 or from any other subheading; or A change to any of the following goods classified in subheading 8103.20 through 8113.00, including from materials also classified in subheading 8103.20 through 8113.00: Matte; unwrought; powder except from flakes; flakes except from powder; bars except from rods or profiles; rods except from bars or profiles; profiles except from rods or bars; wire except from rod; plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate; foil except from sheet or strip; tubes except from pipes; pipes except from tubes; tube or pipe fittings except from tubes or pipes; cables/stranded wire/plaited bands; or A change to any other good of subheading 8103.20 through 8113.00 from any other subheading, including another subheading within that group.

HTSUS	Tariff shift and/or other requirements
8201.10–8202.40	A change to subheading 8201.10 through 8202.40 from any other subheading, including another subheading within that group.
8202.91	A change to subheading 8202.91 from any other subheading, except from subheading 8202.99.
8202.99	A change to subheading 8202.99 from any other heading.
8203.10–8207.90	A change to subheading 8203.10 through 8207.90 from any other subheading, including another subheading within that group.
8208–8215	A change to heading 8208 through 8215 from any other heading, including another heading within that group.
8301.10–8301.50	A change to subheading 8301.10 through 8301.50 from any other subheading, including another subheading within that group, except from subheading 8301.60 when that change is pursuant to General Rule of Interpretation 2(a).
8301.60–8301.70	A change to subheading 8301.60 through 8301.70 from any other chapter.
8302.10–8302.60	A change to subheading 8302.10 through 8302.60 from any other subheading, including another subheading within that group.
8303–8304	A change to heading 8303 through 8304 from any other heading, including another heading within that group.
8305.10–8305.90	A change to subheading 8305.10 through 8305.90 from any other subheading, including another subheading within that group.
8306–8307	A change to heading 8306 through 8307 from any other heading, including another heading within that group.
8308.10–8308.90	A change to subheading 8308.10 through 8308.90 from any other subheading, including another subheading within that group.
8309–8310	A change to heading 8309 through 8310 from any other heading, including another heading within that group.
8311.10–8311.90	A change to subheading 8311.10 through 8311.90 from any other subheading, including another subheading within that group.
(o)	**Section XVI: Chapters 84 through 85**
8401.10	A change to subheading 8401.10 from any other subheading.
8401.20	A change to subheading 8401.20 from any other subheading; or A change to completed machinery and apparatus classified in subheading 8401.20 from parts classified in subheading 8401.20.
8401.30	A change to subheading 8401.30 from any other subheading.
8401.40	A change to subheading 8401.40 from any other heading.
8402.11–8402.12	A change to subheading 8402.11 through 8402.12 from any other subheading outside that group.
8402.19–8402.20	A change to subheading 8402.19 through 8402.20 from any other subheading, including another subheading within that group.
8402.90	A change to subheading 8402.90 from any other heading, except from heading 7303, 7304, 7305, or 7306 unless the change from these headings involves bending to shape.
8403.10	A change to subheading 8403.10 from any other subheading.
8403.90	A change to subheading 8403.90 from any other heading.
8404.10–8404.20	A change to subheading 8404.10 through 8404.20 from any other subheading, including another subheading within that group.
8404.90	A change to subheading 8404.90 from any other heading.
8405.10	A change to subheading 8405.10 from any other subheading.
8405.90	A change to subheading 8405.90 from any other heading.
8406.10	A change to subheading 8406.10 from any other subheading.
8406.81–8406.82	A change to subheading 8406.81 through 8406.82 from any other subheading outside that group.
8406.90	A change to subheading 8406.90 from any other heading.
8407	A change to heading 8407 from any other heading.
8408	A change to heading 8408 from any other heading.
8409.10	A change to subheading 8409.10 from any other heading.
8409.91–8409.99	A change to subheading 8409.91 through 8409.99 from any other heading, except a change resulting from a simple assembly.
8410.11–8410.13	A change to subheading 8410.11 through 8410.13 from any other subheading outside that group.
8410.90	A change to subheading 8410.90 from any other heading.
8411.11–8411.82	A change to subheading 8411.11 through 8411.82 from any other subheading outside that group.
8411.91–8411.99	A change to subheading 8411.91 through 8411.99 from any other heading.
8412.10–8412.80	A change to subheading 8412.10 through 8412.80 from any other subheading, including another subheading within that group.
8412.90	A change to subheading 8412.90 from any other heading.
8413.11–8413.82	A change to subheading 8413.11 through 8413.82 from any other subheading, including another subheading within that group.
8413.91	A change to subheading 8413.91 from any other heading.
8413.92	A change to subheading 8413.92 from any other heading.
8414.10–8414.80	A change to subheading 8414.10 through 8414.80 from any other subheading, including another subheading within that group.
8414.90	A change to subheading 8414.90 from any other heading.
8415.10–8415.83	A change to subheading 8415.10 through 8415.83 from any subheading, including another subheading within that group, except a change within that group resulting from a simple assembly.
8415.90	A change to subheading 8415.90 from any other subheading, except from heading 7411, 7608, 8414, 8501, or 8535 through 8537 when resulting from a simple assembly.
8416.10–8416.30	A change to subheading 8416.10 through 8416.30 from any other subheading, including another subheading within that group.

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8416.90	A change to subheading 8416.90 from any other heading.
8417.10–8417.80	A change to subheading 8417.10 through 8417.80 from any other subheading, including another subheading within that group.
8417.90	A change to subheading 8417.90 from any other heading.
8418.10–8418.91	A change to absorption-type electrical refrigerators of subheading 8418.29 from any other good of subheading 8418.29 or from any other subheading; or A change to any other good of subheading 8418.29 from absorption-type electrical refrigerators of subheading 8418.29 or from any other subheading; or A change to heat pumps of subheading 8418.61 from any other subheading, except from compression type units whose condensers are heat exchangers of subheading 8418.69; or A change to compression type units of subheading 8418.69 from any other subheading, except from heat pumps of subheading 8418.61 or from any other good of subheading 8418.69; or A change to other refrigerating or freezing equipment of subheading 8418.69 from any other subheading, except from heat pumps of subheading 8418.61; or A change to any other good of subheading 8418.69 from compression type units of subheading 8418.69 or from any other subheading; or A change to any other good of subheading 8418.10 through 8418.91 from any other subheading, including another subheading within that group.
8418.99	A change to subheading 8418.99 from any other heading, except from heading 7303, 7304, 7305, or 7306 unless the change from these headings involves bending to shape.
8419.11–8419.89	A change to subheading 8419.11 through 8419.89 from any other subheading, including another subheading within that group.
8419.90	A change to subheading 8419.90 from any other heading, except from heading 7303, 7304, 7305, or 7306 unless the change from these headings involves bending to shape, and except from heading 8501 when resulting from a simple assembly.
8420.10	A change to subheading 8420.10 from any other subheading.
8420.91	A change to subheading 8420.91 from any other heading.
8420.99	A change to subheading 8420.99 from any other heading, except from heading 8501 when resulting from a simple assembly.
8421.11–8421.39	A change to subheading 8421.11 through 8421.39 from any other subheading, including another subheading within that group.
8421.91	A change to subheading 8421.91 from any other heading.
8421.99	A change to subheading 8421.99 from any other heading.
8422.11–8422.40	A change to subheading 8422.11 through 8422.40 from any other subheading, including another subheading within that group.
8422.90	A change to subheading 8422.90 from any other heading, except from heading 8501 when resulting from a simple assembly.
8423.10–8423.89	A change to subheading 8423.10 through 8423.89 from any other subheading, including another subheading within that group.
8423.90	A change to subheading 8423.90 from any other heading.
8424.10–8424.89	A change to subheading 8424.10 through 8424.89 from any other subheading, including another subheading within that group.
8424.90	A change to subheading 8424.90 from any other heading, except from subheading 8414.40 or 8414.80.
8425.11–8430.69	A change to pit-head winding gears or to winches specially designed for use underground of subheading 8425.31 through 8425.39 from any other good of subheading 8425.31 through 8425.39 or from any other subheading; or A change to any other good of subheading 8425.31 through 8425.39 from pit-head winding gears or to winches specially designed for use underground of subheading 8425.31 through 8425.39 from any other good of subheading 8425.31 through 8425.39 or from any other subheading; or A change to mine wagon pushers, locomotive or wagon traversers, wagon tippers and similar railway wagon handling equipment of subheading 8428.90 from any other good of subheading 8428.90 or from any other subheading; or A change to any other good of subheading 8428.90 from mine wagon pushers, locomotive or wagon traversers, wagon tippers and similar railway wagon handing equipment of subheading 8428.90 or from any other subheading; or A change to any other good of subheading 8425.11 through 8430.69 from any other subheading, including another subheading within that group, except for a change to subheading 8428.90 from passenger boarding bridges of subheadings 8479.71 or 8479.79.
8431	A change to heading 8431 from any other heading, except from heading 8501 when resulting from a simple assembly.
8432.10–8432.80	A change to subheading 8432.10 through 8432.80 from any other subheading, including another subheading within that group.
8432.90	A change to subheading 8432.90 from any other heading.
8433.11–8433.60	A change to subheading 8433.11 through 8433.60 from any other subheading, including another subheading within that group.
8433.90	A change to subheading 8433.90 from any other heading, except from heading 8407 or 8408 when resulting from a simple assembly.
8434.10–8434.20	A change to subheading 8434.10 through 8434.20 from any other subheading, including another subheading within that group.
8434.90	A change to subheading 8434.90 from any other heading, except from heading 8501 when resulting from a simple assembly.
8435.10	A change to subheading 8435.10 from any other subheading.

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8435.90	A change to subheading 8435.90 from any other heading, except from heading 8501 when resulting from a simple assembly.
8436.10–8436.80	A change to subheading 8436.10 through 8436.80 from any other subheading, including another subheading within that group.
8436.91	A change to subheading 8436.91 from any other heading.
8436.99	A change to subheading 8436.99 from any other heading, except from heading 8407, 8408, or 8501 when resulting from a simple assembly.
8437.10–8437.80	A change to subheading 8437.10 through 8437.80 from any other subheading, including another subheading within that group.
8437.90	A change to subheading 8437.90 from any other heading, except from heading 8407, 8408, or 8501 when resulting from a simple assembly.
8438.10–8438.80	A change to subheading 8438.10 through 8438.80 from any other subheading, including another subheading within that group.
8438.90	A change to subheading 8438.90 from any other heading, except from heading 8407, 8408, or 8501 when resulting from a simple assembly.
8439.10–8439.30	A change to subheading 8439.10 through 8439.30 from any other subheading, including another subheading within that group.
8439.91	A change to subheading 8439.91 from any other heading, except from heading 8407, 8408, or 8501 when resulting from a simple assembly.
8439.99	A change to subheading 8439.99 from any other heading, except from heading 8407, 8408, or 8501 when resulting from a simple assembly.
8440.10	A change to subheading 8440.10 from any other subheading.
8440.90	A change to subheading 8440.90 from any other heading, except from heading 8407, 8408, or 8501 when resulting from a simple assembly.
8441.10–8441.80	A change to subheading 8441.10 through 8441.80 from any other subheading, including another subheading within that group.
8441.90	A change to subheading 8441.90 from any other heading, except from heading 8407, 8408, or 8501 when resulting from a simple assembly.
8442.30	A change to subheading 8442.30 from any other subheading.
8442.40	A change to subheading 8442.40 from any other heading, except from heading 8501 when resulting from a simple assembly.
8442.50	A change to subheading 8442.50 from any other heading.
8443.11–8443.39	A change to printing machinery of subheading 8443.11 through 8443.19 from any other subheading outside that group, except from machines for uses ancillary to printing of subheading 8443.91; or A change to printer units of ADP machines of subheading 8443.31 through 8443.32 from any other good of subheading 8443.31 through 8443.32 or from any other subheading, except from parts and accessories suitable for use solely or principally with the machines of subheading 8443.31 through 8443.32 of subheading 8443.99 when that change is the result of simple assembly, or from subheading 8504.90 or heading 8473, when that change is the result of simple assembly, and except from other units of ADP machines of subheading 8517.62 through 8517.69 or heading 8528, or from subheading 8471.60 through 8472.90; or A change to facsimile machines of subheading 8443.31 through 8443.32 from any other good of subheading 8443.31 through 8443.32 or from any other subheading, except from teleprinters of subheading 8443.32, or from subheading 8443.99 or 8517.70 when the change is the result of a simple assembly, or from subheading 8517.11 through 8517.69; or A change to teleprinters of subheading 8443.32 from any other good of subheading 8443.32 or from any other subheading, except from facsimile machines of subheading 8443.31 through 8443.32, and except from subheading 8443.99 or 8517.70 when the change is the result of a simple assembly , or from subheading 8517.11 through 8517.69; or A change to printing machines of subheading 8443.39 from any other subheading, except from subheading 8443.11 through 8443.39, or from machines for uses ancillary to printing of subheading 8443.91; or A change to electrostatic photocopying apparatus of subheading 8443.39 from any other good of subheading 8443.39 or from any other subheading; or A change to other photocopying apparatus of subheading 8443.39 from any other good of subheading 8443.39 or from any other subheading; or A change to thermo-copying apparatus of subheading 8443.39 from any other good of subheading 8443.39 or from any other subheading.
8443.91	A change to machines for uses ancillary to printing from any other good of subheading 8443.91 or from any other subheading, except subheading 8443.11 through 8443.19; or A change to any other good from any other heading, except from heading 8501 when resulting from a simple assembly.
8443.99	A change to accessory or auxiliary machines which are intended for attachment to an electrostatic photocopier and which do not operate independently of such photocopier from any other good of subheading 8443.99, provided that change is not the result of a simple assembly, or from any other subheading, except from subheading 8443.31 through 8443.32, 8471.60 through 8472.90, 8504.90 or from heading 8473 or from other units of ADP machines of subheading 8517.62 through 8517.69 or heading 8528 when that change is the result of a simple assembly; or A change to parts or accessories of printers of subheading 8443.31 or 8443.32 from any other heading except from heading 8414, 8501, 8504, 8534, 8541, or 8542 when resulting from a simple assembly, or from heading 8473 or subheading 8517.70; or A change to parts of facsimile machines from any other good of subheading 8443.99 or from any other subheading, except from parts for teleprinters, including teletypewriters, of subheading 8443.99 or from heading 8517; or

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	A change to parts for teleprinters, including teletypewriters, from any other good of subheading 8443.99 or any other subheading, except from parts of facsimile machines of subheading 8443.99 or from heading 8517; or A change to parts or accessories of photocopying apparatus incorporating an optical system or of the contact type or to thermocopying apparatus from any other good of subheading 8443.99 or from any other subheading.
8444	A change to heading 8444 from any other heading.
8445.11–8447.90	A change to subheading 8445.11 through 8447.90 from any other subheading outside that group.
8448.11–8448.19	A change to subheading 8448.11 through 8448.19 from any other subheading, including another subheading within that group.
8448.20–8448.59	A change to subheading 8448.20 through 8448.59 from any other heading, except from heading 8501 when resulting from a simple assembly.
8449	A change to heading 8449 from any other heading.
8450.11–8450.20	A change to subheading 8450.11 through 8450.20 from any other subheading, including another subheading within that group.
8450.90	A change to subheading 8450.90 from any other heading, except from heading 8501 when resulting from a simple assembly.
8451.10–8451.80	A change to subheading 8451.10 through 8451.80 from any other subheading, including another subheading within that group.
8451.90	A change to subheading 8451.90 from any other heading, except from heading 8501 when resulting from a simple assembly.
8452.10–8452.29	A change to subheading 8452.10 through 8452.29 from any other subheading outside that group.
8452.30	A change to subheading 8452.30 from any other subheading.
8452.90	A change to goods of subheading 8452.90, other than a change to furniture, bases and covers for sewing machines, and parts thereof, from any other heading, except from heading 8501 when resulting from a simple assembly; or A change to furniture, bases and covers for sewing machines, and parts thereof from any other good of 8452.90 or from any other subheading
8453.10–8453.80	A change to subheading 8453.10 through 8453.80 from any other subheading, including another subheading within that group.
8453.90	A change to subheading 8453.90 from any other heading, except from heading 8501 when resulting from a simple assembly.
8454.10–8454.30	A change to subheading 8454.10 through 8454.30 from any other subheading, including another subheading within that group.
8454.90	A change to subheading 8454.90 from any other heading.
8455.10–8455.22	A change to subheading 8455.10 through 8455.22 from any other subheading, including another subheading within that group.
8455.30	A change to subheading 8455.30 from any other heading.
8455.90	A change to subheading 8455.90 from any other heading, except from heading 8501 when resulting from a simple assembly.
8456.11–8456.90	A change to subheading 8456.11 through 8456.90 from any other heading, other than a change to water-jet cutting machines of subheading 8456.50, except from machine-tools for dry-etching patterns on semiconductor materials of subheading 8486.20; or A change to water-jet cutting machines of subheading 8456.50 from any other good of subheading 8456.40 or from any other subheading, except from subheading 8479.89 or from subheading 8486.10 through 8486.40.
8457.10	A change to subheading 8457.10 from any other heading, except from heading 8458 through 8465 when resulting from a simple assembly.
8457.20–8465.99	A change to subheading 8457.20 through 8465.99 from any other heading, including another heading within that group.
8466.10–8466.94	A change to subheading 8466.10 through 8466.94, other than a change to parts of water-jet cutting machines of subheading 8466.93, from any other heading outside that group, except from heading 8501 when resulting from a simple assembly; or A change to parts of water-jet cutting machines of subheading 8466.93 from any other good of heading 8466 or from any other heading, except from heading 8479 or from heading 8501 when resulting from a simple assembly.
8467.11–8467.89	A change to subheading 8467.11 through 8467.89 from any other subheading, including another subheading within that group.
8467.91–8467.99	A change to subheading 8467.91 through 8467.99 from any other heading, except from heading 8407, or except from heading 8501 when resulting from a simple assembly.
8468.10–8468.80	A change to subheading 8468.10 through 8468.80 from any other subheading, including another subheading within that group.
8468.90	A change to subheading 8468.90 from any other heading.
8470.10–8471.50	A change to accounting machines of subheading 8470.90 from any other good of subheading 8470.90, provided that the change is not the result of a simple assembly; or A change to any other good of subheading 8470.90 from accounting machines of subheading 8470.90, provided that the change is not the result of a simple assembly; or A change to analog or hybrid automatic data processing machines of subheading 8471.30 through 8471.50 from any other good of subheading 8471.30 through 8471.50, provided that the change is not the result of a simple assembly; or A change to any other good of subheading 8471.30 through 8471.50 from analog or hybrid automatic data processing machines of subheading 8471.30 through 8471.50, provided that the change is not the result of a simple assembly; or

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	A change to subheading 8470.10 through 8471.50 from any subheading within that group or from heading 8473, provided that the change is not the result of a simple assembly; or A change to subheading 8470.10 through 8471.50 from any other subheading outside that group, except from heading 8473.
8471.60–8472.90	A change to addressing machines or address plate embossing machines of subheading 8472.90 from any other good of subheading 8472.90, provided that the change is not the result of simple assembly; or A change to any other good of subheading 8472.90 from addressing machines and address plate embossing machines of subheading 8472.90, provided that the change is not the result of simple assembly; or A change to subheading 8471.60 through 8472.90 from any other subheading outside that group, except from subheading 8504.40 or from heading 8473; or A change to subheading 8471.60 through 8472.90 from any other subheading within that group or from subheading 8504.90 or from heading 8473, provided that the change is not the result of simple assembly; or A change to word-processing machines of subheading 8472.90 from any other good of heading 8472 or from any other subheading, except from automatic typewriters of heading 8472; or A change to automatic typewriters of subheading 8472.90 from any other good of heading 8472 or from any other subheading, except from word-processing machines of heading 8472; or A change to other electric typewriters of subheading 8472.90 from any other good of heading 8472 or from any other subheading, except from other non-electric typewriters of heading 8472; or A change to other non-electric typewriters of subheading 8472.90 from any other good of heading 8472 or from any other subheading, except from other electric typewriters of heading 8472.
8473	A change to heading 8473 from any other heading, except from heading 8414, 8501, 8504, 8534, 8541, or 8542 when resulting from a simple assembly.
8474.10–8474.80	A change to subheading 8474.10 through 8474.80 from any other subheading outside that group, except from heading 8501; or A change to subheading 8474.10 through 8474.80 from any other subheading within that group or from heading 8501, provided that the change is not the result of a simple assembly.
8474.90	A change to subheading 8474.90 from any other heading, except from heading 8501 when resulting from a simple assembly.
8475.10	A change to subheading 8475.10 from any other subheading.
8475.21–8475.29	A change to subheading 8475.21 through 8475.29 from any other subheading outside that group.
8475.90	A change to subheading 8475.90 from any other heading, except from heading 8501 when resulting from a simple assembly.
8476.21–8476.89	A change to subheading 8476.21 through 8476.89 from any other subheading outside that group.
8476.90	A change to subheading 8476.90 from any other heading, except from heading 8501 when resulting from a simple assembly.
8477.10–8477.80	A change to subheading 8477.10 through 8477.80 from any other subheading, including another subheading within that group.
8477.90	A change to subheading 8477.90 from any other heading, except from heading 8501 when resulting from a simple assembly.
8478.10	A change to subheading 8478.10 from any other subheading.
8478.90	A change to subheading 8478.90 from any other heading, except from heading 8501 when resulting from a simple assembly.
8479.10–8479.89	A change to subheading 8479.10 through 8479.89, other than a change to passenger boarding bridges of subheading 8479.71 or 8479.79, from any other subheading, including another subheading within that group, except from subheading 8486.10 through 8486.40 and except for a change to 8479.89 from water-jet cutting machines of 8456.50; or A change to passenger boarding bridges of subheading 8479.71 or 8479.79 from any other subheading.
8479.90	A change to subheading 8479.90 from any other heading, except from heading 8501 when resulting from a simple assembly and except from parts of water-jet cutting machines of heading 8466.
8480	A change to heading 8480 from any other heading.
8481.10–8481.80	A change to subheading 8481.10 through 8481.80 from any other heading, or from subheading 8481.90 except when resulting from a simple assembly.
8481.90	A change to subheading 8481.90 from any other heading.
8482.10–8482.80	A change to subheading 8482.10 through 8482.80 from any other heading; or A change to subheading 8482.10 through 8482.80 from any other subheading, including another subheading within that group, except from inner or outer races or rings classified in subheading 8482.99.05, 8482.99.15, or 8482.99.25.
8482.91–8482.99	A change to subheading 8482.91 through 8482.99 from any other heading.
8483.10	A change to subheading 8483.10 from any other subheading.
8483.20	A change to subheading 8483.20 from any other subheading, except from subheading 8482.10 through 8482.80.
8483.30–8483.60	A change to subheading 8483.30 through 8483.60 from any other subheading, including another subheading within that group.
8483.90	A change to subheading 8483.90 from any other heading.
8484.10–8484.90	A change to subheading 8484.10 through 8484.90 from any other subheading, including another subheading within that group.
8485.10–8485.90	A change to subheading 8485.10 from any other subheading except from subheading 8486.10 through 8486.40 and from water-jet cutting machines of subheading 8456.90; A change to subheading 8485.20 from any other subheading;

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8486.10–8486.40	A change to subheading 8485.30 from any other subheading except from subheading 8475.21 through 8475.29, from 8486.10 through 8486.40, from water-jet cutting machines of subheading 8456.90, and from heading 8501, where such change from heading 8501 is the result of simple assembly; A change to subheading 8485.80 from any other subheading except from subheading 8486.10 through 8486.40 and from water-jet cutting machines of subheading 8456.90; and A change to subheading 8485.90 from any other subheading, except from parts of water-jet cutting machines of heading 8466 and except from heading 8501 when resulting from a simple assembly. A change to other machine-tools for working any material by removal of material, by electro-chemical, electron beam, ionic-beam or plasma arc process of subheading 8486.10 from any other good of subheading 8486.10 or from any other subheading, except from other machine-tools for working any material by removal of material, by electro-chemical, electron beam, ionic-beam or plasma arc process of subheading 8486.40, or from subheading 8456.50 to 8456.90; or A change to sawing machines of subheading 8486.10 from any other good of subheading 8486.10 or from any other subheading, except from subheading 8464.10; or A change to steam or sand blasting machines and similar jet projecting machines of subheading 8486.20 from any other good of subheading 8486.20 or from any other subheading, except from steam or sand blasting machines and similar jet projecting machines of subheading 8424.30 or 8486.40; or A change to ion implanters designed for doping semiconductor materials of subheading 8486.20 from any other good of subheading 8486.20 or from any other subheading, except from ion implanters designed for doping semiconductor materials of subheading 8543.10; or A change to other machine-tools for dry-etching patterns on semiconductor materials of subheading 8486.20 from any other good of subheading 8486.20 or from any other subheading, except from heading 8456; or A change to direct write-on-wafer apparatus of subheading 8486.20 from any other good of subheading 8486.20 or from any other subheading, except from step or repeat aligners or other apparatus for the projection or drawing of circuit patterns on sensitized semiconductor materials of subheading 8486.20 or from subheading 9010.50; or A change to step aligners of subheading 8486.20 from any other good of subheading 8486.20 or from any other subheading, except from direct write-on-wafer apparatus, repeat aligners, or other apparatus for the projection or drawing of circuit patterns on sensitized semiconductor materials of subheading 8486.20 or from subheading 9010.50; or A change to repeat aligners of subheading 8486.20 from any other good of subheading 8486.20 or from any other subheading, except from direct write-on-wafer apparatus, step aligners, or other apparatus for the projection or drawing of circuit patterns on sensitized semiconductor materials of subheading 8486.20 or from subheading 9010.50; or A change to other apparatus for the projection or drawing of circuit patterns on sensitized semiconductor materials of subheading 8486.20 from any other good of subheading 8486.20 or from any other subheading, except from direct write-on-wafer apparatus, step or repeat aligners of subheading 8486.20 or from subheading 9010.50; or A change to centrifuges of subheading 8486.10 through 8486.20 from any other good of subheading 8486.10 through 8486.20 or from any other subheading, except from subheading 8421.19; or A change to machine-tools operated by laser or other light or photon beam process of subheading 8486.10 through 8486.20 from any other good of subheading 8486.10 through 8486.20 or from any other subheading, except from subheading 8456.11 to 8456.12; or A change to grinding or polishing machines of subheading 8486.10 through 8486.20 from any other good of subheading 8486.10 through 8486.20 or from any other subheading, except from subheading 8464.20; or A change to other electrical machines or apparatus, having individual functions, of subheading 8486.10 through 8486.20 from any other good of subheading 8486.10 through 8486.20 or from any other subheading, except from other electrical machines or apparatus of subheading 8486.10 through 8486.20, 8486.90, 8543.70, 8542.31 through 8542.39, and except from proximity cards or tags of subheading 8523.52; or A change to other furnaces or ovens of subheading 8486.10 through 8486.20 from any other good of subheading 8486.10 through 8486.20 or from any other subheading, except from subheading 8514.30; or A change to other machine-tools for working stone, ceramics or like mineral materials or for cold working glass of subheading 8486.10 through 8486.30 from any other good of subheading 8486.10 through 8486.30 or from any other subheading, except from other machine-tools for working stone, ceramics or like mineral materials or for cold working glass of subheading 8486.10 through 8486.30, or from subheading 8464.90; or A change to other mechanical appliances for projecting, dispersing or spraying liquids or powders of subheading 8486.10 through 8486.30 from any other good of subheading 8486.10 through 8486.30 or from any other subheading, except from subheading 8424.89; or A change to steam or sand blasting machines or similar jet projecting machines of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading, except from steam or sand blasting machines and similar jet projecting machines of subheading 8424.30 or 8486.20; or A change to pneumatic elevators or conveyors of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading, except from subheading 8428.20; or A change to other belt type continuous-action elevators or conveyors for goods or materials of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading, except from subheading 8428.33; or

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	A change to other continuous-action elevators or conveyors for goods or materials of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading, except from subheading 8428.39; or A change to other lifting, handling, loading or unloading machinery of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading, except from subheading 8428.90; or A change to other machine-tools for working any material by removal of material, by electro-chemical, electron beam, ionic-beam or plasma arc process of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading, except from other machine-tools for working any material by removal of material, by electro-chemical, electron beam, ionic-beam or plasma arc process of subheading 8486.10, or from subheading 8456.40, 8456.50 or 8456.90; or A change to numerically controlled bending, folding, straightening or flattening machines of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading, except from subheading 8462.21; or A change to other bending, folding, straightening or flattening machines of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading, except from subheading 8462.29; or A change to other machines for working hard materials of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading, except from subheading 8465.99; or A change to injection-molding machines of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading except from subheading 8477.10; or A change to vacuum molding machines or other thermoforming machines of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading, except from subheading 8477.40; or A change to other machinery for molding or otherwise forming of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading, except from subheading 8477.59; or A change to parts of welding machines or of electric machines and apparatus for hot spraying of metals or cermets of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading, except from subheading 8515.90; or A change to pattern generating apparatus designed to produce masks or reticles from photoresist coated substrates of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading, except from subheading 9017.20; or A change to die attach apparatus, tape automated bonders or wire bonders for assembly of semiconductors of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading, except from subheading 8515.11 through 8515.80; or A change to deflash machines for cleaning and removing contaminants from the metal leads of semiconductor packages prior to the electroplating process (deflash by chemical bath) of subheading 8486.40 from any other good of subheading 8486.40 or from any other subheading, except from subheading 8465.99; or A change to other machines or mechanical appliances of subheading 8486.10 through 8486.40 from any other good of subheading 8486.10 through 8486.40 or from any other subheading, except from other machines or mechanical appliances of subheading 8486.10 through 8486.40, 8479.89, 8508.11 through 8508.19 or 8508.60.
8486.90	A change to parts or accessories of drawing, marking-out or mathematical calculating instruments or to instruments for measuring length, for use in the hand, of subheading 8486.90 from any other good of subheading 8486.90 or from any other subheading, except from heading 9017; or A change to parts or accessories of apparatus for the projection or drawing of circuit patterns on sensitized semiconductor materials or of other apparatus or equipment for photographic laboratories or negatoscopes of subheading 8486.90 from any other good of subheading 8486.90 or from any other subheading, except from heading 9010; or A change to parts of electrical machines or apparatus, having individual functions, of subheading 8486.90 from any other good of subheading 8486.90 or from any other subheading, except from heading 8543; or A change to parts of machinery for working rubber or plastics or for the manufacture of products from these materials of subheading 8486.90 from any other good of subheading 8486.90 or from any other subheading, except from other parts of machinery for working rubber or plastics or for the manufacture of products from these materials of subheading 8486.90, or from subheading 8477.90, and except from heading 8501 when resulting from a simple assembly; or A change to tool holders or to self-opening dieheads of subheading 8486.90 from any other good of subheading 8486.90 or from any other subheading, except from subheading 8466.10 through 8466.94, work holders, dividing heads or other special attachments of subheading 8486.90, and except from heading 8501 when resulting from simple assembly; or A change to work holders of subheading 8486.90 from any other good of subheading 8486.90, except from tool holders, dividing heads or other special attachments of subheading 8486.90, or from any other subheading, except from subheading 8466.10 through 8466.94, and except from heading 8501 when resulting from simple assembly; or A change to dividing heads or to other special attachments for machine-tools of subheading 8486.90 from any other good of subheading 8486.90, except from tool holders or work holders of subheading 8486.90, or from any other subheading, except from subheading 8466.10 through 8466.94, and except from heading 8501 when resulting from simple assembly; or A change to parts or accessories for machine-tools for working stone, ceramics, concrete, asbestos-cement or like minerals or for cold working glass of subheading 8486.90 from any other good of subheading 8486.90, except from parts or accessories of:

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	• Machine-tools for working any material by the removal of material, by laser or other light or photon beam, ultrasonic, electro-discharge, electro-chemical, electron beam, ionic-beam or plasma arc processes, or • Machine-tools for drilling, boring, milling, threading or tapping by removing metal, or for deburring, sharpening, grinding, honing, lapping, polishing or otherwise finishing metal or cermets by means of grinding stones, abrasives or polishing products, or • Machine-tools for planing, shaping, slotting, broaching, gear cutting, gear grinding or gear finishing, sawing, cutting-off, or for working by removing metal or cermets, or • Machine-tools for working metal by bending, folding, straightening, flattening sheathing, punching or notching (including presses), or • Machine-tools for working metal or cermets, without removing material, or • Machine-tools for working wood, cork, bone, hard rubber, hard plastics or similar hard materials (including machines for nailing, stapling, gluing or otherwise assembling), or • Machine-tools for working metal by forging, hammering or die forging (including presses), or • Machining centers, unit construction machines (single station) or multi-station transfer machines for working metal, or • Lathes (including turning centers), for removing metal, or • Presses for metal or working metal carbides, of subheading 8486.90, or a change from any other subheading, except from subheading 8466.10 through 8466.94, and except from heading 8501 when resulting from simple assembly; or A change to parts or accessories of machine-tools (including machines for nailing, stapling, gluing or otherwise assembling) for working wood, cork, bone, hard rubber, hard plastics or similar hard materials of subheading 8486.90 from any other good of subheading 8486.90, except from parts or accessories of: • Machine-tools for working any material by the removal of material, by laser or other light or photon beam, ultrasonic, electro-discharge, electro-chemical, electron beam, ionic-beam or plasma arc processes, or • Machine-tools for drilling, boring, milling, threading or tapping by removing metal, or • Machine-tools for deburring, sharpening, grinding, honing, lapping, polishing or otherwise finishing metal or cermets by means of grinding stones, abrasives or polishing products, or • Machine-tools for planing, shaping, slotting, broaching, gear cutting, gear grinding or gear finishing, sawing, cutting-off, or for working by removing metal or cermets, or • Machine-tools for working metal by forging, hammering or die forging (including presses), or • Machine-tools for working metal by bending, folding, straightening, flattening sheathing, punching or notching (including presses), or • Machine-tools for working metal or cermets, without removing material, or • Machine-tools for working stone, ceramics, concrete, asbestos-cement or like minerals or for cold working glass, or • Machining centers, unit construction machines (single station) or multi-station transfer machines for working metal, or • Lathes (including turning centers), for removing metal, or of presses for working metal or metal carbides, of subheading 8486.90, or a change from any other subheading, except from subheading 8466.10 through 8466.94, and except from heading 8501 when resulting from simple assembly; or A change to parts or accessories of machine-tools for working any material by the removal of material, by laser or other light or photon beam, ultrasonic, electro-discharge, electro-chemical, electron beam, ionic-beam or plasma arc processes, or for drilling, boring, milling, threading or tapping by removing metal, or for deburring, sharpening, grinding, honing, lapping, polishing or otherwise finishing metal or cermets by means of grinding stones, abrasives or polishing products, or for planing, shaping, slotting, broaching, gear cutting, gear grinding or gear finishing, sawing, cutting-off, or for working by removing metal or cermets, or to parts and accessories of machining centers, unit construction machines (single station) or multi-station transfer machines for working metal, or of lathes (including turning centers), for removing metal, of subheading 8486.90 from any other good of subheading 8486.90 except from parts or accessories of: • Machine-tools for working metal by forging, hammering or die forging, or • Machine-tools for working metal by bending, folding, straightening, flattening sheathing, punching or notching (including presses), or • Machine-tools for working metal or cermets, without removing material, or • Machine-tools for working stone, ceramics, concrete, asbestos-cement or like minerals or for cold working glass, or for working wood, cork, bone, hard rubber, hard plastics or similar hard materials (including machines for nailing, stapling, gluing or otherwise assembling), or • Presses for working metal or metal carbides, of subheading 8486.90, or a change from any other subheading, except from subheading 8466.10 through 8466.94, and except from heading 8501 when resulting from simple assembly; or A change to parts or accessories of machine-tools (including presses) for working metal by forging, hammering or die forging, or for working metal by bending, folding, straightening, flattening, sheathing, punching or notching (including presses), or for working metal or cermets, without removing material or to parts or accessories of presses for working metal carbide of subheading 8486.90 from any other good of subheading 8486.90, except from parts or accessories of: • Machine-tools for working any material by the removal of material, by laser or other light or photon beam, ultrasonic, electro-discharge, electro-chemical, electron beam, ionic-beam or plasma arc processes, or • Machine-tools for drilling, boring, milling, threading or tapping by removing metal, or • Machine-tools for deburring, sharpening, grinding, honing, lapping, polishing or otherwise finishing metal or cermets by means of grinding stones, abrasives or polishing products, or

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	• Machine-tools for planing, shaping, slotting, broaching, gear cutting, gear grinding or gear finishing, sawing, cutting-off, or • Machine-tools for working by removing metal or cermets, or • Machine-tools for working stone, ceramics, concrete, asbestos-cement or like minerals or for cold working glass, or • Machine-tools for working wood, cork, bone, hard rubber, hard plastics or similar hard materials (including machines for nailing, stapling, gluing or otherwise assembling), or • Machining centers, unit construction machines (single station) or multi-station transfer machines for working metal, or • Lathes (including turning centers), for removing metal, of subheading 8486.90, or a change from any other subheading, except from subheading 8466.10 through 8466.94, and except from heading 8501 when resulting from simple assembly; or A change to parts suitable for use solely or principally with lifting, handling, loading or unloading machinery from any other good of subheading 8486.90 or from any other subheading, except from subheading 8431.39 and except from heading 8501 when resulting from simple assembly.
8487	A change to heading 8487 from any other heading.
8501	A change to heading 8501 from any other heading.
8502	A change to heading 8502 from any other heading.
8503	A change to heading 8503 from any other heading.
8504.10–8504.50	A change to subheading 8504.10 through 8504.50 from any other subheading outside that group.
8504.90	A change to subheading 8504.90 from any other heading.
8505.11–8505.20	A change to subheading 8505.11 through 8505.20 from any other subheading, including another subheading within that group.
8505.90	A change to electro-magnetic lifting heads of subheading 8505.90 from any other subheading or from any other good of subheading 8505.90; or A change to any other good of subheading 8505.90 from any other heading.
8506.10	A change to subheading 8506.10 from any other subheading; or A change to a primary cell or battery of maganese dioxide of an external volume not exceeding 300 cm^3 of subheading 8506.10 from any other good of subheading 8506.10; or A change to a primary cell or battery of maganese dioxide of an external volume exceeding 300 cm^3 of subheading 8506.10 from any other good of subheading 8506.10.
8506.30	A change to subheading 8506.30 from any other subheading; or A change to a primary cell or battery of mercuric oxide of an external volume not exceeding 300 cm^3 of subheading 8506.30 from any other good of subheading 8506.30; or A change to a primary cell or battery of mercuric oxide of an external volume exceeding 300 cm^3 of subheading 8506.30 from any other good of subheading 8506.30.
8506.40	A change to subheading 8506.40 from any other subheading; or A change to a primary cell or battery of silver oxide of an external volume not exceeding 300 cm^3 of subheading 8506.40 from any other good of subheading 8506.40; or A change to a primary cell or battery of silver oxide of an external volume exceeding 300 cm^3 of subheading 8506.40 from any other good of subheading 8506.40.
8506.50–8506.80	A change to subheading 8506.50 through 8506.80 from any other subheading outside that group; or A change to a primary cell or battery of an external volume not exceeding 300 cm^3 of subheading 8506.50 through 8506.80 from any other good of subheading 8506.50 through 8506.80; or A change to a primary cell or battery of an external volume exceeding 300 cm^3 of subheading 8506.50 through 8506.80 from any other good of subheading 8506.50 through 8506.80.
8506.90	A change to subheading 8506.90 from any other heading.
8507.10–8507.80	A change to subheading 8507.10 through 8507.80 from any other subheading, including another subheading within that group, except for a change to subheading 8507.80 from subheading 8507.50 or 8507.60.
8507.90	A change to subheading 8507.90 from any other heading.
8508.11–8508.60	A change to subheading 8508.11 through 8508.60 from any other subheading, including another subheading within that group.
8508.70	A change to subheading 8508.70 from any other heading, except from heading 8501 when resulting from simple assembly.
8509.40–8509.80	A change to floor polishers or to kitchen waste disposers of subheading 8509.80 from any other good of subheading 8509.80 or from any other subheading; or A change to any other good of subheading 8509.80 from floor polishers or from kitchen waste disposers of subheading 8509.80 or from any other subheading; or A change to any other good of subheading 8509.40 through 8509.80 from any other subheading, including another subheading within that group.
8509.90	A change to subheading 8509.90 from any other heading, except from heading 8501 when resulting from a simple assembly.
8510.10–8510.30	A change to subheading 8510.10 through 8510.30 from any other subheading, including another subheading within that group.
8510.90	A change to subheading 8510.90 from any other heading, except from heading 8501 when resulting from a simple assembly.
8511.10–8511.80	A change to subheading 8511.10 through 8511.80 from any other subheading, including another subheading within that group.
8511.90	A change to subheading 8511.90 from any other heading.
8512.10–8512.30	A change to subheading 8512.10 through 8512.30 from any other subheading outside that group.
8512.40	A change to subheading 8512.40 from any other subheading, except from subheading 8512.90 or heading 8501 when resulting from a simple assembly.
8512.90	A change to subheading 8512.90 from any other heading.

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8513.10	A change to subheading 8513.10 from any other subheading.
8513.90	A change to subheading 8513.90 from any other heading.
8514.10–8514.40	A change to subheading 8514.10 through 8514.40 from any other subheading, including another subheading within that group.
8514.90	A change to subheading 8514.90 from any other heading.
8515.11–8515.80	A change to subheading 8515.11 through 8515.80 from any other subheading outside that group.
8515.90	A change to subheading 8515.90 from any other heading.
8516.10–8516.79	A change to subheading 8516.10 through 8516.79 from any other subheading, including another subheading within that group.
8516.80	A change to subheading 8516.80 from any other heading.
8516.90	A change to subheading 8516.90 from any other heading.
8517.11–8517.69	A change to subheading 8517.13 through 8517.14 from any other subheading, except from other transceivers, other transmission apparatus or other transmission apparatus incorporating reception apparatus for radiotelephony or radiotelegraphy of subheading 8517.61 through 8517.69, or 8525.50 through 8525.60; or A change to other transmission apparatus for radiotelephony or radiotelegraphy or to other transmission apparatus incorporating reception apparatus for radiotelephony or radiotelegraphy of subheading 8517.61 through 8517.69 from any other good of subheading 8517.61 through 8517.69 or from any other subheading, except from subheading 8517.13 through 8517.14, or 8525.50 through 8525.60; or A change to other units of automatic data processing machines of subheading 8517.62 through 8517.69 from any other good of subheading 8517.62 through 8517.69 or from any other subheading, except from subheading 8504.90 or from heading 8473 or subheading 8517.71 or 8517.79 when the change is the result of simple assembly; or A change to reception apparatus for radiotelephony or radiotelegraphy of subheading 8517.69 from any other good of subheading 8517.69 or from any other subheading, except from subheading 8527.99, or A change to any other good of subheading 8517.11 through 8517.69 from any other subheading outside that group, except from facsimile machines or teleprinters of subheading 8443.31 through 8443.32, and except from subheading 8443.99 or 8517.71 through 8517.79 when that change is the result of simple assembly.
8517.71–8517.79	A change to parts or accessories of the machines of heading 8471 not incorporating a cathode ray tube from any other good of heading subheading 8517.71 or 8517.79 or from any other subheading, except from heading 8414, 8501, 8504, 8534, 8541, or 8542 when resulting from a simple assembly, and except from heading 8473 or subheading 8443.99; or A change to antennas or antenna reflectors of a kind suitable for use with apparatus for radiotelephony or radiotelegraphy or to other parts suitable for use solely or principally with apparatus for radiotelephony or radiotelegraphy from any other good of subheading 8517.71 and 8517.79 or from any other subheading, except from heading 8529; or A change to any other good of subheading 8517.71 through 8517.79 from parts or accessories of the machines of heading 8471 not incorporating a cathode ray tube, or from antennas or antenna reflectors of a kind suitable for use with apparatus for radiotelephony or radiotelegraphy, or from other parts suitable for use solely or principally with the apparatus for radiotelephony or radiotelegraphy of subheading 8517.71 through 8517.79, or from any other heading.
8518.10–8518.50	A change to subheading 8518.10 through 8518.50 from any other heading.
8518.90	A change to subheading 8518.90 from any other heading.
8519.20–8519.30	A change to coin-or disc-operated record-players of subheading 8519.20 from any other subheading or from any other good of subheading 8519.20; or A change to turntables (record-decks) of subheading 8519.30 from any other subheading or from other turntables of subheading 8519.30; or A change to any other good of subheading 8519.20 through 8519.30 from any other subheading, including another subheading within that group.
8519.81	A change to transcribing machines from any other subheading or from any other good of subheading 8519.81; or A change to pocket-size cassette-players from any other subheading or from any other goods of subheading 8519.81, except from other cassette-type sound reproducing apparatus; or A change to other cassette-type sound reproducing apparatus from any other subheading or from any other goods of subheading 8519.81, except from pocket-size cassette players; or A change to digital audio type magnetic tape recorders incorporating sound reproducing apparatus from any other subheading or from any other good of subheading 8519.81, except from other cassette-type magnetic tape recorders incorporating sound reproducing apparatus of subheading 8519.81; or A change to other cassette-type magnetic tape recorders incorporating sound reproducing apparatus from any other subheading or from any other good of subheading 8519.81, except from digital audio type magnetic tape recorders incorporating sound reproducing apparatus of subheading 8519.81; or A change to any other good of subheading 8519.81 from any other subheading or from any other good of subheading 8519.81.
8519.89	A change to other sound reproducing apparatus from any other subheading or from any other good of subheading 8519.89, except from other sound reproducing apparatus of subheading 8519.89; or A change to any other good of subheading 8519.89 from any other good of subheading 8519.89 or from any other subheading.
8521.10–8521.90	A change to subheading 8521.10 through 8521.90 from any other subheading, including another subheading within that group.

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8522	A change to heading 8522 from any other heading.
8523	A change to cards incorporating an electronic integrated circuit (''smart'' cards) of subheading 8523.52 from any other subheading; or A change to proximity tags of subheading 8523.52 from any other subheading or from any other good of heading 8523, except from subheading 8543.70; or A change to prepared unrecorded media for sound recording or similar recording or other phenomena, other than products of chapter 37, from records, tapes and other recorded media for sound or other similarly recorded phenomena, excluding products of chapter 37, or from any other heading; or A change to records, tapes and other recorded media for sound or other similarly recorded phenomenon, excluding products of chapter 37, from prepared unrecorded media for sound recording or similar recoding or other phenomena, other than products of chapter 37.
8524.11–8524.99	A change to subheading 8524.11 from any other subheading; A change to subheading 8524.12 through 8524.19 from any other heading; A change to subheading 8524.91 from any other subheading; A change from subheading 8524.92 through 8524.99 from any other heading.
8525.50–8525.60	A change to subheading 8525.50 through 8525.60 from any other subheading outside that group, except from subheading 8517.12, and 8517.61 through 8517.69.
8525.81–8525.89	A change to subheading 8525.81 through 8525.89 from any other subheading or from any other good of subheading 8525.81 through 8525.89, except a change to video camera recorders from television cameras.
8526.10–8526.92	A change to subheading 8526.10 through 8526.92 from any other subheading, including another subheading within that group.
8527.12–8527.13	A change to subheading 8527.12 through 8527.13 from any other subheading outside that group.
8527.19–8527.99	A change to other radio broadcast receivers of subheading 8527.99 from any other good of subheading 8527.99 or from any other subheading; or A change to any other good of subheading 8527.99 from radio broadcast receivers of subheading 8527.99 or from any other subheading; or A change to any other good of subheading 8527.19 through 8527.99 from any other subheading, including another subheading within that group.
8528.42	A change to display units from any other subheading, except from subheading 8471.60 or 8504.40, or from heading 8473 when the change is the result of a simple assembly.
8528.49	A change to color video monitors from any other good of subheading 8528.49 or from any other subheading, except from subheading 8540.11 through 8540.12; or A change to black and white or other monochrome video monitors from any other good of subheading 8528.49 or from any other subheading, except from subheading 8540.11 through 8540.12.
8528.52	A change to display units from any other subheading, except from subheading 8471.60 or 8504.40, or from heading 8473 when the change is the result of a simple assembly.
8528.59	A change to color video monitors from any other good of subheading 8528.59 or from any other subheading, except from subheading 8540.11 through 8540.12; or A change to black and white or other monochrome video monitors from any other good of subheading 8528.59 or from any other subheading, except from subheading 8540.11 through 8540.12.
8528.62	A change to display units from any other subheading, except from subheading 8471.60 or 8504.40, or from heading 8473 when the change is the result of a simple assembly.
8528.69–8528.73	A change to subheading 8528.69 through 8528.73 from any other subheading, including another subheading within that group, except from subheading 8540.11 through 8540.12.
8529	A change to heading 8529 from any other heading.
8530.10–8530.80	A change to subheading 8530.10 through 8530.80 from any other subheading, including another subheading within that group.
8530.90	A change to subheading 8530.90 from any other heading.
8531.10–8531.80	A change to subheading 8531.10 through 8531.80 from any other subheading, including another subheading within that group, except from subheading 8531.90 when resulting from a simple assembly.
8531.90	A change to subheading 8531.90 from any other heading.
8532.10–8532.30	A change to subheading 8532.10 through 8532.30 from any other subheading, including another subheading within that group.
8532.90	A change to subheading 8532.90 from any other heading.
8533.10–8533.40	A change to subheading 8533.10 through 8533.40 from any other subheading, including another subheading within that group.
8533.90	A change to subheading 8533.90 from any other heading.
8534	A change to heading 8534 from any other heading.
8535.10–8535.90	A change to subheading 8535.10 through 8535.90 from any other subheading, including another subheading within that group.
8536.10–8536.90	A change to other articles of plastics of subheading 8536.70 from any other good of subheading 8536.70 or from any other subheading, except from heading 3926; or A change to ceramic ferrules, not exceeding 3 mm in diameter or 25 mm in length, having a fiber channel opening and/or ceramic mating sleeves of subheading 8536.70 from any other subheading, except from heading 6901 through 6914; or A change to any other good of subheading 8536.10 through 8536.90 from any other subheading, including another subheading within that group.
8537	A change to heading 8537 from any other heading.
8538	A change to heading 8538 from any other heading.
8539.10–8539.31	A change to subheading 8539.10 through 8539.31 from any other subheading, including another subheading within that group.

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8539.32–8539.39	A change to subheading 8539.32 through 8539.39 from any other subheading outside that group.
8539.41–8539.52	A change to subheading 8539.41 through 8539.52 from any other subheading outside that group.
8539.90	A change to subheading 8539.90 from any other heading.
8540.11–8540.20	A change to subheading 8540.11 through 8540.20 from any other subheading, including another subheading within that group.
8540.40–8540.60	A change to subheading 8540.40 through 8540.60 from any other subheading outside that group.
8540.71–8540.89	A change to subheading 8540.71 through 8540.89 from any other subheading, including another subheading within that group.
8540.91–8540.99	A change to subheading 8540.91 through 8540.99 from any other subheading, including another subheading within that group, except when resulting from a simple assembly.
8541–8542	A change to multichips of subheading 8542.31 through 8542.39 from any other good of subheading 8542.31 through 8542.39 or from any other subheading, except from subheading 8523.52 or 8543.70; or A change to a mounted chip, die or wafer classified in heading 8541 or 8542 from an unmounted chip, die, or wafer classified in heading 8541 or 8542; or A change to a programmed ''read only memory'' (ROM) chip from an unprogrammed ''programmable read only memory'' (PROM) chip; or A change to any other good of heading 8541 through 8542 from any other subheading, including another subheading within that group.
8543.10	A change to subheading 8543.10 from any other subheading, except from ion implanters designed for doping semiconductor material of subheading 8486.20.
8543.20–8543.40	A change to subheading 8543.20 through 8543.40 from any other subheading, including another subheading within that group.
8543.70	A change to subheading 8543.70 from any other subheading, except from LED modules of subheading 8539.51 and LED lamps of subheading 8539.52, except from proximity cards or tags of subheading 8523.52 and except from other machines or apparatus of subheading 8486.10 through 8486.20.
8543.90	A change to subheading 8543.90 from any other heading, except from parts of subheading 8486.90.
8544.11–8544.70	A change to subheading 8544.42 from any other good of subheading 8544.42, except when resulting from simple assembly; or A change to subheading 8544.49 from any other good of subheading 8544.49, except when resulting from simple assembly; or A change to subheading 8544.11 through 8544.70 from any other subheading, including another subheading within that group, except when resulting from simple assembly.
8545.11–8547.90	A change to subheading 8545.11 through 8547.90 from any other subheading, including another subheading within that group.
8548	A change to heading 8548 from any other heading, except from heading 8549.
8549	A change to heading 8549 from any other heading, except from heading 8548.
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8601	A change to heading 8601 from any other heading.
8602	A change to heading 8602 from any other heading.
8603–8606	A change to heading 8603 through 8606 from any other heading, including another heading within that group, except from heading 8607 when that change is pursuant to General Rule of Interpretation 2(a).
8607.11	A change to subheading 8607.11 from any other subheading, except from subheading 8607.12, and except from subheading 8607.19 when that change is pursuant to General Rule of Interpretation 2(a).
8607.12	A change to subheading 8607.12 from any other subheading, except from subheading 8607.11, and except from subheading 8607.19 when that change is pursuant to General Rule of Interpretation 2(a).
8607.19	A change to subheading 8607.19 from any other subheading.
8607.21–8607.99	A change to subheading 8607.21 through 8607.99 from any other heading, except to mounted brake linings and pads of subheading 8607.21 through 8607.99 from subheading 6813.10.
8608	A change to heading 8608 from any other heading.
8609	A change to heading 8609 from any other heading, except from heading 7309 through 7311.
8701–8705	A change to heading 8701 through 8705 from any other heading, including another heading within that group, except from heading 8706.
8706	A change to heading 8706 from any other heading.
8707	A change to heading 8707 from any other heading, except from subheading 8708.29 when that change is pursuant to General Rule of Interpretation 2(a).
Note: Any change to heading 8708 from subheading 8709.90, 8716.90, 8431.20, or 8431.49 shall not be considered to satisfy a required change in tariff classification.	
8708.10	A change to subheading 8708.10 from any other subheading.
8708.22	A change to subheading 8708.22 from any other heading.
8708.29	A change to subheading 8708.29 from any other subheading, except from subheading 8708.95.
8708.30	A change to mounted brake linings and pads from any other heading, except from brake linings and pads of subheading 6813.20 or 6813.81; or A change to other brakes or servo-brakes or parts thereof from any other heading.
8708.40	A change to parts for power trains of subheading 8708.40 from any other good of subheading 8708.40 or from any other subheading, except from parts or accessories of the goods of subheading 8708.50, 8708.80 through 8708.92, or 8708.94 through 8708.99; or

HTSUS	Tariff shift and/or other requirements
	A change to any other good of subheading 8708.40 from parts for power trains of subheading 8708.40, except when the change is pursuant to General Rule of Interpretation 2(a), or from any other subheading, except from parts or accessories of the goods of subheading 8708.50, 8708.80 through 8708.92, or 8708.94 through 8708.99, when the change is pursuant to General Rule of Interpretation 2(a).
8708.50	A change to non-driving axles or parts thereof from any other good of subheading 8708.50 or from any other subheading; or A change to half-shafts or drive shafts or to other parts of tractors suitable for agricultural use, half-shafts or drive shafts or other parts of tractors (except road tractors), cast-iron parts, half-shafts or drive shafts, or to other parts for power trains from any other good of subheading 8708.50 or from any other subheading, except from parts or accessories of the goods of subheading 8708.40, 8708.80 through 8708.92, or 8708.94 through 8708.99; or A change to any other good of subheading 8708.50 from half-shafts or drive shafts or other parts of tractors suitable for agricultural use, half-shafts or drive shafts or other parts of tractors (except road tractors), cast-iron parts, half-shafts or drive shafts or from other parts for power trains of subheading 8708.50, except when the change is pursuant to General Rule of Interpretation 2(a), or from non-driving axles and parts thereof of subheading 8708.50, or from any other subheading, except from parts or accessories of subheading 8708.40, 8708.80 through 8708.92, or 8708.94 through 8708.99, when the change is pursuant to General Rule of Interpretation 2(a).
8708.70	A change to subheading 8708.70 from any other subheading.
8708.80	A change to parts for suspension systems for tractors suitable for agricultural use, parts for suspension systems for other tractors (except road tractors), parts of cast iron, or to other parts for suspension systems from any other good of subheading 8708.80 or from any other subheading, except from parts or accessories of the goods of subheading 8708.40, 8708.50, 8708.91, 8708.92, or 8708.94 through 8708.99; or A change to any other good of subheading 8708.80 from parts for suspension systems for tractors suitable for agricultural use, parts for suspension systems for other tractors (except road tractors), parts of cast iron, or from other parts for suspension systems, except when the change is pursuant to General Rule of Interpretation 2(a), or from any other subheading, except from parts or accessories of the goods of subheading 8708.40, 8708.50, 8708.91, 8708.92, or 8708.94 through 8708.99, when the change is pursuant to General Rule of Interpretation 2(a).
8708.91	A change to parts of tractors suitable for agricultural use, parts of other tractors (except road tractors), parts of cast-iron or to parts or accessories from any other good of subheading 8708.91 or from any other subheading, except from other parts or accessories of subheading 8708.40, 8708.50, 8708.80, 8708.92, or 8708.94 through 8708.99; or A change to any other good of subheading 8708.91 from parts of tractors suitable for agricultural use, parts of other tractors (except road tractors), parts of cast-iron or from parts or accessories of the goods of subheading 8708.91, when that change is pursuant to General Rule of Interpretation 2(a), or from any other subheading, except from parts or accessories of the goods of subheading 8708.40, 8708.50, 8708.80, 8708.92, or 8708.94 through 8708.99, when the change is pursuant to General Rule of Interpretation 2(a).
8708.92	A change to parts of tractors suitable for agricultural use, parts of other tractors (except road tractors), parts of cast-iron or to other parts or accessories from any other good of subheading 8708.92 or from any other subheading, except from parts or accessories of the goods of subheading 8708.40, 8708.50, 8708.80, 8708.91, or 8708.94 through 8708.99; or A change to any other good of subheading 8708.92 from parts of tractors suitable for agricultural use, parts of other tractors (except road tractors), parts of cast-iron or from other parts or accessories of subheading 8708.92 or from any other subheading.
8708.93	A change to subheading 8708.93 from any other subheading.
8708.94	A change to parts for steering systems of tractors suitable for agricultural use, parts for steering systems of other tractors (except road tractors), parts of cast-iron or to other parts for steering systems from any other good of subheading 8708.94 or from any other subheading, except from parts or accessories of the goods of subheading 8708.40, 8708.50, 8708.80, 8708.91, 8708.92, or 8708.95 through 8708.99; or A change to any other good of subheading 8708.94 from parts for steering systems of tractors suitable for agricultural use, parts for steering systems of other tractors (except road tractors), parts of cast-iron or from other parts for steering systems of subheading 8708.94, except when the change is pursuant to General Rule of Interpretation 2(a), or from any other subheading, except from parts or accessories of the goods of subheading 8708.40, 8708.50, 8708.80, 8708.91, 8708.92, or 8708.95 through 8708.99, when that change is pursuant to General Rule of Interpretation 2(a).
8708.95	A change to inflators or modules for airbags from any other good of subheading 8708.95 or from any other subheading, except from subheading 8708.29; or A change to airbags or to other parts of tractors suitable for agricultural use, airbags or to other parts of other tractors (except road tractors), other airbags, or to other parts or accessories from inflators or modules for airbags of subheading 8708.95 or from any other subheading, except from parts or accessories of the goods of subheading 8708.40, 8708.50, 8708.80, 8708.91, 8708.92, 8708.94, or 8708.99.
8708.99	A change to subheading 8708.99 from any other subheading, except from parts or accessories of the goods of subheading 8708.40, 8708.50, 8708.80, 8708.91, 8708.92, 8708.94, or 8708.95.
8709.11–8709.19	A change to subheading 8709.11 through 8709.19 from any other subheading outside that group, except from subheading 8709.90 when that change is pursuant to General Rule of Interpretation 2(a).
8709.90	A change to subheading 8709.90 from any other heading, except from subheading 8431.20 or heading 8708.
8710	A change to heading 8710 from any other heading.

HTSUS	Tariff shift and/or other requirements
8711–8713	A change to heading 8711 through 8713 from any other heading, including another heading within that group, except from heading 8714 when that change is pursuant to General Rule of Interpretation 2(a).
8714	A change to heading 8714 from any other heading, except from subheading 6813.10 to mounted brake linings or pads classified in heading 8714.
8715	A change to heading 8715 from any other heading.
8716.10–8716.80	A change to subheading 8716.10 through 8716.80 from any other heading, or from subheading 8716.90 except when that change is pursuant to General Rule of Interpretation 2(a).
8716.90	A change to subheading 8716.90 from any other heading, except from subheading 8709.90 or 8431.49.
8801–8806	A change to heading 8801 through 8806 from any other heading outside that group, except from heading 8807 when that change is pursuant to General Rule of Interpretation 2(a).
8805	A change to heading 8805 from any other heading.
8807.10–8807.90	A change to subheading 8807.10 through 8807.90 from any other subheading, including another subheading within that group.
8901–8903	A change to heading 8901 through 8903 from any other heading outside that group.
8904	A change to heading 8904 from any other heading.
8905	A change to heading 8905 from any other chapter.
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8906–8907	A change to heading 8906 through 8907 from any other heading, including another heading within that group, except from heading 8903 or 8905.
8908	A change to heading 8908 from any other chapter.
(q)	**Section XVIII: Chapters 90 through 92**
9001.10	A change to subheading 9001.10 from any other subheading, except from subheading 8544.70 or glass preforms of heading 7002.
9001.20–9001.30	A change to subheading 9001.20 through 9001.30 from any other subheading, including another subheading within that group.
9001.40–9001.90	A change to subheading 9001.40 through 9001.90 from any other subheading, including another subheading within that group, except from lens blanks of heading 7014 or subheading 7015.10.
9002.11–9002.90	A change to subheading 9002.11 through 9002.90 from any other subheading, including another subheading within that group, except from subheading 9001.90 or from lens blanks of heading 7014.
9003.11–9003.19	A change to subheading 9003.11 through 9003.19 from any other heading; or A change to subheading 9003.11 through 9003.19 from any other subheading, including another subheading within that group, except from subheading 9003.90 if the temples or fronts are not domestic materials.
9003.90	A change to subheading 9003.90 from any other heading.
9004	A change to heading 9004 from any other heading, except from subheading 9001.40 or 9001.50.
9005.10–9005.80	A change to subheading 9005.10 through 9005.80 from any other subheading, including another subheading within that group.
9005.90	A change to subheading 9005.90 from any other heading, except from heading 9001 or 9002.
9006.30–9006.69	A change to cameras of a kind used for recording documents on microfilm, microfiche or other microforms of subheading 9006.53 through 9006.59 from any other good of subheading 9006.53 through 9006.59 or from any other subheading; or A change to any other good of subheading 9006.53 through 9006.59 from cameras of a kind used for recording documents on microfilm, microfiche or other microforms of subheading 9006.53 through 9006.59 or from any other subheading; or A change to flashbulbs, flashcubes or the like of subheading 9006.69 from any other good of subheading 9006.69 or from any other subheading; or A change to any other good of subheading 9006.30 through 9006.69 from any other subheading, including another subheading within that group.
9006.91–9006.99	A change to subheading 9006.91 through 9006.99 from any other heading.
9007.10	A change to subheading 9007.10 from any other good of subheading 9007.10 or from any other subheading.
9007.20	A change to subheading 9007.20 from any other subheading; or A change to a projector for film of less than 16mm width of subheading 9007.20 from any other projector of subheading 9007.20; or A change from a projector for film of less than 16mm width of subheading 9007.20 to any other projector of subheading 9007.20.
9007.91–9007.92	A change to subheading 9007.91 through 9007.92 from any other heading, except from lenses of heading 9002 when resulting from a simple assembly.
9008.50	A change to subheading 9008.50 from any other good of subheading 9008.50 or from any other subheading.
9008.90	A change to subheading 9008.90 from any other heading, except from lenses of heading 9002 when resulting from a simple assembly.
9010.10	A change to subheading 9010.10 from any other subheading.
9010.50	A change to subheading 9010.50 from any other subheading, except from apparatus for the projection or drawing of circuit patterns on sensitized semiconductor materials of subheading 8486.20.
9010.60	A change to subheading 9010.60 from any other subheading.
9010.90	A change to subheading 9010.90 from any other heading, except from parts of apparatus for the projection or drawing of circuit patterns on sensitized semiconductor materials of subheading 8486.90.
9011.10–9011.80	A change to subheading 9011.10 through 9011.80 from any other subheading, including another subheading within that group.

HTSUS	Tariff shift and/or other requirements
9011.90	A change to subheading 9011.90 from any other heading.
9012.10	A change to subheading 9012.10 from any other subheading, including another subheading within that group.
9012.90	A change to subheading 9012.90 from any other heading.
9013.10	A change to subheading 9013.10 from any other subheading, except from optical telescopes of subheading 9005.80.
9013.20–9013.80	A change to subheading 9013.20 through 9013.80 from any other subheading, including another subheading within that group.
9013.90	A change to subheading 9013.90 from any other subheading, except from subheading 9002.19 when resulting from a simple assembly.
9014.10–9014.80	A change to subheading 9014.10 through 9014.80 from any other subheading, including another subheading within that group.
9014.90	A change to subheading 9014.90 from any other heading.
9015.10–9015.80	A change to subheading 9015.10 through 9015.80 from any other subheading, including another subheading within that group.
9015.90	A change to subheading 9015.90 from any other heading.
9016	A change to heading 9016 from any other heading.
9017.10–9017.80	A change to subheading 9017.10 through 9017.80 from any other subheading, including another subheading within that group.
9017.90	A change to subheading 9017.90 from any other heading.
9018.11	A change to subheading 9018.11 from any other subheading, except to electro-cardiographs from printed circuit assemblies when resulting from a simple assembly.
9018.12–9018.14	A change to subheading 9018.12 through 9018.14 from any other subheading outside that group, except from subheading 9018.19.
9018.19	A change to subheading 9018.19 from any other subheading, except to patient monitoring systems from printed circuit assemblies when resulting from a simple assembly.
9018.20–9018.32	A change to subheading 9018.20 through 9018.32 from any other subheading, including another subheading within that group.
9018.39	A change to subheading 9018.39 from any other subheading, except from surgical tubing of subheading 4009.10 when resulting from a simple assembly.
9018.41–9018.50	A change to subheading 9018.41 through 9018.50 from any other subheading, including another subheading within that group.
9018.90	A change to subheading 9018.90 from any other subheading, except from subheading 9001.90 or synthetic rubber classified in heading 4002 when resulting from a simple assembly; or A change to defibrillators from printed circuit assemblies, except when resulting from a simple assembly.
9019.10–9019.20	A change to subheading 9019.10 through 9019.20 from any other subheading, including another subheading within that group.
9020	A change to heading 9020 from any other heading.
9021.10	A change to subheading 9021.10 from any other subheading, except from nails classified in heading 7317 or screws classified in heading 7318 when resulting from a simple assembly.
9021.21–9021.90	A change to subheading 9021.21 through 9021.90 from any other subheading, including another subheading within that group.
9022.12–9022.14	A change to subheading 9022.12 through 9022.14 from any other subheading outside that group.
9022.19–9022.90	A change to subheading 9022.19 through 9022.90 from any other subheading, including another subheading within that group.
9023	A change to heading 9023 from any other heading.
9024.10–9024.80	A change to subheading 9024.10 through 9024.80 from any other subheading, including another subheading within that group.
9024.90	A change to subheading 9024.90 from any other heading.
9025.11–9025.80	A change to subheading 9025.11 through 9025.80 from any other subheading, including another subheading within that group.
9025.90	A change to subheading 9025.90 from any other heading.
9026.10–9026.80	A change to subheading 9026.10 through 9026.80 from any other subheading, including another subheading within that group.
9026.90	A change to subheading 9026.90 from any other heading.
9027.10–9027.90	A change to exposure meters of subheading 9027.50 from any other good of subheading 9027.50 or from any other subheading; or A change to any other good of subheading 9027.50 from exposure meters of subheading 9027.50; or A change to any other good of subheading 9027.10 through 9027.90 from any other subheading, including another subheading within that group.
9028.10–9028.30	A change to subheading 9028.10 through 9028.30 from any other subheading, including another subheading within that group.
9028.90	A change to subheading 9028.90 from any other heading.
9029.10–9029.20	A change to subheading 9029.10 through 9029.20 from any other subheading, including another subheading within that group.
9029.90	A change to subheading 9029.90 from any other heading.
9030.10	A change to subheading 9030.10 from any other subheading.
9030.20	A change to cathode ray tube oscilloscopes or oscillographs of subheading 9030.20 from non-cathode ray tube oscilloscopes or oscillographs of subheading 9030.20 or from any other subheading; or A change to non-cathode ray tube oscilloscopes or oscillographs of subheading 9030.20 from cathode ray tube oscilloscopes or oscillographs of subheading 9030.20 or from any other subheading, except from subheading 9030.32, 9030.82, 9030.84, 9030.89, or 9030.90.

HTSUS	Tariff shift and/or other requirements
9030.31	A change to subheading 9030.31 from any other subheading.
9030.32	A change to subheading 9030.32 from any other subheading, except from non-cathode ray tube oscilloscopes or oscillographs of subheading 9030.20, or from subheading 9030.82 or 9030.84.
9030.33	A change to subheading 9030.33 from any other subheading, except from subheading 9030.39.
9030.39	A change to subheading 9030.39 from any other subheading, except from non-cathode ray tube oscilloscopes or oscillographs of subheading 9030.20, or from subheading 9030.32, 9030.82, or 9030.84.
9030.40	A change to subheading 9030.40 from any other subheading.
9030.82–9030.84	A change to subheading 9030.82 through 9030.84 from any other subheading outside that group, except from other instruments or apparatus with a recording device of subheading 9030.20, 9030.32 or 9030.39.
9030.89	A change to subheading 9030.89 from any other subheading, except from non-cathode ray tube oscilloscopes or oscillographs of subheading 9030.20 or from subheading 9030.90.
9030.90	A change to subheading 9030.90 from any other subheading, except from non-cathode ray tube oscilloscopes or oscillographs of subheading 9030.20 or from subheading 9030.89.
9031.10–9031.20	A change to subheading 9031.10 through 9031.20 from any other subheading, including another subheading within that group.
9031.41–9031.49	A change to profile projectors of subheading 9031.49 from any other good of subheading 9031.49 or from any other subheading; or A change to any other good of subheading 9031.49 from a profile projector of subheading 9031.49 or from any other subheading, except from subheading 9031.41; or A change to any other good of subheading 9031.41 through 9031.49 from any other subheading outside that group.
9031.80	A change to subheading 9031.80 from any other subheading.
9031.90	A change to subheading 9031.90 from any other heading.
9032.10–9032.89	A change to subheading 9032.10 through 9032.89 from any other subheading, including another subheading within that group.
9032.90	A change to subheading 9032.90 from any other subheading, except from heading 8537 when resulting from a simple assembly.
9033	A change to heading 9033 from any other heading.
Chapter 91 Note: The country of origin of goods classified in subheading 9113.90.40 shall be determined under the provisions of § 102.21.	
9101–9107	A change to heading 9101 through 9107 from any other heading outside that group, except from heading 9108 through 9110; or A change to heading 9101 through 9107 from complete movements, unassembled, classified in subheading 9110.11 or 9110.90, or from rough movements classified in subheading 9110.19 or 9110.90.
9108–9109	A change to heading 9108 through 9109 from any other heading outside that group, except from heading 9110; or A change to heading 9108 through 9109 from complete movements, unassembled, classified in subheading 9110.11 or 9110.90, or from rough movements classified in subheading 9110.19 or 9110.90.
9110	A change to heading 9110 from any other heading, except from subheading 9114.90.
9111.10–9111.80	A change to subheading 9111.10 through 9111.80 from any other subheading outside that group, except from subheading 9111.90 when that change is pursuant to General Rule of Interpretation 2(a).
9111.90	A change to subheading 9111.90 from any other heading.
9112.20	A change to subheading 9112.20 from any other subheading, except from subheading 9112.90 when that change is pursuant to General Rule of Interpretation 2(a).
9112.90	A change to subheading 9112.90 from any other heading.
9113	A change to heading 9113 from any other heading.
9114	A change to heading 9114 from any other heading.
9201–9208	A change to keyboard pipe organs, harmoniums or other similar keyboard instruments with free metal reeds of subheading 9205.90 from any other good of subheading 9205.90 or from any other subheading, except from heading 9209 when that change is pursuant to General Rule of Interpretation 2(a); or A change to accordions and similar instruments, or mouth organs of subheading 9205.90 from any other good of subheading 9205.90 or from any other subheading, except from heading 9209 when that change is pursuant to General Rule of Interpretation 2(a); or A change to any other good of subheading 9205.90 from keyboard pipe organs, harmoniums and other similar keyboard instruments with free metal reeds, accordions and similar instruments, or mouth organs of subheading 9205.90 or from any other subheading, except from heading 9209 when that change is pursuant to General Rule of Interpretation 2(a); or A change to any other good of heading 9201 through 9208 from any other heading, including another heading within that group, except from heading 9209 when that change is pursuant to General Rule of Interpretation 2(a).
9209	A change to heading 9209 from any other heading.
(r)	**Section XIX: Chapter 93**
9301–9304	A change to heading 9301 through 9304 from any other heading, including another heading within that group, except from heading 9305 when that change is pursuant to General Rule of Interpretation 2(a).
9305	A change to heading 9305 from any other heading.
9306	A change to heading 9306 from any other heading.

HTSUS	Tariff shift and/or other requirements
9307	A change to heading 9307 from any other heading.
(s)	**Section XX: Chapters 94 through 96**

Chapter 94 Note: For a good classifiable in subheadings 9404.30 through 9404.90 which does not meet the appropriate tariff shift rule specified for those subheadings, the country of origin is the country where all cutting and sewing operations required to form the outer shell were performed. If all cutting and sewing operations required to form the outer shell were not performed in a single country, the country of origin will be the single country where the component of the outer shell which determines the classification of that good was produced. If a single country did not produce a component of the outer shell which determines the classification of that good, then the country of origin will be the country in which the good last underwent a substantial assembly process. Notwithstanding the foregoing provisions of this Note, the country of origin of goods classified in subheadings 9404.90.10 and 9404.90.80 through 9404.90.95 shall be determined under the provisions of § 102.21.

9401.10–9401.80	A change to subheading 9401.52 through 9401.59 from any subheading outside that group, except from subheading 9401.10 through 9401.80, subheading 9403.10 through 9403.89, and except from subheading 9401.91 through 9401.99 or 9403.91 through 9403.99 when that change is pursuant to General Rule of Interpretation 2(a); or A change to subheading 9401.10 through 9401.80 from any other subheading outside that group, except from subheading 9403.10 through 9403.89, and except from subheading 9401.91 through 9401.99 or 9403.91 through 9403.99, when that change is pursuant to General Rule of Interpretation 2(a).
9401.91–9401.99	A change to subheading 9401.91 through 9401.99 from any other heading, except from subheading 9403.91 through 9403.99.
9402	A change to heading 9402 from any other heading, except from heading 9401.10 through 9401.80 or subheading 9403.10 through 9403.89, and except from subheading 9401.91 through 9401.99 or 9403.91 through 9403.99, when that change is pursuant to General Rule of Interpretation 2(a).
9403.10–9403.89	A change to subheading 9403.10 through 9403.89 from any other subheading outside that group, except from subheading 9401.10 through 9403.89, and except from subheading 9401.91 through 9401.99 or 9403.91 through 9403.99, when that change is pursuant to General Rule of Interpretation 2(a).
9403.91–9403.99	A change to subheading 9403.91 through 9403.99 from any other heading, except from subheading 9401.91 through 9401.99.
9404.10–9404.29	A change to subheading 9404.10 through 9404.29 from any other heading.
9404.30–9404.90	A change to down- and/or feather-filled goods classified in subheading 9404.30 through 9404.90 from any other heading; or For all other goods classified in subheading 9404.30 through 9404.90, a change from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809 through 5810, 5901, 5903 through 5904, 5906 through 5907, or 6001 through 6006, or subheading 6307.90.
9405.11–9405.69	A change to subheading 9405.11 through 9405.69 from any other subheading outside that group, except from subheading 9405.91 through 9405.99 when that change is pursuant to General Rule of Interpretation 2(a).
9405.91–9405.99	A change to subheading 9405.91 through 9405.99 from any other heading.
9406	A change to heading 9406 from any other heading.
9503	A change to wheeled toys designed to be ridden by children or to dolls' carriages or dolls' strollers, parts or accessories thereof from any other chapter, except from heading 8714 when that change is pursuant to General Rule of Interpretation 2(a); or A change to dolls, whether or not dressed, from any other subheading or from any other good of heading 9503, except from skins for stuffed dolls of heading 9503; or A change to parts or accessories of dolls representing only human beings from any other heading or from any other good of heading 9503, except from toys representing animals or non-human creatures of heading 9503; or A change to electric trains, including tracks, signals and other accessories or parts thereof from any other good of heading 9503 or from any other subheading; or A change to reduced-size (''scale'') model assembly kits, (excluding electric trains) or to parts or accessories thereof, from any other good of heading 9503 or from any other subheading; or A change to other construction sets and constructional toys or to parts or accessories thereof from any other good of heading 9503 or from any other subheading; or A change to toys representing animals or non-human creatures or to parts or accessories thereof from wheeled toys designed to be ridden by children, dolls' carriages, or dolls representing only human beings of heading 9503 or from any other heading; or A change to toys representing animals or non-human creatures from parts or accessories of toys representing animals or non-human creatures of heading 9503; or A change to parts or accessories of toys representing animals or non-human creatures from wheeled toys designed to be ridden by children, dolls' carriages, or dolls' strollers of heading 9503 or from any other heading, except from heading 6111 or 6209; or A change to toy musical instruments and apparatus from any other good of heading 9503 or from any other subheading; or A change to puzzles from any other good of heading 9503 or from any other subheading; or A change to other toys, put up in sets or outfits, or to other toys and models, incorporating a motor, or to other toys from any other chapter.
9504.20–9506.29	A change to subheading 9504.20 through 9506.29 from any other subheading, including another subheading within that group.
9506.31	A change to subheading 9506.31 from any other subheading, except from subheading 9506.39.

HTSUS	Tariff shift and/or other requirements
9506.32–9506.99	A change to subheading 9506.32 through 9506.99 from any other subheading, including another subheading within that group.
9507.10–9507.30	A change to subheading 9507.10 through 9507.30 from any other chapter.
9507.90	A change to subheading 9507.90 from any other subheading, except from heading 5004 through 5006, 5404, 5406, or 5603, or from subheading 5402.11 through 5402.49.
9508	A change to heading 9508 from any other heading.
Chapter 96 Note: The country of origin of goods classified in subheading 9612.10.9010 will be determined under the provisions of § 102.21. The country of origin of goods classified in subheadings 9619.00.21 through 9619.00.79, HTSUS, will be determined under the provisions of § 102.21.	
9601	A change to heading 9601 from any other heading.
9602	A change to heading 9602 from any other heading.
9603	A change to heading 9603 from any other heading.
9604–9605	A change to heading 9604 through 9605 from any other heading, including another heading within that group.
9606.10	A change to subheading 9606.10 from any other heading.
9606.21–9606.29	A change to subheading 9606.21 through 9606.29 from any other heading.
9606.30	A change to subheading 9606.30 from any other heading.
9607.11–9607.19	A change to subheading 9607.11 through 9607.19 from any other subheading, except from subheading 9607.20 when that change is pursuant to General Rule of Interpretation 2(a).
9607.20	A change to subheading 9607.20 from any other subheading.
9608.10–9608.40	A change to subheading 9608.10 through 9608.40 from any other subheading, including another subheading within that group; or A change to India ink drawing pens of subheading 9608.30 from any other good of subheading 9608.30; or A change to any other good of subheading 9608.30 from India ink drawing pens of subheading 9608.30.
9608.50	A change to subheading 9608.50 from any other heading.
9608.60–9608.99	A change to subheading 9608.60 through 9608.99 from any other subheading, including another subheading within that group.
9609.10	A change to subheading 9609.10 from any other subheading.
9609.20	A change to subheading 9609.20 from any other chapter.
9609.90	A change to subheading 9609.90 from any other chapter.
9610–9612	A change to heading 9610 through 9612 from any other heading, including another heading within that group.
9613.10–9613.20	A change to subheading 9613.10 through 9613.20 from any other subheading outside that group.
9613.30–9613.80	A change to subheading 9613.30 through 9613.80 from any other subheading, including another subheading within that group.
9613.90	A change to subheading 9613.90 from any other heading.
9614.00	A change to pipes or pipe bowls from any other subheading, except to roughly shaped blocks of wood or root from heading 4407; or A change to articles other than pipes or pipe bowls from any other heading.
9615.11–9615.90	A change to subheading 9615.11 through 9615.90 from any other subheading, including another subheading within that group.
9616–9618	A change to heading 9616 through 9618 from any other heading, including another heading within that group.
9619.00	A change to a plastic good of subheading 9619.00 from any other heading, except from heading 3926; or A change to a paper good of subheading 9619.00 from any other heading, except from heading 4818.
9620.00	A change to subheading 9620.00 from any other heading or subheading, except from heading 9001 or 9002 and except from heading 8414, 8501, 8504, 8534, 8541, or 8542 when resulting from a simple assembly.
(t)	**Section XXI: Chapter 97**
9702–9706	A change to heading 9702 through 9706 from any other heading, including another heading within that group.
9701.21–9701.99	A change to subheading 9701.21 through 9701.99 from any other subheading, including another subheading within that group.

[T.D. 96–48, 61 FR 28957, June 6, 1996; 61 FR 33846, July 1, 1996; 61 FR 41737, Aug. 12, 1996; T.D. 99–64, 64 FR 43266, Aug. 10, 1999; CBP Dec. 03–11, 68 FR 43631, July 24, 2003; CBP Dec. 08–42, 73 FR 64519, Oct. 30, 2008; 76 FR 54696, Sept. 2, 2011; CBP Dec. 12–15, 77 FR 58932, Sept. 25, 2012; CBP Dec. 12–21, 77 FR 73309, Dec. 10, 2012; CBP Dec. 22-25, 87 FR 68340, Nov. 15, 2022]

EDITORIAL NOTE: By CBP Dec. 22-25, 87 FR 68340, Nov. 15, 2022, § 102.20 was amended; however, the revisions to entries ''2707.10-2707.99'' in paragraph (e) of the table, and ''6812.99'' in paragraph (l) of the table could not be incorporated due to inaccurate amendatory instructions.

§ 102.21 Textile and apparel products.

(a) *Applicability*. Except for purposes of determining whether goods originate in Israel or are the growth, product, or manufacture of Israel, and except as otherwise provided for by statute, the provisions of this section will control the determination of the country of origin of imported textile and apparel products for purposes of the Customs laws and the administration of quantitative restrictions. The provisions of this section will apply to goods entered, or withdrawn from warehouse, for consumption on or after July 1, 1996.

(b) *Definitions*. The following terms will have the meanings indicated when used in this section:

(1) *Country of origin*. The term country of origin means the country, territory, or insular possession in which a good originates or of which a good is the growth, product, or manufacture.

(2) *Fabric-making process*. A *fabric-making process* is any manufacturing operation that begins with polymers, fibers, filaments (including strips), yarns, twine, cordage, rope, or fabric strips and results in a textile fabric.

(3) *Knit to shape*. The term *knit to shape* applies to any good of which 50 percent or more of the exterior surface area is formed by major parts that have been knitted or crocheted directly to the shape used in the good, with no consideration being given to patch pockets, appliques, or the like. Minor cutting, trimming, or sewing of those major parts will not affect the determination of whether a good is ''knit to shape.''

(4) *Major parts*. The term *major parts* means integral components of a good but does not include collars, cuffs, waistbands, plackets, pockets, linings, paddings, trim, accessories, or similar parts.

(5) *Textile or apparel product*. A *textile or apparel product* is any good classifiable in Chapters 50 through 63, Harmonized Tariff Schedule of the United States (HTSUS), and any good classifiable under one of the following HTSUS headings or subheadings:

3005.90
3921.12.15
3921.13.15
3921.90.2550
4202.12.40–89
4202.22.40–89
4202.32.40–99
4202.92.04–08
4202.92.15–33
4202.92.60–97
6405.20.60
6406.10.77
6406.10.90
6406.90.15
6501
6502
6504
6505.00 (except for hair-nets of subheading 6505.00)
6601.10–99
7019.13.15
7019.13.28
7019.61–90
8708.21
8804
9113.90.40
9404.90
9612.10.9010
9619.00.21–79

(6) *Wholly assembled*. The term ''wholly assembled'' when used with reference to a good means that all components, of which there must be at least two, preexisted in essentially the same condition as found in the finished good and were combined to form the finished good in a single country, territory, or insular possession. Minor attachments and minor embellishments (for example, appliques, beads, spangles, embroidery, buttons) not appreciably affecting the identity of the good, and minor subassemblies (for example, collars, cuffs, plackets, pockets), will not affect the status of a good as ''wholly assembled'' in a single country, territory, or insular possession.

(c) *General rules*. Subject to paragraph (d) of this section, the country of origin of a textile or apparel product will be determined by sequential application of paragraphs (c) (1) through (5) of this section and, in each case where appropriate to the specific context, by application of the additional requirements or conditions of §§ 102.12 through 102.19 of this part.

(1) The country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced.

(2) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this

section, the country of origin of the good is the single country, territory, or insular possession in which each foreign material incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section.

(3) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1) or (2) of this section:

(i) If the good was knit to shape, the country of origin of the good is the single country, territory, or insular possession in which the good was knit; or

(ii) Except for fabrics of chapter 59 and goods of headings 5609, 5807, 5811, 6213, 6214, 6301 through 6306, and 6308, and subheadings 6307.10, 6307.90, 9404.90, and 9619.00.31–33 if the good was not knit to shape and the good was wholly assembled in a single country, territory, or insular possession, the country of origin of the good is the country, territory, or insular possession in which the good was wholly assembled.

(4) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1), (2) or (3) of this section, the country of origin of the good is the single country, territory, or insular possession in which the most important assembly or manufacturing process occurred.

(5) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1), (2), (3) or (4) of this section, the country of origin of the good is the last country, territory, or insular possession in which an important assembly or manufacturing process occurred.

(d) *Treatment of sets.* Where a good classifiable in the HTSUS as a set includes one or more components that are textile or apparel products and a single country of origin for all of the components of the set cannot be determined under paragraph (c) of this section, the country of origin of each component of the set that is a textile or apparel product will be determined separately under paragraph (c) of this section.

(e) *Specific rules by tariff classification.* (1) The following rules will apply for purposes of determining the country of origin of a textile or apparel product under paragraph (c)(2) of this section:

TABLE 1 TO PARAGRAPH (e)(1)

HTSUS	Tariff shift and/or other requirements
3005.90	If the good contains pharmaceutical substances, a change to subheading 3005.90 from any other heading; or If the good does not contain pharmaceutical substances, a change to subheading 3005.90 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5601 through 5603, 5801 through 5804, 5806, 5809, 5903, 5906 through 5907, and 6001 through 6006.
3921.12.15	A change to subheading 3921.12.15 from any other heading.
3921.13.15	A change to subheading 3921.13.15 from any other heading.
3921.90.2550	A change to subheading 3921.90.2550 from any other heading.
4202.12.40–4202.12.89	A change to subheading 4202.12.40 through 4202.12.89 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
4202.22.40–4202.22.89	A change to subheading 4202.22.40 through 4202.22.89 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
4202.32.40–4202.32.99	A change to subheading 4202.32.40 through 4202.32.99 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
4202.92.04–4202.92.08	A change to subheadings 4202.92.04 through 4202.92.08 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory or insular possession.
4202.92.15–4202.92.33	A change to subheading 4202.92.15 through 4202.92.33 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
4202.92.60–4202.92.97	A change to subheading 4202.92.60 through 4202.92.97 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
5001–5002	A change to heading 5001 through 5002 from any other chapter.
5003	A change to heading 5003 from any other heading, provided that the change is the result of garnetting. If the change to heading 5003 is not the result of garnetting, the country of origin of the good is the country of origin of the good prior to its becoming waste.
5004–5006	(1) If the good is of staple fibers, a change to heading 5004 through 5006 from any heading outside that group, provided that the change is the result of a spinning process.

TABLE 1 TO PARAGRAPH (e)(1)—Continued

HTSUS	Tariff shift and/or other requirements
	(2) If the good is of filaments, a change to heading 5004 through 5006 from any heading outside that group, provided that the change is the result of an extrusion process.
5007	(1) A change from greige fabric of heading 5007 to finished fabric of heading 5007 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or, (2) If the country of origin cannot be determined under (1) above, a change to heading 5007 from any other heading, provided that the change is the result of a fabric-making process.
5101–5103	A change to heading 5101 through 5103 from any other chapter.
5104	A change to heading 5104 from any other heading.
5105	A change to heading 5105 from any other chapter.
5106–5110	A change to heading 5106 through 5110 from any heading outside that group, provided that the change is the result of a spinning process.
5111–5113	A change to heading 5111 through 5113 from any heading outside that group, provided that the change is the result of a fabric-making process.
5201	A change to heading 5201 from any other chapter.
5202	A change to heading 5202 from any other heading, provided that the change is the result of garnetting. If the change to heading 5202 is not the result of garnetting, the country of origin of the good is the country of origin of the good prior to its becoming waste.
5203	A change to heading 5203 from any other chapter.
5204–5207	A change to heading 5204 through 5207 from any heading outside that group, provided that the change is the result of a spinning process.
5208–5212	(1) A change from greige fabric of heading 5208 through 5212 to finished fabric of heading 5208 through 5212 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or (2) If the country of origin cannot be determined under (1) above, a change to heading 5208 through 5212 from any heading outside that group, provided that the change is the result of a fabric-making process.
5301–5305	(1) Except for waste, a change to heading 5301 through 5305 from any other chapter. (2) For waste, a change to heading 5301 through 5305 from any heading outside that group, provided that the change is the result of garnetting. If the change is not the result of garnetting, the country of origin of the good is the country of origin of the good prior to its becoming waste.
5306–5307	A change to heading 5306 through 5307 from any heading outside that group, provided that the change is the result of a spinning process.
5308	(1) Except for paper yarns, a change to heading 5308 from any other heading, provided that the change is the result of a spinning process. (2) For paper yarns, a change to heading 5308 from any other heading, except from heading 4707, 4801 through 4806, 4811, and 4818.
5309–5311	(1) A change from greige fabric of heading 5309 through 5311 to finished fabric of heading 5309 through 5311 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or (2)If the country of origin cannot be determined under (1) above, a change to heading 5309 through 5311 from any heading outside that group, provided that the change is the result of a fabric-making process.
5401–5406	A change to heading 5401 through 5406 from any other heading, provided that the change is the result of an extrusion process.
5407–5408	(1) A change from greige fabric of heading 5407 through 5408 to finished fabric of heading 5407 through 5408 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or (2) If the country of origin cannot be determined under (1) above, a change to heading 5407 through 5408 from any heading outside that group, provided that the change is the result of a fabric-making process.
5501–5502	A change to heading 5501 through 5502 from any other chapter, provided that the change is the result of an extrusion process.
5503–5504	A change to heading 5503 through 5504 from any other chapter, except from Chapter 54.
5505	A change to heading 5505 from any other heading, provided that the change is the result of garnetting. If the change is not the result of garnetting, the country of origin of the good is the country of origin of the good prior to its becoming waste.
5506–5507	A change to heading 5506 through 5507 from any other chapter, except from Chapter 54.
5508–5511	A change to heading 5508 through 5511 from any heading outside that group, provided that the change is the result of a spinning process.
5512–5516	(1) A change from greige fabric of heading 5512 through 5516 to finished fabric of heading 5512 through 5516 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or (2) If the country of origin cannot be determined under (1) above, a change to heading 5512 through 5516 from any heading outside that group, provided that the change is the result of a fabric-making process.

TABLE 1 TO PARAGRAPH (e)(1)—Continued

HTSUS	Tariff shift and/or other requirements
5601	(1) A change to wadding of heading 5601 from any other heading, except from heading 5105, 5203, 5501 through 5507, and articles of wadding of heading 9619. (2) A change to flock, textile dust, mill neps, or articles of wadding, of heading 5601 from any other heading or from wadding of heading 5601.
5602–5603	(1) Except for fabric of wool or of fine animal hair, a change from greige fabric of heading 5602 through 5603 to finished fabric of heading 5602 through 5603 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or (2) If the country of origin cannot be determined under (1) above, a change to heading 5602 through 5603 from any heading outside that group, provided that the change is the result of a fabric-making process.
5604	(1) If the textile component is of continuous filaments, including strips, a change of those filaments, including strips, to heading 5604 from any other heading, except from heading 5001 through 5007, 5401 through 5408, and 5501 through 5502, and provided that the change is the result of an extrusion process. (2) If the textile component is of staple fibers, a change of those fibers to heading 5604 from any other heading, except from heading 5004 through 5006, 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and provided that the change is the result of a spinning process.
5605–5606	If the good is of continuous filaments, including strips, a change of those filaments, including strips, to heading 5605 through 5606 from any other heading, except from heading 5001 through 5007, 5401 through 5408, and 5501 through 5502, and provided that the change is the result of an extrusion process; or If the good is of staple fibers, a change of those fibers to heading 5605 through 5606 from any other heading, except from heading 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and provided that the change is the result of a spinning process.
5607	If the good is of continuous filaments, including strips, a change of those filaments, including strips, to heading 5607 from any other heading, except from heading 5001 through 5007, 5401 through 5406, and 5501 through 5511, and provided that the change is the result of an extrusion process; or If the good is of staple fibers, a change of those fibers to heading 5607 from any other heading, except from heading 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and provided that the change is the result of a spinning process.
5608	(1)(a) Except for netting of wool or of fine animal hair, a change from greige netting of heading 5608 to finished netting of heading 5608 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or (1)(b) If the country of origin cannot be determined under (1)(a) above, a change to netting of heading 5608 from any other heading, except from heading 5804, and provided that the change is the result of a fabric-making process. (2) A change to fishing nets or other made up nets of heading 5608: (a) If the good does not contain nontextile attachments, from any other heading, except from heading 5804 and 6002 through 6006, and provided that the change is the result of a fabric-making process; or (b) If the good contains nontextile attachments, from any heading, including a change from another good of heading 5608, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
5609	(1) If of continuous filaments, including strips, the country of origin of a good classifiable under heading 5609 is the country, territory, or insular possession in which those filaments, including strips, were extruded. (2) If of staple fibers, the country of origin of a good classifiable under heading 5609 is the country, territory, or insular possession in which those fibers were spun into yarns.
5701–5705	A change to heading 5701 through 5705 from any other chapter.
5801–5803	(1) Except for fabric of wool or of fine animal hair, a change from greige fabric of heading 5801 through 5803 to finished fabric of heading 5801 through 5803 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or (2) If the country of origin cannot be determined under (1) above, a change to heading 5801 through 5803 from any other heading, including a heading within that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, and 6002 through 6006, and provided that the change is the result of a fabric-making process.
5804.10	(1) Except for fabric of wool or of fine animal hair, a change from greige fabric of subheading 5804.10 to finished fabric of subheading 5804.10 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or (2) If the country of origin cannot be determined under (1) above, a change to subheading 5804.10 from any other heading, except from heading 5608, and provided that the change is the result of a fabric-making process.

TABLE 1 TO PARAGRAPH (e)(1)—Continued

HTSUS	Tariff shift and/or other requirements
5804.21–5804.30	(1) Except for lace of wool or of fine animal hair, a change from greige lace of subheading 5804.21 through 5804.30 to finished lace of subheading 5804.21 through 5804.30 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or (2) If the country of origin cannot be determined under (1) above, a change to subheading 5804.21 through 5804.30 from any other heading, provided that the change is the result of a fabric-making process.
5805	A change to heading 5805 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, and 5512 through 5516, and provided that the change is the result of a fabric-making process.
5806	(1) Except for fabric of wool or of fine animal hair, a change from greige fabric of heading 5806 to finished fabric of heading 5806 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or (2) If the country of origin cannot be determined under (1) above, a change to heading 5806 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, and 5801 through 5803, and provided that the change is the result of a fabric-making process.
5807	The country of origin of a good classifiable under heading 5807 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
5808.10	(1) If the good is of continuous filaments, including strips, a change of those filaments, including strips, to subheading 5808.10 from any other heading, except from heading 5001 through 5007, 5401 through 5406, 5501 through 5502, and 5604 through 5607, and provided that the change is the result of an extrusion process. (2) If the good is of staple fibers, a change of those fibers to heading 5808.10 from any other heading, except from heading 5106 through 5113, 5204 through 5212, 5306 through 5311, 5401 through 5408, 5508 through 5516, and 5604 through 5607, and provided that the change is the result of a spinning process.
5808.90	(1) For ornamental fabric trimmings: (a) A change from a greige good of subheading 5808.90 to a finished good of subheading 5808.90 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or, (b) If the country of origin cannot be determined under (a) above, a change to subheading 5808.90 from any other chapter, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, and 5512 through 5516, and provided that the change is the result of a fabric-making process. (2) For nonfabric ornamental trimmings: (a) If the trimming is of continuous filaments, including strips, a change to subheading 5808.90 from any other heading, except from heading 5001 through 5007, 5401 through 5408, 5501 through 5502, and 5604 through 5607, and provided that the change is the result of an extrusion process; or (b) If the trimming is of staple fibers, a change to subheading 5808.90 from any other heading, except from heading 5106 through 5113, 5204 through 5212, 5306 through 5311, 5401 through 5408, 5508 through 5516, and 5604 through 5607, and provided that the change is the result of a spinning process. (3) For tassels, pompons and similar articles: (a) If the good has been wholly assembled in a single country, territory, or insular possession, a change to subheading 5808.90 from any other heading; (b) If the good has not been wholly assembled in a single country, territory, or insular possession and the good is of staple fibers, a change to subheading 5808.90 from any other heading, except from heading 5004 through 5006, 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and 5604 through 5607, and provided that the change is the result of a spinning process; or (c) If the good has not been wholly assembled in a single country, territory, or insular possession and the good is of filaments, including strips, a change to subheading 5808.90 from any other heading, except from heading 5001 through 5007, 5401 through 5406, and 5501 through 5502, and provided that the change is the result of an extrusion process.
5809	A change to heading 5809 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5801 through 5802, 5804, and 5806, and provided that the change is the result of a fabric-making process.
5810.10	The country of origin of goods of subheading 5810.10 is the single country, territory, or insular possession in which the embroidery was performed.
5810.91–5810.99	(1) For embroidered fabric, the country of origin is the country, territory, or insular possession in which the fabric was produced by a fabric-making process. (2) For embroidered badges, emblems, insignia, and the like, comprised of multiple components, the country of origin is the place of assembly, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (3) For embroidered badges, emblems, insignia, and the like, not comprised of multiple components, a change to subheading 5810.91 through 5810.99 from any other chapter, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5903, 5907, 6001 through 6006, and provided that the change is the result of a fabric-making process.
5811	The country of origin of a good classifiable under heading 5811 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.

TABLE 1 TO PARAGRAPH (e)(1)—Continued

HTSUS	Tariff shift and/or other requirements
5901–5903	(1) Except for fabric of wool or of fine animal hair, a change from greige fabric of heading 5901 through 5903 to finished fabric of heading 5901 through 5903 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or, (2) If the country of origin cannot be determined under (1) above, a change to heading 5901 through 5903 from any other heading, including a heading within that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5803, 5806, 5808, and 6002 through 6006, and provided that the change is the result of a fabric-making process.
5904	(1) For goods that have been wholly assembled by means of a lamination process, a change to heading 5904 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) For all other goods, the country of origin of the good will be determined by application of § 102.21(c)(4) or, if the country of origin cannot be determined under that section, by application of § 102.21(c)(5).
5905	(1) Except for wall coverings consisting of textile fabric of wool or of fine animal hair treated on the back or affixed by any means to a backing of any material, a change from wall coverings of greige fabric of heading 5905 to wall coverings of finished fabric of heading 5905 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or, (2) If the country of origin cannot be determined under (1) above, a change to heading 5905 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5603, 5803, 5806, 5808, and 6002 through 6006, and provided that the change is the result of a fabric-making process.
5906–5907	(1) Except for fabric of wool or of fine animal hair, a change from greige fabric of heading 5906 through 5907 to finished fabric of heading 5906 through 5907 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or, (2) If the country of origin cannot be determined under (1) above, a change to heading 5906 through 5907 from any other chapter, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5803, 5806, 5808, and 6002 through 6006, and provided that the change is the result of a fabric-making process.
5908	(1) Except for yarns, twine, cord, and braid, a change to heading 5908 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5801 through 5802, 5806, 5808, and 6001 through 6006. (2) For yarns, twine, cord, and braid: (a) If the good is of continuous filaments, including strips, a change to heading 5908 from any other heading, except from heading 5001 through 5007, 5401 through 5406, and 5501 through 5502, and provided that the change is the result of an extrusion process; or (b) If the good is of staple fibers, a change to heading 5908 from any other heading, except from heading 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and 5605 through 5607, and provided that the change is the result of a spinning process.
5909	A change to heading 5909 from any other chapter, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5603, 5801 through 5804, 5806, 5808, and 6001 through 6006, and provided that the good does not contain armor or accessories of nontextile material and provided that the change is the result of a fabric-making process; or A change to textile hosepiping with armor or accessories of nontextile material, of heading 5909, from any heading, including a change from another good of heading 5909, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
5910	(1) For belts and belting of braid, rope, or cord: (a) If the good is of continuous filaments, including strips, a change of those filaments, including strips, to heading 5910 from any other heading, except from heading 5001 through 5006, 5401 through 5406, and 5501 through 5502, and provided that the change is the result of an extrusion process; or (b) If the good is of staple fibers, a change of those fibers to heading 5910 from any other heading, except from heading 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and provided that the change is the result of a spinning process. (2) For fabric belting and belts, not braids and not combined with nontextile components, whether or not reinforced with metal or other material, a change to heading 5910 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5808 through 5809, and 6001 through 6006, and provided the change is the result of a fabric-making process. (3) For fabric belts, including belts of braided materials, combined with nontextile components, whether or not reinforced with metal or other material, a change to heading 5910 from any heading, including a change from another good of heading 5910, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.

TABLE 1 TO PARAGRAPH (e)(1)—Continued

HTSUS	Tariff shift and/or other requirements
5911.10–5911.20	(1) Except for fabric of wool or of fine animal hair, a change from greige fabric of subheading 5911.10 through 5911.20 to finished fabric of subheading 5911.10 through 5911.20 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or, (2) If the country of origin cannot be determined under (1) above, a change to subheading 5911.10 through 5911.20 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, and 6001 through 6006, and provided that the change is the result of a fabric-making process.
5911.31–5911.32	(1)(a) Except for fabric of wool or of fine animal hair, a change from greige fabric of subheading 5911.31 through 5911.32 to finished fabric of subheading 5911.31 through 5911.32 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or, (1)(b) If the country of origin cannot be determined under (1)(a) above, for goods not combined with nontextile components, a change to subheading 5911.31 through 5911.32 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, and 6001 through 6006, and provided that the change is the result of a fabric-making process. (2) For goods combined with nontextile components, a change to subheading 5911.31 through 5911.32 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
5911.40	(1) Except for fabric of wool or of fine animal hair, a change from greige fabric of subheading 5911.40 to finished fabric of subheading 5911.40 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or, (2) If the country of origin cannot be determined under (1) above, a change to subheading 5911.40 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, and 6001 through 6006, and provided that the change is the result of a fabric-making process.
5911.90	(1) For goods of yarn, rope, cord, or braid: (a)If the good is of continuous filaments, including strips, a change of those filaments, including strips, to subheading 5911.90 from any other heading, except from heading 5001 through 5006, 5401 through 5406, and 5501 through 5502, and provided that the change is the result of an extrusion process; or (b) If the good is of staple fibers, a change of those fibers to subheading 5911.90 from any other heading, except from heading 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and provided that the change is the result of a spinning process. (2)(a) If the good is a fabric, except for fabric of wool or of fine animal hair, a change from greige fabric of subheading 5911.90 to finished fabric of subheading 5911.90 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or, (2)(b) If the country of origin cannot be determined under (2)(a) above, if the good is a fabric, a change to subheading 5911.90 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809, and 6001 through 6006, and provided that the change is the result of a fabric-making process. (3) If the good is a made up article other than a good of yarn, rope, cord, or braid, a change to subheading 5911.90 from any heading, including a change from another good of heading 5911, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
6001–6006	(1) Except for fabric of wool or of fine animal hair, a change from greige fabric of heading 6001 through 6006 to finished fabric of heading 6001 through 6006 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing; or, (2) If the country of origin cannot be determined under paragraph (1) of this entry, a change to heading 6001 through 6006 from any heading outside that group, provided that the change is the result of a fabric-making process.
6101–6117	(1) If the good is not knit to shape and consists of two or more component parts, except for goods of subheading 6117.10 provided for in paragraph (e)(2) of this section, a change to an assembled good of heading 6101 through 6117 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good is not knit to shape and does not consist of two or more component parts, except for goods of subheading 6117.10 provided for in paragraph (e)(2) of this section, a change to heading 6101 through 6117 from any heading outside that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5806, 5809 through 5811, 5903, 5906 through 5907, 6001 through 6006, knitted or crocheted articles of heading 9619, and subheading 6307.90, and provided that the change is the result of a fabric-making process.

TABLE 1 TO PARAGRAPH (e)(1)—Continued

HTSUS	Tariff shift and/or other requirements
	(3) If the good is knit to shape, except for goods of subheading 6117.10 provided for in paragraph (e)(2) of this section, a change to 6101 through 6117 from any heading outside that group, except from knitted or crocheted articles of heading 9619, provided that the knit to shape components are knit in a single country territory or insular possession.
6209.20.1000–6209.20.5035.	(1) If the good consists of two or more component parts, a change to an assembled good of subheading 6209.20.1000 through 6209.20.5035 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more component parts, a change to subheading 6209.20.1000 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
6209.20.5045–6209.90.9000.	(1) If the good consists of two or more component parts, a change to an assembled good of subheading 6209.20.5045 through 6209.90.9000 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more component parts, a change to subheading 6209.20.5045 through 6209.90.9000 from any heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, 6217, subheading 6307.90, and from babies' garments and clothing accessories of heading 9619, and provided that the change is the result of a fabric-making process.
6210–6211	(1) If the good consists of two or more component parts, a change to an assembled good of heading 6210 through 6211 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more component parts, a change to heading 6210 through 6211 from any heading outside that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, 6001 through 6006, and 6217, subheading 6307.90, and subheading 9619.00.61 through 9619.00.79, and provided that the change is the result of a fabric-making process.
6212	(1) If the good is not knit to shape and consists of two or more component parts, a change to an assembled good of heading 6212 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good is not knit to shape and does not consist of two or more component parts, a change to heading 6212 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, 6001 through 6006, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process. (3) If the good is knit to shape, a change to heading 6212 from any other heading, provided that the knit to shape components are knit in a single country, territory, or insular possession.
6213–6214	Except for goods of heading 6213 through 6214 provided for in paragraph (e)(2) of this section, the country of origin of a good classifiable under heading 6213 through 6214 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
6215–6217	(1) If the good consists of two or more component parts, a change to an assembled good of heading 6215 through 6217 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more component parts, a change to heading 6215 through 6217 from any heading outside that group, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
6301–6306	Except for goods of heading 6302 through 6304 provided for in paragraph (e)(2) of this section, the country of origin of a good classifiable under heading 6301 through 6306 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
6307.10	The country of origin of a good classifiable under subheading 6307.10 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
6307.20	A change to subheading 6307.20 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
6307.90	The country of origin of a good classifiable under subheading 6307.90 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
6308	The country of origin of a good classifiable under heading 6308 is the country, territory, or insular possession in which the woven fabric component of the good was formed by a fabric-making process.
6309–6310	The country of origin of a good classifiable under heading 6309 through 6310 is the country, territory, or insular possession in which the good was last collected and packaged for shipment.
6405.20.60	A change to subheading 6405.20.60 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.

TABLE 1 TO PARAGRAPH (e)(1)—Continued

HTSUS	Tariff shift and/or other requirements
6406.10.77	(1) If the good consists of two or more components, a change to subheading 6406.10.77 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more components, a change to subheading 6406.10.77 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5801 through 5804, 5806, 5808 through 5810, 5903, 5906 through 5907, and 6001 through 6006, and provided that the change is the result of a fabric-making process.
6406.10.90	(1) If the good consists of two or more components, a change to subheading 6406.10.90 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more components, a change to subheading 6406.10.90 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5801 through 5804, 5806, 5808 through 5810, 5903, 5906 through 5907, and 6001 through 6006, and provided that the change is the result of a fabric-making process.
6406.90.15	(1) If the good consists of two or more components, a change to subheading 6406.90.15 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more components, a change to subheading 6406.90.15 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5801 through 5804, 5806, 5808 through 5810, 5903, 5906 through 5907, and 6001 through 6006, and provided that the change is the result of a fabric-making process.
6501	(1) If the good consists of two or more components, a change to heading 6501 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more components, a change to heading 6501 from any other heading, except from heading 5602, and provided that the change is the result of a fabric-making process.
6502	(1) If the good consists of two or more components, a change to heading 6502 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more components, a change to heading 6502 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5801 through 5804, 5806, 5808 through 5810, 5903, 5906 through 5907, and 6001 through 6006, and provided that the change is the result of a fabric-making process.
6504	(1) If the good consists of two or more components, a change to heading 6504 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more components, a change to heading 6504 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5608, 5801 through 5804, 5806, 5808 through 5810, 5903, 5906 through 5907, and 6001 through 6006, and provided that the change is the result of a fabric-making process.
6505.00	(1) For felt hats and other felt headgear, made from the hat bodies, hoods or plateaux of heading 6501, whether or not lined or trimmed, if the good consists of two or more components, a change to subheading 6505.00 from any other good of subheading 6505.00 or from any other subheading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) For felt hats and other felt headgear, made from the hat bodies, hoods or plateaux of heading 6501, whether or not lined or trimmed, if the good does not consist of two or more components, a change to subheading 6505.00 from any other subheading, except from heading 5602, and provided that the change is the result of a fabric making process. (3) For any other good, if the good consists of two or more components, a change to goods of subheading 6505.00, other than hair-nets, from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (4) For any other good, if the good does not consist of two or more components, a change to goods of subheading 6505.00, other than hair-nets, from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5609, 5801 through 5804, 5806, 5808 through 5811, 5903, 5906 through 5907, and 6001 through 6006, and provided that the change is the result of a fabric-making process.
6601.10–6601.91	A change to subheading 6601.10 through 6601.91 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
7019.13.15	(1) If the good is of filaments, a change to subheading 7019.13.15 from any other heading, provided that the change is the result of an extrusion process. (2) If the good is of staple fibers, a change to subheading 7019.13.15 from any other subheading, except from subheading 7019.13.35, 7019.19.30 through 7019.19.91, 7019.14.00 through 7019.15.00, 7019.80.90, 7019.71.00, 7019.80.10, and 7019.90, and provided that the change is the result of a spinning process.

TABLE 1 TO PARAGRAPH (e)(1)—Continued

HTSUS	Tariff shift and/or other requirements
7019.13.28	(1) If the good is of filaments, a change to subheading 7019.13.28 from any other heading, provided that the change is the result of an extrusion process. (2) If the good is of staple fibers, a change to subheading 7019.13.28 from any other subheading, except from subheading 7019.13.35, 7019.19.30 through 7019.19.91, 7019.14.00 through 7019.15.00, 7019.80.90, 7019.71.00, 7019.80.10, and 7019.90, and provided that the change is the result of a spinning process.
7019.61–7019.90	A change to subheading 7019.61 through 7019.90 from any other subheading, provided that the change is the result of a fabric-making process.
8708.21	(1) For seat belts not combined with nontextile components, a change to subheading 8708.21 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, and 5512 through 5516, and provided that the change is the result of a fabric-making process. (2) For seat belts combined with nontextile components, a change to an assembled good of subheading 8708.21 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
8804	(1) If the good consists of two or more component parts, a change to an assembled good of heading 8804 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more component parts, a change to heading 8804 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5603, 5801 through 5804, 5806, 5809 through 5811, 5903, 5906 through 5907, and 6001 through 6006, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
9113.90.40	(1) If the good consists of two or more component parts, a change to an assembled good of subheading 9113.90.40 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession. (2) If the good does not consist of two or more component parts, a change to subheading 9113.90.40 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5603, 5801 through 5802, 5806, 5809, 5903, 5906 through 5907, and 6001 through 6006, and subheading 6307.90, and provided that the change is the result of a fabric-making process.
9404.90	Except for goods of subheading 9404.90 provided for in paragraph (e)(2) of this section, the country of origin of a good classifiable under subheading 9404.90 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.
9503.00.0080	For garments and accessories thereof, footwear or headgear of dolls representing only human beings, a change to an assembled good from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.
9612.10.9010	A change to subheading 9612.10.9010 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5603, 5806, 5903, 5906 through 5907, and 6002 through 6006, and provided that the change is the result of a fabric-making process.
9619	(1) A change to articles of wadding of heading 9619 from any other heading, except from heading 5105, 5203, 5501 through 5507, and from 5601; or (2) If the good is not knit to shape and consists of two or more component parts, except for goods of subheading 6117.10 provided for in paragraph (e)(2) of this section, a change to an assembled knitted or crocheted article of heading 9619, from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession; or (3) If the good is not knit to shape and does not consist of two or more component parts, except for goods of subheading 6117.10 provided for in paragraph (e)(2) of this section, a change to a knitted or crocheted article of heading 9619 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5806, 5809 through 5811, 5903, 5906 through 5907, 6001 through 6006, 6101 through 6117; and subheading 6307.90, and provided that the change is the result of a fabric-making process; or (4) If the good is knit to shape, except for goods of subheading 6117.10 provided for in paragraph (e)(2) of this section, a change to a knitted or crocheted article of heading 9619 from any other heading, except from heading 6101 through 6117, provided that the knit to shape components are knit in a single country, territory, or insular possession; or (5) If the good consists of two or more component parts, a change to an assembled women's or girls' singlet or other undershirt, brief, panty, negligee, bathrobe, dressing gown, or a similar article of heading 9619 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession; or (6) If the good does not consist of two or more component parts, a change to a women's or girls' singlet or other undershirt, brief, panty, negligee, bathrobe, dressing gown, or a similar article of heading 9619 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, 6201 through 6208, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process; or (7) The country of origin of a baby diaper of cotton classifiable in heading 9619 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process; or

TABLE 1 TO PARAGRAPH (e)(1)—Continued

HTSUS	Tariff shift and/or other requirements
	(8) If the good consists of two or more component parts, a change to an assembled baby garment of synthetic fiber or artificial fiber of heading 9619 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession; or (9) If the good does not consist of two or more component parts, a change to a baby garment of synthetic fiber or artificial fiber of heading 9619 from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, 6209, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process; or (10) If the good consists of two or more component parts, a change to an assembled women's or girls' garment, made up of fabrics of heading 5602, 5603, 5903, 5906, or 5907, of heading 9619 or a girls', boys', men's, or women's garment, other than knitted or crocheted garments and other than a women's or girls' singlet or other undershirt, brief, panty, negligee, bathrobe, dressing gown, or a similar article, from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession; (11) If the good does not consist of two or more component parts, a change to an assembled women's or girls' garment, made up of fabrics of heading 5602, 5603, 5903, 5906, or 5907, of heading 9619 or a girls', boys', men's, or women's garment, other than knitted or crocheted garments and other than a women's or girls' singlet or other undershirt, brief, panty, negligee, bathrobe, dressing gown, or a similar article from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5809 through 5811, 5903, 5906 through 5907, 6001 through 6006, 6210 through 6212, and 6217, and subheading 6307.90, and provided that the change is the result of a fabric-making process; or (12) The country of origin of an other made up article of heading 9619 is the country, territory, or insular possession in which the woven fabric component of the good was formed by a fabric-making process.
9619.00.31–9619.00.33 ..	The country of origin of a good classifiable in subheading 9619.00.31 through 9619.00.33 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process.

(2) For goods of HTSUS headings 6213 and 6214 and HTSUS subheadings 6117.10, 6302.22, 6302.29, 6302.53, 6302.59, 6302.93, 6302.99, 6303.92, 6303.99, 6304.19, 6304.93, 6304.99, 9404.90.85 and 9404.90.95, except for goods classified under those headings or subheadings as of cotton or of wool or consisting of fiber blends containing 16 percent or more by weight of cotton:

(i) The country of origin of the good is the country, territory, or insular possession in which the fabric comprising the good was both dyed and printed when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing;

(ii) If the country of origin cannot be determined under paragraph (e)(2)(i) of this section, except for goods of HTSUS subheading 6117.10 that are knit to shape or consist of two or more component parts, the country of origin is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process; or

(iii) For goods of HTSUS subheading 6117.10 that are knit to shape or consist of two or more component parts, if the country of origin cannot be determined under paragraph (e)(2)(i) of this section:

(A) If the good is knit to shape, the country of origin of the good is the country, territory, or insular possession in which a change to HTSUS subheading 6117.10 from yarn occurs, provided that the knit to shape components are knit in a single country, territory, or insular possession; or

(B) If the good is not knit to shape and consists of two or more component parts, the country of origin of the good is the country, territory, or insular possession in which a change to an assembled good of HTSUS subheading 6117.10 from unassembled components occurs, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.

[T.D. 95–69, 60 FR 46197, Sept. 5, 1995]

EDITORIAL NOTES: 1. For FEDERAL REGISTER citations affecting §,102.21 see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

2. By CBP Dec. 22-25, 87 FR 68356, Nov. 15, 2022, §102.21 was amended; however, the revision to entry ''6201-6208'' in table 1 to paragraph (e)(1) could not be incorporated due to inaccurate amendatory instruction.

§ 102.22 Rules of origin for textile and apparel products of Israel.

(a) *Applicability*. The provisions of this section will control for purposes of determining whether a textile or apparel product, as defined in §102.21(b)(5), is considered a product of Israel for purposes of the customs laws and the administration of quantitative limitations. A textile or apparel product will be a product of Israel if it is wholly the growth, product, or manufacture of Israel. However, a textile or apparel product that consists of materials produced or derived from, or processed in, another country, or insular possession of the United States, in addition to Israel, will be a product of Israel if it last underwent a substantial transformation in Israel. A textile or apparel product will be considered to have undergone a substantial transformation if it has been transformed by means of substantial manufacturing or processing operations into a new and different article of commerce.

(b) *Criteria for determining country of origin for products of Israel*. The criteria in paragraphs (b)(1) and (b)(2) of this section will be considered in determining whether an imported textile or apparel product is a product of Israel. These criteria are not exhaustive. One or any combination of criteria may be determinative, and additional factors may be considered.

(1) A new and different article of commerce will usually result from a manufacturing or processing operation if there is a change in:

(i) Commercial designation or identity;

(ii) Fundamental character; or

(iii) Commercial use.

(2) In determining whether merchandise has been subjected to substantial manufacturing or processing operations, the following will be considered:

(i) The physical change in the material or article as a result of the manufacturing or processing operations in Israel or in Israel and a foreign territory or country or insular possession of the U.S.;

(ii) The time involved in the manufacturing or processing operations in Israel or in Israel and a foreign territory or country or insular possession of the U.S.;

(iii) The complexity of the manufacturing or processing operations in Israel or in Israel and a foreign territory or country or insular possession of the U.S.;

(iv) The level or degree of skill and/or technology required in the manufacturing or processing operations in Israel or in Israel and a foreign territory or country or insular possession of the U.S.; and

(v) The value added to the article or material in Israel or in Israel and a foreign territory or country or insular possession of the U.S., compared to its value when imported into the U.S.

(c) *Manufacturing or processing operations*. (1) An article or material usually will be a product of Israel when it has undergone in Israel prior to importation into the United States any of the following:

(i) Dyeing of fabric and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing;

(ii) Spinning fibers into yarn;

(iii) Weaving, knitting or otherwise forming fabric;

(iv) Cutting of fabric into parts and the assembly of those parts into the completed article; or

(v) Substantial assembly by sewing and/or tailoring of all cut pieces of apparel articles which have been cut from fabric in another foreign territory or country, or insular possession of the U.S., into a completed garment (e.g., the complete assembly and tailoring of all cut pieces of suit-type jackets, suits, and shirts).

(2) An article or material usually will not be considered to be a product of Israel by virtue of merely having undergone any of the following:

(i) Simple combining operations, labeling, pressing, cleaning or dry cleaning, or packaging operations, or any combination thereof;

(ii) Cutting to length or width and hemming or overlocking fabrics which are readily identifiable as being intended for a particular commercial use;

(iii) Trimming and/or joining together by sewing, looping, linking, or other means of attaching otherwise completed knit-to-shape component parts produced in a single country, even when accompanied by other processes (e.g., washing, drying, and mending) normally incident to the assembly process;

(iv) One or more finishing operations on yarns, fabrics, or other textile articles, such as showerproofing, superwashing, bleaching, decating, fulling, shrinking, mercerizing, or similar operations; or

(v) Dyeing and/or printing of fabrics or yarns.

(d) *Results of origin determination.* If Israel is determined to be the country of origin of a textile or apparel product by application of the provisions in paragraphs (a), (b), and (c) of this section, the inquiry into the origin of the product ends. However, if Israel is determined not to be the country of origin of a textile or apparel product by application of the provisions in paragraphs (a), (b), and (c) of this section, the country of origin of the product will be determined under the rules of origin set forth in §102.21, although the application of those rules cannot result in Israel being the country of origin of the product.

[CBP Dec. 05–32, 70 FR 58013, Oct. 5, 2005]

§102.23 Origin and Manufacturer Identification.

(a) *Textile or apparel product manufacturer identification.* All commercial importations of textile or apparel products must identify on CBP Form 3461, or its electronic equivalent, (Entry/Immediate Delivery) and CBP Form 7501, or its electronic equivalent, (Entry Summary), and in all electronic data transmissions that require identification of the manufacturer, the manufacturer of such products through a manufacturer identification code (MID) constructed from the name and address of the entity performing the origin-conferring operations pursuant to §102.21 or §102.22 of this part, as applicable. The code must be accurately constructed using the methodology set forth in the appendix to this part, including the use of the two-letter International Organization for Standardization (ISO) code for the country of origin of such products. When a single entry is filed for products of more than one manufacturer, the products of each manufacturer must be separately identified. Importers must be able to demonstrate to CBP their use of reasonable care in determining the manufacturer. If an entry filed for such merchandise fails to include the MID properly constructed from the name and address of the manufacturer, the Center director may reject the entry or take other appropriate action. For purposes of this paragraph, ''textile or apparel products'' means goods classifiable in Section XI, Harmonized Tariff Schedule of the United States (HTSUS), and goods classifiable in any 10-digit HTSUS number outside of Section XI with a three-digit textile category number assigned to the specific subheading.

(b) *Incomplete or insufficient information.* If the Center director is unable to determine the country of origin of a textile or apparel product, the importer must submit additional information as requested by the Center director. Release of the product from CBP custody will be denied until a determination of the country of origin is made based upon the information provided or the best information available.

(c) *Date of exportation.* For quota, visa or export license requirements, and statistical purposes, the date of exportation for textile or apparel products listed in §102.21(b)(5) will be the date the vessel or carrier leaves the last port in the country of origin, as determined by application of §102.21 or §102.22, as applicable. Contingency of diversion in another foreign territory or country will not change the date of

exportation for quota, visa or export license requirements or for statistical purposes.

[CBP Dec. 05–32, 70 FR 58013, Oct. 5, 2005, as amended at CBP Dec. 11–09, 76 FR 14584, Mar. 17, 2011; CBP Dec. 15–14, 80 FR 61286, Oct. 13, 2015; CBP Dec. 16–26, 81 FR 93017, Dec. 20, 2016]

§ 102.24 Entry of textile or apparel products.

Textile or apparel products subject to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), whether or not the requirements set forth in § 102.21 or § 102.22, as applicable, have been met, will be denied entry where the factory, producer, manufacturer, or other company named in the entry documents for such textile or apparel products is named in a directive published in the FEDERAL REGISTER by the Committee for the Implementation of Textile Agreements as a company found to be illegally transshipping, closed or unable to produce records to verify production. In these circumstances, no additional information will be accepted or considered by CBP for purposes of determining the admissibility of such textile or apparel products.

[CBP Dec. 05–32, 70 FR 58013, Oct. 5, 2005, as amended by CBP Dec. 12–19, 77 FR 72719, Dec. 6, 2012]

§ 102.25 Textile or apparel products under the North American Free Trade Agreement.

In connection with a claim for NAFTA preferential tariff treatment involving non-originating textile or apparel products subject to the tariff preference level provisions of appendix 6.B to Annex 300–B of the NAFTA and Additional U.S. Notes 3 through 6 to Section XI, Harmonized Tariff Schedule of the United States, the importer must submit to CBP a Certificate of Eligibility, or its electronic equivalent, covering the products. The Certificate of Eligibility, or its electronic equivalent, must be properly completed and signed by an authorized official of the Canadian or Mexican government and must be presented to CBP at the time the claim for preferential tariff treatment is filed under § 181.21 of this chapter. If the Center director is unable to determine the country of origin of the products, they will not be entitled to preferential tariff treatment or any other benefit under the NAFTA for which they would otherwise be eligible.

[CBP Dec. 05–32, 70 FR 58013, Oct. 5, 2005, as amended by CBP Dec. 15–14, 80 FR 61286, Oct. 13, 2015; CBP Dec. 16–26, 81 FR 93017, Dec. 20, 2016]

APPENDIX TO PART 102—TEXTILE AND APPAREL MANUFACTURER IDENTIFICATION

RULES FOR CONSTRUCTING THE MANUFACTURER IDENTIFICATION CODE (MID)

1. Pursuant to § 102.23(a) of this part, all commercial importations of textile or apparel products, as defined in that paragraph, must identify on CBP Form 3461, or its electronic equivalent, (Entry/Immediate Delivery) and CBP Form 7501, or its electronic equivalent, (Entry Summary), and in all electronic data transmissions that require identification of the manufacturer, the manufacturer of such products through a manufacturer identification code (MID) constructed from the name and address of the entity performing the origin-conferring operations. The MID may be up to 15 characters in length, with no spaces inserted between the characters.

2. The first 2 characters of the MID consist of the ISO code for the actual country of origin of the goods. The one exception to this rule is Canada. ''CA'' is not a valid country code for the MID; instead, one of the appropriate province codes listed below must be used:

ALBERTA—XA
BRITISH COLUMBIA—XC
MANITOBA—XM
NEW BRUNSWICK—XB
NEWFOUNDLAND (LABRADOR)—XW
NORTHWEST TERRITORIES—XT
NOVA SCOTIA—XN
NUNAVUT—XV
ONTARIO—XO
PRINCE EDWARD ISLAND—XP
QUEBEC—XQ
SASKATCHEWAN—XS
YUKON TERRITORY—XY

3. The next group of characters in the MID consists of the first three characters in each of the first two ''words'' of the manufacturer's name. If there is only one ''word'' in the name, then only the first three characters from the name are to be used. For example, ''Amalgamated Plastics Corp.'' would yield ''AMAPLA,'' and ''Bergstrom'' would yield ''BER.'' If there are two or more initials together, they are to be treated as a single word. For example, ''A.B.C. Company'' or ''A B C Company'' would yield ''ABCCOM,'' ''O.A.S.I.S. Corp.'' would yield ''OASCOR,''

''Dr. S.A. Smith'' would yield ''DRSA,'' and ''Shavings B L Inc.'' would yield ''SHABL.'' The English words ''a,'' ''an,'' ''and,'' ''of,'' and ''the'' in the manufacturer's name are to be ignored. For example, ''The Embassy of Spain'' would yield ''EMBSPA.'' Portions of a name separated by a hyphen are to be treated as a single word. For example, ''Rawles-Aden Corp.'' or ''Rawles—Aden Corp.'' would both yield ''RAWCOR.'' Some names include numbers. For example, ''20th Century Fox'' would yield ''20TCEN'' and ''Concept 2000'' would yield ''CON200.''

a. Some words in the title of the foreign manufacturer's name are not to be used for the purpose of constructing the MID. For example, most textile factories in Macau start with the same words, ''Fabrica de Artigos de Vestuario,'' which means ''Factory of Clothing.'' For a factory named ''Fabrica de Artigos de Vestuario JUMP HIGH Ltd,'' the portion of the factory name that identifies it as a unique entity is ''JUMP HIGH.'' This is the portion of the name that should be used to construct the MID. Otherwise, all of the MIDs from Macau would be the same, using ''FABDE,'' which is incorrect.

b. Similarly, many factories in Indonesia begin with the prefix PT, such as ''PT Morich Indo Fashion.'' In Russia, other prefixes are used, such as ''JSC,'' ''OAO,'' ''OOO,'' and ''ZAO.'' These prefixes are to be ignored for the purpose of constructing the MID.

4. The next group of characters in the MID consists of the first four numbers in the largest number on the street address line. For example, ''11455 Main Street, Suite 9999'' would yield ''1145.'' A suite number or a post office box is to be used if it contains the largest number. For example, ''232 Main Street, Suite 1234'' would yield ''1234.'' If the numbers in the street address are spelled out, such as ''One Thousand Century Plaza,'' no numbers representing the manufacturer's address will appear in this section of the MID. However, if the address is ''One Thousand Century Plaza, Suite 345,'' this would yield ''345.'' When commas or hyphens separate numbers, all punctuation is to be ignored and the number that remains is to be used. For example, ''12,34,56 Alaska Road'' and ''12–34–56 Alaska Road'' would yield ''1234.'' When numbers are separated by a space, both numbers are recognized and the larger of the two numbers is to be selected. For example, ''Apt. 509 2727 Cleveland St.'' would yield ''2727.''

5. The last characters in the MID consist of the first three letters in the city name. For example, ''Tokyo'' would yield ''TOK,'' ''St. Michel'' would yield ''STM,'' ''18-Mile High'' would yield ''MIL,'' and ''The Hague'' would yield ''HAG.'' Numbers in the city name or line are to be ignored. For city-states, the first three letters are to be taken from the country name. For example, Hong Kong would yield ''HON,'' Singapore would yield ''SIN,'' and Macau would yield ''MAC.''

6. As a general rule, in constructing a MID, all punctuation, such as commas, periods, apostrophes, and ampersands, are to be ignored. All single character initials, such as the ''S'' in ''Thomas S. Delvaux Company,'' are also to be ignored, as are leading spaces in front of any name or address.

7. Examples of manufacturer names and addresses and their corresponding MIDs are listed below:

LA VIE DE FRANCE, 243 Rue de la Payees, 62591 Bremond, France; FRLAVIE243BRE

20TH CENTURY TECHNOLOGIES, 5 Ricardo Munoz, Suite 5880, Caracas, Venezuela; VE20TCEN5880CAR

Fabrica de Artigos de Vestuario TOP JOB, Grand River Building, FI 2–4, Macau; MOTOPJOB24MAC

THE GREENHOUSE, 45 Royal Crescent, Birmingham, Alabama 35204; USGRE45BIR

CARDUCCIO AND JONES, 88 Canberra Avenue, Sidney, Australia; AUCARJON88SID

N. MINAMI & CO., LTD., 2–6, 8–Chome Isogami-Dori, Fukiai-Ku, Kobe, Japan; JPMINCO26KOB

BOCCHACCIO S.P.A., Visa Mendotti, 61, 8320 Verona, Italy; ITBOCSPA61VER

MURLA-PRAXITELES INC., Athens, Greece; GRMURINCATH

SIGMA COY E.X.T., 4000 Smyrna, Italy, 1640 Delgado; ITSIGCOY1640SMY

COMPANHIA TEXTIL KARSTEN, Calle Grande, 25–27, 67890 Lisbon, Portugal, PTKAR2527LIS

HURON LANDMARK, 1840 Huron Road, Windsor, ON, Canada N9C 2L5; XOHURLAN1840WIN

A.B.C. COMPANY, 55–5 Hung To Road, P.O. Box 1234, Kowloon, Hong Kong; HKABCCOM1234HON.

[CBP Dec. 05–32, 70 FR 58015, Oct. 5, 2005, as amended at CBP Dec. 11–09, 76 FR 14584, Mar. 17, 2011; CBP Dec. 15–14, 80 FR 61286, Oct. 13, 2015]

PART 103—AVAILABILITY OF INFORMATION

Sec.

AUTHORITY: 5 U.S.C. 301, 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

Section 103.31 also issued under 19 U.S.C. 1431;

Section 103.31a also issued under 19 U.S.C. 2071 note and 6 U.S.C. 943;

Section 103.33 also issued under 19 U.S.C. 1628;

Section 103.34 also issued under 18 U.S.C. 1905.

SOURCE: T.D. 81–168, 46 FR 32565, June 24, 1981, unless otherwise noted.

§ 103.0 Scope.

This part governs the production/disclosure of agency-maintained documents/information requested pursuant to the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552), the Privacy Act of 1974, as amended (5 U.S.C. 552a), and/or under other statutory or regulatory provisions and/or as requested through administrative and/or legal processes. In this respect, this part contains regulations on production or disclosure in federal, state, local, and foreign proceedings and includes specific information pertaining to the procedures to be followed when producing or disclosing documents or information under various circumstances. In addition, this part contains regulations on other information subject to restricted access. As information obtained by CBP is derived from myriad sources, persons seeking information should consult with the appropriate field officer before invoking the formal procedures set forth in this part. The regulations in this part supplement the regulations of the Department of Homeland Security regarding public access to records found at 6 CFR part 5. For purposes of this part, the CBP Office of the Chief Counsel is considered to be a part of CBP.

[CBP Dec. 15–16, 80 FR 71692, Nov. 17, 2015, as amended by CBP Dec. 20-09, 85 FR 31057, May 22, 2020]

Subpart A—Production of Documents/Disclosure of Information Under the FOIA

§ 103.1 Public reading room.

CBP maintains a virtual public reading room at *http://foiarr.cbp.gov/* where the material required to be made available under 5 U.S.C. 552(a) and this part may be inspected and copied.

[CBP Dec. 15–16, 80 FR 71692, Nov. 17, 2015]

§ 103.2 Department of Homeland Security Freedom of Information Act procedures.

Inorder to process requests for documents/information and appeals under the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552), CBP applies the Department of Homeland Security FOIA regulations in 6 CFR part 5, subpart A.

[CBP Dec. 15–16, 80 FR 71692, Nov. 17, 2015, as amended by CBP Dec. 20-09, 85 FR 31057, May 22, 2020]

§ 103.3 Department of Homeland Security Privacy Act procedures.

Department of Homeland Security Privacy Act regulations. In order to process access requests for documents/information and appeals under the Privacy Act

of 1974, as amended (5 U.S.C. 552a), CBP applies the Department of Homeland Security Privacy Act regulations in 6 CFR part 5, subpart B.

[CBP Dec. 15–16, 80 FR 71692, Nov. 17, 2015]

§§ 103.4–103.13 [Reserved]

Subpart B—Production or Disclosure in Federal, State, Local, and Foreign Proceedings

SOURCE: T.D. 96–36, 61 FR 19838, May 3, 1996, unless otherwise noted.

§ 103.21 Purpose and definitions.

(a) *Purpose.* (1) This subpart sets forth procedures to be followed with respect to the production or disclosure of any documents contained in CBP files, any information relating to material contained in CBP files, any testimony by a CBP employee, or any information acquired by any person as part of that person's performance of official duties as a CBP employee or because of that person's official status, hereinafter collectively referred to as ''information'', in all federal, state, local, and foreign proceedings when a subpoena, notice of deposition (either upon oral examination or written interrogatory), order, or demand, hereinafter collectively referred to as a ''demand'', of a court, administrative agency, or other authority is issued for such information.

(2) This subpart does not cover those situations where the United States is a party to the action. In situations where the United States is a party to the action, CBP employees are instructed to follow internal CBP policies and procedures.

(b) *CBP employee.* For purposes of this subpart, the term ''CBP employee'' includes all present and former officers and employees of U.S. Customs and Border Protection.

(c) *CBP documents.* For purposes of this subpart, the term ''CBP documents'' includes any document (including copies thereof), no matter what media, produced by, obtained by, furnished to, or coming to the knowledge of, any CBP employee while acting in his/her official capacity, or because of his/her official status, with respect to the administration or enforcement of laws administered or enforced by CBP.

(d) *Originating component.* For purposes of this subpart, the term ''originating component'' references the CBP official, or the official's designee, in charge of the office responsible for the collection, assembly, or other preparation of the information demanded or that, at the time the person whose testimony is demanded acquired the information in question, employs or employed the person whose testimony is demanded.

(e) *Disclosure to government law enforcement or regulatory agencies.* Nothing in this subpart is intended to impede the appropriate disclosure of information by CBP to federal, state, local, and foreign law enforcement or regulatory agencies, in accordance with the confidentiality requirements of the Privacy Act (5 U.S.C. 552a), the Trade Secrets Act (18 U.S.C. 1905), and other applicable statutes.

(f) *Disclosure to federal attorneys and the Court of International Trade.* Nothing in this subpart is intended to restrict the disclosure of CBP information requested by the Court of International Trade, U.S. Attorneys, or attorneys of the Department of Justice, for use in cases which arise under the laws administered or enforced by, or concerning, CBP and which are referred by the Department of Homeland Security to the Department of Justice for prosecution or defense.

(g) *Disclosure of non-CBP information.* Nothing in the subpart is intended to impede the appropriate disclosure of non-CBP information by CBP employees in any proceeding in which they are a party or witness solely in their personal capacities.

(h) *Failure of CBP employee to follow procedures.* The failure of any CBP employee to follow the procedures specified in this subpart neither creates nor confers any rights, privileges, or benefits on any person or party.

(i) *In camera inspection of records.* Nothing in this subpart authorizes CBP personnel to withhold records from a federal court, whether civil or criminal, pursuant to its order for such records appropriately made, for purposes of *in camera* inspection of the

records to determine the propriety of claimed exemption(s) from disclosure.

[61 FR 19838, May 3, 1996, as amended at 78 FR 70856, Nov. 27, 2013]

§ 103.22 Procedure in the event of a demand for CBP information in any federal, state, or local civil proceeding or administrative action.

(a) *General prohibition against disclosure.* In any federal, state, or local civil proceeding or administrative action in which CBP is not a party, no CBP employee shall, in response to a demand for CBP information, furnish CBP documents or testimony as to any material contained in CBP files, any information relating to or based upon material contained in CBP files, or any information or material acquired as part of the performance of that person's official duties (or because of that person's official status) without the prior written approval of the Chief Counsel, as described in paragraph (b) of this section.

(b) *Employee notification to Counsel.* Whenever a demand for information is made upon a CBP employee, that employee shall immediately prepare a report that specifically describes the testimony or documents sought and notify the Assistant Chief Counsel or Associate Chief Counsel for the area where the employee is located. If the employee is located at Headquarters or outside of the United States, the employee shall immediately notify the Chief Counsel. The CBP employee shall then await instructions from the Chief Counsel concerning the response to the demand.

(c) *Requesting party's initial burden.* A party seeking CBP information shall serve on the appropriate CBP employee the demand, a copy of the Summons and Complaint, and provide an affidavit, or, if that is not feasible, a statement that sets forth a summary of the documents or testimony sought and its relevance to the proceeding. Any disclosure authorization for documents or testimony by a CBP employee shall be limited to the scope of the demand as summarized in such affidavit or statement. The Chief Counsel may, upon request and for good cause shown, waive the requirements of this paragraph.

(d) *Requesting party's notification requirement.* The demand for CBP information, pursuant to the provisions of paragraph (c) of this section, shall be served at least ten (10) working days prior to the scheduled date of the production of the documents or the taking of testimony.

(e) *Counsel notification to originating component.* Upon receipt of a proper demand for CBP information, one which complies with the provisions of paragraph (c) of this section, if the Chief Counsel believes that it will comply with any part of the demand, it will immediately advise the originating component.

(f) *Conditions for authorization of disclosure.* The Chief Counsel, subject to the provisions of paragraph (h) of this section, may authorize the production of CBP documents or the appearance and testimony of a CBP employee if:

(1) Production of the demanded documents or testimony, in the judgment of the Chief Counsel, are appropriate under the factors specified in § 103.23(a) of this subpart; and

(2) None of the factors specified in § 103.23(b) of this subpart exist with respect to the demanded documents or testimony.

(g) *Limitations on the scope of authorized disclosure.* (1) The Chief Counsel shall authorize the disclosure of CBP information by a CBP employee without further authorization from CBP officials whenever possible, *provided* that:

(i) If necessary, Counsel has consulted with the originating component regarding disclosure of the information demanded;

(ii) There is no objection from the originating component to the disclosure of the information demanded; and

(iii) Counsel has sought to limit the demand for information to that which would be consistent with the factors specified in § 103.23 of this part.

(2) In the case of an objection by the originating component, the Chief Counsel shall make the disclosure determination.

(h) *Disclosure of commercial information.* In the case of a demand for commercial information or commercial documents concerning importations or exportations, the Chief Counsel shall

obtain the authorization of the Assistant Commissioner (Field Operations) or his/her designee prior to the Chief Counsel authorizing the production/disclosure of such documents/information.

[61 FR 19838, May 3, 1996, as amended at 78 FR 70856, Nov. 27, 2013]

§ 103.23 Factors in determining whether to disclose information pursuant to a demand.

(a) *General considerations.* In authorizing disclosures pursuant to a proper demand for CBP information, one which complies with the provisions of § 103.22(c), the Chief Counsel should consider the following factors:

(1) Whether the disclosure would be appropriate under the relevant substantive law concerning privilege;

(2) Whether the disclosure would be appropriate under the rules of procedure governing the case or matter in which the demand arose; and,

(3) Whether the requesting party has demonstrated that the information requested is:

(i) Relevant and material to the action pending, based on copies of the summons and complaint that are required to be attached to the subpoena *duces tecum* or other demand;

(ii) Genuinely necessary to the proceeding, *i.e.,* a showing of substantial need has been made;

(iii) Unavailable from other sources; and,

(iv) Reasonable in its scope, *i.e.,* the documents, information, or testimony sought are described with particularity.

(4) Whether consultation with the originating component requires that the Chief Counsel make a separate determination as to the disclosure of the information requested.

(b) *Circumstances where disclosure will not be made.* Among the demands in response to which disclosure will not be authorized by the Chief Counsel are those demands with respect to which any of the following factors exist:

(1) Disclosure would violate a treaty, statute (such as the Privacy Act, 5 U.S.C. 552a, the Trade Secrets Act, 18 U.S.C. 1905, or the income tax laws, 26 U.S.C. 6103 and 7213), or a rule of procedure, such as the grand jury secrecy rule, Fed.R.Crim.Proc. rule 6(e) (18 U.S.C.App.);

(2) Disclosure would violate a specific regulation;

(3) Disclosure would reveal classified or confidential information;

(4) Disclosure would reveal a confidential source or informant;

(5) Disclosure would reveal investigatory records compiled for law enforcement purposes, interfere with enforcement proceedings, or disclose investigative techniques and procedures;

(6) Disclosure would improperly reveal confidential commercial information without the owner's consent (*e.g.,* entry information);

(7) Disclosure relates to documents which were produced by another agency or entity;

(8) Disclosure would unduly interfere with the orderly conduct of CBP business;

(9) CBP has no interest, records, or other official information regarding the matter in which disclosure is sought;

(10) There is a failure to make proper service upon the United States; or

(11) There is a failure to comply with federal, state, or local rules of discovery.

[61 FR 19838, May 3, 1996, as amended at 78 FR 70856, Nov. 27, 2013]

§ 103.24 Procedure in the event a decision concerning a demand is not made prior to the time a response to the demand is required.

If response to a demand is required before the instructions from the Chief Counsel are received, the U.S. Attorney, his/her assistant, or other appropriate legal representative shall be requested to appear with the CBP employee upon whom the demand has been made. The U.S. Attorney, his/her assistant, or other appropriate legal representative shall furnish the court or other authority with a copy of the regulations contained in this subpart, inform the court or other authority that the demand has been or is being, as the case may be, referred for the prompt consideration of the Chief Counsel, and shall respectfully request

the court or authority to stay the demand pending receipt of the requested instructions.

[61 FR 19838, May 3, 1996, as amended at 78 FR 70856, Nov. 27, 2013]

§ 103.25 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the demand in response to a request made in accordance with § 103.24 pending receipt of instructions, or rules that the demand must be complied with irrespective of instructions rendered in accordance with §§ 103.22, 103.23, 103.26, or 103.27 of this subpart not to produce the documents or disclose the information sought, the CBP employee upon whom the demand has been made shall, pursuant to this subpart, respectfully decline to comply with the demand. *See, United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951).

[61 FR 19838, May 3, 1996, as amended at 78 FR 70856, Nov. 27, 2013]

§ 103.26 Procedure in the event of a demand for CBP information in a state or local criminal proceeding.

Center directors, port directors, special agents in charge within the Office of Internal Affairs, chief patrol agents, directors within the Office of Air and Marine, directors of field laboratories, or any supervisor of such officials may, in the interest of federal, state, and local law enforcement, upon receipt of demands of state or local authorities, and at the expense of the State, authorize employees under their supervision to attend trials and administrative hearings on behalf of the government in any state or local criminal case, to produce records, and to testify as to facts coming to their knowledge in their official capacities. However, in cases where a defendant in a state or local criminal case demands testimony or the production of CBP documents or information, authorization from the Chief Counsel is required as under § 103.22 of this subpart. No disclosure of information under this section shall be made if any of the factors listed in § 103.23(b) of this subpart are present.

[61 FR 19838, May 3, 1996, as amended at 78 FR 70856, Nov. 27, 2013; CBP Dec. 16–26, 81 FR 93017, Dec. 20, 2016]

§ 103.27 Procedure in the event of a demand for CBP information in a foreign proceeding.

(a) *Required prior approval for disclosure.* In any foreign proceeding in which CBP is not a party, no CBP employee shall, in response to a demand, furnish CBP documents or testimony as to any material contained in CBP files, any information relating to or based upon material contained in CBP files, or any information or material acquired as part of the performance of that person's official duties (or because of that person's official status) without the prior approval of the Chief Counsel, as described in paragraph (b) of this section.

(b) *Employee notification to Counsel.* Whenever a demand in a foreign proceeding is made upon a CBP employee concerning pre-clearance activities within the territory of the foreign country, that employee shall immediately notify the appropriate Associate Chief Counsel responsible for the pre-clearance location. All other demands in a foreign proceeding shall be reported by CBP employees to the Chief Counsel. The CBP employee shall then await instructions from the Chief Counsel concerning the response to the demand.

(c) *Counsel notification to originating component.* Upon receipt of a proper demand for CBP information, one which complies with the provisions of § 103.22(c), if the Chief Counsel believes that it will comply with any part of the demand, it will immediately advise the originating component.

(d) *Conditions for authorization of disclosure.* The Chief Counsel, subject to the terms of paragraph (e) of this section, may authorize the disclosure of CBP documents or the appearance and testimony of a CBP employee if:

(1) Production of the demanded documents or testimony, in the judgment of the Chief Counsel, are appropriate under the factors specified in § 103.23(a) of this subpart; and

(2) None of the factors specified in § 103.23(b) of this subpart exist with respect to the demanded documents or testimony.

(e) *Limitations on the scope of authorized disclosure.* (1) The Chief Counsel shall authorize the disclosure of CBP

information by a CBP employee without further authorization from CBP officials whenever possible, provided that:

(i) If necessary, Counsel has consulted with the originating component regarding disclosure of the information demanded;

(ii) There is no objection from the originating component to the disclosure of the information demanded; and

(iii) Counsel has sought to limit the demand for information to that which would be consistent with the factors specified in §103.23 of this part.

(2) In the case of an objection by the originating component, the Chief Counsel shall make the disclosure determination.

[61 FR 19838, May 3, 1996, as amended at 78 FR 70856, Nov. 27, 2013]

Subpart C—Other Information Subject to Restricted Access

§103.31 Information on vessel manifests and summary statistical reports.

(a) *Disclosure to members of the press.* Accredited representatives of the press, including newspapers, commercial magazines, trade journals, and similar publications shall be permitted to examine vessel manifests and summary statistical reports of imports and exports and to copy therefrom for publication information and data subject to the following rules:

(1) Of the information and data appearing on outward manifests, only the name and address of the shipper, general character of the cargo, number of packages and gross weight, name of vessel or carrier, port of exit, port of destination, and country of destination may be copied and published. However, if the Secretary of the Treasury makes an affirmative finding on a shipment-by-shipment basis that disclosure of the above information is likely to pose a threat of personal injury or property damage, that information shall not be disclosed to the public.

(2) Commercial or financial information, such as the names of the consignees, and marks and numbers shall not be copied from outward manifests or any other papers.

(3) All the information appearing on the cargo declaration (CBP Form 1302) of the inward vessel manifest may be copied and published. However, if the Secretary of the Treasury makes an affirmative finding on a shipment-by-shipment basis that the disclosure of the information contained on the cargo declaration is likely to pose a threat of personal injury or property damage, that information shall not be disclosed to the press.

(b) *Review of data.* All copies and notations from inward or outward manifests shall be submitted for examination by a CBP officer designated for that purpose.

(c) *Disclosure to the public.* Members of the public shall not be permitted to examine vessel manifests. However, they may request and obtain from CBP, information from vessel manifests, subject to the rules set forth in paragraph (a) of this section. However, importers and exporters, or their duly authorized brokers, attorneys, or agents may be permitted to examine manifests with respect to any consignment of goods in which they have a proper and legal interest as principal or agent, but shall not be permitted to make any general examination of manifests or make any copies or notations from them except with reference to the particular importation or exportation in which they have a proper and legal interest.

(d) *Confidential treatment*—(1) *Inward manifest.* An importer or consignee may request confidential treatment of its name and address contained in inward manifests, to include identifying marks and numbers. In addition, an importer or consignee may request confidential treatment of the name and address of the shipper or shippers to such importer or consignee by using the following procedure:

(i) An importer or consignee, or authorized employee, attorney or official of the importer or consignee, must submit a certification (as described in paragraph (d)(1)(ii) of this section) claiming confidential treatment of its name and address. The name and address of an importer or consignee includes marks and numbers which reveal the name and address of the importer or consignee. An importer or

consignee may file a certification requesting confidentiality for all its shippers.

(ii) There is no prescribed format for a certification. However, the certification shall include the importer's or consignee's Internal Revenue Service Employer Number, if available. There is no requirement to provide sufficient facts to support the conclusion that the disclosure of the names and addresses would likely cause substantial harm to the competitive position of the importer or consignee.

(iii) The certification must be submitted to the Vessel Manifest Program Manager, Office of Trade (Mail Stop 1354), U.S. Customs and Border Protection, 1801 N Beauregard Street, Alexandria, VA 22311; or submitted electronically via an email transmission at *vesselmanifestconfidentiality@cbp.dhs.gov* or via the Vessel Manifest Confidentiality Online Application on CBP's public website, *www.CBP.gov*.

(iv) Each initial certification will be valid for a period of two years from the date of receipt. Renewal certifications should be submitted to the Vessel Manifest Program Manager at least 60 days prior to the expiration of the current certification. Information so certified may be copied, but not published, by the press during the effective period of the certification. An importer or consignee shall be given written notification by CBP of the receipt of its certification of confidentiality.

(2) *Outward manifest.* If a shipper wishes to request confidential treatment by Customs of the shipper's name and address contained in an outward manifest, the following procedure shall be followed:

(i) A shipper, or authorized employee or official of the shipper, must submit a certification claiming confidential treatment of the shipper's name and address. The certification shall include the shipper's Internal Revenue Service Employer Number, if available.

(ii) There is no prescribed format for a certification.

(iii) The certification must be submitted to the Vessel Manifest Program Manager, Office of Trade (Mail Stop 1354), U.S. Customs and Border Protection, 1801 N Beauregard Street, Alexandria, VA 22311; or submitted electronically via an email transmission at *vesselmanifestconfidentiality@cbp.dhs.gov* or via the Vessel Manifest Confidentiality Online Application on the CBP's public website, *www.CBP.gov*.

(iv) Each certification will be valid for a period of two (2) years from the date of its approval.

(3) If any individual shall abuse the privilege granted him to examining inward and outward manifests or shall make any improper use of any information or data obtained from such manifests or other papers filed in the customhouse, both he and the party or publication which he represents shall thereafter be denied access to such papers.

(e) *Availability of manifest data on CD-ROMS*—(1) *Availability.* Manifest data acquired from the Automated Manifest System (AMS) is available to interested members of the public on CD-ROMS. This data, compiled daily, will contain all manifest transactions made on the nationwide system within the last 24 hour period. Data for which parties have requested confidential treatment in accordance with paragraph (d) of this section will not be included on the CD-ROMS. These CD-ROMS may be purchased at the government's production cost. CD-ROMS are available for specific days or on a subscription basis.

(2) *Requests and subscriptions.* Requests for CD-ROMS must be in writing and submitted to: U.S. Customs and Border Protection, National Finance Center, Collections Section, P.O. Box 68907, Indianapolis, Indiana 46268, or 6026 Lakeside Blvd., Indianapolis, Indiana 46278. Requests must include a check to cover the cost of the CD-ROMS requested. Actual costs and other specific information should be ascertained by contacting the Collections Section at (317) 614–4514. Bills for subscriptions will be issued monthly, with the first month's fee due in advance. Requested CD-ROMS will be mailed from the CBP Technology Support Center, first class, on the next business day after compilation. Parties desiring another form of delivery will have to make their own arrangements and notify CBP in advance. Subscriptions may be canceled provided CBP receives written notice at least 10 days prior to the end of the month. The CBP

Technology Support Center must be notified in writing within seven days of technical problems with CD-ROMS or non-receipt of CD-ROMS in order to receive a replacement or credit towards future tape purchases. Refunds will not be provided. Information regarding the technical specifications of the CD-ROMS, problem CD-ROMS or the non-receipt of CD-ROMS should be directed to CBP Technology Support Center at 1–800–927–8729.

(3) *Data elements.* The following are the data elements from the AMS manifest which will be provided to the public via CD-ROMS:

1. Carrier code.
2. Vessel country code.
3. Vessel name.
4. Voyage number.
5. District/port of unlading.
6. Estimated arrival date.
7. Bill of lading number.
8. Foreign port of lading.
9. Manifest quantity.
10. Manifest units.
11. Weight.
12. Weight unit.
13. Shipper name.[1]
14. Shipper address.[1]
15. Consignee name.[1]
16. Consignee address.[1]
17. Notify party name.[1]
18. Notify party address.[1]
19. Piece count.
20. Description of goods.
21. Container number.
22. Seal number.

[T.D. 81–168, 46 FR 32565, June 24, 1981]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 103.31, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 103.31a Advance electronic information for air, truck, and rail cargo; Importer Security Filing information for vessel cargo.

The following types of advance electronic information are *per se* exempt from disclosure as either trade secrets or privileged or confidential commercial or financial information, unless CBP receives a specific request for such records pursuant to 6 CFR 5.3, and the owner of the information expressly agrees in writing to its release:

(a) Advance cargo information that is electronically presented to Customs and Border Protection (CBP) for inbound or outbound air, rail, or truck cargo in accordance with § 122.48a, § 123.91, § 123.92, or § 192.14 of this chapter;

(b) Importer Security Filing information that is electronically presented to CBP for inbound vessel cargo in accordance with § 149.2 of this chapter;

(c) Vessel stow plan information that is electronically presented to CBP for inbound vessels in accordance with § 4.7c of this chapter; and

(d) Container status message information that is electronically presented for inbound containers in accordance with § 4.7d of this chapter.

[CBP Dec. 08–46, 73 FR 71780, Nov. 25, 2008, as amended by CBP Dec. 15–16, 80 FR 71692, Nov. 17, 2015]

§ 103.32 Information concerning fines, penalties, and forfeitures cases.

Except as otherwise provided in these regulations or in other directives (including those published as Treasury Decisions or CBP Decisions), port directors, Center directors, and other CBP officers must refrain from disclosing facts concerning seizures, investigations, and other pending cases until CBP action is completed. After the penalty proceeding is closed by payment of the claim amount, payment of a mitigated amount, or judicial action, the identity of the violator, the section of the law violated, the amount of penalty assessed, loss of revenue, mitigated amount (if applicable), and the amount of money paid may be disclosed to the public by the appropriate port director. Public disclosure of any other item of information concerning such cases, whether open or closed, must only be made in conformance with the procedures provided in 6 CFR 5.3.

[T.D. 81–168, 46 FR 32565, June 24, 1981. Redesignated by T.D. 96–36, 61 FR 19838, May 3, 1996, as amended by CBP Dec. 15–16, 80 FR 71693, Nov. 17, 2015; CBP Dec. 16–26, 81 FR 93017, Dec. 20, 2016]

[1] Designates data element which will be deleted where confidentiality has been requested.

§ 103.33 Release of information to foreign agencies.

(a) The Commissioner or his designee may authorize Customs officers to exchange information or documents with foreign customs and law enforcement agencies if the Commissioner or his designee reasonably believes the exchange of information is necessary to—

(1) Ensure compliance with any law or regulation enforced or administered by Customs;

(2) Administer or enforce multilateral or bilateral agreements to which the U.S. is a party;

(3) Assist in investigative, judicial and quasi-judicial proceedings in the U.S.; and

(4) An action comparable to any of those described in paragraphs (a) (1) through (3) of this section undertaken by a foreign customs or law enforcement agency, or in relation to a proceeding in a foreign country.

(b)(1) Information may be provided to foreign customs and law enforcement agencies under paragraph (a) of this section only if the Commissioner or his designee obtains assurances from such agencies that such information will be held in confidence and used only for the law enforcement purposes for which such information is provided to such agencies by the Commissioner or his designee.

(2) No information may be provided under paragraph (a) of this section to any foreign customs or law enforcement agency that has violated any assurances described in paragraph (b)(1) of this section.

[T.D. 86–196, 51 FR 40792, Nov. 10, 1986. Redesignated by T.D. 96–36, 61 FR 19838, May 3, 1996]

§ 103.34 Sanctions for improper actions by CBP officers or employees.

(a) The improper disclosure of the confidential information contained in CBP documents, or the disclosure of information relative to the business of one importer or exporter that is acquired by a CBP officer or employee in an official capacity to any person not authorized by law or regulations to receive this information is a ground for dismissal from CBP, suspension, or other disciplinary action, and if done for a valuable consideration subjects that person to criminal prosecution.

(b) Under 5 U.S.C. 552(a)(4)(F), the Special Counsel, Merit Systems Protection Board, has authority, upon the issuance of a written finding by a court that a CBP officer or employee who was primarily responsible for withholding a record may have acted arbitrarily or capriciously, to initiate a proceeding to determine whether disciplinary action is warranted against that officer or employee. Such proceedings are governed by Merit Systems Protection Board regulations found at part 1201 of Title 5 of the Code of Federal Regulations.

[T.D. 81–168, 46 FR 32565, June 24, 1981. Redesignated by T.D. 96–36, 61 FR 19838, May 3, 1996, as amended by CBP Dec. 15–16, 80 FR 71693, Nov. 17, 2015]

PART 111—CUSTOMS BROKERS

Sec.

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624; 1641.

Section 111.2 also issued under 19 U.S.C. 1484, 1498;

Section 111.96 also issued under 19 U.S.C. 58c, 31 U.S.C. 9701.

SOURCE: T.D. 00–17, 65 FR 13891, Mar. 15, 2000, unless otherwise noted.

§ 111.0 Scope.

This part sets forth regulations providing for the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers, including the qualifications required of applicants, and the procedures for applying for licenses and permits. This part also prescribes the duties and responsibilities of brokers, the grounds and procedures for disciplining brokers, including the assessment of monetary penalties, and the revocation or suspension of licenses and permits.

Subpart A—General Provisions

§ 111.1 Definitions.

When used in this part, the following terms have the meanings indicated:

Appropriate Executive Director, Office of Trade. ''Appropriate Executive Director, Office of Trade'' means the Executive Director responsible for broker management.

Broker. ''Broker'' means a customs broker.

Broker's office of record. ''Broker's office of record'' means the office designated by a customs broker as the

broker's primary location that oversees the administration of the provisions of this part regarding all activities conducted under a national permit.

Corporate compliance activity. ''Corporate compliance activity'' means activity performed by a business entity to ensure that documents for a related business entity or entities are prepared and filed with CBP using ''reasonable care'', but such activity does not extend to the actual preparation or filing of the documents or their electronic equivalents. For purposes of this definition, a ''business entity'' is an entity that is registered or otherwise on record with an appropriate governmental authority for business licensing, taxation, or other legal purposes, and the term ''related business entity or entities'' encompasses a business entity that has more than a 50 percent ownership interest in another business entity, a business entity in which another business entity has more than a 50 percent ownership interest, and two or more business entities in which the same business entity has more than a 50 percent ownership interest.

Customs broker. ''Customs broker'' means a person who is licensed under this part to transact customs business on behalf of others.

Customs business. ''Customs business'' means those activities involving transactions with CBP concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by CBP on merchandise by reason of its importation, and the refund, rebate, or drawback of those duties, taxes, or other charges. ''Customs business'' also includes the preparation, and activities relating to the preparation, of documents in any format and the electronic transmission of documents and parts of documents intended to be filed with CBP in furtherance of any other customs business activity, whether or not signed or filed by the preparer. However, ''customs business'' does not include the mere electronic transmission of data received for transmission to CBP and does not include a corporate compliance activity.

Department of Homeland Security or any representative of the Department of Homeland Security. ''Department of Homeland Security or any representative of the Department of Homeland Security'' means any office, officer, or employee of the U.S. Department of Homeland Security, wherever located.

Employee. ''Employee'' means a person who meets the common law definition of employee and is in the service of a customs broker.

Executive Assistant Commissioner. ''Executive Assistant Commissioner'' means the Executive Assistant Commissioner of the Office of Trade at the Headquarters of U.S. Customs and Border Protection.

Freight forwarder. ''Freight forwarder'' means a person engaged in the business of dispatching shipments in foreign commerce between the United States, its territories or possessions, and foreign countries, and handling the formalities incident to such shipments, on behalf of other persons.

Officer. ''Officer'', when used in the context of an association or corporation, means a person who has been elected, appointed, or designated as an officer of an association or corporation in accordance with statute and the articles of incorporation, articles of agreement, charter, or bylaws of the association or corporation.

Permit. ''Permit'' means a permit issued to a broker under §111.19.

Person. ''Person'' includes individuals, partnerships, associations, and corporations.

Processing Center. ''Processing Center'' means the broker management operations of a Center of Excellence and Expertise (Center) that process applications for a broker's license under §111.12(a), applications for a national permit under §111.19(b) for an individual, partnership, association, or corporation, as well as submissions required in this part for an already-licensed broker.

Records. ''Records'' means documents, data and information referred to in, and required to be made or maintained under, this part and any other records, as defined in §163.1(a) of this chapter, that are required to be maintained by a broker under part 163 of this chapter.

Responsible supervision and control. ''Responsible supervision and control''

means that degree of supervision and control necessary to ensure the proper transaction of the customs business of a broker, including actions necessary to ensure that an employee of a broker provides substantially the same quality of service in handling customs transactions that the broker is required to provide. *See* §111.28 for a list of factors which CBP may consider when evaluating responsible supervision and control.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 03–15, 68 FR 47460, Aug. 11, 2003; CBP Dec. 22–21, 87 FR 63313, Oct. 18, 2022]

§111.2 License and permit required.

(a) *License*—(1) *General.* Except as otherwise provided in paragraph (a)(2) of this section, a person must obtain the license provided for in this part in order to transact customs business as a broker.

(2) *Transactions for which license is not required*—(i) *For one's own account.* An importer or exporter transacting customs business solely on his own account and in no sense on behalf of another is not required to be licensed, nor are his authorized regular employees or officers who act only for him in the transaction of such business.

(ii) *As employee of broker*—(A) *General.* An employee of a broker, acting solely for his employer, is not required to be licensed where:

(*1*) *Authorized to sign documents.* The broker has authorized the employee to sign documents pertaining to customs business on his behalf, and has executed a power of attorney for that purpose. The broker is not required to file the power of attorney with CBP, but must provide proof of its existence to CBP upon request; or

(*2*) *Authorized to transact other business.* The broker has filed with the processing Center a statement identifying the employee as authorized to transact customs business on his behalf.

(B) *Broker supervision; withdrawal of authority.* Where an employee has been given authority under paragraph (a)(2)(ii) of this section, the broker must exercise sufficient supervision of the employee to ensure proper conduct on the part of the employee in the transaction of customs business, and the broker will be held strictly responsible for the acts or omissions of the employee within the scope of his employment and for any other acts or omissions of the employee which, through the exercise of reasonable care and diligence, the broker should have foreseen. The broker must promptly notify the processing Center if authority granted to an employee under paragraph (a)(2)(ii) of this section is withdrawn. The withdrawal of authority will be effective upon receipt by the processing Center.

(iii) *Marine transactions.* A person transacting business in connection with entry or clearance of vessels or other regulation of vessels under the navigation laws is not required to be licensed as a broker.

(iv) *Transportation in bond.* Any carrier bringing merchandise to the port of arrival or any bonded carrier transporting merchandise for another may make entry for that merchandise for transportation in bond without being a broker.

(v) *Noncommercial shipments.* An individual entering noncommercial merchandise for another party is not required to be a broker, provided that the requirements of §141.33 of this chapter are met.

(vi) *Foreign trade zone activities.* A foreign trade zone operator or user need not be licensed as a broker in order to engage in activities within a zone that do not involve the transfer of merchandise to the customs territory of the United States.

(b) *National permit.* A national permit issued to a broker under §111.19 will constitute sufficient permit authority for the broker to conduct customs business within the customs territory of the United States as defined in §101.1 of this chapter.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 03–15, 68 FR 47460, Aug. 11, 2003;CBP Dec. 09–47, 74 FR 69018, Dec. 30, 2009; CBP Dec. 22–21, 87 FR 63313, Oct. 18, 2022]

§111.3 Customs business.

(a) *Location.* Customs business must be conducted within the customs territory of the United States as defined in §101.1 of this chapter.

(b) *Point of contact.* A licensed customs broker, or partnership, association, or corporation, conducting customs business under a national permit must designate a knowledgeable point of contact to be available to CBP during and outside of normal operating hours to respond to customs business issues. The licensed customs broker, or partnership, association, or corporation, must maintain accurate and current point of contact information in a CBP-authorized electronic data interchange (EDI) system. If a CBP-authorized EDI system is not available, then the information must be provided in writing to the processing Center.

[CBP Dec. 22–21, 87 FR 63313, Oct. 18, 2022]

§ 111.4 Transacting customs business without a license.

Any person who intentionally transacts customs business, other than as provided in § 111.2(a)(2), without holding a valid broker's license, will be liable for a monetary penalty for each such transaction as well as for each violation of any other provision of 19 U.S.C. 1641. The penalty will be assessed in accordance with subpart E of this part.

§ 111.5 Representation before Government agencies.

(a) *Agencies within the Department of Homeland Security.* A broker who represents a client in the importation or exportation of merchandise may represent the client before the Department of Homeland Security or any representative of the Department of Homeland Security on any matter concerning that merchandise.

(b) *Agencies not within the Department of Homeland Security.* In order to represent a client before any agency not within the Department of Homeland Security, a broker must comply with any regulations of that agency governing the appearance of representatives before it.

Subpart B—Procedure To Obtain License or Permit

§ 111.11 Basic requirements for a license.

(a) *Individual.* In order to obtain a broker's license, an individual must:

(1) Be a citizen of the United States on the date of submission of the application referred to in § 111.12(a) and not an officer or employee of the United States Government;

(2) Attain the age of 21 prior to the date of submission of the application referred to in § 111.12(a);

(3) Be of good moral character; and

(4) Have established, by attaining a passing (75 percent or higher) grade on an examination taken within the 3-year period before submission of the application referred to in § 111.12(a), that he has sufficient knowledge of customs and related laws, regulations and procedures, bookkeeping, accounting, and all other appropriate matters to render valuable service to importers and exporters.

(b) *Partnership.* In order to qualify for a broker's license, a partnership must have at least one member of the partnership who is a broker.

(c) *Association or corporation.* In order to qualify for a broker's license, an association or corporation must:

(1) Be empowered under its articles of association or articles of incorporation to transact customs business as a broker; and

(2) Have at least one officer who is a broker.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 17-05, 82 FR 29718, June 30, 2017]

§ 111.12 Application for license.

(a) *Submission of application and fee.* An application for a broker's license must be timely submitted to the processing Center after the applicant attains a passing grade on the examination. The application must be executed on CBP Form 3124. The application must be accompanied by the application fee prescribed in § 111.96(a) and one copy of the appropriate attachment required by the application form (Articles of Agreement or an affidavit signed by all partners, Articles of Agreement of the association, or the

Articles of Incorporation). If the applicant proposes to operate under a trade or fictitious name in one or more States, evidence of the applicant's authority to use the name in each of those States must accompany the application. The application, application fee and any additional documentation as required above may be submitted to a CBP-authorized electronic data interchange (EDI) system. If a CBP-authorized EDI system is not available, then the information must be submitted in writing to the processing Center. An application for an individual license must be submitted within the 3-year period after the applicant took and passed the examination referred to in §§111.11(a)(4) and 111.13. The processing Center may require an individual applicant to provide a copy of the notification that the applicant passed the examination (*see* §111.13(e)) and will require the applicant to submit fingerprints at the time of the interview. The processing Center may reject an application as improperly filed if the application is incomplete or, if on its face, the application demonstrates that one or more of the basic requirements set forth in §111.11 has not been met at the time of filing; in either case the application and fee will be returned to the filer without further action.

(b) *Withdrawal of application.* An applicant for a broker's license may withdraw the application at any time prior to issuance of the license by providing written notice of the withdrawal to the processing Center or through a CBP-authorized EDI system, if available. However, withdrawal of the application does not entitle the applicant to a refund of the application fee set forth in §111.96(a).

[CBP Dec. 22–21, 87 FR 63313, Oct. 18, 2022]

§111.13 Examination for individual license.

(a) *Scope of examination.* The examination for an individual broker's license will be designed to determine the individual's knowledge of customs and related laws, regulations and procedures, bookkeeping, accounting, and all other appropriate matters necessary to render valuable service to importers and exporters. The examination will be prepared by Customs and Border Protection (CBP).

(b) *Basic requirements, date, and place of examination.* In order to be eligible to take the examination, an individual must on the date of examination be a citizen of the United States who has attained the age of 18 years and who is not an officer or employee of the United States Government. CBP will publish a notice announcing each examination on its Web site. Examinations will be given on the fourth Wednesday in April and October unless the regularly scheduled examination date conflicts with a national holiday, religious observance, or other foreseeable event and the agency publishes in the FEDERAL REGISTER an appropriate notice of a change in the examination date. An individual who intends to take the examination must complete the electronic application at least 30 calendar days prior to the scheduled examination date and must remit the examination fee prescribed in §111.96(a) at that time. CBP will give notice of the time and place for the examination, including whether alternatives to on-site testing will be available, which is at CBP's sole discretion.

(c) *Special examination.* If a partnership, association, or corporation loses the required member or officer having an individual broker's license (see §111.11(b) and (c)(2)) and its license would be revoked by operation of law under the provisions of 19 U.S.C. 1641(b)(5) and §111.45(a) before the next scheduled examination, CBP may authorize a special examination for a prospective applicant for an individual license who would serve as the required licensed member or officer. CBP may also authorize a special examination for an individual for purposes of continuing the business of a sole proprietorship broker. A special examination for an individual may also be authorized by CBP if a brokerage firm loses the individual broker who was exercising responsible supervision and control over the transaction of customs business before the next scheduled examination. A request for a special examination must be submitted to the Executive Assistant Commissioner, Office of Trade, in writing and must describe the circumstances giving rise to

the need for the examination. If the request is granted, the Executive Assistant Commissioner, Office of Trade or his/her designee, will notify the prospective examinee of the exact time and place for the examination. If the individual attains a passing grade on the special examination, the application for the license may be submitted in accordance with §111.12. The examinee will be responsible for all additional costs incurred by CBP in preparing and administering the special examination that exceed the examination fee prescribed in §111.96(a), and those additional costs must be reimbursed to CBP before the examination is given.

(d) *Failure to appear for examination.* If a prospective examinee advises the Office of Trade at the Headquarters of U.S. Customs and Border Protection, Attn: Broker Management Branch, electronically in a manner specified by CBP at least 2 working days prior to the date of a regularly scheduled examination that he will not appear for the examination, CBP will refund the examination fee referred to in paragraph (b) of this section. No refund of the examination fee or additional reimbursed costs will be made in the case of a special written examination provided for under paragraph (c) of this section.

(e) *Notice of examination result.* CBP will provide to each examinee written or electronic notice of the result of the examination taken under this section. A failure of an examinee to attain a passing grade on the examination will preclude the submission of an application under §111.12 but will not preclude the examinee from taking an examination again at a later date in accordance with paragraph (b) of this section.

(f) *Appeal of failing grade on examination.* If an examinee fails to attain a passing grade on the examination taken under this section, the examinee may challenge that result by filing a written or electronic appeal with the Office of Trade at the Headquarters of U.S. Customs and Border Protection, Attn: Broker Management Branch, within 60 calendar days after the date of the written or electronic notice provided for in paragraph (e) of this section. CBP will provide to the examinee written or electronic notice of the decision on the appeal. If the CBP decision on the appeal affirms the result of the examination, the examinee may request review of the decision on the appeal by submitting a written or electronic request to the appropriate Executive Director, Office of Trade, U.S. Customs and Border Protection, within 60 calendar days after the date of the notice on that decision.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by T.D. 03–23, 68 FR 31977, May 29, 2003, CBP Dec. 09–38, 74 FR 52401, Oct. 13, 2009; CBP Dec. 10–29, 75 FR 52458, Aug. 26, 2010; CBP Dec. 17-05, 82 FR 29718, June 30, 2017; CBP Dec. 22–21, 87 FR 63314, Oct. 18, 2022]

§ 111.14 Background investigation of the license applicant.

(a) *Scope of background investigation.* A background investigation under this section will ascertain facts relevant to the question of whether the applicant is qualified and will cover, but need not be limited to:

(1) The accuracy of the statements made in the application and interview;

(2) The business integrity and financial responsibility of the applicant; and

(3) When the applicant is an individual (including a member of a partnership or an officer of an association or corporation), the character and reputation of the applicant, including any association with any individuals or groups that may present a risk to the security or to the revenue collection of the United States.

(b) *Referral to Headquarters.* The processing Center will forward the application and supporting documentation to the appropriate Executive Director, Office of Trade. The processing Center will also submit the recommendation for action on the application.

(c) *Additional inquiry.* The appropriate Executive Director, Office of Trade, may require further inquiry if additional facts are deemed necessary to evaluate the application. The appropriate Executive Director, Office of Trade, may also require the applicant (or in the case of a partnership, association, or corporation, one or more of its members or officers) to appear in person or by another approved method

before the appropriate Executive Director, Office of Trade, or his or her representatives, for the purpose of undergoing further written or oral inquiry.

[CBP Dec. 22–21, 87 FR 63314, Oct. 18, 2022]

§ 111.15 Issuance of license.

If the appropriate Executive Director, Office of Trade, finds that the applicant is qualified and has paid all applicable fees prescribed in §111.96(a), the Executive Assistant Commissioner will issue a license. A license for an individual who is a member of a partnership, or an officer of an association or corporation will be issued in the name of the individual licensee and not in his or her capacity as a member or officer of the organization with which he or she is connected. The license will be forwarded to the processing Center, which will deliver it to the licensee.

[CBP Dec. 22–21, 87 FR 63314, Oct. 18, 2022]

§ 111.16 Denial of a license.

(a) *Notice of denial.* If the appropriate Executive Director, Office of Trade, determines that the application for a license should be denied for any reason, notice of denial will be given by him or her to the applicant and to the processing Center. The notice of denial will state the reasons why the license was not issued.

(b) *Grounds for denial.* The grounds sufficient to justify denial of an application for a license include, but need not be limited to:

(1) Any cause which would justify suspension or revocation of the license of a broker under the provisions of §111.53;

(2) The failure to meet any requirement set forth in §111.11;

(3) A failure to establish the business integrity and financial responsibility of the applicant;

(4) A failure to establish the good character and reputation of the applicant;

(5) Any willful misstatement or omission of pertinent facts in the application or interview for the license;

(6) Any conduct which would be deemed unfair or detrimental in commercial transactions by accepted standards;

(7) A reputation imputing to the applicant criminal, dishonest, or unethical conduct, or a record of that conduct; or

(8) Any other relevant information uncovered over the course of the background investigation.

[CBP Dec. 22–21, 87 FR 63314, Oct. 18, 2022]

§ 111.17 Review of the denial of a license.

(a) *By the appropriate Executive Director, Office of Trade.* Upon the denial of an application for a license, the applicant may file with the appropriate Executive Director, Office of Trade, in writing, additional information or arguments in support of the application and may request to appear in person, by telephone, or by other acceptable means of communication. This filing and request must be received by the appropriate Executive Director, Office of Trade within sixty (60) calendar days of the denial.

(b) *By the Executive Assistant Commissioner.* Upon the decision of the appropriate Executive Director, Office of Trade, affirming the denial of an application for a license, the applicant may file with the Executive Assistant Commissioner, in writing, a request for any additional review that the Executive Assistant Commissioner, deems appropriate. This request must be received by the Executive Assistant Commissioner within sixty (60) calendar days of the affirmation by the appropriate Executive Director, Office of Trade, of the denial of the application for a license.

(c) *By the Court of International Trade.* Upon a decision of the Executive Assistant Commissioner affirming the denial of an application for a license, the applicant may appeal the decision to the Court of International Trade, provided that the appeal action is commenced within sixty (60) calendar days after the decision date by the Executive Assistant Commissioner.

[CBP Dec. 22–21, 87 FR 63314, Oct. 18, 2022]

§ 111.18 Reapplication for license.

An applicant who has been denied a license may reapply at any time by complying with the provisions of

§ 111.12 and addressing how deficiencies have been remedied.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 22–21, 87 FR 63315, Oct. 18, 2022]

§ 111.19 National permit.

(a) *General.* A national permit is required for the purpose of transacting customs business throughout the customs territory of the United States as defined in § 101.1 of this chapter.

(b) *Application for a national permit.* An applicant who obtains a passing grade on the examination for an individual broker's license may apply for a national permit. The applicant will exercise responsible supervision and control (as described in § 111.28) over the activities conducted under that national permit. The national permit application may be submitted concurrently with or after the submission of an application for a broker's license. An applicant applying for a national permit on behalf of a partnership, association, or corporation must be a licensed broker employed by the partnership, association, or corporation. An application for a national permit under this paragraph must be submitted in the form of a letter to the processing Center or to a CBP-authorized electronic data interchange (EDI) system. The application must set forth or attach the following:

(1) The applicant's broker license number and date of issuance if available;

(2) If the applicant is applying for a national permit on behalf of a partnership, association, or corporation: the name of the partnership, association, or corporation and the title held by the applicant within the partnership, association, or corporation;

(3) If the applicant is applying for a national permit on behalf of a partnership, association, or corporation: a copy of the documentation issued by a State, or local government that establishes the legal status and reserves the business name of the partnership, association, or corporation;

(4) The address, telephone number, and email address of the office designated by the applicant as the office of record as defined in § 111.1. The office will be noted in the national permit when issued;

(5) The name, telephone number, and email address of the point of contact described in § 111.3(b) to be available to CBP to respond to issues related to the transaction of customs business;

(6) If the applicant is applying for a national permit on behalf of a partnership, association, or corporation: the name, broker license number, office address, telephone number, and email address of each individual broker employed by the partnership, association, or corporation;

(7) A list of all employees together with the specific employee information prescribed in § 111.28 for each employee;

(8) A supervision plan describing how responsible supervision and control will be exercised over the customs business conducted under the national permit, including compliance with § 111.28;

(9) The location where records will be retained (*see* § 111.23);

(10) The name, telephone number, and email address of the knowledgeable employee responsible for broker-wide records maintenance and financial recordkeeping requirements (*see* § 111.21(d)); and

(11) A receipt or other evidence showing that the fees specified in § 111.96(b) and (c) have been paid in accordance with paragraph (b) of this section.

(c) *Fees.* A national permit issued under paragraph (a) of this section is subject to the permit application fee specified in § 111.96(b) and to the customs user permit fee specified in § 111.96(c). The fees must be paid at the processing Center (*see* § 111.1) or through a CBP-authorized EDI system at the time the permit application is submitted.

(d) *Action on application; list of permitted brokers.* The processing Center that receives the application will review the application to determine whether the applicant meets the requirements of paragraphs (a) and (b) of this section. If the processing Center is of the opinion that the national permit should not be issued, the processing Center will submit written reasons for that opinion to the appropriate Executive Director, Office of Trade, CBP

Headquarters, for appropriate instructions on whether to grant or deny the national permit. The appropriate Executive Director, Office of Trade, CBP Headquarters, will notify the applicant if his or her application is denied. CBP will issue a national permit to an applicant who meets the requirements of paragraphs (a) and (b) of this section. CBP will maintain and make available to the public an alphabetical list of permitted brokers.

(e) *Review of the denial of a national permit*—(1) *By the Executive Assistant Commissioner*. Upon the denial of an application for a national permit under this section, the applicant may file with the Executive Assistant Commissioner, in writing, additional information or arguments in support of the application and may request to appear in person, by telephone, or by other acceptable means of communication. This filing and request must be received by the Executive Assistant Commissioner within sixty (60) calendar days of the denial.

(2) *By the Court of International Trade*. Upon a decision of the Executive Assistant Commissioner affirming the denial of an application for a national permit under this section, the applicant may appeal the decision to the Court of International Trade, provided that the appeal action is commenced within sixty (60) calendar days after the decision date by the Executive Assistant Commissioner.

(f) *Responsible supervision and control*. The individual broker who qualifies for the national permit will exercise responsible supervision and control (as described in §111.28) over the activities conducted under that national permit.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 22–22, 87 FR 63267, Oct. 18, 2022; CBP Dec. 22–21, 87 FR 63315, Oct. 18, 2022]

Subpart C—Duties and Responsibilities of Customs Brokers

§ 111.21 Record of transactions.

(a) Each broker must keep current in a correct, orderly, and itemized manner records of account reflecting all his financial transactions as a broker. He must keep and maintain on file copies of all his correspondence and other records relating to his customs business.

(b) Each broker must provide notification to the CBP Office of Information Technology Security Operations Center (CBP SOC) of any known breach of electronic or physical records relating to the broker's customs business. Notification must be electronically provided (*cbpsoc@cbp.dhs.gov*) within 72 hours of the discovery of the breach, including any known compromised importer identification numbers (*see* 19 CFR 24.5). Within ten (10) business days of the notification, a broker must electronically provide an updated list of any additional known compromised importer identification numbers. To the extent that additional information is subsequently discovered, the broker must electronically provide that information within 72 hours of discovery. Brokers may also call CBP SOC at a telephone number posted on CBP.gov with questions as to the reporting of the breach, if any guidance is needed.

(c) Each broker must comply with the provisions of this part and part 163 of this chapter when maintaining records that reflect on his transactions as a broker.

(d) Each broker must designate a knowledgeable employee as the party responsible for brokerage-wide record-keeping requirements. Each broker must maintain accurate and current point of contact information in a CBP-authorized electronic data interchange (EDI) system. If a CBP-authorized EDI system is not available, then the information must be provided in writing to the processing Center.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 22–21, 87 FR 63315, Oct. 18, 2022]

§ 111.22 [Reserved]

§ 111.23 Retention of records.

(a) *Place of retention*. A licensed customs broker must maintain originals of the records referred to in this part, including any records stored in electronic formats, within the customs territory of the United States and in accordance with the provisions of this part and part 163 of this chapter.

(b) *Period of retention.* The records described in this section, other than powers of attorney, must be retained for at least 5 years after the date of entry. Powers of attorney must be retained until revoked, and revoked powers of attorney and letters of revocation must be retained for 5 years after the date of revocation or for 5 years after the date the client ceases to be an ''active client'' as defined in §111.29(b)(2)(ii), whichever period is later. When merchandise is withdrawn from a bonded warehouse, records relating to the withdrawal must be retained for 5 years from the date of withdrawal of the last merchandise withdrawn under the entry.

[CBP Dec. 12–12, 77 FR 33966, June 8, 2012, as amended by CBP Dec. 22–21, 87 FR 63316, Oct. 18, 2022]

§111.24 Records confidential.

The records referred to in this part and pertaining to the business of the clients serviced by the broker are to be considered confidential, and the broker must not disclose their contents or any information connected with the records to any persons other than those clients, their surety on a particular entry, and representatives of the Department of Homeland Security (DHS), or other duly accredited officers or agents of the United States, except on subpoena or court order by a court of competent jurisdiction, or when authorized in writing by the client. This confidentiality provision does not apply to information that properly is available from a source open to the public.

[CBP Dec. 22–21, 87 FR 63316, Oct. 18, 2022]

§111.25 Records must be available.

(a) *General.* During the period of retention, the broker must maintain the records referred to in this part in such a manner that they may readily be examined. Records required to be maintained under the provisions of this part must be made available upon reasonable notice for inspection, copying, reproduction or other official use by representatives of the Department of Homeland Security (DHS) within the prescribed period of retention or within any longer period of time during which they remain in the possession of the broker.

(b) *Examination request.* Upon request by DHS to examine records, the designated recordkeeping contact (*see* §111.21(d)), must make all records available to DHS within thirty (30) calendar days, or such longer time as specified by DHS, at the location specified by DHS.

(c) *Recordkeeping requirements.* Records subject to the requirements of part 163 of this chapter must be made available to DHS in accordance with the provisions of that part.

[CBP Dec. 22–21, 87 FR 63316, Oct. 18, 2022]

§111.26 Interference with examination of records.

Except in accordance with the provisions of part 163 of this chapter, a broker must not refuse access to, conceal, remove, or destroy the whole or any part of any record relating to his transactions as a broker which is being sought, or which the broker has reasonable grounds to believe may be sought, by the Department of Homeland Security or any representative of the Department of Homeland Security, nor may he otherwise interfere, or attempt to interfere, with any proper and lawful efforts to procure or reproduce information contained in those records.

§111.27 Audit or inspection of records.

The Field Director, Regulatory Audit, will make any audit or inspection of the records required by this subpart to be kept and maintained by a broker as may be necessary to enable DHS, or other duly accredited officers or agents of the United States, to determine whether or not the broker is complying with the requirements of this part.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 22–21, 87 FR 63316, Oct. 18, 2022]

§111.28 Responsible supervision and control.

(a) *General.* Every individual broker operating as a sole proprietor, every licensed member of a partnership that is a broker, and every licensed officer of an association or corporation that is a

broker must exercise responsible supervision and control (see §111.1) over the transaction of the customs business of the sole proprietorship, partnership, association, or corporation. A sole proprietorship, partnership, association, or corporation must employ a sufficient number of licensed brokers relative to the job complexity, similarity of subordinate tasks, physical proximity of subordinates, abilities and skills of employees, and abilities and skills of the managers. While the determination of what is necessary to perform and maintain responsible supervision and control will vary depending upon the circumstances in each instance, factors which CBP may consider in its discretion and to the extent any are relevant include, but are not limited to, the following:

(1) The training provided to broker employees;

(2) The issuance of instructions and guidelines to broker employees;

(3) The volume and type of business conducted by the broker;

(4) The reject rate for the various customs transactions relative to overall volume;

(5) The level of access broker employees have to current editions of CBP regulations, the Harmonized Tariff Schedule of the United States, and CBP issuances;

(6) The availability of a sufficient number of individually licensed brokers for necessary consultation with employees of the broker;

(7) The frequency of supervisory visits of an individually licensed broker to another office of the broker that does not have an individually licensed broker;

(8) The frequency of audits and reviews by an individually licensed broker of the customs transactions handled by employees of the broker;

(9) The extent to which the individually licensed broker who qualifies the permit is involved in the operation of the brokerage and communications between CBP and the brokerage;

(10) Any circumstances which indicate that an individually licensed broker has a real interest in the operations of a brokerage;

(11) The timeliness of processing entries and payment of duty, tax, or other debt or obligation owing to the Government for which the broker is responsible, or for which the broker has received payment from a client;

(12) Communications between CBP and the broker, and the broker's responsiveness and action to communications, direction, and notices from CBP;

(13) Communications between the broker and its officer(s) or member(s), and the broker's responsiveness and action to communications and direction from its officer(s) or member(s).

(b) *Employee information*—(1) *Current employees.* Each national permit holder must submit to the processing Center a list of the names of persons currently employed by the broker. The list of employees must be submitted prior to issuance of a national permit under §111.19 and before the broker begins to transact customs business. For each employee, the broker must provide the name, social security number, date and place of birth, date of hire, and current home address. After the initial submission, an updated list must be submitted to a CBP-authorized electronic data interchange (EDI) system if any of the information required by this paragraph changes. If a CBP-authorized EDI system is not available, then the information must be provided in writing to the processing Center. The update must be submitted within thirty (30) calendar days of the change.

(2) *New employees.* Within thirty (30) calendar days of the start of employment of a new employee(s), the broker must submit a list of new employee(s) with the information required under paragraph (b)(1) of this section to a CBP-authorized EDI system. The broker may submit a list of the new employee(s) or an updated list of all employees, specifically noting the new employee(s). If a CBP-authorized EDI system is not available, then the information must be provided in writing to the processing Center.

(3) *Terminated employees.* Within thirty (30) calendar days after the termination of employment of an employee, the broker must submit a list of terminated employee(s) to a CBP-authorized EDI system. The broker may submit a list of the terminated employee(s) or

an updated list of all employees, specifically noting the terminated employee(s). If a CBP-authorized EDI system is not available, then the information must be provided in writing to the processing Center.

(c) *Broker's responsibility*. Notwithstanding a broker's responsibility for providing the information required in paragraph (b) of this section, in the absence of culpability by the broker, CBP will not hold the broker responsible for the accuracy of any information that is provided to the broker by the employee.

(d) *Termination of qualifying member or officer*. In the case of an individual broker who is a qualifying member of a partnership for purposes of §111.11(b) or who is a qualifying officer of an association or corporation for purposes of §111.11(c)(2), that individual broker must immediately provide written notice to the appropriate Executive Director, Office of Trade, when his employment as a qualifying member or officer terminates and must send a copy of the written notice to the processing Center.

(e) *Change in ownership*. If the ownership of a broker changes and ownership shares in the broker are not publicly traded, the broker must immediately provide written notice of that fact to the appropriate Executive Director, Office of Trade, and must send a copy of the written notice to the processing Center. When a change in ownership results in the addition of a new principal to the organization, and whether or not ownership shares in the broker are publicly traded, CBP reserves the right to conduct a background investigation on the new principal. The processing Center will notify the broker if CBP objects to the new principal, and the broker will be given a reasonable period of time to remedy the situation. If the background investigation uncovers information which would have been the basis for a denial of an application for a broker's license and the principal's interest in the broker is not terminated to the satisfaction of the processing Center, suspension or revocation proceedings may be initiated under subpart D of this part. For purposes of this paragraph, a ''principal'' means any person having at least a five (5) percent capital, beneficiary or other direct or indirect interest in the business of a broker.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 22–21, 87 FR 63316, Oct. 18, 2022]

§111.29 Diligence in correspondence and paying monies.

(a) *Due diligence by broker*. Each broker must exercise due diligence in making financial settlements, in answering correspondence, and in preparing or assisting in the preparation and filing of records relating to any customs business matter handled by him as a broker. Payment of duty, tax, or other debt or obligation owing to the Government for which the broker is responsible, or for which the broker has received payment from a client, must be made to the Government on or before the date that payment is due. Payments received by a broker from a client after the due date must be transmitted to the Government within 5 working days from receipt by the broker. Each broker must provide a written statement to a client accounting for funds received for the client from the Government, or received from a client where no payment to the Government has been made, or received from a client in excess of the Governmental or other charges properly payable as part of the client's customs business, within 60 calendar days of receipt. No written statement is required if there is actual payment of the funds by a broker.

(b) *Notice to client of method of payment*. (1) All brokers must provide their clients with the following written notification:

> If you are the importer of record, payment to the broker will not relieve you of liability for customs charges (duties, taxes, or other debts owed CBP) in the event the charges are not paid by the broker. Therefore, if you pay by check, customs charges may be paid with a separate check payable to the ''U.S. Customs and Border Protection'' which will be delivered to CBP by the broker.

(2) The written notification set forth in paragraph (b)(1) of this section must be provided by brokers as follows:

(i) On, or attached to, any power of attorney provided by the broker to a

client for execution on or after September 27, 1982; and

(ii) To each active client no later than February 28, 1983, and at least once at any time within each 12-month period after that date. An active client means a client from whom a broker has obtained a power of attorney and for whom the broker has transacted customs business on at least two occasions within the 12-month period preceding notification.

§ 111.30 Notification of change of business address, organization, name, or location of business records; status report; termination of brokerage business.

(a) *Change of address.* A broker is responsible for providing CBP with the broker's current addresses, which include the broker's office of record address as defined in §111.1, an email address, and, if the broker is not actively engaged in transacting business as a broker, the broker's non-business address. If a broker does not receive mail at the broker's office of record or non-business address, the broker must also provide CBP with a valid address at which he or she receives mail. When address information (the broker's office of record address, mailing address, email address) changes, or the broker is no longer actively engaged in transacting business as a broker, he or she must update his or her address information within ten (10) calendar days through a CBP-authorized electronic data interchange (EDI) system. If a CBP-authorized EDI system is not available, then address updates must be provided in writing within ten (10) calendar days to the processing Center.

(b) *Change in organization.* A partnership, association, or corporation broker must update within ten (10) calendar days in writing to the processing Center any of the following:

(1) The date on which a licensed member or officer ceases to be the qualifying member or officer for purposes of §111.11(b) or (c)(2), and the name of the licensed member or officer who will succeed as the license qualifier;

(2) The date on which a licensed employee ceases to be the national permit qualifier for purposes of §111.19(a), and the name of the licensed employee who will succeed as the national permit qualifier; and

(3) Any change in the Articles of Agreement, Charter, Articles of Association, or Articles of Incorporation relating to the transaction of customs business, or any other change in the legal nature of the organization (for example, conversion of a general partnership to a limited partnership, merger with another organization, divestiture of a part of the organization, or entry into bankruptcy protection).

(c) *Change in name.* A broker who changes his or her name, or who proposes to operate under a trade or fictitious name in one or more States and is authorized by State law to do so, must submit to the appropriate Executive Director, Office of Trade, at the Headquarters of U.S. Customs and Border Protection, evidence of his or her authority to use that name. The name must not be used until the approval of Headquarters has been received. In the case of a trade or fictitious name, the broker must affix his own name in conjunction with each signature of the trade or fictitious name when signing customs documents.

(d) *Triennial status report*—(1) *General.* Each broker must file a triennial status report with CBP on February 1 of each third year after 1985. The report must be filed through a CBP-authorized EDI system and will not be considered received by CBP until payment of the triennial status report fee prescribed in §111.96(d) is received. If a CBP-authorized EDI system is not available, the triennial status report must be filed with the processing Center. A report received during the month of February will be considered filed timely. No form or particular format is required.

(2) *Individual.* (i) Each individual broker must state in the report required under paragraph (d)(1) of this section whether he or she is actively engaged in transacting business as a broker. If he or she is so actively engaged, the broker must also:

(A) State the name under which, and the address at which, the broker's business is conducted if he or she is a sole proprietor, and an email address;

(B) State the name and address of his or her employer if he or she is employed by another broker, unless his or her employer is a partnership, association or corporation broker for which he or she is a qualifying member or officer for purposes of §111.11(b) or (c)(2); and

(C) State whether or not he or she still meets the applicable requirements of §§111.11 and 111.19 and has not engaged in any conduct that could constitute grounds for suspension or revocation under §111.53.

(ii) An individual broker not actively engaged in transacting business as a broker must provide CBP with the broker's current mailing address and email address, and state whether or not he or she still meets the applicable requirements of §§111.11 and 111.19 and has not engaged in any conduct that could constitute grounds for suspension or revocation under §111.53.

(3) *Partnership, association, or corporation.* (i) Each partnership, association, or corporation broker must state in the report required under paragraph (d)(1) of this section the name under which its business as a broker is being transacted, the broker's office of record (*see* §111.1), the name, address and email address of each licensed member of the partnership or licensed officer of the association or corporation, including the license qualifier under §111.11(b) or (c)(2) and the name of the licensed employee who is the national permit qualifier under §111.19(a), and whether the partnership, association, or corporation is actively engaged in transacting business as a broker. The report must be signed by a licensed member or officer.

(ii) A partnership, association, or corporation broker must state whether or not the partnership, association, or corporation broker still meets the applicable requirements of §§111.11 and 111.19 and has not engaged in any conduct that could constitute grounds for suspension or revocation under §111.53.

(4) *Failure to file timely.* If a broker fails to file the report required under paragraph (d)(1) of this section by March 1 of the reporting year, the broker's license is suspended by operation of law on that date. By March 31 of the reporting year, CBP will transmit written notice of the suspension to the broker by certified mail, return receipt requested, at the address reflected in CBP records. If the broker files the required report and pays the required fee within 60 calendar days of the date of the notice of suspension, the license will be reinstated. If the broker does not file the required report and pay the required fee within that 60-day period, the broker's license is revoked by operation of law without prejudice to the filing of an application for a new license. Notice of the revocation will be published in the FEDERAL REGISTER.

(e) *Custody of records.* Upon permanent termination of brokerage business, written notification of the name, address, email address and telephone number of the party having legal custody of the brokerage business records must be provided to the processing Center. That notification will be the responsibility of:

(1) The individual broker, upon the permanent termination of his brokerage business;

(2) Each member of a partnership who holds an individual broker's license, upon the permanent termination of a partnership brokerage business; or

(3) Each association or corporate officer who holds an individual broker's license, upon the permanent termination of an association or corporate brokerage business.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 22–21, 87 FR 63317, Oct. 18, 2022]

§ 111.31 Conflict of interest.

(a) *Former officer or employee of U.S. Government.* A broker who was formerly an officer or employee in U.S. Government service must not represent a client before the Department of Homeland Security or any representative of the Department of Homeland Security in any matter to which the broker gave personal consideration or gained knowledge of the facts while in U.S. Government service, except as provided in 18 U.S.C. 207.

(b) *Relations with former officer or employee of U.S. Government.* A broker must not knowingly assist, accept assistance from, or share fees with a person who has been employed by a client

in a matter pending before the Department of Homeland Security or any representative of the Department of Homeland Security to which matter that person gave personal consideration or gained personal knowledge of the facts or issues of the matter while in U.S. Government service.

(c) *Importations by broker or employee.* A broker who is an importer himself must not act as broker for an importer who imports merchandise of the same general character as that imported by the broker unless the client has full knowledge of the facts. The same restriction will apply if a broker's employee is an importer.

§ 111.32 False information.

A broker must not file or procure or assist in the filing of any claim, or of any document, affidavit, or other papers, known by such broker to be false. In addition, a broker must not give, or solicit or procure the giving of, any information or testimony that the broker knew or should have known was false or misleading in any matter pending before the Department of Homeland Security or to any representative of the Department of Homeland Security. A broker also must document and report to CBP when the broker separates from or cancels representation of a client as a result of determining the client is intentionally attempting to use the broker to defraud the U.S. Government or commit any criminal act against the U.S. Government. The report to CBP must include the client name, date of separation or cancellation, and reason for the separation or cancellation.

[CBP Dec. 22–21, 87 FR 63318, Oct. 18, 2022]

§ 111.33 Government records.

A broker must not procure or attempt to procure, directly or indirectly, information from Government records or other Government sources of any kind to which access is not granted by proper authority.

§ 111.34 Undue influence upon Department of Homeland Security employees.

A broker must not influence or attempt to influence the conduct of any representative of the Department of Homeland Security in any matter pending before the Department of Homeland Security or any representative of the Department of Homeland Security by the use of duress or a threat or false accusation, or by the offer of any special inducement or promise of advantage, or by bestowing any gift or favor or other thing of value.

§ 111.35 Acceptance of fees from attorneys.

With respect to customs transactions, a broker must not demand or accept from any attorney (whether directly or indirectly, including, for example, from a client as a part of any arrangement with an attorney) on account of any case litigated in any court of law or on account of any other legal service rendered by an attorney any fee or remuneration in excess of an amount measured by or commensurate with the time, effort and skill expended by the broker in performing his services.

§ 111.36 Relations with unlicensed persons.

(a) *Employment by unlicensed person other than importer.* When a broker is employed for the transaction of customs business by an unlicensed person who is not the actual importer, the broker must transmit to the actual importer either a copy of his bill for services rendered or a copy of the entry, unless the merchandise was purchased on a delivered duty-paid basis or unless the importer has in writing waived transmittal of the copy of the entry or bill for services rendered.

(b) *Service to others not to benefit unlicensed person.* Except as otherwise provided in paragraph (c) of this section, a broker must not enter into any agreement with an unlicensed person to transact customs business for others in such manner that the fees or other benefits resulting from the services rendered for others inure to the benefit of the unlicensed person.

(c) *Relations with a freight forwarder.* A broker may compensate a freight forwarder for referring brokerage business, subject to the following conditions:

(1) The importer or other party in interest is notified in advance by the forwarder or broker of the name of the broker selected by the forwarder for the handling of his Customs transactions;

(2) The broker transmits directly to the importer or other party in interest:

(i) A true copy of his brokerage charges if the fees and charges are to be collected by or through the forwarder, unless this requirement is waived in writing by the importer or other party in interest; or

(ii) A statement of his brokerage charges and an itemized list of any charges to be collected for the account of the freight forwarder if the fees and charges are to be collected by or through the broker;

(3) The broker must execute a customs power of attorney directly with the importer of record or drawback claimant, and not via a freight forwarder or other third party, to transact customs business for that importer of record or drawback claimant. No part of the agreement of compensation between the broker and the forwarder, nor any action taken pursuant to the agreement, can forbid or prevent direct communication between the importer of record, drawback claimant, or other party in interest and the broker; and

(4) In making the agreement and in all actions taken pursuant to the agreement, the broker remains subject to all other provisions of this part.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 22–21, 87 FR 63318, Oct. 18, 2022]

§ 111.37 Misuse of license or permit.

A broker must not allow his license, permit or name to be used by or for any unlicensed person (including a broker whose license or permit is under suspension), other than his own employees authorized to act for him, in the solicitation, promotion or performance of any customs business or transaction.

§ 111.38 False representation to procure employment.

A broker must not knowingly use false or misleading representations to procure employment in any customs matter. In addition, a broker must not represent to a client or prospective client that he can obtain any favors from the Department of Homeland Security or any representative of the Department of Homeland Security.

§ 111.39 Advice to client.

(a) *Withheld or false information.* A broker must not withhold information from a client relative to any customs business it conducts on behalf of a client who is entitled to the information. The broker must not knowingly impart to a client false information relative to any customs business.

(b) *Due diligence.* A broker must exercise due diligence to ascertain the correctness of any information which the broker imparts to a client, including advice to the client on the proper payment of any duty, tax, or other debt or obligation owing to the U.S. Government.

(c) *Error or omission by client.* If a broker knows that a client has not complied with the law or has made an error in, or omission from, any document, affidavit, or other record which the law requires the client to execute, he must advise the client promptly of that noncompliance, error, or omission. The broker must advise the client on the proper corrective actions required and retain a record of the broker's communication with the client in accordance with §§ 111.21 and 111.23.

(d) *Illegal plans.* A broker must not knowingly suggest to a client or prospective client any illegal plan for evading payment of any duty, tax, or other debt or obligation owing to the U.S. Government.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 22–21, 87 FR 63318, Oct. 18, 2022]

§ 111.40 Protests.

A broker must not act on behalf of any person, or attempt to represent any person, regarding any protest unless he is authorized to do so in accordance with part 174 of this chapter.

§ 111.41 Endorsement of checks.

A broker must not endorse or accept, without authority of his client, any U.S. Government draft, check, or warrant drawn to the order of the client.

§ 111.42 Relations with person who is notoriously disreputable or whose license is under suspension, canceled "with prejudice," or revoked.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, a broker must not knowingly and directly or indirectly:

(1) Accept employment to effect a customs transaction as associate, correspondent, officer, employee, agent, or subagent from any person who is notoriously disreputable or whose broker license was revoked for any cause or is under suspension or was cancelled ''with prejudice;''

(2) Assist in the furtherance of any customs business or transactions of any person described in paragraph (a)(1) of this section;

(3) Employ, or accept assistance in the furtherance of any customs business or transactions from, any person described in paragraph (a)(1) of this section, without the approval of the Executive Assistant Commissioner, or his or her designee, (see § 111.79);

(4) Share fees with any person described in paragraph (a)(1) of this section; or

(5) Permit any person described in paragraph (a)(1) of this section to participate, directly or indirectly and whether through ownership or otherwise, in the promotion, control, or direction of the business of the broker.

(b) *Client exception.* Nothing in this section will prohibit a broker from transacting customs business on behalf of a bona fide importer or exporter who may be notoriously disreputable or whose broker license is under suspension or was cancelled ''with prejudice'' or revoked.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 22–21, 87 FR 63318, Oct. 18, 2022]

§§ 111.43–111.44 [Reserved]

§ 111.45 Revocation by operation of law.

(a) *License and permit.* If a broker that is a partnership, association, or corporation fails to have, during any continuous period of 120 days, at least one member of the partnership or at least one officer of the association or corporation who holds a valid individual broker's license, that failure will, in addition to any other sanction that may be imposed under this part, result in the revocation by operation of law of the license and the national permit issued to the partnership, association, or corporation. If a broker that is a partnership, association, or corporation fails to employ, during any continuous period of 180 days, a licensed customs broker who is the national permit qualifier for the broker, that failure will, in addition to any other sanction that may be imposed under this part, result in the revocation by operation of law of the national permit issued to the partnership, association, or corporation. CBP will notify the broker in writing of an impending revocation by operation of law under this section thirty (30) calendar days before the revocation is due to occur, if the broker has provided advance notice to CBP of the underlying events that could cause a revocation by operation of law under this section. If the license or permit of a partnership, association, or corporation is revoked by operation of law, CBP will notify the organization of the revocation.

(b) *Annual broker permit fee.* If a broker fails to pay the annual permit user fee pursuant to § 111.96(c), the permit is revoked by operation of law. The processing Center will notify the broker in writing of the failure to pay and the revocation of the permit.

(c) *Publication.* Notice of any revocation under this section will be published in the FEDERAL REGISTER.

(d) *Applicability of other sanctions.* Notwithstanding the operation of paragraph (a) or (b) of this section, each broker still has a continuing obligation to exercise responsible supervision and control over the conduct of its brokerage business and to otherwise comply with the provisions of this part. Any failure on the part of a broker to meet that continuing obligation during the 120 or 180-day period referred to in paragraph (a) of this section, or during any shorter period of time, may result in the initiation of suspension or revocation proceedings or the assessment

of a monetary penalty under subpart D or subpart E of this part.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 22–21, 87 FR 63318, Oct. 18, 2022]

Subpart D—Cancellation, Suspension, or Revocation of License or Permit, and Monetary Penalty in Lieu of Suspension or Revocation

§ 111.50 General.

This subpart sets forth provisions relating to cancellation, suspension, or revocation of a license or a permit, or assessment of a monetary penalty in lieu of suspension or revocation, under section 641(d)(2)(B), Tariff Act of 1930, as amended (19 U.S.C. 1641(d)(2)(B)). The provisions relating to assessment of a monetary penalty under sections 641(b)(6) and (d)(2)(A), Tariff Act of 1930, as amended (19 U.S.C. 1641(b)(6) and (d)(2)(A)), are set forth in subpart E of this part.

§ 111.51 Cancellation of license or permit.

(a) *Without prejudice.* The appropriate Executive Director, Office of Trade, may cancel a broker's license or permit ''without prejudice'' upon written application by the broker if the appropriate Executive Director, Office of Trade, determines that the application for cancellation was not made in order to avoid proceedings for the suspension or revocation of the license or permit. If the appropriate Executive Director, Office of Trade, determines that the application for cancellation was made in order to avoid those proceedings, he or she may cancel the license or permit ''without prejudice'' only with authorization from the Executive Assistant Commissioner.

(b) *With prejudice.* The appropriate Executive Director, Office of Trade may cancel a broker's license or permit ''with prejudice'' when specifically requested to do so by the broker. The effect of a cancellation ''with prejudice'' is in all respects the same as if the license or permit had been revoked for cause by the Executive Assistant Commissioner except that it will not give rise to a right of appeal.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 22–21, 87 FR 63319, Oct. 18, 2022]

§ 111.52 Voluntary suspension of license or permit.

The appropriate Executive Director, Office of Trade, may accept a broker's written voluntary offer of suspension of the broker's license or permit for a specific period of time under any terms and conditions to which the parties may agree.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 22–21, 87 FR 63319, Oct. 18, 2022]

§ 111.53 Grounds for suspension or revocation of license or permit.

The appropriate CBP officer may initiate proceedings for the suspension, for a specific period of time, or revocation of the license or permit of any broker for any of the following reasons:

(a) The broker has made or caused to be made in any application for any license or permit under this part, or report filed with CBP, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any application or report any material fact which was required;

(b) The broker has been convicted, at any time after the filing of an application for a license under § 111.12, of any felony or misdemeanor which:

(1) Involved the importation or exportation of merchandise;

(2) Arose out of the conduct of customs business; or

(3) Involved larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds;

(c) The broker has violated any provision of any law enforced by CBP or the rules or regulations issued under any provision of any law enforced by CBP;

(d) The broker has counseled, commanded, induced, procured, or knowingly aided or abetted the violations by any other person of any provision of any law enforced by CBP or the rules

or regulations issued under any provision of any law enforced by CBP;

(e) The broker has knowingly employed, or continues to employ, any person who has been convicted of a felony, without written approval of that employment from the appropriate Executive Director, Office of Trade,;

(f) The broker has, in the course of customs business, with intent to defraud, in any manner willfully and knowingly deceived, misled or threatened any client or prospective client;

(g) The broker has been convicted of committing or conspiring to commit an act of terrorism as described in section 2332b of title 18, United States Code; or

(h) The broker no longer meets the applicable requirements of §§111.11 and 111.19.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 22–21, 87 FR 63319, Oct. 18, 2022]

§ 111.54 [Reserved]

§ 111.55 Investigation of complaints.

Every complaint or charge against a broker which may be the basis for disciplinary action may be forwarded for investigation to the appropriate investigative authority within the Department of Homeland Security. The investigative authority will submit a final report on the investigation of complaints to the processing Center and send a copy of the report to the appropriate Executive Director, Office of Trade.

[CBP Dec. 22–21, 87 FR 63319, Oct. 18, 2022]

§ 111.56 Review of report on the investigation of complaints.

The processing Center will review the report on the investigation of complaints, or if there is no report on the investigation of complaints, other documentary evidence, to determine if there is sufficient basis to recommend that charges be preferred against the broker. The processing Center will then submit the recommendation with supporting reasons to the appropriate Executive Director, Office of Trade, for final determination together with a proposed statement of charges when recommending that charges be preferred.

[CBP Dec. 22–21, 87 FR 63319, Oct. 18, 2022]

§ 111.57 Determination by appropriate Executive Director, Office of Trade.

The appropriate Executive Director, Office of Trade, will make a determination on whether or not charges should be preferred, and will notify the processing Center of the decision.

[CBP Dec. 22–21, 87 FR 63319, Oct. 18, 2022]

§ 111.58 Content of statement of charges.

Any statement of charges referred to in this subpart must give a plain and concise, but not necessarily detailed, description of the facts claimed to constitute grounds for suspension or revocation of the license or permit. The statement of charges also must specify the sanction being proposed (that is, suspension of the license or permit or revocation of the license or permit), but if a suspension is proposed the charges need not state a specific period of time for which suspension is proposed. A statement of charges which fairly informs the broker of the charges against him so that he is able to prepare his response will be deemed sufficient. Different means by which a purpose might have been accomplished, or different intents with which acts might have been done, so as to constitute grounds for suspension or revocation of the license may be alleged in the alternative under a single count in the statement of charges.

§ 111.59 Preliminary proceedings.

(a) *Opportunity to participate.* The processing Center will advise the broker of his opportunity to participate in preliminary proceedings with an opportunity to avoid formal proceedings against his license or permit.

(b) *Notice of preliminary proceedings.* The processing Center will serve upon the broker, in the manner set forth in §111.63, written notice that:

(1) Transmits a copy of the proposed statement of charges;

(2) Informs the broker that formal proceedings are available to him;

(3) Informs the broker that sections 554 and 558, Title 5, United States Code,

will be applicable if formal proceedings are necessary;

(4) Invites the broker to show cause why formal proceedings should not be instituted;

(5) Informs the broker that he may make submissions and demonstrations of the character contemplated by the cited statutory provisions;

(6) Invites any negotiation for settlement of the complaint or charge that the broker deems it desirable to enter into;

(7) Advises the broker of his right to be represented by counsel;

(8) Specifies the place where the broker may respond in writing; and

(9) Advises the broker that the response must be received within 30 calendar days of the date of the notice.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 22–21, 87 FR 63319, Oct. 18, 2022]

§ 111.60 Request for additional information.

If, in order to prepare his response, the broker desires additional information as to the time and place of the alleged misconduct, or the means by which it was committed, or any other more specific information concerning the alleged misconduct, he may request that information in writing. The broker's request must set forth in what respect the proposed statement of charges leaves him in doubt and must describe the particular language of the proposed statement of charges as to which additional information is needed. If in the opinion of the processing Center that information is reasonably necessary to enable the broker to prepare his response, he will furnish the broker with that information.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 22–21, 87 FR 63319, Oct. 18, 2022]

§ 111.61 Decision on preliminary proceedings.

The processing Center will prepare a summary of any oral presentations made by the broker or the broker's attorney and forward it to the appropriate Executive Director, Office of Trade, together with a copy of each paper filed by the broker. The processing Center will also give to the appropriate Executive Director, Office of Trade, a recommendation on action to be taken as a result of the preliminary proceedings. If the appropriate Executive Director, Office of Trade, determines that the broker has satisfactorily responded to the proposed charges and that further proceedings are not warranted, he or she will so inform the processing Center, who will notify the broker. If no response is filed by the broker or if the appropriate Executive Director, Office of Trade, determines that the broker has not satisfactorily responded to all of the proposed charges, he or she will advise the processing Center of that fact and instruct the processing Center to prepare, sign, and serve a notice of charges and the statement of charges. If one or more of the charges in the proposed statement of charges was satisfactorily answered by the broker in the preliminary proceedings, the appropriate Executive Director, Office of Trade, will instruct the processing Center to omit those charges from the statement of charges.

[CBP Dec. 22–21, 87 FR 63319, Oct. 18, 2022]

§ 111.62 Contents of notice of charges.

The notice of charges must inform the broker that:

(a) Sections 554 and 558, Title 5, United States Code, are applicable to the formal proceedings;

(b) The broker may be represented by counsel;

(c) The broker will have the right to cross-examine witnesses;

(d) The broker will be notified of the time and place of a hearing on the charges; and

(e) Prior to the hearing on the charges, the broker may file with the processing Center, a verified answer to the charges.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 22–21, 87 FR 63319, Oct. 18, 2022]

§ 111.63 Service of notice and statement of charges.

(a) *Individual.* The processing Center will serve the notice of charges and the statement of charges against an individual broker as follows:

(1) By delivery to the broker personally;

(2) By certified mail, return receipt requested, addressed to the broker's office of record (or other address as provided pursuant to §111.30).

(3) By any other means which the broker may have authorized in a written communication to the processing Center; or

(4) If attempts to serve the broker by the methods prescribed in paragraphs (a)(1) through (a)(3) of this section are unsuccessful, the processing Center may serve the notice and statement by leaving them with the person in charge of the broker's office.

(b) *Partnership, association or corporation.* The processing Center will serve the notice of charges and the statement of charges against a partnership, association, or corporation broker as follows:

(1) By delivery to any member of the partnership personally or to any officer of the association or corporation personally;

(2) By certified mail addressed to any member of the partnership or to any officer of the association or corporation, with demand for a return card signed solely by the addressee;

(3) By any other means which the broker may have authorized in a written communication to the processing Center; or

(4) If attempts to serve the broker by the methods prescribed in paragraphs (b)(1) through (b)(3) of this section are unsuccessful, the processing Center may serve the notice and statement by leaving them with the person in charge of the broker's office.

(c) *Certified mail; evidence of service.* When service under this section is by certified mail to the broker's office of record (or other address as provided pursuant to §111.30), the receipt of the return card signed or marked will be satisfactory evidence of service.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 22–21, 87 FR 63320, Oct. 18, 2022]

§111.64 Service of notice of hearing and other papers.

(a) *Notice of hearing.* After service of the notice and statement of charges, the processing Center will serve upon the broker and his attorney if known, by one of the methods set forth in §111.63 or by ordinary mail, a written notice of the time and place of the hearing. The hearing will be scheduled to take place within 30 calendar days after service of the notice of hearing.

(b) *Other papers.* Other papers relating to the hearing may be served by one of the methods set forth in §111.63 or by ordinary mail or upon the broker's attorney.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 22–21, 87 FR 63320, Oct. 18, 2022]

§111.65 Extension of time for hearing.

If the broker or his attorney requests in writing a delay in the hearing for good cause, the hearing officer designated pursuant to §111.67(a) may reschedule the hearing and in that case will notify the broker or his attorney in writing of the extension and the new time for the hearing.

§111.66 Failure to appear.

If the broker or his attorney fails to appear for a scheduled hearing, the hearing officer designated pursuant to §111.67(a) will proceed with the hearing as scheduled and will hear evidence submitted by the parties. The provisions of this part will apply as though the broker were present, and the Executive Assistant Commissioner may issue an order of suspension of the license or permit for a specified period of time or revocation of the license or permit, or assessment of a monetary penalty in lieu of suspension or revocation, in accordance with §111.74 if he finds that action to be in order.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 22–21, 87 FR 63320, Oct. 18, 2022]

§111.67 Hearing.

(a) *Hearing officer.* The hearing officer must be an administrative law judge appointed pursuant to 5 U.S.C. 3105.

(b) *Rights of the broker.* The broker or his attorney will have the right to examine all exhibits offered at the hearing and will have the right to cross-examine witnesses and to present witnesses who will be subject to cross-examination by the Government representatives.

(c) *Interrogatories.* Upon the written request of either party, the hearing officer may permit deposition upon oral or written interrogatories to be taken before any officer duly authorized to administer oaths for general purposes or in customs matters. The other party to the hearing will be given a reasonable time in which to prepare cross-interrogatories and, if the deposition is oral, will be permitted to cross-examine the witness. The deposition will become part of the hearing record.

(d) *Transcript of record.* The processing Center will provide a competent reporter to make a record of the hearing. When the record of the hearing has been transcribed by the reporter, the processing Center will deliver a copy of the transcript of record to the hearing officer, the broker and the Government representative without charge.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 22–21, 87 FR 63320, Oct. 18, 2022]

§ 111.68 Proposed findings and conclusions.

The hearing officer will allow the parties a reasonable period of time after delivery of the transcript of record in which to submit proposed findings and conclusions and supporting reasons for the findings as contemplated by 5 U.S.C. 557(c).

§ 111.69 Recommended decision by hearing officer.

After review of the proposed findings and conclusions submitted by the parties pursuant to § 111.68, the hearing officer will make his recommended decision in the case and certify the entire record to the Executive Assistant Commissioner. The hearing officer's recommended decision must conform to the requirements of 5 U.S.C. 557.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 22–21, 87 FR 63320, Oct. 18, 2022]

§ 111.70 Additional submissions.

Upon receipt of the record, the Executive Assistant Commissioner will afford the parties a reasonable opportunity to make any additional submissions that are permitted under 5 U.S.C. 557(c) or otherwise required by the circumstances of the case.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 22–21, 87 FR 63320, Oct. 18, 2022]

§ 111.71 Immaterial mistakes.

The Executive Assistant Commissioner will disregard an immaterial misnomer of a third person, an immaterial mistake in the description of any person, thing, or place, or ownership of any property, any other immaterial mistake in the statement of charges, or a failure to prove immaterial allegations in the description of the broker's conduct.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 22–21, 87 FR 63320, Oct. 18, 2022]

§ 111.72 Dismissal subject to new proceedings.

If the Executive Assistant Commissioner finds that the evidence produced at the hearing indicates that a proper disposition of the case cannot be made on the basis of the charges preferred, he or she may instruct the processing Center to serve appropriate charges as a basis for new proceedings to be conducted in accordance with the procedures set forth in this subpart.

[CBP Dec. 22–21, 87 FR 63320, Oct. 18, 2022]

§ 111.73 [Reserved]

§ 111.74 Decision and notice of suspension or revocation or monetary penalty.

If the Executive Assistant Commissioner finds that one or more of the charges in the statement of charges is not sufficiently proved, the suspension, revocation, or monetary penalty action may be based on any remaining charges if the facts alleged in the charges are established by the evidence. If the Executive Assistant Commissioner in the exercise of discretion and based solely on the record, issues an order suspending a broker's license

or permit for a specified period of time or revoking a broker's license or permit or, except in a case described in §111.53(b)(3), assessing a monetary penalty in lieu of suspension or revocation, the appropriate Executive Director, Office of Trade, will promptly provide written notification of the order to the broker and, unless an appeal from the order of the Executive Assistant Commissioner is filed by the broker (*see* §111.75), the appropriate Executive Director, Office of Trade, will publish a notice of the suspension or revocation, or the assessment of a monetary penalty, in the FEDERAL REGISTER. If no appeal from the order of the Executive Assistant Commissioner is filed, an order of suspension or revocation or assessment of a monetary penalty will become effective sixty (60) calendar days after issuance of written notification of the order unless the Executive Assistant Commissioner finds that a more immediate effective date is in the national or public interest. If a monetary penalty is assessed and no appeal from the order of the Executive Assistant Commissioner is filed, payment of the penalty must be tendered within sixty (60) calendar days after the effective date of the order, and, if payment is not tendered within that sixty (60)-day period, the license or permit of the broker will immediately be suspended until payment is made.

[CBP Dec. 22–21, 87 FR 63320, Oct. 18, 2022]

§111.75 Appeal from the Executive Assistant Commissioner's decision.

An appeal from the order of the Executive Assistant Commissioner suspending or revoking a license or permit, or assessing a monetary penalty, may be filed by the broker in the Court of International Trade as provided in section 641(e), Tariff Act of 1930, as amended (19 U.S.C. 1641(e)). The commencement of those proceedings will, unless specifically ordered by the Court, operate as a stay of the Executive Assistant Commissioner's order.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 22–21, 87 FR 63320, Oct. 18, 2022]

§111.76 Reopening the case.

(a) *Grounds for reopening.* Provided that no appeal is filed in accordance with §111.75, a person whose license or permit has been suspended or revoked, or against whom a monetary penalty has been assessed in lieu of suspension or revocation, may make application to the appropriate Executive Director, Office of Trade, to reopen the case and have the order of suspension or revocation or monetary penalty assessment set aside or modified on the ground that new evidence has been discovered or on the ground that important evidence is now available which could not be produced at the original hearing by the exercise of due diligence. The application must set forth the precise character of the evidence to be relied upon and must state the reasons why the applicant was unable to produce it when the original charges were heard.

(b) *Procedure.* The appropriate Executive Director, Office of Trade, will forward the application, together with a recommendation for action thereon, to the Executive Assistant Commissioner. The Executive Assistant Commissioner may grant or deny the application to reopen the case and may order the taking of additional testimony before the appropriate Executive Director, Office of Trade. The appropriate Executive Director, Office of Trade, will notify the applicant of the decision by the Executive Assistant Commissioner. If the Executive Assistant Commissioner grants the application and orders a hearing, the appropriate Executive Director, Office of Trade, will set a time and place for the hearing and give due written notice of the hearing to the applicant. The procedures governing the new hearing and recommended decision of the hearing officer will be the same as those governing the original proceeding. The original order of the Executive Assistant Commissioner will remain in effect pending conclusion of the new proceedings and issuance of a new order under §111.77.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 22–21, 87 FR 63320, Oct. 18, 2022]

§ 111.77 Notice of vacated or modified order.

If, pursuant to § 111.76 or for any other reason, the Executive Assistant Commissioner issues an order vacating or modifying an earlier order under § 111.74 suspending or revoking a broker's license or permit, or assessing a monetary penalty, the appropriate Executive Director, Office of Trade, will notify the broker in writing and will publish a notice of the new order in the FEDERAL REGISTER.

[CBP Dec. 22–21, 87 FR 63320, Oct. 18, 2022]

§ 111.78 Reprimands.

If a broker fails to observe and fulfill the duties and responsibilities of a broker as set forth in this part but that failure is not sufficiently serious to warrant initiation of suspension or revocation proceedings, Headquarters, or the processing Center with the approval of Headquarters, may serve the broker with a written reprimand. The reprimand, and the facts on which it is based, may be considered in connection with any future disciplinary proceeding that may be instituted against the broker in question.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 22–21, 87 FR 63321, Oct. 18, 2022]

§ 111.79 Employment of broker who has lost license.

Five years after the revocation or cancellation ''with prejudice'' of a license, the ex-broker may petition the appropriate Executive Director, Office of Trade for authorization to assist, or accept employment with, a broker. The petition will not be approved unless the appropriate Executive Director, Office of Trade is satisfied that the petitioner has refrained from all activities described in § 111.42 and that the petitioner's conduct has been exemplary during the period of disability. The appropriate Executive Director, Office of Trade will also give consideration to the gravity of the misconduct which gave rise to the petitioner's disability. In any case in which the misconduct led to pecuniary loss to the Government or to any person, the appropriate Executive Director, Office of Trade will also take into account whether the petitioner has made restitution of that loss.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 22–21, 87 FR 63321, Oct. 18, 2022]

§ 111.80 [Reserved]

§ 111.81 Settlement and compromise.

The Executive Assistant Commissioner may settle and compromise any disciplinary proceeding which has been instituted under this subpart according to the terms and conditions agreed to by the parties including, but not limited to, the assessment of a monetary penalty in lieu of any proposed suspension or revocation of a broker's license or permit.

[CBP Dec. 22–21, 87 FR 63321, Oct. 18, 2022]

Subpart E—Monetary Penalty and Payment of Fees

§ 111.91 Grounds for imposition of a monetary penalty; maximum penalty.

CBP may assess a monetary penalty or penalties as follows:

(a) In the case of a broker, in an amount not to exceed an aggregate of $30,000 for one or more of the reasons set forth in § 111.53(a) through (g) other than those listed in § 111.53(b)(3), and provided that no license or permit suspension or revocation proceeding has been instituted against the broker under subpart D of this part for any of the same reasons; or

(b) In the case of a person who is not a broker, in an amount not to exceed $10,000 for each transaction or violation referred to in § 111.4 and in an amount not to exceed an aggregate of $30,000 for all those transactions or violations.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 22–21, 87 FR 63321, Oct. 18, 2022]

§ 111.92 Notice of monetary penalty.

(a) *Pre-penalty notice.* If assessment of a monetary penalty under § 111.91 is contemplated, CBP will issue a written notice which advises the broker or other person of the allegations or complaints against him and explains that the broker or other person has a right

to respond to the allegations or complaints in writing within 30 days of the date of mailing of the notice. The Fines, Penalties, and Forfeitures Officer has discretion to provide additional time for good cause.

(b) *Penalty notice.* If the broker or other person files a timely response to the written notice of the allegations or complaints, the Fines, Penalties, and Forfeiture Officer will review this response and will either cancel the case, issue a notice of penalty in an amount which is lower than that provided for in the written notice of allegations or complaints or issue a notice of penalty in the same amount as that provided in the written notice of allegations or complaints. If no response is received from the broker or other person, the Fines, Penalties, and Forfeitures Officer will issue a notice of penalty in the same amount as that provided in the written notice of allegations or complaints.

[T.D. 00–57, 65 FR 53575, Sept. 5, 2000, as amended by CBP Dec. 22–21, 87 FR 63321, Oct. 18, 2022]

§ 111.93 Petition for relief from monetary penalty.

A broker or other person who receives a notice issued under § 111.92(b) may file a petition for relief from the monetary penalty in accordance with the procedures set forth in part 171 of this chapter.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by T.D. 00–57, 65 FR 53575, Sept. 5, 2000]

§ 111.94 Decision on monetary penalty.

CBP will follow the procedures set forth in part 171 of this chapter in considering any petition for relief filed under § 111.93. After CBP has considered the allegations or complaints set forth in the notice issued under § 111.92 and any timely response made to the notice by the broker or other person, the Fines, Penalties, and Forfeitures Officer will issue a written decision to the broker or other person setting forth the final determination and the findings of fact and conclusions of law on which the determination is based. If the final determination is that the broker or other person is liable for a monetary penalty, the broker or other person must pay the monetary penalty, or make arrangements for payment of the monetary penalty, within 60 calendar days of the date of the written decision. If payment or arrangements for payment are not timely made, CBP will refer the matter to the Department of Justice for institution of appropriate judicial proceedings.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 22–21, 87 FR 63321, Oct. 18, 2022]

§ 111.95 Supplemental petition for relief from monetary penalty.

A decision of the Fines, Penalties, and Forfeitures Officer with regard to any petition filed in accordance with part 171 of this chapter may be the subject of a supplemental petition for relief. Any supplemental petition also must be filed in accordance with the provisions of part 171 of this chapter.

§ 111.96 Fees.

(a) *License fee; examination fee; fingerprint fee.* Each applicant for a broker's license pursuant to § 111.12 must pay a fee of $300 for an individual license application and $500 for a partnership, association, or corporation license application to defray the costs to CBP in processing the application. Each individual who intends to take the examination provided for in § 111.13 must pay a $390 examination fee before taking the examination. An individual who submits an application for a license must also pay a fingerprint processing fee; the processing Center will inform the applicant of the current Federal Bureau of Investigation fee for conducting fingerprint checks, which must be paid to CBP before further processing of the application will occur.

(b) *Permit application fee.* An application fee of $100 must be paid in connection with a national permit issued under § 111.19 to defray the processing costs, including costs associated with an application for reinstatement of a permit that was revoked by operation of law or otherwise.

(c) *Permit user fee.* Payment of an annual permit user fee defined in § 24.22(h) of this chapter is required for a national permit granted to an individual, partnership, association, or corporate broker. The permit user fee is payable

with the filing of an application for a national permit under §111.19(b), and for each subsequent calendar year at the processing Center referred to in §111.19(b). The permit user fee must be paid by the due date as published annually in the FEDERAL REGISTER, and must be remitted in accordance with the procedures set forth in §24.22(i) of this chapter. When a broker submits an application for a national permit under §111.19(b), the full permit user fee must be remitted with the application, regardless of the point during the calendar year at which the application is submitted. If a broker fails to pay the annual permit user fee by the published due date, the permit is revoked by operation of law. The processing Center will notify the broker in writing of the failure to pay and the revocation of the permit.

(d) *Triennial status report fee.* A fee of $100 is required to defray the costs of administering the triennial status reporting requirement prescribed in §111.30(d)(1).

(e) *Method of payment.* All fees prescribed under this section must be paid by check or money order payable to the U.S. Customs and Border Protection, or paid by other CBP-approved payment method.

[T.D. 00–17, 65 FR 13891, Mar. 15, 2000, as amended by CBP Dec. 03–13, 68 FR 43630, July 24, 2003; 72 FR 3734, Jan. 26, 2007; CBP Dec. 17-05, 82 FR 29719, June 30, 2017; CBP Dec. 17-16, 82 FR 50530, Nov. 1, 2017; CBP Dec. 22–22, 87 FR 63267, Oct. 18, 2022; CBP Dec. 22–21, 87 FR 63321, Oct. 18, 2022]

PART 112—CARRIERS, CARTMEN, AND LIGHTERMEN

Sec.

AUTHORITY: 19 U.S.C. 66, 1551, 1565, 1623, 1624.

SOURCE: T.D. 73–140, 38 FR 13551, May 23, 1973, unless otherwise noted.

§ 112.0 Scope.

This part sets forth regulations providing for the bonding of carriers which will receive merchandise for transportation in bond, the licensing of cartmen and lightermen, and the procedures for applying for such bonds and licenses. This part also sets forth the regulations concerning the obtaining of identification cards by cartmen and lightermen, and their employees and the procedures for revoking or suspending licenses and identification cards. Provisions setting forth the duties and responsibilities of cartmen and lightermen are set forth in part 125 of this chapter.

[T.D. 73–140, 38 FR 13551, May 23, 1973, as amended by T.D. 94–81, 59 FR 51494, Oct. 12, 1994]

Subpart A—General Provisions

§ 112.1 Definitions.

When used in this part, the following terms shall have the meaning indicated:

Carrier. A ''carrier'' is one who undertakes to transport goods, merchandise or people.

Cartman. A ''cartman'' is one who undertakes to transport goods or merchandise within the limits of the port.

Common carrier. A ''common carrier'' is a carrier owning or operating a railroad, steamship, or other transportation line or route which undertakes to transport goods or merchandise for all of the general public who choose to employ him.

Contract carrier. A ''contract carrier'' is a carrier which undertakes to transport specific goods or merchandise for a specific person or group of persons, and is authorized to operate as such by any agency of the United States.

District. ''District'' means the geographic area in which the parties excepted by the last sentence of §112.2(b)(2) may operate under their bonds without obtaining a cartage or lighterage license issued under this part. A listing of each district, and the ports thereunder, will be published on or before October 1, 1995, and whenever updated.

Freight forwarder. A ''freight forwarder'' is one who engages in the business of dispatching shipments on behalf of other persons, for a consideration, in foreign or domestic commerce between the United States, its territories or possessions, and foreign countries, and of handling the formalities incident to such shipments, and is authorized to operate as such by any agency of the United States.

Lighterman. A ''lighterman'' is one who transports goods or merchandise on a barge, scow, or other small vessel to or from a vessel within the port, or from place to place within a port.

Private carrier. A ''private carrier'' is a carrier of his own goods or merchandise.

[T.D. 73–140, 38 FR 13551, May 23, 1973, as amended by T.D. 95–77, 60 FR 50019, Sept. 27, 1995]

§ 112.2 Bond or license required.

(a) *Carriers.* A bond provided for in this part is required to transact business as a carrier receiving merchandise for transportation in bond.

(b) *Cartmen and lightermen*—(1) *Necessity for bond.* A bond, as provided for in this part, is required to transact business as a cartman or lighterman. The cartage or lighterage of merchandise designated for examination, entered for warehouse, taken to container stations or centralized examination stations, taken into custody as unclaimed or destined for admission to a foreign trade zone may be done under the bond of a cartman or lighterman who is licensed pursuant to the provisions of this part or that of a bonded carrier, as provided for in paragraph (a) of this section. Foreign trade zone operators, bonded warehouse proprietors, container station operators and centralized examination station operators may engage in limited cartage or lighterage under their respective bonds. A foreign trade zone operator may engage in cartage or lighterage under his bond only for merchandise destined for his foreign trade zone and may also transport merchandise to his zone from anywhere within the district boundaries (see definition of ''district'' at §112.1) where the foreign trade zone is located. A bonded warehouse proprietor may engage in cartage or lighterage under his bond only for merchandise destined for his bonded warehouse and may also transport merchandise to his warehouse from anywhere within the district boundaries (see definition of ''district'' at §112.1) where the bonded warehouse is located. A container station operator may engage in cartage or lighterage under his bond only for merchandise destined for his container station and may also transport merchandise to his container station from anywhere within the district boundaries (see definition of ''district'' at §112.1) where the container station is located. A centralized examination station operator may engage in cartage or lighterage under his bond only for merchandise destined for his centralized examination station and may also transport merchandise to his centralized examination station from anywhere within the district boundaries (see definition of ''district'' at §112.1) where the centralized examination station is located.

(2) *Necessity for license.* A license, as provided for in this part, is required to transact business as a cartman or lighterman for the cartage or lighterage of merchandise. Bonded carriers may engage in cartage and lighterage under their bonds without obtaining a license. Foreign trade zone operators,

bonded warehouse proprietors, container station operators and centralized examination station operators may engage, under their bonds, in the limited cartage and lighterage and other transportation described in this paragraph without obtaining a license.

[T.D. 73–140, 38 FR 13551, May 23, 1973, as amended by T.D. 94–81, 59 FR 51494, Oct. 12, 1994; T.D. 95–77, 60 FR 50020, Sept. 27, 1995]

Subpart B—Authorization of Carriers To Carry Bonded Merchandise

§ 112.11 Carriers which may be authorized.

(a) *From port to port in the United States.* The port director may authorize the following types of carriers to receive merchandise for transportation in bond from one port to another in the United States upon compliance with the provisions of this subpart:

(1) Common carriers.

(2) Contract carriers.

(3) Freight forwarders.

(4) Private carriers, if:

(i) The merchandise (including containerized merchandise) to be transported is the property of the private carrier; and

(ii) The private carrier files a bond on Customs Form 301, containing the bond conditions set forth in §113.63 of this chapter,

(b) *Between ports in Canada or Mexico through the United States.* Canadian and Mexican motor vehicle common carriers may be authorized to transport merchandise under bond between ports in Canada or Mexico through the United States (see part 123 of this chapter), upon compliance with the provisions of this subpart.

[T.D. 73–140, 38 FR 13551, May 23, 1973, as amended by T.D. 81–243, 46 FR 45602, Sept. 14, 1981; T.D. 84–213, 49 FR 41171, Oct. 19, 1984]

§ 112.12 Application for authorization.

(a) *General requirements.* All carriers and freight forwarders desiring to be authorized to receive merchandise for transportation in bond shall file with the port director concerned a bond on Customs Form 301, containing the bond conditions set forth in §113.63 of this chapter, in a sum specified by the port director accompanied by a fee of $50. A check or money order shall be made payable to the United States Customs Service.

(b) *Special requirements.* In addition to the requirements in paragraph (a) of this section, the specified carriers shall also file with the port director the following documents:

(1) *Common carriers other than railroad, steamship, or airline companies.* Common carriers other than railroad, steamship, or airline companies generally known to be engaged in common carriage, shall file a certified extract of its articles of incorporation or charter showing that it is authorized to engage in common carriage, and a statement that it is operating or intends to operate as a common carrier.

(2) *Contract carriers and freight forwarders.* Contract carriers and freight forwarders shall file a certificate from the appropriate agency of the United States showing that the applicant is authorized to operate as a contract carrier or freight forwarder by that agency and a statement showing that the applicant is operating or intends to operate as such.

(3) *Private carriers.* The private carrier shall file the bond with the director of the port where the private carrier intends to operate. If the private carrier intends to operate in two or more Customs ports, he shall file the bond with the director of one of the ports, send a copy of the bond to the director for each additional port, and include with the bond and copies of the bond a list of all Customs districts in which he intends to operate. If the private carrier is the proprietor of one or more Customs bonded warehouses or bonded container stations, or the operator of a foreign trade zone, to which imported merchandise will be transported, he shall accompany the bond and copies of the bond by a statement showing the location of each warehouse, container station, or zone.

(4) *Motor carriers.* All motor carriers shall file:

(i) A detailed description of the terminal facilities employed by the principal at the points of origin and destination on the routes covered; and

(ii) A statement showing that facilities are available for the segregation

and safeguarding of the packages designated by the port director for examination from a particular shipment.

[T.D. 73–140, 38 FR 13551, May 23, 1973, as amended by T.D. 81–243, 46 FR 45602, Sept. 14, 1981; T.D. 84–213, 49 FR 41171, Oct. 19, 1984; T.D. 86–16, 51 FR 5063, Feb. 11, 1986]

§ 112.13 Approval of applications.

The port director shall approve an application for authorization as carriers of bonded merchandise and the bond filed, authorizing the applicant to act as a carrier of bonded merchandise provided he is satisfied that:

(a) The amount of the bond is sufficient.

(b) All documents required by this subpart have been furnished and are in proper form; and

(c) The fee prescribed has been paid.

§ 112.14 Discontinuance of carrier bonds.

Carrier bonds may be discontinued at any time by the Commissioner of Customs or by the director of the port where the bond is filed. Authorized carriers desiring to terminate such bonds shall make application therefor to such port director.

Subpart C—Licensing of Cartmen and Lightermen

§ 112.21 License required.

A customhouse cartage or lighterage license issued by the port director in accordance with this part or specific authorization of the Commissioner of Customs shall be required to perform Customs cartage or lighterage, except as provided in §§ 18.3 and 125.12 of this chapter or, as provided in § 112.2(b), when such merchandise is to be transported under the bond of the foreign trade zone operator, bonded warehouse proprietor, centralized examination station operator, container station operator, or a bonded carrier.

[T.D. 94–81, 59 FR 51495, Oct. 12, 1994]

§ 112.22 Application for license.

(a) *General requirements.* An applicant for a customhouse cartage or lighterage license shall file with the director of the port where he proposes to conduct business the following:

(1) A bond on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter, in an amount specified by the port director.

(2) Payment of a fee of $100. A check or money order shall be made payable to the United States Customs Service.

(3) If required by the port director, a list showing the names and addresses of the managing officers and members of the organization or of the persons who will receive or transport imported merchandise which has not been released from Customs custody, or a list of all such persons and their addresses.

(b) *Special requirements*—(1) *Cartman licensed by city or State.* Any cartman licensed by city or State authorities shall present to the port director his city or State license, after which such documents shall be returned.

(2) *Lighterman.* A lighterman shall present his vessel's marine documents, if any have been issued, to the port director for examination, after which such documents shall be returned.

(c) *Reapplication by certain terminated licensees.* Where the applicant for a customhouse cartage or lighterage license has previously been issued such a license and the license has been terminated pursuant to § 113.56 of this chapter, the port director may waive the filing of the items described in paragraphs (a)(2) and (a)(3) of this section, as well as the investigation described in § 112.23, provided the application is made within 30 days of the effective date of the termination of the previous license. Any requirements waived by the port director under this paragraph will be deemed to have been complied with for purposes of § 112.24(b).

[T.D. 73–140, 38 FR 13551, May 23, 1973, as amended by T.D. 74–200, 39 FR 27128, July 25, 1974; T.D. 76–324, 41 FR 50822, Nov. 18, 1976; T.D. 84–213, 49 FR 41171, Oct. 19, 1984]

§ 112.23 Investigation of applicant.

The port director may refer the application for a cartman's or lighterman's license to the appropriate special agent in charge where investigation and report concerning the character, qualification, and experience of the applicant as well as the nature and fitness of the equipment to be used.

§ 112.24 Issuance of license.

The port director shall issue a customhouse cartage and lighterage license on Customs Form 3857 provided he is satisfied that:

(a) The character, qualifications, and experience of the applicant and fitness of his equipment are satisfactory.

(b) The applicant has complied with all the requirements of § 112.22.

§ 112.25 Bonded carriers.

A carrier or freight forwarder who has filed a bond on Customs Form 301 containing the bond conditions set forth in § 113.63 of this chapter may transport merchandise within a port for which the bond provides coverage.

[T.D. 94–81, 59 FR 51495, Oct. 12, 1994]

§ 112.26 Duration of license.

A license issued in accordance with this subpart shall remain in force and effect until the license is suspended or revoked pursuant to § 112.30 or until the required bond is terminated pursuant to § 113.27 of this chapter.

[T.D. 76–324, 41 FR 50822, Nov. 18, 1976, as amended by T.D. 84–213, 49 FR 41171, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984; T.D. 97–82, 62 FR 51770, Oct. 3, 1997]

§ 112.27 Marking of vehicles and vessels.

(a) *Marking required.* Every vehicle licensed by Customs for cartage and every barge, scow, or other lighter licensed by Customs for lighterage shall be marked with the legend ''Customhouse License No. _____'', and the name of the person or firm to whom the license has been issued. The abbreviated legend ''C.H.L. No. _____'' may be used.

(b) *Size of marking.* The marking required by this section shall appear in letters and figures not less than 3 inches high.

(c) *Place of marking*—(1) *Carts, trucks, drays, and other vehicles.* Every cart, truck, dray, or other vehicle used for Customs cartage by a licensed cartman shall be marked with the required legend and name on each side by painting directly onto the vehicle, or by the permanent attachment of signs bearing the required marking. However, if such marking is found by the port director to be impractical, he may designate some other conspicuous place upon the vehicle where the marking shall appear.

(2) *Barges, scows, lighters, and other vessels.* Every barge, scow, lighter, or other vessel used for Customs lighterage by a licensed lighterman shall be conspicuously marked with the required legend and name.

(d) *Removal of marking upon termination of license.* The markings required by this section shall be removed upon termination of the license.

[T.D. 73–140, 38 FR 13551, May 23, 1973, as amended by T.D. 84–213, 49 FR 41171, Oct. 19, 1984]

§ 112.28 Production of license.

Inspectors or other Customs officers may require any person claiming to be a licensed customhouse cartman or lighterman to produce his license for inspection.

§ 112.29 Records.

(a) *Records of cartage and lighterage.* The port director may require that licensed Customs cartmen and lightermen shall make, keep, and promptly submit for Customs inspection and examination upon request therefor such current written records relating to cartage and lighterage as may be needed for purposes of local Customs administration. Cartmen and lightermen shall maintain these records for 3 years from the expiration date of the related contract for cartage or lighterage.

(b) *Current list of officers, members, or employees.* The port director may require a licensee to furnish, at such times and intervals as the port director deems necessary, a current list showing the names and addresses of the managing officers and members of the organization or of the persons who will receive or transport imported merchandise which has not been released from Customs custody, or a list of all such persons and their addresses.

[T.D. 73–140, 38 FR 13551, May 23, 1973, as amended by T.D. 79–159, 44 FR 31968, June 4, 1979]

§ 112.30 Suspension or revocation of license.

(a) *Grounds for suspension or revocation of licenses.* The port director may revoke or suspend the license of a cartman or lighterman if:

(1) His license is not promptly produced upon demand;

(2) His vehicle or vessel is not properly marked, as required by § 112.27;

(3) The cartman or lighterman refuses or neglects to obey any proper order of a Customs officer or any Customs order, rule, or regulation relative to the cartage or lighterage of merchandise, including the making, keeping, and submitting of current written records relating to cartage and lighterage;

(4) The license was obtained through fraud or the misstatement of a material fact;

(5) The holder of such a license or an officer of a corporation holding such a license is convicted of or has committed acts which would constitute a felony, or a misdemeanor involving theft, smuggling, or a theft-connected crime. Any change in the employment status of the corporate officer (e.g., discharge, resignation, demotion, or promotion) prior to conviction of a misdemeanor involving theft, smuggling, or a theft-connected crime, resulting from acts committed while a corporate officer, will not preclude application of this provision;

(6) The holder of such license permits it to be used by any other person;

(7) The holder of such license fails to surrender promptly, or satisfactorily explain the failure to surrender, to the port director, identification cards of persons no longer employed by him where identification cards are required pursuant to § 112,41;

(8) The holder of such license fails to furnish a current list of names and addresses of officers and members or employees when required by the port director pursuant to § 112.29;

(9) The holder is guilty of any negligence, dishonest or deceptive practices or carelessness in the conduct of his business; or

(10) The port director determines that the bond is not sufficient in amount or lacks sufficient sureties, and a satisfactory new bond with good and sufficient sureties is not furnished within a reasonable time.

(b) *Notice of revocation or suspension.* The port director shall suspend or revoke a license by serving notice of the proposed action in writing upon the holder of the license. Such notice shall be in the form of a statement specifically setting forth the grounds for revocation or suspension of the license and shall be final and conclusive upon the licensee unless he shall file with the port director a written notice of appeal in accordance with paragraph (c) of this section.

(c) *Notice of appeal.* The licensee may file a written notice of appeal from the revocation or suspension within 10 days following receipt of the notice of revocation or suspension. The notice of appeal shall be filed in duplicate, and shall set forth the response of the licensee to the statement of the port director. The licensee in his notice of appeal may request a hearing.

(d) *Hearing on appeal*—(1) *Notification of and time of hearing.* If a hearing is requested, it shall be held before a hearing officer designated by the Secretary of the Treasury or his designee within 30 days following application therefor. The licensee shall be notified of the time and place of the hearing at least 5 days prior thereto.

(2) *Conduct of hearing.* The holder of the license may be represented by counsel at the revocation or suspension hearing. All evidence and testimony of witnesses in such proceeding, including substantiation of charges and the answer thereto, shall be presented with both parties having the right of cross-examination. A stenographic record of the proceedings shall be made and a copy thereof shall be delivered to the licensee. At the conclusion of such proceedings or review of a written appeal, the hearing officer or the port director, as the case may be, shall forthwith transmit all papers and the stenographic record of the hearing, if held, to the Commissioner of Customs, together with his recommendation for final action.

(3) *Additional arguments.* Following a hearing and within 10 calendar days after delivery of a copy of the stenographic record, the licensee may submit to the Commissioner of Customs in

writing additional views and arguments on the basis of such record.

(4) *Failure to appear.* If neither the licensee nor his attorney appear for a scheduled hearing, the hearing officer shall conclude the hearing and transmit all papers with his recommendation to the Commissioner of Customs.

(e) *Decision on the appeal.* The Commissioner shall render his decision, in writing, stating his reasons therefor, with respect to the action proposed by the hearing officer or the port director. Such decision shall be transmitted to the port director and served by him on the licensee.

(f) *Review by the Court of International Trade.* Any licensee adversely affected by a decision of the Commissioner of Customs may appeal the decision in the Court of International Trade.

[T.D. 73–140, 38 FR 13551, May 23, 1973, as amended by T.D. 85–90, 50 FR 21431, May 24, 1985; T.D. 88–63, 53 FR 40220, Oct. 14, 1988]

Subpart D—Identification Cards

§ 112.41 Identification cards required.

A port director may require each licensed cartman or lighterman and each employee thereof who receives, transports, or otherwise handles imported merchandise which has not been released from Customs custody to carry and display upon request of a Customs officer an identification card issued by Customs. The card shall be in the possession of the person in whose name it is issued at all times when he is engaged in transactions with respect to imported merchandise. An identification card shall not be issued to any person whose employment in connection with the transportation of bonded merchandise will, in the judgment of the port director, endanger the revenue.

[T.D. 73–140, 38 FR 13551, May 23, 1973, as amended by T.D. 99–64, 64 FR 43266, Aug. 10, 1999]

§ 112.42 Application for identification card.

An application for an identification card required pursuant to § 112.41 of this part, shall be filed personally by the applicant with the port director on Customs Form 3078 together with two 1¼″ × 1¼″ color photographs of the applicant. The fingerprints of the applicant shall also be required on form FD 258 or electronically at the time of filing the application. The port director shall inform the applicant of the current Federal Bureau of Investigation user fee for conducting fingerprint checks and the Customs administrative processing fee, the total of which must be tendered with the application. The application may be referred for investigation and report concerning the character of the applicant.

[T.D. 93–18, 58 FR 15772, Mar. 24, 1993, as amended by T.D. 01–14, 66 FR 8767, Feb. 2, 2001]

§ 112.43 Form of identification card.

The identification card shall be issued on Customs Form 3873 and shall not be valid unless signed by the employee and a Customs officer and the U.S. Customs seal is impressed thereon. The holder shall encase the card in protective transparent plastic so that both sides are clearly visible.

§ 112.44 Changes in information on identification cards.

Where there has been a change in the name, address, or employer of the holder, the card shall be promptly submitted by the cardholder to the port director, supported by application in proper form indicating the change so that it may be officially changed on the Customs records. New cards shall be issued when necessary.

§ 112.45 Surrender of identification cards.

The identification card shall be surrendered by the holder or licensee to the port director when:

(a) The employee holder leaves the employment of the licensed cartman or lighterman;

(b) The cartman or lighterman bond or license is terminated; or

(c) The card is revoked or suspended pursuant to § 112.48.

§ 112.46 Report of loss or theft.

The loss or theft of an identification card shall be promptly reported by the cardholder to the port director.

§ 112.47 Wrongful presentation.

If an identification card is presented by a person other than the one to whom it was issued, such card shall be forthwith confiscated.

§ 112.48 Revocation or suspension of identification cards.

(a) *Grounds for revocation or suspension of identification cards.* An identification card issued pursuant to this part may be revoked or suspended by the port director for any of the following grounds:

(1) Such card was obtained through fraud or the misstatement of a material fact;

(2) The holder of such card is convicted of a felony, or convicted of a misdemeanor involving theft, smuggling, or any theft-connected crime;

(3) The holder permits the card to be used by any other person, or refuses to produce it upon the proper demand of a Customs officer; or

(4) The holder fails to abide by the rules and regulations prescribed in § 112.45 and part 125 of this chapter.

(b) *Notice of revocation or suspension.* The port director shall suspend or revoke an identification card by serving notice of the proposed action in writing upon the holder of the card. Such notice shall be in the form of a statement specifically setting forth the grounds for revocation or suspension of the card and shall be final and conclusive upon the holder unless he shall file with the port director a written notice of appeal in accordance with paragraph (c) of this section.

(c) *Notice of appeal.* The holder may file a written notice of appeal from the revocation or suspension within 10 days following receipt of the notice of revocation or suspension. The notice of appeal shall be filed, in duplicate, and shall set forth the response of the holder to the statement of the port director. The holder in his notice of appeal may request a hearing.

(d) *Hearing on appeal*—(1) *Notification of and time of hearing.* If a hearing is requested, it shall be held before a hearing officer designated by the Secretary of the Treasury or his designee within 30 days following application therefor. The holder shall be notified of the time and place of hearing at least 5 days prior thereto.

(2) *Conduct of hearing.* The holder of the card may be represented by counsel at the revocation or suspension hearing. All evidence and testimony of witnesses in such proceeding, including substantiation of charges and the answer thereto, shall be presented with both parties having the right of cross-examination. A stenographic record of the proceedings shall be made and a copy thereof shall be delivered to the cardholder. At the conclusion of such proceedings or review of a written appeal, the hearing officer or the port director, as the case may be, shall forthwith transmit all papers and the stenographic record of the hearing, if held, to the Commissioner of Customs, together with his recommendation for final action.

(3) *Additional arguments.* Following a hearing and within 10 calendar days after delivery of a copy of the stenographic record, the holder of the card may submit to the Commissioner of Customs in writing additional views and arguments on the basis of such record.

(4) *Failure to appear.* If neither the cardholder nor his attorney appear for a scheduled hearing, the hearing officer shall conclude the hearing and transmit all papers with his recommendation to the Commissioner of Customs.

(e) *Decision on the appeal.* The Commissioner shall render his decision, in writing, stating his reasons therefor, with respect to the action proposed by the hearing officer or the port director. Such decision shall be transmitted to the port director and served by him on the cardholder.

§ 112.49 Temporary identification cards.

(a) *Issuance.* When an identification card is required by the port director under § 112.41, and the port director determines that the application for the identification card cannot be administratively processed in a reasonable period of time, any licensed cartman or lighterman may upon written request have a temporary identification card

issued by the port director to his employee if he can show to the satisfaction of the port director that a hardship to his business would result pending issuance of an identification card.

(b) *Validity and renewal.* The temporary identification card shall be valid for a period of 60 days. The port director may renew the temporary identification card for additional 30-day periods if he feels that the circumstances under which the temporary identification card was originally issued continue to exist. The temporary identification card shall be returned by the holder or licensee to the port director when the identification card is issued or the privileges granted thereby are withdrawn.

(c) *Withdrawal of temporary card.* The temporary identification card may be withdrawn at any time if in the judgment of the port director continuation of the privileges granted thereby would endanger the revenue or if the holder of the temporary identification card refuses or neglects to obey any proper order of a Customs officer or any Customs order, rule, or regulation.

(d) *Bond.* The licensed cartman or lighterman shall as a condition precedent to the issuance of a temporary identification card to his employee be required to post a bond in a penal sum, the amount to be determined by the port director, to guarantee return of the temporary identification card by the holder upon its withdrawal or upon issuance of a permanent identification card and to cover any loss or damage caused to the United States by the holder of the temporary identification card. The bond shall be on Customs Form 301 and contain the bond conditions set forth in §113.63 of this chapter and be in such amount as determined by the port director.

[T.D. 73–140, 38 FR 13551, May 23, 1973, as amended by T.D. 84–213, 49 FR 41171, Oct. 19, 1984]

PART 113—CBP BONDS

AUTHORITY: 19 U.S.C. 66, 1623, 1624.

Subpart E also issued under 19 U.S.C. 1484, 1551, 1565.

Section 113.74 also issued under 19 U.S.C. 1337.

Section 113.75 and appendix C also issued under 19 U.S.C. 1484b.

SOURCE: T.D. 84–213, 49 FR 41171, Oct. 19, 1984, unless otherwise noted.

§ 113.0 Scope.

This part sets forth the general requirements applicable to bonds. It contains the general authority and powers of the Commissioner of CBP in requiring bonds, bond approval and execution, bond conditions, general and special bond requirements, the requirements which must be met to be either a principal or a surety, the requirements concerning the production of documents, the authority and manner of assessing liquidated damages and requirements for cancelling the bond or charges against a bond.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by CBP Dec. 15–15, 80 FR 70162, Nov. 13, 2015]

Subpart A—General Provisions

§ 113.1 Authority to require security or execution of bond.

Where a bond or other security is not specifically required by law or regulation, the Commissioner of CBP may by specific instruction require, or authorize the Director, Revenue Division or the port director to require, such bonds or other security considered necessary for the protection of the revenue or to assure compliance with any pertinent law, regulation, or instruction.

[80 FR 70162, Nov. 13, 2015]

§ 113.2 Powers of Commissioner of CBP relating to bonds.

Whenever a bond is required or authorized by law, regulation, or instruction, the Commissioner of CBP may:

(a) Prescribe the conditions and form of the bond and fix the amount of penalty, whether for the payment of liquidated damages, or of a penal sum, except as otherwise specifically provided by law.

(b) Provide for the approval of the sureties on the bond, without regard to any general provision of law.

(c) Authorize the execution of a term bond, the conditions of which will extend to and cover similar cases of importations over a period of time, not to exceed one year or such longer period as he may fix, when in his opinion special circumstances warrant a longer period.

(d) Authorize the taking of a consolidated bond (single transaction or term) in lieu of separate bonds to assure compliance with two or more provisions of law, regulation, or instruction. Such a consolidated bond will have the same force and effect as the separate bonds in lieu of which it was taken. The Commissioner of CBP may fix the penalty for violation of a consolidated bond

without regard to any other provision of law, regulation, or instruction.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by CBP Dec. 15–15, 80 FR 70162, Nov. 13, 2015]

§ 113.3 Liability of surety on a terminated bond.

The surety, as well as the principal, remains liable on a terminated bond for obligations incurred prior to termination.

§ 113.4 Bonds and carnets.

(a) *Bonds.* All bonds required to be given under the customs laws or CBP regulations will be known as CBP bonds.

(b) *Carnets.* A carnet is an international customs document which serves simultaneously as a customs entry document and as a customs bond. Therefore, carnets, provided for in part 114 of this chapter, are ordinarily acceptable without posting further security under the customs laws or CBP regulations requiring bonds.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by CBP Dec. 15–15, 80 FR 70163, Nov. 13, 2015]

Subpart B—Bond Application and Approval of Bond

§ 113.11 Bond application.

(a) *Single transaction bond application.* In order to insure that the revenue is adequately protected, the port director may require a person who will be engaged in a single customs transaction relating to the importation or entry of merchandise to file a bond application. The single transaction bond application may be in the form of a letter filed with the Director, Revenue Division or the port director, or the application may be scanned and submitted to CBP as an email attachment or by fax. The application must identify the value and nature of the merchandise involved in the transaction to be secured. When the proper bond in a sufficient amount is filed with the entry summary or with the entry, or when the entry summary is filed at the time of entry, an application will not be required.

(b) *Continuous bond application.* To secure multiple transactions relating to the importation or entry of merchandise or the operation of a bonded smelting or refining warehouse, a continuous bond application must be submitted to the Director, Revenue Division. The continuous bond application may be in the form of a letter or it may be scanned and submitted to CBP as an email attachment or by facsimile (fax).

(1) *Information required.* The application must contain the following information:

(i) The general character of the merchandise to be entered; and

(ii) The total amount of ordinary customs duties (including any taxes required by law to be treated as duties), plus the estimated amount of any other tax or taxes on the merchandise to be collected by CBP, accruing on all merchandise imported by the principal during the calendar year preceding the date of the application. The total amount of duties and taxes will be that which would have been required to be deposited had the merchandise been entered for consumption even though some or all of the merchandise may have been entered under bond. If the value or nature of the merchandise to be imported will change in any material respect during the next year the change must be identified. If no imports were made during the calendar year prior to the application, a statement of the duties and taxes it is estimated will accrue on all importations during the current year shall be submitted.

(2) *Application updates.* If the Director, Revenue Division approves a bond based upon the application, whenever there is a significant change in the information provided under this paragraph, the principal on the bond must submit a new application containing an update of the information required by paragraph (b)(1) of this section. The new application must be filed no later than 30 days after the new facts become known to the principal.

(c) *Certification.* Any application submitted under this section must be signed by the applicant and contain the following certification:

I certify that the factual information contained in this application is true and accurate and any information provided which is based upon estimates is based upon the best

information available on the date of this application.

[CBP Dec. 15–15, 80 FR 70163, Nov. 13, 2015]

§ 113.12 Bond approval.

(a) *Single transaction bonds.* Single transaction bonds will be approved by the Revenue Division or the director of the port where filed.

(b) *Continuous bonds.* Continuous bonds must be approved by the Revenue Division. Only one continuous bond for a particular activity will be authorized for each principal.

[CBP Dec. 15–15, 80 FR 70163, Nov. 13, 2015]

§ 113.13 Amount of bond.

(a) *Minimum amount of bond.* The amount of any CBP bond must not be less than $100, except when the law or regulation expressly provides that a lesser amount may be taken. Fractional parts of a dollar will be disregarded in computing the amount of a bond. The bond always will be stated as the next highest dollar.

(b) *Guidelines for determining amount of bond.* In determining whether the amount of a bond is sufficient, CBP will consider:

(1) The prior record of the principal in timely payment of duties, taxes, and charges with respect to the transaction(s) involving such payments;

(2) The prior record of the principal in complying with CBP demands for redelivery, the obligation to hold unexamined merchandise intact, and other requirements relating to enforcement and administration of customs and other laws and CBP regulations;

(3) The value and nature of the merchandise involved in the transaction(s) to be secured;

(4) The degree and type of supervision that CBP will exercise over the transaction(s);

(5) The prior record of the principal in honoring bond commitments, including the payment of liquidated damages; and

(6) Any additional information contained in any application for a bond.

(c) *Periodic review of bond sufficiency.* CBP will periodically review each bond on file to determine whether the bond is adequate to protect the revenue and ensure compliance with applicable law and regulations. If CBP determines that a bond is inadequate, the principal and surety will be promptly notified in writing. The principal will have 15 days from the date of notification to remedy the deficiency. Notwithstanding the foregoing, where CBP determines that a bond is insufficient to adequately protect the revenue and ensure compliance with applicable law and regulations, CBP may provide written notice to the principal and surety that, upon receipt thereof, additional security in the form of cash deposit or single transaction bond may be required for any and all of the principal's transactions until the deficiency is remedied.

(d) *Additional security.* Notwithstanding the provisions of this section or any other provision of this chapter, if CBP believes that acceptance of a transaction secured by a continuous bond would place the revenue in jeopardy or otherwise hamper the enforcement of all applicable laws or regulations, CBP may immediately require additional security.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by CBP Dec. 15–15, 80 FR 70163, Nov. 13, 2015]

§ 113.14 Approved form of bond inadequate.

If CBP determines that none of the conditions contained in subpart G of this part is applicable to a transaction sought to be secured, the Director, Revenue Division, or the port director, as CBP deems appropriate, will draft conditions that cover the transaction. Before execution of the bond, the conditions must be submitted to Headquarters, Attention: Executive Director, Regulations and Rulings, Office of International Trade, for approval.

[CBP Dec. 15–15, 80 FR 70163, Nov. 13, 2015]

§ 113.15 Retention of approved bonds.

Except for bonds containing an agreement to pay court costs (condemned goods) (*see* § 113.72), and except as may otherwise be deemed appropriate by CBP, bonds that are approved by the port director will be retained at the port office and bonds that are approved by the Revenue Division (including bonds relating to repayment of

erroneous drawback payments containing the conditions set forth in §113.65) will be retained at the Revenue Division. The bond containing the agreement to pay court costs (condemned goods), will be transmitted to the United States attorney, as required by section 608, Tariff Act of 1930, as amended (19 U.S.C. 1608).

[CBP Dec. 15–15, 80 FR 70164, Nov. 13, 2015]

Subpart C—Bond Requirements

§113.21 Information required on the bond.

(a)(1) *Identification of principal and sureties*. The names of the principal and sureties and their respective places of residence must appear in the bond. In the case of a corporate principal or surety, its legal designation and the address of its principal place of business must appear.

(2) *Identification of trade names and unincorporated divisions of a corporate principal*. The principal may list on the bond trade names and the names of unincorporated divisions of the corporate principal which do not have a separate and distinct legal status who are authorized to use the bond in their own name.

(b) *Date of execution*. Each bond must bear the date it was actually executed.

(c) *Statement of the amount*. The amount of the bond must be stated in figures.

(d) *Use of abbreviations*. Abbreviations may not be used except in dates and the state of incorporation of the principal or the surety.

(e) *Blank spaces on the bond*. Lines must be drawn through all spaces and blocks on the bond which are not filled in.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by CBP Dec. 15–15, 80 FR 70164, Nov. 13, 2015]

§113.22 Witnesses required.

(a) *Generally*. The signature of each party to a bond executed by a noncorporate principal or surety must be witnessed by two persons, who must sign their names as witnesses, and include their addresses.

(b) *Witness for both principal and surety*. When two persons signing as witnesses act for both principal and surety, they must so indicate by stating on the bond ''as to both''.

(c) *Corporate principal or surety*. No witnesses are required where bonds are executed by properly authorized officers or agents of a corporate principal or corporate surety. For requirements concerning the execution of a bond by an authorized officer or agent of a corporate principal or surety, see §§113.33 and 113.37 of this part.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by CBP Dec. 15–15, 80 FR 70164, Nov. 13, 2015]

§113.23 Changes made on the bond.

(a) *Definition of the types of changes*—(1) *Modification or interlineation*. Modifications or interlineations are changes which go to the substance of the bond, or are basic revisions of the bond.

(2) *Alterations or erasures*. Alterations or erasures consist of minor changes, such as the correction of typographical errors, or change of address, which do not go to the substance, or result in basic revision of the bond.

(b) *Prior to signing*. When erasures, alterations, modifications, or interlineations are made on the bond prior to its signing by the parties to the bond, a statement by an agent of the surety company or by the personal sureties to that effect must be placed upon the bond.

(c) *After signing*. If erasures or alterations are made after the bond is signed, but prior to the approval of the bond by CBP, the consent of all the parties must be written on the bond. Except in cases where a change in the bond is expressly authorized by regulation, or by the Commissioner, no modification or interlineation may be made on the bond after execution. When a modification or interlineation is desired, a new bond will be executed.

(d) *After approval of the bond by CBP*. Except in cases where a change in the bond is expressly authorized by regulations, or instructions from the Commissioner, the port director may not permit a change as defined in paragraph (a) of this section after the bond has been approved by CBP. When

changes are desired, a new bond is required, which, when approved, will supersede the existing bond.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984, as amended by CBP Dec. 15–15, 80 FR 70164, Nov. 13, 2015]

§ 113.24 Riders.

(a) *Types of riders.* The Revenue Division will accept all types of authorized bond riders. For a comprehensive listing, see the CBP Web site located at *www.cbp.gov*.

(b) *Location and method of filing.* A bond rider must be filed at the Revenue Division, and may be submitted in paper or scanned and submitted to the Revenue Division as an email attachment or by facsimile (fax).

(c) *Attachment of rider to paper bond.* A rider submitted to CBP in paper format must be securely attached to the related bond to prevent their loss or misplacement.

(d) *Format of rider.* The riders must be signed, sealed, witnessed, executed, include a certificate as to corporate principal, if applicable, and otherwise comply with the requirements of this part. The riders must contain the following conditions:

(1) *Name change of principal.*

By this rider to the CBP Form 301,____ (bond number), dated ____, executed by ____, (former name), as principal, ____, (importer number), the, ____ (new name), hereby certifies that it is the same entity formerly known as ____, (former name), and the principal and surety agree that they are responsible for any act secured by this bond done under principal's former name. Principal and surety agree to be bound under this bond to the same extent as if this bond had been executed in the principal's new name. This rider is effective on ____ (date).

(2) *Address change.*

By this rider to CBP Form 301, ____ (bond number) executed on ____ (date), by ____, (principal's name), as principal, ____, (importer number), and ____ (surety's name and code), as surety, which is effective on ____ (date), the principal, surety or both, intend that the bond be amended to show ____ (new address) as their address. The principal, surety or both, as may be appropriate agree to be bound as though this bond has been executed with the new address(s) shown.

(3) *Addition or deletion of trade names and unincorporated divisions of a corporate principal*—(i) *Addition rider.*

By this rider to the CBP Form 301, ____, (bond number), executed on ____, (date), by ____, (principal's name), as principal, ____, (importer number) and ____, (surety's name and code), as surety, which is effective on ____ (date), the principal and surety agree that the below listed names are unincorporated units of the principal or are trade or business names used by the principal in its business and that this bond covers its business and that this bond covers any act done in those names to the same extent as though done in the name of the principal. The principal and surety agree that any such act must be considered to be the act of the principal.

(ii) *Deletion rider.*

By this rider to the CBP Form 301, ____, (bond number), executed on ____, (date), by ____, (principals name) as principal, ____, (importer number and ____, (surety's name and surety code), as surety, which is effective on ____, (date), the principal and surety agree that the below listed names of unincorporated units of the principal or trade or business names used by the principal in its business are deleted from the bond effective upon the date of approval of the rider by the appropriate CBP bond approval official.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by CBP Dec. 15–15, 80 FR 70164, Nov. 13, 2015]

§ 113.25 Seals.

When a seal is required, the seal must be affixed adjoining the signatures of principal and surety, if individuals, and the corporate seal must be affixed close to the signatures of persons signing on behalf of a corporation. Bonds must be under seal in accordance with the law of the state in which executed. However, when the charter or governing statute of a corporation requires its acts to be evidenced by its corporate seal, such seal is required.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by CBP Dec. 15–15, 80 FR 70164, Nov. 13, 2015]

§ 113.26 Effective dates of bonds and riders.

(a) *General.* A continuous bond, and any associated application required by §113.11, or rider, may be filed up to 60 days prior to the effective date requested for the continuous bond or rider.

(b) *Single transaction bond.* A single transaction bond is effective on the

date of the transaction identified on CBP Form 301.

(c) *Continuous bond.* A continuous bond is effective on the effective date identified on CBP Form 301.

(d) *Riders for name change of principal, address change, and addition of trade names and unincorporated divisions of a corporate principal.* Riders for a name change of principal, address change, and addition of trade names and unincorporated divisions of a corporate principal are effective on the effective date identified on the rider.

(e) *Rider to delete trade names and unincorporated divisions of a corporate principal.* A rider to delete trade names and unincorporated divisions of a corporate principal is effective on the effective date identified on the rider if the date is at least 10 business days after the date the port receives the rider. If the rider is not received 10 business days before the identified effective date or no effective date is identified on the rider, it will be effective on the close of business of the tenth business day after it is received in the port.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended at 80 FR 70164, Nov. 13, 2015; CBP Dec. 15–15, 81 FR 15159, Mar. 22, 2016]

§ 113.27 Effective dates of termination of bond.

(a) *Termination by principal/co-principal.* A written request by a principal or co-principal to terminate a bond must be mailed, faxed, or emailed to the Revenue Division or, in the case of a bond relating to repayment of erroneous drawback payment, to the drawback office where the bond was approved. The termination will take effect on the date requested if that date is at least 10 business days after the date CBP receives the request. If no termination date is requested, the termination will take effect on the tenth business day following the date CBP receives the request.

(b) *Termination by surety.* A surety may not disavow already incurred obligations but may, with or without the consent of the principal, terminate its agreement to accept future obligations on a bond. The surety must provide reasonable notice of termination, made pursuant to the methods set forth in paragraph (a) of this section, to both the Revenue Division or a drawback office, as appropriate, and to the principal. The notice must state the date on which the termination will be effective. Thirty days will constitute reasonable notice unless the surety can show to the satisfaction of CBP that a shorter time frame is reasonable under the facts and circumstances.

(c) *Effect of termination.* If a bond is terminated, no new customs transactions may be charged against the bond. A new bond in an appropriate amount on CBP Form 301, containing the appropriate bond conditions set forth in subpart G of this part, must be filed before further customs activity may be transacted.

[CBP Dec. 15–15, 80 FR 70164, Nov. 13, 2015]

Subpart D—Principals and Sureties

§ 113.30 Information pertaining to principals and sureties on the bond.

The general information pertaining to the principal and surety which must be given in the body of the bond is set forth in § 113.21.

§ 113.31 Same party as principal and surety; attorney in fact.

(a) *Same party as principal and surety.* The same person, partnership, or corporation cannot be both principal and surety on a bond.

(b) *Attorney in fact for principal or surety.* In executing a bond, a person may act as:

(1) Attorney in fact for both principal and surety;

(2) Surety and attorney in fact for the principal; or

(3) Principal and attorney in fact for the surety.

§ 113.32 Partnerships as principals.

A partnership, including a limited partnership, means any business association recognized as such under the laws of the State where the association is organized.

(a) *Execution.* Partnership bonds must be executed in the firm name, with the name of the member or attorney of the firm executing it appearing immediately below the firm signature.

(b) *Action of one principal binding on all principals of the partnership.* Pursuant to section 495, Tariff Act of 1930, as amended (19 U.S.C. 1495), when a bond is executed by any member of the partnership, the bond will be binding on the other partners in like manner and to the same extent as if such other partners had personally joined in the execution.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 86–204, 51 FR 42998, Nov. 28, 1986; CBP Dec. 15–15, 80 FR 70164, Nov. 13, 2015]

§ 113.33 Corporations as principals.

(a) *Name of corporation on the bonds.* The name of a corporation executing a CBP bond as a principal, may be printed or placed thereon by means of a rubber stamp or otherwise, followed by the written signature of the authorized officer or attorney.

(b) *Signature and seal of the corporation on the bond.* The bond of a corporate principal must be signed by an authorized officer or attorney of the corporation and the corporate seal must be affixed immediately adjoining the signature of the person executing the bond, as provided for in § 113.25.

(c) *Bond executed by an officer of corporation.* When a bond is executed by an officer of a corporation, a power of attorney will not be required if the person signing the bond on behalf of the corporation is known to the Revenue Division, port director, or drawback office to be the president, vice president, treasurer, or secretary of the corporation. The officer's signature is prima facie evidence of that officer's authority to bind the corporation. When a power of attorney is required, it must conform to the requirements of subpart C, part 141, of this chapter.

(d) *Bond executed by an attorney in fact.* When an attorney in fact executes a bond on behalf of a corporate principal and a power of attorney has not been filed with the Revenue Division (unless exempted from filing by § 141.46 of this chapter), there must be attached a power of attorney executed by an officer of the corporation whose authority to execute the power must be shown as prescribed in paragraph (c) of this section.

(e) *Subsidiaries as co-principals.* The provisions of this section are applicable to each corporate subsidiary which joins its parent corporation by signing the bond as co-principal.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended at CBP Dec. 15–15, 80 FR 70164, Nov. 13, 2015]

§ 113.34 Co-principals.

A bond with a co-principal may be used by a person having a distinct legal status (e.g., individual, partnership, corporation) to join another person with the same distinct legal status on the bond. A bond with a co-principal may not be used to join an entity which does not have a distinct legal status (e.g. an unincorporated division of a corporation). However, an entity which does not have a distinct legal status may use another bond if listed on the bond by the principal at the time of execution or by subsequent rider (see § 113.24). A bond with co-principal may not be used to join different legal entities (e.g. an individual and a corporation, a partnership and a corporation).

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by CBP Dec. 15–15, 80 FR 70165, Nov. 13, 2015]

§ 113.35 Individual sureties.

(a) *Number required.* If individuals sign as sureties, there must be two sureties on the bond unless CBP is satisfied that one surety is sufficient to protect the revenue and ensure compliance with the law and regulations.

(b) *Qualifications to act as surety*—(1) *Residency and citizenship.* Each individual surety on a CBP bond must be both a resident and citizen of the United States.

(2) *Granting of power of attorney.* Any individual, unless prohibited by law, may grant a power of attorney to sign as surety on CBP bonds. Unless the power is unlimited, all persons to whom the power relates must be named.

(3) *Property requirements.* For both single transaction and continuous bonds, each individual surety must have property available as security within the customs territory of the United States. The current market

value of the property, less any encumbrance, must be equal to or greater than the amount of the bond. If one individual surety is accepted, the individual surety must have property the value of which, less any encumbrance, is equal to or greater than twice the amount of the bond.

(c) *Oath and evidence of solvency.* Before being accepted as a surety, the individual must:

(1) Take an oath on CBP Form 3579, setting forth:

(i) The amount of assets over and above all debts and liabilitiesand such exemptions as may be allowed by law; and

(ii) The general description and location of one or more pieces ofreal estate owned within the customs territory of the United States, and the value thereof, less any encumbrance.

(2) Produce such evidence of solvency and financial responsibility asCBP may require.

(d) *Determination of financial responsibility.* An individual will not be accepted as surety on a bond until CBP is satisfied as to the financial responsibility of the individual. CBP may request Immigration and Customs Enforcement (ICE) to conduct an immediate investigation to verify a surety's financial responsibility.

(e) *Continuancy of financial responsibility.* In order to ascertain the continued solvency and financial responsibility of individual sureties, CBP will require a new oath and determine the financial responsibility of each individual surety as prescribed in paragraphs (c) and (d) of this section at least once every six months, and more often if deemed advisable.

[CBP Dec. 15–15, 80 FR 70165, Nov. 13, 2015]

§ 113.36 Partner acting as surety on behalf of a partner or on behalf of a partnership.

A member of a partnership will not be accepted as an individual surety on a bond executed by the partnership as principal. A partner may be an individual surety for a fellow partner on a bond if (a) the transaction is in an individual capacity and unrelated to the partnership, (b) sufficient unencumbered nonpartnership property is available as security, and (c) the individual qualifies as an individual surety under the provisions of § 113.35 of this part.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by CBP Dec. 15–15, 80 FR 70165, Nov. 13, 2015]

§ 113.37 Corporate sureties.

(a) *Lists of corporations and limits of their bonds.* Treasury Department Circular 570 contains a list of corporations authorized to act as sureties on bonds, with the amount in which each may be accepted. Unless otherwise directed by the Commissioner of CBP, no corporation will be accepted as surety on a bond if not named in the current Circular as amended by FEDERAL REGISTER notice and no bond may exceed the respective limit stated in the Circular, unless the excess is protected as prescribed in § 223.11, Bureau of the Fiscal Service Regulations (31 CFR 223.11).

(b) *Name of corporation on the bond.* The name of a corporation executing a CBP bond, as a surety, may be printed or placed thereon by means of a rubber stamp or otherwise, followed by the written signature of the authorized officer or attorney.

(c) *Name of agent or attorney on the bond.* The agent or attorney acting for a corporate surety must have stamped, printed, or typed on each bond executed by him, below his signature, his full name as it appears on the bond.

(d) *Social security or other surety-generated identification number of agent or attorney on the bond.* In the appropriate place on each bond executed by the agent or attorney acting for a corporate surety, the agent or attorney must place his/her social security number or other surety-generated 9-digit alphanumeric identification number, as it appears on the corporate surety power of attorney.

(e) *Signature and seal of the corporation on the bond.* A bond executed by a corporate surety must be signed by an authorized officer or attorney of the corporation and the corporate seal must be affixed immediately adjoining the signature of the person executing the bond, as provided for in § 113.25.

(f) *Two or more corporate sureties as sureties on the same obligation.* Two or more corporate sureties may be accepted as sureties on any obligation the

amount of which does not exceed the limitations of their aggregate qualifying power as fixed and determined by the Secretary of the Treasury. The amount for which each corporate surety may act as surety in all cases must be within the limitation prescribed by the Secretary, unless the excess is protected as prescribed in §223.11, Bureau of the Fiscal Service Regulations (31 CFR 223.11). Each corporate surety must limit its liability to a definite specified amount, in terms, upon the face of the bond by attaching the following:

CORPORATE SURETIES AGREEMENT FOR LIMITATION OF LIABILITY

____ (name of surety), ____ (surety code), a surety company incorporated under laws of the State of ____, authorized to conduct a surety business in the State of ____, and having its principal place of business at ____ (address), and ____ (names of surety), ____ (surety code), a surety company incorporated under the laws of the State of ____ and having its principal place of business at ____ (address), as sureties, and ____ (name of principal), as principal, are jointly and severally obligated to the United States in the amount of ____ ($) on a bond executed on ____ (date of execution) with each surety jointly and severally obligate with the principal in the amounts listed below and no more:

____ (name of surety) ____
($)
____ (name of surety) ____
($)

By this agreement the principal and sureties bind themselves and agree that for the purpose of allowing a joint action against any or all of them, and for that purpose only, this agreement and the bond under which they are obligated and which is incorporated by reference into this agreement, shall be treated as the joint and several as well as the several obligation of each of the parties.

Signed and sealed this _____ day of _____20____

___Principal
___Surety
___Surety
___Authorized CBP officer

(g) *Power of attorney for the agent or attorney of the surety.* Corporations may execute powers of attorney to act in their behalf in the following manner:

(1) *Execution and contents.* Corporate surety powers of attorney may be submitted to CBP on the CBP Form 5297 and may be scanned and submitted as an email attachment, or submitted by facsimile (fax) or mail.

(i) Corporate surety name and number,

(ii) Name and address of agent or attorney, and social security number or other surety-generated 9-digit alphanumeric identification number for the agent or attorney.

(iii) Port(s) where the agent or attorney is authorized to act,

(iv) Date of execution of power of attorney,

(v) Seal of the corporate surety,

(vi) Signature of any two principal officers of corporation, and

(vii) Dollar amount of authorization.

(2) *Filing.* The corporate surety power of attorney executed on CBP Form 5297 must be filed with CBP. The original(s) of the corporate surety power of attorney must be retained at the port where it(they) was(were) filed.

(3) *Use at port where power of attorney not filed before receipt of computer printout.* If the grantee desires to use the power of attorney at a port covered by the power of attorney, other than the one where the power of attorney was filed, before the first computer printout reflecting this power of attorney is received, the CBP Form 5297, must be filed in triplicate (original and two copies), rather than duplicate. The second copy must be validated by CBP and returned to the grantee. The grantee, at the time of filing a bond at a port other than the port where the power of attorney was filed, must provide this validated copy of the power of attorney as proof of the grant of authority. The validity of this copy of the power of attorney will expire when the first computer printout reflecting this power of attorney is received.

(4) *Term and revocation.* Corporate surety powers of attorney will continue in force and effect until revoked. Any surety desiring that a designated agent or attorney be divested of a power of attorney must execute a revocation on CBP Form 5297. The revocation will take effect on the close of business on the date requested provided the corporate surety power of attorney is received 5 days before the date requested; otherwise the revocation will be effective at the close of business 5 days after the request is received at the port office.

(5) *Change on the power of attorney.* (i) No change may be made on the CBP Form 5297 after it has been approved by CBP except the following:

(A) Grantee name change;

(B) Grantee address change; and

(C) The addition of port(s) to the corporate surety power of attorney on file.

(ii) To make any other change to the power of attorney two separate CBP Forms 5297 must be submitted, one revoking the previous power of attorney, and one containing a new grant of authority.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984; T.D. 95–77, 60 FR 50020, Sept. 27, 1995; CBP Dec. 15–15, 80 FR 70165, Nov. 13, 2015]

§ 113.38 Delinquent sureties.

(a) *Acceptance as surety when in default as principal on another CBP bond.* No person will be accepted as surety on any CBP bond while in default as principal on any other CBP bond.

(b) *Acceptance as surety when in default as surety on another CBP bond.* A surety on a CBP bond which is in default may be accepted as surety on other CBP bonds only to the extent that the surety assets are unencumbered by the default.

(c)(1) *Nonacceptance of single transaction bond by port director.* A port director may refuse to accept a single transaction bond secured by an individual or corporate surety when the surety, without just cause, is significantly delinquent either in the number of outstanding bills or dollar amounts thereof. If the port director believes that a substantial question of law exists as to whether a breach of bond obligation has occurred he should request internal advice under the provisions of §177.11 from the Executive Director, Regulations and Rulings, Office of International Trade, CBP Headquarters.

(2) *Non-acceptance of bond upon instruction by Commissioner of CBP or Director, Revenue Division.* The Commissioner of CBP, or the Director, Revenue Division, may issue instructions to CBP officers not to accept a bond secured by an individual or corporate surety who, without just cause, is significantly delinquent with respect to either the number or dollar amounts of outstanding bills.

(3) *Notice of surety.* The appropriate CBP officer may take the above actions only after the surety has been provided reasonable notice with an opportunity to pay delinquent amounts, provide justification for the failure to pay, or demonstrate the existence of a significant legal issue justifying further delay in payment.

(4) *Review and final decision.* After a review of any submission made by a surety under paragraph (c)(3) of this section, if an appropriate CBP officer is still of the opinion that bonds secured by the surety should not be accepted, written notice of the decision will be provided to the surety at least five days before the date that CBP will no longer accept the bonds of the surety. Copies of the notice will also be provided to the Executive Director, Regulations and Rulings, Office of International Trade and, if the notice does not originate from the Revenue Director, to the Director, Revenue Director. Notice will be given to the public by publishing the decision in the *Customs Bulletin*.

(5) *Duration of decision.* Any decision not to accept a given surety's bond shall remain in effect for a minimum of five days or until all outstanding delinquencies are resolved, whichever is later.

(6) *Actions consistent with requirements.* Any action not to accept the bonds of a surety under paragraphs (c)(1) and (2) of this section shall be consistent with the requirements of this section.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991; T.D. 95–77, 60 FR 50020, Sept. 27, 1995; T.D. 99–27, 64 FR 13675, Mar. 22, 1999; T.D. 99–64, 64 FR 43266, Aug. 10, 1999; CBP Dec. 15–15, 80 FR 70166, Nov. 13, 2015]

§ 113.39 Procedure to remove a surety from Treasury Department Circular 570.

If a port director, Fines, Penalties, and Forfeitures Officer, or authorized Revenue Division officer is dissatisfied with a surety company because the company has neglected or refused to pay a valid demand made on the surety company's bond or otherwise has failed

to honor an obligation on that bond, the port director, Fines, Penalties, and Forfeitures Officer, or authorized Revenue Division personnel may take the following steps to recommend that the surety company be removed from Treasury Department Circular 570.

(a) *Report to Headquarters.* A port director, Fines, Penalties, and Forfeitures Officer, or authorized Revenue Division officer will send the following evidence to CBP Headquarters, Attention: Executive Director, Regulations and Rulings, Office of International Trade:

(1) A copy of the bond in issue;

(2) A copy of the entry or other evidence which shows that there was a default on the bond;

(3) A copy of all notices, demands or correspondence sent to the surety company requesting the honoring of the bond obligation;

(4) A copy of all correspondence from the surety company; and

(5) A written report of the facts known to the port director, Fines, Penalties, and Forfeitures Officer, or authorized Revenue Director personnel showing the unsatisfactory performance by the surety company of the bond obligation(s).

(b) *Review by Headquarters.* CBP Headquarters will review submitted evidence and determine whether further action against the surety company is warranted. If it is determined that further action is warranted, a report recommending appropriate action will be submitted to the Fiscal Assistant Secretary, Department of the Treasury, as required by § 223.18(a), Bureau of the Fiscal Service Regulations (31 CFR 223.18(a)). The port director, Fines, Penalties, and Forfeitures Officer, and Director, Revenue Division will be informed in writing of Headquarters action regarding their request for removal of the surety.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991; T.D. 95–77, 60 FR 50020, Sept. 27, 1995; T.D. 99–27, 64 FR 13675, Mar. 22, 1999; CBP Dec. 15–15, 80 FR 70166, Nov. 13, 2015]

§ 113.40 Acceptance of cash deposits or obligations of the United States in lieu of sureties on bonds.

(a) *General provisions.* In lieu of sureties on any bond required or authorized by any law, regulation, or instruction which the Secretary of the Treasury, the Secretary of Homeland Security, or the Commissioner of CBP are authorized to enforce, the Director, Revenue Division or, in the case of single transaction bonds, a port director, may accept United States money, United States bonds (except for savings bonds), United States certificates of indebtedness, Treasury notes, or Treasury bills in an amount equal to the face amount of the bond that would be required. The option to deposit cash or U.S. obligations in lieu of sureties is at the option of the importer, and a CBP Form 301 or other CBP-approved bond designating the appropriate activity for the cash deposits or U.S. obligations in lieu of surety must be filed. When cash or obligations in lieu of surety are accepted, it must be for a term of no more than one year. Additional cash deposits or obligations in lieu of surety may be required.

(b) *Authority to sell United States obligations on default.* At the time of deposit with the Director, Revenue Division, of any U.S. obligation (other than U.S. money), the obligor must deliver a duly executed power of attorney and agreement authorizing the Director, Revenue Division, in the case of any default in the performance of any of the conditions of the bond, to sell the obligation so deposited and to apply the proceeds of the sale, in whole or in part, to the satisfaction of any damages, demands, or deficiency arising by reason of default. The format of the power of attorney and agreement, when the obligor is a corporation, is set forth below and must be appropriately modified when the obligor is either an individual or a partnership:

POWER OF ATTORNEY AND AGREEMENT

(FOR CORPORATION)

____, (name of corporation) a corporation duly incorporated under the laws of the State of ____, and having its principal office in the City of ____, State of ____, as authorized by a resolution of the board of directors of the corporation, passed on the ____ day of

____, 20____, a duly certified copy of which is attached, does constitute and appoint ____ (name and official title of bond-approving officer), and his successors in office, as attorney for said corporation, for and in the name of the corporation to collect or to sell, assign, and transfer the securities described as follows:

The securities having been deposited by it as security for the performance of the agreements undertaken in a bond with the United States, executed on the date of _____, 20____, the terms and conditions of which are incorporated by reference into this power of attorney and agreement and made a part hereof. The undersigned agrees that in case of any default in the performance of any of the agreements the attorney shall have full power to collect the securities or any part thereof, or to sell, assign, and transfer the securities or any part thereof at public or private sale, without notice, free from any equity of redemption and without appraisement or valuation, notice and right to redeem being waived and to apply the proceeds of the sale or collection in whole or in part to the satisfaction of any obligation arising by reason of default. The undersigned further agrees that the authority granted by this agreement is irrevocable. The corporation for itself, its successors and assigns, ratifies and confirms whatever the attorney shall do by virtue of this agreement.

Witnessed, signed, and sealed, this _____ day of _____ 20____.

[Corporate seal.]

By ____ _____

Before me, the undersigned, a notary public within and for the County of _____, in the State of _____ (or the District of Columbia), personally appeared _____ (name and title of officer) and for and in behalf of said _____, a corporation, acknowledged the execution of the foregoing power of attorney.

Witness my hand and notarial seal this _____ day of _____, 20____;.

[Notarial seal.]

Notary Public _____

NOTE: Securities must be described by title, date of maturity, rate of interest, denomination, serial number, and whether coupon or registered. Failure to give a complete description will warrant rejection of this power of attorney.

(c) *Application of United States money or obligations on default.* If United States cash or obligations are deposited in lieu of surety on any bond, the appropriate CBP officer is authorized to apply the cash or money received from the deposited obligation to satisfy any damages, demand, or deficiency arising from a default under the bond.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984; CBP Dec. 15–15, 80 FR 70166, Nov. 13, 2015]

Subpart E—Production of Documents

§ 113.41 Entry made prior to production of documents.

When entry is made prior to the production of a required document, the importer must indicate in the ''Missing Documents'' box (box 16) on CBP Form 7501, or its electronic equivalent, the missing document, whether the importer gives a bond or stipulates to produce the document.

[T.D. 84-213, 49 FR 41171, Oct. 19, 1984, as amended by CBP Dec. 15–14, 80 FR 61286, Oct. 13, 2015; CBP Dec. 15–15, 80 FR 70167, Nov. 13, 2015]

§ 113.42 Time period for production of documents.

Except when another period is fixed by law or regulations, any document for the production of which a bond or stipulation is given must be delivered within 120 days from the date of notice from CBP requesting such document, or within any extension of such time which may be granted pursuant to §133.43(a). If the period ends on a Saturday, Sunday, or holiday, delivery on the next business day will be accepted as timely.

[T.D. 85–167, 50 FR 40363, Oct. 3, 1985, as amended by CBP Dec. 15–15, 80 FR 70167, Nov. 13, 2015]

§ 113.43 Extension of time period.

(a) *Application received within time period.* If a document referred to in §113.42 is not produced within 120 days from the date of the transaction in connection with which the bond was given, the port director or an appropriate CBP officer, in his or her discretion, and upon written application of the importer, may extend the period for one further period not to exceed 60 days.

(b) *Late application.* No application for the extension of the period of any bond given to assure the production of a missing document will be allowed by

the port director if the application is received later than 60 days after the expiration of the period of the bond, and any extension will not be allowed by the port director for a period of more than 60 days from the date of expiration of the period.

(c) *Acceptance of a free-entry or reduced-duty document prior to liquidation.* When a bond is given for the production of any free-entry or reduced-duty document and a satisfactory document is produced prior to liquidation of the entry or within the period during which a valid reliquidation may be completed, provided the failure to file was not due to willful negligence or fraudulent intent, it will be accepted as satisfying the requirement that it be filed in connection with the entry, and the bond charge for its production will be cancelled.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 85–167, 50 FR 40363, Oct. 3, 1985; CBP Dec. 15–15, 80 FR 70167, Nov. 13, 2015]

§ 113.44 Assent of sureties to an extension of a bond.

(a) *Extension prescribed by law or regulations.* The assent of the sureties to any extension of the period prescribed in a bond is not necessary when the extension is authorized by law or regulations.

(b) *Other extension.* The assent of the sureties must be obtained before any extension of the period prescribed in a bond other than an extension authorized by law or regulation, is allowed.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by CBP Dec. 15–15, 80 FR 70167, Nov. 13, 2015]

§ 113.45 Charge for production of a missing document made against a continuous bond.

When a continuous bond secures the production of a missing document and the bond is breached by the principal's failure to timely produce that document, the claim for liquidated damages must be in an amount equal to the amount of the single transaction bond that would have been taken had the transaction been covered by a single transaction bond.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by CBP Dec. 15–15, 80 FR 70167, Nov. 13, 2015]

Subpart F—Assessment of Damages and Cancellation of Bond

§ 113.51 Cancellation of bond or charge against the bond.

The Commissioner of CBP may authorize the cancellation of any bond provided for in this part or any charge that may have been made against the bond, in the event of a breach of any condition of the bond, upon payment of a lesser amount or penalty or upon such other terms and conditions as may be deemed sufficient.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by CBP Dec. 15–15, 80 FR 70167, Nov. 13, 2015]

§ 113.52 Failure to satisfy the bond.

If any CBP bond, except one given only for the production of free-entry or reduced-duty documents (*see* § 113.43(c) of this chapter) has not been satisfied upon the expiration of 180 days after liability has accrued under the bond, the matter will be reported to the Department of Justice for prosecution unless measures have been taken to file an application for relief or protest in accordance with the provisions of this chapter or to satisfactorily settle this matter.

[CBP Dec. 15–15, 80 FR 70167, Nov. 13, 2015]

§ 113.53 Waiver of CBP requirement supported by a bond.

(a) *Waiver by the Commissioner of CBP.* When a CBP requirement supported by a bond is waived by the Commissioner of CBP, the waiver may be:

(1) Unconditional, in which case the importer is relieved from the payment of liquidated damages;

(2) Conditioned upon prior settlement of the bond obligation by payment of liquidated damages; or

(3) Conditioned upon such other terms and conditions as the Commissioner of CBP may deem sufficient.

(b) *Waiver by the port director or other authorized CBP officer*. When a CBP requirement supported by a bond is waived by the port director or other authorized CBP officer pursuant to the authority conferred by these regulations, the waiver will be unconditional.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by CBP Dec. 15–15, 80 FR 70167, Nov. 13, 2015]

§ 113.54 Cancellation of erroneous charges.

(a) *Bonds*. Section 172.11(b) of this chapter sets forth provisions relating to the cancellation of charges against the bond when it is determined that the act or omission forming the basis for the claim for liquidated damages did not in fact occur.

(b) *Carnets*. Section 114.34 of this chapter sets forth provisions relating to the cancellation of erroneous charges involving carnets.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 00–57, 65 FR 53575, Sept. 5, 2000]

§ 113.55 Cancellation of export bonds.

(a) *Manner of cancellation*. A bond to assure exportation as defined in § 101.1 of this chapter may be cancelled:

(1) *Upon exportation*. Upon the listing of the merchandise on the outward manifest or outward bill of lading, the inspector's certificate of lading, the record of clearance of the vessel or of the departure of the vehicle, and the production of a foreign landing certificate if the certificate is required by the port director.

(2) *Upon payment of liquidated damages*. Upon the payment of liquidated damages.

(b) *Cancellation of bond charges of an international carrier*. The conditions of the bond of an international carrier may be considered as having been complied with upon the production of the applicable documents listed in paragraph (a)(1) of this section.

(c) *Foreign landing certificate*. A foreign landing certificate, when required, must be produced within six months from the date of exportation and must be signed by a revenue officer of the foreign country to which the merchandise is exported, unless it is shown that the country has no customs administration, in which case the certificate may be signed by the consignee or by the vessel's agent at the place of landing. Landing certificates are required in the following cases:

(1) *Mandatory*. A landing certificate will be required in every case to establish the exportation of narcotic drugs or any equipment, stores (except such articles as are placed on board vessels or aircraft under the provisions of section 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317)), or machinery for vessels.

(2) *Optional with the port director*. A landing certificate may be required by the port director for merchandise exported from the United States, or residue cargo, when a certificate is deemed necessary for the protection of the revenue.

(3) *Waiver*. Except as provided in § 4.88 of this chapter, in cases where landing certificates are required and they cannot be produced, an application for waiver thereof may be made to the Commissioner of CBP through the port director, accompanied by such proof of exportation and landing abroad as may be available.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by CBP Dec. 15–15, 80 FR 70167, Nov. 13, 2015]

Subpart G—CBP Bond Conditions

§ 113.61 General.

Each section in this subpart identifies specific coverage for a particular customs activity. When an individual or organization files a bond with CBP the activity in which they plan on engaging will be identified on the bond. The bond conditions listed in this subpart which correspond to that activity will be incorporated by reference into the bond.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by CBP Dec. 15–15, 80 FR 70167, Nov. 13, 2015]

§ 113.62 Basic importation and entry bond conditions.

A bond for basic importation and entry must contain the conditions listed in this section and may be either a single transaction or a continuous bond.

BASIC IMPORTATION AND ENTRY BOND CONDITIONS

(a) *Agreement to Pay Duties, Taxes, and Charges.* (1) If merchandise is imported and released from CBP custody or withdrawn from a CBP bonded warehouse into the commerce of, or for consumption in, the United States, or under §181.53 of this chapter is withdrawn from a duty-deferral program for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico, the obligors (principal and surety, jointly and severally) agree to:

(i) Deposit, within the time prescribed by law or regulation, any duties, taxes, and charges imposed, or estimated to be due, at the time of release or withdrawal; and

(ii) Pay, as demanded by CBP, all additional duties, taxes, and charges subsequently found due, legally fixed, and imposed on any entry secured by this bond.

(2) If the principal enters any merchandise into a CBP bonded warehouse, the obligors agree;

(i) To pay any duties, taxes, and charges found to be due on any of that merchandise which remains in the warehouse at the expiration of the warehousing time limit set by law; and

(ii) That the obligation to pay duties, taxes, and charges on the merchandise applies whether it is properly withdrawn by the principal, or by the principal's transferee, or is unlawfully removed by the principal or any other person, without regard to whether the merchandise is manipulated, unless payment was made or secured to be made by some other person.

(3) Under this agreement, the obligation to pay any and all duties, taxes, and charges due on any entry ceases on the date the principal timely files with CBP a bond of the owner in which the owner agrees to pay all duties, taxes, and charges found due on that entry; provided a declaration of the owner has also been properly filed.

(b) *Agreement to Make or Complete Entry.* If all or part of imported merchandise is released before entry under the provisions of the special delivery permit procedures under 19 U.S.C. 1448(b), released before completion of the entry under 19 U.S.C. 1484(a), or withdrawn from warehouse under 19 U.S.C. 1557(a) (see §10.62b of this chapter), the principal agrees to file within the time and in the manner prescribed by law and regulation, documentation to enable CBP to:

(1) Determine whether the merchandise may be released from CBP custody;

(2) Properly assess duties on the merchandise;

(3) Collect accurate statistics with respect to the merchandise; and

(4) Determine whether applicable requirements of law and regulation are met.

(c) *Agreement to Produce Documents and Evidence.* If merchandise is released conditionally to the principal before all required documents or other evidence is produced, the principal agrees to furnish CBP with any document or evidence as required by law or regulation, and within the time specified by law or regulations.

(d) *Agreement to Redeliver Merchandise.* If merchandise is released conditionally from CBP custody to the principal before all required evidence is produced, before its quantity and value are determined, or before its right of admission into the United States is determined, the principal agrees to redeliver timely, on demand by CBP, the merchandise released if it:

(1) Fails to comply with the laws or regulations governing admission into the United States;

(2) Must be examined, inspected, or appraised as required by 19 U.S.C. 1499; or

(3) Must be marked with the country of origin as required by law or regulation.

It is understood that any demand for redelivery will be made no later than 30 days after the date that the merchandise was released or 30 days after the end of the conditional release period (whichever is later). (See §§141.113(b), 12.73(b)(2), and 12.80 of this chapter.)

(e) *Agreement to Rectify Any Non-Compliance with Provisions of Admission.* If merchandise is released conditionally to the principal before its right of admission into the United States is determined, the principal, after notification, agrees to mark, clean, fumigate, destroy, export or do any other thing to

the merchandise in order to comply with the law and regulations governing its admission into the United States within the time period set in the notification.

(f) *Agreement for Examination of Merchandise.* If the principal obtains permission to have any merchandise examined elsewhere than at a wharf or other place in charge of a CBP officer, the principal agrees to:

(1) Hold the merchandise at the place of examination until the merchandise is properly released;

(2) Transfer the merchandise to another place on receipt of instructions from CBP made before release; and

(3) Keep any customs seal or cording on the merchandise intact until the merchandise is examined by CBP.

(g) *Reimbursement and Exoneration of the United States.* The obligors agree to:

(1) Pay the compensation and expenses of any CBP officer, as required by law or regulation; and

(2) Exonerate the United States and its officers from any risk, loss, or expense arising out of principal's importation, entry, or withdrawal of merchandise.

(h) *Agreement on Duty-Free Entries or Withdrawals.* If the principal enters or withdraws any merchandise, without payment of duty and tax, or at a reduced rate of duty and tax, as permitted under the law, the principal agrees:

(1) To use and handle the merchandise in the manner and for the purpose entitling it to duty-free treatment;

(2) If a fishing vessel, to present the original approved application to CBP within 24 hours on each arrival of the vessel in the customs territory of the United States from a fishing voyage;

(3) To furnish timely proof to CBP that any merchandise entered or withdrawn under any law permitting duty-free treatment was used in accordance with that law; and

(4) To keep safely all withdrawn beverages remaining on board while the vessel is in port, as may be required by CBP.

(i) *Agreement to comply with CBP regulations applicable to customs security areas at airports.* If access to the customs security areas at airports is desired, the principal (including its employees, agents, and contractors) agrees to comply with the CBP regulations in this chapter applicable to customs security areas at airports. If the principal defaults, the obligors (principal and surety, joint and severally) agree to pay liquidated damages of $1000 for each default or such other amount as may be authorized by law or regulation.

(j) The principal agrees to comply with all Importer Security Filing requirements set forth in part 149 of this chapter including but not limited to providing security filing information to CBP in the manner and in the time period prescribed by regulation. If the principal defaults with regard to any obligation, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each violation.

(k) *Agreement to comply with electronic entry and/or advance cargo information filing requirements.* (1) If the principal is qualified to utilize electronic entry filing as provided for in part 143, of this chapter, the principal agrees to comply with all conditions set forth in part 143 and to send and accept electronic transmissions without the necessity of paper copies.

(2) If the principal elects to provide advance inward air or truck cargo information to CBP electronically, the principal agrees to provide such cargo information to CBP in the manner and in the time period required, respectively, under §122.48a or §123.92 of this chapter. If the principal defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each violation.

(l) *Agreement to comply with Air Cargo Advance Screening (ACAS) requirements.* The principal agrees to comply with all ACAS requirements set forth in §§122.48a and 122.48b of this chapter including, but not limited to, providing ACAS data to U.S. Customs and Border Protection in the manner and in the time period prescribed by regulation and taking the necessary action to address ACAS referrals and Do-Not-Load (DNL) instructions as prescribed by regulation. If the principal defaults with regard to these obligations, the

principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each violation.

(m) *Agreement to ensure and establish issuance of softwood lumber export permit and collection of export fees.* In the case of a softwood lumber product imported from Canada that is subject to the requirement that the Government of Canada issue an export permit pursuant to the Softwood Lumber Agreement, the principal agrees, as set forth in § 12.140 of this chapter, to assume the obligation to ensure within 10 working days of release of the merchandise, and establish to the satisfaction of CBP, that the applicable export permit has been issued by the Government of Canada.

(n) *Consequence of default.* (1) If the principal defaults on agreements in this condition other than conditions in paragraphs (a), (g), (i), (j), (k)(2), (l), or (m) of this section the obligors agree to pay liquidated damages equal to the value of the merchandise involved in the default, or three times the value of the merchandise involved in the default if the merchandise is restricted or prohibited merchandise or alcoholic beverages, or such other amount as may be authorized by law or regulation.

(2) It is understood and agreed that whether the default involves merchandise is determined by CBP and that the amount to be collected under these conditions will be based upon the quantity and value of the merchandise as determined by CBP. Value as used in these provisions means value as determined under 19 U.S.C. 1401a.

(3) If the principal defaults on agreements in this condition other than conditions (a) or (g) and the default does not involve merchandise, the obligors agree to pay liquidated damages of $1,000 for each default or such other amount as may be authorized by law or regulation.

(4) If the principal defaults on agreements in the condition set forth in paragraph (a)(1)(i) of this section only, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages equal to two times the unpaid duties, taxes and charges estimated to be due or $1,000, whichever is greater. A default on the condition set forth in paragraph (a)(1)(i) of this section will be presumed if any monetary instrument authorized for the payment of estimated duties, taxes and charges by § 24.1(a) of this chapter is returned unpaid by a financial institution, or if a payment authorized under Automated Clearinghouse (see § 24.25 of this chapter) is not transmitted electronically to CBP in a timely manner. If the principal defaults on agreements in both of the conditions as set forth in paragraphs (a)(1)(i) and (b) of this section, the measure of liquidated damages assessed will be as provided in paragraph (n)(1) of this section for a default of the agreements in the condition set forth in paragraph (b) of this section. For purposes of this paragraph, the phrase ''unpaid duties, taxes and charges'' will include any appropriate ad valorem fees described in § 24.23 of this chapter, fees relating to dutiable mail described in § 24.22(f) of this chapter, and harbor maintenance fees described in § 24.24(e)(3) (i) and (ii) of this chapter.

(5) If the principal defaults on agreements in the condition set forth in paragraph (m) of this section only, the obligors agree to pay liquidated damages equal to $100 per thousand board feet of the imported lumber.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 113.62, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 113.63 Basic custodial bond conditions.

A basic custodial bond must contain the conditions listed in this section and must be a continuous bond.

BASIC CUSTODIAL BOND CONDITIONS

(a) *Receipt of Merchandise.* The principal agrees:

(1) To operate as a custodian of any bonded merchandise received, including merchandise collected for transport to his facility, and to comply with all regulations regarding the receipt, carriage, safekeeping, and disposition of such merchandise;

(2) To accept only merchandise authorized under CBP regulations;

(3) To maintain all records required by CBP regulations relating to merchandise received into bond, and to produce the records upon demand by an authorized CBP officer;

(4) If authorized to use the alternative transfer procedure set forth in §144.34(c) of this chapter, to operate as constructive custodian for all merchandise transferred under those procedures, thereby assuming primary responsibility for the continued proper custody of the merchandise notwithstanding its geographical location;

(5) If authorized to operate a container station under the CBP regulations, to report promptly to CBP each arrival of a container and its merchandise by delivery of the manifest and the application for transfer, or by other approved notice.

(b) *Carriage and Safekeeping of Merchandise.* The principal agrees:

(1) If a bonded carrier, to use only authorized means of conveyance;

(2) To keep safe any merchandise placed in its custody including, when approved by CBP, repacking and transferring such merchandise when necessary for its safety or preservation;

(3) To comply with CBP regulations relating to the handling of bonded merchandise; and

(4) If authorized to use the alternative transfer procedure set forth in §144.34(c) of this chapter, to keep safe any merchandise so transferred.

(c) *Disposition of Merchandise.* The principal agrees:

(1) If a bonded carrier, to report in-bond arrivals and exportations in the manner and in the time prescribed by regulation and to export in-bond merchandise in the time periods prescribed by regulation.

(2) If a cartage or lighterage business, to deliver promptly and safely to CBP any merchandise placed in the principal's custody together with any related cartage and lighterage ticket and manifest;

(3) To dispose of merchandise in a manner authorized by CBP regulations; and

(4) To file timely with CBP any report required by CBP regulations.

(5) In the case of Class 9 warehouses, to provide reasonable assurance of exportation of merchandise withdrawn under the sales ticket procedure of §144.37(h) of this chapter.

(d) *Agreement to Redeliver Merchandise to CBP.* If the principal is designated a bonded carrier, or licensed to operate a cartage or lighterage business, or authorized to use the alternative transfer procedure set forth in §144.34(c) of this chapter, the principal agrees to redeliver timely, on demand by CBP, any merchandise delivered to unauthorized locations or to the consignee without the permission of CBP. It is understood that the demand for redelivery shall be made no later than 30 days after CBP discovers the improper delivery.

(e) *Compliance with Licensing and Operating Requirements.* The principal agrees to comply with all customs laws and CBP regulations relating to principal's facilities, conveyances, and employees.

(f) *Agreement to comply with CBP regulations applicable to customs security areas at airports.* If access to customs security areas at airports is desired, the principal (including its employee, agents, and contractors) agrees to comply with the CBP regulations applicable to customs security areas at airports. If the principal defaults, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages of $1000 for each default or such other amount as may be authorized by law or regulation.

(g) The principal agrees to comply with all Importer Security Filing requirements set forth in part 149 of this chapter including but not limited to providing security filing information to CBP in the manner and in the time period prescribed by regulation. If the principal defaults with regard to any obligation, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 per violation.

(h) *Agreement to comply with Air Cargo Advance Screening (ACAS) requirements.* The principal agrees to comply with all ACAS requirements set forth in §§122.48a and 122.48b of this chapter including, but not limited to, providing ACAS data to U.S. Customs and Border Protection in the manner and in the time period prescribed by regulation and taking the necessary action to address ACAS referrals and Do-Not-Load (DNL) instructions as prescribed by

regulation. If the principal defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each violation.

(i) *Reimbursement and Exoneration of the United States.* The principal and surety agree to:

(1) Pay the compensation and expenses of any CBP officer as required by law or regulation;

(2) Pay the cost of any locks, seals, and other fastenings required by CBP regulations for securing merchandise placed in the principal's custody;

(3) Pay for any expenses connected with the suspension or termination of the bonded status of the premises;

(4) Exonerate the United States and its officers from any risk, loss, or expense arising out of the principal's custodial operation; and

(5) Pay any charges found to be due CBP arising out of the principal's custodial operation.

(j) *Consequence of Default.* (1) If the principal defaults on conditions (a) through (e) in this agreement, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages equal to the value of the merchandise involved in the default or three times the value of the merchandise involved in the default if the merchandise is restricted or prohibited merchandise or alcoholic beverages, or such other amount as may be authorized by law or regulation.

(2) It is understood and agreed that the amount to be collected under conditions (a) through (e) of this agreement will be based upon the quantity and value of the merchandise as determined by CBP. Value as used in these provisions means value as determined under 19 U.S.C. 1401a.

(3) If the principal defaults on conditions (a) through (e) in this agreement and the default does not involve merchandise, the obligors agree to pay liquidated damages of $1,000 for each default or such other amount as may be authorized by law or regulation. It is understood and agreed that whether the default involves merchandise is determined by CBP.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §113.63, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§113.64 International carrier bond conditions.

A bond for international carriers must contain the conditions listed in this section and may be either a single transaction or continuous bond.

INTERNATIONAL CARRIER BOND CONDITIONS

(a) *Agreement to Pay Penalties, Duties, Taxes, and Other Charges.* If any vessel, vehicle, or aircraft, or any master, owner, or person in charge of a vessel, vehicle or aircraft, slot charterer, or any non-vessel operating common carrier as defined in §4.7(b)(3)(ii) of this chapter or other party as specified in §122.48a(c)(1)(ii)–(c)(1)(iv) or §122.48b(c)(2) of this chapter, incurs a penalty, duty, tax or other charge provided by law or regulation, the obligors (principal and surety, jointly and severally) agree to pay the sum upon demand by CBP. If the principal (carrier or operator) fails to pay the fees for processing letters, documents, records, shipments, merchandise, or other items on or before the last day of the month that follows the close of the calendar quarter to which the processing fees relate pursuant to §24.23(b)(4) of this chapter, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages equal to two times the processing fees not timely paid to CBP as prescribed by regulation.

(b) *Agreement to pay liquidated damages*—(1) *Passenger processing fees:* If the principal (carrier) fails to pay passenger processing fees to CBP within 31 calendar days after the close of the calendar quarter in which they were required to be collected pursuant to §24.22(g) of this chapter, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages equal to two times the passenger processing fees that were required to be collected but not timely remitted to CBP, regardless of whether such fees were in fact collected from passengers, as prescribed by regulation.

(2) *Railroad car processing fees:* If the principal (carrier) fails to pay railroad

car processing fees to CBP within 60 calendar days after the close of the calendar month in which they were collected pursuant to §24.22(d) of this chapter, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages equal to two times the railroad car processing fees which have not been timely paid to CBP as prescribed by regulation.

(3) *Reimbursement fees payable by express consignment carrier and centralized hub facilities.* If the principal (carrier) fails to timely pay the reimbursement fees payable to CBP by express consignment carrier facilities and centralized carrier facilities pursuant to the terms set forth in §24.23(b)(4) of this chapter, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages equal to two times the fees which have not been timely paid to CBP as prescribed by that section.

(c) *Agreement on Unlading, Safekeeping, and Disposition of Merchandise, Supplies, Crew Purchases, Etc.* The principal agrees to comply with all laws and CBP regulations applicable to unlading, safekeeping, and disposition of merchandise, supplies, crew purchases, and other articles on board the vehicle, vessel, or aircraft; and to redeliver the foregoing to CBP upon demand as provided by CBP regulations. If principal defaults, obligors agree to pay liquidated damages equal to the value of the merchandise involved in the default or three times the value of the merchandise involved in the default if the merchandise is restricted or prohibited merchandise or alcoholic beverages, or such other amount as may be authorized by law or regulation. It is understood and agreed that the amount to be collected under this condition will be based upon the quantity and value of the merchandise as determined by CBP. Value as used in these provisions means value as determined under 19 U.S.C. 1401a.

(d) *Agreement to provide advance cargo information.* The incoming carrier agrees to provide advance cargo information to CBP in the manner and in the time period required under §§4.7 and 4.7a of this chapter. If the incoming carrier, as principal, defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each violation, to a maximum of $100,000 per conveyance arrival.

(e) *Non-vessel operating common carrier (NVOCC); other party.* If a slot charterer, non-vessel operating common carrier (NVOCC) as defined in §4.7(b)(3)(ii) of this chapter, or other party specified in §122.48a(c)(1)(ii)–(c)(1)(iv) of this chapter, elects to provide advance cargo information to CBP electronically, the NVOCC or other party, as a principal under this bond, in addition to compliance with the other provisions of this bond, also agrees to provide such cargo information to CBP in the manner and in the time period required under those respective sections. If the NVOCC or other party, as principal, defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each violation, to a maximum of $100,000 per conveyance arrival.

(f) *Agreement to comply with Importer Security Filing requirements.* If the principal elects to provide the Importer Security Filing information to Customs and Border Protection (CBP), the principal agrees to comply with all Importer Security Filing requirements set forth in part 149 of this chapter including but not limited to providing security filing information to CBP in the manner and in the time period prescribed by regulation. If the principal defaults with regard to any obligation, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each violation.

(g) *Agreement to comply with vessel stow plan requirements.* If the principal causes a vessel to arrive within the limits of a port in the United States, the principal agrees to submit a stow plan in the manner and in the time period required pursuant to part 4.7c of this chapter. If the principal defaults with regard to this obligation, the principal and surety (jointly and severally) agree to pay liquidated damages of $50,000 for each vessel arrival.

(h) *Agreement to comply with container status message requirements.* If the principal causes a vessel to arrive within the limits of a port in the United States, the principal agrees to submit

container status messages in the manner and in the time period required pursuant to part 4.7d of this chapter. If the principal defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each violation, to a maximum of $100,000 per vessel arrival.

(i) *Agreement to comply with Air Cargo Advance Screening (ACAS) requirements.* (1) The inbound air carrier agrees to comply with all ACAS requirements set forth in §§ 122.48a and 122.48b of this chapter including, but not limited to, providing ACAS data to U.S. Customs and Border Protection (CBP) in the manner and in the time period prescribed by regulation and taking the necessary action to address ACAS referrals and Do-Not-Load (DNL) instructions as prescribed by regulation. If the inbound air carrier, as principal, defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each violation, to a maximum of $100,000 per conveyance arrival.

(2) If a party specified in § 122.48b(c)(2) of this chapter provides the ACAS data to CBP, that party, as principal under this bond, agrees to comply with all ACAS requirements set forth in §§ 122.48a and 122.48b of this chapter including, but not limited to, providing ACAS data to CBP in the manner and in the time period prescribed by regulation and taking the necessary action to address ACAS referrals and Do-Not-Load (DNL) instructions as prescribed by regulation. If the principal defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each violation, to a maximum of $100,000 per conveyance arrival.

(j) *Agreement to Deliver Export Documents.* If the principal's vessel, vehicle, or aircraft is granted clearance without filing a complete outward manifest and all required export documents, the principal agrees to file timely the required manifest and all required export documents. If the principal defaults, the obligors agree to pay liquidated damages of $1,100 for each day's delinquency beyond the prescribed period, but not more than $10,000 per violation.

(k) *Agreement to comply with CBP regulations applicable to customs security areas at airports.* If access to customs security areas at airports is desired, the principal (including its employees, agents, and contractors) agrees to comply with the CBP regulations applicable to customs security areas at airports. If the principal defaults, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages of $1000 for each default or such other amount as may be authorized by law or regulation.

(l) *Exoneration of the United States.* The obligors agree to exonerate the United States and its officers from any risk, loss, or expense arising out of entry or clearance of the carrier, or handling of the articles on board.

(m) *Unlawful disposition.* (1) Principal agrees that it will not allow seized or detained merchandise, marked with warning labels of the fact of seizure or detention, to be placed on board a vessel, vehicle, or aircraft for exportation or to be otherwise disposed of without written permission from CBP, and that if it fails to prevent such placement or other disposition, it will redeliver the merchandise to CBP within 30 days, upon demand made within 10 days of CBP discovery of the unlawful placement or other disposition.

(2) Principal agrees that it will act, in regard to merchandise in its possession on the date the redelivery demand is issued, in accordance with any CBP demand for redelivery made within 10 days of CBP discovery that there is reasonable cause to believe that the merchandise was exported in violation of the export control laws.

(3) Obligors agree that if the principal defaults in either of these obligations, they will pay, as liquidated damages, an amount equal to three times the value of the merchandise which was not redelivered.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 113.64, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 113.65 Repayment of erroneous drawback payment bond conditions.

A bond for repayment of erroneous drawback must contain the conditions listed in this section and may be either a single transaction or continuous bond.

REPAYMENT OF ERRONEOUS DRAWBACK PAYMENT BOND CONDITIONS

(a) *Agreement Under Exporter's Summary Procedure.* If the principal is permitted to file drawback claims under the exporter's summary procedure and the principal's drawback claims are paid before a final determination that the principal:

(1) Is entitled to the drawback claimed.

(2) Correctly described the exported articles in the claim.

(3) Correctly stated the facts of exportation in the claim; the principal and surety, jointly and severally agree to refund, on demand, any money claimed by CBP to have been erroneously paid as a result of an incorrect statement on the drawback claim, and

(4) The principal agrees to pay any charges due CBP as provided by law or regulation.

(b) *Agreement Under Accelerated Payment of Drawback.* If the principal receives an accelerated payment of drawback based on the principal's calculation of the drawback claim, the principal and surety, jointly and severally agree to refund on demand the full amount of any overpayment, as determined on liquidation of the drawback claim.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 86–178, 51 FR 34959, Oct. 1, 1986; T.D. 88–72, 53 FR 45902, Nov. 15, 1988; CBP Dec. 15–15, 80 FR 70168, Nov. 13, 2015]

§ 113.66 Control of containers and instruments of international traffic bond conditions.

A bond for control of containers and instruments of international traffic must contain the conditions listed in this section and must be a continuous bond.

CONTROL OF CONTAINERS AND INSTRUMENTS OF INTERNATIONAL TRAFFIC BOND CONDITIONS

(a) *Agreement to Enter Any Diverted Instrument of International Traffic.* If a principal brings in and takes out of the customs territory of the United States an instrument of international traffic without entry and without payment of duty, as provided by the CBP regulations and section 322(a), Tariff Act of 1930, as amended (19 U.S.C. 1322(a)) the principal agrees to:

(1) Report promptly to CBP when the instrument is diverted to point-to-point local traffic in the customs territory of the United States or when the instrument is otherwise withdrawn in the customs territory of the United States from its use as an instrument of international traffic.

(2) Promptly enter the instrument unless exempt from entry; and

(3) Pay any duty due on the instrument at the rate in effect and in its condition on the date of diversion or withdrawal.

(b) *Agreement to Comply With the Provisions of subheading 9801.00.10, or 9803.00.50 Harmonized Tariff Schedule of the United States (HTSUS).* If the principal gets free release of any serially numbered shipping container classifiable under subheading 9801.00.10 or 9803.00.50, HTSUS, the principal agrees:

(1) Not to advance the value or improve its condition abroad or claim (or make a previous claim) drawback on, any container released under subheading 9801.00.10, HTSUS;

(2) To pay the initial duty due and otherwise comply with every condition in subheading 9803.00.50, HTSUS, on any container released under that item;

(3) To mark that container in the manner required by CBP;

(4) To keep records which show the current status of that container in service and the disposition of that container if taken out of service; and

(5) To remove or strike out the markings on that container when it is taken out of service or when the principal transfers ownership of it.

(c) *Agreement to comply with application approved under 19 CFR 10.41b(b).* If the principal establishes a program for

the cross-border movements of shipping devices based upon an application approved as provided in §10.41b(b) of this chapter (19 CFR 10.41b(b)), the principal agrees:

(1) To timely file complete and accurate reports on the shipping devices, and to pay any applicable duty due on the devices and repairs made to such devices, as provided in the approved application;

(2) To retain complete and accurate records regarding the shipping devices, and to make such records available to CBP for inspection and audit upon reasonable notice, as also required in the approved application; and

(3) To otherwise comply with every other condition of the approved application.

(d) *Consequence of Default.* (1) If the principal defaults on agreements in these conditions, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages equal to the value of the merchandise involved in the default or such other amount as may be authorized by law or regulation.

(2) It is understood and agreed that the amount to be collected under these conditions will be based upon the quantity and value of the merchandise as determined by CBP.

(3) If the principal defaults on the agreements in these conditions and the default does not involve merchandise, the obligors agree to pay liquidated damages of $1,000 for each default or such other amount as may be authorized by law or regulation. It is understood and agreed that whether the default involves merchandise is determined by CBP.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 88–72, 53 FR 45902, Nov. 15, 1988; T.D. 89–1, 53 FR 51255, Dec. 21, 1988; T.D. 96–20, 61 FR 7990, Mar. 1, 1996; CBP Dec. 15–15, 80 FR 70169, Nov. 13, 2015]

§113.67 Commercial gauger and commercial laboratory bond conditions.

COMMERCIAL GAUGER BOND CONDITIONS

(a) *Commercial gauger bond conditions.* A commercial gauger's bond must contain the conditions listed in this section and must be a continuous bond.

(1) If the principal is a commercial gauger whose reports of gauging or whose samples are accepted for CBP purposes, the principal agrees to:

(i) Gauge or sample merchandise according to the standards and procedures set out in the CBP regulations;

(ii) Abide by the requirements set out in §151.13(b) of this chapter; and

(iii) Submit properly any required report, proof, abstract, or sample to CBP.

(2)(i) If the principal defaults, the obligors (principal and surety) agree to pay liquidated damages equal to the value of the merchandise involved in the default or three times the value of the merchandise involved in the default if the merchandise is restricted or prohibited merchandise or alcoholic beverages or such other amount as may be authorized by law or regulation.

(ii) If the principal defaults on the agreements in these conditions and the default does not involve merchandise, the obligors agree to pay liquidated damages of $1,000 for each default or such other amount as may be authorized by law or regulation.

(iii) It is understood and agreed that whether the default involves merchandise is determined by CBP, that the amount to be collected under this condition will be based on the quantity and value of the merchandise as determined by CBP and that value as used in these provisions means value as determined under 19 U.S.C. 1401a.

COMMERCIAL LABORATORY BOND CONDITIONS

(b) *Commercial laboratory bond conditions.* A commercial laboratory's bond must contain the conditions listed in this subsection and must be a continuous bond.

(1) If the principal is a commercial laboratory whose laboratory analysis reports are accepted for CBP purposes, the principal agrees to:

(i) Conduct laboratory analyses according to the standards and procedures set out in the CBP regulations;

(ii) Abide by the requirements set out in §§151.12(c) and 151.14 of this chapter; and

(iii) Submit properly any required report, proof, abstract, or sample to CBP.

(2)(i) If the principal defaults, the obligors (principal and surety, jointly and

severally) agree to pay liquidated damages equal to the value of the merchandise involved in the default or three times the value of the merchandise involved in the default if the merchandise is restricted or prohibited merchandise or alcoholic beverages or such other amount as may be authorized by law or regulation.

(ii) If the principal defaults on the agreements in these conditions and the default does not involve merchandise, the obligors agree to pay liquidated damages of $1,000 for each default or such other amount as may be authorized by law or regulation.

(iii) It is understood and agreed that whether the default involves merchandise is determined by CBP, that the amount to be collected under this condition shall be based on the quantity and value of the merchandise as determined by CBP and that value as used in these provisions means value as determined under 19 U.S.C. 1401a.

[T.D. 87–39, 52 FR 9787, Mar. 26, 1987, as amended by T.D. 88–72, 53 FR 45902, Nov. 15, 1988; T.D. 99–67, 64 FR 48534, Sept. 7, 1999; T.D. 01–26, 66 FR 16854, Mar. 28, 2001; CBP Dec. 15–15, 80 FR 70169, Nov. 13, 2015]

§ 113.68 Wool and fur products labeling acts and fiber products identification act bond conditions.

A bond to comply with wool and fur products labeling acts and fiber products identification act must contain the conditions listed in this section and must be a single transaction bond.

WOOL AND FUR PRODUCTS LABELING ACTS AND FIBER PRODUCTS IDENTIFICATION ACT

(a) If the principal obtains release from CBP custody of any wool or fur product (hereafter ''merchandise'') that is subject to the provisions of the Wool Products Labeling Act of 1939, the Fur Products Labeling Act, or the Fiber Products Identification Act, the principal guarantees that the merchandise complies with every provision of those Acts, as applicable.

(b) If any of the released merchandise does not comply with each applicable provision of the Wool Products Labeling Act of 1939, the Fur Products Labeling Act, or the Fiber Products Identification Act, the obligors (principal or surety, jointly and severally) agree to pay liquidated damages equal to two times the value of the merchandise involved in the default and duty thereon. It is understood and agreed that the amount to be collected under this condition will be based upon the quantity and value of the merchandise as determined by CBP. Value as used in these provisions means value as determined under 19 U.S.C. 1401a.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 88–72, 53 FR 45902, Nov. 15, 1988; CBP Dec. 15–15, 80 FR 70169, Nov. 13, 2015]

§ 113.69 Production of bills of lading bond conditions.

A bond to produce a bill of lading must contain the conditions listed in this section and must be a single transaction bond.

PRODUCTION OF BILL OF LADING BOND CONDITIONS

If the principal obtains release of any merchandise before filing a valid bill of lading on that merchandise with CBP, the obligors (principal and surety, jointly and severally) agree to:

(a) Produce timely a valid bill of lading for the merchandise; and

(b) Relieve the United States and its employees from all liability, to indemnify the United States and its employees against loss, and defend any action brought on a claim for loss based on the release without production of a valid bill of lading.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 88–72, 53 FR 45902, Nov. 15, 1988; CBP Dec. 15–15, 80 FR 70169, Nov. 13, 2015]

§ 113.70 Bond condition to indemnify United States for detention of copyrighted material.

A bond to indemnify the United States for detention of copyrighted material must contain the conditions listed in this section and must be a single transaction bond.

BOND CONDITION TO INDEMNIFY UNITED STATES FOR DETENTION OF COPYRIGHTED MATERIAL

If CBP detains any articles alleged by the principal to be a piratical copy of

material covered by the principal's copyright pending a final determination whether the articles are prohibited entry under the copyright laws, the obligors (principal and surety, jointly and severally) agree to hold the United States and its employees, and the importer or owner of those articles, jointly and severally, harmless from any material depreciation of those articles and any loss or damage caused by the detention in the event it is finally determined that the articles are not a piratical copy of the material.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 88–72, 53 FR 45902, Nov. 15, 1988; CBP Dec. 15–15, 80 FR 70169, Nov. 13, 2015]

§ 113.71 Bond condition to observe neutrality.

A bond to observe neutrality must contain the conditions listed in this section and must be a single transaction bond.

BOND CONDITION TO OBSERVE NEUTRALITY

(a) If clearance is granted to the principal's vessel, which is armed or is built for a war-like purpose, with a cargo of arms and munitions, so that it is likely to be used to commit hostilities against people or countries with whom the Government of the United States is at peace, the principal guarantees that the vessel will not be used to commit hostilities against any country, state, colony, or people with whom the Government is at peace.

(b) If the principal defaults, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages equal to twice the value of the vessel and cargo.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 88–72, 53 FR 45902, Nov. 15, 1988; CBP Dec. 15–15, 80 FR 70169, Nov. 13, 2015]

§ 113.72 Bond condition to pay court costs (condemned goods).

A bond to pay court costs (condemned goods) must contain the condition listed in this section and must be a single transaction bond.

BOND CONDITION TO PAY COURT COSTS (CONDEMNED GOODS)

If any seized goods belonging to principal are condemned the obligors (principal and surety, jointly and severally) agree to pay all costs of the condemnation proceedings.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 88–72, 53 FR 45902, Nov. 15, 1988; CBP Dec. 15–15, 80 FR 70169, Nov. 13, 2015]

§ 113.73 Foreign trade zone operator bond conditions.

A bond of a foreign trade zone operator must contain the conditions listed in this section and must be a continuous bond.

FOREIGN TRADE ZONE OPERATOR BOND CONDITIONS

If the principal is authorized to operate a foreign trade zone or subzone:

(a) *Receipt, Handling, and Disposition of Merchandise.* The principal agrees to comply with:

(1) The law and CBP regulations relating to the receipt (including merchandise received and receipted for transport to his zone), admission, status, handling, transfer, and removal of merchandise from the foreign trade zone or subzone, and

(2) The CBP regulations concerning the maintenance of inventory control and recordkeeping systems covering merchandise in the foreign trade zone or subzone. If the principal defaults and the default involves merchandise other than domestic merchandise for which no permit for admission is required, the obligors (principal and surety, jointly and severally) agree to pay liquidated damages equal to the value of the merchandise involved in the default, or three times the value of the merchandise involved in the default if the merchandise is restricted or prohibited merchandise or alcoholic beverages, or such other amount as may be authorized by law or regulation. It is understood and agreed that whether the default involves merchandise is a determination made by CBP, that the amount to be collected under this condition will be based upon the quantity and value of the merchandise as determined by CBP, and that value as used

in these provisions means value as determined under 19 U.S.C. 1401a. If the principal defaults and the default does not involve merchandise, the obligors agree to pay liquidated damages of $1,000 for each default, or such other amount as may be authorized by law or regulations.

(b) *Agreement to Pay Duties, Taxes, and Charges.* The obligors agree to pay any duties, taxes, and charges found to be due on any merchandise, properly admitted to the foreign trade zone or subzone, which is found to be missing from the zone or cannot be accounted for in the zone, it being expressly understood and agreed that the amount of said duties, taxes, and charges will be determined solely by CBP.

(c) *Agreement to comply with Importer Security Filing requirements.* The principal agrees to comply with all Importer Security Filing requirements set forth in part 149 of this chapter including but not limited to providing security filing information to CBP in the manner and in the time period prescribed by regulation. If the principal defaults with regard to any obligation, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each violation.

(d) *Reimbursement and Exoneration of the United States.* The obligors agree to:

(1) Exonerate the United States and its officers from any risk, loss, or expense arising from the principal's operation of the foreign trade zone or subzone;

(2) Pay the compensation and expenses of any CBP Officer, as required by law or regulations.

(e) *Payment of Annual Fee.* The principal agrees to pay timely any annual fee or fees as provided in the CBP regulations. If the principal defaults, the obligors agree to pay liquidated damages equal to the amount of the annual fee due but not paid and an amount equal to one percent of the annual fee for each of the first seven days the annual fee is in arrears, two percent of the annual fee for each of the succeeding seven days the annual fee is in arrears, and three percent of the annual fee for each day thereafter in which the annual fee is in arrears.

[T.D. 84–213, 49 FR 41171, Oct. 19, 1984, as amended by T.D. 86–16, 51 FR 5063, Feb. 11, 1986; T.D. 88–72, 53 FR 45902, Nov. 15, 1988; T.D. 94–81, 59 FR 51495, Oct. 12, 1994; T.D. 01–26, 66 FR 16854, Mar. 28, 2001; CBP Dec. 08–46, 73 FR 71781, Nov. 25, 2008; CBP Dec. 15–15, 80 FR 70169, Nov. 13, 2015]

§ 113.74 Bond conditions to indemnify a complainant under section 337 of Tariff Act of 1930, as amended.

A bond to indemnify a complainant under section 337 of the Tariff Act of 1930, as amended, must contain the conditions listed in appendix B to this part. The bond must be a single transaction bond and must be filed in accordance with the provisions set forth in 19 CFR 12.39(b)(2). For the forfeiture or return of this bond, the provisions of 19 CFR 210.50(d) will apply.

[T.D. 00–87, 65 FR 77815, Dec. 13, 2000, as amended by CBP Dec. 15–15, 80 FR 70169, Nov. 13, 2015]

§ 113.75 Bond conditions for deferral of duty on large yachts imported for sale at United States boat shows.

A bond for the deferral of entry completion and duty deposit pursuant to 19 U.S.C. 1484b for a dutiable large yacht imported for sale at a United States boat show must conform to the terms of appendix C to this part. The bond must be filed in accordance with the provisions set forth in §4.94a of this chapter.

[68 FR 13626, Mar. 20, 2003]

APPENDIX A TO PART 113—AIRPORT CUSTOMS SECURITY AREA BOND

AIRPORT CUSTOMS SECURITY AREA BOND

_____(name of principal) of _____(address) and _____(name of surety) of _____(address) are held and firmly bound unto the United States of America in the sum of ____dollars ($____), for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, by these conditions.

WITNESS our hands and seals this ____day of ____, 20____. WHEREAS, the principal (including the principal's employees, agents, and contractors) desires access to airport customs security areas;

Now, Therefore, the Condition of this Obligation is Such That—

The principal agrees to comply with the CBP regulations applicable to customs security areas at airports. If the principal defaults on the condition of this obligation, the principal and surety, jointly and severally, agree to pay liquidated damages of $1,000 for each default; or such other amount as may be authorized by law or regulation. This bond is effective _____, 20___, and remains in force for one year beginning with the effective date and for each succeeding annual period, or until terminated. This bond constitutes a separate bond for each annual period in the amount listed above for liabilities that accrue in each annual period.

Signed, Sealed, and Delivered in the Presence of —

Name
Address

Name
Address
Principal (SEAL)

Name
Address

Name
Address

Name
Address
Surety (SEAL)

Name
Address

[CBP Dec. 15–15, 80 FR 70169, Nov. 13, 2015]

APPENDIX B TO PART 113—BOND TO INDEMNIFY COMPLAINANT UNDER SECTION 337, TARIFF ACT OF 1930, AS AMENDED

This appendix contains the bond to indemnify a complainant under section 337 of the Tariff Act of 1930, as amended. The provisions contained in §§12.39(b)(2) and 113.74 of the CBP Regulations (19 CFR Chapter I) and §210.50(d) of the U.S. International Trade Commission Regulations (19 CFR Chapter II) apply.

BOND TOTO INDEMNIFY COMPLAINANT UNDER SECTION 337, TARIFF ACT OF 1930, AS AMENDED

_____ as principal and _____ as surety, are held and bound to _____, as the complainant in U.S. International Trade Commission case/investigation number _____, of unfair practices or methods of competition in import trade in violation of section 337, Tariff Act of 1930, as amended, in the sum of _____ dollars ($_____), for payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, by these conditions.

Pursuant to the provisions of section 337, Tariff Act of 1930, as amended, the principal and surety recognize that the Commission has, according to the conditions described in its order, excluded from, or authorized, entry into the United States of the following merchandise

_____ under entry number _____, dated _____.

The principal and surety recognize that the Commission has excluded that merchandise from entry until its investigation is completed, or until its decision that there is a violation of section 337 becomes final.

The principal and surety recognize that certain merchandise excluded from entry by the Commission was, or may be, offered for entry into the United States while the Commission's prohibition is in effect.

The principal and surety recognize that the principal desires to obtain a release of that merchandise pending a final determination of the merchandise's admissibility into the United States, as provided under section 337, and, for that purpose, the principal and surety execute this stipulation:

If it is determined, as provided in section 337 of the Tariff Act of 1930, as amended, to exclude that merchandise from the United States, then, on notification from the CBP, the principal is obligated to export or destroy under CBP supervision the merchandise released under this stipulation within 30 days from the date of the CBP's notification.

The principal and surety, jointly and severally, agree that if the principal defaults on that obligation, the principal and surety shall pay to the complainant an amount equal to the face value of the bond as may be demanded by him/her under the applicable law and regulations.

Witness our hands and seals this _____ day of _____ (month), _____ (year).

_____ (seal)
Principal

_____ (seal)
Surety

[T.D. 00–87, 65 FR 77815, Dec. 13, 2000; 65 FR 80497, Dec. 21, 2000, as amended by CBP Dec. 15–15, 80 FR 70170, Nov. 13, 2015; CBP Dec. 16–26, 81 FR 93017, Dec. 20, 2016]

APPENDIX C TO PART 113—BOND FOR DEFERRAL OF DUTY ON LARGE YACHTS IMPORTED FOR SALE AT UNITED STATES BOAT SHOWS

BOND FOR DEFERRAL OF DUTY ON LARGE YACHTS IMPORTED FOR SALE AT UNITED STATES BOAT SHOWS

_____, as principal, and _____, as surety, are held and firmly bound to the UNITED STATES OF AMERICA in the sum of _____ dollars ($_____), for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these conditions.

Pursuant to the provisions of 19 U.S.C. 1484b, the principal has imported at the port of _____ a dutiable large yacht (exceeding 79 feet in length, used primarily for recreation or pleasure, and previously sold by a manufacturer or dealer to a consumer) identified as _____ for sale at a boat show in the United States with deferral of entry completion and duty deposit and has executed this obligation as a condition precedent to that deferral.

A failure to inform CBP in writing of an exportation, or to complete the required entry, within the 6-month bond period will give rise to a claim for liquidated damages unless the principal informs CBP of the exportation or completes the entry within the time limits prescribed in 19 CFR 4.94a. If the principal fails to comply with any condition of this obligation, which includes compliance with any requirement or condition set forth in 19 U.S.C. 1484b or 19 CFR 4.94a, the principal and surety jointly and severally agree to pay to CBP an amount of liquidated damages equal to twice the amount of duty on the large yacht that would otherwise be imposed under subheading 8903.91.00 or 8903.92.00 of the Harmonized Tariff Schedule of the United States. For purposes of this paragraph, the term duty includes any duties, taxes, fees and charges imposed by law.

The principal will exonerate and hold harmless the United States and its officers from or on account of any risk, loss, or expense of any kind or description connected with or arising from the failure to store and deliver the large yacht as required, as well as from any loss or damage resulting from fraud or negligence on the part of any officer, agent, or other person employed by the principal.

WITNESS our hands and seals this _____ day of _____ (month), _____ (Year).

_____
(Name) (Address)

_____ [SEAL]
(Principal)

_____ [SEAL]
(Name) (Address)

_____ [SEAL]
(Surety)

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the* _____ of the corporation named as principal in the attached bond; that _____, who signed the bond on behalf of the principal, was then _____ of that corporation; that I know his signature, and his signature to the bond is genuine; and that the bond was duly signed, sealed, and attested for and in behalf of the corporation by authority to its governing body.

_____
(CORPORATE SEAL)

(To be used when no power of attorney has been filed with CBP.)

*May be executed by the secretary, assistant secretary, or other officer of the corporation.

[68 FR 13626, Mar. 20, 2003, as amended by CBP Dec. 15–15, 80 FR 70170, Nov. 13, 2015; CBP Dec. 16–26, 81 FR 93017, Dec. 20, 2016]

APPENDIX D TO PART 113—IMPORTER SECURITY FILING BOND

This appendix contains the relevant terms and conditions for Importer Security Filing Bonds.

Importer Security Filing Bond

KNOW ALL MEN BY THESE PRESENTS, that _____ of _____, as principal having Customs and Border Protection (CBP) Identification Number _____ and _____, as surety are held and firmly bound unto the United States of America up to the sum of _____ dollars ($_____) for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas, the named principal (including the named principal's employees, agents and contractors) agrees to comply with all Importer Security Filing requirements set forth in 19 CFR part 149, including but not limited to providing security filing information to CBP in the manner and in the time period prescribed by regulation.

If the principal defaults on the conditions of this obligation, the principal and surety jointly and severally, agree to pay liquidated damages of $5,000 for each violation, or such other amount as may be authorized by law or regulation upon demand by CBP.

[COMPLETE THIS PARAGRAPH ONLY FOR A SINGLE TRANSACTION BOND]

This single transaction bond secures the single transaction identified by Importer Security Filing transaction number _____ issued by CBP on _____, 20_____.

[COMPLETE THIS PARAGRAPH ONLY FOR A CONTINUOUS BOND]

This continuous bond is effective _____, 20_____, and remains in force for one year beginning with the effective date and for each succeeding annual period, or until terminated. This bond constitutes a separate bond for each period in the amount listed above for liabilities that accrue in each period. The intention to terminate this bond must be conveyed within the period and manner prescribed in the CBP Regulations.

This bond is executed on _____, 20_____.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

_____

(Name) (Address)

_____

(Name) (Address)

_____

(Principal Name) (Seal)

_____

_____

(Principal Address)

_____

(Surety Name) (Seal)

Surety No. _____

_____

_____

_____

(Surety Mailing Address)

Surety Agent Name _____

Surety Agent ID Number _____

[74 FR 68377, Dec. 24, 2009]

PART 114—CARNETS

Sec.

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624.

SOURCE: T.D. 70–134, 35 FR 9261, June 13, 1970, unless otherwise noted.

§ 114.0 Scope.

This part is concerned with the use of international Customs documents known as carnets. It also contains provisions concerning the approval of associations to issue carnets in the United States covering merchandise to be exported and to guarantee carnets issued abroad covering merchandise to be imported. The carnet serves simultaneously as a Customs entry document and as a Customs bond.

Subpart A—General Provisions

§ 114.1 Definitions.

The following are general definitions for the purpose of part 114:

(a) *Commissioner*. ''Commissioner'' means the Commissioner of Customs.

(b) *Issuing association*. ''Issuing association'' means an association approved by the Commissioner for the issue of carnets in the Customs territory of the United States under a Customs Convention or bilateral Agreement to which the United States has acceded.

(c) *Guaranteeing association*. ''Guaranteeing association'' means an association approved by the Commissioner to guarantee the payment of obligations under carnets covering merchandise entering the Customs territory of the United States under a Customs Convention or bilateral Agreement to which the United States has acceded.

(d) *A.T.A. carnet.* ''A.T.A. carnet'' (Admission Temporaire—Temporary Admission) means the document reproduced as the Annex to the Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods (TIAS 6631).

(e) [Reserved]

(f) *TIR carnet.* ''TIR carnet'' (Transport International Routier) means the document reproduced as Annex 1 to the Customs Convention on the International Transport of Goods under Cover of TIR Carnets.

(g) *TECRO/AIT Carnet.* ''TECRO/AIT carnet'' means the document issued pursuant to the Bilateral Agreement between the Taipei Economic and Cultural Representative Office (TECRO) and the American Institute in Taiwan (AIT) to cover the temporary admission of goods.

[T.D. 70–134, 35 FR 9261, June 13, 1970, as amended by T.D. 71–70, 36 FR 4490, Mar. 6, 1971; T.D. 82–116, 47 FR 27262, June 24, 1982; T.D. 85–180, 50 FR 42517, Oct. 21, 1985; T.D. 98–10, 63 FR 4168, Jan. 28, 1998]

§ 114.2 Customs Conventions and Agreements.

The regulations in this part relate to carnets provided for in the following Customs Conventions and Agreements:

(a) Customs Convention on the A.T.A. Carnet for the Temporary Admission of Goods (hereinafter referred to as A.T.A. Convention).

(b) [Reserved]

(c) Customs Convention on the International Transport of Goods Under Cover of TIR Carnets, done at Geneva on November 14, 1975, as well as the 1959 TIR Convention, TIAS 6633.

(d) Agreement Between the Taipei Economic and Cultural Representative Office in the United States and the American Institute in Taiwan on TECRO/AIT Carnet for the Temporary Admission of Goods (hereinafter referred to as the Agreement).

[T.D. 70–134, 35 FR 9261, June 13, 1970, as amended by T.D. 82–116, 47 FR 27262, June 24, 1982; T.D. 85–180, 50 FR 42517, Oct. 21, 1985; T.D. 98–10, 63 FR 4168, Jan. 28, 1998]

§ 114.3 Carnets.

(a) *Use.* A carnet issued in conformity with the provisions of a Convention or Agreement identified in § 114.2 and with the regulations in this part shall serve as an entry document within the scope contemplated by the applicable Convention or Agreement and as a bond for the performance of acts in compliance with the provisions of such Convention or Agreement and the Customs statutes and regulations which are involved. Such carnet shall:

(1) Show the period for which it is valid,

(2) Be fully completed in accordance with the provisions of the Convention or Agreement which provides for its issuance, and

(3) Include an English translation whenever the goods covered by a carnet are described in another language.

(b) *Area of validity.* Carnets are valid in the customs territory of the United States which includes only the States, the District of Columbia, and Puerto Rico.

[T.D. 71–70, 36 FR 4490, Mar. 6, 1971, as amended by T.D. 98–10, 63 FR 4168, Jan. 28, 1998]

Subpart B—Issuing and Guaranteeing Associations

§ 114.11 Approval.

(a) *Documents to be furnished.* Before an association may be approved to serve as issuing association or guaranteeing association in the United States with respect to carnets authorized under a Customs Convention or Agreement to which the United States has acceded, such association shall furnish the Commissioner a written undertaking, in a form satisfactory to the Commissioner, to perform the functions and fulfill the obligations specified in the Convention or Agreement under which carnets are to be issued or guaranteed. Evidence of affiliation with an appropriate international organization shall also be required if affiliation with such an organization is required by the Convention or Agreement under which carnets are to be issued or guaranteed.

(b) *Publication of notice of approval.* Notice of the approval of an issuing association or a guaranteeing association with respect to a Customs Convention or Agreement to which the United States has acceded will be published in

the FEDERAL REGISTER by the Commissioner.

[T.D. 70–134, 35 FR 9261, June 13, 1970, as amended by T.D. 71–70, 36 FR 4490, Mar. 6, 1971; T.D. 98–10, 63 FR 4168, Jan. 28, 1998]

§ 114.12 Termination of approval.

(a) *For cause.* The Commissioner may suspend or revoke the approval previously given to any issuing association or guaranteeing association for failure or refusal to comply with the duties, obligations, or requirements set forth in its written undertaking on which the approval was based; in the applicable Customs Convention; or in the customs regulations; or upon termination of the affiliation with an appropriate international organization required by § 114.11(a). Before such suspension or revocation, the Commissioner shall give the association a reasonable opportunity to refute the alleged failure of compliance.

(b) *Withdrawal.* To be relieved of future obligations, an approved guaranteeing association must notify the Commissioner, in writing, not less than 6 months in advance of a specified termination date that it will not guarantee the payment of obligations under carnets accepted by district directors of Customs after the specified date. The receipt of such notice by the Commissioner will in no way affect the responsibility of the guaranteeing association for payment of claims on carnets accepted by district directors before the designated termination date.

(c) *Notice.* Notice of the suspension or revocation of the approval of an issuing association or a guaranteeing association, or of the withdrawal of an approved guaranteeing association, with respect to a Customs Convention to which the United States has acceded will be published in the FEDERAL REGISTER by the Commissioner.

[T.D. 70–134, 35 FR 9261, June 13, 1970, as amended by T.D. 71–70, 36 FR 4490, Mar. 6, 1971]

Subpart C—Processing of Carnets

§ 114.21 Acceptance.

A carnet executed in accordance with § 114.3 shall be accepted provided that when the carnet is presented an association for the guaranteeing of such carnets has been approved in accordance with § 114.11 and such approval has not been terminated as provided for in § 114.12.

§ 114.22 Coverage of carnets.

(a) *A.T.A. carnet.* The A.T.A. carnet is acceptable for goods to be temporarily entered, or temporarily entered and transported, under:

(1) The Customs Convention on the Temporary Importation of Professional Equipment, or

(2) The International Convention to Facilitate the Importation of Commercial Samples and Advertising Material, which includes:

(i) Commercial samples, or

(ii) Motion picture advertising films not exceeding 16 mm., consisting essentially of photographs (with or without sound track) showing the nature or operation of products or equipment whose qualities cannot be adequately demonstrated by samples or catalogs. There shall be presented with each carnet covering motion picture advertising films a statement showing how each of the following requirements is met. The films must:

(A) Relate to products or equipment offered for sale or for hire by a person established in the territory of another contracting party;

(B) Be of a kind suitable for exhibition to the public; and

(C) Be imported in a packet which contains not more than one copy of each film and which does not form part of a larger consignment of films.

(b) [Reserved]

(c) *TIR carnet*—(1) *Use.* The TIR carnet may be accepted at any port of entry for the transport of merchandise in road vehicles or in containers, even if the containers, without being loaded on road vehicles, are carried by other means of transport for part of the journey between the customs offices of departure and destination. The TIR carnet may also be accepted for the transport of ''heavy or bulky goods'' as defined in Article 1 of the TIR Convention. The TIR carnet covers the transportation of merchandise for customs purposes only. Road vehicles transporting merchandise under cover of a TIR carnet must also comply with all

other applicable requirements of Federal and State agencies concerned with the regulations of such vehicles and their personnel.

(2) *Taken on charge.* A TIR carnet is ''taken on charge'' by Customs when it is accepted as a transportation entry and when the shipment covered thereby is receipted for by the bonded carrier (see §§ 18.1, 18.2, and 18.10(a) of this chapter). Until the carnet is ''taken on charge,'' the guaranteeing association shall have no liability to the United States under the carnet.

(d) *TECRO/AIT carnet*—(1) *Use.* The TECRO/AIT carnet is acceptable for the following two categories of goods to be temporarily imported, unless importation is prohibited under the laws and regulations of the United States:

(i) Professional equipment; and

(ii) Commercial samples and advertising material imported for the purpose of being shown or demonstrated with a view to soliciting orders.

(2) *Issue and use.* (i) Issuing associations shall indicate on the cover of the TECRO/AIT carnet the customs territory in which it is valid and the name and address of the guaranteeing association.

(ii) The period fixed for re-exportation of goods imported under cover of a TECRO/AIT carnet shall not in any case exceed the period of validity of that carnet.

(e) *Excess liability.* When the total of duties and taxes on any shipment covered by a carnet exceeds the amount for which the guaranteeing association is liable, the excess constitutes a charge against the carrier's bond.

[T.D. 70–134, 35 FR 9261, June 13, 1970, as amended by T.D. 71–70, 36 FR 4490, Mar. 6, 1971; T.D. 82–116, 47 FR 27262, June 24, 1982; T.D. 98–10, 63 FR 4168, Jan. 28, 1998]

§ 114.23 Maximum period.

(a) *A.T.A. carnet.* No A.T.A. carnet with a period of validity exceeding 1 year from date of issue shall be accepted. This period of validity cannot be extended.

(b) *TIR carnet.* A TIR carnet may be accepted without limitation as to time provided it is initially ''taken on charge by a customs administration (United States or foreign) within the period of validity shown on its front cover.''

(c) *TECRO/AIT carnet.* A TECRO/AIT carnet shall not be issued with a period of validity exceeding one year from the date of issue. This period of validity cannot be extended and must be shown on the front cover of the carnet.

[T.D. 71–70, 36 FR 4491, Mar. 6, 1971, as amended by T.D. 82–116, 47 FR 27262, June 24, 1982; T.D. 85–180, 50 FR 42517, Oct. 21, 1985; T.D. 98–10, 63 FR 4168, Jan. 28, 1998]

§ 114.24 Additions.

When an A.T.A. or TECRO/AIT carnet has been issued, no extra item shall be added to the list of goods enumerated on the reverse of the cover of the carnet or on any continuation sheet annexed thereto.

[T.D. 70–134, 35 FR 9261, June 13, 1970, as amended by T.D. 82–116, 47 FR 27262, June 24, 1982; T.D. 98–10, 63 FR 4168, Jan. 28, 1998]

§ 114.25 Replacement of carnets.

In the case of destruction, loss, or theft of an A.T.A. or TECRO/AIT carnet while the goods which it covers are in the Customs territory of the United States, the director of the port where such goods were imported may, upon request of the association which issued the carnet abroad, accept a replacement document, the validity of which expires on the same date as that of the carnet which it replaces, provided the port director determines that the description of merchandise in the replacement document fully corresponds to the description set forth in the importation voucher from the carnet to be replaced.

[T.D. 70–134, 35 FR 9261, June 13, 1970, as amended by T.D. 82–116, 47 FR 27262, June 24, 1982; T.D. 98–10, 63 FR 4168, Jan. 28, 1998]

§ 114.26 Discharge, nonacceptance, or cancellation of carnets.

(a) *Unconditional discharge.* An A.T.A. or TECRO/AIT carnet shall be discharged unconditionally by the port director when he is satisfied that all merchandise covered thereby is reexported or destroyed. A TIR carnet shall be discharged unconditionally when all merchandise covered thereby has been properly entered, placed in general

order, or exported under customs supervision. In all other cases, any discrepancy shall be noted on the appropriate counterfoil, and action shall be taken in accordance with §10.39 or §18.6 of this chapter.

(b) *Effect of discharge.* When a port director has discharged a carnet unconditionally by completion of the appropriate counterfoil, no claim may be brought against the guaranteeing association for payment under the carnet unless it can be established that the discharge was obtained improperly or fraudulently or, in the case of an A.T.A. or TECRO/AIT carnet, that there has been a breach of the conditions of temporary importation.

(c) *Nonacceptance or cancellation of TIR carnets.* If a TIR carnet presented to Customs is not accepted, it shall be stamped ''Not Taken on Charge'' (see §114.22(c)(2)). If merchandise not required to be transported in bond moving under cover of a TIR carnet is not exported, the carnet shall be stamped ''Cancelled.''

[T.D. 71–70, 36 FR 4491, Mar. 6, 1971, as amended by T.D. 82–116, 47 FR 27262, June 24, 1982; T.D. 98–10, 63 FR 4168, Jan. 28, 1998]

Subpart D—Miscellaneous

§114.31 Restrictions.

(a) *Mail importations.* Carnets shall not be accepted for importations by mail.

(b) *Temporary importations.* Merchandise not entitled to temporary importation under bond shall not be imported under cover of an A.T.A. or TECRO/AIT carnet.

(c) *Transportation in bond.* Except as provided in §18.43 of this chapter, merchandise not entitled to transportation in bond shall not be transported under cover of a TIR carnet.

[T.D. 71–70, 36 FR 4491, Mar. 6, 1971, as amended by T.D. 85–180, 50 FR 42517, Oct. 21, 1985; T.D. 98–10, 63 FR 4168, Jan. 28, 1998]

§114.32 Samples for taking orders.

A.T.A. or TECRO/AIT carnets may be accepted for unaccompanied samples and samples imported by a natural person resident in the Customs territory of the United States, as well as for samples imported by a natural person resident in the territory of another contracting party to the A.T.A. Convention or TECRO/AIT Agreement.

[T.D. 70–134, 35 FR 9261, June 13, 1970, as amended by T.D. 82–116, 47 FR 27262, June 24, 1982; T.D. 98–10, 63 FR 4168, Jan. 28, 1998]

§114.33 Action against carnet user.

In the event of fraud, violation, or abuse of the privileges of a Convention or Agreement, action may be taken against the users of carnets for applicable duties and charges or liquidated damages, as the case may be. Penalties to which such persons have thereby rendered themselves liable may also be imposed.

[T.D. 70–134, 35 FR 9261, June 13, 1970, as amended by T.D. 98–10, 63 FR 4168, Jan. 28, 1998]

§114.34 Cancellation of erroneous charges.

(a) *TIR carnet.* When it is determined that liquidated damages assessed or paid for any shortage, irregular delivery, or nondelivery of merchandise covered by a TIR carnet did not in fact accrue, the liquidated damages shall be cancelled by the port director and, if paid, refunded, as provided by §18.8 of this chapter.

(b) *A.T.A. or TECRO/AIT carnet.* When it is determined that liquidated damages assessed or paid for failure to properly reexport or destroy merchandise temporarily imported under cover of an A.T.A. or TECRO/AIT carnet did not in fact accrue, the liquidated damages shall be cancelled by the port director and, if paid, refunded as provided by §10.39 of this chapter.

(c) *Determination dependent upon a construction of law.* When the determination of whether or not the charge was erroneously made depends upon a construction of law, the charge shall not be cancelled without the approval of the Commissioner of Customs, unless there is in force a ruling by the Commissioner of Customs decisive of the issue.

[T.D. 74–227, 39 FR 32023, Sept. 4, 1974, as amended by T.D. 82–116, 47 FR 27262, June 24, 1982; T.D. 98–10, 63 FR 4168, Jan. 28, 1998; T.D. 00–57, 65 FR 53575, Sept. 5, 2000]

PART 115—CARGO CONTAINER AND ROAD VEHICLE CERTIFICATION PURSUANT TO INTERNATIONAL CUSTOMS CONVENTIONS

Subpart A—General

Subpart B—Administration

Subpart C—Procedures for Approval of Containers by Design Type

Subpart D—Procedures for Approval of Containers After Manufacture

Subpart E—Procedures for Approval of Individual Road Vehicles

Subpart F—Procedures for Approval of Road Vehicles by Design Type

AUTHORITY: 5 U.S.C. 301, 19 U.S.C. 66, 1624; E.O. 12445 of October 17, 1983.

SOURCE: T.D. 86–92, 51 FR 16161, May 1, 1986, unless otherwise noted.

Subpart A—General

§ 115.1 Purpose.

This chapter establishes procedures for certifying containers and road vehicles in conformance with the Customs Convention on Containers (1956) (TIAS 6634), the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (1959) (TIAS 6633), the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets, November 14, 1975 (TIAS), and the Customs Convention on Containers, 1972 (TIAS), by applying the procedures and technical conditions set forth in the annexes to these conventions.

§ 115.2 Application.

(a) Certification of containers and road vehicles for international transport under Customs seal is voluntary. This chapter does not require certification of containers and road vehicles.

(b) The Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), January 15, 1959 (20 UST 184, TIAS 6633), requires that the approval of road vehicles be made by competent

authorities of the country in which the owner or carrier is a resident or is established, and that containers should be either similarly approved, or approved by the competent authority of the country where it is first used for transport under Customs seal. The Customs Convention on Containers, May 18, 1956 (20 UST 301, TIAS 6634), requires that the approval of containers be made by competent authorities of the country in which the owner is a resident or is established or by those of the country where the container is used for the first time for transport under Customs seal. The TIR Convention, 1975, generally provides that a road vehicle, for which approval at a stage after manufacture is desired, shall be approved by the competent authority where the vehicle owner or operator is established or located, or where the vehicle is registered. Such approval under the TIR Convention, 1975, or, for containers, the Customs Convention on Containers, 1972, may be accomplished by the competent authority of the country in which the owner or operator is able to produce the conveyance. The 1975 TIR Convention and the Customs Convention on Containers, 1972, also provide that the Certifying Authority of the country of manufacture, if that country is a contracting party to the Convention, may approve a series of road vehicles or containers presented for design type approval. The procedures for applying for certification are contained in §§ 115.28, 115.38, 115.49, and 115.63 of this part.

§ 115.3 Definitions.

For the purpose of this part:

(a) *Certifying Authority*. ''Certifying Authority'' means a nonprofit firm or association, incorporated or established in the U.S., which the Commissioner finds competent to carry out the functions of this part and which he designates to certify containers and road vehicles for international transport under Customs seal.

(b) *Commissioner*. ''Commissioner'' means the Commissioner of Customs.

(c) *Container*. ''Container'' means an article of transport equipment (lift van, portable tank, or other similar structure).

(1) Fully or partially enclosed to constitute a compartment intended for containing goods;

(2) Of a permanent character and strong enough to be suitable for repeated use;

(3) Specifically designed to facilitate the carriage of goods by one or more modes of transport, without intermediate reloading;

(4) Designed for ready handling, particularly its transfer from one mode of transport to another;

(5) Designed to be easily filled and emptied; and

(6) Having an internal volume of 1 cubic meter (35.3 cubic feet) or more.

(d) *Manufacturer*. ''Manufacturer'' means an organization or person constructing containers or road vehicles for certification in accordance with this chapter.

(e) *Prototype*. ''Prototype'' means a sample unit of a series of identical containers or road vehicles all built, so far as practical, under the same conditions.

(f) *Road vehicle*. ''Road Vehicle'', as defined in Chapter 1, Article 1 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), November 14, 1975 (TIAS), means not only any power-driven road vehicle but also any trailer or semi-trailer designed to be coupled to it.

(g) *Customs and TIR/Container Plan*. ''Customs and TIR/Container Plan'' means the designer's drawing of a vehicle (for TIR purposes) or container (for TIR and Container Convention purposes) that illustrates each requirement in § 115.30, § 115.40, § 115.51, or § 15.65, as appropriate to this part.

(h) The definitions in the subject Conventions shall be considered applicable to terms not specifically defined above.

§ 115.4 Conflicting provisions.

The provisions of the most recent TIR/Container Convention shall apply in the event of conflict between it and an earlier TIR/Container Convention covered by these regulations.

Subpart B—Administration

§ 115.6 Designated Certifying Authorities.

(a) *Certifying Authorities for containers and road vehicles.* The Commissioner has designated the following Certifying Authorities for containers and road vehicles as defined in this part:

(1) The American Bureau of Shipping, ABS Plaza, 16855 Northchase Drive, Houston, Texas 77060–6008;

(2) International Cargo Gear Bureau, Inc., 321 West 44th Street, New York, New York 10036;

(3) The National Cargo Bureau, Inc., 17 Battery Place, Suite 1232, New York, New York 10004–1110.

(b) *Certifying Authority for containers.* The Commissioner has designated Lloyd's Register North America, Inc., 1401 Enclave Parkway, Suite 200, Houston, Texas 77077, as a Certifying Authority only for containers as defined in this part.

[CBP Dec. 09–27, 74 FR 36926, July 27, 2009]

§ 115.7 Designation of additional Certifying Authorities.

(a) The Commissioner may designate as a Certifying Authority any nonprofit firm or association that he finds competent to carry out the functions of §§ 115.8 through 115.14 of this subpart.

(b) Any designation as Certifying Authority may be terminated by the Commissioner.

§ 115.8 Certifying Authorities responsibilities—road vehicles.

(a) *General.* Road vehicles may be approved individually or by design type.

(b) *Individual approval.* The Certifying Authority to whom a road vehicle is submitted for approval shall inspect such road vehicle produced in accordance with the general rules contained in Annex 3 of the TIR Convention, 1975.

(c) *Design type approval.* The Certifying Authority to whom a road vehicle is submitted for design type approval shall examine the drawings and detailed design specifications submitted with the application for approval. The Certifying Authority shall advise the applicant of any changes that must be made to the proposed design type in order that approval may be granted. The Certifying Authority shall examine one or more vehicles to confirm that such vehicles comply with the technical conditions contained in Annex 2 of the TIR Convention, 1975. The Certifying Authority shall notify the applicant of its decision to grant design type approval, and it shall issue an approval certificate complying with Annexes 3 and 4 of the TIR Convention, 1975.

(d) *Supplementary examinations.* If a road vehicle approved by design type is the subject of an extended production run under one certificate of approval, the Certifying Authority shall confirm by examination of one or more road vehicles during the manufacturing process, or by other means, that such vehicles continue to meet the approved drawings and detailed design specifications and the technical requirements of Annex 2 of the TIR Convention, 1975.

For the purposes of this section, an extended production run shall be considered a continuous run of many units over long periods of time, as well as a new run following the completion of a previous run.

§ 115.9 Certifying Authorities responsibilities—containers.

(a) *General.* Containers may be approved for transport under seal by design type at the manufacturing stage or, otherwise, at a stage subsequent to manufacture.

(b) *Design type approval.* The Certifying Authority to whom a container is submitted for design type approval shall examine the drawings and detailed design specifications submitted with the application for approval. The Certifying Authority shall advise the applicant of any changes that must be made to the proposed design type so that approval may be granted. The Certifying Authority shall examine one or more containers to confirm that such containers comply with the technical requirements of part 1, Annex 7, TIR Convention, 1975, and Annex 4 of the Customs Convention on Containers, 1972. The Certifying Authority shall issue a certificate authorizing the applicant to affix an approval plate, as described in appendix 1 to part II, Annex 7 of the TIR Convention, 1975,

and Annex 5 of the Customs Convention on Containers, 1972, for all containers manufactured in conformity with the specifications of the type of container approved. This certificate shall comply with the model certificate in appendix 2, part II, Annex 7 of the TIR Convention, 1975, and appendix 2 of Annex 5 of the Customs Convention on Containers, 1972.

(c) *After manufacture.* The Certifying Authority to whom containers are submitted for approval after manufacture, shall examine as many containers as necessary to ascertain that they comply with the technical conditions prescribed in part 1, Annex 7, TIR Convention, 1975, and Annex 5 of the Customs Convention on Containers, 1972. The Certifying Authority shall issue a certificate of approval authorizing the applicant to affix an approval plate to the specific number or series of containers being approved. The certificate shall comply with the model certificate of approval in appendix 3, Part II, Annex 7, TIR Convention, 1975, and appendix 3, Annex 5, Customs Convention on Containers, 1972.

(d) *Supplementary examinations.* If a container approved by design type is the subject of an extended production run or several production runs under one certificate of approval, the Certifying Authority shall confirm by examination of one or more containers during the manufacturing process, or by other means, that such containers continue to meet the approved drawings and detailed design specifications and the technical requirements of Annex 7 of the TIR Convention, 1975, and Annex 4 of the Customs Convention on Containers, 1972. For the purposes of this section, an extended production run shall be considered as a continuous run of many units over long periods of time, as well as a new run following completion of a previous run.

§ 115.10 Certificate of approval.

A Certifying Authority shall issue a certificate of approval by design type for a specified number or unlimited series of containers that are approved in accordance with the procedures contained in §§ 115.29, 115.31, 115.38, and 115.41, and road vehicles that are approved in accordance with the procedures contained in §§ 115.49, 115.52, 115.63, and 115.66 of this part.

(a) *Road vehicles.* A Certifying Authority shall issue a certificate of approval conforming to the model in Annex 4 of the 1975 TIR Convention for vehicles submitted for individual or design type approval, if satisfied that the vehicles comply with the technical conditions prescribed in Annex 2 of the TIR Convention, 1975.

(b) *Containers*—(1) *Approval after manufacture.* A Certifying Authority shall issue a certificate of approval conforming to the model in appendix 3, Part II to Annex 7 of the TIR Convention, 1975, and appendix 3 to Annex 5 of the Customs Convention on Containers, 1972, for containers approved at a stage after manufacture, when it has been ascertained that the containers comply with the technical conditions prescribed in Annex 7 of the TIR Convention, 1975, and Annex 4 of the Customs Convention on Containers, 1972. The certificate shall be valid for the number of containers approved.

(2) *Design type approved.* A Certifying Authority shall issue a single certificate of approval conforming to the model in appendix 2, Part II to Annex 7 of the TIR Convention, 1975, and appendix 2 to Annex 5 of the Customs Convention on Containers, 1972, for containers approved by design type when it has been ascertained that the container type complies with the technical conditions prescribed in Annex 7 of the 1975 TIR Convention, and Annex 4 of the Customs Convention on Containers, 1972. The certificate shall be valid for all containers manufactured in conformity with the specifications of the type approved.

(c) *Provisions common to both approval procedures.* The certificate of approval issued pursuant to paragraphs (a) and (b) of this section shall be valid for either the specific number of containers approved, or for an unlimited series of containers of the approved type.

§ 115.11 Establishment of fees.

(a) Each Certifying Authority shall establish and file with the Commissioner a schedule of fees for the performance of the certification procedures under this chapter. The fees shall

be based on the costs (including transportation expense) actually incurred by the Certifying Authority. The fees are subject to approval by the Commissioner before their use by the Certifying Authority.

(b) Each Certifying Authority shall make available a schedule of its fees approved by the Commissioner. In addition, the schedules of approved fees for all the Certifying Authorities are available from the Headquarters, U.S. Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

[T.D. 86–92, 51 FR 16161, May 1, 1986, as amended by T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 115.12 Records maintained by Certifying Authority.

(a) Each Certifying Authority shall maintain—

(1) A copy of each individual certificate of approval issued, together with a copy of the plans and the application to which the approval refers, along with any information submitted by the manufacturer and/or owner or operator for the certification of a container or a road vehicle.

(2) A record of each serial number assigned and affixed by the manufacturer to the road vehicles and containers manufactured under a design type approval, and containers approved at a stage after manufacture.

(b) The Commissioner may examine the Certifying Authority's files required by paragraph (a) of this section.

§ 115.13 Records to be furnished Customs.

Each Certifying Authority shall furnish the Headquarters, U.S. Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, unless waived by Customs;

(a) A copy of each issued certificate of approval for containers and road vehicles and a copy of the plans and application to which the approval refers;

(b) A copy of each issued individual approval for a container or road vehicle.

[T.D. 86–92, 51 FR 16161, May 1, 1986, as amended by T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 115.14 Meeting on program.

If determined necessary by Customs, each Certifying Authority's representative for certification functions shall meet, after notice, with the Commissioner to review their administration of the certification program.

§ 115.15 Reports by road vehicle or container manufacturer.

Each manufacturer shall forward to the appropriate Certifying Authority, quarterly or when otherwise requested by that Authority:

(a) The registration number or other identifying information on road vehicles, or serial numbers assigned to containers manufactured under a certificate of approval by design type; and

(b) An attestation that each road vehicle or container to which a serial number was assigned was manufactured in full compliance with the certificate of approval by design type.

§ 115.16 Notification of Certifying Authority by manufacturer.

In order that the Certifying Authority can schedule an appropriate inspection, a manufacturer shall give notification to that Authority before each production run of road vehicles or containers to be built pursuant either to plans approved by the Certifying Authority, or revised plans (approved or unapproved).

§ 115.17 Appeal to Commissioner of Customs.

(a) Any manufacturer, carrier, or owner may, within 30 days after he has been notified by a Certifying Authority of an adverse determination, including any review provided, appeal that determination to the Commissioner.

(b) Any determination which is appealed remains in effect pending a decision by the Commissioner.

§ 115.18 Decision of Commissioner of Customs final.

The decision of the Commissioner on any matter appealed to him is final.

Subpart C—Procedures for Approval of Containers by Design Type

§ 115.25 General.

The Certifying Authority shall, at the request of a manufacturer, evaluate containers for approval by design type during the manufacturing stage.

§ 115.26 Eligibility.

Any manufacturer of containers to be manufactured in a type series from standard design and specifications so that each container has identical characteristics, may apply for approval by design type.

§ 115.27 Where to apply.

A manufacturer may apply for approval of a container by design type to a Certifying Authority of the country in which the container is manufactured if such country is a contracting party to the TIR Convention, 1975, or the Customs Convention on Containers, 1972.

§ 115.28 Application for approval.

Each application by a manufacturer or an owner for certification of a container by design type must include:

(a) Three copies, each no larger than 3 feet by 4 feet, of the customs and TIR/Container plan;

(b) Customs and TIR/Container plan number;

(c) Three copies of the specifications which include the following information:

(1) The name and address of the manufacturer and the owner; and

(2) A description of the container including the—

(i) Type of construction;

(ii) Dimensions;

(iii) Material of construction;

(iv) Coating system used;

(v) Identification marks and numbers; and

(vi) Tare weight;

(d) The location and date for inspection; and

(e) A statement signed by the manufacturer that:

(1) A container of the design type concerned is available for inspection and approval by the Certifying Authority before, during, and after the production run;

(2) Notification will be given to the Certifying Authority of each change in the design before adoption; and

(3) Each container will be marked with:

(i) The metal plate required in § 115.32;

(ii) The identification number or letter of the design type assigned by the manufacturer; and

(iii) The serial number of the container assigned by the manufacturer.

§ 115.29 Plan review.

(a) A manufacturer or owner who wants containers to be approved by design type must submit the plans and specifications for the container to the Certifying Authority.

(b) The Certifying Authority examining the plans and specifications submitted in accordance with paragraph (a) of this section shall:

(1) Approve the plans and specifications in accordance with the requirements of § 115.30 and arrange to inspect a container in accordance with § 115.31; or

(2) Advise the applicant of any necessary changes to be made for compliance with the requirements of § 115.30.

(c) If changes in the design of the container are made during production but after approval of the plans and specifications by the Certifying Authority and furnish it with ''as-built'' drawings of the container so that the plans can be reviewed and one or more containers inspected during the production stage to confirm that they continue to comply with the requirements of § 115.30.

§ 115.30 Technical requirements for containers by design type.

The plans and specifications of a container submitted in accordance with the requirements contained in § 115.29, and the one or more containers inspected in accordance with the requirements of § 115.31, must comply with the requirements of Annex 7 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), November

14, 1975 (TIAS), and Annex 4 of the Customs Convention on Containers (Container Convention), December 2, 1972. Copies of Annex 7 and Annex 4 may be obtained from the Headquarters, U.S. Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

[T.D. 86–92, 51 FR 16161, May 1, 1986, as amended by T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 115.31 Examination, inspection, and testing.

(a) Before the issuance of a certificate of approval by design type, the Certifying Authority shall:

(1) Make a physical examination of one or more containers of the production series concerned;

(2) Assure itself as to the adequacy of the manufacturer's system to control quality of materials used, manufacturing methods, and finished containers; and

(3) Require the manufacturer to make available to the Certifying Authority records of material, including affidavits furnished by suppliers.

(b) The Certifying Authority shall conduct such examinations, inspections, and tests of the production run containers as it deems necessary.

§ 115.32 Approval plates.

The manufacturer shall affix, in a clearly visible place on or near one of the doors or other main openings of each container manufactured to the approved design, a metal approval plate measuring at least 20 by 10 centimeters (7.8 by 3.9 inches). The following shall be embossed on or stamped into the surface of the approval plate:

(a) ''Approved for transport under Customs seal.''

(b) ''USA/(number of the certificate of approval)/(last two digits of year of approval).'' (e.g. ''USA/1600/84'' means ''United States of America certificate of approval number 1600, issued in 1984).'' A two digit alpha suffix may be added to the certificate of approval number to identify the Certifying Authority, e.g., USA/1600–AB/85, USA/1600–IB/85.

(c) Identification of the type of container and of the number of the container in the type series.

(d) The serial number assigned to the container by the manufacturer (manufacturer's number).

§ 115.33 Termination of approval.

Any container, the essential features of which are changed, shall no longer be covered by the design type approval. Such a container may be made available to a Certifying Authority for inspection and individual approval in accordance with subpart D of the part. However, repairs in kind do not constitute a change of the essential features.

Subpart D—Procedures for Approval of Containers After Manufacture

§ 115.37 General.

This subpart provides for the approval and certification of containers after manufacture, and for those altered so as to void their design type approval.

§ 115.38 Application.

A written request for approval of a container after manufacture may be made by the owner or operator to a Certifying Authority and must include the following:

(a) Three copies, each no longer than 3 feet by 4 feet, of the Customs and TIR/Container plan;

(b) Customs and TIR/Container plan number;

(c) Three copies of the specifications which include the following information:

(1) Type of container;

(2) Name and business address of applicant;

(3) Identification marks and numbers;

(4) Tare weight;

(5) Nominal overall dimensions in centimeters;

(6) Type of construction and essential particulars of structure (nature of materials, coating system used, parts which are reinforced, whether bolts are riveted or welded, and similar matters); and

(7) Proposed location and date for inspection of the container.

§ 115.39 Eligibility.

The owner or operator may submit containers to be approved after the manufacturing stage to:

(a) The Certifying Authority of the country of manufacture if such country is a contracting party to the Convention.

(b) The Certifying Authority of the country where the owner or operator is resident or established, when such Certifying Authority has representatives located in the country of manufacture, which is a noncontracting party to the Convention.

(c) The Certifying Authority of the country where a container is used for the first time for transport of merchandise under Customs seal or where it is otherwise physically located.

§ 115.40 Technical requirements for containers.

A container that is submitted for inspection for approval after manufacture, must comply with the requirements of Annex 7 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), November 14, 1975 (TIAS) and Annex 4 of the Customs Convention on Containers (Container Convention), December 2, 1972. Copies of Annex 7 and Annex 4 may be obtained from the Headquarters, U.S. Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

[T.D. 86–92, 51 FR 16161, May 1, 1986, as amended by T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 115.41 Certificate of approval for containers approved after manufacture.

The Certifying Authority shall issue an individual certificate of approval for each container that meets the requirements in § 115.40.

§ 115.42 Approval plates.

(a) The owner or operator applicant shall, upon receipt of a certificate of approval from the Certifying Authority, affix an approval plate in the manner specified for containers approved by design type (see § 115.32).

(b) Although an entry is not required in the space provided for type identifiers on an approval plate for containers approved after manufacture, identification number and letters indicating that a series of containers comply with the same specifications may be placed in such space. This may be used to assist in the identification of a series of containers in which a common defect may be discovered subsequent to certification. In such case the approval number on the plate shall be altered by an addition to the second or third element of such number. The specific method of altering the approval number may be established by each Certifying Authority, for containers approved by it, and communicated to the U.S. Customs Service.

(c) Two possible methods of accomplishing this are:

(1) Placing an ''X'' in front of the numeric portion of the middle element of the approval number, e.g., USA/X123–IB/85.

(2) Placing a suffix at the end of the approval number, e.g, USA/123–AB/85–01.

§ 115.43 Termination of approval.

Approval of a container terminates upon a change in the container by a major repair or alteration of any of the essential features required in § 115.40. Repairs by replacement in kind do not constitute a change of the essential features.

Subpart E—Procedures for Approval of Individual Road Vehicles

§ 115.48 General.

This subpart provides for the approval and certification of individual road vehicles that comply with the technical requirements in § 115.51.

§ 115.49 Application.

A written request for approval of an individual road vehicle may be made by the owner, or carrier to a Certifying Authority and must include:

(a) Three copies, each no larger than 3 feet by 4 feet, of the Customs and TIR plan;

(b) Customs and TIR plan number;

(c) Three copies of the specifications which include the following information:
(1) Type of vehicle;
(2) Name and business address of owner or operator;
(3) Name of the manufacturer;
(4) Chassis number;
(5) Engine number (if applicable);
(6) Registration number;
(7) Particulars of construction;
(8) Any photos or diagrams required by the Certifying Authority to facilitate approval; and
(9) A proposed place and date for inspection of the road vehicle.

§ 115.50 Eligibility.

A road vehicle may be submitted for inspection by its owner or operator to a Certifying Authority of the country in which the owner or operator is a resident or is established, or where the vehicle is registered.

§ 115.51 Technical requirements.

A road vehicle that is submitted for inspection for individual approval must comply with the requirements of Annex 2 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), November 14, 1975, (TIAS). Copies of Annex 2 may be obtained from the Headquarters, U.S. Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

[T.D. 86–92, 51 FR 16161, May 1, 1986, as amended by T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 115.52 Approval.

The Certifying Authority shall issue a certificate of approval, valid for 2 years, to each road vehicle that complies with the applicable requirements in § 115.51.

§ 115.53 Certificate of approval.

A certificate of approval must be kept on the vehicle as evidence of approval.

§ 115.54 Renewal of certificate.

A certificate of approval may be renewed if the Certifying Authority determines by inspection every 2 years that the vehicle continues to comply with the applicable requirements in § 115.51.

§ 115.55 Termination of approval.

Approval of a road vehicle terminates:
(a) Upon expiration of the certificate of approval; or
(b) Upon a change in the road vehicle by a major repair or alteration of any of the essential features required in § 115.51. Repairs by replacement in kind do not constitute a change of the essential features.

Subpart F—Procedures for Approval of Road Vehicles by Design Type

§ 115.60 General.

This subpart provides for the approval and certification of road vehicles manufactured by design type.

§ 115.61 Eligibility.

Any manufacturer of road vehicles which are being manufactured in a type series from a standard design and specifications, so that each road vehicle has identical characteristics, may apply for an approval by design type.

§ 115.62 Where to apply.

A manufacturer may apply for approval of a road vehicle by design type to a Certifying Authority of the country in which the road vehicle is manufactured, if such country is a contracting party to the TIR Convention, 1975.

§ 115.63 Application for approval.

Each application by a manufacturer for certification of a road vehicle by design type must include:
(a) Three copies, each no larger than 3 feet by 4 feet, of the Customs and TIR plan;
(b) Customs and TIR plan number;
(c) Three copies of the specifications which include the following information:
(1) The name and address of the manufacturer and the owner; and
(2) A description of the road vehicle including the:
(i) Particulars of construction;
(ii) Dimensions;

(iii) Construction materials; and

(iv) Marks and numbers, including chassis, engine, and registration numbers.

(d) A statement signed by the manufacturer that:

(1) It will present vehicles of the type concerned to the Certifying Authority which that Authority may wish to examine;

(2) Permit the Certifying Authority to examine further units at any time during or after the production run;

(3) Notify the Certifying Authority of each change in the design or specifications before adoption;

(4) Mark the road vehicles in a visible place with the identification number or letters of the design type and the serial number of the vehicle in the type series manufacturer's number; and

(5) Keep a record of vehicles manufactured according to the design type.

§ 115.64 Plan review.

(a) A manufacturer or owner who wants road vehicles to be approved by design type must submit the plans and specifications of the road vehicles to the Certifying Authority.

(b) The Certifying Authority that examines the plans and specifications submitted in accordance with paragraph (a) of this section shall:

(1) Approve the plans and specifications in accordance with the requirements of § 115.65 and arrange to inspect a road vehicle in accordance with § 115.66; or

(2) Advise the applicant of any necessary changes to be made for compliance with the requirements of § 115.65.

(c) If changes in design of the road vehicle are made during production but after approval of the plans and specifications by the Certifying Authority, the manufacturer shall immediately notify the Certifying Authority and furnish it with ''as-built'' drawings of the road vehicle so that the plans can be reviewed and one or more road vehicles inspected during the production stage to confirm that they continue to comply with the requirements of § 115.65.

§ 115.65 Technical requirements for road vehicles by design type.

The plans and specifications of a road vehicle that are submitted in accordance with the requirements contained in § 115.64, and the one or more road vehicles that are inspected in accordance with the requirements of § 115.66, must comply with the requirements of Annex 2 of the Customs Convention on the International Transport of Goods Under Cover of TIR Carnets (TIR Convention), November 14, 1975 (TIAS). Copies of Annex 2 may be obtained from the Headquarters, U.S. Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

[T.D. 86–92, 51 FR 16161, May 1, 1986, as amended by T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 115.66 Examination, inspection, and testing.

(a) Before the issuance of a certificate of approval by design type, the Certifying Authority shall:

(1) Make a physical examination of one or more vehicles of the production series concerned;

(2) Assure itself as to the adequacy of the manufacturer's system to control quality of materials used, manufacturing methods, and finished road vehicles; and

(3) Require the manufacturer to make available to the Certifying Authority records of materials, including affidavits furnished by suppliers.

(b) The Certifying Authority shall conduct such examinations, inspections, and testing of the production run road vehicles as it deems necessary.

§ 115.67 Approval certificate.

The holder of the approval certificate shall, before using the vehicle for the carriage of goods under the cover of a TIR Carnet, fill in as may be required on the approval certificate:

(a) The registration number given to the vehicle (item No. 1); or

(b) In the case of a vehicle not subject to registration, particulars of his name and business address (item No. 8). (See Annex 4 of the Convention for model of certificate of approval.)

§ 115.68 Termination of approval.

Any road vehicle whose essential features are changed shall no longer be covered by the design type approval. Such a road vehicle may be made available to a Certifying Authority for inspection and individual approval in accordance with subpart E of this part. However, repairs in kind do not constitute a change of the essential features.

PART 118—CENTRALIZED EXAMINATION STATIONS

Sec.

AUTHORITY: 19 U.S.C. 66, 1499, 1623, 1624; 22 U.S.C. 401; 31 U.S.C. 5317.

SOURCE: T.D. 93–6, 58 FR 5604, Jan. 22, 1993, unless otherwise noted.

§ 118.0 Scope.

This part sets forth regulations providing for the making of agreements between Customs and persons desiring to operate a centralized examination station (CES). It covers the application process, the responsibilities of the person or entity selected to be a CES operator, the written agreement to operate a CES facility, the port director's discretion to immediately suspend a CES operator's or entity's selection and the written agreement to operate the CES or to propose the permanent revocation of a CES operator's or entity's selection and cancellation of the written agreement for specified conduct, and the appeal procedures to challenge an immediate suspension or proposed revocation and cancellation action. Procedures and requirements for the transfer of merchandise to a CES are set forth in part 151 of this chapter.

[T.D. 93–6, 58 FR 5604, Jan. 22, 1993; 58 FR 6574, Jan. 29, 1993, as amended by T.D. 96–57, 61 FR 39070, July 26, 1996]

Subpart A—General Provisions

§ 118.1 Definition.

A centralized examination station (CES) is a privately operated facility, not in the charge of a Customs officer, at which merchandise is made available to Customs officers for physical examination. A CES may be established in any port or any portion of a port, or any other area under the jurisdiction of a port director. To present outbound cargo for inspection at a CES at a port other than the shipment's designated port of exit, either proof of the shipper's consent to the inspection must be furnished or a complete set of transportation documents must accompany the shipment to evidence that exportation of the goods is imminent and that the goods are committed to export, thereby, making them subject to Customs examination.

[T.D. 93–6, 58 FR 5604, Jan. 22, 1993, as amended by T.D. 98–29, 63 FR 16684, Apr. 6, 1998]

§ 118.2 Establishment of a CES.

When a port director makes a preliminary determination that a new CES should be established, or when the term of an existing CES is about to expire and the port director believes that the need for a CES still exists, he will announce, by written notice posted at the customhouse and by any other written methods he may consider appropriate (such as normal port information distribution channels, trade bulletins or local newspapers), that applications to operate a CES are being accepted. This notice will include the general criteria together with any local criteria that applicants must

meet (see § 118.11 of this part), and will invite the public to submit any relevant written comments on whether a new CES should be established or on whether there is still a need for a CES. Applications will be accepted only in response to the port notice and must be received within 60 calendar days from the date of the notice. Public comments must be received within 30 calendar days from the date of the notice.

§ 118.3 Written agreement.

The applicant tentatively selected to operate a CES must sign a written agreement with CBP before commencing operations. Failure to execute a written agreement with CBP in a timely manner will result in the revocation of that applicant's tentative selection and may result in tentative selection of another applicant or republication of the notice soliciting applications. In addition to the provisions described elsewhere in this part, the agreement will specify the duration of the authority to operate the CES. That duration will be not less than three years nor more than five years. Such agreements cannot be transferred, sold, inherited, or conveyed in any manner. At the expiration of the agreement, an operator wishing to reapply may do so pursuant to this part and his application will be considered de novo.

[T.D. 93–6, 58 FR 5604, Jan. 22, 1993, as amended at CBP Dec. 10–29, 75 FR 52452, Aug. 26, 2010]

§ 118.4 Responsibilities of a CES operator.

By signing the agreement and commencing operation of a CES, an operator agrees to:

(a) Maintain the facility designated as the CES in conformity with the security standards as outlined in the approved application;

(b) Provide adequate personnel and equipment to ensure reliable service for the opening, presentation for inspection, and closing of all types of cargo designated for examination by Customs. Such service must be provided on a ''first come-first served'' basis;

(c) Assess service fees as outlined in the fee schedule included in the approved application or as changed under § 118.5 of this part and bill users directly for services rendered;

(d) Assume responsibility for any charges or expenses incurred in connection with the operation of the CES;

(e) Maintain, at his own expense, adequate liability insurance with respect to the property within his control and with respect to persons having access to the CES;

(f) Keep current the list filed with the port director pursuant to § 118.11(f) of this part. Additions to or deletions from the list must be submitted in writing to the port director within 10 calendar days of the commencement or termination of employment;

(g) Maintain a Customs custodial bond in an amount set by the port director. The CES operator will accept and keep safe all merchandise delivered to the CES for examination. The bond will include liability for transporting merchandise to the CES from within the district boundaries (see definition of ''district'' at § 112.1); such liability is assumed by the CES operator when he picks up merchandise for transportation to his facility. The operator also agrees to increase the amount of the bond if deemed appropriate by the port director.

(h) Maintain and make available for Customs examination all records connected with the operation of the CES in accordance with part 162 of this chapter and retain such records for a period of not less than five years from the date of the transaction or examination conducted pursuant to the agreement to operate the CES;

(i) Submit, if requested by Customs, the fingerprints of all employees involved in the CES operation;

(j) Provide office space, parking spaces, appropriate sanitary facilities, and potable water to Customs personnel at no charge or a charge of $1 per year; and

(k) Perform in accordance with any other reasonable requirements imposed by the port director.

(l) Provide transportation for merchandise to the CES from within the district boundaries (see definition of ''district'' at § 112.1). This responsibility is optional. If the CES operator chooses to provide transportation, he shall receipt for the merchandise when

he picks it up and assume liability for the merchandise at that time.

[T.D. 93–6, 58 FR 5604, Jan. 22, 1993, as amended by T.D. 94–81, 59 FR 51495, Oct. 12, 1994; T.D. 95–77, 60 FR 50020, Sept. 27, 1995; T.D. 98–29, 63 FR 16684, Apr. 6, 1998]

§ 118.5 Procedures for changes to a fee schedule.

Whenever a CES operator intends to increase, add to or otherwise change the service fees set forth in the fee schedule referred to in §118.4(c) of this part, the operator shall provide 90 calendar days advance written notice to the port director of such proposed fee schedule change and shall include in the notice a justification for any increased or additional fee. Following receipt of this written notice, the port director will advise the public of the proposed fee schedule change and invite comments thereon under the public notice and comment procedures set forth in §118.2 of this part. After a review of the proposed fee schedule change and any public comments thereon, and based on the principle of comparability set forth in §118.11(c) of this part, the port director will decide whether to approve the change, will notify the CES operator in writing of his decision, and will notify the public of any approved fee schedule change by the same methods that were used to provide the public with notice of the proposed change. A CES operator shall remain bound by the existing fee schedule and shall not implement any fee schedule change prior to receipt of written approval of the change from the port director.

Subpart B—Application To Establish a CES

§ 118.11 Contents of application.

Each application to operate a CES shall consist of the following information, any application not providing all of the specified information will not be considered, and the responses to paragraphs (b), (c), (d), (g) and (h) of this section shall constitute the criteria used to judge the application:

(a) The name and address of the facility to be operated as the CES, the names of all principals or corporate officers, and the name and telephone number of an individual to be contacted for further information;

(b) A description of the CES's accessibility within the port or other location, and a floor plan of the facility actually dedicated to the CES operation showing bay doors, office space, exterior features, security features, and staging and work space. Where a significant capital expenditure would be required in order for an existing facility to meet security or other physical or equipment requirements necessary for the CES operation, the applicant may request in the application time to conform the facility to such requirements. The agreement referred to in §118.3 of this part shall not be executed, in any event, until the facility is conformed to meet the requirements;

(c) A schedule of fees clearly showing what the applicant will charge for each type of service. Subject to any special costs incurred by the applicant such as facility modifications to meet specific cargo handling or storage requirements or to meet Customs security standards, the fees set forth in the schedule shall be comparable to fees charged for similar services in the area to be served by the CES;

(d) A detailed list of equipment showing that the applicant can make a diverse variety of cargo available for examination in an efficient and timely manner;

(e) A copy of an approved custodial bond on Customs Form 301. If the applicant does not possess such a bond, a completed Customs Form 301 must be included with the application for approval as a prerequisite to selection;

(f) A list of all employees involved in the CES operation setting forth their names, dates of birth, and social security numbers. (Providing social security numbers is voluntary; however, failure to provide the number may hinder the investigation process.);

(g) Any information showing the applicant's experience in international cargo operations and knowledge of Customs procedures and regulations; and

(h) Any other information to address any local criteria that the port director considers essential to the selection process based on port conditions.

[T.D. 93–6, 58 FR 5604, Jan. 22, 1993; 58 FR 6574, Jan. 29, 1993, as amended by T.D. 98–29, 63 FR 16684, Apr. 6, 1998]

§ 118.12 Action on application.

Following submission of all applications in accordance with §§ 118.2 and 118.11 of this part, the port director will advise the public of the applications received and invite comments thereon under the public notice and comment procedures set forth in § 118.2; with regard to each application, the notice will set forth the name of the applicant, the address of the facility proposed to be operated as the CES, the proposed fee schedule, the list of equipment at the facility, and the number of employees to be involved in the CES operation. The port director, based on a review of all applications under the criteria set forth in § 118.11 and any public comments submitted under § 118.2 or this section, shall determine whether a CES operator should be selected and, if a CES operator is to be selected, shall select the applicant that will best meet the examination needs of Customs and facilitate the movement of merchandise.

[T.D. 93–6, 58 FR 5604, Jan. 22, 1993, as amended by T.D. 99–64, 64 FR 43266, Aug. 10, 1999]

§ 118.13 Notification of selection or nonselection.

The applicant selected to operate a CES will be notified in writing by the port director of his tentative selection. The selection shall become final upon execution of the written agreement between Customs and the applicant under § 118.3 of this part, and the port director will advise the public of the final selection and of the date on which the CES will commence operation under the agreement in accordance with the notice procedures set forth in § 118.2 of this part. Each applicant not selected to be a CES operator will be so notified in writing and with a statement of the reason of nonselection.

Subpart C—Termination of a CES

§ 118.21 Temporary suspension; permanent revocation of selection and cancellation of agreement to operate a CES.

The port director may immediately suspend or propose permanent revocation and cancellation of CES operations for cause as provided in this section.

(a) *Immediate suspension.* The port director may immediately suspend, for a temporary period of time or until revocation and cancellation proceedings are concluded pursuant to § 118.23, a CES operator's or entity's selection and the written agreement to operate the CES if:

(1) The selection and written agreement were obtained through fraud or the misstatement of a material fact; or

(2) The CES operator or an officer of a corporation which is a CES operator or a person the port director determines is exercising substantial ownership or control over such operator or officer is indicted for, convicted of, or has committed acts, which would constitute a felony, or a misdemeanor involving theft or a theft-connected crime. In the absence of an indictment or conviction, the port director must have probable cause to believe the proscribed acts occurred.

(b) *Proposed revocation and cancellation.* The port director may propose to revoke the selection as operator and cancel the agreement to operate a CES if:

(1) The CES operator refuses or otherwise fails to follow any proper order of a Customs officer or any Customs order, rule, or regulation relative to the operation of a CES, or fails to operate in accordance with the terms of his agreement or to comply with any of the provisions of § 118.4 of this part;

(2) The CES operator fails to retain merchandise which has been designated for examination;

(3) The CES operator does not provide secure facilities or properly safeguard merchandise within the CES;

(4) The CES operator fails to furnish a current list of names, addresses and other information required by § 118.4 of this part; or

(5) The custodial bond required by §118.4 of this part is determined to be insufficient in amount or lacking sufficient sureties, and a satisfactory new bond with good and sufficient sureties is not furnished within a reasonable time.

(6) The CES operator or an officer of a corporation which is a CES operator or a person the port director determines is exercising substantial ownership or control over such operator or officer is indicted for, convicted of, or has committed acts, which would constitute any of the offenses listed under paragraph (a) of this section. Where adverse action is initiated by the port director pursuant to paragraph (a) of this section and continued under this paragraph, the suspension of CES activities remains in effect through the appeal procedures provided under §118.23.

(c) *Circumstance of change in employment not a bar to adverse action.* Any change in the employment status of a corporate officer (for example, discharge, resignation, demotion, or promotion) prior to indictment or conviction or after committing any acts which would constitute the culpable behavior described under paragraph (a) of this section, will not preclude application of this section, but may be taken into account by the port director in exercising discretion to take adverse action. If the person whose employment status changed remains in a substantial ownership, control, or beneficial relationship with the CES operator, this factor will also be considered in exercising discretion under this section.

[T.D. 93–6, 58 FR 5604, Jan. 22, 1993; 58 FR 6574, Jan. 29, 1993, as amended by T.D. 96–57, 61 FR 39071, July 26, 1996]

§118.22 Notice of immediate suspension or proposed revocation and cancellation action.

Adverse action pursuant to the provisions of §118.21(a) or (b) is initiated when the port director serves written notice on the operator or entity selected to operate the CES. The notice shall be in the form of a statement specifically setting forth the grounds for the adverse action and shall inform the operator of the appeal procedures under §118.23 of this part.

[T.D. 96–57, 61 FR 39071, July 26, 1996]

§118.23 Appeal to the Assistant Commissioner; procedure; status of CES operations.

(a) *Appeal to the Assistant Commissioner.* Appeal of a port director's decision under §118.21(a) or (b) must be filed with the Assistant Commissioner, Office of Field Operations, within 10 calendar days of receipt of the written notice of the adverse action. The appeal shall be filed in duplicate and shall set forth the CES operator's or entity's responses to the grounds specified by the port director in his written notice letter for the adverse action initiated. The Assistant Commissioner, Office of Field Operations, or his designee, shall render a written decision to the CES operator or entity, stating the reasons for the decision, by letter mailed within 30 working days following receipt of the appeal, unless the period for decision is extended with due notification to the CES operator or entity.

(b) *Status of CES operations during appeal.* During this appeal period, an immediate suspension of a CES operator's or entity's selection and written agreement pursuant to §118.21(a) of this part shall remain in effect. A proposed revocation of a CES operator's or entity's selection and cancellation of the written agreement pursuant to §118.21(b)(1) through (5) of this part shall not take effect unless the appeal process under this paragraph has been concluded with a decision adverse to the operator.

(c) *Effect of suspension or revocation.* Once a suspension or revocation action takes effect, the CES operator must cease CES operations. However, when CES operations are suspended or revoked and cancelled by Customs, it is the CES operator's responsibility to ensure that merchandise already at the CES is properly consigned to another location for inspection, as directed by the importer and approved by the port director.

[T.D. 96–57, 61 FR 39071, July 26, 1996]

PART 122—AIR COMMERCE REGULATIONS

Sec.

Subpart I—Procedures for Residue Cargo and Stopover Passengers

Subpart J—Transportation in Bond and Merchandise in Transit

Subpart K—Accompanied Baggage in Transit

Subpart L—Transit Air Cargo Manifest (TACM) Procedures

Subpart M—Aircraft Liquor Kits

Subpart N—Flights to and From the U.S. Virgin Islands

Subpart O [Reserved]

Subpart P—Public Aircraft [Reserved]

Subpart Q—Penalties

Subpart R—Air Carrier Smuggling Prevention Program

Subpart S—Access to Customs Security Areas

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1415, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

Section 122.22 is also issued under 46 U.S.C. 60105.

Section 122.49a also issued under 8 U.S.C. 1101, 1221, 19 U.S.C. 1431, 49 U.S.C. 44909.

Section 122.49b also issued under 8 U.S.C. 1221, 19 U.S.C. 1431, 49 U.S.C. 114, 44909.

Section 122.49c also issued under 8 U.S.C. 1221, 19 U.S.C. 1431, 49 U.S.C. 114, 44909.

Section 122.49d also issued under 49 U.S.C. 44909(c)(3).

Section 122.75a also issued under 8 U.S.C. 1221, 19 U.S.C. 1431.

Section 122.75b also issued under 8 U.S.C. 1221, 19 U.S.C. 1431, 49 U.S.C. 114.

SOURCE: T.D. 88–12, 53 FR 9292, Mar. 22, 1988, unless otherwise noted.

§ 122.0 Scope.

(a) *Applicability.* (1) The regulations in this part relate to the entry and clearance of aircraft and the transportation of persons and cargo by aircraft, and are applicable to all air commerce.

(2) The regulations in this part do not apply to the United States Postal Service's transmission of advance electronic information for inbound international mail shipments by air, see §145.74 of this chapter.

(b) *Authority of other agencies.* Nothing in this part is intended to divest or diminish authority and operational control that are vested in the FAA or any other agency, particularly with respect to airspace and aircraft safety.

[CBP Dec. 08–43, 73 FR 68309, Nov. 18, 2008, as amended by CBP Dec. 21-04, 86 FR 14277, Mar. 15, 2021]

Subpart A—General Definitions and Provisions

§ 122.1 General definitions.

The following definitions apply in this part, unless otherwise stated:

(a) *Aircraft.* An ''aircraft'' is any device now known, or hereafter invented, used or designed for navigation or flight in the air. It does not include hovercraft.

(b) *Aircraft commander.* An ''aircraft commander'' is any person serving on an aircraft who is in charge or has command of its operation and navigation.

(c) *Agent.* An ''agent'' is any person who is authorized to act for or in place of:

(1) An owner or operator of a scheduled airline by written authority; or

(2) An owner or operator of a nonscheduled airline, by power of attorney.

The authority to act shall be in writing and satisfactory to the port director.

(d) *Commercial aircraft.* A ''commercial aircraft'' is any aircraft transporting passengers and/or cargo for some payment or other consideration, including money or services rendered.

(e) *International airport.* An ''international airport'' is any airport designated by:

(1) The Secretary of the Treasury or the Commissioner of Customs as a port of entry for aircraft arriving in the U.S. from any place outside thereof and for the merchandise carried on such aircraft;

(2) The Attorney General as a port of entry for aliens arriving on such aircraft; and

(3) The Secretary of Health and Human Services as a place for quarantine inspection.

(f) *Landing rights airport.* A ''landing rights airport'' is any airport, other than an international airport or user fee airport, at which flights from a foreign area are given permission by Customs to land.

(g) *Preclearance.* ''Preclearance'' is the examination and inspection of air travelers and their baggage, at the request of an airline, at foreign places where Customs personnel are stationed for that purpose. Preclearance may be used only for air travelers and their baggage, not for merchandise.

(h) *Private aircraft.* A ''private aircraft'' is any aircraft engaged in a personal or business flight to or from the U.S. which is not:

(1) Carrying passengers and/or cargo for commercial purposes;

(2) Leaving the U.S. carrying neither passengers nor cargo in order to lade passengers and/or cargo in a foreign area for commercial purposes; or

(3) Returning to the U.S. carrying neither passengers nor cargo in ballast after leaving with passengers and/or cargo for commercial purposes;

(i) *Public aircraft.* A ''public aircraft'', is any aircraft owned by, or under the complete control and management of the U.S. government or any of its agencies, or any aircraft owned by or under the complete control and management

of any foreign government which exempts public aircraft of the U.S. from arrival, entry and clearance requirements similar to those provided in subpart C of this part, but not including any government owned aircraft engaged in carrying persons or property for commercial purposes. This definition applies if the aircraft is:

(1) Manned entirely by members of the armed forces or civil service of such government, or by both;

(2) Transporting only property of such government, or passengers traveling on official business of such government; or

(3) Carrying neither passengers nor cargo.

(j) *Residue cargo.* ''Residue cargo'' is any cargo on board an aircraft arriving in the U.S. from a foreign area if the:

(1) Final delivery airport in the U.S. is not the port of arrival; or

(2) Cargo remains on board the aircraft and travels from port to port in the U.S., for final delivery in a foreign area.

(k) *Scheduled airline.* A ''scheduled airline'' is any individual, partnership, corporation or association:

(1) Engaged in air transportation under regular schedules to, over, away from, or within the U.S.; and

(2) Holding a Foreign Air Carrier Permit or a Certificate of Public Convenience and Necessity, issued by the Department of Transportation pursuant to 14 CFR parts 201 and 213.

(l) *United States.* Except when used in another context, ''U.S.'' means the territory of the several States, the District of Columbia, and Puerto Rico, including the territorial waters and overlying airspace.

(m) *User fee airport.* A ''user fee airport'' is an airport so designated by Customs. Flights from a foreign area may be granted permission to land at a user fee airport rather than at an international airport or a landing rights airport. An informational listing of user fee airports is contained in § 122.15.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 88–16, 53 FR 10371, Mar. 31, 1988; T.D. 92–90, 57 FR 43397, Sept. 21, 1992; T.D. 93–66, 58 FR 44130, Aug. 19, 1993]

§ 122.2 Other Customs laws and regulations.

Except as otherwise provided for in this chapter, and insofar as such laws and regulations are applicable, aircraft arriving or having arrived from or departing for any foreign port or place, and the persons and merchandise, including baggage, carried thereon, shall be subject to the laws and regulations applicable to vessels to the extent that such laws and regulations are administered or enforced by Customs, as provided in 19 U.S.C. 1644 and 1644a.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 98–74, 63 FR 51288, Sept. 25, 1998]

§ 122.3 Availability of forms.

The forms mentioned in this part may be purchased from the director of port of entry. A small quantity of each form is set aside by port directors for free distribution and official use.

§ 122.4 English language required.

A translation in the English language shall be attached to the original and each copy of any form or document written or printed in a foreign language.

§ 122.5 Reproduction of Customs forms.

(a) *Specifications.* Subject to approval by Customs, the forms mentioned in this part may be printed by private parties if the specified size, wording arrangement, style and size of type, and quality of paper are used.

(b) *Exceptions.* Port directors may accept privately printed copies of the General Declaration (Customs Form 7507) and air cargo manifest (Customs Form 7509) which are different from the official forms. The privately printed forms shall include all information required on the official forms. The differences allowed are:

(1) *General Declaration.* Customs Form 7507 may be printed in several languages, so long as the form includes an English version. The instructions on the reverse side of the official form may be omitted.

(2) *Air cargo manifest.* Customs Form 7509 may be changed to allow for additional information used by the airline.

Subpart B—Classes of Airports

§ 122.11 Designation as international airport.

(a) *Procedure.* International airports, as defined in § 122.1(e), will be designated after due investigation to establish that sufficient need exists in any port to justify such designation and to determine the airport best suited for such purpose. In each case, a specific airport will be chosen. International airports will be publicly owned, unless circumstances require otherwise

(b) *Withdrawal of designation.* The designation as an international airport may be withdrawn for any of the following reasons:

(1) The amount of business clearing through the airport does not justify maintenance of inspection equipment and personnel;

(2) Proper facilities are not provided or maintained by the airport;

(3) The rules and regulations of the Federal Government are not followed; or

(4) Some other location would be more useful.

(c) *Providing office space to the Federal Government.* Each international airport shall provide, without cost to the Federal Government, proper office and other space for the sole use of Federal officials working at the airport. A suitable paved loading area shall be supplied by each airport at a place convenient to the office space. The loading area shall be kept for the use of aircraft entering or clearing through the airport.

§ 122.12 Operation of international airports.

(a) *Entry, clearance and charges.* International airports are open to all aircraft for entry and clearance at no charge by Customs. However, charges may be assessed by the airport for commercial or private use of the airport.

(b) *Servicing of aircraft.* When an aircraft enters or clears through an international airport, it shall be promptly serviced by airport personnel solely on the basis of order of arrival or readiness for departure. Servicing charges imposed by the airport operators shall not be greater than the schedule of charges in effect at the airport in question.

(c) *FAA rules; denial of permission to land*—(1) *Federal Aviation Administration.* International airports must follow and enforce any requirements for airport operations, including airport rules that are set out by the Federal Aviation Administration in 14 CFR part 91.

(2) *Customs and Border Protection.* CBP, based on security or other risk assessments, may limit the locations where aircraft entering the United States from a foreign port or place may land. Consistent with § 122.32(a) of this Title, CBP has the authority to deny aircraft permission to land in the United States, based upon security or other risk assessments.

(3) *Commercial aircraft.* Permission to land at an international airport may be denied to a commercial aircraft if advance electronic information for incoming foreign cargo aboard the aircraft has not been received as provided in § 122.48a except in the case of emergency or forced landings.

(4) *Private Aircraft.* Permission to land at an international airport will be denied if the pilot of a private aircraft arriving from a foreign port or place fails to submit an electronic manifest and notice of arrival pursuant to § 122.22, except in the case of emergency or forced landings.

(d) *Additional requirements.* Additional requirements may be put into effect at a particular airport as the needs of the Customs port served by the airport demand.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by CBP Dec. 03–32, 68 FR 68170, Dec. 5, 2003; CBP Dec. 08–43, 73 FR 68309, Nov. 18, 2008]

§ 122.13 List of international airports.

The following is a list of international airports of entry designated by the Secretary of the Treasury.

Location and Name

Albany, N.Y.—Albany County Airport
Baudette, Minn.—Baudette International Airport
Bellingham, Wash.—Bellingham International Airport
Brownsville, Tex.—Brownsville International Airport
Burlington, Vt.—Burlington International Airport

Calexico, Calif.—Calexico International Airport
Caribou, Maine—Caribou Municipal Airport
Chicago, Ill.—Midway Airport
Cleveland, Ohio—Cleveland Hopkins International Airport
Cut Bank, Mont.—Cut Bank Airport
Del Rio, Tex.—Del Rio International Airport
Detroit, Mich.—Detroit City Airport
Detroit, Mich.—Detroit Metropolitan Wayne County Airport
Douglas, Ariz.—Bisbee-Douglas International Airport
Duluth, Minn.—Duluth International Airport
Duluth, Minn.—Sky Harbor Airport
El Paso, Tex.—El Paso International Airport
Fort Lauderdale, Fla.—Fort Lauderdale-Hollywood International Airport
Friday Harbor, Wash.—Friday Harbor Seaplane Base
Grand Forks, N. Dak.—Grand Forks International Airport
Great Falls, Mont.—Great Falls International Airport
Havre, Mont.—Havre City-County Airport
Houlton, Maine—Houlton International Airport
International Falls, Minn.—Falls International Airport
Juneau, Alaska—Juneau Municipal Airport
Juneau, Alaska—Juneau Harbor Seaplane Base
Ketchikan, Alaska—Ketchikan Harbor Seaplane Base
Key West, Fla.—Key West International Airport
Laredo, Tex.—Laredo International Airport
Massena, N.Y.—Richards Field
Maverick, Tex.—Maverick County Airport
McAllen, Tex.—Miller International Airport
Miami, Fla.—Chalk Seaplane Base
Miami, Fla.—Miami International Airport
Minot, N.Dak.—Minot International Airport
Nogales, Ariz.—Nogales International Airport
Ogdensburg, N.Y.—Ogdensburg Harbor
Ogdensburg, N.Y.—Ogdensburg International Airport
Oroville, Wash.—Dorothy Scott Airport
Oroville, Wash.—Dorothy Scott Seaplane Base
Pembina, N.Dak.—Pembina Municipal Airport
Port Huron, Mich.—St. Clair County International Airport
Port Townsend, Wash.—Jefferson County International Airport
Ranier, Minn.—Ranier Internatioal Seaplane Base
Rochester, N.Y.—Rochester-Monroe County Airport
Rouses Point, N.Y.—Rouses Point Seaplane Base
San Diego, Calif.—San Diego International Airport (Lindbergh Field)
Sandusky, Ohio—Griffing-Sandusky Airport
Sault Ste. Marie, Mich.—Sault Ste. Marie City-County Airport
Seattle, Wash.—King County International Airport
Seattle, Wash.—Lake Union Air Service (Seaplanes)
Tampa, Fla.—Tampa International Airport
Tucson, Ariz.—Tucson International Airport
Watertown, N.Y.—Watertown New York International Airport
West Palm Beach, Fla.—Palm Beach International Airport
Williston, N. Dak.—Sloulin Field International Airport
Wrangell, Alaska—Wrangell Seaplane Base
Yuma, Ariz.—Yuma International Airport

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 96–44, 61 FR 25778, May 23, 1996; T.D. 99–40, 64 FR 18566, Apr. 15, 1999]

§ 122.14 Landing rights airport.

(a) *Permission to land.* Permission to land at a landing rights airport may be given as follows:

(1) *Scheduled flight.* The scheduled aircraft of a scheduled airline may be allowed to land at a landing rights airport. Permission is given by the director of the port, or his representative, at the port nearest to which first landing is made.

(i) *Additional flights, charters or changes in schedule—Scheduled aircraft.* If a new carrier plans to set up a new flight schedule, or an established carrier makes changes in its approved schedule, landing rights may be granted by the port director.

(ii) *Additional or charter flight.* If a carrier or charter operator wants to begin operating or to add flights, application must be made to the port director for landing rights. All requests must be made not less than 48 hours before the intended time of arrival, except in emergencies. If the request is oral, it must be put in writing before or at the time of arrival.

(2) *Private aircraft.* The pilots of private aircraft are required to secure permission to land from CBP following transmission of the advance notice of arrival via an electronic data interchange system approved by CBP, pursuant to §122.22. Prior to departure as defined in §122.22(a), from a foreign port or place, the pilot of a private aircraft must receive a message from CBP that landing rights have been granted for that aircraft at a particular airport.

(3) *Other aircraft.* Following advance notice of arrival pursuant to §122.31, all other aircraft may be allowed to land at a landing rights airport by the director of the port of entry or station nearest the first place of landing.

(4) *Denial or withdrawal of landing rights.* Permission to land at a landing rights airport may be denied or permanently or temporarily withdrawn for any of the following reasons:

(i) Appropriate and/or sufficient Federal Government personnel are not available;

(ii) Proper inspectional facilities or equipment are not available at, or maintained by, the requested airport;

(iii) The entity requesting the landing rights has a history of failing to abide by appropriate instructions given by a CBP officer;

(iv) Reasonable grounds exist to believe that applicable Federal rules and regulations pertaining to safety, including cargo safety and security, CBP, or other inspectional activities may not be adhered to; or

(v) CBP has deemed it necessary to deny landing rights to an aircraft.

(5) *Appeal of denial or withdrawal of landing rights for commercial scheduled aircraft as defined in section 122.1(d).* In the event landing rights are denied or subsequently permanently withdrawn by CBP, within 30 days of such decision, the affected party may file a written appeal with the Assistant Commissioner, Office of Field Operations, Headquarters.

(6) *Emergency or forced landing.* Permission to land is not required for an emergency or forced landing (covered under §122.35).

(b) *Payment of expenses.* In the case of an arrival at a location outside the limits of a port of entry, the owner, operator or person in charge of the aircraft must pay any added charges for inspecting the aircraft, passengers, employees and merchandise when landing rights are given (see §§24.17 and 24.22(e) of this chapter).

(c) *Payment of expenses.* In the case of an arrival at a location outside the limits of a port of entry, the owner, operator or person in charge of the aircraft shall pay any added charges for inspecting the aircraft, passengers, employees and merchandise when landing rights are given (see §§24.17 and 24.22(e) of this chapter).

(d) *Denial or withdrawal of landing rights.* Permission to land at a landing rights airport may be denied or withdrawn for any of the following reasons:

(1) Appropriate and/or sufficient Federal Government personnel are not available;

(2) Proper inspectional facilities or equipment are not available at, or maintained by, the requested airport;

(3) The entity requesting services has failed to abide by appropriate instructions of a Customs officer;

(4) Advance cargo information has not been received as provided in §122.48a;

(5) Other reasonable grounds exist to believe that Federal rules and regulations pertaining to safety, including cargo safety and security, and Customs, or other inspectional activities have not been followed; or

(6) The granting of the requested landing rights would not be in the best interests of the Government.

(e) *Appeal of denial or withdrawal.* In the event landing rights are denied or withdrawn by the port director, a written appeal of the decision may be made to the Assistant Commissioner, Office of Field Operations, Headquarters.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988. Redesignated and amended by T.D. 92–90, 57 FR 43397, Sept. 21, 1992; T.D. 95–77, 60 FR 50020, Sept. 27, 1995; T.D. 99–27, 64 FR 13675, Mar. 22, 1999; CBP Dec. 03–32, 68 FR 68170, Dec. 5, 2003; CBP Dec. 08–43, 73 FR 68309, Nov. 18, 2008]

§122.15 User fee airports.

(a) *Permission to land.* The procedures for obtaining permission to land at a user fee airport are the same procedures as those set forth in §122.14 for landing rights airports.

(b) *List of user fee airports.* The following is a list of user fee airports designated by the Commissioner of Customs in accordance with 19 U.S.C. 58b. The list is subject to change without notice. Information concerning service at any user fee airport can be obtained by calling the airport or its authority directly.

Location	Name
Addison, Texas	Addison Airport.
Appleton, Wisconsin	Appleton International Airport.

Location	Name
Bedford, Massachusetts.	L.G. Hanscom Field.
Belgrade, Montana	Bozeman Yellowstone International Airport.
Boca Raton, Florida	Boca Raton Airport.
Broomfield, Colorado.	Rocky Mountain Metropolitan Airport.
Carlsbad, California	McClellan-Palomar Airport.
Conroe, Texas	Conroe-North Houston Regional Airport.
Dallas, Texas	Dallas Love Field Municipal Airport
Daytona Beach, Florida.	Daytona Beach International Airport.
Edinburg, Texas	South Texas International Airport at Edinburg.
Egg Harbor Township, New Jersey.	Atlantic City International Airport.
Englewood, Colorado.	Centennial Airport.
Fort Worth, Texas ..	Fort Worth Alliance Airport.
Fort Worth, Texas ..	Fort Worth Meacham International Airport.
Fresno, California ...	Fresno Yosemite International Airport.
Gypsum, Colorado	Eagle County Regional Airport.
Harlingen, Texas	Valley International Airport.
Hayden, Idaho	Coeur d'Alene Airport.
Ithaca, New York ...	Ithaca Tompkins Regional Airport.
Johnson City, New York.	Greater Binghamton Airport.
Lakeland, Florida ...	Lakeland Linder International Airport.
Lansing, Michigan ..	Capital Region International Airport.
Leesburg, Florida ...	Leesburg International Airport.
Lexington, Kentucky	Blue Grass Airport.
Manchester, New Hampshire.	Manchester-Boston Regional Airport.
Marathon, Florida ...	Florida Keys Marathon Airport.
Mascoutah, Illinois	MidAmerica St. Louis Airport.
McKinney, Texas ...	McKinney National Airport.
Melbourne, Florida	Orlando Melbourne International Airport.
Mesa, Arizona	Phoenix-Mesa Gateway Airport.
Midland, Texas	Midland International Air and Space Port.
Morristown, New Jersey.	Morristown Municipal Airport.
Moses Lake, Washington.	Grant County International Airport.
Myrtle Beach, South Carolina.	Myrtle Beach International Airport.
Naples, Florida	Naples Municipal Airport.
New Windsor, New York.	New York Stewart International Airport.
Ontario, California ..	Ontario International Airport.
Orlando, Florida	Orlando Executive Airport.
Palm Springs, California.	Palm Springs International Airport.
Plattsburgh, New York.	Plattsburgh International Airport.
Rochester, Minnesota.	Rochester International Airport.
Rogers, Arkansas ..	Rogers Executive Airport—Carter Field.
San Bernardino, California.	San Bernardino International Airport.
San Antonio, Texas	Kelly Field Annex.
Santa Ana, California.	John Wayne Airport.
Sarasota, Florida	Sarasota/Bradenton International Airport.
Savoy, Illinois	University of Illinois-Willard Airport.
Scottsdale, Arizona	Scottsdale Airport.
Sheboygan Falls, Wisconsin.	Sheboygan County Memorial Airport.
South Bend, Indiana.	South Bend International Airport.
St. Augustine, Florida.	Northeast Florida Regional Airport.
Stuart, Florida	Witham Field Airport.
Sugar Land, Texas	Sugar Land Regional Airport.
Trenton, New Jersey.	Trenton Mercer Airport.
Van Nuys, California.	Van Nuys Airport.
Victorville, California	Southern California Logistics Airport.
Waterford, Michigan	Oakland County International Airport.
Waukegan, Illinois ..	Waukegan National Airport.
West Chicago, Illinois.	Dupage County Airport.
Wheeling, Illinois	Chicago Executive Airport.
Yoder, Indiana	Fort Wayne International Airport.
Ypsilanti, Michigan	Willow Run Airport.

(c) *Withdrawal of designation.* The designation as a user fee airport shall be withdrawn under either of the following circumstances:

(1) If either Customs or the airport authority gives 120 days written notice of termination to the other party; or

(2) If any amounts due to be paid to Customs are not paid on a timely basis.

[T.D. 92–90, 57 FR 43397, Sept. 21, 1992]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §122.15, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

Subpart C—Private Aircraft

§122.21 Application.

This subpart applies to all private aircraft as defined in §122.1(h). No other provisions of this part apply to private aircraft, except where stated in this subpart.

§122.22 Electronic manifest requirement for all individuals onboard private aircraft arriving in and departing from the United States; notice of arrival and departure information.

(a) *Definitions.* For purposes of this section:

Departure. ''Departure'' means the point at which the aircraft is airborne and the aircraft is en route directly to its destination.

Departure Information. ''Departure Information'' refers to the data elements that are required to be electronically submitted to CBP pursuant to paragraph (c)(4) of this section.

Pilot. ''Pilot'' means the individual(s) responsible for operation of an aircraft while in flight.

Travel Document. ''Travel Document'' means U.S. Department of Homeland Security approved travel documents.

United States. ''United States'' means the continental United States, Alaska, Hawaii, Puerto Rico, the Virgin Islands of the United States, Guam and the Commonwealth of the Northern Mariana Islands.

(b) *Electronic manifest requirement for all individuals onboard private aircraft arriving in the U.S.; notice of arrival*—(1) *General requirement.* The private aircraft pilot is responsible for ensuring the notice of arrival and manifest information regarding each individual onboard the aircraft are transmitted to CBP. The pilot is responsible for the submission, accuracy, correctness, timeliness, and completeness of the submitted information, but may authorize another party to submit the information on their behalf. Except as provided in paragraph (b)(7) of this section, all data must be transmitted to CBP by means of an electronic data interchange system approved by CBP and must set forth the information specified in this section. All data pertaining to the notice of arrival for the aircraft and the manifest data regarding each individual onboard the aircraft must be transmitted at the same time via an electronic data interchange system approved by CBP.

(2) *Time for submission.* The private aircraft pilot is responsible for ensuring that the information specified in paragraphs (b)(3) and (b)(4) of this section is transmitted to CBP:

(i) For flights originally destined for the United States, any time prior to departure of the aircraft, but no later than 60 minutes prior to departure of the aircraft from the foreign port or place; or

(ii) For flights not originally destined to the United States, but diverted to a U.S. port due to an emergency, no later than 30 minutes prior to arrival; in cases of non-compliance, CBP will take into consideration that the carrier was not equipped to make the transmission and the circumstances of the emergency situation.

(3) *Manifest data required.* For private aircraft arriving in the United States the following identifying information for each individual onboard the aircraft must be submitted:

(i) Full name (last, first, and, if available, middle);

(ii) Date of birth;

(iii) Gender (F = female; M = male);

(iv) Citizenship;

(v) Country of residence;

(vi) Status on board the aircraft;

(vii) DHS-Approved travel document type (e.g. passport; alien registration card, etc.);

(viii) DHS-Approved travel document number, if a DHS-approved travel document is required;

(ix) DHS-Approved travel document country of issuance; if a DHS-approved travel document is required;

(x) DHS-Approved travel document expiration date, where applicable;

(xi) Alien registration number, where applicable;

(xii) Address while in the United States (number and street, city, state, and zip code). This information is required for all travelers including crew onboard the aircraft.

(4) *Notice of arrival.* The advance notice of arrival must include the following information about the aircraft and where applicable, the pilot:

(i) Aircraft tail number;

(ii) Type of Aircraft;

(iii) Call sign (if available);

(iv) CBP issued decal number (if available);

(v) Place of last departure (ICAO airport code, when available);

(vi) Date of aircraft arrival;

(vii) Estimated time of arrival;

(viii) Estimated time and location of crossing U.S. border/coastline;

(ix) Name of intended U.S. airport of first landing (as listed in §122.24 if applicable, unless an exemption has been granted under §122.25, or the aircraft was inspected by CBP Officers in the U.S. Virgin Islands);

(x) Owner/Lessees name (if individual: Last, first, and, if available, middle; or business entity name, if applicable);

(xi) Owner/Lessees address (number and street, city, state, zip/postal code, country, telephone number, fax number, and email address);

(xii) Pilot/Private aircraft pilot name (last, first, middle, if available);

(xiii) Pilot license number;

(xiv) Pilot street address (number and street, city, state, zip/postal code, country, telephone number, fax number, and email address);

(xv) Country of issuance of pilot's license;

(xvi) Operator name (for individuals: last, first, and if available, middle; or business entity name, if applicable);

(xvii) Operator street address (number and street, city, state, zip code, country, telephone number, fax number, and e-mail address);

(xviii) Aircraft color(s);

(xix) Complete Itinerary (foreign airports landed at within past 24 hours prior to landing in United States); and

(xx) 24-hour Emergency point of contact (e.g., broker, dispatcher, repair shop, or other third party contact or individual who is knowledgeable about this particular flight) name (first, last, middle, if available) and phone number.

(5) *Reliable facilities.* When reliable means for giving notice are not available (for example, when departure is from a remote place) a landing must be made at a foreign place where notice can be sent prior to coming into the United States.

(6) *Permission to land.* Prior to departure from the foreign port or place, the pilot of a private aircraft must receive a message from DHS approving landing within the United States, and follow any instructions contained therein prior to departure. Once DHS has approved departure, and the pilot has executed all instructions issued by DHS, the aircraft is free to depart with the intent of landing at the designated U.S. port of entry.

(7) *Changes to manifest.* The private aircraft pilot is obligated to make necessary changes to the arrival manifest after transmission of the manifest to CBP. If changes to an already transmitted manifest are necessary, an updated and amended manifest must be resubmitted to CBP. Only amendments regarding flight cancellation, expected time of arrival (ETA) or changes in arrival location, to an already transmitted manifest may be submitted telephonically, by radio, or through existing processes and procedures. On a limited case-by-case basis, CBP may permit a pilot to submit or update notice of arrival and arrival/departure manifest information telephonically when unforeseen circumstances preclude submission of the information via eAPIS. Under such circumstances, CBP will manually enter the notice of arrival and arrival/departure manifest information provided by the pilot and the pilot is required to wait for CBP screening and approval to depart. Changes in ETA and arrival location must be coordinated with CBP at the new arrival location to ensure that resources are available to inspect the arriving aircraft. If a subsequent manifest is submitted less than 60 minutes prior to departure to the United States, the private aircraft pilot must receive approval from CBP for the amended manifest containing added passenger information and/or changes to information that were submitted regarding the aircraft and all individuals onboard the aircraft, before the aircraft is allowed to depart the foreign location, or the aircraft may be, as appropriate, diverted from arriving in the United States, or denied permission to land in the United States. If a subsequent, amended manifest is submitted by the pilot, any approval to depart the foreign port or location previously granted by CBP as a result of the original manifest's submission is invalid.

(8) *Pilot responsibility for comparing information collected with travel document.* The pilot collecting the information described in paragraphs (b)(3) and (b)(4) of this section is responsible for comparing the travel document presented by each individual to be transported onboard the aircraft with the travel document information he or she is transmitting to CBP in accordance with this section in order to ensure that the information is correct, the document appears to be valid for travel purposes, and the individual is the person to whom the travel document was issued.

(c) *Electronic manifest requirement for all individuals onboard private aircraft departing from the United States; departure information*—(1) *General requirement.* The private aircraft pilot is responsible for ensuring that information regarding private aircraft departing

the United States, and manifest data for all individuals onboard the aircraft is timely transmitted to CBP. The pilot is responsible for the accuracy, correctness, timeliness, and completeness of the submitted information, but may authorize another party to submit the information on their behalf. Data must be transmitted to CBP by means of an electronic data interchange system approved by CBP, and must set forth the information specified in paragraph (c)(3) and (c)(4) of this section. All data pertaining to the aircraft, and all individuals onboard the aircraft must be transmitted at the same time. On a limited case-by-case basis, CBP may permit a pilot to submit or update notice of arrival and arrival/departure manifest information telephonically to CBP when unforeseen circumstances preclude submission of the information via eAPIS. Under such circumstances, CBP will manually enter the notice of arrival and arrival/departure manifest information provided by the pilot and the pilot is required to wait for CBP screening and approval to depart.

(2) *Time for submission*. The private aircraft pilot must transmit the electronic data required under paragraphs (c)(3) and (c)(4) of this section to CBP any time prior to departing the United States, but no later than 60 minutes prior to departing the United States.

(3) *Manifest data required*. For private aircraft departing the United States the following identifying information for each individual onboard the aircraft must be submitted:

(i) Full name (last, first, and, if available, middle);

(ii) Date of birth;

(iii) Gender (F = female; M = male);

(iv) Citizenship;

(v) Country of residence;

(vi) Status on board the aircraft;

(vii) DHS-Approved travel document type (e.g. passport; alien registration card, etc.);

(viii) DHS-Approved travel document number;

(ix) DHS-Approved travel document country of issuance, if a DHS-Approved travel document is required;

(x) DHS-approved travel document expiration date, where applicable;

(xi) Alien registration number, where applicable;

(xii) Address while in the United States (number and street, city, state, and zip/postal code). This information is required for all travelers including crew onboard the aircraft.

(4) *Notice of Departure information*. For private aircraft and pilots departing the United States, the following departure information must be submitted by the pilot:

(i) Aircraft tail number;

(ii) Type of Aircraft;

(iii) Call sign (if available);

(iv) CBP issued decal number (if available);

(v) Place of last departure (ICAO airport code, when available);

(vi) Date of aircraft departure;

(vii) Estimated time of departure;

(viii) Estimated time and location of crossing U.S. border/coastline;

(ix) Name of intended foreign airport of first landing (ICAO airport code, when available);

(x) Owner/Lessees name (if individual: last, first, and, if available, middle; or business entity name if applicable);

(xi) Owner/Lessees street address (number and street, city, state, zip/postal code, country, telephone number, fax number, and email address);

(xii) Pilot/Private aircraft pilot name (last, first and, if available, middle);

(xiii) Pilot license number;

(xiv) Pilot street address (number and street, city, state, zip/postal code, country, telephone number, fax number, and email address);

(xv) Country of issuance of pilot's license;

(xvi) Operator name (if individual: last, first, and if available, middle; or business entity name, if applicable);

(xvii) Operator street address (number and street, city, state, zip/postal code, country, telephone number, fax number, and email address);

(xviii) 24-hour Emergency point of contact (e.g., broker, dispatcher, repair shop, or other third party contact, or individual who is knowledgeable about this particular flight) name (last, first, middle, if available) and phone number;

(xix) Aircraft color(s); and

(xx) Complete itinerary (intended foreign airport destinations for 24 hours following departure).

(5) *Permission to depart.* Prior to departure for a foreign port or place, the pilot of a private aircraft must receive a message from DHS approving departure from the United States and follow any instructions contained therein. Once DHS has approved departure, and the pilot has executed all instructions issued by DHS, the aircraft is free to depart.

(6) *Changes to manifest.* If any of the data elements change after the manifest is transmitted, the private aircraft pilot must update the manifest and resubmit the amended manifest to CBP. Only amendments regarding flight cancellation, expected time of departure or changes in departure location, to an already transmitted manifest may be submitted telephonically, by radio, or through existing processes and procedures. If an amended manifest is submitted less than 60 minutes prior to departure, the private aircraft pilot must receive approval from CBP for the amended manifest containing added passenger information and/or changes to information that were submitted regarding the aircraft before the aircraft is allowed to depart the U.S. location, or the aircraft may be denied clearance to depart from the United States. If a subsequent amended manifest is submitted by the pilot, any clearance previously granted by CBP as a result of the original manifest's submission is invalid.

(7) *Pilot responsibility for comparing information collected with travel document.* The pilot collecting the information described in paragraphs (c)(3) and (c)(4) of this section is responsible for comparing the travel document presented by each individual to be transported onboard the aircraft with the travel document information he or she is transmitting to CBP in accordance with this section in order to ensure that the information is correct, the document appears to be valid for travel purposes, and the individual is the person to whom the travel document was issued.

[CBP Dec. 08–43, 73 FR 68310, Nov. 18, 2008]

§ 122.23 Certain aircraft arriving from areas south of the U.S.

(a) *Application.* (1) This section sets forth particular requirements for certain aircraft arriving from south of the United States. This section is applicable to all aircraft except:

(i) Public aircraft;

(ii) Those aircraft operated on a regularly published schedule, pursuant to a certificate of public convenience and necessity or foreign aircraft permit issued by the Department of Transportation, authorizing interstate, overseas air transportation; and

(iii) Those aircraft with a seating capacity of more than 30 passenges or a maximum payload capacity of more than 7,500 pounds which are engaged in air transportation for compensation or hire on demand. (See 49 U.S.C. App. 1372 and 14 CFR part 298).

(2) The term ''place'' as used in this section means anywhere outside of the inner boundary of the Atlantic (Coastal) Air Defense Identification Zone (ADIZ) south of 30 degrees north latitude, anywhere outside of the inner boundary of the Gulf of Mexico (Coastal) ADIZ, or anywhere outside of the inner boundary of the Pacific (Coastal) ADIZ south of 33 degrees north latitude.

(b) *Notice of arrival.* All aircraft to which this section applies arriving in the Continental United States via the U.S./Mexican border or the Pacific Coast from a foreign place in the Western Hemisphere south of 33 degrees north latitude, or from the Gulf of Mexico and Atlantic Coasts from a place in the Western Hemisphere south of 30 degrees north latitude, from any place in Mexico, from the U.S. Virgin Islands, or [notwithstanding the definition of ''United States'' in §122.1(l)] from Puerto Rico, must furnish a notice of intended arrival. Private aircraft must transmit an advance notice of arrival as set forth in §122.22 of this part. Other than private aircraft, all aircraft to which this section applies must communicate to CBP notice of arrival at least one hour before crossing the U.S. coastline. Such notice must be communicated to CBP by telephone, radio, other method or the Federal Aviation Administration in accordance with paragraph (c) of this section.

(c) *Contents of notice.* The advance notice of arrival shall include the following:

(1) Aircraft registration number;
(2) Name of aircraft commander;
(3) Number of U.S. citizen passengers;
(4) Number of alien passengers;
(5) Place of last departure;
(6) Estimated time and location of crossing U.S. border/coastline;
(7) Estimated time of arrival;
(8) Name of intended U.S. airport of first landing, as listed in §122.24, unless an exemption has been granted under §122.25, or the aircraft has not landed in foreign territory or is arriving directly from Puerto Rico, or the aircraft was inspected by Customs officers in the U.S. Virgin Islands.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by CBP Dec. 08–43, 73 FR 68312, Nov. 18, 2008]

§ 122.24 Landing requirements for certain aircraft arriving from areas south of U.S.

(a) *In general.* Certain aircraft arriving from areas south of the United States that are subject to §122.23 are required to furnish a notice of intended arrival in compliance with §122.23. Subject aircraft must land for CBP processing at the nearest designated airport to the border or coastline crossing point as listed under paragraph (b) unless exempted from this requirement in accordance with §122.25. In addition to the requirements of this section, pilots of aircraft to which §122.23 is applicable must comply with all other landing and notice of arrival requirements. This requirement shall not apply to those aircraft which have not landed in foreign territory or are arriving directly from Puerto Rico, if the aircraft was inspected by CBP officers in the U.S. Virgin Islands, or otherwise precleared by CBP officers at designated preclearance locations.

(b) *List of designated airports.*

Location	Name
Beaumont, Tex	Jefferson County Airport.
Brownsville, Tex ..	Brownsville International Airport.
Calexico, Calif	Calexico International Airport.
Corpus Christi, Tex.	Corpus Christi International Airport.
Del Rio, Tex	Del Rio International Airport.
Douglas, Ariz	Bisbee-Douglas International Airport.
Douglas, Ariz	Douglas Municipal Airport.
Eagle Pass, Tex ..	Eagle Pass Municipal Airport.
El Paso, Tex	El Paso International Airport.
Fort Lauderdale, Fla.	Fort Lauderdale Executive Airport.
Fort Lauderdale, Fla.	Fort Lauderdale-Hollywood International Airport.
Fort Pierce, Fla	St. Lucie County Airport.
Houston, Tex	William P. Hobby Airport.
Key West, Fla	Key West International Airport.
Laredo, Tex	Laredo International Airport.
McAllen, Tex	Miller International Airport.
Miami, Fla	Miami International Airport.
Miami, Fla	Opa-Locka Airport.
Miami, Fla	Tamiami Airport.
Midland, TX	Midland International Airport.
New Orleans, La ..	New Orleans International Airport (Moissant Field).
New Orleans, La ..	New Orleans Lakefront Airport.
Nogales, Ariz	Nogales International Airport.
Presidio, Tex	Presidio-Lely International Airport.
San Antonio Tex ..	San Antonio International Airport.
San Diego, Calif ..	Brown Field.
Santa Teresa, N. Mex.	Santa Teresa Airport.
Tampa, Fla	Tampa International Airport.
Tucson, Ariz	Tucson International Airport.
West Palm Beach, Fla.	Palm Beach International Airport.
Wilmington, NC	New Hanover County Airport
Yuma, Ariz	Yuma International Airport.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by 89–2, Dec. 21, 1988; T.D. 89–2, 53 FR 51272, Dec. 21, 1988; T.D. 89–44, 54 FR 14214, Apr. 10, 1989; T.D. 93–67, 58 FR 44444, Aug. 23, 1993; T.D. 94–34, 59 FR 16122, Apr. 6, 1994; T.D. 97–35, 62 FR 24815, May 7, 1997; CBP Dec. 08–01, 73 FR 12262, Mar. 7, 2008; CBP Dec. 08–43, 73 FR 68312, Nov. 18, 2008]

§ 122.25 Exemption from special landing requirements.

(a) *Request.* Any company or individual that has operational control over an aircraft required to give advance notice of arrival under §122.23 may request an exemption from the landing requirements in §122.24. Single overflight exemptions may be granted to entities involved in air ambulance type operations when emergency situations arise and in cases involving the non-emergency transport of persons seeking medical treatment in the U.S. All approvals of requests for overflight exemptions and the granting of authority to be exempted from the landing requirements are at the discretion of the port director. Exemptions may allow aircraft to land at any airport in the U.S. staffed by Customs. Aircraft traveling under an exemption shall continue to follow advance notice and general landing rights requirements.

(b) *Procedure.* An exemption request shall be made to the port director at the airport at which the majority of

Customs overflight processing is desired by the applicant. Except for air ambulance operations and other flights involving the non-emergency transport of persons seeking medical treatment in the U.S., the requests shall be signed by an officer of the company or by the requesting individual and be notarized or witnessed by a Customs officer. The requests shall be submitted:

(1) At least 30 days before the anticipated first arrival, if the request is for an exemption covering a number of flights over a period of one year, or

(2) At least 15 days before the anticipated arrival, if the request is for a single flight, or

(3) In cases involving air ambulance operations when emergency situations arise and other flights involving the non-emergency transport of persons seeking medical treatment in the U.S., if time permits, at least 24 hours prior to departure. If this cannot be accomplished, Customs will allow receipt of the overflight exemption application up to departure time. In cases of extreme medical emergency, Customs will accept overflight exemption requests in flight through a Federal Aviation Administration Flight Service Station.

(c) *Content of request.* All requests for exemption from special landing requirements, with the exception of those for air ambulance operations and other flights involving the non-emergency transport of persons seeking medical treatment in the U.S., shall include the following information. Requests for exemptions for air ambulance operations and other flights involving the non-emergency transport of persons for medical treatment in the U.S. shall include the following information except for paragraphs (c)(5) and (c)(6) of this section:

(1) Aircraft registration number(s) and manufacturer's serial number(s) for all aircraft owned or operated by the applicant that will be utilizing the overflight exemption;

(2) Identification information for each aircraft including class, manufacturer, type, number, color scheme, and type of engine (e.g., turbojet, turbofan, turboprop, reciprocating, helicopter, etc.);

(3) A statement that the aircraft is equipped with a functioning mode C (altitude reporting) transponder which will be in use during overflight, that the overflights will be made in accord with instrument flight rules (IFR), and that the overflights will be made at altitudes above 12,500 feet mean sea level (unless otherwise instructed by Federal Aviation Administration controllers);

(4) Name and address of the applicant operating the aircraft, if the applicant is a business entity, the address of the headquarters of the business (include state of incorporation if applicable), and the names, addresses, Social Security numbers (if available), and dates of birth of the company officer or individual signing the application. If the aircraft is operated under a lease, include the name, address, Social Security number (if available), and date of birth of the owner if an individual, or the address of the headquarters of the business (include state of incorporation if applicable), and the names, addresses, Social Security numbers, and dates of birth of the officers of the business;

(5) Individual, signed applications from each usual or anticipated pilot or crewmember for all aircraft for which an overflight exemption is sought stating name, address, Social Security number (if available), Federal Aviation Administration certificate number (if applicable), and place and date of birth;

(6) A statement from the individual signing the application that the pilot(s) and crewmember(s) responding to paragraph (c)(5) of this section are those intended to conduct overflights, and that to the best of the individual's knowledge, the information supplied in response to paragraph (c)(5) of this section is accurate;

(7) Names, addresses, Social Security numbers (if applicable), and dates of birth for all usual or anticipated passengers. An approved passenger must be on board to utilize the overflight exemptions.

NOTE: Where the Social Security number is requested, furnishing of the SSN is voluntary. The authority to collect the SSN is 19 U.S.C. 66, 1433, 1459 and 1624. The primary purpose for requesting the SSN is to assist in ascertaining the identity of the individual so as to assure that only law-abiding persons will be granted permission to land at interior airports in the U.S. without first landing at

one of the airports designated in §122.24. The SSN will be made available to Customs personnel on a need-to-know basis. Failure to provide the SSN may result in a delay in processing of the application;

(8) Description of the usual or anticipated baggage or cargo if known, or the actual baggage or cargo;

(9) Description of the applicant's usual business activity;

(10) Name(s) of the airport(s) of intended first landing in the U.S. Actual overflights will only be permitted to specific approved airports;

(11) Foreign place or places from which flight(s) will usually originate; and

(12) Reasons for request for overflight exemption.

(d) *Procedure following exemption.* (1) If an aircraft subject to §122.23 is granted an exemption from the landing requirements as provided in this section, the aircraft commander shall notify Customs at least 60 minutes before:

(i) Crossing into the U.S. over a point on the Pacific Coast north of 33 degrees north latitude; or

(ii) Crossing into the U.S. over a point of the Gulf of Mexico or Atlantic Coast north of 30 degrees north latitude; or

(iii) Crossing into the U.S. over the Southwestern land border (defined as the U.S.-Mexican border between Brownsville, Texas, and San Diego, California). Southwestern land border crossings must be made while flying in Federal Aviation Administration published airways.

(2) The notice shall be given to a designated airport specified in §122.24. The notice may be furnished directly to Customs by telephone, radio or other means, or may be furnished through the Federal Aviation Administration to Customs. If notice is furnished pursuant to this paragraph, notice pursuant to §§122.23 and 122.24 is unnecessary.

(3) All overflights must be conducted pursuant to an instrument flight plan filed with the Federal Aviation Administration or equivalent foreign aviation authority prior to the commencement of the overflight.

(4) The owner or aircraft commander of an aircraft subject to §122.23 granted an exemption from the landing requirements must:

(i) Notify Customs of a change of Federal Aviation Administration or other (foreign) registration number for the aircraft;

(ii) Notify Customs of the sale, theft, modification or destruction of the aircraft;

(iii) Notify Customs of changes of usual or anticipated pilots or crewmembers as specified in paragraph (c)(5) of this section. Every pilot and crewmember participating in an overflight must have prior Customs approval either through initial application and approval, or through a supplemental application submitted by the new pilot or crewmember and approved by Customs before commencement of the pilot's or crewmember's first overflight.

(iv) Request permission from Customs to conduct an overflight to an airport not listed in the initial overflight application as specified in paragraph (c)(10) of this section. The request must be directed to the port director who approved the initial request for an overflight exemption.

(v) Retain copies of the initial request for an overflight exemption, all supplemental applications from pilots or crewmembers, and all requests for additional landing privileges as well as a copy of the letter from Customs approving each of these requests. The copies must be carried on board any aircraft during the conduct of an overflight.

(5) The notification specified in paragraph (d)(4) of this section must be given to Customs within 5 working days of the change, sale, theft, modification, or destruction, or before a flight for which there is an exemption, whichever occurs earlier.

(e) *Inspection of aircraft having or requesting overflight exemption.* Applicants for overflight exemptions must agree to make the subject aircraft available for inspection by Customs to determine if the aircraft is capable of meeting Customs requirements for the proper conduct of an overflight. Inspections may be conducted during the review of an initial application or at any time

during the term of an overflight exemption.

[T.D. 89–24, 53 FR 5429, Feb. 3, 1989, as amended by T.D. 89–24, 53 FR 6884, 6988, Feb. 15, 1989; CBP Dec. 08–43, 73 FR 68312, Nov. 18, 2008]

§ 122.26 Entry and clearance.

Private aircraft, as defined in §122.1(h), arriving in the United States as defined in §122.22, are not required to formally enter. No later than 60 minutes prior to departure from the United States as defined in §122.22, to a foreign location, manifest data for each individual onboard a private aircraft and departure information must be submitted as set forth in §122.22(c). Private aircraft must not depart the United States to travel to a foreign location until CBP confirms receipt of the appropriate manifest and departure information as set forth in §122.22(c), and grants electronic clearance via electronic mail or telephone.

[CBP Dec. 08–43, 73 FR 68312, Nov. 18, 2008]

§ 122.27 Documents required.

(a) *Crewmembers and passengers.* Crewmembers and passengers on a private aircraft arriving in the U.S. shall make baggage declarations as set forth in part 148 of this chapter. An oral declaration of articles acquired in foreign areas shall be made, unless a written declaration on Customs Form 6059–B is found necessary by inspecting officers.

(b) *Cargo.* (1) On arrival, cargo and unaccompanied baggage not carried for hire aboard a private aircraft may be listed on a baggage declaration on Customs Form 6059–B, and shall be entered. If the cargo or unaccompanied baggage is not listed on a baggage declaration, it shall be entered in the same manner as cargo carried for hire into the U.S.

(2) On departure, when a private aircraft leaves the U.S. carrying cargo not for hire, the Bureau of Census (15 CFR part 30) and the Export Administration Regulations (15 CFR parts 730 through 774) and any other applicable export laws shall be followed. A foreign landing certificate or certified copy of a foreign Customs entry is required as proof of exportation if the cargo includes:

(i) Merchandise valued at more than $500.00; or

(ii) More than one case of alcoholic beverages withdrawn from a Customs bonded warehouse or otherwise in bond for direct exportation by private aircraft.

A foreign landing certificate, when required, shall be produced within six months from the date of exportation and shall be signed by a revenue officer of the foreign country to which the merchandise is exported, unless it is shown that the country has no Customs administration, in which case the certificate may be signed by the consignee or by the vessel's agent at the place of landing.

(c) *Pilot certificate/license, certificate of registration*—(1) *Pilot certificate/license.* A commander of a private aircraft arriving in the U.S. must present for inspection a valid pilot certificate/license, medical certificate, authorization, or license held by that person, when presentation for inspection is requested by a Customs officer.

(2) *Certificate of registration.* A valid certificate of registration for private aircraft which are U.S.-registered must also be presented upon arrival in the U.S., when presentation for inspection is requested by a Customs officer. A so-called ''pink slip'' is a duplicate copy of the Aircraft Registration Application (FAA Form AC 8050–1), and does not constitute a valid certificate of registration authorizing travel internationally.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 91–61, 56 FR 32086, July 15, 1991; CBP Dec. 04–28, 69 FR 52599, Aug. 27, 2004]

§ 122.28 Private aircraft taken abroad by U.S. residents.

An aircraft belonging to a resident of the U.S. which is taken to a foreign area for non-commercial purposes and then returned to the U.S. by the resident shall be admitted under the conditions and procedures set forth in §148.32 of this chapter. Repairs made abroad, and accessories purchased abroad shall be included in the baggage declaration as required by §148.32(c), and may be subject to entry and payment of duty as provided in §148.32.

§ 122.29 Arrival fee and overtime services.

Private aircraft may be subject to the payment of an arrival fee for services provided as set forth in § 24.22 of this chapter. For the procedures to be followed in requesting overtime services in connection with the arrival of private aircraft, see § 24.16 of this chapter.

[T.D. 93–85, 58 FR 54286, Oct. 21, 1993]

§ 122.30 Other Customs laws and regulations.

Sections 122.2 and 122.161 apply to private aircraft.

Subpart D—Landing Requirements

§ 122.31 Notice of arrival.

(a) *Application.* Except as provided in paragraph (b) of this section, all aircraft entering the United States from a foreign area must give advance notice of arrival.

(b) *Exceptions for scheduled aircraft of a scheduled airline.* Advance notice is not required for aircraft of a scheduled airline arriving under a regular schedule. The regular schedule must have been filed with the port director for the airport where the first landing is made.

(c) *Giving notice of arrival*—(1) *Procedure*—(i) *Private aircraft.* The pilot of a private aircraft must give advance notice of arrival in accordance with § 122.22 of this part.

(ii) [Reserved]

(iii) *Certain aircraft arriving from areas south of the United States.* Certain aircraft arriving from areas south of the United States must follow the advance notice of arrival procedures set forth in § 122.23 of this part.

(iv) *Other aircraft.* The commander of an aircraft not otherwise covered by paragraphs (c)(1)(i) and (c)(1)(iii) of this section must give advance notice of arrival as set forth in paragraph (d) of this section. Notice must be given to the port director at the place of first landing, either:

(A) Directly by radio, telephone, or other method; or

(B) Through Federal Aviation Administration flight notification procedure (see International Flight Information Manual, Federal Aviation Administration).

(2) *Reliable facilities.* When reliable means for giving notice are not available (for example, when departure is from a remote place) a departure must be made at a place where notice can be sent prior to coming into the U.S.

(d) *Contents of notice.* The advance notice of arrival required by aircraft covered in paragraph (c)(1)(iv) of this section must include the following information:

(1) Type of aircraft and registration number;

(2) Name (last, first, middle, if available) of aircraft commander;

(3) Place of last foreign departure;

(4) International airport of intended landing or other place at which landing has been authorized by CBP;

(5) Number of alien passengers;

(6) Number of citizen passengers; and

(7) Estimated time of arrival.

(e) *Time of notice.* Notice of arrival as required pursuant to paragraph (c)(1)(iv) of this section must be furnished far enough in advance to allow inspecting CBP officers to reach the place of first landing of the aircraft prior to the aircraft's arrival.

(f) *Notice of other Federal agencies.* When advance notice is received, the port director will inform any other concerned Federal agency.

[CBP Dec. 08–43, 73 FR 68312, Nov. 18, 2008, as amended by CBP Dec. 16–06, 81 FR 14953, Mar. 21, 2016]

§ 122.32 Aircraft required to land.

(a) Any aircraft coming into the U.S., from an area outside of the U.S., is required to land, unless it is denied permission to land in the U.S. by CBP pursuant to § 122.12(c), or is exempted from landing by the Federal Aviation Administration.

(b) *Conditional permission to land.* CBP has the authority to limit the locations where aircraft entering the U.S. from a foreign area may land. As such, aircraft must land at the airport designated in their APIS transmission unless instructed otherwise by CBP or changes to the airport designation are required for aircraft and/or airspace

safety as directed by the Federal Aviation Administration (FAA) flight services.

[CBP Dec. 08–43, 73 FR 68313, Nov. 18, 2008]

§ 122.33 Place of first landing.

(a) The first landing of an aircraft entering the United States from a foreign area will be:

(1) At a designated international airport (see § 122.13), provided that permission to land has not been denied pursuant to § 122.12(c);

(2) At a landing rights airport if permission to land has been granted (see § 122.14); or

(3) At a designated user fee airport if permission to land has been granted (see § 122.15).

(b) Permission to land at a landing rights airport or user fee airport is not required for an emergency or forced landing (see § 122.35).

[T.D. 92–90, 57 FR 43397, Sept. 21, 1992, as amended by CBP Dec. 03–32, 68 FR 68170, Dec. 5, 2003]

§ 122.35 Emergency or forced landing.

(a) *Application.* This section applies to emergency or forced landings made by aircraft when necessary for safety or the preservation of life or health, when such aircraft are:

(1) Travelling from airport to airport in the U.S. under a permit to proceed (see §§ 122.52, 122.54 and 122.83(d)), or a Customs Form 7509 (see § 122.113); or

(2) Coming into the U.S. from a foreign area.

(b) *Notice.* When an emergency or forced landing is made, notice shall be given:

(1) To the Customs Service at the intended place of first landing, nearest international airport, or nearest port of entry, as soon as possible;

(2) By the aircraft commander, other person in charge, or aircraft owner, who shall make a full report of the flight and the emergency or forced landing.

(c) *Passengers and crewmembers.* The aircraft commander or other person in charge shall keep all passengers and crewmembers in a separate place at the landing area until Customs officers arrive. Passengers and crewmembers may be removed if necessary for safety, or for the purpose of contacting Customs.

(d) *Merchandise and baggage.* The aircraft commander or other person in charge shall keep all merchandise and baggage together and unopened at the landing area until Customs officers arrive. The merchandise and baggage may be removed for safety or to protect property.

(e) *Mail.* Mail may be removed from the aircraft, but shall be delivered at once to an officer or employee of the Postal Service.

§ 122.36 Responsibility of aircraft commander.

If an aircraft lands in the U.S. and Customs officers have not arrived, the aircraft commander shall hold the aircraft, and any merchandise or baggage on the aircraft for inspection. Passengers and crewmembers shall be kept in a separate place until Customs officers authorize their departure.

§ 122.37 Precleared aircraft.

(a) *Application.* This section applies when aircraft carrying crew, passengers and baggage, or merchandise which has been precleared pursuant to § 148.22 of this chapter at a location listed in § 101.5 of this chapter and makes an unscheduled or unintended landing at an airport in the U.S.

(b) *Notice.* The aircraft commander or agent shall give written notice to the Customs office at:

(1) The intended place of unlading; and

(2) The place of preclearance.

(c) *Time of notice.* Notice shall be given within 7 days of the unscheduled or unintended landing unless other arrangements have been made in advance between the carrier and the port director.

§ 122.38 Permit and special license to unlade and lade.

(a) *Applicability.* Before any passengers, baggage, or merchandise may be unladen or laden aboard on arrival or departure of an aircraft subject to these regulations, a permit and/or special license to unlade or lade shall be obtained from Customs.

(1) *Permit to unlade or lade.* A permit is required to obtain Customs supervision of unlading and lading during official Customs duty hours.

(2) *Special license to unlade or lade.* A special license is required to obtain Customs supervision of unlading and lading at any time not within official Customs duty hours (generally, during overtime hours, Sundays or holidays).

(b) *Authorization required.* A permit or special license shall be required for each arrival and departure unless a term permit or special license has been granted. No permit or special license shall be issued unless the carrier complies with the terminal facilities and employee list requirements of §4.30 of this chapter.

(c) *Term permit or special license.* A term permit or special license may be issued covering all arrivals and departures during a period of up to one year, providing local arrangements have been made to notify Customs before services are needed. The notice shall specify the kinds of services requested, and the exact times they will be needed. No term permit or special license shall be issued, and any term permit or special license already issued shall be revoked, unless the carrier complies with the terminal facilities and employee list requirements of §4.30 of this chapter. In addition, a term permit or special license to unlade or lade already issued will not be applicable to any inbound or outbound flight, with respect to which Customs and Border Protection (CBP) has not received the advance electronic cargo information required, respectively, under §122.48a or §192.14(b)(1)(ii) of this chapter (see paragraph (g) of this section).

(d) *Procedures.* The application for a permit and special license to unlade or lade shall be made by the owner, operator, or agent for an aircraft on Customs Form 3171, and shall be submitted to the port director for the airport where the unlading and lading will take place. The application shall be accompanied by a bond on Customs Form 301, containing the bond conditions set forth in subpart G of part 113 of this chapter, or a cash deposit, unless this requirement is waived under paragraph (e) of this section.

(e) *Waiver of bond.* To insure prompt and orderly clearance of the aircraft, passengers, baggage, or merchandise, the port director may waive the requirement under paragraph (d) of this section that either a bond or a cash deposit be made, if he is convinced the revenue is protected and that all Customs requirements are satisfied.

(f) *Automatic renewal of term permit or special license.* Automatic renewal of a term permit or special license may be requested by the owner, operator, or agent for an aircraft when a bond on Customs Form 301 containing the appropriate bond conditions set forth in subpart G of part 113 of this chapter is on file. The request shall be for successive annual periods which conform to the automatic renewal periods of the bond. An application will be approved by the port director unless specific reasons exist for denial. If a request for automatic renewal is not approved, the port director shall notify the requestor, and shall state the reasons for the denial. To apply for automatic renewal, item 10 on Customs Form 3171 shall be changed by adding the following words after the period of time indicated: ''And automatic annual renewal thereof for so long as the bond is renewed and remains in effect.''

(g) *Advance receipt of electronic cargo information.* The CBP will not issue a permit to unlade or lade cargo upon arrival or departure of an aircraft, and a term permit or special license already issued will not be applicable to any inbound or outbound flight, with respect to which CBP has not received the advance electronic cargo information required, respectively, under §122.48a or §192.14 of this chapter. In cases in which CBP does not receive complete cargo information in the time and manner and in the electronic format required by §122.48a or §192.14 of this chapter, as applicable, CBP may delay issuance of a permit or special license to unlade or lade cargo, and a term permit or special license to unlade or lade already issued may not apply, until all required information is received. The CBP may also decline to issue a permit or special license to unlade or lade, and a term permit or special license already issued may not apply, with respect to the specific cargo for which

advance information is not timely received electronically, as specified in §122.48a or §192.14(b)(1)(ii) of this chapter.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 94–2, 58 FR 68526, Dec. 28, 1993; CBP Dec. 03–32, 68 FR 68170, Dec. 5, 2003]

Subpart E—Aircraft Entry and Entry Documents; Electronic Manifest Requirements for Passengers, Crew Members, and Non-Crew Members Onboard Commercial Aircraft Arriving In, Continuing Within, and Overflying the United States

§ 122.41 Aircraft required to enter.

All aircraft coming into the United States from a foreign area must make entry under this subpart except:

(a) Public and private aircraft;

(b) Aircraft chartered by, and transporting only cargo that is the property of, the U.S. Department of Defense (DoD), where the DoD-chartered aircraft is manned entirely by the civilian crew of the air carrier under contract to DoD; and

(c) Aircraft traveling from airport to airport in the U.S. under subpart I, relating to residue cargo procedures.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by CBP Dec. 03–32, 68 FR 68170, Dec. 5, 2003]

§ 122.42 Aircraft entry.

(a) *By whom.* Entry shall be made by the aircraft commander or an agent.

(b) *Place of entry*—(1) *First landing at international airport.* Entry shall be made at the international airport at which first landing is made.

(2) *First landing at another airport.* If the first landing is not at an international airport pursuant to §122.14, §122.15, or §122.35, the aircraft commander or agent shall make entry at the nearest international airport or port of entry, unless some other place is allowed for the purpose.

(c) *Delivery of forms.* When the aircraft arrives, the aircraft commander or agent shall deliver any required forms to the Customs officer at the place of entry at once.

(d) *Exception to entry requirement.* An aircraft of a scheduled airline which stops only for refueling at the first place of arrival in the United States will not be required to enter provided:

(1) That such aircraft departs within 24 hours after arrival;

(2) No cargo, crew, or passengers are off-loaded; and

(3) Landing rights at that airport as either a regular or alternate landing place shall have been previously secured.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by CBP Dec. 10–29, 75 FR 52452, Aug. 26, 2010; CBP Dec. 16–06, 81 FR 14953, Mar. 21, 2016]

§ 122.43 General declaration.

(a) *When required.* A general declaration, Customs Form 7507, shall be filed for all aircraft required to enter under §122.41 (Aircraft required to enter).

(b) *Exception.* Aircraft arriving directly from Canada on a flight beginning in Canada and ending in the U.S. need not file a general declaration to enter. Instead, an air cargo manifest (see §122.48) may be filed in place of the general declaration, regardless of whether cargo is on board. The air cargo manifest shall state the following:

I certify to the best of my knowledge and belief that this manifest contains an exact and true account of all cargo on board this aircraft.

Signature _____

(Aircraft Commander or Agent)

(c) *Form.* The general declaration shall be on Customs Form 7507 or on a privately printed form prepared under §122.5. The form shall contain all required information, unless the information is given in some other manner under subpart E of this part.

§ 122.44 Crew baggage declaration.

If an aircraft enters the U.S. from a foreign area, aircraft crewmembers shall file a crew baggage declaration as provided in subpart G, part 148 of this chapter.

§ 122.45 Crew list.

(a) *When required.* A crew list shall be filed by all aircraft required to enter under §122.41.

(b) *Exception.* No crew list is required for aircraft arriving directly from Canada on a flight beginning in Canada and ending in the U.S. Instead, the total number of crewmembers may be shown on the general declaration.

(c) *Form.* The crew list shall show the full name (last name, first name, middle initial) of each crewmember, either:

(1) On the general declaration in the column headed ''Total Number of Crew''; or

(2) On a separate, clearly marked document.

(d) *Crewmembers returning as passengers.* Crewmembers of any aircraft returning to the U.S. as passengers on a commercial aircraft from a trip on which they were employed as crewmembers shall be listed on the aircraft general declaration or crew list.

§ 122.46 Crew purchase list.

(a) *When required.* A crew purchase list shall be filed with the general declaration for any aircraft required to enter under § 122.41.

(b) *Exception.* A crew purchase list is not required for aircraft arriving directly from Canada on a flight beginning in Canada and ending in the U.S. If a written crew declaration is required for the aircraft under subpart G of part 148 of this chapter (Crewmember Declarations and Exemptions), it shall be attached to the air cargo manifest, along with the number of any written crew declarations.

(c) *Form.* If a crewmember enters articles for which a written crew declaration is not required (see subpart G, part 148 of this chapter), the articles shall be listed next to the crewmember's name on the general declaration, or on the attached crew purchase list. Articles listed on a written crew declaration need not be listed on the crew purchase list if:

(1) The crew declaration is attached to the general declaration, or to the crew list which in turn is attached to the general declaration; and

(2) The statement ''Crew purchases as per attached crew declaration'' appears on the general declaration or crew list.

§ 122.47 Stores list.

(a) *When required.* A stores list shall be filed for all aircraft required to enter under § 122.41.

(b) *Form.* The aircraft stores shall be listed on the cargo manifest or on a separate list. If the stores are listed on a separate list, the list must be attached to the cargo manifest. The statement ''Stores List Attached'' must appear on the cargo manifest.

(c) *Contents*—(1) *Required listing.* The stores list shall include all of the following:

(i) Alcoholic beverages, cigars, cigarettes and narcotic drugs, whether domestic or foreign;

(ii) Bonded merchandise arriving as stores;

(iii) Foreign merchandise arriving as stores; and

(iv) Equipment which must be licensed by the Secretary of State (see § 122.48(b)).

(2) *Other articles.* In the case of aircraft of scheduled airlines, other domestic supplies and equipment (if not subject to license) and fuel may be dropped from the stores list if the statement ''Domestic supplies and equipment and fuel for immediate flight only, except as noted'' appears on the cargo manifest or on the separate stores list. The stores list shall be attached to the cargo manifest.

(d) *Other statutes.* Section 446, Tariff Act of 1930, as amended (19 U.S.C. 1446), which covers supplies and stores kept on board vessels, applies to aircraft arriving in the U.S. from any foreign area.

§ 122.48 Air cargo manifest.

(a) *When required.* Except as provided in paragraphs (d) and (e) of this section, an air cargo manifest need not be filed or retained aboard the aircraft for any aircraft required to enter under § 122.41. However, an air cargo manifest for all cargo on board must otherwise be available for production upon demand. The general declaration must be filed as provided in § 122.43.

(b) *Exception.* A cargo manifest is not required for merchandise, baggage and stores arriving from and departing for a foreign country on the same through flight. Any cargo manifest already on board may be inspected. All articles on

board which must be licensed by the Secretary of State shall be listed on the cargo manifest. Company mail shall be listed on the cargo manifest.

(c) *Form.* The air cargo manifest, Customs Form 7509, must contain all required information regarding all cargo on board the aircraft, except that a more complete description of the cargo shipped may be provided by attaching to the manifest copies of the air waybills covering the cargo on board, including, if a consolidated shipment, any house air waybills. When copies of air waybills are attached, the statement ''Cargo as per air waybills attached'' must appear on the manifest. The manifest must reference an 11-digit air waybill number for each air waybill it covers. The air waybill number must not be used by the issuer for another air waybill for a period of one year after issuance.

(d) *Unaccompanied baggage.* Unaccompanied baggage arriving in the U.S. under a check number from any foreign country by air and presented timely to Customs may be authorized for delivery by the carrier after inspection and examination without preparation of an entry, declaration, or being manifested as cargo. Such baggage must be found to be free of duty or tax under any provision of Chapter 98, HTSUS (19 U.S.C. 1202), and cannot be restricted or prohibited. Unaccompanied checked baggage not presented timely to Customs or presented timely and found by Customs to be dutiable, restricted, or prohibited may be subject to seizure. Such unaccompanied checked baggage shall be added to the cargo list in columns under the following headings:

Check No.	Description	Where from	Destination	Name of examining officer	Disposition

The two columns, headed ''Name of examining officer'' and ''Disposition,'' are provided on the cargo manifest for the use of Customs officers. Unaccompained unchecked baggage arriving as air express or freight shall be manifested as other air express or freight.

(e) *Accompanied baggage in transit.* This section applies when accompanied baggage enters into the U.S. in one aircraft and leaves the U.S. in another aircraft. When passengers do not have access to their baggage while in transit through the U.S., the baggage is considered cargo and shall be listed on Customs Form 7509, Air Cargo Manifest.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 89–1, 53 FR 51255, Dec. 21, 1988; T.D. 02–51, 67 FR 55721, Aug. 30, 2002; CBP Dec. 03–32, 68 FR 68170, Dec. 5, 2003]

§ 122.48a Electronic information for air cargo required in advance of arrival.

(a) *General requirement.* Pursuant to section 343(a), Trade Act of 2002, as amended (19 U.S.C. 2071 note), for any inbound aircraft required to make entry under § 122.41, that will have commercial cargo aboard, U.S. Customs and Border Protection (CBP) must electronically receive from the inbound air carrier and, if applicable, an approved party as specified in paragraph (c)(1) of this section, certain information concerning the inbound cargo, as enumerated, respectively, in paragraphs (d)(1) and (d)(2) of this section. CBP must receive such information according to the time frames prescribed in paragraph (b) of this section. However, a subset of these data elements known as ACAS data and identified in paragraph (d) of this section, is also subject to the requirements and time frame described in § 122.48b. The advance electronic transmission of the required cargo information to CBP must be effected through a CBP-approved electronic data interchange system.

(1) *Cargo remaining aboard aircraft; cargo to be entered under bond.* Air cargo arriving from and departing for a foreign country on the same through flight and cargo that is unladen from the arriving aircraft and entered, in bond, for exportation, or for transportation and exportation (see subpart J of this part), are subject to the advance electronic information filing requirement under paragraph (a) of this section.

(2) *Diplomatic Pouches and Diplomatic Cargo*. When goods comprising a diplomatic or consular bag (including cargo shipments, containers, and the like identified as Diplomatic Pouch) that belong to the United States or to a foreign government are shipped under an air waybill, such cargo is subject to the advance reporting requirements, but the description of the shipment as Diplomatic Pouch will be sufficient detail for description. Shipments identified as Diplomatic Cargo, such as office supplies or unaccompanied household goods, are subject to the advance reporting requirements of paragraph (a) of this section.

(b) *Time frame for presenting data*—(1) *Nearby foreign areas*. In the case of aircraft under paragraph (a) of this section that depart for the United States from any foreign port or place in North America, including locations in Mexico, Central America, South America (from north of the Equator only), the Caribbean, and Bermuda, CBP must receive the required cargo information no later than the time of the departure of the aircraft for the United States (the trigger time is no later than the time that wheels are up on the aircraft, and the aircraft is en route directly to the United States).

(2) *Other foreign areas*. In the case of aircraft under paragraph (a) of this section that depart for the United States from any foreign area other than that specified in paragraph (b)(1) of this section, CBP must receive the required cargo information no later than 4 hours prior to the arrival of the aircraft in the United States.

(c) *Party electing to file advance electronic cargo data*—(1) *Other filer*. In addition to incoming air carriers for whom participation is mandatory, one of the following parties meeting the qualifications of paragraph (c)(2) of this section, may elect to transmit to CBP the electronic data for incoming cargo that is listed in paragraph (d)(2) of this section:

(i) An Automated Broker Interface (ABI) filer (importer or its Customs broker) as identified by its ABI filer code;

(ii) A Container Freight Station/deconsolidator as identified by its FIRMS (Facilities Information and Resources Management System) code;

(iii) An Express Consignment Carrier Facility as identified by its FIRMS code; or,

(iv) An air carrier as identified by its carrier IATA (International Air Transport Association) code, that arranged to have the incoming air carrier transport the cargo to the United States.

(2) *Eligibility*. To be qualified to file cargo information electronically, a party identified in paragraph (c)(1) of this section must establish the communication protocol required by CBP for properly presenting cargo information through the approved data interchange system. Also, other than a broker or an importer (see §113.62(k)(2) of this chapter), the party must possess a Customs international carrier bond containing all the necessary provisions of §113.64 of this chapter.

(3) *Nonparticipation by other party*. If another party as specified in paragraph (c)(1) of this section does not participate in advance electronic cargo information filing, the party that arranges for and/or delivers the cargo shipment to the incoming carrier must fully disclose and present to the carrier the cargo information listed in paragraph (d)(2) of this section; and the incoming carrier must present this information electronically to CBP under paragraph (a) of this section.

(4) *Required information in possession of third party*. Any other entity in possession of required cargo data that is not the incoming air carrier or a party described in paragraph (c)(1) of this section must fully disclose and present the required data for the inbound air cargo to either the air carrier or other electronic filer, as applicable, which must present such data to CBP.

(5) *Party receiving information believed to be accurate*. Where the party electronically presenting the cargo information required in paragraph (d) of this section receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the presenting party acquired such information, and whether and how the presenting party is able to verify this information. Where the presenting party is not reasonably able to verify

such information, CBP will permit the party to electronically present the information on the basis of what that party reasonably believes to be true.

(d) *Non-consolidated/consolidated shipments.* For non-consolidated shipments, the incoming air carrier must transmit to CBP all of the information for the air waybill record, as enumerated in paragraph (d)(1) of this section. For consolidated shipments: the incoming air carrier must transmit to CBP the information listed in paragraph (d)(1) of this section that is applicable to the master air waybill; and the air carrier must transmit cargo information for all associated house air waybills as enumerated in paragraph (d)(2) of this section, unless another party as described in paragraph (c)(1) of this section electronically transmits this information directly to CBP.

(1) *Cargo information from air carrier.* The incoming air carrier must present to CBP the following data elements for inbound air cargo (an ''M'' next to any listed data element indicates that the data element is mandatory in all cases; a ''C'' next to the listed data element indicates that the data element is conditional and must be transmitted to CBP only if the particular information pertains to the inbound cargo; and an ''A'' next to any listed data element indicates that the data element is an ACAS data element that is also subject to the requirements and time frame specified in § 122.48b):

(i) Air waybill number (M) (A) (The air waybill number is the International Air Transport Association (IATA) standard 11-digit number);

(ii) Trip/flight number (M);

(iii) Carrier/ICAO (International Civil Aviation Organization) code (M) (The approved electronic data interchange system supports both 3- and 2-character ICAO codes, provided that the final digit of the 2-character code is not a numeric value);

(iv) Airport of arrival (M) (The 3-alpha character ICAO code corresponding to the first airport of arrival in the Customs territory of the United States (for example, Chicago O'Hare = ORD; Los Angeles International Airport = LAX));

(v) Airport of origin (M) (The 3-alpha character ICAO code corresponding to the airport from which a shipment began its transportation by air to the United States (for example, if a shipment began its transportation from Hong Kong (HKG), and it transits through Narita, Japan (NRT), en route to the United States, the airport of origin is HKG, not NRT));

(vi) Scheduled date of arrival (M);

(vii) Total quantity based on the smallest external packing unit (M) (A) (for example, 2 pallets containing 50 pieces each would be considered as 100, not 2);

(viii) Total weight (M) (A) (may be expressed in either pounds or kilograms);

(ix) Precise cargo description (M) (A) (for consolidated shipments, the word ''Consolidation'' is a sufficient description for the master air waybill record; for non-consolidated shipments, a precise cargo description or the 6-digit Harmonized Tariff Schedule (HTS) number must be provided (generic descriptions, specifically those such as ''FAK'' (''freight of all kinds''), ''general cargo'', and ''STC'' (''said to contain'') are not acceptable));

(x) Shipper name and address (M) (A) (for consolidated shipments, the identity of the consolidator, express consignment or other carrier, is sufficient for the master air waybill record; for non-consolidated shipments, the name of the foreign vendor, supplier, manufacturer, or other similar party is acceptable (and the address of the foreign vendor, etc., must be a foreign address); by contrast, the identity of a carrier, freight forwarder or consolidator is not acceptable);

(xi) Consignee name and address (M) (A) (for consolidated shipments, the identity of the container station (see 19 CFR 19.40–19.49), express consignment or other carrier is sufficient for the master air waybill record; for non-consolidated shipments, the name and address of the party to whom the cargo will be delivered is required regardless of the location of the party; this party need not be located at the arrival or destination port);

(xii) Consolidation identifier (C);

(xiii) Split shipment indicator (C) (see paragraph (d)(3) of this section for the specific data elements that must be

presented to CBP in the case of a split shipment);

(xiv) Permit to proceed information (C) (this element includes the permit-to-proceed destination airport (the 3-alpha character ICAO code corresponding to the permit-to-proceed destination airport); and the scheduled date of arrival at the permit-to-proceed destination airport);

(xv) Identifier of other party which is to submit additional air waybill information (C);

(xvi) In-bond information (C) (this data element includes the destination airport; the international/domestic identifier (the in-bond type indicator); the in-bond control number, if there is one (C); and the onward carrier identifier, if applicable (C));

(xvii) Local transfer facility (C) (this facility is a Container Freight Station as identified by its FIRMS code, or the warehouse of another air carrier as identified by its carrier code); and

(xviii) Flight departure message (M) (this data element includes the liftoff date and liftoff time using the Greenwich Mean Time (GMT)/Universal Time, Coordinated (UTC) at the time of departure from each foreign airport en route to the United States; if an aircraft en route to the United States stops at one or more foreign airports and cargo is loaded on board, the flight departure message must be provided for each departure).

(2) *Cargo information from carrier or other filer.* The incoming air carrier must present the following additional information to CBP for the incoming cargo, unless another party as specified in paragraph (c)(1) of this section elects to present this information directly to CBP. Information for all house air waybills under a single master air waybill consolidation must be presented electronically to CBP by the same party. (An ''M'' next to any listed data element indicates that the data element is mandatory in all cases; a ''C'' next to any listed data element indicates that the data element is conditional and must be transmitted to CBP only if the particular information pertains to the inbound cargo; and an ''A'' next to any listed data element indicates that the data element is an ACAS data element that is also subject to the requirements and time frame specified in §122.48b):

(i) The master air waybill number and the associated house air waybill number (M) (A) (the house air waybill number may be up to 12 alphanumeric characters (each alphanumeric character that is indicated on the paper house air waybill document must be included in the electronic transmission; alpha characters may not be eliminated));

(ii) Foreign airport of origin (M) (The 3-alpha character ICAO code corresponding to the airport from which a shipment began its transportation by air to the United States (for example, if a shipment began its transportation from Hong Kong (HKG), and it transits through Narita, Japan (NRT), en route to the United States, the airport of origin is HKG, not NRT));

(iii) Cargo description (M) (A) (a precise description of the cargo or the 6-digit Harmonized Tariff Schedule (HTS) number must be provided);

(iv) Total quantity based on the smallest external packing unit (M) (A) (for example, 2 pallets containing 50 pieces each would be considered as 100, not 2);

(v) Total weight of cargo (M) (A) (may be expressed in either pounds or kilograms);

(vi) Shipper name and address (M) (A) (the name of the foreign vendor, supplier, manufacturer, or other similar party is acceptable (and the address of the foreign vendor, etc., must be a foreign address); by contrast, the identity of a carrier, freight forwarder or consolidator is not acceptable);

(vii) Consignee name and address (M) (A) (the name and address of the party to whom the cargo will be delivered is required regardless of the location of the party; this party need not be located at the arrival or destination port); and

(viii) In-bond information (C) (this data element includes the destination airport; the international/domestic identifier (the in-bond type indicator); the in-bond control number, if there is one (C); and the onward carrier identifier, if applicable (C)).

(3) *Additional cargo information from air carrier; split shipment.* When the incoming air carrier elects to transport

cargo covered under a single consolidated air waybill on more than one aircraft as a split shipment (see §141.57 of this chapter), the carrier must report the following additional information for each house air waybill covered under the consolidation (An ''M'' next to any listed data element indicates that the data element is mandatory in all cases; a ''C'' next to any listed data element indicates that the data element is conditional and must be transmitted to CBP only if the particular information pertains to the inbound cargo):

(i) The master and house air waybill number (M) (The master air waybill number is the IATA standard 11-digit number; the house air waybill number may be up to 12 alphanumeric characters (each alphanumeric number that is indicated on the paper house air waybill must be included in the electronic transmission; alpha characters may not be eliminated));

(ii) The trip/flight number (M);

(iii) The carrier/ICAO code (M) (The approved electronic data interchange system supports both 3- and 2-character ICAO codes, provided that the final digit of the 2-character code is not a numeric value);

(iv) The airport of arrival (M) (The 3-alpha character ICAO code corresponding to the first airport of arrival in the Customs territory of the United States (for example, Chicago O'Hare = ORD; Los Angeles International Airport = LAX));

(v) The airport of origin (M) (The 3-alpha character ICAO code corresponding to the airport from which a shipment began its transportation by air to the United States (for example, if a shipment began its transportation from Hong Kong (HKG), and it transits through Narita, Japan (NRT), en route to the United States, the airport of origin is HKG, not NRT));

(vi) Scheduled date of arrival (M);

(vii) The total quantity of the cargo covered by the house air waybill based on the smallest external packing unit (M) (For example, 2 pallets containing 50 pieces each would be considered as 100, not 2);

(viii) The total weight of the cargo covered by the house air waybill (M) (May be expressed in either pounds or kilograms);

(ix) Description (M) (This description should mirror the precise level of cargo description information that is furnished to the incoming carrier by the other electronic filer, if applicable (see paragraph (c)(1) of this section));

(x) Permit-to-proceed information (C) (This element includes the permit-to-proceed destination airport (the 3-alpha character ICAO code corresponding to the permit-to-proceed destination airport); and the scheduled date of arrival at the permit-to-proceed destination airport);

(xi) Boarded quantity (C) (The quantity of the cargo covered by the house air waybill (see paragraph (d)(3)(vii) of this section) that is included in the incoming portion of the split shipment); and

(xii) Boarded weight (C) (The weight of the cargo covered by the house air waybill (see paragraph (d)(3)(viii) of this section) that is included in the incoming portion of the split shipment).

[CBP Dec. 03–32, 68 FR 68170, Dec. 5, 2003, as amended at CBP Dec. 08–46, 73 FR 71782, Nov. 25, 2008; CBP Dec. 09–39, 74 FR 52677, Oct. 14, 2009; CBP Dec. 18-05, 83 FR 27404, June 12, 2018]

§ 122.48b Air Cargo Advance Screening (ACAS).

(a) *General requirement.* Pursuant to section 343(a), Trade Act of 2002, as amended (19 U.S.C. 2071 note), in addition to the advance filing requirements pursuant to §122.48a, for any inbound aircraft required to make entry under §122.41, that will have commercial cargo aboard, U.S. Customs and Border Protection (CBP) must electronically receive from the inbound air carrier and/or another eligible ACAS filer, as specified in paragraph (c) of this section, certain information concerning the inbound cargo, as enumerated in paragraph (d) of this section. CBP must receive such information, known as ACAS data, no later than the time frame prescribed in paragraph (b) of this section. The transmission of the required ACAS data to CBP (ACAS filing) must be effected through a CBP-approved electronic data interchange system. Any ACAS referrals must be

resolved in accordance with the provisions and time frame prescribed in paragraph (e) of this section. Any Do-Not-Load (DNL) instruction must be addressed in accordance with the provisions prescribed in paragraph (f) of this section.

(b) *Time frame for presenting data.* (1) *Initial filing.* The ACAS data must be submitted as early as practicable, but no later than prior to loading of the cargo onto the aircraft.

(2) *Update of ACAS filing.* The party who submitted the initial ACAS filing pursuant to paragraph (a) of this section must update the initial filing if, after the filing is submitted, any of the submitted data changes or more accurate data becomes available. Updates are required up until the time frame specified in §122.48a(b) for submitting advance information under §122.48a(a).

(c) *Parties filing ACAS data*—(1) *Inbound air carrier.* If no other eligible party elects to file the ACAS data, the inbound air carrier must file the ACAS data. If another eligible party does elect to file ACAS data, the inbound air carrier may also choose to file the ACAS data.

(2) *Other filers.* The following entities can elect to be ACAS filers, provided they also meet the ACAS filer requirements in paragraph (c)(3) of this section:

(i) All parties eligible to elect to file advance electronic cargo data listed in §122.48a(c); and

(ii) Foreign Indirect Air Carriers. For purposes of this section, ''foreign indirect air carrier'' (FIAC) is defined as any person, not a citizen of the United States, who undertakes indirectly to engage in the air transportation of property. A FIAC may volunteer to be an ACAS filer and accept responsibility for the submission of accurate and timely ACAS filings, as well as for taking the necessary action to address any referrals and Do-Not-Load (DNL) instructions when applicable.

(3) *ACAS filer requirements.* All inbound air carriers and other entities electing to be ACAS filers must:

(i) Establish the communication protocol required by CBP for properly transmitting an ACAS filing through a CBP-approved electronic data interchange system;

(ii) Possess the appropriate bond containing all the necessary provisions of §113.62, §113.63, or §113.64 of this chapter;

(iii) Report all of the originator codes that will be used to file ACAS data. If at any time, ACAS filers wish to utilize additional originator codes to file ACAS data, the originator code must be reported to CBP prior to its use; and

(iv) Provide 24 hours/7 days a week contact information consisting of a telephone number and email address. CBP will use the 24 hours/7 days a week contact information to notify, communicate, and carry out response protocols for Do-Not-Load (DNL) instructions, even if an electronic message is sent.

(4) *Nonparticipation by other party.* If a party specified in paragraph (c)(2) of this section does not participate in an ACAS filing, the party that arranges for and/or delivers the cargo to the inbound air carrier must fully disclose and present to the inbound air carrier the required cargo data listed in paragraph (d) of this section; and the inbound air carrier must present this data electronically to CBP under paragraph (a) of this section.

(5) *Required information in possession of third party.* Any other entity in possession of required ACAS data that is not the inbound air carrier or a party described in paragraph (c)(2) of this section must fully disclose and present the required data for the inbound air cargo to either the inbound air carrier or other eligible ACAS filer, as applicable, which must present such data to CBP.

(6) *Party receiving information believed to be accurate.* Where the party electronically presenting the cargo data required in paragraph (d) of this section receives any of this data from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the presenting party acquired such information, and whether and how the presenting party is able to verify this information. Where the presenting party is not reasonably able to verify such information, CBP will permit the party to electronically present the data on the basis of what

that party reasonably believes to be true.

(d) *ACAS data elements.* Some of the ACAS data elements are mandatory in all circumstances, one is conditional and is required only in certain circumstances, and others are optional. The definitions of the mandatory and conditional ACAS data elements are set forth in § 122.48a.

(1) *Mandatory data elements.* The following data elements are required to be submitted at the lowest air waybill level (*i.e.*, at the house air waybill level if applicable) by all ACAS filers:

(i) Shipper name and address;

(ii) Consignee name and address;

(iii) Cargo description;

(iv) Total quantity based on the smallest external packing unit;

(v) Total weight of cargo; and

(vi) Air waybill number. The air waybill number must be the same in the filing required by this section and the filing required by § 122.48a.

(2) *Conditional data element: Master air waybill number.* The master air waybill (MAWB) number for each leg of the flight is a conditional data element. The MAWB number is a required data element in the following circumstances; otherwise, the submission of the MAWB number is optional, but encouraged:

(i) When the ACAS filer is a different party than the party that will file the advance electronic air cargo data required by § 122.48a. To allow for earlier submission of the ACAS filing, the initial ACAS filing may be submitted without the MAWB number, as long as the MAWB number is later submitted by the ACAS filer or the inbound air carrier according to the applicable ACAS time frame for data submission in paragraph (b) of this section; or

(ii) When the ACAS filer is transmitting all the data elements required by § 122.48a according to the applicable ACAS time frame for data submission; or

(iii) When the inbound air carrier would like to receive from CBP a check on the ACAS status of a specific shipment. If the MAWB number is submitted, either by the ACAS filer or the inbound air carrier, CBP will provide this information to the inbound air carrier upon request.

(3) *Optional data elements*—(i) *Second Notify Party.* The ACAS filer may choose to designate a Second Notify Party to receive shipment status messages from CBP.

(ii) Any additional data elements listed in § 122.48a or any additional information regarding ACAS data elements (*e.g.*, telephone number, email address, and/or internet protocol address for shipper and/or consignee) may be provided and are encouraged.

(e) *ACAS referrals*—(1) *Potential referrals.* There are two types of referrals that may be issued by CBP after a risk assessment of an ACAS submission:

(i) *Referral for information.* A referral for information will be issued if a risk assessment of the cargo cannot be conducted due to non-descriptive, inaccurate, or insufficient data. This can be due to typographical errors, vague cargo descriptions, and/or unverifiable information; and

(ii) *Referral for screening.* A referral for screening will be issued if the potential risk of the cargo is deemed high enough to warrant enhanced screening. A referral for screening must be resolved according to TSA-approved enhanced screening methods.

(2) *ACAS referral resolution.* All ACAS filers and/or inbound air carriers, as applicable, must respond to and take the necessary action to address all referrals as provided in paragraphs (e)(2)(i)–(ii) of this section, no later than prior to departure of the aircraft. The appropriate protocols and time frame for taking the necessary action to address these referrals must be followed as directed. The parties responsible for taking the necessary action to address ACAS referrals are as follows:

(i) *Referral for information.* The ACAS filer is responsible for taking the necessary action to address a referral for information. The last party to file the ACAS data is responsible for such action. For instance, the inbound air carrier is responsible for taking the necessary action to address a referral for information if the inbound air carrier retransmits an original ACAS filer's data and the referral is issued after this retransmission.

(ii) *Referral for screening.* As provided in paragraph (e)(1)(ii) of this section, a referral for screening must be resolved

according to TSA-approved enhanced screening methods. If the ACAS filer is a party recognized by TSA to perform screening, the ACAS filer may address a referral for screening directly; if the ACAS filer is a party other than the inbound air carrier and chooses not to address the referral for screening or is not a party recognized by TSA to perform screening, the ACAS filer must notify the inbound air carrier of the referral for screening. The inbound air carrier is responsible for taking the necessary action to address a referral for screening, unless another ACAS filer recognized by TSA to perform screening has taken such action.

(3) *Prohibition on transporting cargo with unresolved ACAS referrals.* The inbound air carrier may not transport cargo on an aircraft destined to the United States until any and all referrals issued pursuant to paragraph (e)(1) of this section with respect to such cargo have been resolved.

(f) *Do-Not-Load (DNL) instructions.* (1) A Do-Not-Load (DNL) instruction will be issued if it is determined that the cargo may contain a potential bomb, improvised explosive device, or other material that may pose an immediate, lethal threat to the aircraft and its vicinity.

(2) As provided in paragraph (c)(3)(iv) of this section, all ACAS filers must provide a telephone number and email address that is monitored 24 hours/7 days a week in case a Do-Not-Load (DNL) instruction is issued. All ACAS filers and/or inbound air carriers, as applicable, must respond and fully cooperate when the entity is reached by phone and/or email when a Do-Not-Load (DNL) instruction is issued. The party with physical possession of the cargo will be required to carry out the Do-Not-Load (DNL) protocols and the directions provided by law enforcement authorities.

(3) The inbound air carrier may not transport cargo with a Do-Not-Load (DNL) instruction.

[CBP Dec. 18-05, 83 FR 27405, June 12, 2018]

§ 122.49 Correction of air cargo manifest or air waybill.

(a) *Shortages*—(1) *Reporting.* Shortages (merchandise listed on the manifest or air waybill but not found) shall be reported to the port director by the aircraft commander or agent. The report shall be made:

(i) On a Customs Form 5931, filled out and signed by the importer and the importing or bonded carrier; or

(ii) On a Customs Form 5931, filled out and signed by the importer alone under § 158.3 of this chapter; or

(iii) On a copy of the cargo manifest, which shall be marked ''Shortage Declaration,'' and must list the merchandise involved and the reasons for the shortage.

(2) *Time to file.* Shortages shall be reported within the time set out in part 158 of this chapter, or within 30 days of aircraft entry.

(3) *Evidence.* The aircraft commander or agent shall supply proof of the claim that:

(i) Shortage merchandise was not imported, or was properly disposed of; or

(ii) That corrective action was taken. This proof shall be kept in the carrier file for one year from the date of aircraft entry.

(b) *Overages*—(1) *Reporting.* Overages (merchandise found but not listed on the manifest or air waybill) shall be reported to the port director by the aircraft commander or agent. The report shall be made:

(i) On a Customs Form 5931; or

(ii) On a separate copy of the cargo manifest which is marked ''Post Entry'' and lists the overage merchandise and the reason for the overage.

(2) *Time to file.* Overages shall be reported within 30 days of aircraft entry.

(3) *Evidence.* Satisfactory proof of the reasons for the overage shall be kept on file by the carrier for one year from the date of the report.

(c) *Statement on cargo manifest.* If the air cargo manifest is used to report shortages or overages, the Shortages Declaration or Post Entry must include the signed statement of the aircraft commander or agent as follows:

I declare to the best of my knowledge and belief that the discrepancy described herein occurred for the reason stated. I also certify that evidence to support the explanation of the discrepancy will be retained in the carrier's files for a period of at least one year and will be made available to Customs on demand.

Signature _____

(Aircraft Commander or Agent)

(d) *Notice by port director.* The port director shall immediately notify the aircraft commander or agent of any shortages or overages that were not reported by the aircraft commander or agent. Notice shall be given by sending a copy of Customs Form 5931 to the aircraft commander or agent, or in any other appropriate way. The aircraft commander or agent shall make a satisfactory reply within 30 days of entry of the aircraft or receipt of the notice, whichever is later.

(e) *Correction not required.* A correction in the manifest or air waybill is not required if:

(1) The port director is satisfied that the difference between the quantity of bulk merchandise listed on the manifest or air waybill, and the quantity unladen, is the usual difference caused by absorption or loss of moisture, temperature, faulty weighing at the airport, or other such reason; and

(2) The marks or numbers on merchandise packages are different from the marks or numbers listed on the cargo manifest for those packages if the quantity and description of the merchandise is given correctly.

(f) *Statutes applicable.* If an aircraft arrives in the U.S. from a foreign area with merchandise and unaccompanied baggage for which a manifest or air waybill must be filed, section 584 (concerning manifest violations), Tariff Act of 1930, as amended (19 U.S.C. 1584, applies.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 98–74, 63 FR 51288, Sept. 25, 1998]

§ 122.49a Electronic manifest requirement for passengers onboard commercial aircraft arriving in the United States.

(a) *Definitions.* The following definitions apply for purposes of this section:

Appropriate official. ''Appropriate official'' means the master or commanding officer, or authorized agent, owner, or consignee, of a commercial aircraft; this term and the term ''carrier'' are sometimes used interchangeably.

Carrier. See ''Appropriate official.''

Commercial aircraft. ''Commercial aircraft'' has the meaning provided in §122.1(d) and includes aircraft engaged in passenger flight operations, all-cargo flight operations, and dual flight operations involving the transport of both cargo and passengers.

Crew Member. ''Crew member'' means a person serving on board an aircraft in good faith in any capacity required for normal operation and service of the flight. In addition, the definition of ''crew member'' applicable to this section should not be applied in the context of other customs laws, to the extent this definition differs from the meaning of ''crew member'' contemplated in such other customs laws.

Departure. ''Departure'' means the point at which the wheels are up on the aircraft and the aircraft is en route directly to its destination.

Emergency. ''Emergency'' means, with respect to an aircraft arriving at a U.S. port due to an emergency, an urgent situation due to a mechanical, medical, or security problem affecting the flight, or to an urgent situation affecting the non-U.S. port of destination that necessitates a detour to a U.S. port.

Passenger. ''Passenger'' means any person, including a Federal Aviation Administration (FAA) Aviation Security Inspector with valid credentials and authorization, being transported on a commercial aircraft who is not a crew member.

Securing the aircraft. ''Securing the aircraft'' means the moment the aircraft's doors are closed and secured for flight.

United States. ''United States'' means the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands (beginning November 28, 2009), and the Virgin Islands of the United States.

(b) *Electronic arrival manifest*—(1) *General* (i)—*Basic requirement.* Except as provided in paragraph (c) of this section, an appropriate official of each commercial aircraft (carrier) arriving in the United States from any place outside the United States must transmit to the Advance Passenger Information System (APIS; referred to in this section as the Customs and Border Protection (CBP) system), the electronic data interchange system approved by

CBP for such transmissions, an electronic passenger arrival manifest covering all passengers checked in for the flight. A passenger manifest must be transmitted separately from a crew member manifest required under §122.49b if transmission is in U.S. EDIFACT format. The passenger manifest must be transmitted to the CBP system at the place and time specified in paragraph (b)(2) of this section, in the manner set forth under paragraph (b)(1)(ii) of this section.

(ii) *Transmission of manifests.* A carrier required to make passenger arrival manifest transmissions to the CBP system under paragraph (b)(1)(i) of this section must make the required transmissions, covering all passengers checked in for the flight, in accordance with either paragraph (b)(1)(ii)(A), (B), (C), or (D) of this section, as follows:

(A) *Non-interactive batch transmission option.* A carrier that chooses not to transmit required passenger manifests by means of a CBP-certified interactive electronic transmission system under paragraph (b)(1)(ii)(B), (C), or (D) of this section must make batch manifest transmissions in accordance with this paragraph (b)(1)(ii)(A) by means of a non-interactive electronic transmission system approved by CBP. The carrier may make a single, complete batch manifest transmission containing the data required under paragraph (b)(3) of this section for all passengers checked in for the flight or two or more partial batch manifest transmissions, each containing the required data for the identified passengers and which together cover all passengers checked in for the flight. After receipt of the manifest information, the CBP system will perform an initial security vetting of the data and send to the carrier by a non-interactive transmission method a ''not-cleared'' instruction for passengers identified as requiring additional security analysis and a ''selectee'' instruction for passengers requiring secondary screening (e.g., additional examination of the person and/or his baggage) under applicable Transportation Security Administration (TSA) requirements. The carrier must designate as a ''selectee'' any passenger so identified during initial security vetting, in accordance with applicable TSA requirements. The carrier must not issue a boarding pass to, or load the baggage of, any passenger subject to a ''not-cleared'' instruction and must contact TSA to seek resolution of the ''not-cleared'' instruction by providing, if necessary, additional relevant information relative to the ''not-cleared'' passenger. TSA will notify the carrier if the ''not-cleared'' passenger is cleared for boarding or downgraded to ''selectee'' status based on the additional security analysis.

(B) *Interactive batch transmission option.* A carrier, upon obtaining CBP certification, in accordance with paragraph (b)(1)(ii)(E) of this section, may make manifest transmissions by means of an interactive electronic transmission system configured for batch transmission of data and receipt from the CBP system of appropriate messages. A carrier operating under this paragraph must make transmissions by transmitting a single, complete batch manifest containing the data required under paragraph (b)(3) of this section for all passengers checked in for the flight or two or more partial batch manifests, each containing the required data for the identified passengers and which together cover all passengers checked in for the flight. In the case of connecting passengers arriving at the connecting airport already in possession of boarding passes for a U.S.-bound flight whose data have not been collected by the carrier, the carrier must transmit all required manifest data for these passengers when they arrive at the gate, or some other suitable place designated by the carrier, for the flight. After receipt of the manifest information, the CBP system will perform an initial security vetting of the data and send to the carrier by interactive electronic transmission, as appropriate, a ''cleared'' instruction for passengers not matching against the watch list, a ''not-cleared'' instruction for passengers identified as requiring additional security analysis, and a ''selectee'' instruction for passengers who require secondary screening (e.g., additional examination of the person and/or his baggage) under applicable TSA requirements. The carrier must designate as a ''selectee'' any passenger so identified during initial

security vetting, in accordance with applicable TSA requirements. The carrier must not issue a boarding pass to, or load the baggage of, any passenger subject to a ''not-cleared'' instruction and, in the case of connecting passengers (as described in this paragraph), the carrier must not board or load the baggage of any such passenger until the CBP system returns a ''cleared'' or ''selectee'' response for that passenger. Where a ''selectee'' instruction is received for a connecting passenger, the carrier must ensure that such passenger undergoes secondary screening before boarding. The carrier must seek resolution of a ''not-cleared'' instruction by contacting TSA and providing, if necessary, additional relevant information relative to the ''not-cleared'' passenger. Upon completion of the additional security analysis, TSA will notify the carrier if a ''not-cleared'' passenger is cleared for boarding or downgraded to ''selectee'' status based on the additional security analysis. No later than 30 minutes after the securing of the aircraft, the carrier must transmit to the CBP system a message reporting any passengers who checked in but were not onboard the flight. The message must identify the passengers by a unique identifier selected or devised by the carrier or by specific passenger data (e.g., name) and may contain the unique identifiers or data for all passengers onboard the flight or for only those passengers who checked in but were not onboard the flight.

(C) *Interactive individual passenger information transmission option.* A carrier, upon obtaining CBP certification, in accordance with paragraph (b)(1)(ii)(E) of this section, may make manifest transmissions by means of an interactive electronic transmission system configured for transmitting individual passenger data for each passenger and for receiving from the CBP system appropriate messages. A carrier operating under this paragraph must make such transmissions as individual passengers check in for the flight or, in the case of connecting passengers arriving at the connecting airport already in possession of boarding passes for a U.S.-bound flight whose data have not been collected by the carrier, as these connecting passengers arrive at the gate, or some other suitable place designated by the carrier, for the flight. With each transmission of manifest information by the carrier, the CBP system will perform an initial security vetting of the data and send to the carrier by interactive electronic transmission, as appropriate, a ''cleared'' instruction for passengers not matching against the watch list, a ''not-cleared'' instruction for passengers identified as requiring additional security analysis, and a ''selectee'' instruction for passengers requiring secondary screening (e.g., additional examination of the person and/or his baggage) under applicable TSA requirements. The carrier must designate as a ''selectee'' any passenger so identified during initial security vetting, in accordance with applicable TSA requirements. The carrier must not issue a boarding pass to, or load the baggage of, any passenger subject to a ''not-cleared'' instruction and, in the case of connecting passengers (as described in this paragraph), must not board or load the baggage of any such passenger until the CBP system returns a ''cleared'' or ''selectee'' response for that passenger. Where a ''selectee'' instruction is received by the carrier for a connecting passenger, the carrier must ensure that secondary screening of the passenger is conducted before boarding. The carrier must seek resolution of a ''not-cleared'' instruction by contacting TSA and providing, if necessary, additional relevant information relative to the ''not-cleared'' passenger. Upon completion of the additional security analysis, TSA will notify the carrier if a ''not-cleared'' passenger is cleared for boarding or downgraded to ''selectee'' status based on the additional security analysis. No later than 30 minutes after the securing of the aircraft, the carrier must transmit to the CBP system a message reporting any passengers who checked in but were not onboard the flight. The message must identify the passengers by a unique identifier selected or devised by the carrier or by specific passenger data (name) and may contain the unique identifiers or data for all passengers onboard the flight or for only those passengers who checked in but were not onboard the flight.

(D) *Combined use of interactive methods.* If certified to do so, a carrier may make transmissions under both paragraphs (b)(1)(ii)(B) and (C) of this section for a particular flight or for different flights.

(E) *Certification.* Before making any required manifest transmissions under paragraph (b)(1)(ii)(B) or (C) of this section, a carrier must subject its electronic transmission system to CBP testing, and CBP must certify that the carrier's system is then presently capable of interactively communicating with the CBP system for effective transmission of manifest data and receipt of appropriate messages in accordance with those paragraphs.

(2) *Place and time for submission.* The appropriate official specified in paragraph (b)(1)(i) of this section (carrier) must transmit the arrival manifest or manifest data as required under paragraphs (b)(1)(i) and (ii) of this section to the CBP system (CBP Data Center, CBP Headquarters), in accordance with the following:

(i) For manifests transmitted under paragraph (b)(1)(ii)(A) or (B) of this section, no later than 30 minutes prior to the securing of the aircraft;

(ii) For manifest information transmitted under paragraph (b)(1)(ii)(C) of this section, no later than the securing of the aircraft;

(iii) For flights not originally destined to the United States but diverted to a U.S. port due to an emergency, no later than 30 minutes prior to arrival; in cases of non-compliance, CBP will take into consideration whether the carrier was equipped to make the transmission and the circumstances of the emergency situation; and

(iv) For an aircraft operating as an air ambulance in service of a medical emergency, no later than 30 minutes prior to arrival; in cases of non-compliance, CBP will take into consideration whether the carrier was equipped to make the transmission and the circumstances of the emergency situation.

(3) *Information required.* Except as provided in paragraph (c) of this section, the electronic passenger arrival manifest required under paragraph (b)(1) of this section must contain the following information for all passengers, except that the information specified in paragraphs (b)(iv), (v), (x), (xii), (xiii), and (xiv) of this section must be included on the manifest only on or after October 4, 2005:

(i) Full name (last, first, and, if available, middle);

(ii) Date of birth;

(iii) Gender (F = female; M = male);

(iv) Citizenship;

(v) Country of residence;

(vi) Status on board the aircraft;

(vii) Travel document type (*e.g.*, P = passport; A = alien registration card);

(viii) Passport number, if a passport is required;

(ix) Passport country of issuance, if a passport is required;

(x) Passport expiration date, if a passport is required;

(xi) Alien registration number, where applicable;

(xii) Address while in the United States (number and street, city, state, and zip code), except that this information is not required for U.S. citizens, lawful permanent residents, or persons who are in transit to a location outside the United States;

(xiii) Passenger Name Record locator, if available;

(xiv) International Air Transport Association (IATA) code of foreign port/place where transportation to the United States began (foreign port code);

(xv) IATA code of port/place of first arrival (arrival port code);

(xvi) IATA code of final foreign port/place of destination for in-transit passengers (foreign port code);

(xvii) Airline carrier code;

(xviii) Flight number; and

(xix) Date of aircraft arrival.

(c) *Exception.* The electronic passenger arrival manifest specified in paragraph (b)(1) of this section is not required for active duty U.S. military personnel being transported as passengers on arriving Department of Defense commercial chartered aircraft.

(d) *Carrier responsibility for comparing information collected with travel document.* The carrier collecting the information described in paragraph (b)(3) of this section is responsible for comparing the travel document presented by the passenger with the travel document information it is transmitting to

CBP in accordance with this section in order to ensure that the information is correct, the document appears to be valid for travel to the United States, and the passenger is the person to whom the travel document was issued.

(e) *Sharing of manifest information.* Information contained in the passenger manifests required by this section that is received by CBP electronically may, upon request, be shared with other Federal agencies for the purpose of protecting national security. CBP may also share such information as otherwise authorized by law.

[CBP Dec. 05–12, 70 FR 17852, Apr. 7, 2005, as amended by CBP Dec. 07–64, 72 FR 48342, Aug. 23, 2007; CBP Dec. 09–02, 74 FR 2836, Jan. 16, 2009; CBP Dec. 09–14, 74 FR 25388, May 28, 2009]

§ 122.49b Electronic manifest requirement for crew members and non-crew members onboard commercial aircraft arriving in, continuing within, and overflying the United States.

(a) *Definitions.* The definitions set forth below apply for purposes of this section. The definitions set forth in § 122.49a(a), other than those for the terms set forth below, also apply for purposes of this section:

All-cargo flight. ''All-cargo flight'' means a flight in operation for the purpose of transporting cargo which has onboard only ''crew members'' and ''non-crew members'' as defined in this paragraph.

Carrier. In addition to the meaning set forth in § 122.49a(a), ''carrier'' includes each entity that is an ''aircraft operator'' or ''foreign air carrier'' with a security program under 49 CFR part 1544, 1546, or 1550 of the Transportation Security Administration regulations.

Crew member. ''Crew member'' means a pilot, copilot, flight engineer, airline management personnel authorized to travel in the cockpit, cabin crew, and relief crew (also known as ''deadheading crew''). However, for all other purposes of immigration law and documentary evidence required under the Immigration and Nationality Act (8 U.S.C. 1101, *et seq.*), ''crew member'' (or ''crewman'') means a person serving onboard an aircraft in good faith in any capacity required for the normal operation and service of the flight (8 U.S.C. 1101(a)(10) and (a)(15)(D), as applicable). In addition, the definition of ''crew member'' applicable to this section should not be applied in the context of other customs laws, to the extent this definition differs from the meaning of ''crew member'' contemplated in such other customs laws.

Flight continuing within the United States. ''Flight continuing within the United States'' refers to the domestic leg of a flight operated by a foreign air carrier that originates at a foreign port or place, arrives at a U.S. port, and then continues to a second U.S. port.

Flight overflying the United States. ''Flight overflying the United States'' refers to a flight departing from a foreign port or place that enters the territorial airspace of the U.S. en route to another foreign port or place.

Non-crew member. ''Non-crew member'' means air carrier employees and their family members and persons traveling onboard a commercial aircraft for the safety of the flight (such as an animal handler when animals are onboard). The definition of ''non-crew member'' is limited to all-cargo flights. (On a passenger or dual flight (passengers and cargo), air carrier employees, their family members, and persons onboard for the safety of the flight are considered passengers.)

Territorial airspace of the United States. ''Territorial airspace of the United States'' means the airspace over the United States, its territories, and possessions, and the airspace over the territorial waters between the United States coast and 12 nautical miles from the coast.

(b) *Electronic arrival manifest*—(1) *General requirement.* Except as provided in paragraph (c) of this section, an appropriate official of each commercial aircraft operating a flight arriving in or overflying the United States, from a foreign port or place, or continuing within the United States after arriving at a U.S. port from a foreign port or place, must transmit to Customs and Border Protection (CBP) an electronic crew member manifest and, for all-cargo flights only, an electronic non-crew member manifest covering any crew members and non-crew members onboard. Each manifest must be transmitted to CBP at the place and time

specified in paragraph (b)(2) of this section by means of an electronic data interchange system approved by CBP and must set forth the information specified in paragraph (b)(3) of this section. Where both a crew member manifest and a non-crew member manifest are required with respect to an all-cargo flight, they must be combined in one manifest covering both crew members and non-crew members. Where a passenger arrival manifest under §122.49a and a crew member arrival manifest under this section are required, they must be transmitted separately if the transmission is in US EDIFACT format.

(2) *Place and time for submission; certification; changes to manifest*—(i) *Place and time for submission*. The appropriate official specified in paragraph (b)(1) of this section must transmit the electronic manifest required under paragraph (b)(1) of this section to the CBP Data Center, CBP Headquarters:

(A) With respect to aircraft arriving in and overflying the United States, no later than 60 minutes prior to departure of the aircraft from the foreign port or place of departure, and with respect to aircraft continuing within the United States, no later than 60 minutes prior to departure from the U.S. port of arrival;

(B) For a flight not originally destined to arrive in the United States but diverted to a U.S. port due to an emergency, no later than 30 minutes prior to arrival; in cases of noncompliance, CBP will take into consideration that the carrier was not equipped to make the transmission and the circumstances of the emergency situation; and

(C) For an aircraft operating as an air ambulance in service of a medical emergency, no later than 30 minutes prior to arrival;

(ii) *Certification*. Except as provided in paragraph (c) of this section, the appropriate official, by transmitting the manifest as required under paragraph (b)(1) of this section, certifies that the flight's crew members and non-crew members are included, respectively, on the master crew member list or master non-crew member list previously submitted to CBP in accordance with §122.49c. If a crew member or non-crew member on the manifest is not also included on the appropriate master list, the flight may be, as appropriate, denied clearance to depart, diverted from arriving in the United States, or denied clearance to enter the territorial airspace of the United States.

(iii) *Changes to manifest*. The appropriate official is obligated to make necessary changes to the crew member or non-crew member manifest after transmission of the manifest to CBP. Necessary changes include adding a name, with other required information, to the manifest or amending previously submitted information. If changes are submitted less than 60 minutes before scheduled flight departure, the air carrier must receive approval from TSA before allowing the flight to depart or the flight may be, as appropriate, denied clearance to depart, diverted from arriving in the United States, or denied clearance to enter the territorial airspace of the United States.

(3) *Information required*. The electronic crew member and non-crew member manifests required under paragraph (b)(1) of this section must contain the following information for all crew members and non-crew members, except that the information specified in paragraphs (b)(iii), (v), (vi), (vii), (xiii), (xv), and (xvi) of this section must be included on the manifest only on or after October 4, 2005:

(i) Full name (last, first, and, if available, middle);

(ii) Date of birth;

(iii) Place of birth (city, state—if applicable, country);

(iv) Gender (F = female; M = male);

(v) Citizenship;

(vi) Country of residence;

(vii) Address of permanent residence;

(viii) Status on board the aircraft;

(ix) Pilot certificate number and country of issuance (if applicable);

(x) Travel document type (*e.g.*, P = passport; A = alien registration card);

(xi) Passport number, if a passport is required;

(xii) Passport country of issuance, if a passport is required;

(xiii) Passport expiration date, if a passport is required;

(xiv) Alien registration number, where applicable;

(xv) Passenger Name Record locator, if available;

(xvi) International Air Transport Association (IATA) code of foreign port/place where transportation to the United States began or where the transportation destined to the territorial airspace of the United States began (foreign port code);

(xvii) IATA code of port/place of first arrival (arrival port code);

(xviii) IATA code of final foreign port/place of destination for (foreign port code);

(xix) Airline carrier code;

(xx) Flight number; and

(xxi) Date of aircraft arrival.

(c) *Exceptions.* The electronic crew member or non-crew member manifest requirement specified in paragraph (b)(1) of this section is subject to the following conditions:

(1) Federal Aviation Administration (FAA) Aviation Safety Inspectors with valid credentials and authorization are not subject to the requirement, but the manifest requirement of §122.49a applies to these inspectors on flights arriving in the United States, as they are considered passengers on arriving flights;

(2) For crew members traveling onboard an aircraft chartered by the U.S. Department of Defense that is arriving in the United States, the provisions of this section apply regarding electronic transmission of the manifest, except that:

(i) The manifest certification provision of paragraph (b)(2)(ii) of this section is inapplicable; and

(ii) The TSA manifest change approval requirement of paragraph (b)(2)(iii) of this section is inapplicable;

(3) For crew members traveling onboard an aircraft chartered by the U.S. Department of Defense that is continuing a flight within the United States or overflying the United States, the manifest is not required;

(4) For non-crew members traveling onboard an all-cargo flight chartered by the U.S. Department of Defense that is arriving in the United States, the manifest is not required, but the manifest requirement of §122.49a applies to these persons, as, in this instance, they are considered passengers on arriving flights; and

(5) For non-crew members traveling onboard an all-cargo flight chartered by the U.S. Department of Defense that is continuing a flight within the United States or overflying the United States, the manifest is not required.

(d) *Carrier responsibility for comparing information collected with travel document.* The carrier collecting the information described in paragraph (b)(3) of this section is responsible for comparing the travel document presented by the crew member or non-crew member with the travel document information it is transmitting to CBP in accordance with this section in order to ensure that the information is correct, the document appears to be valid for travel to the United States, and the crew member or non-crew member is the person to whom the travel document was issued.

(e) *Sharing of manifest information.* Information contained in the crew member and non-crew member manifests required by this section that is received by CBP electronically may, upon request, be shared with other Federal agencies for the purpose of protecting national security. CBP may also share such information as otherwise authorized by law.

(f) *Superseding amendments issued by TSA.* One or more of the requirements of this section may be superseded by specific provisions of, amendments to, or alternative procedures authorized by TSA for compliance with an aviation security program, emergency amendment, or security directive issued by the TSA to an air carrier subject to 49 CFR part 1544, 1546, or 1550. The provisions or amendments will have superseding effect only for the air carrier to which issued and only for the period of time specified in the provision or amendment.

[CBP Dec. 05–12, 70 FR 17852, Apr. 7, 2005]

§ 122.49c Master crew member list and master non-crew member list requirement for commercial aircraft arriving in, departing from, continuing within, and overflying the United States.

(a) *General requirement.* Air carriers subject to the provisions of §§122.49b and 122.75b, with respect to the flights

covered in those sections, must electronically transmit to Customs and Border Protection (CBP), by means of an electronic data interchange system approved by CBP, a master crew member list and a master non-crew member list containing the information set forth in paragraph (c) of this section covering, respectively, all crew members and non-crew members operating and servicing its flights. The initial transmission of a list must be made at least two days in advance of any flight a crew member or non-crew member on the list will be operating, serving on, or traveling on and must contain the information set forth in paragraph (c) of this section. After review of the master crew list and the master non-crew list by TSA, TSA will advise the carrier of any crew members or non-crew members that must be removed from the list. Only those persons on the TSA-approved master crew and master non-crew lists will be permitted to operate, serve on, or travel on flights covered by this section. Until a carrier becomes a participant in the CBP-approved electronic interchange system, it must submit the required information in a format provided by TSA.

(b) *Changes to master lists.* After the initial transmission of the master crew member and non-crew member lists to CBP, the carrier is obligated to update the lists as necessary. To add a name to either list, along with the required information set forth in paragraph (c) of this section, or to add or change information relative to a name already submitted, the carrier must transmit the information to CBP at least 24 hours in advance of any flight the added or subject crew member or non-crew member will be operating, serving on, or traveling on. A carrier must submit deletions from the lists as expeditiously as possible.

(c) *Master list information.* The electronic master crew lists required under paragraph (a) of this section must contain the following information with respect to each crew member or non-crew member that operates, serves on, or travels on a carrier's flights that are covered by this section except that the information specified in paragraphs (c)(4), (5), (6), (7), and (10) of this section must be included on the manifest only on or after October 4, 2005:

(1) Full name (last, first, and, if available, middle);

(2) Gender;

(3) Date of birth;

(4) Place of birth (city, state—if applicable, and country);

(5) Citizenship;

(6) Country of residence;

(7) Address of permanent residence;

(8) Passport number, if passport required;

(9) Passport country of issuance, if passport required;

(10) Passport expiration date, if passport required;

(11) Pilot certificate number and country of issuance, if applicable;

(12) Status onboard the aircraft.

(d) *Exception.* The master crew member and non-crew member list requirements of this section do not apply to aircraft chartered by the U.S. Department of Defense.

(e) *Superseding amendments issued by TSA.* One or more of the requirements of this section may be superseded by specific provisions of, amendments to, or alternative procedures authorized by TSA for compliance with an aviation security program, emergency amendment, or security directive issued by the TSA to an air carrier subject to the provisions of 49 CFR part 1544, 1546, or 1550. The amendments will have superseding effect only for the air carrier to which issued and only for the period of time specified in the amendment.

[CBP Dec. 05–12, 70 FR 17854, Apr. 7, 2005]

§ 122.49d Passenger Name Record (PNR) information.

(a) *General requirement.* Each air carrier, foreign and domestic, operating a passenger flight in foreign air transportation to or from the United States, including flights to the United States where the passengers have already been pre-inspected or pre-cleared at the foreign location for admission to the U.S., must, upon request, provide Customs with electronic access to certain Passenger Name Record (PNR) information, as defined and described in paragraph (b) of this section. In order to readily provide Customs with such access to requested PNR information, each air carrier must ensure that its

electronic reservation/departure control systems correctly interface with the U.S. Customs Data Center, Customs Headquarters, as prescribed in paragraph (c)(1) of this section.

(b) *PNR information defined; PNR information that Customs may request*—(1) *PNR information defined.* Passenger Name Record (PNR) information refers to reservation information contained in an air carrier's electronic reservation system and/or departure control system that sets forth the identity and travel plans of each passenger or group of passengers included under the same reservation record with respect to any flight covered by paragraph (a) of this section.

(2) *PNR data that Customs may request.* The air carrier, upon request, must provide Customs with electronic access to any and all PNR data elements relating to the identity and travel plans of a passenger concerning any flight under paragraph (a) of this section, to the extent that the carrier in fact possesses the requested data elements in its reservation system and/or departure control system. There is no requirement that the carrier collect any PNR information under this paragraph, that the carrier does not otherwise collect on its own and maintain in its electronic reservation/departure control systems.

(c) *Required carrier system interface with Customs Data Center to facilitate Customs retrieval of requested PNR data*—(1) *Carrier requirements for interface with Customs.* Within the time specified in paragraph (c)(2) of this section, each air carrier must fully and effectively interface its electronic reservation/departure control systems with the U.S. Customs Data Center, Customs Headquarters, in order to facilitate Customs ability to retrieve needed Passenger Name Record data from these electronic systems. To effect this interface between the air carrier's electronic reservation/departure control systems and the Customs Data Center, the carrier must:

(i) Provide Customs with an electronic connection to its reservation system and/or departure control system. (This connection can be provided directly to the Customs Data Center, Customs Headquarters, or through a third party vendor that has such a connection to Customs.);

(ii) Provide Customs with the necessary airline reservation/departure control systems' commands that will enable Customs to:

(A) Connect to the carrier's reservation/departure control systems;

(B) Obtain the carrier's schedules of flights;

(C) Obtain the carrier's passenger flight lists; and

(D) Obtain data for all passengers listed for a specific flight; and

(iii) Provide technical assistance to Customs as required for the continued full and effective interface of the carrier's electronic reservation/departure control systems with the Customs Data Center, in order to ensure the proper response from the carrier's systems to requests for data that are made by Customs.

(2) *Time within which carrier must interface with Customs Data Center to facilitate Customs access to requested PNR data.* Any air carrier which has not taken steps to fully and effectively interface its electronic reservation/departure control systems with the Customs Data Center must do so, as prescribed in paragraphs (c)(1)(i)–(c)(1)(iii) of this section, within 30 days from the date that Customs contacts the carrier and requests that the carrier effect such an interface. After being contacted by Customs, if an air carrier determines it needs more than 30 days to properly interface its automated database with the Customs Data Center, it may apply in writing to the Assistant Commissioner, Office of Field Operations (OFO) for an extension. Following receipt of the application, the Assistant Commissioner, OFO, may, in writing, allow the carrier an extension of this period for good cause shown. The Assistant Commissioner's decision as to whether and/or to what extent to grant such an extension is within the sole discretion of the Assistant Commissioner and is final.

(d) *Sharing of PNR information with other Federal agencies.* Passenger Name Record information as described in paragraph (b)(2) of this section that is made available to Customs electronically may, upon request, be shared with other Federal agencies for the

purpose of protecting national security (49 U.S.C. 44909(c)(5)). Customs may also share such data as otherwise authorized by law.

[T.D. 02–33, 67 FR 42712, June 25, 2002. Redesignated by CBP Dec. 05–12, 70 FR 17852, Apr. 7, 2005]

§ 122.50 General order merchandise.

(a) Any merchandise or baggage regularly landed but not covered by a permit for its release shall be allowed to remain at the place of unlading until the fifteenth calendar day after landing. No later than 20 calendar days after landing, the pilot or owner of the aircraft or the agent thereof shall notify Customs of any such merchandise or baggage for which entry has not been made. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system. Failure to provide such notification may result in assessment of a monetary penalty of up to $1,000 per bill of lading against the pilot or owner of the aircraft or the agent thereof. If the value of the merchandise on the bill is less than $1,000, the penalty shall be equal to the value of such merchandise.

(b) Any merchandise or baggage that is taken into custody from an arriving carrier by any party under a Customs-authorized permit to transfer or in-bond entry may remain in the custody of that party for 15 calendar days after receipt under such permit to transfer or 15 calendar days after arrival at the port of destination. No later than 20 calendar days after receipt under the permit to transfer or 20 calendar days after arrival under bond at the port of destination, the party shall notify Customs of any such merchandise or baggage for which entry has not been made. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system. If the party fails to notify Customs of the unentered merchandise or baggage in the allotted time, he may be liable for the payment of liquidated damages under the terms and conditions of his custodial bond (see § 113.63(c)(4) of this chapter).

(c) In addition to the notification to Customs required under paragraphs (a) and (b) of this section, the carrier (or any other party to whom custody of the unentered merchandise has been transferred by a Customs authorized permit to transfer or in-bond entry) shall provide notification of the presence of such unreleased and unentered merchandise or baggage to a bonded warehouse certified by the port director as qualified to receive general order merchandise. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system and shall be provided within the applicable 20-day period specified in paragraph (a) or (b) of this section. It shall then be the responsibility of the bonded warehouse proprietor to arrange for the transportation and storage of the merchandise or baggage at the risk and expense of the consignee. The arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (*see* § 19.9 of this chapter). Any unentered merchandise or baggage shall remain the responsibility of the carrier, pilot, or person in charge of the importing aircraft, or the agent thereof, or party to whom the merchandise has been transferred under a Customs authorized permit to transfer or in-bond entry, until it is properly transferred from his control in accordance with this paragraph. If the party to whom custody of the unentered merchandise or baggage has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to notify a Customs-approved bonded warehouse of such merchandise or baggage within the applicable 20-calendar-day period, he may be liable for the payment of liquidated damages of $1,000 per bill of lading under the terms

and conditions of his international carrier or custodial bond (see §§113.63(b), 113.63(c) and 113.64(b) of this chapter).

(d) If the carrier or any other party to whom custody of the unentered merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to timely relinquish custody of the merchandise to a Customs-approved bonded General Order warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) If the bonded warehouse operator fails to take possession of unentered and unreleased merchandise or baggage within five calendar days after receipt of notification of the presence of such merchandise or baggage under this section, he may be liable for the payment of liquidated damages under the terms and conditions of his custodial bond (see §113.63(a)(1) of this chapter). If the port director finds that the warehouse proprietor cannot accept the goods because they are required by law to be exported or destroyed (*see* §127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In this event, the carrier or other party will be responsible under bond for exporting or destroying the goods, as necessary (*see* §§113.63(c)(3) and 113.64(b) of this chapter).

(f) In ports where there is no bonded warehouse authorized to accept general order merchandise, or if merchandise requires specialized storage facilities that are unavailable in a bonded facility, the port director, after having received notice of the presence of unentered merchandise or baggage in accordance with the provisions of this section, shall direct the storage of the merchandise by the carrier or by any other appropriate means.

(g) Merchandise taken into the custody of the port director pursuant to section 490(b), Tariff Act of 1930, as amended (19 U.S.C. 1490(b)), shall be sent to a general order warehouse after 1 day after the day the aircraft arrived, to be held there at the risk and expense of the consignee.

[T.D. 98–74, 63 FR 51288, Sept. 25, 1998, as amended by T.D. 02–65, 67 FR 68033, Nov. 8, 2002]

Subpart F—International Traffic Permit

§ 122.51 Aircraft of domestic origin registered in the U.S.

After Customs inspection of the aircraft, passengers, baggage and merchandise at the entry airport, commercial aircraft of domestic origin registered in the U.S. may be allowed to proceed to other airports in the U.S. without permit.

§ 122.52 Aircraft of foreign origin registered in the U.S.

(a) *Application.* This section applies to commercial aircraft (as defined in §122.1(d)) of foreign origin registered in the U.S. and arriving in the U.S. from a foreign area.

(b) *Aircraft entered as an imported article.* If an aircraft covered by this section is entered as an imported article, and any applicable duty for the aircraft has been paid on a prior arrival, it may be allowed to proceed as other than an imported article. In this instance, the aircraft commander must file a declaration that states the:

(1) Port where entry was made;

(2) Date duty, if any, was paid; and

(3) Number of the entry.

(c) *Aircraft not entered as imported article*—(1) *Treatment as other than an imported article.* A commercial aircraft covered by this section which has not been entered as an imported article may travel from airport to airport in the U.S. without payment of duty. Each commercial aircraft shall proceed under a permit on Customs Form 7507 or 7509, as provided in §122.54. Treatment of the aircraft as other than an imported article shall continue for so long as the aircraft:

(i) Is used only for commercial purposes between the U.S. and foreign areas; and

(ii) Will leave the U.S. for a foreign destination in commercial use or carrying neither passengers nor cargo.

(2) *Treatment as an imported article.* Any aircraft covered by this section

which was not entered as an imported article shall make entry if it:

(i) Is withdrawn from commercial use between the U.S. and foreign areas; or

(ii) Is used in the U.S. in a way not reasonably related to efficient commercial use of the aircraft between the U.S. and foreign areas.

(3) *Aircraft damage and duty payment*—(i) *Substantial damage to commercial aircraft.* If an accident causes substantial damage to a commercial aircraft, no entry or duty payment is required for any part of the wreckage.

(ii) *Less than substantial damage and export.* If an accident does not cause substantial damage to a commercial aircraft, salvageable parts of the wrecked aircraft may be exported. In this circumstance, the aircraft, as a whole or in part, is not considered to be withdrawn from commercial use and is not subject to entry or to duty as imported merchandise.

(iii) *Less than substantial damage and no export.* If an accident does not cause substantial damage to a commercial aircraft and the wrecked aircraft or any salvageable part of it is not exported, then:

(A) Entry is required to be made for the damaged aircraft or any salvageable part of it; and

(B) A duty payment, if applicable, based on the condition of the aircraft following the accident, is required.

§ 122.53 Aircraft of foreign registry chartered or leased to U.S. air carriers.

Aircraft of foreign registry leased or chartered to a U.S. air carrier, while being operated by the U.S. air carrier under the provisions of the Federal Aviation Administration regulations (14 CFR 121.153), shall be treated as U.S. registered aircraft for purposes of this subpart.

§ 122.54 Aircraft of foreign registry.

(a) *Application.* For any commercial aircraft of foreign registry arriving in the U.S., the aircraft commander or agent shall file for an international traffic permit when the aircraft;

(1) Is not an imported article; and

(2) Is ferried (proceeds carrying neither passengers nor cargo) from the airport of first arrival to one or more airports in the U.S. (For permit to proceed with residue cargo, passengers, or crewmembers for discharge in the U.S., see subpart I of this part).

(b) *International traffic permit.* The international traffic permit shall be filed on Customs Form 7507 by the carrier or its agent. Customs Form 7509 may be used if the aircraft arrives directly from Canada on a flight beginning in Canada and ending in the U.S. Either form shall show the following information and must be approved by the appropriate Customs officer:

(1) Type of aircraft;

(2) Nationality and registration number of aircraft;

(3) Name and country of aircraft manufacturer;

(4) Name of aircraft commander;

(5) Country from which aircraft arrived;

(6) Name and location of airport where international traffic permit is issued;

(7) Date international traffic permit is issued;

(8) Name and location of airport to which aircraft is proceeding;

(9) Purpose of stay in the U.S.;

(10) Signature of Customs officer giving permit.

(c) *Permit on board.* The international traffic permit shall be kept on board the aircraft while in the U.S.

(d) *Intermediate airports.* For each airport at which the aircraft lands, the Customs officer, or airport manager if there is no Customs officer present, shall note the following information on the permit:

(1) Name and location of the airport;

(2) Date and arrival time;

(3) Purpose of the visit;

(4) Name and location of the next airport to be visited; and

(5) Date and time of departure.

(e) *Final airport.* The international traffic permit shall be given to the Customs officer in charge at the airport of final clearance for a foreign destination. Before clearance is given, the Customs officer shall make sure that the aircraft was properly inspected by Customs in the U.S.

(f) *Port of issue.* The international traffic permit shall be returned after final clearance to the director of the

port where the permit was issued, to be kept on file.

(g) *Enforcement.* Once the permit to proceed has been issued for an aircraft, the director of the port of issue must receive notice that the aircraft has made final clearance. If notice is not received within 60 days, the port director shall report the matter to the Customs agent in charge of the area for investigation.

Subpart G—Clearance of Aircraft and Permission To Depart

§ 122.61 Aircraft required to clear.

(a) Private aircraft leaving the United States as defined in §122.22, for a foreign area are required to clear as set forth in §122.26. All other aircraft, except for public aircraft leaving the United States for a foreign area, are required to clear if:

(1) Carrying passengers and/or merchandise for hire; or

(2) Taking aboard or discharging passengers and/or merchandise for hire in a foreign area.

(b) Any aircraft used by members of air travel clubs are required to clear, and foreign aircraft traveling under a permit to proceed shall also clear.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by CBP Dec. 08–43, 73 FR 68313, Nov. 18, 2008]

§ 122.62 Aircraft not otherwise required to clear.

(a) *Bureau of the Census.* Under Bureau of the Census Regulations (15 CFR part 30), aircraft not required to clear by §122.61 shall obtain permission to depart if carrying merchandise from the U.S. to Puerto Rico or from Puerto Rico to the U.S.

(b) *Bureau of Industry and Security.* Aircraft leaving the U.S. for a foreign area must be cleared by Customs if a validated license from the Bureau of Industry and Security (Department of Commerce) is required for the aircraft under the Export Administration Regulations (15 CFR parts 730 through 774). Aircraft are not required to clear if the Secretary of Commerce issues a permit allowing departure without clearance.

(c) *Department of State.* Aircraft not covered by Export Administration Regulations are subject to the Department of State export licensing authority as set out in 22 CFR parts 121 and 123. Such aircraft may depart from the U.S. only with the proper Department of State license.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 93–61, 58 FR 41425, Aug. 4, 1993; CBP Dec. 04–28, 69 FR 52599, Aug. 27, 2004; 69 FR 54179, Sept. 2, 2004]

§ 122.63 Scheduled airlines.

The aircraft commander or agent shall request clearance or permission to depart for aircraft of scheduled airlines covered by this subpart.

(a) *Clearance at other than airport of final departure.* Aircraft may clear at each airport where merchandise and/or passengers are taken on board for transport outside of the U.S. The clearance applies only to the merchandise and passengers boarding at each place. Clearance shall be requested at the Customs port of entry (regardless of whether it is an international airport) nearest to the place where merchandise and/or passengers are taken on board.

(b) *Clearance at final departure airport.* Clearance or permission to depart may be requested at the Customs port of entry (regardless of whether it is an international airport) nearest the last departure airport.

§ 122.64 Other aircraft.

Clearance or permission to depart shall be requested by the aircraft commander or agent for aircraft covered by this subpart other than those of scheduled airlines. The request must be made to the director of the port of entry (regardless of whether it is an international airport) nearest the final departure airport.

§ 122.65 Failure to depart.

Once an aircraft has been cleared or given permission to depart it must depart within 72 hours. The aircraft commander or agent shall report promptly to the port director if departure is delayed beyond or cancelled within 72 hours after the aircraft received clearance or permission to depart.

§ 122.66 Clearance or permission to depart denied.

If advance electronic air cargo information is not received as provided in

§192.14 of this chapter, Customs and Border Protection may deny clearance or permission for the aircraft to depart from the United States.

[CBP Dec. 03–32, 68 FR 68173, Dec. 5, 2003]

Subpart H—Documents Required for Clearance and Permission To Depart; Electronic Manifest Requirements for Passengers, Crew Members, and Non-Crew Members Onboard Commercial Aircraft Departing From the United States

§ 122.71 Aircraft departing with no commercial export cargo.

(a) *Application*. This section applies to aircraft departing for foreign territory with no export cargo, but not to those aircraft which are themselves being exported.

(1) Such aircraft may clear by telephone in advance with the director of the port of departure if departing empty or carrying only:

(i) Passengers for hire; or

(ii) Non-commercial cargo for which Electronic Export Information (EEI) is not required.

(2) If not cleared by telephone, an air cargo manifest containing the following statement, signed by the aircraft commander or agent, must be submitted to CBP:

I declare to the best of my knowledge and belief that there is no cargo on board this aircraft.

Signature _____
(Aircraft Commander or Agent)

(b) *Timeliness*. The request for telephone clearance must be received by the CBP officer in charge with sufficient time remaining before departure to ensure that CBP may undertake any necessary examination of the aircraft and cargo.

(c) *Documentation*. If clearance is granted by telephone, the aircraft commander is not required to file the documents required by this subpart.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by CBP Dec. 17-06, 82 FR 32238, July 13, 2017]

§ 122.72 Aircraft departing with commercial export cargo.

If an aircraft with export cargo leaves the U.S. for any foreign area, a general declaration, if required, an air cargo manifest and any required Electronic Export Information (EEI), must be filed in accordance with this subpart for all cargo on the aircraft, and for the aircraft itself if exported as merchandise. See §122.79 for special requirements regarding shipments to U.S. possessions.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by CBP Dec. 17-06, 82 FR 32238, July 13, 2017]

§ 122.73 General declaration and air cargo manifest.

(a) *General declaration*—(1) *Form*. The general declaration must be on CBP Form 7507 and must show all information required.

(2) *Preparation and filing*. The aircraft commander or agent must file two copies of the general declaration with CBP at the departure airport.

(3) *Exception*. A general declaration will not be required if the air cargo manifest, CBP Form 7509, contains the statement shown in paragraph (b) of this section.

(b) *Air cargo manifest*—(1) *Form*. The air cargo manifest must be on CBP Form 7509, and must show all information required. If a general declaration is not presented, the following statement, signed by the aircraft commander or agent, must appear on the form:

I declare that all statements contained in this manifest, including the account of the cargo on board this aircraft, are complete, exact, and true to the best of my knowledge.

Signature _____
(Aircraft Commander or Agent)

(2) *Preparation and filing*. The aircraft commander or agent must file two copies of the air cargo manifest with the Customs at the departure airport. Three copies of the air cargo manifest must be filed if the aircraft is covered by §122.77(b). The air cargo manifest must be filed in:

(i) Complete form, with all required Electronic Export Information (EEI) filing citations, exclusions, and/or exemption legends (see §122.75); or

(ii) Incomplete form (pro forma) under § 122.74.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by CBP Dec. 17-06, 82 FR 32238, July 13, 2017]

§ 122.74 Incomplete (pro forma) manifest.

(a) *Application*—(1) *Shipments to foreign countries.* Except for aircraft bound for foreign locations referred to in paragraph (b) of this section, clearance, or permission to depart may be given to an aircraft bound for a foreign location by the CBP at the departure airport before a complete manifest or all required Electronic Export Information (EEI) have been filed, if a proper bond is filed on CBP Form 301, containing the bond conditions set forth in subpart G of part 113 of this chapter.

(2) *Shipments to Puerto Rico.* As provided in § 122.79(b), any required air cargo manifest or EEI filing citations, exclusions, and/or exemption legends for direct flights between the United States and Puerto Rico must be filed with the appropriate CBP officer upon arrival in Puerto Rico. If any required manifest or EEI filing citations, exclusions, and/or exemption legends are not filed with the appropriate CBP officer within one business day after arrival in Puerto Rico, a proper bond must be filed at that time on CBP Form 301, containing the bond conditions set forth in subpart G of part 113 of this chapter.

(b) *Exceptions.* In the following circumstances, an incomplete manifest will not be accepted and a complete air cargo manifest and all required EEI must be filed with the port director before the aircraft will be cleared:

(1) During any time covered by a proclamation of the President that a state of war exists between foreign nations; or

(2) If the aircraft is departing on a flight from the U.S. directly or indirectly to a foreign country listed in § 4.75 of this chapter.

NOTE TO PARAGRAPH (b): In both cases, a complete air cargo manifest and all required Shipper's Export Declarations shall be filed with the port director before the aircraft will be cleared.

(c) *Filing under bond.* An incomplete set of documents may be filed only when accompanied by the proper bond. Under the bond, a complete set of documents shall be filed within whichever of the following time periods is appropriate:

(1) *Shipments to foreign countries.* All required EEI and a complete air cargo manifest must be filed by the airline not later than the fourth business day after clearance (when clearance is required) or departure (when clearance is not required) of the aircraft.

(2) *Shipments to and from Puerto Rico.* For shipments from the U.S. to Puerto Rico, the complete manifest (when required) and all required EEI must be filed not later than the seventh business day after arrival into Puerto Rico. For shipments from Puerto Rico to the U.S., the complete manifest (when required) and all required EEI must be filed not later than the seventh business day after departure from Puerto Rico.

(3) *Shipments to U.S. possessions.* For shipments between the U.S. or Puerto Rico and possessions of the U.S., a complete manifest and all required EEI must be filed by the airline not later than the seventh business day after departure. See § 122.79.

(d) *Declaration required.* A declaration shall be made on the incomplete manifest that:

(1) All required documents will be filed within the 4-day bond period; or

(2) All required documents will be filed within the 7-day bond period.

Once all documents have been filed, a statement as required by § 122.75(b) shall be made.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 93–61, 58 FR 41425, Aug. 4, 1993; CBP Dec. 17-06, 82 FR 32238, July 13, 2017]

§ 122.75 Complete manifest.

(a) *Contents.* A complete air cargo manifest must list all cargo laden, and show for each item the air waybill number, or marks and numbers on packages and the type of goods carried. If an item does not require a Electronic Export Information (EEI) filing citations, exemptions, and/or exclusion legends, it must be noted on the air cargo manifest.

(1) *Shipments on an air waybill.* A copy of each air waybill on which shipments

are listed may be attached to the air cargo manifest, and the number of the air waybill may be listed on the air cargo manifest. The statement ''Cargo as per Air Waybill Attached'' must appear on the air cargo manifest if this is done.

(2) *Direct departure.* With regard to direct departures of shipments requiring EEI, each EEI filing citation must be listed on the air cargo manifest in the column for air waybill numbers. The statement ''Electronic Information Annotated'' must appear on the manifest if this is done.

(b) *Statement required.* (1) When all required documents are ready for filing, the following statement must appear on the air cargo manifest, or on the general declaration form if an air cargo manifest is not required:

The annotated EEI filing citations, exclusions, and/or exemption legends represent a full and complete enumeration and description of the cargo carried in this flight except that listed on the cargo manifest.

(2) If an incomplete set of documents has been filed and is later completed, the following statement must accompany the EEI filing citations, exclusions, and/or exemption legends and any required air cargo manifests:

The annotated EEI filing citations, exclusions, and/or exemption legends represent a full and complete enumeration and description of the cargo carried on aircraft No. _____, Flight No. _____ cleared direct for _____, on _____ except cargo listed on any cargo manifest required to be filed for such flight.

Airline _____

Authorized Agent _____

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by CBP Dec. 17-06, 82 FR 32239, July 13, 2017]

§ 122.75a Electronic manifest requirement for passengers onboard commercial aircraft departing from the United States.

(a) *Definitions.* The definitions set forth in § 122.49a(a) also apply for purposes of this section.

(b) *Electronic departure manifest*—(1) *General*—(i) *Basic requirement.* Except as provided in paragraph (c) of this section, an appropriate official of each commercial aircraft (carrier) departing from the United States en route to any port or place outside the United States must transmit to the Advance Passenger Information System (APIS; referred to in this section as the Customs and Border Protection (CBP) system), the electronic data interchange system approved by CBP for such transmissions, an electronic passenger departure manifest covering all passengers checked in for the flight. A passenger manifest must be transmitted separately from a crew member manifest required under § 122.75b if transmission is in U.S. EDIFACT format. The passenger manifest must be transmitted to the CBP system at the place and time specified in paragraph (b)(2) of this section, in the manner set forth under paragraph (b)(1)(ii) of this section.

(ii) *Transmission of manifests.* A carrier required to make passenger departure manifest transmissions to the CBP system under paragraph (b)(1)(i) of this section must make the required transmissions covering all passengers checked in for the flight in accordance with either paragraph (b)(1)(ii)(A), (B), (C), or (D) of this section, as follows:

(A) *Non-interactive batch transmission option.* A carrier that chooses not to transmit required passenger manifests by means of a CBP-certified interactive electronic transmission system under paragraph (b)(1)(ii)(B), (C), or (D) of this section must make batch manifest transmissions in accordance with this paragraph (b)(1)(ii)(A) by means of a non-interactive electronic transmission system approved by CBP. The carrier may make a single, complete batch manifest transmission containing the data required under paragraph (b)(3) of this section for all passengers checked in for the flight or two or more partial batch manifest transmissions, each containing the required data for the identified passengers and which together cover all passengers checked in for the flight. After receipt of the manifest information, the CBP system will perform an initial security vetting of the data and send to the carrier by a non-interactive transmission method a ''not-cleared'' instruction for

passengers identified as requiring additional security analysis and a ''selectee'' instruction for passengers requiring secondary screening (e.g., additional examination of the person and/or his baggage) under applicable Transportation Security Administration (TSA) requirements. The carrier must designate as a ''selectee'' any passenger so identified during initial security vetting, in accordance with applicable TSA requirements. The carrier must not issue a boarding pass to, or load the baggage of, any passenger subject to the ''not-cleared'' instruction and must contact the Transportation Security Administration (TSA) to seek resolution of the ''not-cleared'' instruction by providing, if necessary, additional relevant information relative to the ''not-cleared'' passenger. TSA will notify the carrier if a ''not-cleared'' passenger is cleared for boarding or downgraded to ''selectee'' status based on the additional security analysis.

(B) *Interactive batch transmission option.* A carrier, upon obtaining CBP certification, in accordance with paragraph (b)(1)(ii)(E) of this section, may make manifest transmissions by means of an interactive electronic transmission system configured for batch transmission of data and receipt from the CBP system of appropriate messages. A carrier operating under this paragraph must make manifest transmissions by transmitting a single, complete batch manifest containing the data required under paragraph (b)(3) of this section for all passengers checked in for the flight or two or more partial batch manifests, each containing the required data for the identified passengers and which together cover all passengers checked in for the flight. In the case of connecting passengers arriving at the connecting airport already in possession of boarding passes for a flight departing from the United States whose data have not been collected by the carrier, the carrier must transmit required manifest data for these passengers when they arrive at the gate, or some other suitable place designated by the carrier, for the flight. After receipt of the manifest information, the CBP system will perform an initial security vetting of the data and send to the carrier by interactive electronic transmission, as appropriate, a ''cleared'' instruction for passengers not matching against the watch list, a ''not-cleared'' instruction for passengers identified as requiring additional security analysis, and a ''selectee'' instruction for passengers who require secondary screening (e.g., additional examination of the person and/or his baggage) under applicable TSA requirements. The carrier must designate as a ''selectee'' any passenger so identified during initial security vetting, in accordance with applicable TSA requirements. The carrier must not issue a boarding pass to, or load the baggage of, any passenger subject to a ''not-cleared'' instruction and, in the case of connecting passengers (as described in this paragraph), the carrier must not board or load the baggage of any such passenger until the CBP system returns a ''cleared'' or ''selectee'' response for that passenger. Where a ''selectee'' instruction is received for a connecting passenger, the carrier must ensure that such passenger undergoes secondary screening before boarding. The carrier must seek resolution of a ''not-cleared'' instruction by contacting TSA and providing, if necessary, additional relevant information relative to the ''not-cleared'' passenger. Upon completion of the additional security analysis, TSA will notify the carrier if a ''not-cleared'' passenger is cleared for boarding or downgraded to ''selectee'' status based on the additional security analysis. No later than 30 minutes after the securing of the aircraft, the carrier must transmit to the CBP system a message reporting any passengers who checked in but were not onboard the flight. The message must identify the passengers by a unique identifier selected or devised by the carrier or by specific passenger data (name) and may contain the unique identifiers or data for all passengers onboard the flight or for only those passengers who checked in but were not onboard the flight.

(C) *Interactive individual passenger information transmission option.* A carrier, upon obtaining CBP certification, in accordance with paragraph (b)(1)(ii)(E) of this section, may make manifest transmissions by means of an interactive electronic transmission system

configured for transmitting individual passenger data for each passenger and for receiving from the CBP system appropriate messages. A carrier operating under this paragraph must make such transmissions as individual passengers check in for the flight or, in the case of connecting passengers arriving at the connecting airport already in possession of boarding passes for a flight departing from the United States whose data have not been collected by the carrier, as these connecting passengers arrive at the gate, or some other suitable place designated by the carrier for the flight. With each transmission of manifest information by the carrier, the CBP system will perform an initial security vetting of the data and send to the carrier by interactive electronic transmission, as appropriate, a ''cleared'' instruction for passengers not matching against the watch list, a ''not-cleared'' instruction for passengers identified during initial security vetting as requiring additional security analysis, and a ''selectee'' instruction for passengers requiring secondary screening (e.g., additional examination of the person and/or his baggage) under applicable TSA requirements. The carrier must designate as a ''selectee'' any passenger so identified during initial security vetting, in accordance with applicable TSA requirements. The carrier must not issue a boarding pass to, or load the baggage of, any passenger subject to a ''not-cleared'' instruction and, in the case of connecting passengers (as described in this paragraph), must not board or load the baggage of any such passenger until the CBP system returns a ''cleared'' or ''selectee'' response for that passenger. Where a ''selectee'' instruction is received for a connecting passenger, the carrier must ensure that such passenger undergoes secondary screening before boarding. The carrier must seek resolution of a ''not-cleared'' instruction by contacting TSA and providing, if necessary, additional relevant information relative to the ''not-cleared'' passenger. Upon completion of the additional security analysis, TSA will notify the carrier if a ''not-cleared'' passenger is cleared for boarding or downgraded to ''selectee'' status based on the additional security analysis. No later than 30 minutes after the securing of the aircraft, the carrier must transmit to the CBP system a message reporting any passengers who checked in but were not onboard the flight. The message must identify the passengers by a unique identifier selected or devised by the carrier or by specific passenger data (name) and may contain the unique identifiers or data for all passengers onboard the flight or for only those passengers who checked in but were not onboard the flight.

(D) *Combined use of interactive methods.* If certified to do so, a carrier may make transmissions under both paragraphs (b)(1)(ii)(B) and (C) of this section for a particular flight or for different flights.

(E) *Certification.* Before making any required manifest transmissions under paragraph (b)(1)(ii)(B) or (C) of this section, a carrier must subject its electronic transmission system to CBP testing, and CBP must certify that the carrier's system is then presently capable of interactively communicating with the CBP system for effective transmission of manifest data and receipt of appropriate messages under those paragraphs.

(2) *Place and time for submission.* The appropriate official specified in paragraph (b)(1)(i) of this section (carrier) must transmit the departure manifest or manifest data as required under paragraphs (b)(1)(i) and (ii) of this section to the CBP system (CBP Data Center, CBP Headquarters), in accordance with the following:

(i) For manifests transmitted under paragraph (b)(1)(ii)(A) and (B) of this section, no later than 30 minutes prior to the securing of the aircraft;

(ii) For manifest information transmitted under paragraph (b)(1)(ii)(C) of this section, no later than the securing of the aircraft; and

(iii) For an aircraft operating as an air ambulance in service of a medical emergency, no later than 30 minutes after departure.

(3) *Information required.* The electronic passenger departure manifest required under paragraph (b)(1) of this section must contain the following information for all passengers, except

that the information specified in paragraphs (b)(3)(iv), (ix), and (xi) of this section must be included on the manifest only on or after October 4, 2005:

(i) Full name (last, first, and, if available, middle);

(ii) Date of birth;

(iii) Gender (F = female; M = male);

(iv) Citizenship;

(v) Status on board the aircraft;

(vi) Travel document type (*e.g.*, P = passport; A = alien registration card);

(vii) Passport number, if a passport is required;

(viii) Passport country of issuance, if a passport is required;

(ix) Passport expiration date, if a passport is required;

(x) Alien registration number, where applicable;

(xi) Passenger Name Record locator, if available;

(xii) International Air Transport Association (IATA) departure port code;

(xiii) IATA code of port/place of final arrival (foreign port code);

(xiv) Airline carrier code;

(xv) Flight number; and

(xvi) Date of aircraft departure.

(c) *Exception.* The electronic passenger departure manifest specified in paragraph (b)(1) of this section is not required for active duty military personnel traveling as passengers on board a departing Department of Defense commercial chartered aircraft.

(d) *Carrier responsibility for comparing information collected with travel document.* The carrier collecting the information described in paragraph (b)(3) of this section is responsible for comparing the travel document presented by the passenger with the travel document information it is transmitting to CBP in accordance with this section in order to ensure that the information is correct, the document appears to be valid for travel purposes, and the passenger is the person to whom the travel document was issued.

(e) *Sharing of manifest information.* Information contained in the passenger manifest required under this section that is received by CBP electronically may, upon request, be shared with other Federal agencies for the purpose of protecting national security. CBP may also share such information as otherwise authorized by law.

[CBP Dec. 05–12, 70 FR 17855, Apr. 7, 2005, as amended by CBP Dec. 07–64, 72 FR 48344, Aug. 23, 2007]

§ 122.75b Electronic manifest requirement for crew members and non-crew members onboard commercial aircraft departing from the United States.

(a) *Definitions.* The definitions set forth in § 122.49a(a) also apply for purposes of this section, except that the definitions of ''all-cargo flight,'' ''carrier,'' ''crew member,'' and ''non-crew member'' applicable to this section are found in § 122.49b(a).

(b) *Electronic departure manifest*—(1) *General requirement.* Except as provided in paragraph (c) of this section, an appropriate official of each commercial aircraft departing from the United States to any port or place outside the United States must transmit to Customs and Border Protection (CBP) an electronic crew member departure manifest and, for all-cargo flights only, an electronic non-crew member departure manifest covering any crew members and non-crew members onboard. Each manifest must be transmitted to CBP at the place and time specified in paragraph (b)(2) of this section by means of an electronic data interchange system approved by CBP and must set forth the information specified in paragraph (b)(3) of this section. Where both a crew member departure manifest and a non-crew member departure manifest are required for an all-cargo flight, they must be combined in one departure manifest covering both crew members and non-crew members. Where a passenger departure manifest under § 122.75a and a crew member departure manifest under this section are required, they must be transmitted separately if the transmission is in US EDIFACT format.

(2) *Place and time for submission; certification; change to manifest*—(i) *Place and time for submission.* The appropriate official specified in paragraph (b)(1) of this section must transmit the electronic departure manifest required under paragraph (b)(1) of this section to the CBP Data Center, CBP Headquarters, no later than 60 minutes prior

to departure of the aircraft, except that for an air ambulance in service of a medical emergency, the manifest must be transmitted to CBP no later than 30 minutes after departure.

(ii) *Certification.* Except as provided in paragraph (c) of this section, the appropriate official, by transmitting the manifest as required under paragraph (b)(1) of this section, certifies that the flight's crew members and non-crew members are included, respectively, on the master crew member list or master non-crew member list previously submitted to CBP in accordance with §122.49c. If a crew member or non-crew member on the manifest is not also included on the appropriate master list, the flight may be denied clearance to depart.

(iii) *Changes to manifest.* The appropriate official is obligated to make necessary changes to the crew member or non-crew member departure manifest after transmission of the manifest to CBP. Necessary changes include adding a name, with other required information, to the manifest or amending previously submitted information. If changes are submitted less than 60 minutes before scheduled flight departure, the air carrier must receive approval from TSA before allowing the flight to depart or the flight may be denied clearance to depart.

(3) *Information required.* The electronic crew member and non-crew member departure manifests required under paragraph (b)(1) of this section must contain the following information for all crew members and non-crew members, except that the information specified in paragraphs (b)(iii), (v), (vi), (xii), and (xiv) of this section must be included on the manifest only on or after October 4, 2005:

(i) Full name (last, first, and, if available, middle);

(ii) Date of birth;

(iii) Place of birth (city, state—if applicable, country);

(iv) Gender (F = female; M = male);

(v) Citizenship;

(vi) Address of permanent residence;

(vii) Status on board the aircraft;

(viii) Pilot certificate number and country of issuance (if applicable);

(ix) Travel document type (*e.g.*, P = passport; A = alien registration card);

(x) Passport number, if a passport is required;

(xi) Passport country of issuance, if a passport is required;

(xii) Passport expiration date, if a passport is required;

(xiii) Alien registration number, where applicable;

(xiv) Passenger Name Record locator, if available;

(xv) International Air Transport Association (IATA) departure port code;

(xvi) IATA code of port/place of final arrival (foreign port code);

(xvii) Airline carrier code;

(xviii) Flight number; and

(xix) Date of aircraft departure.

(c) *Exceptions.* The electronic departure manifest requirement specified in paragraph (b)(1) of this section is subject to the following conditions:

(1) Federal Aviation Administration (FAA) Aviation Safety Inspectors with valid credentials and authorization are not subject to the requirement, but the manifest requirement of §122.75a applies to these inspectors, as they are considered passengers on departing flights;

(2) For crew members traveling onboard departing aircraft chartered by the U.S. Department of Defense, the provisions of this section apply regarding electronic transmission of the manifest, except that:

(i) The manifest certification provision of paragraph (b)(2)(ii) of this section is inapplicable; and

(ii) The TSA manifest change approval requirement of paragraph (b)(2)(iii) of this section is inapplicable; and

(3) For non-crew members traveling onboard a departing all-cargo flight chartered by the U.S. Department of Defense, the manifest is not required, but the manifest requirement of §122.75a applies to these persons, as, in this instance, they are considered passengers on departing flights.

(d) *Carrier responsibility for comparing information collected with travel document.* The carrier collecting the information described in paragraph (b)(3) of this section is responsible for comparing the travel document presented

by the crew member or non-crew member with the travel document information it is transmitting to CBP in accordance with this section in order to ensure that the information is correct, the document appears to be valid for travel, and the crew member or non-crew member is the person to whom the travel document was issued.

(e) *Sharing of manifest information.* Information contained in the crew member and non-crew member manifests required under this section that is received by CBP electronically may, upon request, be shared with other Federal agencies for the purpose of protecting national security. CBP may also share such information as otherwise authorized by law.

(f) *Master crew member and non-crew member lists.* Air carriers subject to the requirements of this section must also comply with the requirements of § 122.49c pertaining to the electronic transmission of a master crew member list and a master non-crew member list as applied to flights departing from the United States.

(g) *Superseding amendments issued by TSA.* One or more of the requirements of this section may be superseded by provisions of, amendments to, or alternative procedures authorized by TSA for compliance with an aviation security program, emergency amendment, or security directive issued by the TSA to an air carrier subject to the provisions of 49 CFR part 1544, 1546, or 1550. The amendments will have superseding effect only for the airline to which issued and only for the period of time they remain in effect.

[CBP Dec. 05–12, 70 FR 17855, Apr. 7, 2005]

§ 122.76 Electronic Export Information (EEI) filing citations, exclusions, and/or exemption legends and inspection certificates.

(a) *Electronic Export Information (EEI)*—(1) *Other than shipments to Puerto Rico.* For shipments other than to Puerto Rico, at the time of clearance, the aircraft commander or agent must file with the CBP port director of the departure airport any EEI filing citations, exclusions, and/or exemption legends required by the Census Bureau's Foreign Trade Regulations (FTR) (see 15 CFR part 30).

(2) *Shipments to Puerto Rico.* For flights carrying shipments to Puerto Rico from the United States, the aircraft commander or agent must file any EEI filing citations, exclusions, and/or exemption legends required by the Census Bureau's FTR (see 15 CFR part 30) upon arrival in Puerto Rico with the CBP port director there.

(b) *Inspection certificates.* The aircraft commander or authorized agent must deliver a proper export inspection certificate issued by the Veterinary Service, Animal and Plant Inspection Service, Department of Agriculture (9 CFR part 91), to the CBP officer in charge at the time of departure of any aircraft carrying horses, mules, asses, cattle, sheep, swine, or goats.

[T.D. 93–61, 58 FR 41426, Aug. 4, 1993, as amended by CBP Dec. 17-06, 82 FR 32239, July 13, 2017]

§ 122.77 Clearance certificate.

(a) *Aircraft departing from the U.S.* One copy of the air cargo manifest shall be used as a clearance certificate when endorsed by the port director to show that clearance is granted.

(b) *Scheduled aircraft.* If a scheduled aircraft clears at an airport which is not the airport at or nearest the place of final take-off from the U.S., two copies of the air cargo manifest shall be filed. One copy shall be used as a clearance certificate when endorsed by the director of the port where clearance is obtained, and the second copy shall be attached to the first for use at subsequent U.S. ports.

§ 122.78 Entry or withdrawal for exportation or for transportation and exportation.

If a shipment is exported under an entry or withdrawal for exportation, or for transportation and exportation, the air cargo manifest, the air waybill, or the consignment note attached to the manifest shall clearly show the following information for each entry or withdrawal:

(a) Number;

(b) Date; and

(c) Class of entry or withdrawal, as follows:

(1) Transportation and exportation;

(2) Withdrawal for transportation and exportation;

(3) Immediate exportation;
(4) Withdrawal for exportation; or
(5) Withdrawal for transportation.

The name of the port where the entry or withdrawal was filed, if not the port where the merchandise is laden for exportation, shall also appear on the air cargo manifest.

§ 122.79 Shipments to U.S. possessions.

(a) *Other than Puerto Rico.* An air cargo manifest must be filed for aircraft transporting cargo between the United States and U.S. possessions. Electronic Export Information (EEI) is not required for shipments from the United States or Puerto Rico to the U.S. possessions, except to the U.S. Virgin Islands or from a U.S. possession and destined to the United States, Puerto Rico, or another U.S. possession.

(b) *Puerto Rico.* When an aircraft carries merchandise on a direct flight from the United States to Puerto Rico, any required air cargo manifest or EEI filing citations, exclusions, and/or exemption legends, must be filed with the appropriate port director Puerto Rico.

[CBP Dec. 17-06, 82 FR 32239, July 13, 2017]

§ 122.80 Verification of statement.

Customs officers may verify any of the statements required under this subpart by examining the shipping records of the airline involved.

Subpart I—Procedures for Residue Cargo and Stopover Passengers

§ 122.81 Application.

(a) *Aircraft arriving with cargo.* Aircraft arriving in the U.S. from a foreign area with cargo shown on the manifest to be traveling to other airports in the U.S. or to foreign areas may proceed under the provisions of this subpart.

(b) *Aircraft arriving with no cargo.* Aircraft arriving in the U.S. from a foreign area with no cargo on board, and requesting immediate examination and release, may proceed if a bond on Customs Form 301, containing the bond conditions set forth in subpart G of part 113 of this chapter, has been filed and covers the aircraft.

§ 122.82 Bond requirements.

A bond on Customs Form 301, containing the bond provisions set forth in subpart G of part 113 of this chapter, shall be filed before an aircraft is given a permit to proceed with residue cargo under this subpart. The bond shall be filed in the correct amount with the director of the entry airport.

§ 122.83 Forms required.

(a) *Traveling general declaration and manifest.* When applying for examination and release from an airport or place of entry in the U.S., the aircraft commander or agent shall file a traveling general declaration and manifest. The traveling general declaration and manifest is one certified copy of the original inward general declaration, and each air cargo manifest required when the aircraft entered. This includes air waybills that were part of the manifest.

(b) *Attachments to traveling general declaration and manifest*—(1) *Crew purchase and stores list.* The crew purchase and stores list, if required when the aircraft enters under §§ 122.46 and 122.47, shall be attached to the traveling general declaration and manifest.

(2) *Crew purchases not listed on a crew purchase list.* A crew member's declaration shall be attached to the traveling general declaration and manifest if:

(i) Crew purchases are listed on a crew declaration, Customs Form 5129, instead of on the crew purchase list, under § 122.46(c)(2); and

(ii) The crew member has not left the aircraft with his or her purchase at the first entry port.

The crew member's declaration must be attached at the port where the articles listed on the declaration receive clearance.

(c) *Abstract general declaration and manifest.* The abstract general declaration and manifest shall consist of one copy of the general declaration, and one copy of each manifest (including air waybills) covering residue cargo:

(1) Not yet examined and released by Customs or any other Federal agency; and

(2) To be discharged at another domestic or foreign airport.

An abstract general declaration and manifest need not be filed at the last domestic port of discharge.

(d) *Permit to proceed.* A permit to proceed from one domestic airport to another shall be filed by the aircraft commander or agent with the Customs officer in charge at the clearance airport. The permit to proceed shall include a declaration by the aircraft commander or agent, which shall be signed on entry at the next domestic airport. The permit to proceed and declaration shall state substantially the following:

PERMIT TO PROCEED FROM ONE AIRPORT TO ANOTHER

Airport of Departure _____
Date _____

Permission is hereby given aircraft _____ to proceed to _____
(Next Domestic Airport)

The aircraft which has arrived from and is destined to the places shown in the general declaration, is proceeding to such places of destination to discharge residue cargo, passengers, or crew members and their purchases, as listed in the attached manifest. Bond was given at the airport of arrival for the cargo retained on board. Items of cargo manifested for delivery at this airport appear to have been landed.

Number of crew members not cleared by Customs _____.

Number of passengers not cleared by Customs _____.

Number of pages of the traveling manifest _____.

_____
(Customs Officer and Title)

DECLARATION ON ENTRY OF AIRCRAFT AT FOLLOWING AIRPORT

Airport of Arrival _____
Date _____

I, _____, commander or authorized agent of the aircraft identified in this document, declare and guarantee that there were not, when such aircraft departed from the airport of _____, nor have been since, nor now are, any more or other goods, wares, or merchandise on board than was stated in the attached manifests.

_____
(Signature and Title)

The permit to proceed and declaration must be stamped, mimeographed or printed on:

(1) The abstract general declaration;

(2) The traveling general declaration when an abstract general declaration is not required; or

(3) A separate sheet of paper.

(e) *Permit to proceed for nonscheduled aircraft.* For each permit to proceed issued to a nonscheduled aircraft carrying residue cargo the transit air cargo manifest procedures shall be followed. When the aircraft arrives at the final port, the aircraft commander shall deliver the permit to proceed to Customs.

(f) *Use of form.* When all of the documents required by this section are in order, the permit to proceed shall be dated and signed by the Customs officer in charge at the clearance airport. One copy of the permit to proceed shall be delivered to the aircraft commander or agent with the other required documents, for filing at the next international airport.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988; T.D. 00–22, 65 FR 16518, Mar. 29, 2000]

§ 122.84 Intermediate airport.

(a) *Application.* The provisions of this section apply at any U.S. airport to which an aircraft proceeds with residue cargo, and passengers, or crewmembers and their purchases not cleared by Customs. They do not apply to aircraft arriving at the last domestic port of discharge.

(b) *Entry.* When an aircraft arrives at the next airport, the aircraft commander or agent shall make entry by filing the:

(1) Abstract general declaration and manifest;

(2) Traveling general declaration and manifest; and

(3) Permit to proceed.

The *Declaration on Entry of Aircraft at Following Airport,* found on the permit to proceed, shall be properly signed before filing for entry.

(c) *Crew declarations.* The declarations and entries, Customs Form 5129, of any crewmembers who leave the aircraft with their purchases at the intermediate airport shall be detached from the traveling general manifest. The declaration and entries are to be detached by the Customs officer in charge and are kept at the airport.

(d) *Departure.* When the aircraft leaves an intermediate airport carrying residue cargo, and passengers or crewmembers and their purchases are not

yet cleared by Customs or another interested Federal agency, the procedure is the same as at the first arrival airport. All documents required by this section, except those detached under paragraph (c) of this sectiCn, shall be returned to the aircraft commander or agent for filing at the next entry airport.

§ 122.85 Final airport.

When an aircraft enters at the last domestic airport of discharge, the traveling general declaration and manifest shall be filed with Customs and kept at the airport. No abstract general declaration and manifest is required.

§ 122.86 Substitution of aircraft.

(a) *Application*. The residue cargo procedure applies when an airline must substitute aircraft to reach a destination due to weather conditions or operational factors which prevent an aircraft on arrival of the flight at the first port from continuing inbound to interior ports scheduled for that flight.

(b) *Clearance and entry*. Clearance and entry of substitute aircraft is required as provided in this subpart for other aircraft.

(c) *Identification*. An identification of all substitute aircraft shall be clearly made on all clearance and entry documents.

(d) *Transporting cargo*—(1) *Forwarding*. The carrier may forward all cargo which arrived on one aircraft by transferring it to another aircraft of the same airline to complete the inbound flight. The transfer shall be done under Customs supervision.

(2) *Conditions*. All of the residue cargo from more than one inbound flight of an airline may be laden on one substitute aircraft of the airline. The substitute aircraft shall finish the inbound transport of the residue cargo.

§ 122.87 Other requirements.

Section 4.85 of this chapter, relating to vessels with residue cargo for domestic ports, applies to aircraft residue cargo, except as stated in this subpart.

§ 122.88 Aircraft carrying domestic (stopover) passengers.

Airlines that commingle domestic (stopover) passengers (that is, passengers who have already cleared Customs at their port of arrival and are continuing on another aircraft to a second U.S. destination) with international passengers who are continuing on the flight to their port of arrival and have not yet cleared Customs, must comply with certain requirements before being issued a permit to proceed. The carriers requirements are as follows:

(a) The domestic (stopover) passengers must be transported on U.S.-registered aircraft, or foreign-registered aircraft of the same foreign airline that brought them into the U.S.

(b) A $2.00 charge must be paid for each revenue producing domestic (stopover) passenger reinspected in the U.S. (see § 24.12 of this chapter).

(c) Arrangements must be made for the checked baggage of all passengers requiring inspection on the previously described flights to be off-loaded and made available for examination in the Federal inspection area at the destination port (intermediate or final) where an inspection is to take place.

(d) All stopover passengers shall be notified in writing, prior to boarding, that they will be subject to full reinspection by Customs. This written notification shall contain the following language: ''Notice to all boarding passengers: You are boarding an aircraft on which passengers will be arriving in the U.S. from foreign destinations. These passengers have not yet cleared U.S. Customs. Accordingly, you will be subject to a full reinspection by Customs at your final U.S. port of entry.''

(e) Domestic (stopover) passengers shall be provided a Customs declaration identified by the words ''Domestic Flight''. The domestic (stopover) passenger is only required to complete items 1–4 on that declaration.

(f) The carrier shall present to Customs, as otherwise required by law, the permit to proceed and/or the general declaration, clearly stating the number of domestic (stopover) passengers to be reinspected upon arrival at the destination port (intermediate or final) where an inspection of passengers is to take place.

Subpart J—Transportation in Bond and Merchandise in Transit

§ 122.91 Application.

This subpart applies to the transportation in bond of merchandise arriving in the U.S. by aircraft and entered:

(a) For immediate transportation to another airport without appraisement; or

(b) For transportation through the U.S. and later exportation by aircraft.

§ 122.92 Procedure at port of origin.

(a) *Forms required*—(1) *Customs Form 7512 or other document.* Customs Form 7512 or other Customs approved documents, such as an air waybill (see paragraph (a)(3) of this section), shall be used for both entry and manifest. Three copies of the form or other document are required to be filed with Customs at the port of origin for merchandise for immediate transportation without appraisement. Four copies of the form or other document are required when merchandise for transportation and exportation is entered. (See also, §§ 18.11 and 18.20(a) of this chapter). Each copy shall be signed by the carrier or its authorized agent.

(2) *Air Waybill.* An air waybill may be used for both entry and manifest. Three copies of the air waybill are required unless the port director deems additional copies necessary. Photocopies of the original air waybill are acceptable. Either preprinted stock air waybills or electronically generated air waybills may be used. The air waybill must:

(i) Contain the information required of a universal air waybill as recognized and accepted by the International Air Transport Association (IATA), be legible and in the English language;

(ii) Display a unique 11-digit number, the first three digits being the air carrier's identification code;

(iii) Display the number of packages based on the smallest external packaging unit (*e.g.*, 14 packages is acceptable, 1 pallet is unacceptable);

(iv) Display the name of the final port of destination in the U.S. or the name of the ultimate country of destination of the cargo indicated by available air carrier shipping documents. The ultimate destination must be shown even though the air transportation may be scheduled to terminate in a country prior to the cargo's final destination;

(v) Be modified to contain the following information which should appear in a block or attachment in the upper right-hand corner as in this example. The numbers 1–8 correspond to the descriptions that follow; the numbers do not have to appear on the AWB:

(1) _____
Origin
(2) _____
Entry Type
(3) _____
Destination
(4) _____
Importing Carrier/Flight Number/Arrival Date
(5) _____
Bonded Carrier/Exporter
(6) _____
Date
(7) _____
Signature of Carrier's Agent
(or Exporter)
(8) _____
Customs Officer Date

The item numbers correspond to the following information:

Item 1—Origin— The numeric port code as listed in Schedule D of the Harmonized Tariff Schedules of the United States, or the port where the in-bond entry is presented.

Item 2—Entry type— The appropriate in-bond code number such as I.T./61 for Immediate Transportation, T&E/62 for Transportation and Exportation, and I.E./63 for Immediate Exportation.

Item 3—Destination— The numeric port code for the intended port of destination for entry or exportation.

Item 4—Importing Carrier/Flight Number/Arrival Date— This information serves to identify the shipment in terms of the inward foreign manifest of the importing carrier. The ''Arrival Date'' is the date of arrival of the importing conveyance in the U.S. The information must be supplied in all instances.

Item 5—Bonded Carrier/Exporter— The bonded carrier or exporter who will be

liable for the proper movement, handling, and safekeeping of the merchandise once the in-bond movement is authorized by Customs. If this information is not supplied, the in-bond movement will be carried out under the bond of the importing carrier. (See Item 7 for further information on transfer of liability.)

Item 6—Date— The date of the in-bond entry preparation. Since an in-bond entry can be prepared before the date of entry presentation and/or acceptance, and prior to the actual arrival of the importing conveyance, this date should only be used for duty assessment purposes when the date in Item 8 is left blank. If a date is not present, the date of in-bond preparation will be deemed to be the date of arrival.

Item 7—Signature of Carrier's Agent (or Exporter)— This signature of the authorized agent of the bonded carrier or exporter identified previously (See Item 5) constitutes acceptance of the liability for the in-bond shipment by the party signing. A signature is required except when the in-bond movement is under the bond of the importing carrier. If unsigned, the submission to Customs of an AWB requesting such a movement is evidence of the acceptance of liability if the AWB is approved by Customs.

Item 8—Customs Officer/Date— Signature of the Customs officer who authorizes the initiation of the in-bond movement and the date of such authorization. Customs will check to make sure merchandise is released only to a bonded carrier. The date is used to start the time limit for completion of the in-bond movement and for consumption entry purposes in accord with §141.69(b) of this chapter. Customs authorization procedures which use a perforation device are acceptable in lieu of the appropriate Customs signature. The port director will determine whether a signature will be required in this block prior to the time that the cargo is allowed to move.

(b) *Delivery of Customs form to carrier*—(1) *Merchandise entered for immediate transportation without appraisement.* When merchandise is entered for immediate transportation without appraisement, two copies of Customs Form 7512 or other Customs approved document shall be delivered to the carrier.

(2) *Merchandise entered for transportation and exportation.* When merchandise is entered for transportation and exportation, one copy of Customs For 7512 and any other Customs approved document shall be delivered to the carrier.

(3) *After delivery.* After delivery, the forms or other document shall accompany the merchandise to the port of destination or exportation.

(c) *Receipt and supervision.* The agent of a bonded air carrier shall give a receipt for any merchandise delivered to it for transportation in bond, and no supervision of the lading of the merchandise on the transporting aircraft shall be required.

(d) *Split shipment*—(1) *Departure within 24 hours.* Merchandise covered by a single entry and manifest (Customs Form 7512 or other Customs approved document) may be sent to the destination airport on one or more aircraft. A separate manifest for each aircraft is not required if the whole shipment is sent within a single 24-hour period.

(2) *Departure not within 24 hours.* If any part of a shipment is sent more than 24 hours after the first part was sent, the entry and manifest copy which accompanies the first shipment shall state that the rest of the shipment will follow by separate aircraft. A single manifest shall be prepared for each part of the shipment sent by separate aircraft. The manifest shall be used as notice of each arrival at the destination airport.

(e) *Transhipment.* Merchandise sent under bond may be transferred at an intermediate airport to one or more aircraft of the same airline. This may be done without Customs supervision and notice of the transfer is not required. If merchandise covered by one entry and manifest is transferred to more than one aircraft, paragraph (d) of this section applies.

(f) *Sealing not required.* The sealing of aircraft, aircraft compartments carrying bonded merchandise, or the cording and sealing of bonded packages carried by the aircraft, is not required.

(g) *Warning labels.* The carrier shall supply and attach the warning label, as

described in §18.4(b)(3) of this chapter, to each bonded package.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 92–82, 57 FR 38276, Aug. 24, 1992; T.D. 00–22, 65 FR 16518, Mar. 29, 2000; CBP Dec. 17–13, 82 FR 45405, Sept. 28, 2017]

§ 122.93 Procedure at destination or exportation airport.

(a) *Delivery to port director*. When a bonded shipment arrives at the destination or exportation airport, the aircraft commander or agent shall deliver one copy of the entry and manifest (Customs Form 7512 or other Customs approved document) covering the shipment to the port director of that airport as notice of arrival. If the shipment was sent by separate aircraft more than 24 hours after the first part of the shipment was sent, then a manifest for each part of the shipment shall be delivered to the port director.

(b) *Delivery to consignee*. When the merchandise is sent under an entry for immediate transportation without appraisal, one copy of the manifest covering the merchandise shall be delivered by the carrier to the consignee. This copy is used to make entry, and may also be used as a carrier certificate as provided in §141.11(a)(4) of this chapter.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988; T.D. 00–22, 65 FR 16518, Mar. 29, 2000]

§ 122.94 Certificate of lading for exportation.

(a) *Required filing*. This section applies to merchandise entered for transportation and exportation by aircraft. A certificate of lading for exportation and a Customs Form 7512 or other Customs approved document (see §122.93 of this subpart) shall be filed when the merchandise reaches the final departure airport. The form shall be filled out and signed at the place where aircraft clearance for the merchandise is given.

(b) *Clearance not at place of final departure*. If an aircraft is cleared at a place other than the place of final departure from the U.S., the aircraft commander or its authorized agent shall:

(1) Promptly report arrival of any bonded merchandise for export to the Customs officer in charge at that place; and

(2) Submit to the Customs officer in charge the certificate received at the place the merchandise was taken on board. The clearance certificate is kept by the Customs officer in charge until departure.

This procedure shall be followed at each place of landing before final departure.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988; T.D. 00–22, 65 FR 15618, Mar. 29, 2000]

§ 122.95 Other provisions.

Part 18 of this chapter (Transportation in Bond and Merchandise in Transit) applies to the transportation of merchandise under this subpart unless stated otherwise.

Subpart K—Accompanied Baggage in Transit

§ 122.101 Entry of accompanied baggage.

Passengers who enter the U.S. on one aircraft and depart to a foreign area on another aircraft with accompanying baggage shall either:

(a) Submit their baggage to Customs for inspection; or

(b) Arrange with the importing carrier for the baggage to be processed under regular in-transit procedures.

When passengers choose not to have access to their baggage while in the U.S., the baggage shall be listed on the Air Cargo Manifest as provided in §122.48.

§ 122.102 Inspection of baggage in transit.

(a) General baggage in transit may be inspected upon arrival, while in transit, and upon exportation. Carriers shall present in-transit baggage for inspection at any time found necessary by the port director.

(b) In-transit baggage shall be presented to a Customs officer for inspection and clearance before the baggage can be delivered to a passenger while in the U.S.

Subpart L—Transit Air Cargo Manifest (TACM) Procedures

§ 122.111 Application.

Cargo (including manifested baggage) which arrives and is transported under Customs control in, through, or from, the U.S. may be transported in bond under this subpart. If cargo is not transported under this subpart, it shall be transported under other provisions of this chapter. (See subparts I and J of this part, and parts 18 and 123 of this chapter.)

§ 122.112 Definitions.

The following definitions apply in this subpart:

(a) *Transit air cargo.* ''Transit air cargo'' is cargo, including manifested baggage, transported under the requirements of this subpart.

(b) *Port of arrival.* The ''port of arrival'' is the port in the U.S. where imported cargo must be documented for further transportation under this subpart.

(c) *Transfer or transferred.* ''Transfer or transferred'' means the change of documentation of cargo to transit air cargo for transportation. The terms also include the physical movement of the cargo from one carrier to another, and thereafter by air or surface movement to the port of destination.

(d) *Transit air cargo manifest.* ''Transit air cargo manifest'' is used in this subpart as the shortened title for the transportation entry and transit air cargo manifest.

§ 122.113 Form for transit air cargo manifest procedures.

A manifest on Customs Form 7509 is required for transit air cargo, as provided in §122.48(c) of this part. The words ''Transportation Entry and Transit Air Cargo Manifest'' shall be printed, stamped or marked on the form and on all copies of the form required for transit air cargo movement.

§ 122.114 Contents.

(a) *Form duplicates original manifest.* Each transit air cargo manifest shall be a duplicate of the sheet presented as part of the cargo manifest for the aircraft on which the cargo arrived in the U.S.

(b) *Shipments shown on manifest*—(1) *Country of exportation.* Each transit air cargo manifest sheet may list:

(i) Only air cargo shipments from one exporting country, with the name of the country shown in the heading; or

(ii) Air cargo shipments from several exporting countries, with the name of the exporting country shown in the ''Nature of Goods'' column.

(2) *Shipment to same port.* Each transit air manifest sheet may list only those shipments manifested by way of the port of arrival for:

(i) The same Customs port of destination;

(ii) The same Customs port for later exportation; or

(iii) Direct exportation from the port of arrival.

(c) *Information required.* Each air cargo manifest sheet shall show:

(1) The foreign port of lading;

(2) The date the aircraft arrived at the port of arrival;

(3) Each U.S. port where Customs services will be necessary due to transit air cargo procedures; and

(4) The final port of destination in the U.S., or the foreign country of destination, for each shipment. The foreign country destination shown on the manifest must be the final destination, as shown by airline shipping documents, even though airline transport may be scheduled to end before the shipment arrives at the final destination.

(d) *Corrections.* If corrections in the route shown on the original manifest for the cargo are required at the port of arrival to make a manifest sheet workable as a transit air cargo manifest, the director of the port of arrival may allow the corrections.

§ 122.115 Labeling of cargo.

A warning label, as required by §18.4(e) of this chapter, shall be attached to all transit air cargo not directly exported from the port of arrival before the cargo leaves the port of arrival.

§ 122.116 Identification of manifest sheets.

When the original cargo manifest for the aircraft on which the cargo arrives is presented by the aircraft commander

or its authorized agent at the port of arrival, a manifest number will be given to the aircraft entry documents by Customs. The number given shall be used by the airline to identify all copies of the transit air cargo manifest. All copies of the manifest shall be correctly numbered before cargo will be released from the port of arrival as transit air cargo.

§ 122.117 Requirements for transit air cargo transport.

(a) *Transportation*—(1) *Port to port.* Transit air cargo may be carried to another port only when a receipt is given, as provided in paragraph (b) of this section. The receipt may be given only to an airline which:

(i) Is a common carrier for the transportation of bonded merchandise; and

(ii) Has the required Customs bond on file.

(2) *Exportation from port of arrival.* Transit air cargo may be exported from the port of arrival only if covered by a bond on Customs Form 301, containing the bond conditions set forth in subpart G of part 113 of this chapter, as provided in § 18.25 of this chapter.

(b) *Receipt*—(1) *Requirements.* When air cargo is to move from the port of arrival as transit air cargo, a receipt shall be given. The receipt shall be made by the airline responsible for transport or export within the general order period (see § 122.50).

(2) *Contents.* The receipt shall appear on each copy of the transit air cargo manifest, clearly signed and dated if required, in the following form:

Received the cargo listed herein for delivery to Customs at the port of destination or exportation shown above, or for direct exportation.

Name of carrier (or exporter)

Attorney or agent of carrier (or exporter)

Date

(c) *Responsibility for transit air cargo*—(1) *Direct exportation.* The responsibility of the airline exporting transit air cargo for direct exportation begins when a receipt, as provided in paragraph (b) of this section, is presented to Customs.

(2) *Other than direct exportation.* When the transit air cargo is not for direct exportation, the responsibility of the airline receiving the cargo begins when a receipt, as provided in paragraph (b) of this section, is presented to Customs.

(3) *Carting.* When carting is used to deliver transit air cargo to receiving airlines, the importing airline is responsible for the cargo under its own bond until a receipt is filed by the receiving airline. This does not apply when the carting is done under part 112 of this chapter, at the expense of the parties involved.

(4) *Importing airlines.* An importing airline which has qualified as a carrier of bonded merchandise, whether registered in the U.S. or a foreign area, may:

(i) Give a receipt for the air cargo;

(ii) File an appropriate bond; and

(iii) Deliver the cargo to an authorized domestic carrier for in-bond transportation from the port of arrival. The importing carrier's bond covers the transportation.

(d) *Split shipments.* A receipt shall be given by one airline for all of the cargo shipments listed on one transit air cargo manifest sheet. Cargo shipments so listed shall be transported from the port of arrival on one aircraft or carrier unless the use of more than one aircraft or carrier would be allowed:

(1) By § 122.92(d) under a single combined entry and manifest;

(2) By § 122.118(d); or

(3) By § 122.119(e), permitting the use of a surface carrier for transport.

Otherwise, all shipments on the transit air cargo manifest shall be separately documented and transported under the regular procedures for transportation of merchandise in bond (See subpart J).

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 98–74, 63 FR 51289, Sept. 25, 1998]

§ 122.118 Exportation from port of arrival.

(a) *Application.* Transit air cargo may be transferred for exportation from any port of arrival under this section. The port director may require any supervision necessary to enforce the regulations of other Federal agencies.

(b) *Time.* Transit air cargo must be exported from the port of arrival within 15 days from the date the exporting airline receives the cargo. After the 15-day period, the individual cargo shipments must be made the subject of individual entries, as appropriate.

(c) *Transit air cargo manifest copies.* Three copies of the transit air cargo manifest shall be filed with Customs.

(1) *Review copy.* The importing airline shall file a copy of each transit air cargo manifest sheet covering any cargo shipment that will be transferred for direct exportation. This filing shall be made as soon as the exporting airline has been chosen. The exporting airline need not give receipt on the review copy for the cargo to be transferred, but the name of the exporting airline shall be placed on the copy.

(2) *Exportation copy.* The exportation copy shall be filed by the exporting airline when clearance documents are presented to Customs.

(3) *Clearance copy.* The clearance copy shall be filed with the exporting aircraft's clearance documents.

The exportation and clearance copies shall show the exporting airline's receipt for the cargo, aircraft number, flight number, and the date.

(d) *Direct export on different aircraft.* Transit air cargo shipments which are listed on one aircraft transit air cargo manifest sheet may be directly exported on different aircraft of the exporting airline. If this occurs, two additional copies of the transit air cargo manifest shall be filed for each shipment or group of shipments transported in other aircraft. Each copy of the transit air cargo manifest shall be clearly marked to show which shipment or shipments listed are covered by the manifest copy.

(e) *Direct export by another airline.* If shipments listed on one transit air cargo manifest sheet are not exported from the same port on the same airline, separate export entries on Customs Form 7512, as required by §18.25 of this chapter, shall be filed.

(f) *Post entered air cargo.* Air cargo not listed on the manifest (i.e., overages) which has been post entered under §122.49(b) may be exported from the port of origin under this subpart. If this occurs, four copies of the air cargo manifest, Customs Form 7509, marked ''Post Entry'', shall be provided. All requirements of §122.44(b) shall be followed in using this procedure.

(g) *Review.* The review copy of the transit air cargo manifest sheets must be reviewed by Customs as required for the carrier manifest copy in §122.120(g). The reviewing officer shall take the proper action if a license is necessary for any cargo. The exporting airline shall be notified that any transit air cargo which is not covered by the required license must be placed under constructive Customs custody in a special area of the airline's terminal until the license is obtained.

[T.D. 88-12, 53 FR 9292, Mar. 22, 1988, as amended by CBP Dec. 17–13, 82 FR 45405, Sept. 28, 2017]

§122.119 Transportation to another U.S. port.

(a) *Application.* Air cargo shipments may be transferred for transportation as transit air cargo from the port of arrival to another port in the U.S. under this section. The director of the port of arrival may require Customs supervision of the transfer.

(b) *Time.* Transit air cargo traveling to a final port of destination in the U.S. shall be delivered to Customs at its destination within 30 days from the date the receiving airline gives the receipt for the cargo at the port of arrival.

(c) *Transit air cargo manifest copies.* Four copies of the transit air cargo manifest, including a carrier manifest copy, shall be filed by the airline giving a receipt for moving the cargo shipments to their destination. The permit copy is used and kept by Customs at the port of arrival.

(d) *Failure to deliver on time*—(1) *Procedure.* If transit air cargo does not arrive at the destination port on time, the director of the port of arrival shall take action as provided in §§18.6 and 18.8 of this chapter. The amount of duty and tax shall be decided at the port of arrival on the basis of information:

(i) On the permit copy kept at the port of arrival; and

(ii) Obtained from the carriers as necessary.

The director of the port of arrival shall notify the airline that presented a receipt for the cargo that there has been a failure to deliver.

(2) *Responsibility of airline.* When the airline that presented a receipt for the cargo receives notice of discrepancies, the airline shall answer within 90 days of the date of such notice to the director of the port of arrival. The answer shall provide any information or documents related to the value and description of the cargo involved that the receipting airline and the importing airline can produce.

(e) *Surface movement to port of destination.* If an aircraft arrives at the port of arrival with cargo to be carried as transit air cargo, the cargo may be transferred to another carrier for surface movement to the port of destination. The transfer is allowed under the following conditions:

(1) The bond of the party receiving the cargo for surface movement must cover the transfer and surface movement;

(2) The description of the cargo on the transit air cargo manifest must be complete;

(3) The entire shipment listed in the transit air cargo manifest must be shipped from the port of arrival to the port of destination by the same surface carrier; and

(4) The requirements of §122.114(b) must be followed.

[T.D. 88–12, 54 FR 9292, Mar. 22, 1988; T.D. 00–22, 65 FR 16518, Mar. 29, 2000, as amended by CBP Dec. 17–13, 82 FR 45405, Sept. 28, 2017]

§ 122.120 Transportation to another port for exportation.

(a) *Application.* Air cargo may be transferred as transit air cargo at the port of arrival for transportation to another port in the U.S. and later exportation under this section.

(b) *Supervision*—(1) *From port of arrival to exportation port.* The director of the port of arrival shall order any supervision found necessary for the transfer of transit air cargo for transportation to another port for export.

(2) *At exportation port.* Customs shall be notified far enough in advance to be able to make any required supervision of the lading of cargo, and to enforce any other Federal agency requirements, when transit air cargo is ready for lading on the exporting aircraft.

(c) *Time.* Transit air cargo covered by this section shall be delivered to CBP at the port of exportation within 30 days from the date of receipt by the forwarding airline.

(d) *Transit air cargo manifest copies.* Five copies of the transit air cargo manifest shall be filed with Customs.

(1) *Port of arrival.* Two copies of the transit air cargo manifest, marked separately as ''permit'' and ''control'' copies, shall be filed with Customs at the port of arrival. Filing shall be made when the arriving aircraft enters, or before the general order period ends, by the airline which presents a receipt to transport the cargo from the port of arrival to the port of destination.

(2) *Port of exportation.* Three copies of the transit air cargo manifest shall be filed at the port of exportation.

(i) *Carrier manifest copy.* The carrier manifest copy shall be attached to the listing of cargo shipments and submitted when the cargo arrives at the exportation port.

(ii) *Exportation and clearance copies.* Two copies, marked separately as ''exportation'' and ''clearance'' copies, shall be filed with Customs at the exportation port.

(e) *Delivery to exporting airline.* When the transit air cargo arrives at the exportation port, it may be delivered directly to the exporting carrier, together with the exportation and clearance copies. The name of the exporting carrier shall be clearly noted on the carrier manifest copy, which shall then be delivered to Customs.

(f) *Storage by exporting airline.* The exporting carrier shall keep all cargo listed on the transit air cargo manifest in one storage space. This storage space shall be separate from the area in which special shipments which require a license under paragraph (g) of this section are stored.

(g) *Export license*—(1) *Review.* A Customs officer shall review the carrier manifest copy of the transit air cargo manifest to make sure that the export licensing requirements of other Federal agencies have been followed.

(2) *Information inadequate.* If the manifest information is not enough for Customs to determine that a license or

other requirement applies, then the transit air cargo shall be checked by examination, or by inspection of the air waybills or attached invoices.

(3) *When license or other requirement applies.* The exporting airline shall be notified at once if Customs finds that the shipment cannot be exported without a license or other approval. The shipment shall then be put under constructive Customs custody in a special area set aside for the shipment in the exporting airline's cargo terminal.

(h) *Filing of exportation and clearance copies*—(1) *Information.* When filed with Customs, the exportation and clearance copies of the transit air cargo manifest shall each show:

(i) The aircraft number;

(ii) The aircraft flight number; and

(iii) The date.

(2) *Filing.* The exporting airline shall file the exportation and clearance copies before the aircraft that carries the transit air cargo departs. The clearance copies shall be grouped together and not mixed in with other outward manifest sheets. The exportation copies shall be grouped together, and kept separate from the outward clearance documents.

(i) *Cargo not laden at same airport by same airline.* If all the cargo listed on one transit air cargo manifest sheet is not laden for exportation from the same U.S. airport by the same airline, then separate entries on Customs Form 7512 are required for each cargo shipment listed:

(1) For transportation and exportation under subpart J of this part; or

(2) For direct exportation under §18.25 of this chapter.

(j) *Cargo laden on more than one aircraft of same airline.* When any cargo shipment listed on the same transit air cargo manifest must be exported on more than one aircraft of the same airline, §122.118(d) applies.

(k) *Failure to deliver.* If all or part of the cargo listed on the transit air cargo manifest is not accounted for with an exportation copy within 45 days, the director of the port of arrival shall take action as provided in §122.119(d).

[T.D. 88–12, 53 FR 9292, Mar. 25, 1988, as amended by T.D. 98–74, 63 FR 51289, Sept. 25, 1998; T.D. 00–22, 65 FR 16518, Mar. 29, 2000; CBP Dec. 17–13, 82 FR 45405, Sept. 28, 2017]

Subpart M—Aircraft Liquor Kits

§122.131 Application.

(a) *Liquor and tobacco.* Subpart M applies to:

(1) Duty-free and tax-free liquor and tobacco; and

(2) Duty-paid and tax-paid liquor and tobacco which has been placed in the same liquor kit as duty-free and tax-free liquor and tobacco.

(b) *Aircraft.* Subpart M applies to all commercial aircraft on domestic or foreign flights operating into, from and between U.S. airports, which are carrying:

(1) Duty-free and tax-free liquor and tobacco withdrawn from bond under section 309, Tariff Act of 1930, as amended (19 U.S.C. 1309); or

(2) Other liquor or tobacco on which duty or taxes have not been paid.

This includes any aircraft carrying duty-free and tax-free liquor under 19 U.S.C. 1309, or other Federal law, although the aircraft is not required to enter, clear or report arrival.

§122.132 Sealing of aircraft liquor kits.

(a) *Sealing required.* Aircraft liquor kits shall be sealed on board the aircraft by crewmembers before the aircraft lands in the U.S. The liquor kits shall be kept under seal while on the ground unless taken to an authorized airline in-bond liquor storeroom.

(b) *Exception.* When an aircraft is traveling between airports in the U.S., in a trade for which duty-free and tax-free liquor is used during flight, sealing the liquor kits on board during transporting stopovers is not required if:

(1) The liquor kits are kept on board the aircraft; and

(2) The port director finds that sealing is not required for revenue protection.

(c) *Seals to be used.* Aircraft liquor kits shall be sealed with serially numbered, Customs approved seals. The airline shall use seals supplied by an approved manufacturer, as provided in part 24 of this chapter. A small number of seals may be obtained from the port director.

(d) *Removing seals.* When sealed liquor kits are on the ground, the Customs seals may be broken only by:

(1) A Customs officer; or

(2) Authorized airline personnel, in an authorized airline in-bond liquor storeroom.

(e) *Resealing.* When a Customs officer breaks the seal of a liquor kit to check the contents, the action shall be recorded on the liquor kit stores list, and the liquor kit must be resealed with an approved seal.

§ 122.133 Stores list required on arrival.

(a) *When required, contents.* Three copies of an incoming stores list shall be prepared for each liquor kit on board before an aircraft lands. The incoming stores list shall state for each type of liquor and bottle size:

(1) Number of full bottles;

(2) Number of partially filled bottles; and

(3) Total number of bottles.

If the carrier chooses not to state the type of liquor for each size bottle, any duty or taxes assessed for any shortage shall be set at the highest rate available for the alcoholic beverages in the kit.

(b) *Disposition of stores list copies.* One copy of the incoming stores list shall be placed in the liquor kit before it is sealed. The remaining two copies shall be used as follows:

(1) One copy shall be filed with the inward cargo manifest; and

(2) One copy shall be kept for filing with the outward cargo manifest if the liquor kit was laden for export.

(c) *For aircraft not required to enter and/or clear.* If an aircraft is not required to enter and/or clear:

(1) One copy shall be given to the Customs officer upon arrival; and

(2) One copy shall be kept to be given to the Customs officer before departure of the aircraft.

(d) *When stores list not prepared.* When a complete stores list is not prepared before landing, liquor kits must be sealed on board, and the seal number shall be recorded on the stores list. When the aircraft lands, the liquor shall be taken at once to the Customs office and the stores list shall be completed by crew members under Customs supervision.

§ 122.134 When airline does not have in-bond liquor storeroom.

(a) *Handling of liquor kits.* An aircraft may land at an airport where the airline involved does not have an authorized in-bond liquor storeroom. When this occurs, the liquor kits, under any supervision found necessary by the port director, may be:

(1) Kept on board the aircraft;

(2) Removed and replaced upon the aircraft; or

(3) Removed and replaced aboard another aircraft.

(b) *Sealing of kits.* Aircraft liquor kits covered by this section shall remain sealed until departure. Customs officers may remove the seal to check the contents of the liquor kits, but shall reseal the kits as provided in § 122.132(e).

(c) *Restocking.* Additional amounts of duty-free and tax-free liquor and tobacco obtained in the U.S. shall be laden in a separate container on any aircraft covered by this section. The lading shall be done under any supervision the port director finds necessary. The additional liquor and tobacco shall be shown on separate outward stores lists.

§ 122.135 When airline has in-bond liquor storeroom.

(a) *Restocking.* Liquor kits on board an aircraft landing at an airport where the airline involved has an authorized in-bond liquor storeroom may be removed and restocked in the storeroom.

(b) *Inventory record.* Each authorized airline in-bond liquor storeroom shall keep an inventory record in a form that satisfies the port director. The inventory record shall account for the receipt and use of all aircraft liquor and tobacco stores on which duty and/or tax has not been paid.

(c) *Airline employees.* Any airline which has an authorized in-bond liquor store room at an airport shall give the port director:

(1) A list of names of all airline employees authorized to break Customs seals on liquor kits in the in-bond liquor storeroom; and

(2) Signature samples of the authorized employees.

(d) *Opening of aircraft liquor kits.* Aircraft liquor kits received in an authorized storeroom shall be opened only by authorized airline employees, or by Customs officers.

(e) *Contents of liquor kits.* The employees who break the seals on aircraft liquor kits shall check the contents at once. The employees shall immediately report to the port director any:

(1) Evidence of seal tampering;

(2) Difference between the seal numbers on the liquor kits and those recorded on the stores list; and

(3) Differences in quantity as shown on the stores list.

(f) *Handling the liquor kits*—(1) *Partial bottles.* Partial bottles of liquor may be removed from incoming liquor kits and kept in the in-bond liquor storeroom to be destroyed or combined with other partial bottles. This may be done only under Customs supervision. The costs of Customs supervision shall be paid by the airline.

(2) *Exportation.* The contents of incoming liquor kits may be commingled to restock outbound liquor kits. The commingling must take place in the airline in-bond liquor storeroom, using liquor bottles on which the seal has not been broken.

(3) *Sealing.* All liquor kits shall be sealed as provided in §122.132(a) before removal from the in-bond liquor storeroom. All seal numbers shall be listed on an outgoing stores list.

§ 122.136 Outgoing stores list.

(a) *Preparation.* Two copies of a serially numbered outgoing stores list shall be prepared by the airline for all liquor and tobacco withdrawn from bonded or non-tax-paid stock and added to liquor kits. The outgoing stores list shall show the total number of bottles for each type liquor, the brand, and the size of each bottle.

(b) *Use of copies.* The two copies of the outgoing stores list shall be used as follows:

(1) One copy shall be placed and kept in the outgoing kits until the aircraft leaves the U.S.; and

(2) One copy must be filed either with the outgoing cargo manifest (for aircraft required to clear) or with Customs before departing, as provided in §122.133(c).

In both cases, the third copy of the inward stores list shall be filed with the outgoing stores list. (See §122.133(c)).

§ 122.137 Certificate of use.

Any liquor or tobacco withdrawn from the in-bond storeroom and shown on the outgoing stores list shall be recorded, when exported, on a certificate of use prepared by the airline.

Subpart N—Flights to and From the U.S. Virgin Islands

§ 122.141 Definitions.

Under subpart N, the following definitions apply:

(a) *United States.* The term ''U.S.'' includes the several States, the District of Columbia and Puerto Rico.

(b) *Foreign area.* The term ''foreign area'' means any area other than the several States, the District of Columbia and Puerto Rico.

§ 122.142 Flights between the U.S. Virgin Islands and a foreign area.

(a) *Aircraft arriving in the U.S. Virgin Islands.* Aircraft arriving in the U.S. Virgin Islands from a place other than the U.S. are governed by the provisions of this part which apply to aircraft arriving in the U.S. from a foreign area.

(b) *Aircraft leaving the U.S. Virgin Islands.* Aircraft leaving the U.S. Virgin Islands for a place other than the U.S. are governed by the provisions of this part that apply to aircraft leaving the U.S. for a foreign area.

§ 122.143 Flights from the U.S. to the U.S. Virgin Islands.

(a) *In general.* Aircraft on flights from the U.S. to the U.S. Virgin Islands are governed by the provisions of this part that apply to aircraft on a flight within the U.S.

(b) *Census Bureau.* When Census Bureau's Foreign Trade Regulations (15 CFR part 30) apply to aircraft carrying merchandise to the U.S. Virgin Islands from the U.S., permission to depart must be obtained from the port director. Permission to depart will not be given unless:

(1) A complete manifest and Electronic Export Information (EEI) as required by 15 CFR part 30 are filed; or

(2) An incomplete manifest under 15 CFR 30.47 is filed and the complete manifest and EEI is filed within 7 business days after departure.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by CBP Dec. 17-06, 82 FR 32239, July 13, 2017]

§ 122.144 Flights from the U.S. Virgin Islands to the U.S.

(a) *Aircraft not inspected.* This paragraph applies to aircraft departing from the U.S. Virgin Islands and arriving in the U.S., without having been inspected prior to departure.

(1) *On departure.* Aircraft leaving the U.S. Virgin Islands for the U.S. are governed by the provisions of this part that apply to aircraft leaving the U.S. for a foreign area.

(2) *On arrival.* Aircraft departing from the U.S. Virgin Islands and arriving in the U.S. are governed by the provisions of this part that apply to aircraft arriving in the U.S. from a foreign area.

(b) *Supervision.* When aircraft are inspected by Customs in the U.S. Virgin Islands, the port director may order any supervision found necessary to protect the revenue and enforce the laws administered by Customs. This includes the collection of duty and taxes on articles bought in the U.S. Virgin Islands.

(c) *Procedure.* When an aircraft that was inspected in the U.S. Virgin Islands arrives in the U.S. from the U.S. Virgin Islands, the aircraft commander must be able to give evidence of the inspection to Customs on request. Evidence of the inspection shall be given in the following manner:

(1) A certificate on Customs Form 7507 shall be presented for aircraft registered in the U.S.:

(i) Of domestic origin; or

(ii) Of foreign origin, if duty has been paid and the aircraft is proceeding carrying neither passengers nor cargo, or with cargo and/or passengers solely from the U.S. Virgin Islands.

Two copies of the certificate shall be given to the inspecting Customs officers in the U.S. Virgin Islands by the aircraft commander. The certificate shall be marked with the port and date of inspection, and must be signed by the inspecting officer. The original of the certificate must be returned to the aircraft commander, who must keep the certificate for a reasonable time after the end of the flight to the U.S. If requested, the certificate shall be presented to Customs. The certificate may be destroyed or disposed of after a reasonable time at the discretion of the aircraft commander or agent.

(2) A permit to proceed on Customs Form 7507 shall be presented for aircraft registered in the U.S. which are:

(i) Of foreign origin;

(ii) Not duty paid; and

(iii) Proceeding carrying neither passengers nor cargo.

The permit to proceed, as required by subpart F of this part, shall be marked with the port and date of inspection, and shall be signed by the inspecting officer in the U.S. Virgin Islands.

(3) A permit to proceed on Customs Form 7507 shall be presented for aircraft registered in a foreign country and proceeding carrying neither passengers nor cargo. The permit to proceed, as required under subpart F of this part, shall be marked with the port and date of inspection, and shall be signed by the inspecting officer in the U.S. Virgin Islands.

(4) A permit to proceed, or other document, shall be filed as required under subpart I of this part for an aircraft carrying residue cargo and/or passengers. The permit to proceed shall be marked with the port and date of inspection, and it must be signed by the inspecting officer in the U.S. Virgin Islands.

Subpart O [Reserved]

Subpart P—Public Aircraft [Reserved]

Subpart Q—Penalties

§ 122.161 In general.

Except as provided in subpart S of this part, any person who violates any Customs requirements stated in this part, or any regulation that applies to aircraft under § 122.2, is, in addition to any other applicable penalty, subject to civil penalty of $5,000 as provided by 19 U.S.C. 1644 and 1644a, except for overages, and failure to manifest narcotics or marihuana, in which cases the penalties set forth in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584) apply, or for failure to report arrival or to present the documents required by § 122.27(c) of this part in which cases the penalties set forth in section 436, Tariff Act of 1930, as amended (19 U.S.C. 1436) apply, and any aircraft used in connection with any such violation shall be subject to seizure and forfeiture, as provided for in the Customs laws. A penalty or forfeiture may be mitigated under part 171 of this chapter.

[T.D. 91–61, 56 FR 32086, July 15, 1991, as amended by T.D. 98–74, 63 FR 51289, Sept. 25, 1998]

§ 122.162 Failure to notify and explain differences in air cargo manifest.

(a) *Application.* Penalties shall be assessed if differences in an air cargo manifest (overages or shortages) are discovered and:

(1) The required notice and explanation are not made in time;

(2) The port director is not satisfied that the differences were caused by clerical error or other mistake;

(3) There has been a loss of revenue to the U.S.; or

(4) The port director is not satisfied that there was a valid reason for delay in reporting any differences.

(b) *Definition.* Under this section, ''clerical error or other mistake'' means a non-negligent, inadvertant, or typographical mistake in the preparation, assembly, or submission (electronically or otherwise) of the manifest.

(c) *Repeated differences.* If repeated differences are found in manifests filed by the same person, it may be determined that the differences were a result of negligence and not clerical error or other mistake.

(d) *Knowledge.* A penalty may be assessed for differences in a manifest that are unknown to the aircraft commander or owner.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 99–64, 64 FR 43266, Aug. 10, 1999]

§ 122.163 Transit air cargo traveling to U.S. ports.

(a) *Application.* If transit air cargo is traveling from the port of arrival to another U.S. port under § 122.119, a liability shall be assessed, as set out in § 18.8 of this chapter if there has been:

(1) Shortage in delivery;

(2) Irregular delivery; or

(3) Non-delivery.

(b) *Liabilities assessed.* The liabilities assessed under this section are imposed as liquidated damages under a carrier's bond.

(c) *Value of merchandise.* The port director shall determine the value of merchandise for assessment purposes based on the following factors:

(1) Any data or documents available to the airline which presented a receipt for the transit air cargo, and available to the importing airline relating to the description and value of the cargo; and

(2) Other information available to the port director relating to the same or similar merchandise. If the data or documents required by this section are not submitted within 90 days of the date requested, the port director shall determine value on the basis of other available information. The transit air cargo manifest does not reflect value.

§ 122.164 Transportation to another port for exportation.

If transit air cargo is traveling from the port of arrival to another U.S. port for later exportation, any liquidated damages for shortages or irregular delivery shall be assessed as provided in § 122.163.

§ 122.165 Air cabotage.

(a) The air cabotage law (49 U.S.C. 41703) prohibits the transportation of persons, property, or mail for compensation or hire between points of the U.S. in a foreign civil aircraft. The term ''foreign civil aircraft'' includes

all aircraft that are not of U.S. registration except those foreign-registered aircraft leased or chartered to a U.S. air carrier and operated under the authority of regulations issued by the Department of Transportation, as provided for in 14 CFR 121.153, and those aircraft used exclusively in the service of any government.

(b) Customs officers detecting possible violations shall report the matter to Headquarters, Attention: Entry Procedures and Carriers Branch. Liability should not be assessed under 49 U.S.C. Chapter 463 pending instructions from Headquarters since certain limited domestic transportation by foreign civil aircraft is permitted under regulations issued by the Department of Transportation.

[T.D. 88–12, 53 FR 9292, Mar. 22, 1988, as amended by T.D. 98–74, 63 FR 51289, Sept. 25, 1998; T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 122.166 Arrival, departure, discharge, and documentation.

(a) *Liability for civil penalties.* Except as otherwise provided, any aircraft pilot violation of the requirements of section 433, Tariff Act of 1930, as amended, (19 U.S.C. 1433), with respect to the following actions shall be liable for civil penalties as provided by section 436, Tariff Act of 1930, as amended (19 U.S.C. 1436), and described in paragraph (c) of this section:

(1) Advance notification of arrival;

(2) Report of arrival;

(3) Landing of aircraft;

(4) Presentation of documentation;

(5) Departure from the port, place, or airport of arrival without authorization; or

(6) Discharge of passenger, or merchandise (to include baggage) without authorization.

(b) *Liability for criminal penalties.* Upon conviction, any aircraft pilot violating any of the Customs requirements described in paragraph (a) of this section shall, in addition to civil penalties be subject to criminal penalties as set forth in section 436, Tariff Act of 1930, as amended, (19 U.S.C. 1436), and described in paragraph (c) of this section. If the aircraft has or is discovered to have had on board any merchandise (other than the equivalent, for a vessel, of sea stores) the importation of which into the U.S. is prohibited, that person shall be subject to an additional fine as set forth in 19 U.S.C. 1436 and described in paragraph (c) of this section.

(c) *Civil and criminal penalties described*—(1) *Civil penalty.* The pilot of any aircraft who fails to comply with the requirements of this section is liable for a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation. Any aircraft used in connection with any such violation is subject to seizure and forfeiture.

(2) *Criminal penalty.* In addition to the civil penalty prescribed for violation of this section, the pilot of any aircraft who intentionally fails to comply with the requirements of this section is liable, upon conviction, for a fine of not more than $2,000 or imprisonment for 1 year, or both. If the aircraft is found to have, or to have had, on board any merchandise the importation of which is prohibited, such individual is liable for an additional fine of not more than $10,000 or imprisonment for not more than 5 years, or both.

(3) *Additional civil penalty.* If any merchandise, other than the equivalent of vessel sea stores, is imported or brought into the U.S. aboard an aircraft which has failed to comply with the requirements prescribed by this section, the pilot of the aircraft shall be liable for a civil penalty equal to the value of the merchandise, and the merchandise may be seized and forfeited, unless properly entered by the importer or consignee.

§ 122.167 Aviation smuggling.

(a) *Civil penalties.* Any aircraft pilot who transports, or any person on board any aircraft who possesses prohibited or restricted merchandise knowing, or intending, that the merchandise will be introduced into the U.S. contrary to law shall be subject to a civil penalty of twice the value of the merchandise involved, but not less than $10,000, as prescribed in section 590, Tariff Act of 1930, as amended (19 U.S.C. 1590). Any aircraft used in connection with, or in aiding or facilitating, any violation of 19 U.S.C. 1590, whether or not any person is charged in connection with such violation, may be seized and forfeited in accordance with Customs laws.

(b) *Criminal penalties.* Any aircraft pilot or person who intentionally violates 19 U.S.C. 1590 is, upon conviction, subject to the criminal penalties of a fine of not more than $10,000 or imprisonment for not more than 5 years, or both, if none of the merchandise involved is a controlled substance. More severe penalties are provided in 19 U.S.C. 1590 if the smuggled merchandise is a controlled substance. In such case, a violator is liable for a fine of not more than $250,000 or imprisonment for not more than 20 years, or both.

(c) For purposes of imposing civil penalties under this section, any of the following acts, when performed within 250 miles of the territorial sea of the United States, shall be evidence that the transportation or possession of merchandise was unlawful and shall indicate that the purpose of the transfer was to make it possible for such merchandise, or any part of it, to be introduced into the U.S. unlawfully. For purposes of seizure and forfeiture, the following acts shall be evidence that an aircraft was used in connection with, or to aid or facilitate, a violation of this section;

(1) The operation of an aircraft without lights during such times as lights are required to be displayed under applicable law.

(2) The presence on an aircraft of an auxiliary fuel tank which is not installed in accordance with applicable law.

(3) The failure to correctly identify the aircraft by registration number and country of registration, when requested to do so by a customs officer or other government authority.

(4) The external display of false registration numbers or false country of registration.

(5) The presence on board of unmanifested merchandise, the importation of which is prohibited or restricted.

(6) The presence on board of controlled substances which are not manifested or which are not accompanied by the permits or licenses required under Single Convention on Narcotic Drugs or other international treaty.

(7) The presence of any compartment or equipment which is built or fitted out for smuggling.

Subpart R—Air Carrier Smuggling Prevention Program

SOURCE: T.D. 91–25, 56 FR 12347, Mar. 25, 1991, unless otherwise noted.

§ 122.171 Description of program.

The Air Carrier Smuggling Prevention Program (ACSPP) is designed to enlist the cooperation of the air carriers, as defined in 19 U.S.C. 1584 note, in Customs efforts to prevent the smuggling of controlled substances. If carriers develop and implement thorough and complete internal security procedures at ACSPP designated terminals and foreign departure and intermediate points, the opportunity for their conveyances being used for transportation of controlled substances will be greatly reduced. Participation in the program is voluntary, and may be limited to specific routes. Should a controlled substance be introduced into the United States on a conveyance owned or operated by a participating carrier however, the carrier will be exempt from seizure and penalties should it satisfy the provisions of §122.175 of this part. The program will be operational for a period of 2 years from December 18, 1989, pursuant to 19 U.S.C. 1584 note.

§ 122.172 Eligibility.

Any air carrier whose international flights arrive at, or depart from, any of the designated test airports, Miami International Airport, Dallas-Fort Worth International Airport, or Los Angeles International Airport, is eligible for participation in the ACSPP.

§ 122.173 Application procedures.

(a) *Application.* An air carrier which wishes to participate in the ACSPP shall submit an application to the Assistant Commissioner, Office of Field Operations, in which it:

(1) Identifies specific routes and designated departure points and ACSPP airports for which application is made;

(2) Certifies that it has developed and will continue to maintain standard operating procedures (SOP) which are designed to safeguard the integrity of its employees, cargo and conveyances. The application shall be accompanied by

three (3) copies of the SOP developed by the air carrier.

(b) *Approval criteria.* Upon receipt, each application will be reviewed to determine whether the procedures contained therein meet the requirements of the ACSPP. In determining whether a SOP submitted by an applicant carrier contains sufficient detail to assure the proper level of care and diligence required under the provisions of the ACSPP, the Assistant Commissioner, Office of Field Operations, will apply uniform standards and verify that, at a minimum, procedures are in place which:

(1) Assure positive security background checks are performed on all carrier employees, both those employed within the United States and without, who have access to baggage, cargo or secure areas on participating routes, to the extent permitted by law;

(2) Assure a system of positive baggage and cargo identification is employed at all terminals used by the carrier;

(3) Assure the carrier employs a system to assure that no unmanifested cargo is placed on board the conveyance or brought into the United States on any of their conveyances;

(4) Assure the carrier has specific procedures through which it will notify Customs should it discover any unmanifested or improperly manifested cargo on any of its conveyances or in any area subject to its control;

(5) Assure the carrier has an effective and practical employee awareness training program in place; and

(6) Assure thorough security measures are implemented at all foreign departure points on ACSPP participating routes which will assure that the carrier has control and knowledge of the baggage, cargo, passenger and other materials placed on board its aircraft.

(c) *Acceptance and notification.* Upon verification by Customs that a carrier's SOP meets all the criteria outlined in § 122.173(b) of this part, the carrier will be notified that its application to the ACSPP has been accepted. Acceptance into the ACSPP is made with the understanding and expectation that the carrier will continue to act with the highest degree of care and diligence required under law and that it will abide by and perform all elements of its approved SOP.

[T.D. 91–25, 56 FR 12347, Mar. 25, 1991, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

§ 122.174 Operational procedures.

(a) *Participating carriers.* Participating carriers are required to develop and adhere to procedures whereby they will:

(1) Provide security personnel for every international arrival participating in the ACSPP to conduct the following procedures:

(i) Perform a thorough internal and external search of the arriving aircraft;

(ii) Maintain total control of all passengers and cargo being discharged from the aircraft to either the Customs passenger hall or to the carrier's cargo facility;

(iii) Verify that all cargo on aircraft is properly manifested, marked and weighed and that piece counts are properly performed; and

(iv) Maintain physical security of the aircraft and ramp access to the aircraft while it is being offloaded.

(2) Provide security personnel at the foreign point of departure for every international departure which is participating in ACSPP to conduct the following procedures:

(i) Perform a thorough internal and external search of the departing aircraft;

(ii) Maintain total control of all passengers and cargo being loaded on the aircraft from either the passenger terminal or the carrier's cargo facility;

(iii) Verify that all cargo placed on the aircraft is properly manifested, marked and weighed and that piece counts are properly performed;

(iv) Maintain physical security of the aircraft and ramp access to the aircraft while it is being loaded; and

(v) Maintain similar positive security measures at all foreign intermediate airports prior to the arrival of the aircraft at an ACSPP designated airport.

(b) *U.S. Customs.* U.S. Customs will:

(1) Retain all current options available regarding the search and inspection of any and all passengers, cargo and conveyances; and

(2) Provide training to carrier personnel to assist the development of proper operational procedures.

§ 122.175 Exemption from penalties.

Should a controlled substance be introduced into the United States or discovered aboard an aircraft owned or operated by a participating carrier, or in cargo carried by a participating carrier, on a route identified by the carrier as one participating in the ACSPP and which has been approved by Customs, the participating air carrier shall be considered to have met the test of highest degree of care and diligence required under law, and shall not be subject to the penalty or seizure provisions of the Tariff Act of 1930, as amended, if the carrier establishes at an oral presentation before the port director or his designee, that the carrier was not grossly negligent nor engaged in willful misconduct, and that it had complied with all the provisions of these regulations.

§ 122.176 Removal from ACSPP.

(a) *Grounds for removal from ACSSPP*. The Assistant Commissioner, Office of Field Operations, may revoke or supend the privilege of operating as a member of the ACSPP if:

(1) Acceptance into the program was gained through fraud or the misstatement of a material fact;

(2) The carrier refuses or neglects to obey any proper order of a Customs officer or any Customs order, rule, or regulation relative to its cooperation within the program;

(3) An officer of the carrier or corporation which has been accepted into the program is convicted of a felony or misdemeanor involving theft, smuggling, or other theft-connected crime which was committed in his or her official capacity as an officer of the carrier, or is convicted of any Customs-related crime;

(4) The carrier fails to retain merchandise which has been designated for examination;

(5) The carrier does not provide secure facilities or properly safeguard merchandise within its area of control; or

(6) The carrier fails to observe any of the procedures which it had set forth in the SOP which served as the basis for the carrier's acceptance into the program; and

(7) The carrier has been notified in writing that it has been found in noncompliance with a provision of the program and has failed to correct such noncompliance after having been given a reasonable opportunity to correct such noncompliance.

(b) *Notice and appeal*. The Assistant Commissioner, Office of Field Operations, shall suspend or remove participants from the ACSPP by serving notice of the proposed action upon the carrier in writing. The notice shall be in the form of a statement specifically setting forth the grounds for suspension or removal and shall provide the carrier with notice that it may file a written notice of appeal from suspension or revocation within 10 days following receipt of the notice of revocation or suspension. The notice of appeal shall be filed in duplicate to the office of the Assistant Commissioner, Field Operations, and shall set forth response of the carrier to the statement of the Assistant Commissioner.

(c) *Notice of decision*. The Assistant Commissioner, Office of Field Operations, shall notify the participating carrier in writing of the decision concerning continued participation in the program.

(d) *Use of uniform criteria*. When making any determination regarding a carrier's participation or continuation in the ACSPP, the Assistant Commissioner, Office of Field Operations, shall employ a uniform standard of performance and evaluation.

[T.D. 91–25, 56 FR 12347, Mar. 25, 1991, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991; T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

Subpart S—Access to Customs Security Areas

SOURCE: T.D. 90–82, 55 FR 42557, Oct. 22, 1990, unless otherwise noted.

§ 122.181 Definition of Customs security area.

For purposes of this section, the term ''Customs security area'' means the Federal inspection services area at any airport accommodating international air commerce designated for processing

passengers, crew, their baggage and effects arriving from, or departing to, foreign countries, as well as the aircraft deplaning and ramp area and other restricted areas designated by the port director. These areas will be posted as restricted to the extent possible and are established for the purpose of prohibiting unauthorized entries or contact with persons or objects.

[T.D. 90–82, 55 FR 42557, Oct. 22, 1990, as amended by T.D. 02–40, 67 FR 48984, July 29, 2002]

§ 122.182 Security provisions.

(a) *Customs access seal required.* With the exception of all Federal and uniformed State and local law enforcement personnel and aircraft passengers and crew, all persons located at, operating out of, or employed by any airport accommodating international air commerce or its tenants or contractors, including air carriers, who have unescorted access to the Customs security area, must openly display or produce upon demand an approved access seal issued by Customs. The approved Customs access seal must be in the possession of the person in whose name it is issued whenever the person is in the Customs security area and must be used only in furtherance of that person's employment in accordance with the description of duties submitted by the employer under paragraph (c)(1) of this section. The Customs access seal remains the property of Customs, and any bearer must immediately surrender it as provided in paragraph (g) of this section or upon demand by any authorized Customs officer for any cause referred to in § 122.187(a). Unless surrendered pursuant to paragraph (g) of this section or § 122.187, each approved Customs access seal issued under paragraph (c)(1) of this section will remain valid for 2 years from January 1, 2002, in the case of a Customs access seal issued prior to that date and for 2 years from the date of issuance in all other cases. Retention of an approved Customs access seal beyond the applicable 2-year period will be subject to the reapplication provisions of paragraph (c)(2) of this section.

(b) *Employers responsibility.* Employers operating in Customs airport security areas shall advise all employees of the provisions of the Customs regulations relative to those areas, require employees to familiarize themselves with those provisions and insure employee compliance. The employer shall also advise the port director of any changes of employment pursuant to § 122.182(g).

(c) *Application requirements*—(1) *Initial application.* An application for an approved Customs access seal, as required by this section, must be filed by the applicant with the port director on Customs Form 3078 and must be supported by a written request and justification for issuance prepared by the applicant's employer that describes the duties that the applicant will perform while in the Customs security area. The application requirement applies to all employees required to display an approved Customs access seal by this section, regardless of the length of their employment. The application must be supported by the bond of the applicant's employer or principal on Customs Form 301 containing the bond conditions set forth in § 113.62, § 113.63, or § 113.64 of this chapter, relating to importers or brokers, custodians of bonded merchandise, or international carriers. If the applicant's employer is not the principal on a Customs bond on Customs Form 301 for one or more of the activities to which the bond conditions set forth in § 113.62, § 113.63, or § 113.64 relate, the application must be supported by an Airport Customs Security Area Bond, as set forth in appendix A of part 113 of this chapter. The latter bond may be waived, however, for State or local government-related agencies in the discretion of the port director. Waiver of this bond does not relieve the agency in question or its employees from compliance with all other provisions of this subpart. In addition, in connection with an application for an approved Customs access seal under this section:

(i) The port director may require the applicant to submit fingerprints on form FD–258 or on any other approved medium either at the time of, or following, the filing of the application. If required, the port director will inform

the applicant of the current Federal Bureau of Investigation user fee for conducting fingerprint checks and the Customs administrative processing fee, the total of which must be tendered by, or on behalf of, the applicant with the application; and

(ii) Proof of citizenship or authorized residency and a photograph may also be required.

(2) *Reapplication*. If a person wishes to retain an approved Customs access seal for one or more additional 2-year periods beyond the 2-year period referred to in paragraph (a) of this section, that person must submit a new application no later than 30 calendar days prior to the start of each additional period. The new application must be filed in the manner specified in paragraph (c)(1) of this section for an initial application, and the port director may also require the submission of fingerprints as provided in paragraph (c)(1)(i) of this section. The new application will be subject to review on a de novo basis as if it were an initial application except that the written attestation referred to in paragraph (d) of this section will not be required if there has been no change in the employment of the applicant since the last attestation was submitted to Customs.

(d) *Background check*. An authorized official of the employer must attest in writing that a background check has been conducted on the applicant, to the extent allowable by law. The background check must include, at a minimum, references and employment history, to the extent necessary to verify representations made by the applicant relating to employment in the preceding 5 years. The authorized official of the employer must attest that, to the best of his knowledge, the applicant meets the conditions necessary to perform functions associated with employment in the Customs security area. Additionally, the application may be investigated by Customs and a report prepared concerning the character of the applicant. Records of background investigations conducted by employers must be retained for a period of one year following cessation of employment and made available upon request of the port director.

(e) *Law Enforcement officers and other governmental officials*. Law enforcement officers and other Federal, State, or local officials whose official duties require access to the Customs security area may request from the port director the issuance of an approved Customs access seal. They need not make application nor submit to background checks for security area access. An Airport Customs Security Area Bond is not required.

(f) *Replacement access seal*. A new Custom access seal may be obtained from the port director in the following circumstances, without the completion of an additional application, except as determined by the port director in his discretion:

(1) A change in employee name or address;

(2) A change in the name or ownership of the employing company;

(3) A change in employer or airport authority identification card format; or

(4) Loss or theft of the Customs access seal (see §122.185 of this part).

(g) *Surrender of access seal*. Where the employee no longer requires access to the Customs security area for an extended period of time at the airport of issuance due to a change in duties, termination of employment, or other reason, or where the 2-year period referred to in paragraph (a) of this section expires and a new application under paragraph (c)(2) of this section has not been approved, the employer shall notify the port director in writing, at the time of such change, and shall return the Customs access seal to Customs. The notification shall include information regarding the disposition of the approved Customs access seal of the employee.

[T.D. 90–82, 55 FR 42557, Oct. 22, 1990, as amended by T.D. 93–18, 58 FR 15773, Mar. 24, 1993; T.D. 02–40, 67 FR 48984, July 29, 2002; 67 FR 51928, Aug. 9, 2002]

§122.183 Denial of access.

(a) *Grounds for denial*. Access to the Customs security area will not be granted, and therefore an approved Customs access seal will not be issued, to any person whose access to the Customs security area will, in the judgment of the port director, endanger the revenue or the security of the area or

pose an unacceptable risk to public health, interest or safety, national security, or aviation safety. Specific grounds for denial of access to the Customs security area include, but are not limited to, the following:

(1) Any cause which would justify a demand for surrender of a Customs access seal or the revocation or suspension of access under §122.182(g) or §122.187;

(2) Evidence of a pending or past investigation establishing probable cause to believe that the applicant has engaged in any conduct which relates to, or which could lead to a conviction for, a disqualifying offense listed under paragraph (a)(4) of this section;

(3) The arrest of the applicant for, or the charging of the applicant with, a disqualifying offense listed under paragraph (a)(4) of this section on which prosecution or other disposition is pending;

(4) A disqualifying offense committed by the applicant. For purposes of this paragraph, an applicant commits a disqualifying offense if the applicant has been convicted of, or found not guilty of by reason of insanity, or has committed any act or omission involving, any of the following in any jurisdiction during the 5-year period, or any longer period that the port director deems appropriate for the offense in question, prior to the date of the application submitted under §122.182 or at any time while in possession of an approved Customs access seal:

(i) Forgery of certificates, false marking of aircraft, and other aircraft registration violation (49 U.S.C. 46306);

(ii) Interference with air navigation (49 U.S.C. 46308);

(iii) Improper transportation of a hazardous material (49 U.S.C. 46312);

(iv) Aircraft piracy in the special aircraft jurisdiction of the United States (49 U.S.C. 46502(a));

(v) Interference with flight crew members or flight attendants (49 U.S.C. 46504);

(vi) Commission of certain crimes aboard aircraft in flight (49 U.S.C. 46506);

(vii) Carrying a weapon or explosive aboard aircraft (49 U.S.C. 46505);

(viii) Conveying false information and threats (49 U.S.C. 46507);

(ix) Aircraft piracy outside the special aircraft jurisdiction of the United States (49 U.S.C. 46502(b));

(x) Lighting violations involving transportation of controlled substances (49 U.S.C. 46315);

(xi) Unlawful entry into an aircraft or airport area that serves air carriers or foreign air carriers contrary to established security requirements (49 U.S.C. 46314);

(xii) Destruction of an aircraft or aircraft facility (18 U.S.C. 32);

(xiii) Murder;

(xiv) Assault with intent to murder;

(xv) Espionage;

(xvi) Sedition;

(xvii) Kidnapping or hostage taking;

(xviii) Treason;

(xix) Rape or aggravated sexual abuse;

(xx) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon;

(xxi) Extortion;

(xxii) Armed or felony unarmed robbery;

(xxiii) Distribution of, or intent to distribute, a controlled substance;

(xxiv) Felony arson;

(xxv) Felony involving:

(A) A threat;

(B) Willful destruction of property;

(C) Importation or manufacture of a controlled substance;

(D) Burglary;

(E) Theft;

(F) Dishonesty, fraud, or misrepresentation;

(G) Possession or distribution of stolen property;

(H) Aggravated assault;

(I) Bribery; or

(J) Illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than one year;

(xxvi) Violence at an airport serving international civil aviation (18 U.S.C. 37);

(xxvii) Embezzlement;

(xxviii) Perjury;

(xxix) Robbery;

(xxx) Crimes associated with terrorist activities;

(xxxi) Sabotage;

(xxxii) Assault with a deadly weapon;

(xxxiii) Illegal use or possession of firearms or explosives;

(xxxiv) Any violation of a U.S. immigration law;

(xxxv) Any violation of a Customs law or any other law administered or enforced by Customs involving narcotics or controlled substances, commercial fraud, currency or financial transactions, smuggling, failure to report, or failure to declare;

(xxxvi) Airport security violations; or

(xxxvii) Conspiracy or attempt to commit any of the offenses or acts referred to in paragraphs (a)(4)(i) through (a)(4)(xxxv) of this section;

(5) Denial or suspension of the applicant's unescorted access authority to a Security Identification Display Area (SIDA) pursuant to regulations promulgated by the U.S. Federal Aviation Administration or other appropriate government agency; or

(6) Inability of the applicant's employer or Customs to complete a meaningful background check or investigation of the applicant.

(b) *Notification of denial.* The port director shall give written notification to any person whose application for access to the Customs security area has been denied, fully stating the reasons for denial and setting forth specific appeal procedures. The employer shall be notified in writing that the applicant has been denied access to the area and that the detailed reasons for the denial have been furnished to the applicant. Detailed reasons regarding the denial, however, shall not be furnished to the employer by Customs.

(c) *Appeal of denial.* The denial will be final unless the applicant files with the port director a written notice of appeal within 10 days following receipt of the notice of denial. The notice of appeal shall be filed in duplicate and shall set forth the response of the applicant to the statement of the port director. The port director will render his decision on the appeal to the applicant in writing within 30 calendar days of receipt of the notice of appeal and, if the application is denied on appeal, the decision will advise the applicant of the procedures for filing a further appeal pursuant to paragraph (d) of this section.

(d) *Further appeal of denial.* Where the application on appeal is denied by the port director, the applicant may file a further written notice of appeal with the director of field operations at the Customs Management Center having jurisdiction over the office of the port director within 10 calendar days of receipt of the port director's decision on the appeal. The further notice of appeal must be filed in duplicate and must set forth the response of the applicant to the decision of the port director. The director of field operations will review the appeal and render a written decision. The final decision will be transmitted to the port director and served by him on the applicant.

[T.D. 90–82, 55 FR 42557, Oct. 22, 1990, as amended by T.D. 02–40, 67 FR 48985, July 29, 2002]

§ 122.184 Change of identification; change in circumstances of employee; additional employer responsibilities.

(a) *Change of identification.* The Customs access seal may be removed from the employee by the port director where, for security reasons, a change in the nature of the identification card or other medium on which it appears is necessary.

(b) *Change in circumstances of employee.* If, after issuance of a Customs access seal to an employee, any circumstance arises (for example, an arrest or conviction for a disqualifying offense) that constitutes a ground for denial of access to the Customs security area under §122.183(a) or for revocation or suspension of access to the Customs security area and surrender of the Customs access seal under §122.187(a), the employee must within 24 hours advise the port director in writing of that change in circumstance. In the case of an arrest or prosecution for a disqualifying offense listed in §122.183(a)(4), the employee also must within 5 calendar days advise the port director in writing of the final disposition of that arrest or prosecution. In addition, if an airport operator or an aircraft operator suspends an employee's unescorted access authority to a Security Identification Display Area pursuant to regulations promulgated by the U.S. Federal Aviation Administration or other appropriate government agency and the employee also has an approved Customs access seal, the

employee must within 24 hours advise the port director in writing of the fact of, and basis for, the suspension.

(c) *Additional employer responsibilities.* If an employer becomes aware of any change in the circumstances of its employee as described in paragraph (b) of this section, the employer must immediately advise the port director of that fact even though the employee may have separately reported that fact to the port director under paragraph (b) of this section. In addition, each employer must submit to the port director during the first month of each calendar quarter a report setting forth a current list of all its employees who have an approved Customs access seal. The quarterly report must list separately all additions to, and deletions from, the previous quarterly report. Moreover, each employer must take appropriate steps to ensure that an employee uses an approved Customs access seal only in connection with activities relating to his employment.

[T.D. 02–40, 67 FR 48986, July 29, 2002; 67 FR 51928, Aug. 9, 2002]

§ 122.185 Report of loss or theft of Customs access seal.

The loss or theft of an approved Customs access seal must be promptly reported in writing by the employee to the port director. The Customs access seal may be replaced, as provided in § 122.182(f).

[T.D. 02–40, 67 FR 48986, July 29, 2002]

§ 122.186 Presentation of Customs access seal by other person.

If an approved Customs access seal is presented by a person other than the one to whom it was issued, the Customs access seal will be removed and destroyed. An approved Customs access seal may be removed from an employee by any Customs officer designated by the port director.

[T.D. 02–40, 67 FR 48986, July 29, 2002]

§ 122.187 Revocation or suspension of access.

(a) *Grounds for revocation or suspension of access*—(1) *General.* The port director:

(i) Must immediately revoke or suspend an employee's access to the Customs security area and demand the immediate surrender of the employee's approved Customs access seal for any ground specified in paragraph (a)(2) of this section; or

(ii) May propose the revocation or suspension of an employee's access to the Customs security area and the surrender of the employee's approved Customs access seal whenever, in the judgment of the port director, it appears for any ground not specified in paragraph (a)(2) of this section that continued access might pose an unacceptable risk to public health, interest or safety, national security, aviation safety, the revenue, or the security of the area. In this case the port director will provide the employee with an opportunity to respond to the notice of proposed action.

(2) *Specific grounds.* Access to the Customs security area will be revoked or suspended, and surrender of an approved Customs access seal will be demanded, in any of the following circumstances:

(i) There is probable cause to believe that an approved Customs access seal was obtained through fraud, a material omission, or the misstatement of a material fact;

(ii) The employee is or has been convicted of, or found not guilty of by reason of insanity, or there is probable cause to believe that the employee has committed any act or omission involving, an offense listed in § 122.183(a)(4);

(iii) The employee has been arrested for, or charged with, an offense listed in § 122.183(a)(4) and prosecution or other disposition of the arrest or charge is pending;

(iv) The employee has engaged in any other conduct that would constitute a ground for denial of access to the Customs security area under § 122.183;

(v) The employee permits the approved Customs access seal to be used by any other person or refuses to openly display or produce it upon the proper demand of a Customs officer;

(vi) The employee uses the approved Customs access seal in connection with a matter not related to his employment or not constituting a duty described in the written justification required by § 122.182(c)(1);

(vii) The employee refuses or neglects to obey any proper order of a Customs officer, or any Customs order, rule, or regulation;

(viii) For all employees of the bond holder, if the bond required by §122.182(c) is determined to be insufficient in amount or lacking sufficient sureties, and a satisfactory new bond with good and sufficient sureties is not furnished within a reasonable time;

(ix) The employee no longer requires access to the Customs security area for an extended period of time at the airport of issuance because of a change in duties, termination of employment, or other reason; or

(x) The employee or employer fails to provide the notification of a change in circumstances as required under §122.184(b) or (c) or the employee fails to report the loss or theft of a Customs access seal as required under §122.185.

(b) *Notice of revocation or* suspension. The port director will revoke or suspend access to the Customs security area and demand surrender of the Customs access seal by giving notice of the revocation or suspension and demand in writing to the employee, with a copy of the notice to the employer. The notice will indicate whether the revocation or suspension is effective immediately or is proposed.

(1) *Immediate revocation or suspension.* When the revocation or suspension of access and the surrender of the Customs access seal are effective immediately, the port director will issue a final notice of revocation or suspension. The port director or his designee may deny physical access to the Customs security area and may demand surrender of an approved Customs access seal at any time on an emergency basis prior to issuance of a final notice of revocation or suspension whenever in the judgment of the port director or his designee an emergency situation involving public health, safety, or security is involved and, in such a case, a final notice of revocation or suspension will be issued to the affected employee within 10 calendar days of the emergency action. A final notice of revocation or suspension will state the specific grounds for the immediate revocation or suspension, direct the employee to immediately surrender the Customs access seal if that Customs access seal has not already been surrendered, and advise the employee that he may choose to pursue one of the following two options:

(i) Submit a new application for an approved Customs access seal, in accordance with the provisions of §122.182(c), on or after the 180th calendar day following the date of the final notice of revocation or suspension; or

(ii) File a written administrative appeal of the final notice of revocation or suspension with the port director in accordance with paragraph (c) of this section within 30 calendar days of the date of the final notice of revocation or suspension. The appeal may request that a hearing be held in accordance with paragraph (d) of this section, and in that case the appeal also must demonstrate that there is a genuine issue of fact that is material to the revocation or suspension action.

(2) *Proposed revocation or suspension*—(i) *Issuance of notice.* When the revocation or suspension of access and the surrender of the Customs access seal is proposed, the port director will issue a notice of proposed revocation or suspension. The notice of proposed revocation or suspension will state the specific grounds for the proposed action, inform the employee that he may continue to have access to the Customs security area and may retain the Customs access seal pending issuance of a final notice under paragraph (b)(2)(ii) of this section, and advise the employee that he may file with the port director a written response addressing the grounds for the proposed action within 10 calendar days of the date the notice of proposed action was received by the employee. The employee may respond by accepting responsibility, explaining extenuating circumstances, and/or providing rebuttal evidence. The employee also may ask for a meeting with the port director or his designee to discuss the proposed action.

(ii) *Final notice*—(A) *Based on nonresponse.* If the employee does not respond to the notice of proposed action, the port director will issue a final notice of revocation or suspension within 30 calendar days of the date the notice of proposed action was received by the

employee. The final notice of revocation or suspension will state the specific grounds for the revocation or suspension, direct the employee to immediately surrender the Customs access seal, and advise the employee that he may choose to pursue one of the two options specified in paragraphs (b)(1)(i) and (ii) of this section.

(B) *Based on response.* If the employee files a timely response, the port director will issue a final determination regarding the status of the employee's right of access to the Customs security area within 30 calendar days of the date the employee's response was received by the port director. If this final determination is adverse to the employee, then the final notice of revocation or suspension will state the specific grounds for the revocation or suspension, direct the employee to immediately surrender the Customs access seal, and advise the employee that he may choose to pursue one of the two options specified in paragraphs (b)(1)(i) and (ii) of this section.

(c) *Appeal procedures*—(1) *Filing of appeal.* The employee may file a written appeal of the final notice of revocation or suspension with the port director within 10 calendar days following receipt of the final notice of revocation or suspension. The appeal must be filed in duplicate and must set forth the response of the employee to the statement of the port director. The port director may, in his discretion, allow the employee additional time to submit documentation or other information in support of the appeal.

(2) *Action by port director*—(i) *If a hearing is requested.* If the appeal requests that a hearing be held, the port director will first review the appeal to determine whether there is a genuine issue of fact that is material to the revocation or suspension action. If a hearing is required because the port director finds that there is a genuine issue of fact that is material to the revocation or suspension action, a hearing will be held, and a decision on the appeal will be rendered, in accordance with paragraphs (d) through (f) of this section. If the port director finds that there is no genuine issue of fact that is material to the revocation or suspension action, no hearing will be held and the port director will forward the administrative record as provided in paragraph (c)(2)(ii) of this section for the rendering of a decision on the appeal under paragraph (c)(3) of this section.

(ii) *CMC review.* If no hearing is requested or if the port director finds that a requested hearing is not required, following receipt of the appeal the port director will forward the administrative record to the director of field operations at the Customs Management Center having jurisdiction over the office of the port director for a decision on the appeal. The transmittal of the port director must include a response to any disputed issues raised in the appeal.

(3) *Action by the director.* Following receipt of the administrative record from the port director, the director of field operations will render a written decision on the appeal based on the record forwarded by the port director. The decision will be rendered within 30 calendar days of receipt of the record and will be transmitted to the port director and served by the port director on the employee. A decision on an appeal rendered under this paragraph will constitute the final administrative action on the matter.

(d) *Hearing.* A hearing will be conducted in connection with an appeal of a final notice of revocation or suspension of access to the Customs security area only if the affected employee in writing requests a hearing and demonstrates that there is a genuine issue of fact that is material to the revocation or suspension action. If a hearing is required, it must be held before a hearing officer designated by the Commissioner, or his designee. The employee will be notified of the time and place of the hearing at least 5 calendar days before the hearing. The employee may be represented by counsel at the revocation or suspension hearing. All evidence and testimony of witnesses in the proceeding, including substantiation of charges and the answer to the charges, must be presented. Both parties will have the right of cross'examination. A stenographic record of the proceedings will be made upon request and a copy furnished to the employee. At the conclusion of the

proceedings or review of a written appeal, the hearing officer must promptly transmit all papers and the stenographic record to the director of field operations, together with the recommendation for final action. If neither the employee nor his attorney appears for a scheduled hearing, the hearing officer must record that fact, accept any appropriate testimony, and conclude the hearing. The hearing officer must promptly transmit all papers, together with his recommendations, to the director of field operations.

(e) *Additional written views.* Within 10 calendar days after delivery of a copy of the stenographic record of the hearing to the director of field operations, either party may submit to the director of field operations additional written views and arguments on matters in the record. A copy of any submission will be provided to the other party. Within 10 calendar days of receipt of the copy of the submission, the other party may file a reply with the director of field operations, and a copy of the reply will be provided to the other party. No further submissions will be accepted.

(f) *Decision.* After consideration of the recommendation of the hearing officer and any additional written submissions and replies made under paragraph (e) of this section, the director of field operations will render a written decision. The decision will be transmitted to the port director and served by the port director on the employee. A decision on an appeal rendered under this paragraph will constitute the final administrative action on the matter.

[T.D. 02–40, 67 FR 48986, July 29, 2002; 67 FR 51928, Aug. 9, 2002; 67 FR 54023, Aug. 20, 2002]

§ 122.188 Issuance of temporary Customs access seal.

(a) *Conditions for issuance.* When an approved Customs access seal is required under § 122.182(a) of this part and the port director determines that the application cannot be administratively processed in a reasonable period of time, an employer may, upon written request, be issued a temporary Customs access seal for his employee. The employer must satisfy the port director that a hardship would result if the request is not granted. Surety on the bond, as required by § 122.182(c), may be waived in the discretion of the port director but only for the period of the temporary Customs access seal and its renewal period.

(b) *Validation period.* The temporary Customs access seal shall be valid for a period of 60 days. The port director may renew the temporary Customs access seal for additional 30 day periods where the circumstances under which the temporary Customs access seal was originally issued continue to exist. The temporary Customs access seal shall be destroyed by the port director when the permanent approved Customs access seal is issued, or the privileges granted thereby are withdrawn.

(c) *Temporary employees and official visitors.* The provisions of this section shall also apply to temporary employees and official visitors requiring access to the Customs security area. In the case of temporary employees, the Customs access seal shall be valid for a period of 30 days. In the case of official visitors, the temporary Customs access seal shall be valid for the day of issuance only. Temporary employee and official visitor Customs access seal are renewable for periods equal to their original period of validity.

(d) *Revocation of denial and access.* The temporary Customs access seal may be revoked and access to the Customs security area denied at any time if the holder of the temporary Customs access seal refuses or neglects to obey any proper order of a Customs officer, or any Customs order, rule, or regulation, or if, in the judgment of the port director, continuation of the privileges granted thereby would endanger the revenue or pose a threat to the Customs security area.

[T.D. 90–82, 55 FR 42557, Oct. 22, 1990, as amended by T.D. 02–40, 67 FR 48988, July 29, 2002]

§ 122.189 Bond liability.

Any failure on the part of a principal to comply with the conditions of the bond required under § 122.182(c), including a failure of an employer to comply with any requirement applicable to the employer under this subpart, will constitute a breach of the bond and may

result in a claim for liquidated damages under the bond.

[T.D. 02–40, 67 FR 48988, July 29, 2002]

PART 123—CBP RELATIONS WITH CANADA AND MEXICO

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1415, 1431, 1433, 1436, 1448, 1624, 2071 note.

Section 123.1 also issued under 19 U.S.C. 1459;

Section 123.2 also issued under 19 U.S.C. 1459;
Section 123.3 also issued under 19 U.S.C. 1459;
Section 123.4 also issued under 19 U.S.C. 1484, 1498;
Section 123.7 also issued under 19 U.S.C. 1498;
Section 123.8 also issued under 19 U.S.C. 1450–1454, 1459;
Section 123.9 also issued under 19 U.S.C. 1460, 1584, 1618;
Section 123.12 also issued under 19 U.S.C. 1202 (Chapter 86, Additional U.S. Note 1, HTSUS), 1322;
Sections 123.13–123.18 also issued under 19 U.S.C. 1322;
Sections 123.21–123.23, 123.25–123.29, 123.41, 123.51 also issued under 19 U.S.C. 1554;
Section 123.24 also issued under 19 U.S.C. 1551;
Sections 123.31–123.34, 123.42, 123.52, 123.64 also issued under 19 U.S.C. 1553;
Section 123.63 also issued under 19 U.S.C. 1461, 1462;
Section 123.81 also issued under 19 U.S.C. 1595.

SOURCE: T.D. 70–121, 35 FR 8215, May 26, 1970, unless otherwise noted.

§ 123.0 Scope.

This part contains special regulations pertaining to Customs procedures at the Canadian and Mexican borders. Included are provisions governing report of arrival, manifesting, unlading and lading, instruments of international traffic, shipments in transit through Canada or Mexico or through the United States, commercial traveler's samples transiting the United States or Canada, baggage arriving from Canada or Mexico including baggage transiting the United States or Canada or Mexico, and electronic information for rail and truck cargo in advance of arrival. Aircraft arriving from or departing for Canada or Mexico are governed by the provisions of part 122 of this chapter. The arrival of all vessels from, and clearance of all vessels departing for, Canada or Mexico are governed by the provisions of part 4 of this chapter. Fees for services provided in connection with the arrival of aircraft, vessels, vehicles and other conveyances from Canada or Mexico are set forth in §24.22 of this chapter. Regulations pertaining to the treatment of goods from Canada or Mexico under the North American Free Trade Agreement are contained in part 181 of this chapter. The requirements for the United States Postal Service to transmit advance electronic information for inbound international mail shipments are set forth in §145.74 of this chapter.

[CBP Dec. 21-04, 86 FR 14277, Mar. 15, 2021]

Subpart A—General Provisions

§ 123.1 Report of arrival from Canada or Mexico and permission to proceed.

(a) *Individuals.* Individuals arriving in the United States, unless excepted by voluntary enrollment in and compliance with PORTPASS—a joint Customs Service/Immigration and Naturalization Service facilitated entry program (See, Immigration and Naturalization Regulations at 8 CFR 235.7), must report their arrival to Customs, and failure to report arrival may result in the individual being liable for certain civil and criminal penalties, as provided under 19 U.S.C. 1459, in addition to other penalties applicable under other provisions of law. The specific reporting requirements are as follows:

(1) *Individuals not arriving by conveyance.* Persons arriving otherwise than by conveyance may enter the U.S. only at those locations specified by the Commissioner of Customs, or his designee, and shall then immediately report their arrival to Customs. Such persons shall not depart from the Customs port or station until authorized to do so by the appropriate Customs officer.

(2) *Persons arriving aboard a conveyance that reported its arrival.* Persons aboard a conveyance the arrival of which has been reported to Customs at locations specified by the Commissioner of Customs, or his designee in accordance with section 1433, 1644 or 1644a of title 19, United States Code (19 U.S.C. 1433, 1644, 1644a), shall remain on board until authorized by Customs to depart, and shall then immediately report to the designated Customs facility together with all articles accompanying them.

(3) *Persons arriving aboard a conveyance that has not reported its arrival.* Persons aboard a conveyance the arrival of which has not been reported in accordance with the laws referred to in paragraph (a)(2) of this section, shall

immediately notify a Customs officer and report their arrival, together with appropriate information concerning the conveyance on or in which they arrived, at a location or locations specified by the Commissioner of Customs, or his designee and shall present themselves and their property for Customs inspection and examination.

(b) *Vehicles.* Vehicles may arrive in the U.S. only at a designated port of entry (see §101.3 of this chapter) or Customs station if the Commissioner of Customs, or his designee authorizes entry at that station (see §101.4 of this chapter). Upon arrival of the vehicle in the U.S., the driver, unless he or she and all of the vehicle's occupants are excepted by enrollment in, and in compliance with, PORTPASS—a joint Customs Service/Immigration and Naturalization Service facilitated entry program (See, Immigration and Naturalization Regulations at 8 CFR 235.1 and 286.8), immediately shall report such arrival to Customs, and shall not depart or discharge any passenger or merchandise (including baggage) without authorization by the appropriate Customs officer.

(c) *Vessels.* For report of arrival requirements applicable to all vessels, regardless of tonnage, and arriving from any location, see §4.2 of this chapter.

(d) *Method of reporting.* Report of arrival under paragraphs (a), (b), and (c) of this section shall be made in person unless the port director, by local instructions, requires that it be made by some other specific means. Such local instructions issued by the port director will be made available to interested parties by posting in Customs offices, publication in a newspaper of general circulation in the Customs port that supervises the location, and/or other appropriate means.

[T.D. 93–96, 58 FR 67317, Dec. 21, 1993, as amended by T.D. 94–44, 59 FR 23795, May 9, 1994; T.D. 97–48, 62 FR 32031, June 12, 1997; T.D. 98–74, 63 FR 51289, Sept. 25, 1998; CBP Dec. 04–28, 69 FR 52599, Aug. 27, 2004]

§ 123.2 Penalty for failure to report arrival or for proceeding without a permit.

(a) *Persons.* Any person arriving otherwise than by conveyance who enters the U.S. at other than a designated port of entry, or Customs station if authorization exists for entry at that station, who fails to report arrival as required in §123.1(a) of this part, or who departs from the port of entry or Customs station without authorization by the appropriate Customs officer, whether or not intentionally, shall be subject to such civil and criminal penalties as are prescribed under 19 U.S.C. 1459 and provided for in §123.1 of this part.

(b) *Vessels.* The penalty provisions applicable to vessels for failure to report arrival or for proceeding without a permit are those as provided in §4.3a.

(c) *Vehicles*—(1) *Civil penalties.* The person in charge of any vehicle who—

(i) Enters the vehicle into the U.S. at other than a designated port of entry, or Customs station if authorization exists for entry at that station;

(ii) Fails to report arrival and present the vehicle and all persons and merchandise (including baggage) on board for inspection as required in §123.1(b) of this part;

(iii) Fails to file a manifest or any other document required to be filed in connection with arrival in the U.S. under this part; or

(iv) Without authorization by the appropriate Customs officer, removes such vehicle from the port of entry or Customs station or discharges any passenger or merchandise (including baggage) shall be subject to such civil penalties as are prescribed in section 436, Tariff Act of 1930, as amended (19 U.S.C. 1436), and any conveyance used in connection with any such violation shall be subject to seizure and forfeiture. The person also may be subject to an additional civil penalty equal to the value of the merchandise on the conveyance which was not entered or reported as required by §123.1(b) of this part, and that merchandise may be subject to seizure and forfeiture unless properly entered by the importer or consignee. If the merchandise consists of any controlled substances, additional penalties may be assessed, as prescribed in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584).

(2) *Criminal penalties.* Upon conviction, any person in charge of a vehicle who intentionally commits any of the violations described in paragraph (c)(1)

of this section shall, in addition to the penalties described therein, be subject to such additional criminal penalties as are prescribed in section 436, Tariff Act of 1930, as amended (19 U.S.C. 1436). If the vehicle has or is discovered to have had on board any merchandise (other than sea stores or the equivalent for conveyances other than vessels) the importation of which into the U.S. is prohibited, the person in charge of the vehicle is subject to such additional criminal penalties as are prescribed in section 436, Tariff Act of 1930, as amended (19 U.S.C. 1436).

[T.D. 93–96, 58 FR 67318, Dec. 21, 1993]

§ 123.3 Inward foreign manifest required.

(a) *General requirements.* Baggage or other merchandise carried on a vehicle or on a vessel of less than 5 net tons arriving otherwise than by sea from Canada or Mexico shall be listed on a manifest as prescribed by § 123.4. Vessels which are required to make entry under § 4.3 of this chapter because they are arriving by sea or are 5 net tons or over shall have manifests on board as provided in § 4.7(a) of this chapter.

(b) *Exception where in possession of traveler.* When baggage arrives in the actual possession of a traveler, his declaration will be accepted in lieu of a manifest. Merchandise imported by a person otherwise than in a vessel or vehicle need not be covered by a manifest but shall be presented for inspection, and entry shall be made in accordance with the applicable laws and regulations.

§ 123.4 Inward foreign manifest forms to be used.

The inward foreign manifest required by § 123.3 for a vehicle or a vessel of less than 5 net tons arriving in the United States from Canada or Mexico otherwise than by sea with baggage or merchandise, must be on CBP Form 7533, except as provided for shipments in transit in subparts C, D, E, F, and G of this part, and in the following special cases:

(a) For merchandise free of duty entered on CBP Form 7523, the same form may be used as a manifest in lieu of other forms. (See § 143.23 of this chapter.)

(b) For dutiable merchandise not exceeding $2,500 in value entered on CBP Form 368 or 368A, (serially numbered) or CBP Form 7501, or its electronic equivalent, the same form may be used as a manifest in lieu of other forms. (See § 143.21 of this chapter.) The port director may also allow such merchandise to be entered informally upon the presentation of a commercial invoice which contains the following declaration, signed by the importer or his agent:

> I declare that the information on this invoice is accurate to the best of my knowledge and belief; that the invoice quantities are true and correct manifest quantities; and that I have not received and do not know of any invoice other than this one.

(c) For a shipment not exceeding $250 in value consisting of articles of American origin entered free of duty under the provisions of § 10.1(i) of this chapter and imported in a vehicle, CBP Form 3311, or its electronic equivalent, used in entering the goods, in duplicate, may be accepted in lieu of a manifest.

(d) For baggage arriving in baggage cars, CBP Form 7533 must be used. (See subpart G of this part.)

[T.D. 70–121, 35 FR 8215, May 26, 1970, as amended by T.D. 73–175, 38 FR 17447, July 2, 1973; T.D. 75–105, 40 FR 19813, May 7, 1975; T.D. 82–145, 47 FR 35478, Aug. 16, 1982; T.D. 87–75, 52 FR 26142, July 13, 1987; T.D. 92–56, 57 FR 24944, June 12, 1992; T.D. 94–47, 59 FR 25570, May 17, 1994; T.D. 98–28, 63 FR 16416, Apr. 3, 1998; 77 FR 72719, Dec. 6, 2012; CBP Dec. 15–14, 80 FR 61287, Oct. 13, 2015]

§ 123.5 Certification and filing of inward foreign manifest.

The manifest listing baggage and other merchandise, certified by the master of the vessel or the person in charge of the vehicle, shall be presented to the Customs officer at the time the report of arrival is made. It shall be filed in the original only, unless additional copies are required in this part.

§ 123.6 Train sheet for arriving railroad trains.

The conductor of a railroad train arriving from Canada or Mexico shall present to the Customs officer at the port of arrival individual car manifests and a train sheet, sometimes called a

consist, bridge sheet, or trip sheet, listing each car and showing the car numbers and initials.

§ 123.7 Manifest used as an entry for unconditionally free merchandise value not over $250.

When a shipment not exceeding $250 in value which is unconditionally free of duty and not subject to quota or to internal revenue tax arrives on a vessel of less than 5 net tons arriving otherwise than by sea, the inward foreign manifest on Customs Form 7533 may be presented in duplicate and used as an entry if:

(a) No merchandise for a different entrant is listed on the same page of the manifest,

(b) The country of exportation of the merchandise, its value, and the provision of law under which free entry is claimed are noted thereon, and

(c) Evidence of the right to make entry is furnished as required by § 141.11 of this chapter.

[T.D. 70–121, 35 FR 8215, May 26, 1970, as amended by T.D. 73–175, 38 FR 17447, July 2, 1973]

§ 123.8 Permit or special license to unlade or lade a vessel or vehicle.

(a) *Permission to unlade or lade.* Before any passenger or merchandise, including baggage, may be landed or discharged from any vessel of less than 5 net tons arriving from Canada or Mexico by any route, or from a vehicle, permission to unlade shall be obtained from a Customs officer. Permission to unlade during overtime hours, on a Sunday or holiday, or to lade during overtime hours on a Sunday or holiday merchandise requiring Customs supervision, shall be obtained from the port director. Permission to unlade or lade a truck will be denied for any cargo with respect to which advance electronic information has not been received as provided in § 123.92 or § 192.14 of this chapter, as applicable. In cases in which CBP does not receive complete cargo information in the time and manner and in the electronic format required by § 123.92 or § 192.14 of this chapter, as applicable, CBP may delay issuance of a permit or special license to unlade or lade a truck. Permission to unlade is not required for a vessel of less than 5 net tons arriving otherwise than by sea carrying no baggage or other merchandise. For permission to unlade or lade for vessels of 5 net tons or over, see § 4.30 of this chapter.

(b) *Application for permit or special license to unlade or lade*—(1) *Permit to unlade during regular hours.* Application for a permit to unlade any vehicle or a vessel of less than 5 net tons may be made and permission may be granted orally. The port director may require that the application and permission to unlade be on Customs Form 3171.

(2) *Special license to unlade or lade at night, on a Sunday or holiday.* Application for permission to unlade passengers or merchandise from, or lade any merchandise requiring Customs supervision on, a vessel of less than 5 net tons or a vehicle arriving from or departing for Canada or Mexico by any route at night, on a Sunday or holiday, and requests for any reimbursable overtime services shall be made on Customs Form 3171. In the discretion of the port director and under such condition as he may deem advisable the application may be made orally for vessels of less than 5 net tons and vehicles not carrying persons or property for hire, but requests for reimbursable overtime services shall be on Customs Form 3171. The port director may authorize Customs inspectors to approve the request for overtime services and to grant oral permission to unlade or lade.

(c) *Cash deposit or bond for overtime services.* A request for reimbursable overtime services shall not be approved unless the required cash deposit or bond on Customs Form 301, containing the bond conditions set forth in § 113.64 of this chapter, is on file or is filed with the request.

(d) *Term permit or special license.* A permit or special license required by this section may be issued on a term basis in the manner, and under the conditions applicable, described in § 4.30 (f) or (g) of this chapter. A term permit or special license to unlade or lade a truck already issued will not be applicable as to any cargo with respect to which advance electronic information has not been received as provided in

§ 123.92 or § 192.14 of this chapter, as applicable.

[T.D. 70–121, 35 FR 8215, May 26, 1970, as amended by T.D. 84–213, 49 FR 41183, Oct. 19, 1984; T.D. 94–2, 58 FR 68526, Dec. 28, 1993; CBP Dec. 03–32, 68 FR 68173, Dec. 5, 2003]

§ 123.9 Explanation of a discrepancy in a manifest.

(a) *Provisions applicable*—(1) *Overages.* If any merchandise (including sea stores or its equivalent) is found on board a vessel or vehicle arriving in the U.S. that is not listed on a manifest filed in accordance with § 123.5 of this part, or after having been unladen from such vessel or vehicle, is found not to have been included or described in the manifest or does not agree therewith (an overage), the master, person in charge, or owner of the vessel or vehicle or any person directly or indirectly responsible for the discrepancy is subject to such penalties as are prescribed in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), and any such merchandise belonging or consigned to the master, person in charge, or owner of the vehicle is subject to seizure and forfeiture.

(2) *Shortages.* If merchandise is manifested but not found on board a vessel or vehicle arriving in the U.S. (a shortage), the master, person in charge, or owner of the vessel or vehicle or any person directly or indirectly responsible for the discrepancy is subject to such penalties as are prescribed in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584).

(3) *Failure to file a manifest.* The master or person in charge of a vessel or vehicle arriving in the U.S. or the U.S. Virgin Islands who fails to present a manifest to Customs is liable for civil penalties as are provided by law, and the conveyance used in connection with the failure to file is subject to seizure and forfeiture. A criminal conviction for intentional failure to file shall make the master or person in charge liable for criminal penalties, as provided by statute, and if any merchandise is found or determined to have been on board (other than sea stores or the equivalent for vehicles), the importation of which is prohibited, additional penalties may apply.

(b) *Report of discrepancies*—(1) *Discrepancies discovered by master, person in charge, owner, agent, or person directly or indirectly responsible.* The master, person in charge, owner, or agent of the vessel or vehicle, or any person directly or indirectly responsible for any discrepancy between the merchandise and the manifest, shall report any discrepancy to the port director within 60 days after the date of arrival by completing a report for an overage or a declaration for a shortage. The overage report or shortage declaration may be made on the appropriate manifest form, as listed in § 123.4, or on Customs Form 5931, Discrepancy Report and Declaration. If no manifest has been filed, an original copy of the appropriate form, as listed in § 123.4, should be used. In each case in which a manifest form is used, the form shall be marked or stamped ''Overage Report'' or ''Shortage Declaration'', as appropriate. The form used shall list the merchandise involved and state the reasons for the discrepancy.

(2) *Discrepancies discovered by Customs.* The port director immediately shall advise the master, person in charge, owner, agent, or any person directly or indirectly responsible for the discrepancy between the merchandise and the manifest of any discrepancy discovered by Customs officers which has not been reported. The person so notified shall file an explanation of the discrepancy, as required by paragraph (b)(1) of this section, within 30 days of notification, or within 60 days after arrival of the vessel or vehicle, whichever is later. The port director may notify the master, person in charge, owner, agent, or any person directly or indirectly responsible for the discrepancy by furnishing a copy of Customs Form 5931 to that person, or by any other appropriate written means. Use of Customs Form 5931 shall not preclude assessment of any penalty or liability to forfeiture otherwise incurred.

(c) *Statement on report of discrepancy required.* The overage report or shortage declaration shall bear the following statement signed by the master of the vessel, the person in charge of the vehicle, the owner of the vessel or vehicle, an authorized agent, or the

person directly or indirectly responsible for the discrepancy:

I declare to the best of my knowledge and belief that the discrepancy described herein occurred for the reasons stated. I also certify that evidence to support a claim of non-importation or proper disposition of merchandise will be retained in the carrier's files for a period of at least one year from the date of this report of discrepancy and will be made available to Customs upon demand.

(d) *Action on the discrepancy report.* (1) In accordance with the proviso to 19 U.S.C. 1584, no penalty shall be incurred under that section if—

(i) The manifest discrepancy relates only to a shortage;

(ii) There is timely filing of the discrepancy report;

(iii) There has been no loss of revenue;

(iv) The port director is satisfied that the discrepancy resulted from clerical error or other mistake; and

(v) In the case of a discrepancy not reported initially by the master, person in charge, owner, agent, or the person directly or indirectly responsible, the port director is satisfied that there is a valid reason for failure to file the discrepancy report.

(2) If the criteria in paragraph (d)(1) of this section are not met, applicable penalties under 19 U.S.C. 1584 shall be assessed.

(3) Any penalty or liability to forfeiture incurred under 19 U.S.C. 1584 may be mitigated or remitted under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618).

(e) *Penalty assessment.* For the purpose of assessing penalties under 19 U.S.C. 1584, the value of the merchandise shall be determined as described in section 162.43 of this chapter.

(f) *Lack of knowledge does not relieve liability.* The fact that the master of the vessel, the person in charge of the vehicle, or the owner of the vessel or vehicle had no knowledge of a discrepancy shall not relieve the master, the person in charge, or the owner from a penalty, or the vessel or vehicle from liability to forfeiture, incurred under 19 U.S.C. 1584.

(g) *Clerical error or other mistake defined.* For the purpose of this section, the term ''clerical error or other mistake'' is defined as a non-negligent, inadvertent, or typographical mistake in the preparation, assembly, or submission of manifests. However, repeated similar manifest discrepancies by the same persons may be considered the result of negligence and not clerical error or other mistake.

[T.D. 80–236, 45 FR 64172, Sept. 29, 1980, as amended by T.D. 93–96, 58 FR 67318, Dec. 21, 1993]

§ 123.10 General order merchandise.

(a) Any merchandise or baggage regularly landed but not covered by a permit for its release shall be allowed to remain at the place of unlading until the fifteenth calendar day after landing. No later than 20 calendar days after landing, the owner or operator of the vehicle or the agent thereof shall notify Customs of any such merchandise or baggage for which entry has not been made. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system. Failure to provide such notification may result in assessment of a monetary penalty of up to $1,000 per bill of lading against the owner or operator of the vehicle or the agent thereof. If the value of the merchandise on the bill is less than $1,000, the penalty shall be equal to the value of such merchandise.

(b) Any merchandise or baggage that is taken into custody from an arriving carrier by any party under a Customs-authorized permit to transfer or in-bond entry may remain in the custody of that party for 15 calendar days after receipt under such permit to transfer or 15 calendar days after arrival at the port of destination. No later than 20 calendar days after receipt under the permit to transfer or 20 calendar days after arrival under bond at the port of destination, the party shall notify Customs of any such merchandise or baggage for which entry has not been made. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system. If the party fails to notify Customs of the unentered merchandise or baggage in the allotted time, he may be liable for the payment of liquidated damages under the terms

and conditions of his custodial bond (see §113.63(c)(4) of this chapter).

(c) In addition to the notification to Customs required under paragraphs (a) and (b) of this section, the carrier (or any other party to whom custody of the unentered merchandise has been transferred by a Customs authorized permit to transfer or in-bond entry) shall provide notification of the presence of such unreleased and unentered merchandise or baggage to a bonded warehouse certified by the port director as qualified to receive general order merchandise. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system and shall be provided within the applicable 20-day period specified in paragraph (a) or (b) of this section. It shall then be the responsibility of the bonded warehouse proprietor to arrange for the transportation and storage of the merchandise or baggage at the risk and expense of the consignee. The arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) is responsible for preparing a Customs Form (CF) 6043 (Delivery Ticket), or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, to cover the proprietor's receipt of the merchandise and its transport to the warehouse from the custody of the arriving carrier (or other party to whom custody of the merchandise was transferred by the carrier under a Customs-authorized permit to transfer or in-bond entry) (*see* §19.9 of this chapter). Any unentered merchandise or baggage shall remain the responsibility of the carrier, master, or person in charge of the importing vehicle or the agent thereof or party to whom the merchandise has been transferred under a Customs authorized permit to transfer or in-bond entry until it is properly transferred from his control in accordance with this paragraph. If the party to whom custody of the unentered merchandise or baggage has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to notify a Customs-approved bonded warehouse of such merchandise or baggage within the applicable 20-calendar-day period, he may be liable for the payment of liquidated damages of $1,000 per bill of lading under the terms and conditions of his international carrier or custodial bond (see §§113.63(b), 113.63(c) and 113.64(b) of this chapter).

(d) If the carrier or any other party to whom custody of the unentered merchandise has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to timely relinquish custody of the merchandise to a Customs-approved bonded General Order warehouse, the carrier or other party may be liable for liquidated damages equal to the value of that merchandise under the terms and conditions of his international carrier or custodial bond, as applicable.

(e) If the bonded warehouse operator fails to take possession of unentered and unreleased merchandise or baggage within five calendar days after receipt of notification of the presence of such merchandise or baggage under this section, he may be liable for the payment of liquidated damages under the terms and conditions of his custodial bond (see §113.63(a)(1) of this chapter). If the port director finds that the warehouse proprietor cannot accept the goods because they are required by law to be exported or destroyed (*see* §127.28 of this chapter), or for other good cause, the goods will remain in the custody of the arriving carrier or other party to whom the goods have been transferred under a Customs-authorized permit to transfer or in-bond entry. In this event, the carrier or other party will be responsible under bond for exporting or destroying the goods, as necessary (*see* §§113.63(c)(3) and 113.64(b) of this chapter).

(f) In ports where there is no bonded warehouse authorized to accept general order merchandise, or if merchandise requires specialized storage facilities which are unavailable in a bonded facility, the port director, after having received notice of the presence of unentered merchandise or baggage in accordance with the provisions of this section, shall direct the storage of the merchandise by the carrier or by any other appropriate means.

(g) Merchandise taken into the custody of the port director pursuant to

section 490(b), Tariff Act of 1930, as amended (19 U.S.C. 1490(b)), shall be sent to a general order warehouse after 1 day after the day the vehicle arrived, to be held there at the risk and expense of the consignee.

[T.D. 98–74, 63 FR 51289, Sept. 25, 1998, as amended by T.D. 02–65, 67 FR 68033, Nov. 8, 2002]

Subpart B—International Traffic

§ 123.11 Supplies on international trains.

(a) *Articles acquired abroad.* Articles subject to internal revenue tax and other merchandise acquired abroad constituting supplies arriving on international trains crossing and recrossing the boundary line, for which the train crew elects not to file an inventory as provided for in paragraph (b) of this section, shall be subject to duty and tax unless locked or sealed in a separate compartment or locker upon arrival, and the lock or seal remains unbroken until the train departs from the United States at the final port of exit.

(b) *Inventory procedure.* Supplies acquired abroad for which internal revenue stamps are not required may be used in the United States under the following procedure:

(1) *Port of arrival.* An inventory executed in duplicate consisting of an itemized list showing the kind and quantity of each class of supplies on hand in the car with space for a parallel column in which to show at the port of exit the quantity used, shall be certified by the person in charge of the car and furnished to the Customs officer upon arrival. The Customs officer shall certify the correctness of both copies of the inventory, return the original to the person in charge of the car and retain the duplicate, or forward it to the port of exit if this differs from the port of arrival.

(2) *Port of exit.* Upon arrival at the port of exit, the inventory returned at the port of arrival to the person in charge of the car shall be submitted to the Customs officer after completion by showing the quantity of each item used in the United States, and being certified by the person in charge of the car. Entries must be filed and applicable duties and taxes paid at the port of exit on the quantity of supplies consumed in the United States.

(c) *Supplies purchased in the United States.* Supplies purchased in the United States shall be passed free of duty without inventory or entry.

§ 123.12 Entry of foreign locomotives and equipment in international traffic.

(a) *Use on a continuous route.* Foreign locomotives or other foreign railroad equipment in use on a continuous route crossing the boundary into the United States shall be admitted without formal entry or the payment of duty to proceed to the end of the run and depart for a foreign country, in accordance with the following:

(1) *On inward trip.* Unless formally entered and cleared through Customs into the United States, or unless exempt from entry as provided in §141.4(b)(4) of this chapter, a foreign locomotive shall be used on the inward trip only in connection with taking the inbound train to the last place in a continuous haul, including the switching of cars which it has hauled into the United States. Other foreign railroad equipment may proceed to the place of complete unloading for any merchandise imported therein.

(2) *On outward trip.* Unless formally entered and cleared through Customs into the United States, or unless exempt from entry as provided in §141.4(b)(4) of this chapter, foreign locomotives may be used on the outward trip only in connection with through trains crossing the boundary, including switching to make up such trains. Other foreign railroad equipment may be used in such trains or for such local traffic as is reasonably incidental to its economical and prompt departure for a foreign country.

(b) *Admission of empty equipment.* Empty foreign railroad equipment shall be admitted to the United States without formal entry and payment of duty only if:

(1) The passengers or goods to be loaded are to be transported directly to or through a foreign country; or

(2) The equipment is exempt from entry as provided in §141.4(b)(4) of this chapter.

(c) *Penalty for improper use.* The use of any foreign locomotive and other foreign railroad equipment in violation of this section may result in liabilities being incurred under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).

(d) *Domestic and foreign locomotives and other railroad equipment defined.* For the purpose of this section and §123.13, locomotives or other railroad equipment manufactured in, or regularly imported into, the United States, shall be considered ''domestic'' if not subsequently formally entered and cleared through foreign customs into another country, nor used in foreign local traffic otherwise than as an incident of the return of the equipment to the United States. Other locomotives and railroad equipment shall be considered ''foreign''.

[T.D. 70–121, 35 FR 8215, May 26, 1970, as amended by T.D. 73–73, 38 FR 6991, Mar. 15, 1973; T.D. 79–160, 44 FR 31956, June 4, 1979; T.D. 83–118, 48 FR 23385, May 25, 1983; T.D. 94–51, 59 FR 30294, June 13, 1994]

§ 123.13 Foreign repairs to domestic locomotives and other domestic railroad equipment.

A report of the first arrival in the United States of a domestic locomotive or other railroad equipment after repairs have been made in a foreign country other than those required to restore it to the condition in which it last left the United States (''running repairs''), shall be made promptly, in writing, to the Customs officer at the port of re-entry. The report shall state the time and place of arrival, and the nature and value of the repairs. Each such locomotive or other piece of railroad equipment when withdrawn from international traffic shall be subject to duty upon the value of the repairs (other than ''running repairs''), made abroad at the rate at which the repaired article would be dutiable if imported. For the appropriate determination as to whether the locomotive or other railroad equipment should be considered ''domestic'' or ''foreign'', see §123.12(d).

[T.D. 73–73, 38 FR 6991, Mar. 15, 1973]

§ 123.14 Entry of foreign-based trucks, busses, and taxicabs in international traffic.

(a) *Admission without entry or payment of duty.* Trucks, busses, and taxicabs, however owned, which have their principal base of operations in a foreign country and which are engaged in international traffic, arriving with merchandise or passengers destined to points in the United States, or arriving empty or loaded for the purpose of taking out merchandise or passengers, may be admitted without formal entry or the payment of duty. Such vehicles shall not engage in local traffic except as provided in paragraph (c) of this section.

(b) *Deposit of registration by vehicle not on regular trip.* In any case in which a foreign-based truck, bus, or taxicab admitted under this section is not in use on a regularly scheduled trip, the port director may require that the registration card for the vehicle be deposited pending the return of the vehicle for departure to the country from which it arrived, or the port director may take other appropriate measures to assure the proper use and departure of the vehicle.

(c) *Use in local traffic.* Foreign-based trucks, busses, and taxicabs admitted under this section shall not engage in local traffic in the United States unless the vehicle comes within one of the following exceptions:

(1) The vehicle may carry merchandise or passengers between points in the United States if such carriage is incidental to the immediately prior or subsequent engagement of that vehicle in international traffic. Any such carriage by the vehicle in the general direction of an export move or as part of the return of the vehicle to its base country shall be considered incidental to its engagement in international traffic. An alien driver will not be permitted to operate a vehicle under this paragraph, unless the driver is in compliance with the applicable regulations of the Immigration and Naturalization Service.

(2) A foreign-based truck trailer may carry merchandise between points in the United States on its departure for

a foreign country under the same conditions as are prescribed for ''other foreign railroad equipment'' in §123.12(a)(2).

(d) *Penalty for improper use.* The use of any vehicle referred to in this section in violation of this section may result in liabilities being incurred under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).

[T.D. 70–121, 35 FR 8215, May 26, 1970, as amended by T.D. 79–160, 44 FR 31956, June 4, 1979; T.D. 83–118, 48 FR 23385, May 25, 1983; T.D. 99–10, 64 FR 7504, Feb. 16, 1999]

§123.15 Vehicles of foreign origin used between communities of the United States and Canada or Mexico.

Vehicles of foreign origin which are used for commercial purposes between adjoining or neighboring communities of the United States and Canada or Mexico, such as delivery, peddlers', and service trucks, or wagons, are subject to duty on first arrival, but may thereafter be admitted without formal entry or the payment of duty so long as they are continuously employed in such service.

§123.16 Entry of returning trucks, busses, or taxicabs in international traffic.

(a) *Admission without entry or payment of duty.* Trucks, busses, and taxicabs, whether of foreign or domestic origin, taking out merchandise or passengers for hire or leaving empty for the purpose of bringing back merchandise or passengers for hire shall on their return to the United States be admitted without formal entry or the payment of duty upon their identity being established by State registration cards.

(b) *Use in local traffic.* Trucks, busses, and taxicabs in use in international traffic, which may include the incidental carrying of merchandise or passengers for hire between points in a foreign country, or between points in this country, shall be admitted under this section. However, such vehicles taken abroad for commercial use between points in a foreign country, otherwise than in the course of their use in international traffic, shall be considered to have been exported and must be regularly entered on return.

[T.D. 70–121, 35 FR 8215, May 26, 1970, as amended by T.D. 99–10, 64 FR 7504, Feb. 16, 1999]

§123.17 Foreign repairs to domestic trucks, busses, taxicabs and their equipment.

(a) *Domestic trucks, busses, and taxicabs and their equipment defined.* For the purpose of this section, trucks, busses, and taxicabs and their equipment manufactured in, or regularly imported into the United States, shall be considered ''domestic'' if not subsequently formally entered and cleared through foreign customs into another country, nor used in foreign local traffic otherwise than as an incident of their return to the United States.

(b) *Report of arrival and payment of duty on repairs.* A report of the first arrival in the United States of domestic trucks, busses, and taxicabs and their equipment after repairs have been made in a foreign country, other than those required to restore such vehicle or equipment to the condition in which it last left the United States (''running repairs''), shall be made by the driver or person in charge of the vehicle promptly, in writing, to the Customs officer at the port of reentry. The report shall state the time and place of arrival and the nature and value of the repairs. Each such vehicle or its equipment when withdrawn from international traffic shall be subject to duty upon the value of the repairs (other than ''running repairs'') made abroad at the rate at which the repaired article would be dutiable if imported.

§123.18 Equipment and materials for constructing bridges or tunnels between the United States and Canada or Mexico.

(a) *Admission of equipment and materials.* Equipment for use in construction of bridges or tunnels between the United States and Canada or Mexico shall be admitted without entry or the payment of duty. Materials for such use shall be admitted without entry or payment of duty only for installation in the bridge or tunnel proper, and not in the approaches on land at the United States end of such bridge or tunnel.

(b) *Customs supervision.* All articles admitted under paragraph (a) of this section shall be subject to Customs supervision at the expense of the builder until installed, entered, or exported.

Subpart C—Shipments in Transit Through Canada or Mexico

§ 123.21 Merchandise in transit.

(a) *Status.* Merchandise may be transported from one port to another in the United States through Canada or Mexico in accordance with the regulations in this subpart or subparts E for trucks transiting Canada, F for commercial traveler's samples, or G for baggage. Merchandise so transported is not subject to treatment as an importation when returned to the United States, and no inward foreign manifest is required for merchandise returned under an in-transit manifest. In-transit merchandise returned to the United States shall be treated as an importation as are shipments made from Canada or Mexico if:

(1) An in-transit manifest is not furnished for the merchandise upon its return to the United States;

(2) The merchandise has been transshipped in foreign territory without Customs supervision when the transshipment required the breaking of Customs seals; or

(3) The Customs inspector finds any of the Customs seals applied to the conveyance or compartment unlocked or missing.

(b) *Use of certain vessels prohibited.* Merchandise shall not be transported from port to port in the United States through Canada or Mexico by vessel in violation of the provisions of section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. 883), or section 588, Tariff Act of 1930, as amended (19 U.S.C. 1588). (See § 4.80 of this chapter.)

(c) *Regulations applicable.* The provisions of this subpart shall govern all merchandise transported from one port to another in the United States through Canada or Mexico under in-transit procedures, except as otherwise provided in this subpart or in subpart E for truck shipments transiting Canada, subpart F for commercial traveler's samples transiting Canada, and subpart G for baggage transiting Canada or Mexico.

§ 123.22 In-transit manifest.

(a) *Manifest required.* A manifest in duplicate covering the in-transit merchandise which is to proceed under the provisions of this subpart shall be presented by the carrier to the Customs officer at each port of lading of a vessel, or at the port of exit of a vehicle. Where the merchandise is transported under Customs red in-bond seals and is accompanied by a transportation in-bond manifest, a separate in-transit manifest is not required.

(b) *Additional copies.* In the following cases additional copies of the manifest shall be presented:

(1) When the merchandise is to be transshipped in foreign territory under Customs supervision, a copy of the manifest for each place of transshipment shall be presented.

(2) When a Customs officer requests an extra copy of the manifest as a record of the transaction.

(c) *Manifest forms to be used.* The in-transit manifest forms to be used are:

(1) For trucks, railroad cars or other overland carriers transiting Mexico a manifest on Customs Form 7512–B or 7533–C shall be presented.

(2) For vessels of less than 5 net tons departing and arriving otherwise than by sea, a manifest on Customs Form 7512–B or 7533–C shall be presented. All other vessels are subject to the manifesting requirements contained in § 4.82 of this chapter.

(3) For rail cars transiting Canada, a manifest on Customs Form 7533–C (Canada A4–1/2) shall be presented. For trains which will remain intact while transiting Canadian territory, a consolidated train manifest containing all the information included in the individual car manifests and the train sheet required by § 123.23 may be used in lieu of individual car manifests. For a number of cars which will transit Canada as a group, a consolidated manifest may be used, but a train sheet shall also be presented.

(4) In all other cases where no in-transit manifest form is specified in this subpart, or in subpart E relating to truck shipments on the Canadian

border, subpart F relating to commercial traveler's samples, and subpart G relating to baggage, Customs Form 7512–B or 7533–C shall be presented.

(d) *Contents of in-transit manifest.* The information contained in the manifest shall correspond to the information contained in the waybill accompanying the shipment, except that:

(1) The conveyance shall be identified in a suitable manner in the place provided for such identification.

(2) The description of ladings made up of several shipments which are to go forward in a conveyance or compartment sealed with Customs seals shall be ''miscellaneous shipments.''

(3) When an in-transit rail shipment will enter and reenter Canada in a continuing movement en route to a final destination in the United States, only the final United States port of reentry shall be shown on the manifest.

[T.D. 70–121, 35 FR 8215, May 26, 1970, as amended by T.D. 82–145, 47 FR 35478, Aug. 16, 1982]

§ 123.23 Train sheet for in-transit rail shipments.

Before an in-transit train proceeding under the provisions of this subpart departs from the United States, the carrier shall furnish to the customs officer at the port of exit a train sheet, sometimes called a consist, bridge sheet or trip sheet, listing each car of the train and specifically identifying the in-transit cars, unless a consolidated manifest containing this information has been presented for a train which will remain intact.

§ 123.24 Sealing of conveyances or compartments.

(a) *Sealing required.* Merchandise in transit proceeding under the provisions of this subpart shall be transported in sealed conveyances or compartments, except that:

(1) Less than load or compartment lots may be forwarded in unsealed conveyances or compartments, without cording and sealing;

(2) The Commissioner of Customs may authorize treatment of full loads or lots in the same manner as less than load or compartment lots;

(3) Live animals identifiable by specific description in the manifest may be transported in the care of an attendant or customs inspector at the expense of the parties in interest, in unsealed conveyances or compartments.

(b) *Seals to be affixed.* The carrier shall affix blue in-transit seals to all openings of conveyances and compartments containing in-transit merchandise except that:

(1) Sealable carload shipments on the Canadian border shall be sealed with yellow in-transit seals.

(2) Conveyances or compartments sealed with U.S. Customs red in-bound seals may go forward without additional seals.

(c) *Carrier relieved of responsibility.* The port director may relieve the carrier of the responsibility of affixing in-transit seals by notification in writing that Customs inspectors will assume it.

§ 123.25 Certification and disposition of manifests.

(a) *Certification.* Conveyances proceeding under the provisions of this subpart shall not proceed until the Customs inspector has certified the in-transit manifest or verified its certification by the carrier. The port director may require the carrier to execute the certificate as an alternative to certification by the Customs officer. When the carrier is to execute the certificate, and the merchandise will be forwarded without being under Customs seals, the agent of the carrier shall carefully examine the packages covered by the manifests to satisfy himself that the merchandise agrees with the manifest as to quantity and description.

(b) *Disposition of manifest.* The original manifest, after certification, shall accompany the merchandise. Additional copies required when the merchandise is to be transshipped in Canada or Mexico under Customs supervision shall be given to the person in charge of the conveyance for delivery to the Customs officers who will supervise transshipment.

§ 123.26 Transshipment of merchandise moving through Canada or Mexico.

(a) *General.* Merchandise in transit proceeding under the provisions of this subpart may be transshipped from one

conveyance to another in foreign territory. When transshipment requires the breaking of Customs seals, the breaking of the seals, transshipment and sealing of the conveyance or compartment to which the merchandise is transshipped shall be under the supervision of a Customs officer. He shall note his action on both the additional copy of the manifest presented to him, in accordance with §123.25(b), and on the original copy, which shall be returned to the person in charge of the conveyance to accompany the merchandise. Merchandise transshipped in foreign territory without customs supervision when Customs seals were broken shall be treated upon return to the United States as imported merchandise.

(b) *Storage awaiting transshipment.* Merchandise moving under in-transit manifests and Customs seals which is to be stored in foreign territory awaiting transshipment shall be checked into a storehouse by the Customs officer at the place of transshipment. It shall remain under Customs locks and seals until transshipment is completed under Customs supervision.

(c) *Manifests where contents broken up.* When transshipment involves the breaking up of the in-transit contents of a conveyance or compartment, in such a manner as to require separate manifests for articles previously covered by a single manifest, the Customs officer supervising the transshipment shall take up the carrier's copy of the manifest and require the carrier to prepare a new manifest, in duplicate, for each conveyance to which the merchandise is transshipped. If there is to be further transshipment, an additional copy of each new manifest shall be presented by the carrier, and shall be returned to the person in charge of the carrier for delivery to the Customs officer at the point of further transshipment in accordance with §123.25(b). After the transshipment and sealing of the conveyances and compartments has been supervised and the new manifests certified the originals of the new manifests shall be returned to the carrier to accompany the merchandise to the point of reentry into the United States.

§123.27 Feeding and watering animals in Canada.

If animals in sealed conveyances or compartments cannot be fed and watered in Canada without breaking customs seals, the seals shall be broken and the animals fed and watered under the supervision of a United States or Canadian Customs officer. The supervising officer shall reseal the conveyance or compartment, and make notation as to the resealing on the manifest.

§123.28 Merchandise remaining in or exported to Canada or Mexico.

(a) *In-transit status abandoned.* When the in-transit status of merchandise transiting Canada or Mexico is abandoned and the merchandise is entered for consumption or other disposition in Canada or Mexico, the carrier must send the in-transit seals and manifests to the port where the manifests were first filed with CBP, or in the case of trucks under subpart E, the port of exit, with an endorsement by the carrier's agent on each manifest showing that the merchandise was so entered. The carriers must comply with the export control regulations, 15 CFR part 370.

(b) *In-transit merchandise exported to Canada or Mexico.* Merchandise to be exported to Canada or Mexico after moving in-transit through a contiguous country will be treated as exported when it has passed through the last port of exit from the United States. This paragraph will control whether or not the merchandise to be exported is domestic or foreign and whether or not it is exported with benefit of drawback. The manifest, Electronic Export Information (EEI) filing citations, exclusions, and/or exemption legends, and the notice of exportation, if any, must be filed at the last port of exit from the United States.

[T.D. 70–121, 35 FR 8215, May 26, 1970, as amended by CBP Dec. 17-06, 82 FR 32239, July 13, 2017]

§123.29 Procedure on arrival at port of reentry.

(a) *Presentation of documents.* At the first port in the United States after

transportation through Canada or Mexico under the provisions of this subpart, the carrier shall present to Customs the in-transit manifest or manifests for each loaded conveyance. For mixed ladings, that is, ladings made up of several shipments, the waybills shall be available at the port of return or discharge for use by Customs officers. For a railroad train for which a consolidated manifest was not used the conductor shall also present a train sheet showing the car numbers and initials.

(b) *Vessels and rail shipments continuing in-transit movement*—(1) *Vessels.* In the case of a vessel carrying in-transit merchandise, the master's copies of the in-transit or in-bond manifest covering the merchandise given final Customs release at that port shall be retained by Customs at that port and the manifests covering merchandise to be discharged at subsequent ports of arrival shall be returned to the master of the vessel for presentation to Customs at the next port.

(2) *Rail shipments.* An in-transit rail shipment arriving at an intermediate port of reentry or exit intended for further in-transit movement through Canada may be permitted to go forward under the accompanying in-transit manifest after verification by Customs that the manifest satisfactorily identifies the shipment.

(c) *Checking and breaking of seals*—(1) *Checking seals.* The Customs officer at the port of arrival shall check customs seals applied to the conveyance or compartment for unlocked or missing seals. Where the seals are unlocked or missing, the merchandise shall be treated as having been imported from the transited country.

(2) *Breaking seals.* In-bond seals shall be broken only by a Customs officer or by a person acting under the direction of a Customs officer. In-transit seals may be broken by any carrier's employee, or by a consignee at any time or place after the merchandise under such seals has been released by Customs.

(d) *Proper manifest.* In-transit merchandise shall not be released until proper in-transit manifests are received except that it may be treated as imported merchandise.

(e) *Substitution of merchandise.* Any instance of substitution of merchandise shall be reported to the Commissioner of Customs, and the merchandise shall be detained.

Subpart D—Shipments in Transit Through the United States

§ 123.31 Merchandise in transit.

(a) *From one contiguous country to another.* Merchandise may be transported in transit across the United States between Canada and Mexico under the procedures set forth in part 18 of this chapter for merchandise entered for transportation and exportation.

(b) *From one point in a contiguous country to another through the United States.* Merchandise may be transported from point to point in Canada or in Mexico through the United States in bond in accordance with the procedures set forth in §§ 18.1 and 18.20 through 18.24 of this chapter except where those procedures are modified by this subpart or subparts E for trucks transiting the United States, F for commercial traveler's samples, or G for baggage.

[T.D. 70-121, 35 FR 8215, May 26, 1970, as amended by CBP Dec. 17–13, 82 FR 45405, Sept. 28, 2017]

§ 123.32 In-bond application.

An in-bond application must be submitted pursuant to part 18 of this chapter upon arrival of merchandise which is to proceed under the provisions of this subpart.

[CBP Dec. 17–13, 82 FR 45405, Sept. 28, 2017]

§§ 123.33–123.34 [Reserved]

Subpart E—United States and Canada In-Transit Truck Procedures

§ 123.41 Truck shipments transiting Canada.

(a) *Manifest required.* Trucks with merchandise transiting Canada from point to point in the United States will be manifested on United States-Canada Transit Manifest, Customs Form 7512–B Canada 8½. The driver shall present the manifest in four copies to U.S. Customs at the United States port of departure for review and validation.

(b) *Procedure at United States port of departure.* The Customs officer receiving the manifest shall validate it by stamping each copy in the lower right hand corner to show the port name and date and by initialing each copy. All copies of the validated manifest then will be returned to the driver for presentation to Canadian Customs at the Canadian port of entry.

(c) *Procedure at Canadian ports of arrival and exit.* Truck shipments transiting Canada shall comply with Canadian Customs regulations. These procedures generally are as follows:

(1) *Canadian port of arrival.* The driver shall present a validated United States-Canada Transit Manifest Customs Form 7512–B Canada 8½, in four copies to the Canadian Customs officer, who shall review the manifest for accuracy and verify its validation by U.S. Customs. If the manifest is found not to be properly validated, the truck shall be required to be returned to the United States port of departure so that the manifest may be validated. If the manifest is validated properly and no irregularity is found, the truck will be sealed unless sealing is waived by Canadian Customs. The original manifest will be retained by Canadian Customs at the port of arrival, and the three copies will be returned to the driver for presentation to Canadian Customs at the Canadian port of exit.

(2) *Canadian port of exit.* The driver shall present the three copies of the validated manifest to the Canadian Customs officer at the Canadian port of exit for certification. That officer shall verify that the seals are intact if the vehicle has been sealed or, if sealing has been waived, that there are no irregularities. After verification and certification of the manifest, two certified copies will be returned to the driver (one to be presented to U.S. Customs at the United States port of reentry, the other for the carrier's records), and the truck will be allowed to proceed to the United States.

(d) *Procedure at United States port of reentry.* The driver of a truck reentering the United States after transiting Canada shall present a certified copy of the United States-Canada Transit Manifest, Customs Form 7512–B Canada 8½, to the U.S. Customs officer. If this copy of the manifest does not bear the certification of a Canadian Customs officer at the Canadian port of exit, the driver will be allowed to return to that port to have it certified. The driver will be allowed to break any seals affixed by Canadian Customs upon presentation of a certified manifest. If sealing has been waived, the U.S. Customs officer shall satisfy himself that the truck contains only that merchandise covered by the manifest which moved on the truck from the United States through Canada.

(e) *Proof of exportation from Canada.* The certified copy of the manifest returned to the driver by Canadian Customs at the Canadian port of exit will serve as proof of exportation of the shipment from Canada.

[T.D. 81–85, 46 FR 21990, Apr. 15, 1981]

§ 123.42 Truck shipments transiting the United States.

(a) *Manifest required.* Trucks with merchandise transiting the United States from point to point in Canada will be manifested on United States-Canada Transit Manifest, Customs Form 7512–B Canada 8½. The driver, in accordance with Canadian Customs regulations, shall present the manifest in four copies to Canadian Customs at the Canadian port of departure for review and validation.

(b) *Procedure at Canadian port of departure.* The Customs officer receiving the manifest shall validate it by stamping each copy in the lower right hand corner to show the port name and date and by initialing each copy. All copies of the validated manifest then will be returned to the driver for presentation to U.S. Customs at the United States port of entry.

(c) *Procedure at U.S. port of arrival—*(1) *Filing of in-bond application.* An in-bond application must be filed pursuant to §18.1 of this chapter prior to or upon arrival at a U.S. port. At CBP's discretion the driver may be required to present four validated copies of the United States-Canada Transit Manifest, CBP Form 7512–B Canada 8½, to the CBP officer, who will review the manifest for accuracy and verify its validation by Canadian Customs. If the manifest is found not to be validated properly, the truck will be required to

be returned to the Canadian port of departure so that the manifest may be validated in accordance with Canadian Customs regulations. If the manifest is validated properly and no irregularity is found, the truck will be sealed unless sealing is waived by CBP. The CBP officer will note in the in-bond record and, if paper, on the manifest, the seal numbers or the waiver of sealing, retain the original, and return three copies of the manifest to the driver for presentation to CBP at the U.S. port of exportation.

(2) *Sealing or waiver of sealing.* Trucks transiting the United States will be sealed with red in-bond seals at the United States port of arrival unless sealing is waived in accordance with §18.4 of this chapter. If a truck cannot be sealed effectively and sealing is deemed necessary to protect the revenue or to prevent violation of the Customs laws or regulations, the truck will not be permitted to transit the United States under bond.

(d) *Procedure at U.S. port of exportation.* The arrival of the in-bond shipment at the port of exportation must be reported to CBP in accordance with §18.1 of this chapter.

(1) If the seals are intact, they will be left unbroken unless there is indication that the contents should be verified.

(2) If the seals have been broken, or there is other indication that the contents should be verified, all merchandise will be required to be unladen and a detailed inventory made against the waybills.

If sealing has been waived, the Customs officer shall verify the goods against the accompanying waybills in sufficient detail to detect any irregularity.

(e) *Procedure at Canadian port of reentry.* The driver of a truck reentering Canada after transiting the United States shall present a certified copy of the United States-Canada Transit Manifest, Customs Forms 7512–B Canada 8½, to the Canadian Customs officer. If this copy of the manifest does not bear the certification of a U.S. Customs officer at the United States port of exit, the driver will be allowed to return to that port to have it certified.

(f) *Proof of exportation from United States.* The certified copy of the manifest returned to the driver by the U.S. Customs officer at the U.S. port of exit will serve as proof of exportation of the shipment from the U.S.

(g) *Forwarding procedure.* Except as otherwise provided in this section, merchandise transported in trucks shall be forwarded in accordance with the general provisions for transportation in bond (§§18.1–18.8 of this chapter).

[T.D. 81–85, 46 FR 21991, Apr. 15, 1981, as amended by T.D. 84–212, 49 FR 39047, Oct. 3, 1984; T.D. 00–22, 65 FR 16518, Mar. 29, 2000; CBP Dec. 17–13, 82 FR 45405, Sept. 28, 2017]

Subpart F—Commercial Traveler's Samples in Transit Through the United States or Canada

§ 123.51 Commercial samples transported by automobile through Canada between ports in the United States.

(a) *General provisions.* A commercial traveler arriving at a U.S. frontier port desiring to transport his commercial samples by automobile through Canada to another place in the United States without displaying the samples in Canada may request a U.S. Customs officer at the port of departure to cord and seal the outer containers of the samples if they can be effectively corded and sealed.

(b) *List of samples.* The traveler shall furnish the U.S. Customs officer at the port of exit a list, in duplicate, of all the articles in the containers, with their approximate values, in substantially the following form:

SAMPLES CARRIED IN TRANSIT THROUGH CANADA IN PRIVATE VEHICLE

(U.S. port of exit printed here) (Date)

I have checked the quantity and values of the below-listed articles carried by _____(Name and address of traveler) and owned by _____(Name and address of firm or company)

These articles are contained in _____ (Number) packages which have been corded and sealed for in-transit movement through Canada to _____ (U.S. port of reentry) in _____ (Year, make and license number of vehicle)

_____

(U.S. Customs Inspector)

Description of merchandise	*Value*

When the traveler arrives at Customs with lists already prepared, the form may be inscribed ''as per list attached.''

(c) *Checking, cording, and sealing by U.S. Customs officers.* The Customs officer shall check the list with the articles and satisfy himself that the values shown are approximately correct. The Customs officer will cord and seal the containers with yellow in-transit seals. The traveler may be required to assist the Customs officer in the cording and sealing. The original of the list, signed by the Customs officer over his title and showing that the articles on the list have been checked by the officer against those in the containers shall be returned to the traveler for submission by him to Canadian customs upon his arrival in Canada.

(d) *In-transit manifest.* The traveler shall execute and file Customs Form 7512–B or 7533–C, in the original only, at the U.S. port of departure, as an in-transit manifest covering the movement of the samples to the U.S. port through which the traveler will return. Descriptions, quantities, and values may be shown thereon by noting ''Commercial Samples'' and the number of corded and sealed containers. The manifest shall be returned to the traveler to accompany the samples after being signed and dated by the Customs officer.

(e) *Presentation of in-transit manifest at U.S. port of reentry.* Upon return to the United States, the traveler shall present Customs Form 7512–B or 7533–C and the corded and sealed samples to the U.S. Customs officer at the port where the samples are returned to this country. The Customs officer shall verify that there has been no irregularity.

[T.D. 70–121, 35 FR 8215, May 26, 1970, as amended by T.D. 82–145, 47 FR 35478, Aug. 16, 1982]

§ 123.52 Commercial samples transported by automobile through the United States between ports in Canada.

(a) *General provisions.* A commercial traveler arriving from Canada may be permitted to transport effectively corded and sealed samples in his automobile without further sealing in the United States, upon compliance with this section and subject to the conditions of § 18.20(d) of this chapter, since customs bonded carriers as described in § 18.2 of this chapter are not considered to be reasonably available. Samples having a total value of not more than $200 may be carried by a nonresident commercial traveler through the United States without cording and sealing and without an in-transit manifest in accordance with § 148.41 of this chapter.

(b) *Presentation of sample list at Canadian port of exit.* A commercial traveler arriving from Canada desiring to transport without display in the United States commercial samples in his automobile through the United States to another port in Canada, may present his samples to a Canadian Customs officer at the Canadian port of exit. The traveler will be required to furnish the Canadian Customs officer a list in duplicate of all articles presented showing their approximate values. The list shall bear the traveler's name and address, and the name and address of the firm represented.

(c) *Checking, cording, and sealing by Canadian Customs officers.* The Canadian Customs officer will examine the articles, identify them with the list, and satisfy himself that the values shown are approximately correct. The Canadian Customs officer will cord and seal the outer containers with uncolored in-transit seals and authenticate the list of samples with his signature and title. Cording and sealing may be waived with the concurrence of the United States and Canadian Customs officers.

(d) *Treatment at U.S. port of arrival.* The list of samples properly authenticated shall be submitted upon arrival to the U.S. Customs officer at the port of arrival. After ascertaining that the samples are effectively corded and sealed, or that sealing has been waived, notation of the number of corded and sealed containers, or of the waiver shall be made on the list of samples and the list shall be retained by the Customs officer as a record of the shipment.

(e) *In-transit manifest.* Movement of the samples from the port of arrival to

the port of exit from the United States under this procedure shall be under an in-transit manifest on Customs Form 7512 executed and filed in triplicate by the traveler at the port of arrival in the United States. Descriptions, quantities, and values may be shown thereon by noting ''Commercial Samples,'' the number of corded and sealed containers, and the approximate total value of the samples. When cording and sealing has been waived with the concurrence of a Canadian Customs officer, samples must be identified on the manifest by suitable itemized descriptions and approximate values, or by attaching to the manifest a copy of the list of samples which has been initialed by the Customs officer.

(f) *Presentation of samples and manifest at U.S. port of exit.* The manifest on Customs Form 7512 shall be presented to the Customs officer at the U.S. port of exit, together with the samples covered. If the seals are broken or cording and sealing has been waived, the Customs officer shall verify that there are no irregularities.

[T.D. 70–121, 35 FR 8215, May 26, 1970, as amended by T.D. 73–27, 38 FR 2449, Jan. 26, 1973; T.D. 87–75, 52 FR 20068, May 29, 1987; CBP Dec. 17–13, 82 FR 45405, Sept. 28, 2017]

Subpart G—Baggage

§ 123.61 Baggage arriving in baggage car.

An inward foreign manifest on Customs Form 7533 shall be used for all baggage arriving in baggage cars.

[T.D. 70–121, 35 FR 8215, May 26, 1970, as amended by T.D. 82–145, 47 FR 35478, Aug. 16, 1982]

§ 123.62 Baggage in possession of traveler.

For baggage arriving in the actual possession of a traveler, his declaration shall be accepted in lieu of an inward foreign manifest. (See § 123.3.)

[T.D. 70–121, 35 FR 8215, May 26, 1970, as amended by T.D. 73–72, 38 FR 2449, Jan. 26, 1973]

§ 123.63 Examination of baggage from Canada or Mexico.

(a) *Opening vehicle or compartment to examine baggage.* Customs officers are authorized to unlock, open, and examine vehicles and compartments thereof for the purposes of examining baggage under sections 461, 462, 496, 581(a) and 582, Tariff Act of 1930, as amended (19 U.S.C. 1461, 1462, 1496, 1581(a), and 1582) and 19 U.S.C. 482. However, to the extent practical, the Customs officer should ask the owner or operator to unlock such vehicle or compartment first. Where the owner or operator is unavailable or refuses to unlock the vehicle or compartment or where it is not practical to ask the owner or operator to unlock the same, it shall be opened by the Customs officer. If any article is subject to duty, or any prohibited article is found upon opening by the Customs officer, the whole contents and the vehicle shall be subject to forfeiture pursuant to 19 U.S.C. 1462.

(b) *Inspection of baggage.* A Customs officer has the right to inspect all merchandise and baggage brought into the United States from contiguous countries under 19 U.S.C. 1461. He also has the right, under the same statute, to require that owners of such baggage open it or furnish keys for doing so. Where the owner or agent is unavailable or refuses to open the baggage or furnish keys or where it is not practical to ask the owner or agent to open or furnish keys to the same, it shall be opened by the Customs officer. If any article is subject to duty, or any prohibited article is found upon opening by the Customs officer, the baggage shall be subject to forfeiture pursuant to 19 U.S.C. 1462.

[T.D. 95–86, 60 FR 54188, Oct. 20, 1995]

§ 123.64 Baggage in transit through the United States between ports in Canada or in Mexico.

(a) *Procedure.* Baggage in transit from point to point in Canada or Mexico through the United States may be transported in-bond through the United States in accordance with the procedures set forth in §§ 18.1, 18.13, 18.14, and 18.20 through 18.24 of this chapter except where those procedures are modified by this section.

(b) *In-transit manifest.* Three copies of the manifest on Customs Form 7512 shall be required. One copy of the Form 7512 shall be delivered to the person in charge of the carrier to accompany the

baggage and shall be delivered by the carrier to the Customs officer at the port of departure from the United States.

(c) *Consolidated train manifest.* When the route is such that a train carrying baggage in bond will remain intact while proceeding through the United States, a consolidated train manifest containing the same information as is required on individual manifests may be used in lieu of individual manifest on Customs Form 7512.

(d) *Baggage cards*—(1) *Baggage arriving from Mexico.* For baggage arriving at a port on the Mexican border for in-transit movement through the United States in bond and return to Mexico, the in-transit baggage card described in §18.14 of this chapter shall be used.

(2) *Baggage arriving from Canada.* For baggage arriving at a port on the Canadian border for in-transit movement through the United States in bond and return to Canada, the joint United States-Canada in-transit baggage card, Customs Form 7512–B (Canada 8½) or Customs Form 7533–C (Canada A4–½), shall be used. The baggage card will be filled out and securely attached to the baggage and the attachment verified by a Canadian Customs officer before the baggage leaves Canada. If the joint in-transit baggage card is found to be improperly prepared or attached upon arrival of the baggage in the United States for movement in bond, the carrier may be required to furnish the baggage card described in §18.14 of this chapter for attachment to the baggage before being allowed to proceed. At the port of exit from the United States the joint in-transit baggage card shall be allowed to remain on the baggage.

[T.D. 70–121, 35 FR 8215, May 26, 1970, as amended by T.D. 71–70, 36 FR 4491, Mar. 6, 1971; T.D. 84–212, 49 FR 39047, Oct. 3, 1984; T.D. 87–75, 52 FR 20068, May 29, 1987; T.D. 00–22, 65 FR 16518, Mar. 29, 2000; CBP Dec. 17–13, 82 FR 45405, Sept. 28, 2017]

§ 123.65 Domestic baggage transiting Canada or Mexico between ports in the United States.

(a) *General provision.* Upon request of the carrier, checked baggage of domestic origin may be transported from one port in the United States to another through Canada or through Mexico in accord with the procedure set forth in this section. The provisions of this section shall not apply to domestic hand baggage crossing Canada or Mexico which, upon reentry into the United States, shall be examined in the same manner as baggage of foreign origin.

(b) *Special in-transit tag manifest.* The carrier shall complete and attach to each piece of baggage by wire or cord under Customs supervision a special in-transit tag manifest furnished by the carrier as follows:

(1) *Baggage transiting Mexico.* For baggage of domestic origin to be transported through Mexico between ports of the United States, the special in-transit tag manifest attached to each piece of baggage shall be on white cardboard not less than 2½ × 4½ inches in size printed in substantially the following form:

UNITED STATES CUSTOMS

IN-TRANSIT BAGGAGE MANIFEST

Carrier's Baggageman: Destroy this tag if owner has access to baggage before its return to United States.

Check No. ____.

This baggage is in transit from _____ (Port of exit) through foreign territory to _____ (Port of reentry) in the United States.

This baggage was laden for transportation as above stated.

Date _____

_____

(U.S. Customs Officer)

(2) *Baggage transiting Canada.* For baggage of domestic origin to be transported through Canada between ports in the United States, the joint United States-Canada in-transit baggage card, Customs Form 7512–B (Canada 8½) or Customs Form 7533–C (Canada A4–½), shall be used as the special in-transit tag manifest attached to each piece of baggage.

(c) *Removal of special in-transit tag manifest.* The special in-transit tag manifest shall be removed only by the Customs officers at the final port of reentry into the United States. If the officer finds the special in-transit tag manifest missing or not intact, or for any other reason believes that the baggage has been tampered with while outside the United States, he shall detain it for examination. Otherwise, baggage transported under the procedure in this

section may be passed without examination.

(d) *Procedure in lieu of special in-transit tag manifest.* In lieu of attaching the special in-transit tag manifest to each piece of baggage as set forth in paragraph (b) of this section, baggage of domestic origin may be forwarded in a car or compartment sealed with in-transit seals and manifested as in the case of other merchandise in transit through Canada or Mexico, as provided in subpart C of this part.

[T.D. 70–121, 35 FR 8215, May 26, 1970, as amended by T.D. 87–75, 52 FR 20068, May 29, 1987]

Subpart H [Reserved]

Subpart I—Miscellaneous Provisions

§ 123.81 Merchandise found in building on the boundary.

When any merchandise on which the duty has not been paid or which was imported contrary to law is found in any building upon or within 10 feet of the boundary line between the United States and Canada or Mexico, such merchandise shall be seized and a report of the facts shall be made to the Commissioner. With his approval the building or that portion thereof which is within the United States shall be taken down or removed. The provisions of subpart B of part 162, of this chapter shall be applicable to the search of any such building.

[T.D. 70–121, 35 FR 8215, May 26, 1970, as amended by T.D. 72–211, 37 FR 16487, Aug. 15, 1972. Redesignated by T.D. 99–2, 64 FR 31, Jan. 4, 1999]

§ 123.82 Treatment of stolen vehicles returned from Mexico.

Port directors shall admit without entry and payment of duty allegedly stolen or embezzled vehicles, trailers, airplanes, or component parts of any of them, under the provisions of The Convention between the United States of America and the United Mexican States for the Recovery and Return of Stolen or Embezzled Vehicles and Aircraft (Treaties and Other International Acts Series [TIAS] 10653), of June 28, 1983, if accompanied by a letter from the U.S. Embassy in Mexico City containing:

(a) A statement that the Embassy is satisfied from information furnished it that the property is stolen property being returned to the U.S. under the provisions of the convention between the U.S. and Mexico concluded January 15, 1981, and

(b) An adequate description of the property for identification purposes.

[T.D. 86–118, 51 FR 22515, June 20, 1986. Redesignated by T.D. 99–2, 64 FR 31, Jan. 4, 1999]

Subpart J—Advance Information for Cargo Arriving by Rail or Truck

SOURCE: CBP Dec. 03–32, 68 FR 68173, Dec. 5, 2003, unless otherwise noted.

§ 123.91 Electronic information for rail cargo required in advance of arrival.

(a) *General requirement.* Pursuant to section 343(a), Trade Act of 2002, as amended (19 U.S.C. 2071 note), for any train requiring a train sheet under §123.6, that will have commercial cargo aboard, Customs and Border Protection (CBP) must electronically receive from the rail carrier certain information concerning the incoming cargo, as enumerated in paragraph (d) of this section, no later than 2 hours prior to the cargo reaching the first port of arrival in the United States. Specifically, to effect the advance electronic transmission of the required rail cargo information to CBP, the rail carrier must use a CBP-approved electronic data interchange system.

(1) *Through cargo in transit to a foreign country.* Cargo arriving by train for transportation in transit across the United States from one foreign country to another; and cargo arriving by train for transportation through the United States from point to point in the same foreign country are subject to the advance electronic information filing requirement for incoming cargo under paragraph (a) of this section.

(2) *Cargo under bond.* Cargo that is to be unladed from the arriving train and entered, in bond, for exportation, or for

transportation and exportation, in another vehicle or conveyance is also subject to the advance electronic information filing requirement under paragraph (a) of this section.

(b) *Exception; cargo in transit from point to point in the United States.* Domestic cargo transported by train to one port from another in the United States by way of Canada or Mexico is not subject to the advance electronic information filing requirement for incoming cargo under paragraph (a) of this section.

(c) *Incoming rail carrier*—(1) *Receipt of data; acceptance of cargo.* As a pre-requisite to accepting the cargo, the carrier must receive, from the foreign shipper and owner of the cargo or from a freight forwarder, as applicable, any necessary cargo shipment information, as listed in paragraph (d) of this section, for electronic transmission to CBP.

(2) *Accuracy of information received by rail carrier.* Where the rail carrier electronically presenting the cargo information required in paragraph (d) of this section receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the rail carrier acquired such information, and whether and how the carrier is able to verify this information. Where the rail carrier is not reasonably able to verify such information, CBP will permit the carrier to electronically present the information on the basis of what the carrier reasonably believes to be true.

(d) *Cargo information required.* The rail carrier must electronically transmit to CBP the following information for all required incoming cargo that will arrive in the United States by train:

(1) The rail carrier identification SCAC code (the unique Standard Carrier Alpha Code assigned for each carrier by the National Motor Freight Traffic Association; see §4.7a(c)(2)(iii) of this chapter);

(2) The carrier-assigned conveyance name, equipment number and trip number;

(3) The scheduled date and time of arrival of the train at the first port of entry in the United States;

(4) The numbers and quantities of the cargo laden aboard the train as contained in the carrier's bill of lading, either master or house, as applicable (this means the quantity of the lowest external packaging unit; containers and pallets do not constitute acceptable information; for example, a container holding 10 pallets with 200 cartons should be described as 200 cartons);

(5) A precise cargo description (or the Harmonized Tariff Schedule (HTS) number(s) to the 6-digit level under which the cargo is classified if that information is received from the shipper) and weight of the cargo; or, for a sealed container, the shipper's declared description and weight of the cargo (generic descriptions, specifically those such as ''FAK'' (''freight of all kinds''), ''general cargo,'' and ''STC'' (''said to contain'') are not acceptable);

(6) The shipper's complete name and address, or identification number, from the bill(s) of lading (for each house bill in a consolidated shipment, the identity of the foreign vendor, supplier, manufacturer, or other similar party is acceptable (and the address of the foreign vendor, etc., must be a foreign address); by contrast, the identity of the carrier, freight forwarder, consolidator, or broker, is not acceptable; the identification number will be a unique number to be assigned by CBP upon the implementation of the Automated Commercial Environment);

(7) The complete name and address of the consignee, or identification number, from the bill(s) of lading (The consignee is the party to whom the cargo will be delivered in the United States. However, in the case of cargo shipped ''to order of [a named party],'' the carrier must identify this named ''to order'' party as the consignee; and, if there is any other commercial party listed in the bill of lading for delivery or contact purposes, the carrier must also report this other commercial party's identity and contact information (address) in the ''Notify Party'' field of the advance electronic data transmission to CBP, to the extent that the CBP-approved electronic data interchange system is capable of receiving this data. The identification number will be a unique number assigned by

CBP upon implementation of the Automated Commercial Environment);

(8) The place where the rail carrier takes possession of the cargo shipment;

(9) Internationally recognized hazardous material code when such materials are being shipped by rail;

(10) Container numbers (for containerized shipments) or the rail car numbers; and

(11) The seal numbers for all seals affixed to containers and/or rail cars to the extent that CBP's data system can accept this information (for example, if a container has more than two seals, and only two seal numbers can be accepted through the system per container, the carrier's electronic presentation of two of these seal numbers for the container would be considered as constituting full compliance with this data element).

[CBP Dec. 03–32, 68 FR 68173, Dec. 5, 2003, as amended at CBP Dec. 09–39, 74 FR 52677, Oct. 14, 2009]

§ 123.92 Electronic information for truck cargo required in advance of arrival.

(a) *General requirement.* Pursuant to section 343(a) of the Trade Act of 2002, as amended (19 U.S.C. 2071 note), for any truck required to report its arrival under § 123.1(b), that will have commercial cargo aboard, Customs and Border Protection (CBP) must electronically receive from the party described in paragraph (c) of this section certain information concerning the cargo, as enumerated in paragraph (d) of this section. The CBP must receive such cargo information by means of a CBP-approved electronic data interchange system no later than either 30 minutes or 1 hour prior to the carrier's reaching the first port of arrival in the United States, or such lesser time as authorized, based upon the CBP-approved system employed to present the information.

(1) *Through cargo in transit to a foreign country.* Cargo arriving by truck in transit through the United States from one foreign country to another (§ 123.31(a)); and cargo arriving by truck for transportation through the United States from one point to another in the same foreign country (§ 123.31(b); § 123.42) are subject to the advance electronic information filing requirement in paragraph (a) of this section.

(2) *Cargo entered under bond.* Cargo that is to be unladed from the arriving truck and entered, in bond, for exportation, or for transportation and exportation, in another vehicle or conveyance are also subject to the advance electronic information filing requirement in paragraph (a) of this section.

(b) *Exceptions from advance reporting requirements*—(1) *Cargo in transit from point to point in the United States.* Domestic cargo transported by truck and arriving at one port from another in the United States after transiting Canada or Mexico (§ 123.21; § 123.41) is exempt from the advance electronic filing requirement for incoming cargo under paragraph (a) of this section.

(2) *Certain informal entries.* The following merchandise is exempt from the advance cargo information reporting requirements under paragraph (a) of this section, to the extent that such merchandise qualifies for informal entry pursuant to part 143, subpart C, of this chapter:

(i) Merchandise which may be informally entered on CBP Form 368 or 368A (cash collection or receipt);

(ii) Merchandise unconditionally or conditionally free, not exceeding $2,500 in value, eligible for entry on CBP Form 7523; and

(iii) Products of the United States being returned, for which entry is prescribed on CBP Form 3311, or its electronic equivalent.

(c) *Carrier; and importer or broker*—(1) *Single party presentation.* Except as provided in paragraph (c)(2) of this section, the incoming truck carrier must present all required information to CBP in the time and manner prescribed in paragraph (a) of this section.

(2) *Dual party presentation.* The United States importer, or its customs broker, may elect to present to CBP a portion of the required information that it possesses in relation to the cargo. Where the broker, or the importer (see § 113.62(k)(2) of this chapter), elects to submit such data, the carrier is responsible for presenting to CBP the remainder of the information specified in paragraph (d) of this section.

(3) *Party receiving information believed to be accurate.* Where the party electronically presenting the cargo information required in paragraph (d) of this section receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the presenting party acquired such information, and whether and how the presenting party is able to verify this information. Where the presenting party is not reasonably able to verify such information, CBP will permit the party to electronically present the information on the basis of what the party reasonably believes to be true.

(d) *Cargo information required.* The following commodity and transportation information, as applicable, must be electronically transmitted to and received by CBP for all required incoming cargo arriving in the United States by truck, to the extent that the particular CBP-approved electronic data interchange system employed can accept this information:

(1) Conveyance number, and (if applicable) equipment number (the number of the conveyance is its Vehicle Identification Number (VIN) or its license plate number and state of issuance; the equipment number, if applicable, refers to the identification number of any trailing equipment or container attached to the power unit);

(2) Carrier identification (this is the truck carrier identification SCAC code (the unique Standard Carrier Alpha Code) assigned for each carrier by the National Motor Freight Traffic Association; see §4.7a(c)(2)(iii) of this chapter);

(3) Trip number and, if applicable, the transportation reference number for each shipment (the transportation reference number is the freight bill number, or Pro Number, if such a number has been generated by the carrier);

(4) Container number(s) (for any containerized shipment) (if different from the equipment number), and the seal numbers for all seals affixed to the equipment or container(s);

(5) The foreign location where the truck carrier takes possession of the cargo destined for the United States;

(6) The scheduled date and time of arrival of the truck at the first port of entry in the United States;

(7) The numbers and quantities for the cargo laden aboard the truck as contained in the bill(s) of lading (this means the quantity of the lowest external packaging unit; containers and pallets do not constitute acceptable information; for example, a container holding 10 pallets with 200 cartons should be described as 200 cartons);

(8) The weight of the cargo, or, for a sealed container, the shipper's declared weight of the cargo;

(9) A precise description of the cargo or the Harmonized Tariff Schedule (HTS) numbers to the 6-digit level under which the cargo will be classified (generic descriptions, specifically those such as FAK (''freight of all kinds''), ''general cargo,'' and ''STC'' (''said to contain'') are not acceptable);

(10) Internationally recognized hazardous material code when such cargo is being shipped by truck;

(11) The shipper's complete name and address, or identification number, from the bill(s) of lading (for each house bill in a consolidated shipment, the identity of the foreign vendor, supplier, manufacturer, or other similar party is acceptable (and the address of the foreign vendor, etc., must be a foreign address); by contrast, the identity of the carrier, freight forwarder, consolidator, or broker, is not acceptable; the identification number will be a unique number to be assigned by CBP upon the implementation of the Automated Commercial Environment); and

(12) The complete name and address of the consignee, or identification number, from the bill(s) of lading (the consignee is the party to whom the cargo will be delivered in the United States, with the exception of ''FROB'' (Foreign Cargo Remaining On Board); the identification number will be a unique number assigned by CBP upon implementation of the Automated Commercial Environment).

[CBP Dec. 03–32, 68 FR 68173, Dec. 5, 2003, as amended at CBP Dec. 08–46, 73 FR 71782, Nov. 25, 2008; CBP Dec. 09–39, 74 FR 52677, Oct. 14, 2009; CBP Dec. 12–19, 77 FR 72719, Dec. 6, 2012; CBP Dec. 15–14, 80 FR 61287, Oct. 13, 2015]

PART 125—CARTAGE AND LIGHTERAGE OF MERCHANDISE

AUTHORITY: 19 U.S.C. 66, 1565, and 1624.

Section 125.31, also issued under 5 U.S.C. 301; 19 U.S.C. 1311, 1312, 1484, 1555, 1556, 1557, 1623, and 1646a.

Section 125.32 also issued under 5 U.S.C. 301; 19 U.S.C. 1484.

Section 125.33 also issued under 19 U.S.C. 1311, 1312, 1555, 1556, 1557, 1623, and 1646a.

Sections 125.41 and 125.42 also issued under 19 U.S.C. 1623.

SOURCE: T.D. 73–140, 38 FR 13554, May 23, 1973, unless otherwise noted.

§ 125.0 Scope.

This part is concerned with cartage and lighterage of merchandise and the duties and liabilities of cartmen and lightermen, as well as those parties authorized in § 112.2(b) to engage in cartage. Provisions for licensing cartmen and lightermen are in part 112 of this chapter.

[T.D. 94–81, 59 FR 51495, Oct. 12, 1994]

Subpart A—General Provisions

§ 125.1 Classes of cartage.

(a) *Government cartage.* Government cartage must be done by a licensed customhouse cartman or other bonded carrier as provided in § 112.2 of this chapter under contract or other specific authority for that purpose (except as provided for in § 125.12). All government cartage must be contracted for using the procedures specified in § 125.3.

(b) *Importers' cartage.* Importers' cartage may be done by any licensed customhouse cartman or other bonded carrier as provided in § 112.2 of this chapter.

[T.D. 94–81, 59 FR 51495, Oct. 12, 1994]

§ 125.2 Supervision of cartage and lighterage.

All licensed vehicles or lighters shall be subject to the control and direction of the officer having charge of the merchandise being carried.

§ 125.3 Contracts for Government cartage.

Contracts for Government cartage shall be procured by formally advertised solicitation for bids and award of contract or by negotiation in accordance with the appropriate provisions of the Federal Procurement Regulations, as supplemented by the special procurement requirements of the U.S. Customs Service.

Subpart B—Cartage of Packages for Examination

§ 125.11 Cartage for examination in public stores.

(a) *Government cartage.* The cartage of merchandise in Customs custody designated for examination at the public stores shall be done by a licensed customhouse cartman or a bonded carrier under contract or other specific authority for that purpose.

(b) *Where there is no contract for Government cartage.* At ports where there is no contract for Government cartage in effect, the cartage of packages designated for examination at the public stores shall be done by a licensed customhouse cartman or a bonded carrier designated by the port director for this purpose.

(c) *Payment for Government cartmen.* The cost of the cartage shall be paid by Customs.

[T.D. 73–140, 38 FR 13554, May 23, 1973, as amended by T.D. 94–81, 59 FR 51495, Oct. 12, 1994]

§ 125.12 Cartage for examination at importers' premises or other place.

Merchandise designated for examination at an importer's premises or other place not in the charge of a Customs officer may be carted, lightered, or carried to any such place by the importer without a cartman's or lighterman's license, when in the judgment of the port director the revenue will not be endangered. Otherwise, such transfer shall be done by a licensed cartman, who shall be the contract cartman whenever practicable.

§ 125.13 Cartage of merchandise withdrawn from general order for regular entry.

When merchandise withdrawn from general order for regular entry is to be conveyed to a place designated by the port director for examination, the cartage shall be at the expense of the importer and shall be under the cartage arangements established at the port for hauling examination packages under the provisions of §125.11(a) and (b). Reimbursement of the cost of the cartage shall be collected from the importer prior to release of the merchandise from Customs custody.

§ 125.14 Cartage of unclaimed merchandise.

Unclaimed merchandise shall be carted to the public stores or a bonded warehouse designated by the port director under the cartage arrangements established at the port for hauling examination packages under the provisions of §125.11. Reimbursement of the cost of the cartage shall be collected from the importer prior to release if entry is made or from the proceeds of sale of the merchandise.

[T.D. 73–140, 38 FR 13554, May 23, 1973, as amended by T.D. 78–151, 43 FR 23566, May 31, 1978]

Subpart C—Importers' Cartage

§ 125.21 Cartage other than for examination.

Any licensed customhouse cartman, including an importer licensed to cart his own imported merchandise and a bonded carrier provided for in §112.2 of this chapter, at the expense of the importer or other party in interest, may transfer merchandise from the importing vessel or other conveyance to a bonded warehouse, from one vessel or conveyance to another, from one bonded warehouse to another, from the public stores to a bonded warehouse, from warehouse for transportation or for exportation, and from an internal revenue warehouse for exportation under the internal revenue laws without payment of tax. Foreign trade zone operators, bonded warehouse proprietors, container station operators and centralized examination station operators may engage in limited cartage or lighterage under the conditions specified in §112.2 of this chapter. Nothing in this section shall apply to the cartage of examination packages to the place of examination.

[T.D. 94–81, 59 FR 51495, Oct. 12, 1994]

§ 125.22 Designation of cartman or lighterman, or other bonded carrier.

Importers and exporters shall designate on the entry and permit of bonded merchandise the bonded cartman, lighterman, or other bonded carrier as provided in §112.2 of this chapter by whom they wish their merchandise to be conveyed. An importer also may designate a foreign trade zone operator, bonded warehouse proprietor, container station operator or centralized examination station operator under the conditions specified in §112.2 of this chapter for limited cartage; if he does so, the importer must also designate that the merchandise is bound for the facility run by the operator he designates. Approval of a designation

shall be indicated on the entry papers by the initials of the appropriate Customs officer placed in close proximity to the designation.

[T.D. 94–81, 59 FR 51495, Oct. 12, 1994]

§ 125.23 Failure to designate.

If an importer does not cart his merchandise or designate a licensed customhouse cartman, other bonded carrier, foreign trade zone operator, bonded warehouse proprietor, container station operator or centralized examination station operator, as provided for in §112.2 of this chapter, for the purpose, it shall be carted by a bonded carrier or by a public store cartman authorized by contract or designated by the port director for that purpose. The cost of such cartage shall be paid by the importer of the merchandise before its release from Customs custody.

[T.D. 94–81, 59 FR 51496, Oct. 12, 1994]

§ 125.24 Failure of designated cartman, lighterman or other bonded carrier to appear.

The cartman, lighterman, other bonded carrier, foreign trade zone operator, bonded warehouse proprietor, container station operator or centralized examination station operator designated to convey the merchandise shall be present to take the merchandise when the Customs officer in charge is ready to send it. If the designated vehicle or lighter is not present, after waiting a reasonable time, such officer shall send the merchandise by any available licensed cartman, lighterman, or qualifying bonded carrier.

[T.D. 94–81, 59 FR 51496, Oct. 12, 1994]

Subpart D—Delivery and Receipt

§ 125.31 Documents used.

When merchandise is carted or lightered to and received from a bonded store or bonded warehouse, it shall be accompanied by one of the following tickets or documents:

(a) Customs Form 6043—Delivery Ticket.

(b) Customs Form 7501, or its electronic equivalent, Entry Summary, annotated ''Permit''.

(c) Customs Form 7512—Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit.

[T.D. 82–204, 47 FR 49375, Nov. 1, 1982, as amended by T.D. 84–129, 49 FR 23167, June 5, 1984; T.D. 95–81, 60 FR 52295, Oct. 6, 1995; CBP Dec. 15–14, 80 FR 61287, Oct. 13, 2015]

§ 125.32 Merchandise delivered to a bonded store or bonded warehouse.

When merchandise is carried, carted or lightered to and received in a bonded store or bonded warehouse, the proprietor or his representative shall check the goods against the accompanying delivery ticket, Customs Form 6043, or copy of the permit, Customs Form 7501, or its electronic equivalent, and countersign the document acknowledging receipt of the merchandise as listed thereon. If the proprietor or his agent has been designated to carry the merchandise to his own bonded warehouse, he shall check the goods against the accompanying delivery ticket, Customs Form 6043, or copy of the permit, Customs Form 7501, or its electronic equivalent, at the time he picks up the cargo. Receipt of merchandise by a bonded warehouse proprietor for the purpose of transportation to his own warehouse constitutes receipt into a bonded warehouse.

[T.D. 94–81, 59 FR 51496, Oct. 12, 1994, as amended by CBP Dec. 15–14, 80 FR 61287, Oct. 13, 2015]

§ 125.33 Procedure on receiving merchandise.

(a) *From public or bonded store.* A receipt shall be taken from the cartman, lighterman or bonded carrier for all goods delivered to him from public store or bonded store. The receipt may be taken on Customs Form 6043, or on the appraising officer's release ticket at the time delivery is made.

(b) *From bonded warehouse.* In case of withdrawals from bonded warehouse, the merchandise shall be released only to the proprietor of the warehouse, who shall acknowledge such release on the appropriate withdrawal or removal document.

(c) *All other cases.* A receipt shall be taken for all goods delivered from Customs custody in any other case where

the port director deems such receipt necessary.

[T.D. 73–140, 38 FR 13554, May 23, 1973, as amended by T.D. 82–204, 47 FR 49375, Nov. 1, 1982; T.D. 94–81, 59 FR 51496, Oct. 12, 1994]

§ 125.34 Countersigning of documents and notation of bad order or discrepancy.

When a cartman, lighterman, other bonded carrier, foreign trade zone operator, bonded warehouse proprietor, container station operator or centralized examination station operator, as provided for in §112.2, receives merchandise remaining in Customs custody, he shall countersign the appropriate document in the space provided and shall note thereon any bad order or discrepancy. When available, the importing carrier's tally slip for the merchandise shall be attached to the delivery ticket which accompanies the merchandise while it is being carted or lightered in bond, for the use of Customs officers only at destination.

[T.D. 73–140, 38 FR 13554, May 23, 1973, as amended by T.D. 94–81, 59 FR 51496, Oct. 12, 1994]

§ 125.35 Report of loss, detention, or accident.

Any loss or detention of bonded merchandise, or any accident happening to a vehicle or lighter while carrying bonded merchandise shall be immediately reported by the cartman, lighterman, qualified bonded carrier, foreign trade zone operator, bonded warehouse proprietor, container station operator or centralized examination station operator to the port director.

[T.D. 94–81, 59 FR 51496, Oct. 12, 1994]

§ 125.36 Inability to deliver merchandise.

If the warehouse is closed or the warehouseman refuses to receive the merchandise, the cartman or bonded carrier shall notify the appropriate Customs inspector. The inspector shall promptly report the facts to the port director or his delegated representative for instructions. The merchandise shall then be returned to the Customs inspector, deposited in the public stores for safekeeping, or handled as ordered by the port director.

[T.D. 73–140, 38 FR 13554, May 23, 1973, as amended by T.D. 94–81, 59 FR 51496, Oct. 12, 1994]

Subpart E—Liability

§ 125.41 Liability for cartage.

(a) *Liability of cartman, lighterman or bonded carrier.* The cartman, lighterman, or bonded carrier conveying the merchandise, including merchandise covered by a TIR carnet which has not been ''taken on charge'' (see §114.22(c)(2) of this chapter), shall be liable under his bond for its prompt delivery in sound condition, or in no worse than the damaged condition noted on the delivery ticket, if damage is so noted.

(b) *Liability of foreign trade zone operator, bonded warehouse proprietor, container station operator or centralized examination station operator.* A foreign trade zone operator, bonded warehouse proprietor, container station operator or centralized examination station operator who picks up merchandise including merchandise covered by a TIR carnet which has not been ''taken on charge'', to transport the merchandise to his own facility shall be liable under his bond for the merchandise as soon as he collects the merchandise. The merchandise must be receipted as soon as it is picked up and must be delivered to either the respective foreign trade zone, bonded warehouse, container station or centralized examination station promptly after it is picked up in sound condition, or in no worse than the damaged condition noted on the delivery ticket, if damage is noted.

[T.D. 94–81, 59 FR 51496, Oct. 12, 1994]

§ 125.42 Cancellation of liability.

The Fines, Penalties, and Forfeitures Officer, in accordance with delegated authority, may cancel liquidated damages incurred under the bond of the foreign trade zone operator, containing the bond conditions set forth in §113.73 of this chapter, or under the bond of the cartman, lighterman, bonded carrier, bonded warehouse operator, container station operator or centralized

examination station operator on Customs Form 301, containing the bond conditions set forth in §113.63 of this chapter, upon the payment of such lesser amount, or without the payment of any amount, as the Fines, Penalties, and Forfeitures Officer may deem appropriate under the circumstances. Application for cancellation of liquidated damages incurred shall be made in accordance with the provisions of part 172 of this chapter.

[T.D. 00–57, 65 FR 53575, Sept. 5, 2000]

PART 127—GENERAL ORDER, UNCLAIMED, AND ABANDONED MERCHANDISE

Sec.

AUTHORITY: 19 U.S.C. 66, 1311, 1312, 1484, 1485, 1490, 1491, 1492, 1493, 1506, 1559, 1563, 1623, 1624, 1646a; 26 U.S.C. 5753.

Section 127.12 also issued under 19 U.S.C. 1753;

Section 127.14 also issued under 19 U.S.C. 1555, 1556, 1557;

Section 127.21 also issued under 19 U.S.C. 1753;

Section 127.28 also issued under 15 U.S.C. 2612, 26 U.S.C. 5688;

Sections 127.31, 127.36, 127.37 also issued under 19 U.S.C. 1753.

SOURCE: T.D. 74–114, 39 FR 12092, Apr. 3, 1974, unless otherwise noted.

§ 127.0 Scope.

This part sets forth regulations pertaining to general order merchandise, unclaimed merchandise, and abandoned merchandise, the storage and sale thereof, and the distribution of the proceeds from the sale thereof. Regulations regarding the abandonment of merchandise by the importer to the Government in accordance with section 506(1), Tariff Act of 1930, as amended (19 U.S.C. 1506(1)), appear in part 158 of this chapter.

Subpart A—General Order Merchandise

§ 127.1 Merchandise considered general order merchandise.

Merchandise shall be considered general order merchandise when it is taken into the custody of the port director and deposited in the public stores or a general order warehouse at the risk and expense of the consignee for any of the following reasons:

(a) Whenever entry of any imported merchandise is not made within the time provided by law or regulations prescribed by the Secretary of the Treasury.

(b) Whenever entry is incomplete because of failure to pay estimated duties.

(c) Whenever, in the opinion of the port director, entry cannot be made for want of proper documents or other causes.

(d) Whenever the port director believes that any merchandise is not correctly or legally invoiced.

(e) Whenever, at the request of the consignee or the owner or master of the vessel or person in charge of the vehicle in which merchandise is imported, any merchandise is taken possession of by the port director after the expiration of 1 day after entry of the vessel or report of the vehicle.

§ 127.2 Withdrawal from general order for entry or exportation.

(a) *Exportation within 6 months from date of importation.* Merchandise in general order may be exported without examination or appraisement if the merchandise is delivered to the exporting carrier within 6 months from the date of importation. This merchandise may be entered within 6 months from date of importation for immediate transportation to any port of entry designated by the consignee.

(b) *After expiration of 6 months from date of importation.* Entry for immediate transportation shall be permitted after the expiration of the 6-month period only for the purpose of filing an entry for consumption at the port of destination.

(c) *Withdrawal of less than single general order lot.* The withdrawal from general order of less than a single general order lot shall not be permitted except as provided for in §141.52 of this chapter.

[T.D. 74–114, 39 FR 12092, Apr. 3, 1974, as amended by T.D. 98–74, 63 FR 51290, Sept. 25, 1998]

§ 127.4 General order period defined.

The general order period is that period of time during which general order merchandise, as defined in §127.1, is not subject to sale. The general order period expires 6 months from the date of importation.

[T.D. 79–221, 44 FR 46814, Aug. 9, 1979, as amended by T.D. 98–74, 63 FR 51290, Sept. 25, 1998]

Subpart B—Unclaimed and Abandoned Merchandise

§ 127.11 Unclaimed merchandise.

Any entered or unentered merchandise (except merchandise under section 557, Tariff Act of 1930, as amended (19 U.S.C. 1557), but including merchandise entered for transportation in bond or for exportation) which remains in Customs custody for 6 months from the date of importation or a lesser period for special merchandise as provided by §127.28 (c), (d), and (h), and without all estimated duties and storage or other charges having been paid, shall be considered unclaimed and abandoned.

[T.D. 79–221, 44 FR 46814, Aug. 9, 1979, as amended by T.D. 98–74, 63 FR 51290, Sept. 25, 1998]

§ 127.12 Abandoned merchandise.

(a) *Involuntarily abandoned merchandise.* The following shall be considered to be involuntarily abandoned merchandise:

(1) Articles entered for a trade fair under the provisions of section 3 of the Trade Fair Act of 1959 (19 U.S.C. 1752), which are still in Customs custody at the expiration of 3 months after the closing date of the fair for which they were entered. (See §147.47 of this chapter.)

(2) Any imported merchandise upon which any duties or charges are unpaid, remaining in a bonded warehouse beyond the 5-year warehouse period.

(b) *Voluntarily abandoned merchandise.* The following merchandise shall be considered to be voluntarily abandoned merchandise and the property of the United States Government:

(1) Merchandise which is taken possession of by the port director at the request of the consignee, or owner or master of the vessel or person in charge of the vehicle in which the merchandise was imported.

(2) Merchandise abandoned by the importer to the United States within 30 days after entry in the case of merchandise not sent to the public stores for examination, or within 30 days after the release of the examination packages or merchandise in the case of merchandise sent to the public stores for examination.

(3) Articles entered for a trade fair under the provisions of section 3 of the Trade Fair Act of 1959 (19 U.S.C. 1752), which have been abandoned to the United States within 3 months of the closing of the fair.

(4) Merchandise in a bonded warehouse abandoned by the consignee within 3 years from the date of original importation. (See subpart D of part 158 of this chapter.)

[T.D. 74–114, 39 FR 12092, Apr. 3, 1974, as amended by T.D. 79–221, 44 FR 46814, Aug. 9, 1979]

§ 127.13 Storage of unclaimed and abandoned merchandise.

(a) *Place of storage.* A class 11 bonded warehouse or warehouse of class 3, 4, or 5, certified by the port director as qualified to receive general order merchandise, will be responsible for the transportation and storage of unclaimed and abandoned merchandise, upon due notification to the proprietor of the warehouse by the arriving carrier (or other party to whom the carrier has transferred the merchandise under a Customs-authorized permit to transfer or in-bond entry), as provided in §§ 4.37(c), 122.50(c), and 123.10(c) of this chapter. If no warehouse of these classes is available to receive general order merchandise, or if the merchandise requires specialized storage facilities which are unavailable in a bonded facility, the port director, after having received notice of the presence of unentered merchandise or baggage in accordance with the provisions of this section, will direct the storage of the merchandise by the carrier or by any other appropriate means.

(b) *Payment of storage and expenses.* Storage at the ordinary rates and all other expenses shall be paid by the owner or consignee of the merchandise upon entry thereof. If the goods are sold, such charges shall be paid from the proceeds of the sale to the extent that proceeds are available.

[T.D. 74–114, 39 FR 12092, Apr. 3, 1974, as amended by T.D. 02–65, 67 FR 68034, Nov. 8, 2002]

§ 127.14 Disposition of merchandise in Customs custody beyond time fixed by law.

(a) *Merchandise subject to sale or other disposition*—(1) *General.* If storage or other charges due the United States have not been paid on merchandise remaining in Customs custody after the expiration of the bond period in the case of merchandise entered for warehouse, or after the expiration of the general order period, as defined in § 127.4, in any other case, even though any duties due have been paid, such merchandise will be sold as provided in subpart C of this part, retained for official use as provided in subpart E of this part, destroyed, or otherwise disposed of as authorized by the Commissioner of Customs under the law, unless the merchandise is entered or withdrawn for consumption in accordance with paragraph (b) of this section.

(2) *Destruction of merchandise*—(i) *Proprietor responsibility.* If the port director concludes that merchandise in general order has no commercial value or is otherwise unsalable and cannot be disposed of at public auction (*see* § 127.29), and that its destruction is warranted, the warehouse proprietor must assume responsibility under bond, including the expense, for destroying the merchandise (*see* § 113.63(c)(3) of this chapter). The port director will authorize such destruction on Customs Form (CF) 3499, or on a similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs.

(ii) *Notice of destruction.* Before destroying the merchandise, the warehouse proprietor must first make a reasonable effort under bond (*see* § 113.63(b) and (c) of this chapter), to identify and inform the importer (owner) or consignee regarding the intended destruction of the merchandise. When the appropriate party is identified, notice of destruction will be provided to the party on Customs Form (CF) 5251, appropriately modified, or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs, at least 30 calendar days prior to the date of intended destruction.

(b) *Entry of merchandise subject to sale.* Merchandise subject to sale (except

merchandise abandoned under section 506(1) or 563(b), Tariff Act of 1930, as amended (19 U.S.C. 1506(1), 1563(b))), may be entered or withdrawn for consumption at any time prior to the sale upon payment of the duties, any internal revenue tax, and all charges and expenses that may have accrued thereon. Such merchandise may not be exported without payment of duty nor entered for warehouse.

(c) *Release of merchandise to warehouse proprietor*. The following merchandise for which a permit to release has been issued shall be held to be no longer in the custody of Customs officers and shall be released to the warehouse proprietor:

(1) Merchandise upon which all duties and charges have been paid.

(2) Free and duty-paid merchandise upon which all charges have been paid, not entered for warehouse which remains in bonded warehouse for more than the general order period.

[T.D. 74–114, 39 FR 12092, Apr. 3, 1974, as amended by T.D. 75–161, 40 FR 28790, July 9, 1975; T.D. 79–221, 44 FR 46814, Aug. 9, 1979; T.D. 82–204, 47 FR 49375, Nov. 1, 1982; T.D. 02–65, 67 FR 68034, Nov. 8, 2002]

Subpart C—Sale of Unclaimed and Abandoned Merchandise

§ 127.21 Time of sale.

All unclaimed and abandoned merchandise will be sold at the first regular sale held after the merchandise becomes subject to sale, unless a deferment of its sale is authorized by the port director. Regular sales shall be made once every year or more often at the discretion of the port director.

[T.D. 74–114, 39 FR 12092, Apr. 3, 1974, as amended by T.D. 02–65, 67 FR 68034, Nov. 8, 2002]

§ 127.22 Place of sale.

The port director, in his discretion, may authorize the sale of merchandise subject to sale (including explosives, perishable articles and articles liable to depreciation) at any port. The consignee of any merchandise which is to be transferred from the port where it was imported to another port for sale, shall be notified of the transfer so that he may have the option of making entry of the merchandise before the transfer and sale.

[T.D. 95–77, 60 FR 50020, Sept. 27, 1995]

§ 127.23 Appraisement of merchandise.

Before unclaimed and abandoned merchandise is offered for sale, it shall be appraised in accordance with sections 402 and 402a, Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402). Such merchandise shall also be appraised at its actual domestic value in its condition at the time and place of examination, whether or not it has depreciated or appreciated in value since the date of exportation. The quantity of merchandise in each lot shall be reported.

§ 127.24 Notice of sale.

Notice of sale shall be sent on Customs Form 5251, 30 days prior to the date of sale, or 30 days prior to the transfer of merchandise to the place of sale, to the following:

(a) Importer, if known; or

(b) Consignee, if name and address can be ascertained; or

(c) Shipper, his representative or agent, if merchandise is consigned to order or consignee cannot be ascertained; or

(d) Warehouse transferee; or

(e) Lienholder.

§ 127.25 Advertisement of sale.

(a) *Regular advertising*. Except as prescribed in § 127.28 (c), (d), and (h), and in paragraph (b) of this section, a brief notice of the time and place of sale shall be given for three successive weeks, immediately preceding the sale, in one newspaper of extensive circulation published at the port where the sale is to be held. The newspaper is to be selected by the port director and publication of the notice shall be authorized on the standard form provided for that purpose. The notice shall designate the place where catalogs may be obtained and a reasonable opportunity to inspect the merchandise shall be afforded prospective purchasers.

(b) *Where proceeds are insufficient to pay expenses and duties*. If the port director is satisfied that the proceeds of the sale will not be sufficient to pay the expenses and duties, a written or printed notice of the sale in lieu of the

advertisement shall be conspicuously posted in the customhouse, and, if deemed necessary, at some other proper place for the time specified in paragraph (a) of this section.

§ 127.26 Catalogs.

Catalogs, if used shall specify the description of packages, the description and quantities of their contents, the appraised value thereof, and also the domestic value at the time and place of the examination of the merchandise. They shall be distributed at the sale and announcement made that the Government does not guarantee quality or value and that no allowance will be made for any deficiency found after sale.

§ 127.27 Conduct of sale.

Sales may be conducted by the port director, any employee designated by him or by a public auctioneer.

§ 127.28 Special merchandise.

(a) *Drugs, seeds, plants, nursery stock, and other articles required to be inspected by the Department of Agriculture.* Drugs, seeds, plants, nursery stock, and other articles required to be inspected by the Department of Agriculture must be inspected by a representative of the Department of Agriculture to ascertain whether they comply with the requirements of the law and regulations of that Department. If found not to comply with such requirements, they shall be immediately destroyed.

(b) *Pesticides and devices.* Pesticides and devices intended for trapping, destroying, repelling or mitigating any pest or any other form of plant or animal life (other than man or other than bacteria, virus, or other microorganism on or in living man or other living animals) shall be inspected by a representative of the Environmental Protection Agency to ascertain whether they comply with the requirements of the law and regulations of that agency. If found not to comply with such requirements, they shall be immediately destroyed.

(c) *Explosives, dangerous articles, fruit, and perishables.* Unclaimed explosives and other dangerous articles, and fruit and other perishable articles shall be sold after 3-days' public notice. When it is probable that entry will be made at an early date for unclaimed perishable merchandise, the port director may hold the merchandise for a reasonable time in a bonded cold-storage warehouse if one is available.

(d) *Articles liable to depreciation.* Other unclaimed merchandise shall be sold at public auction upon public notice of not less than 6 or more than 10 days, as the port director may determine, if in his opinion such merchandise will depreciate and sell for an amount insufficient to pay the duties, storage, and other charges if allowed to remain in general order for 6 months.

(e) *Tobacco and tobacco products.* Tobacco articles and tobacco materials as defined in 26 U.S.C. 5702(j) and (k), may be sold for domestic consumption only if they will bring an amount sufficient to pay the expenses of sale as well as the internal revenue tax. If these articles cannot be sold for domestic consumption in accordance with the foregoing conditions, they shall be destroyed unless they can be advantageously sold for export from continuous Customs custody or unless the Commissioner of Customs has authorized other disposition to be made under the law. These articles may be sold for domestic consumption even though the proceeds of sale will not cover the duties due.

(f) *Distilled spirits, wines, and malt beverages.* All unclaimed and abandoned distilled spirits, wines, and malt beverages may be sold for domestic consumption if they will bring an amount sufficient to pay the internal revenue tax. If they cannot be sold for domestic consumption in accordance with the foregoing condition, they shall be destroyed unless they can be advantageously sold for export from continuous Customs custody or unless the Commissioner of Customs has authorized other disposition to be made under the law. The sale must be conducted in accordance with the alcoholic beverage laws of the state in which the sale is held.

(g) *Other merchandise subject to internal revenue taxes.* All other unclaimed and abandoned merchandise subject to internal revenue taxes may be sold for domestic consumption if it will bring

an amount sufficient to pay the internal revenue tax. If, in the opinion of the port director, it is insufficient in value to justify its sale, the merchandise shall be destroyed, unless it can be advantageously sold for export from continuous Customs custody or unless the Commissioner of Customs has authorized other disposition to be made under the law. These articles may be sold for domestic consumption even though the proceeds of sale will not cover the duties due.

(h) *Unclaimed merchandise remaining on dock.* Unclaimed merchandise remaining on the dock which, in the opinion of the port director, will not sell for enough to pay the cost of cartage and storage shall be sold at public auction upon public notice of not less than 6 or more than 10 days.

(i) *Good subject to TSCA Requirements.* A good subject to TSCA requirements, *i.e.*, a covered commodity as defined in section 12.120 of this chapter, will be inspected by a representative of the Environmental Protection Agency to ascertain whether it complies with the Toxic Substances Control Act and the regulations and orders issued thereunder. If found not to comply with these requirements that good must be exported or otherwise disposed of immediately in accordance with the provisions of §§ 12.125 through 12.127 of this chapter.

[T.D. 74–114, 39 FR 12092, Apr. 3, 1974, as amended by T.D. 83–158, 48 FR 34740, Aug. 1, 1983; T.D. 98–74, 63 FR 51290, Sept. 25, 1998; T.D. 02–65, 67 FR 68034, Nov. 8, 2002; CBP Dec. 16-28, 81 FR 94986, Dec. 27, 2016]

§ 127.29 Unsold merchandise.

Merchandise offered for sale but not sold shall be included in the next regular sale of unclaimed and abandoned merchandise. If the port director is satisfied that such merchandise is unsalable or of no commercial value, it shall be destroyed.

Subpart D—Proceeds of Sale

§ 127.31 Disposition of proceeds.

From the proceeds of sale of merchandise remaining in public stores or in bonded warehouse beyond the time fixed by law, the following charges shall be paid in the order named:

(a) Internal revenue taxes.

(b) Expenses of advertising and sale.

(c) Expenses of cartage, storage and labor. When the proceeds are insufficient to pay such charges fully, they shall be paid pro rata. (For merchandise entered for warehousing, see § 127.32 of this subpart.)

(d) Duties.

(e) Any other charges due the United States in connection with the merchandise.

(f) Any sum due to satisfy a lien for freight, charges, or contributions in general average, of which due notice shall have been given in the manner prescribed by law.

§ 127.32 Expenses of cartage, storage, and labor.

The expenses of cartage, storage, and labor for merchandise entered for warehousing shall be paid in the following order:

(a) When such merchandise was warehoused in public stores, expenses of storage and labor shall be paid after expenses of sale (pro-rated when proceeds are insufficient to pay them fully) and any cartage charges shall be paid last.

(b) When such merchandise was warehoused in a bonded warehouse, expenses of storage, cartage, and labor shall be paid last (pro-rated when proceeds are insufficient to pay them fully).

§ 127.33 Chargeable duties.

The duties chargeable on any merchandise within the purview of this subpart shall be assessed on the appraised dutiable value at the rate of duty chargeable at the time the merchandise became subject to sale. Household and personal effects of the character provided for in Chapter 98, Subchapter IV, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), which belong to persons who have not arrived in this country before the effects become subject to sale, are dutiable at the rates in effect when the effects become subject to sale, even though such persons arrive

and make entry for the effects before they are sold.

[T.D. 74–114, 39 FR 12092, Apr. 3, 1974, as amended by T.D. 89–1, 53 FR 51255, Dec. 21, 1988; T.D. 97–82, 62 FR 51770, Oct. 3, 1997]

§ 127.34 Auctioneer's commissions.

The duties of the auctioneer shall be confined to selling the merchandise and his charge for such service shall in no case exceed the commissions usual at the port. Such commissions shall be based on the amount of the successful bid.

§ 127.35 Presentation of accounts.

Accounts for the auctioneer's charges and all other expenses of sale which may be properly chargeable on the merchandise shall be presented to the port director for payment within 10 days from the date of sale. Such expenses shall be apportioned pro rata on the amounts received for different lots sold.

§ 127.36 Claim for surplus proceeds of sale.

(a) *Filing of claim.* Claims for the surplus proceeds of the sale of unclaimed or abandoned merchandise shall be filed with the port director at whose direction the merchandise was sold. The following shall be used in filing a claim:

(1) *Unclaimed merchandise.* Claims for surplus proceeds of the sale of unclaimed merchandise which has become abandoned and sold under section 491 of the Tariff Act of 1930, as amended (19 U.S.C. 1491), shall be supported by the original bill of lading. If only part of a shipment is involved, either a photostatic or certified copy of the original bill of lading may be submitted in lieu of the original bill of lading.

(2) *Involuntarily abandoned merchandise*—(i) *Warehouse goods deemed abandoned.* Claims for surplus proceeds of sale of warehouse goods deemed involuntarily abandoned sold under section 559 of the Tariff Act of 1930, as amended (19 U.S.C. 1559), shall be established by reference to the warehouse entry, or, if the right to withdraw the merchandise from warehouse has been transferred, by reference to the documents by which the transfer was made.

(ii) *Trade fair articles deemed abandoned.* Claims for surplus proceeds of sale of trade fair articles deemed involuntarily (mandatorily) abandoned under section 4 of the Trade Fair Act of 1959 (19 U.S.C. 1753(c)), shall be supported by the original bill of lading. If only part of a shipment is involved, either a photostatic copy or certified copy of the original bill of lading may be submitted in lieu of the original bill of lading. (See § 147.47 of this chapter.)

(b) *Payment of claim.* If a claim of the owner or consignee of unclaimed or abandoned merchandise for the surplus proceeds of sale is properly established as provided in this section, such proceeds of sale shall be paid to him pursuant to section 493 of the Tariff Act of 1930, as amended (19 U.S.C. 1493).

(c) *Doubtful claims.* Any doubtful claims for the proceeds of sale along with all pertinent documents and information available to the port director shall be forwarded to the Commissioner of Customs for instructions or for referral to the General Accounting Office for direct settlement.

§ 127.37 Insufficient proceeds.

(a) *Warehouse merchandise deemed involuntarily abandoned.* If the proceeds of sale of warehouse merchandise deemed involuntarily abandoned are insufficient to pay the duties after payment of all charges having priority, the deficiency shall be collected under the bond for the importation and entry of merchandise on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter.

(b) *Unclaimed merchandise and trade fair articles involuntarily abandoned.* If the proceeds of sale of unclaimed merchandise or trade fair articles involuntarily abandoned are insufficient to pay the charges and duties, the consignee shall be liable for the deficiency unless the merchandise was shipped to him without his consent. If no entry for the merchandise has been filed, and no other attempt to control the merchandise has been made, the merchandise shall be regarded as shipped to the consignee without his consent and no

effort shall be made to collect any deficiency of duties or charges from such consignee.

[T.D. 74–114, 39 FR 12092, Apr. 3, 1974, as amended by T.D. 84–213, 49 FR 41183, Oct. 19, 1984]

Subpart E—Title to Unclaimed and Abandoned Merchandise Vesting in Government

SOURCE: T.D. 02–65, 67 FR 68034, Nov. 8, 2002, unless otherwise noted.

§ 127.41 Government title to unclaimed and abandoned merchandise.

(a) *Vesting of title in Government.* At the end of the 6-month period noted in § 127.11 of this part, at which time merchandise having thus remained in Customs custody is considered as unclaimed and abandoned, the port director, with the concurrence of the Assistant Commissioner, Office of Field Operations, may, in lieu of sale of the merchandise as provided in subpart C of this part, provide notice to all known interested parties under paragraph (b) of this section that the title to such merchandise will be considered as vesting in the United States, free and clear of any liens or encumbrances, as of the 30th day after the date of the notice unless, before the 30th day, the merchandise is entered or withdrawn for consumption and all duties, taxes, fees, transfer and storage charges, and any other expenses that may have accrued on the merchandise are paid.

(b) *Notice to known interested parties.* Notice that the title to unclaimed and abandoned merchandise will vest in the United States, as described in paragraph (a) of this section, will be sent to the following parties on Customs Form (CF) 5251, appropriately modified, or other similar Customs document as designated by the port director or an electronic equivalent as authorized by Customs:

(1) Importer, if known;

(2) Consignee, if name and address can be ascertained;

(3) Shipper, or the shipper's representative or agent, if merchandise is consigned to order or the consignee cannot be ascertained; and

(4) Any other known interested parties.

(c) *Appraisement of merchandise.* Before title to unclaimed and abandoned merchandise is vested in the United States, the merchandise will be appraised in accordance with section 402, Tariff Act of 1930, as amended (19 U.S.C. 1401a).

§ 127.42 Disposition of merchandise owned by Government.

(a) *Disposition.* If title to any unclaimed and abandoned merchandise vests in the United States under § 127.41, the merchandise may be retained by Customs for its official use, or in Customs discretion, the merchandise may be transferred to any other Federal, state or local agency, destroyed or disposed of otherwise.

(b) *Payment of charges and expenses.* All transfer and storage charges or expenses accruing on retained or transferred merchandise will be paid by the receiving agency. Such transfer and storage charges or expenses will include those accruing with respect to the merchandise while subject to general order.

§ 127.43 Petition of party for surplus proceeds had merchandise been sold.

(a) *Filing of petition.* Under section 491(d), Tariff Act of 1930, as amended (19 U.S.C. 1491(d)), any party who can satisfactorily establish title to or a substantial interest in unclaimed and abandoned merchandise, the title to which has vested in the United States, may file a petition for the amount that would have been payable to the party had the merchandise been sold and a proper claim made under section 493, Tariff Act of 1930, as amended (19 U.S.C. 1493).

(b) *When and with whom filed.* The petition may be filed with the port director at whose direction the title to the merchandise was vested in the United States. If the party received notice under § 127.41(b), the petition must be filed within 30 calendar days after the day on which title vested in the United States. If the party can satisfactorily establish that such notice was not received, the party must file the petition within 30 calendar days of learning of

the vesting but not later than 90 calendar days from the vesting.

(c) *Evidence required.* The petition must show the party's title to or interest in the merchandise, and be supported, as appropriate, with the original bill of lading, bill of sale, contract, mortgage, or other satisfactory documentary evidence, or a certified copy of the foregoing. Also, if applicable, the petition must be supported by satisfactoryproof that the petitioner did not receive notice that title to the merchandise would vest in the United States and was in such circumstances as prevented the receipt of notice.

(d) *Payment of claim.* If the claim of the owner, consignee, or other party having title to or a substantial interest in the merchandise, is properly established as provided in this section, the party may be paid out of the Treasury of the United States the amount that it is believed the party would have received under 19 U.S.C. 1493 had the merchandise been sold and a proper claim for the surplus of the proceeds of sale been made under that provision (*see* §127.36 of this part). In determining the amount that may have been payable under 19 U.S.C. 1493, given that the merchandise was not in fact sold at public auction under 19 U.S.C. 1491(a), the appraisement of the merchandise, as provided in §127.41(c), will be taken into consideration. By virtue of the authority delegated to the port director in this matter, any payment made as provided under this paragraph in connection with the filing of a petition under paragraph (b) of this section will be final and conclusive on all parties.

(e) *Doubtful claim.* Any doubtful claim for payment along with all pertinent documents and information available to the port director will be forwarded to the Assistant Commissioner, Office of Administration, for instructions. The decision of the Assistant Commissioner, Office of Administration, with respect to any petition filed under this section will be final and conclusive on all parties.

[T.D. 02–65, 67 FR 68034, Nov. 8, 2002, as amended by CBP Dec. 12–21, 77 FR 73309, Dec. 10, 2012]

PART 128—EXPRESS CONSIGNMENTS

Sec.

AUTHORITY: 19 U.S.C. 58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1321, 1484, 1498, 1551, 1555, 1556, 1565, 1624.

SOURCE: T.D. 89–53, 54 FR 19566, May 8, 1989, unless otherwise noted.

§ 128.0 Scope.

This part sets forth requirements and procedures for the clearance of imported merchandise carried by express consignment operators and carriers, including couriers, under special procedures.

Subpart A—General

§ 128.1 Definitions.

For the purpose of this part the following definitions shall apply:

(a) *Express consignment operator or carrier.* An ''express consignment operator or carrier'' is an entity operating in any mode or intermodally moving cargo by special express commercial service under closely integrated administrative control. Its services are offered to the public under advertised, reliable timely delivery on a door-to-door basis. An express consignment operator assumes liability to Customs for the articles in the same manner as if it is the sole carrier.

(b) *Cargo.* ''Cargo'' means any and all shipments imported into the Customs

territory of the United States by an express consignment operator or carrier whether manifested, accompanied, or unaccompanied.

(c) *Courier shipment.* A ''courier shipment'' is an accompanied express consignment shipment.

(d) *Hub.* A ''hub'' is a separate, unique, single purpose facility normally operating outside of Customs operating hours approved by the port director for entry filing, examination, and release of express consignment shipments.

(e) *Express consignment carrier facility.* An ''express consignment carrier facility'' is a separate or shared specialized facility approved by the port director solely for the examination and release of express consignment shipments.

(f) *Closely integrated administrative control.* The term ''closely integrated administrative control'' means operations must be sufficiently integrated at both ends of the service (i.e., pick-up and delivery) so that the express consignment company can exercise a high degree of control over the shipments, particularly in regard to the reliability of information supplied for Customs purposes. Such control would be indicated by substantial common ownership between the local company and the foreign affiliate and/or by a very close contractual relationship between the local company and its foreign affiliate(s) (*e.g.*, a franchise arrangement).

(g) *Reimbursable.* ''Reimbursable'' means all normal costs incurred at an express consignment operator's hub or an express consignment carrier facility that are required to be reimbursed to the Government.

Subpart B—Administration

§ 128.11 Express consignment carrier application process.

(a) *Facility application.* Requests for approval of an express consignment carrier or hub facility must be in writing to the port director.

(b) *Application contents.* The application for approval of an express consignment carrier or hub facility must include the following:

(1) A full description of the international cargo facilities, including blueprints, floor plans and facility location(s).

(2) A statement of the general character of the express consignment operations that includes, in the case of an express consignment carrier facility, a list of all carriers or operators that intend to use the facility.

(3) An estimate of volume of transactions by:

(i) Formal entries.

(ii) Informal entries.

(iii) Shipments not requiring entry (see § 128.23 of this part).

(4) An application processing fee, as set forth in § 128.13.

(5) A list of principal company officials or officers.

(6) A projected start-up date, and days and hours of operation.

(7) An agreement that the express consignment entity will:

(i) Ensure that all cargo will be processed in the CBP Automated Commercial Environment (ACE) or any other CBP-authorized electronic data interchange system, and associated applications including, but not limited to, Automated Broker Interface (ABI), Automated Manifest System (AMS), Cargo Selectivity, and Statement Processing.

(ii) Sign and implement a narcotics enforcement agreement with U.S. Immigration and Customs Enforcement (ICE).

(iii) Provide, without cost to the Government, adequate office space, equipment, furnishings, supplies and security as per CBP's specifications.

(iv) If the entity is an express consignment carrier facility, provide to Customs and Border Protection, Revenue Division/Attention: Reimbursables, 6650 Telecom Drive, Suite 100, Indianapolis, Indiana 46278, at the beginning of each calendar quarter, a list of all carriers or operators currently using the facility and notify that office whenever a new carrier or operator begins to use the facility or whenever a carrier or operator ceases to use the facility.

(v) If the entity is a hub facility or an express consignment carrier, timely pay all applicable processing fees prescribed in § 24.23 of this chapter.

(c) *Changes or alterations to facility.* All proposed changes or alterations to

an existing approved international cargo processing facility must be submitted in writing to the port director for approval prior to the implementation thereof and must contain the information specified in paragraph (b) of this section. Failure to obtain CBP approval by an express consignment operator or carrier for any modifications to the international cargo processing area may result in the suspension of approval as an express consignment facility or hub and the procedures for processing cargo contained in this part.

[T.D. 89–53, 54 FR 19566, May 8, 1989, as amended by T.D. 93–66, 58 FR 44130, Aug. 19, 1993; CBP Dec. 07–29, 72 FR 31725, June 8, 2007; CBP Dec. 15–14, 80 FR 61287, Oct. 13, 2015]

§ 128.12 Application approval/denial and suspension of operating privileges.

(a) *Notice.* (1) The port director shall promptly notify the applicant in writing of the decision to approve or deny the application to establish an express consignment carrier or hub facility or to suspend or revoke operating privileges at an existing facility.

(2) The notice shall specifically state the grounds for denial or for the proposed suspension or revocation.

(b) *Appeal.* The express consignment entity may file a written notice of appeal seeking review of the denial or proposed suspension or revocation within 30 days after notification.

(c) *Recommendation.* The port director shall consider the allegations and responses in the appeal unless, in the case of a suspension or revocation, the express consignment entity requests a hearing. The appeal along with the port director's recommendation shall be forwarded to the Commissioner of Customs or his designee for a final administrative decision.

(d) *Hearing.* In the case of a proposed suspension or revocation, a hearing may be requested within 30 days after notification. If a hearing is requested, it shall be held before a hearing officer appointed by the Commissioner of Customs or his designee within 30 days following the express consignment entity's request. The entity shall be notified of the time and place of the hearing at least 5 days prior thereto. The express consignment entity may be represented by counsel at such hearing, and all evidence and testimony of witnesses in such proceedings, including substantiation of the allegations and the responses thereto shall be presented, with the right of cross-examination to both parties. A stenographic record of any such proceeding shall be made and a copy thereof shall be delivered to the express consignment entity. At the conclusion of the hearing, all papers and the stenographic record of the hearing shall promptly be transmitted to the Commissioner of Customs or his designee together with a recommendation for final action. The express consignment entity may submit in writing additional views or arguments to the Commissioner or his designee following a hearing on the basis of the stenographic record, within 10 days after delivery to it of a copy of such record. The Commissioner or his designee shall thereafter render the decision in writing, stating the reasons therefor. Such decision shall be served on the express consignment entity, and shall be considered the final administrative action.

§ 128.13 Application processing fee.

Each operator of an express consignment hub or carrier facility will be charged a fee to establish, alter, or relocate such facility which shall be determined under the provisions of 31 U.S.C. 9701. The fee will be periodically reviewed and revised to reflect changes in processing expenses and any changes thereto will be published in the FEDERAL REGISTER and ''Customs Bulletin''.

Subpart C—Procedures

§ 128.21 Manifest requirements.

(a) *Additional information.* Express consignment operators and carriers shall provide the following manifest information in advance of the arrival of all cargo, including all articles for which an entry is not required as noted in § 128.23 (which shall be listed separately and their entry status noted), in addition to the information and documents otherwise required by this chapter:

(1) Country of origin of the merchandise.

(2) Shipper name, address and country.

(3) Ultimate consignee name and address.

(4) Specific description of the merchandise, and under the following conditions, the Harmonized Tariff Schedule of the United States (HTSUS) subheading number:

(i) If the merchandise is required to be formally entered as provided in §128.25; or

(ii) If the merchandise is eligible for, and is entered under, the informal entry procedures as provided in §128.24, but may not be passed free of duty and tax as consisting of a shipment of merchandise imported by one person on one day having a fair retail value in the country of shipment not exceeding $800, as provided in §128.24(e).

(5) Quantity.

(6) Shipping weight.

(7) Value.

(b) *Sorting of cargo*. If the shipments are physically sorted by country of origin of the merchandise when they arrive at the hub or express consignment facility and are presented to Customs in this manner, the advance manifest information shall also be provided with the merchandise segregated by country of origin.

[T.D. 89–53, 54 FR 19566, May 8, 1989, as amended by T.D. 94–51, 59 FR 30294, June 13, 1994; CBP Dec. No. 16-13, 81 FR 58833, Aug. 26, 2016]

§128.22 Bonds.

Each express consignment operator or carrier must be recognized by Customs as an international carrier and approved as a carrier of bonded merchandise, and shall file bonds on Customs Form 301, containing the bond conditions set forth in §§113.62, 113.63, 113.64 and 113.66 of this chapter, to insure compliance with Customs requirements relating to the importation and entry of merchandise as well as the carriage and custody of merchandise under Customs control.

§128.23 Entry requirements.

(a) *General rule*. Except as provided in paragraph (c) of this section, all articles carried by an express consignment entity shall be entered by a person with the right to file entry.

(b) *Procedures*—(1) *General*. All express consignment entities utilizing the procedures in this part must comply with the requirements of the CBP Automated Commercial Environment (ACE) or any other CBP-authorized electronic data interchange system. These requirements include those under the Automated Manifest System (AMS), Cargo Selectivity, Statement Processing, the Automated Broker Interface System (ABI), and enhancements of ACE or any other CBP-authorized electronic data interchange system.

(2) *Entry number*. All entry numbers must be furnished to CBP in a CBP approved bar coded readable format in order to assist in the processing of express consignment cargo under the CBP Automated Commercial Environment (ACE) or any other CBP-authorized electronic data interchange system.

(c) *Exception*. Articles specifically exempt from entry by §141.4(b) of this chapter need not satisfy the general rule as set forth in paragraph (a) of this section.

[T.D. 94–51, 59 FR 30294, June 13, 1994, as amended by CBP Dec. 15–14, 80 FR 61287, Oct. 13, 2015]

§128.24 Informal entry procedures.

(a) *Eligibility*. Informal entry procedures may generally be used for shipments not exceeding $2,500 in value which are imported by express consignment operators and carriers. Individual shipments valued at $2,500 or less may be consolidated on one entry. Such procedures, however, may not be used for prohibited or restricted merchandise, merchandise which is subject to a quota or other quantitative restraints, or for any articles precluded from informal entry procedures by virtue of section 498, Tariff Act of 1930, as amended, (19 U.S.C. 1498).

(b) *Procedures*. CBP Form 3461, or its electronic equivalent, appropriately modified to cover all importations under the special procedures contained in this part, must be submitted prior to the commencement of hub or express consignment carrier facility operations. The party who may make entry

under §143.26 of this chapter may submit a copy of the invoice or the advance manifest as described in §128.21 in lieu of other control documents.

(c) *Alternative procedure.* The party who may make entry under §143.26 of this chapter may be required to submit an individual CBP Form 3461, or its electronic equivalent, covering the eligible shipments on a daily basis or by flight basis. Commercial invoices or advance manifests must be attached to the CBP Form 3461, or its electronic equivalent, which will contain the entry number and such other information deemed necessary by the port director. A notation must be placed on the CBP Form 3461 that the entry covers multiple shipments.

(d) *Entry summary.* An entry summary (CBP Form 7501, or its electronic equivalent) must be presented in proper form, and estimated duties deposited within 10 days of the release of the merchandise under either the regular or alternative procedure described in this section. However, see paragraph (e) of this section if the shipment is valued at $800 or less.

(e) *Shipments valued at $800 or less.* Shipments valued at $800 or less meeting the requirements of §10.151 of this chapter will be passed free of duty and tax. Such shipments must be segregated on the manifest from shipments valued at more than $800 if an advance manifest is used as the entry document, as provided for in §128.21. If such an advance manifest is used as the entry document, the following are not required to be provided for shipments qualifying under this paragraph:

(1) The Harmonized Tariff Schedule of the United States (HTSUS) subheading number (see §128.21(a)(4)); and

(2) An entry summary (see paragraph (d) of this section).

[T.D. 89–53, 54 FR 19566, May 8, 1989, as amended by T.D. 94–51, 59 FR 30294, June 13, 1994; T.D. 95–31, 60 FR 18991, Apr. 14, 1995; T.D. 98–28, 63 FR 16417, Apr. 3, 1998; 77 FR 72720, Dec. 6, 2012; CBP Dec. 15–14, 80 FR 61287, Oct. 13, 2015; CBP Dec. No. 16-13, 81 FR 58833, Aug. 26, 2016]

§128.25 Formal entry procedures.

Formal entry, as provided for under 19 U.S.C. 1484 in parts 141, 142, and 143 (except for subpart C), of this chapter, is required for all shipments exceeding the monetary limitation for informal entry (see §128.24) and any shipment for which the informal entry procedures may not be used (see §128.24).

[T.D. 94–51, 59 FR 30295, June 13, 1994]

PART 132—QUOTAS

Sec.

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.

Sections 132.15, 132.17, and 132.18 also issued under 19 U.S.C. 1202 (additional U.S. Note 3 to Chapter 2, HTSUS; additional U.S. Note 8 to Chapter 17, HTSUS; and subchapter II of Chapter 99, HTSUS, respectively), 1484, 1508.

SOURCE: T.D. 73–203, 38 FR 20230, July 30, 1973, unless otherwise noted.

§ 132.0 Scope.

This part sets forth rules and procedures applicable to quotas administered by Headquarters, U.S. Customs Service.

Subpart A—General Provisions

§ 132.1 Definitions.

When used in this part, the following terms shall have the meaning indicated:

(a) *Absolute (or quantitative) quotas.* ''Absolute (or quantitative) quotas'' are those which permit a limited number of units of specified merchandise to be entered or withdrawn for consumption during specified periods. Once the quantity permitted under the quota is filled, no further entries or withdrawals for consumption of merchandise subject to quota are permitted. Some absolute quotas limit the entry or withdrawal of merchandise from particular countries (geographic quotas) while others are global quotas and limit the entry or withdrawal of merchandise not by source but by total quantity.

(b) *Tariff-rate quotas.* ''Tariff-rate quotas'' permit a specified quantity of merchandise to be entered or withdrawn for consumption at a reduced duty rate during a specified period.

(c) [Reserved]

(d) *Presentation.* ''Presentation'' is the delivery in proper form to the appropriate Customs officer of:

(1) An entry summary for consumption, which shall serve as both the entry and the entry summary, with estimated duties attached (see §141.0a(b)); or

(2) An entry summary for consumption, which shall serve as both the entry and the entry summary, without estimated duties attached, if the entry/entry summary information and a valid scheduled statement date (pursuant to §24.25 of this chapter) have been successfully received by Customs via the Automated Broker Interface; or

(3) A withdrawal for consumption with estimated duties attached.

(e) *Quota-class merchandise.* ''Quota-class merchandise'' is any imported merchandise subject to limitations under an absolute or a tariff-rate quota.

(f) *Quota priority.* ''Quota priority'' is the precedence granted to one entry or withdrawal for consumption of quota-class merchandise over other entries or withdrawals of merchandise subject to the same quota.

(g) *Quota status.* ''Quota status'' is the standing which entitles quota-class merchandise to admission under an absolute quota, or to a reduced rate of duty under a tariff-rate quota, or to any other quota benefit.

[T.D. 73–203, 38 FR 20230, July 30, 1973, as amended by T.D. 79–221, 44 FR 46814, Aug. 9, 1979; T.D. 89–104, 54 FR 50498, Dec. 7, 1989]

§ 132.2 Enactment and administration of quotas.

(a) *Enactment.* Tariff-rate quotas and absolute quotas are established by Presidential proclamations, Executive orders, and legislative enactments. These documents are published in the Customs Bulletin.

(b) *Administration.* Quotas vary by the type of commodity involved, the country of exportation, the period or periods the quota is open and the type of quota. Quotas are divided into two categories: Quotas administered directly by Headquarters, U.S. Customs Service, and quotas administered by other agencies which are enforced by Headquarters, U.S. Customs Service, and which may require special procedures or special documentation in accordance with the regulations and directives of the particular agency involved.

(c) *Strict construction employed.* The terms of a Presidential proclamation, Executive order, or legislative enactment establishing a quota, and the regulations implementing the quota, must be strictly complied with.

§ 132.3 Observation of official hours.

An entry summary for consumption or a withdrawal for consumption for quota-class merchandise shall be presented only during official office hours, except as provided in §§132.12 and 141.62(b) of this chapter. For purposes of administering quotas, ''official office hours'' shall mean 8:30 a.m. to 4:30 p.m. in all time zones.

[T.D. 79–221, 44 FR 46814, Aug. 9, 1979]

§ 132.4 Quota quantity entry limits.

At the opening of the quota no importer shall be permitted to present entries or withdrawals for consumption of quota-class merchandise for a quantity in excess of the quantity admissible under the applicable quota.

§ 132.5 Merchandise imported in excess of quota quantities.

(a) *Absolute quota merchandise.* Absolute quota merchandise imported in excess of the quantity admissible under the applicable quota must be disposed of in accordance with paragraph (c) of this section.

(b) *Tariff-rate quota merchandise.* Merchandise imported in excess of the quantity admissible at the reduced quota rate under a tariff-rate quota is permitted entry at the higher duty rate. However, it may be disposed of in accordance with paragraph (c) of this section.

(c) *Disposition of excess merchandise.* Merchandise imported in excess of either an absolute or a tariff-rate quota may be held for the opening of the next quota period by placing it in a foreign-trade zone or by entering it for warehouse, or it may be exported or destroyed under Customs supervision.

§ 132.6 Exception to reduced rates.

Reduced or modified duty rates under tariff-rate quotas established pursuant to section 350 of the Tariff Act of 1930, as amended and extended (19 U.S.C. 1351), are not applicable to products imported directly or indirectly from the countries or areas listed under General Note 3(b), Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

[T.D. 73–203, 53 FR 20230, July 30, 1973, as amended by T.D. 89–1, 53 FR 51255, Dec. 21, 1988; T.D. 90–78, 55 FR 40166, Oct. 2, 1990]

Subpart B—Administration of Quotas

§ 132.11 Quota priority and status.

(a) *Determination of quota priority and status.* Quota priority and status are determined as of the time of presentation of the entry summary for consumption, or withdrawal for consumption, in proper form in accordance with § 132.1(d).

(b) *Documentation and deposit of duties in proper form required.* Merchandise covered by an entry summary for consumption, which serves as both the entry and entry summary, or by a withdrawal for consumption, shall be regarded as entered for purposes of quota priority and shall acquire quota status if:

(1) The entry summary or withdrawal for consumption is in proper form, and duties have been attached to the entry summary or withdrawal for consumption in proper form; or

(2) The entry summary for consumption is in proper form, and the entry/entry summary information and a valid scheduled statement date (pursuant to § 24.25 of this chapter) have been successfully received by Customs via the Automated Broker Interface.

See §§ 141.4, 141.63, 141.68, 141.69, and 141.101 of this chapter.

(c) *Informal entries.* Mail entries or informal entries shall be regarded as presented for purposes of quota priority when all requirements have been met for the preparation of such an entry.

(d) *Premature presentation of entry or withdrawal.* Quota status will not attach to merchandise in a quota period by reason of the presentation of an entry or withdrawal for consumption at any time prior to the opening of that period.

[T.D. 73–203, 38 FR 20230, July 30, 1973, as amended by T.D. 79–221, 44 FR 46814, Aug. 9, 1979; T.D. 89–104, 54 FR 50498, Dec. 7, 1989]

§ 132.11a Time of presentation.

(a) *General rule.* Except as provided in paragraph (b) of this section, the time of presentation of an entry/entry summary for quota purposes shall be the time of delivery in proper form of:

(1) An entry summary for consumption, or its electronic equivalent, which serves as both the entry and the entry summary, with estimated duties attached; or

(2) An entry summary for consumption, or its electronic equivalent, which shall serve as both the entry and the entry summary without estimated duties attached, if the entry/entry summary information and a valid scheduled statement date have been

successfully received by Customs via the Automated Broker Interface (see §132.1(d)(2); payment must be subsequently made by the statement processing method as set forth in §24.25 of this chapter); or

(3) A withdrawal for consumption with estimated duties attached.

(b) *Before arrival of merchandise.* The entry summary for consumption, without estimated duties attached, may be submitted for preliminary review before the merchandise arrives within the limits of the port where entry is to be made. In that case, the time of presentation of the entry summary for consumption shall be the time estimated duties are deposited after the importing carrier arrives within the port limits.

(c) *Failure to use statement processing method.* If presentation is chosen to be made pursuant to §132.11a(a)(2) and payment is not made as required through the statement processing method, the Center director may require filing of an entry summary for consumption with estimated duties attached as described in §132.11(a)(1) for future filings.

[T.D. 79–221, 44 FR 46814, Aug. 9, 1979, as amended by T.D. 89–104, 54 FR 50498, Dec. 7, 1989; CBP Dec. 15–14, 80 FR 61287, Oct. 13, 2015; CBP Dec. 16–26, 81 FR 93017, Dec. 20, 2016]

§132.12 Procedure on opening of potentially filled quotas.

(a) *Preliminary review before opening.* When it is anticipated that a quota will be filled at the opening of the quota period, entry summaries for consumption, or withdrawals for consumption, with estimated duties attached, shall not be presented before 12 noon Eastern Standard Time in all time zones. However, an entry summary for consumption, or withdrawal for consumption, for merchandise which has arrived within the Customs territory of the United States may be submitted for preliminary review without deposit of estimated duties within a time period before the opening approved by the Center director. Submission of these documents before opening will not accord the merchandise quota priority or status.

(b) *Simultaneous presentation.* Special arrangements shall be made so that all entry summaries for consumption, or withdrawals for consumption, for quota merchandise may be presented at the exact moment of the opening of the quota in all time zones. All importers prepared to present entry summaries for consumption, or withdrawals for consumption, when the quota opens shall be given equal opportunity to do so. All entry summaries for consumption, or withdrawals for consumption, presented in proper form (including those submitted for review before opening of the quota period if accompanied by the deposit of estimated duties) shall be considered to have been presented simultaneously.

(c) *Proration of quantities.* (1) The quantities on all entry summaries for consumption, or withdrawals for consumption, submitted simultaneously shall be prorated by Headquarters against the quota quantity admissible to determine the percentage to be allocated to each importer under the quota. Merchandise in excess of the quota shall be disposed of in accordance with §132.5.

(2) In the event a quota is prorated, entry summaries for consumption, or withdrawals for consumption, with estimated duties attached, shall be returned to the importer for adjustment. The time of presentation for quota purposes, in that event, shall be the exact moment of the opening of the quota provided:

(i) An adjusted entry summary for consumption, or withdrawal for consumption, with estimated duties attached, is deposited within 5 working days after Headquarters authorizes release of the merchandise, and

(ii) The importer takes delivery of the merchandise within 15 working days after release is authorized.

[T.D. 79–221, 44 FR 46814, Aug. 9, 1979, as amended by CBP Dec. 16–26, 81 FR 93017, Dec. 20, 2016]

§132.13 Quotas after opening.

(a) *Procedure when nearing fulfillment.* To secure for each importer the rightful quota priority and status for his quota-class merchandise, and to close the quota simultaneously at all ports of entry:

(1) *For release of merchandise*—(i) *Tariff-rate*. When instructed by Headquarters, the Center director shall require an importer to present an entry summary for consumption, or its electronic equivalent, with estimated duties attached, at the over-quota rate of duty until Headquarters has determined the quantity, if any of the merchandise entitled to the quota rate. If any of the merchandise entered at the over-quota rate is entitled to the quota rate, Customs shall amend the entry summary and refund to the importer any excess duties paid. This section does not prohibit an importer from obtaining release of the merchandise under the immediate delivery procedure. If an importer desires to enter only that quantity entitled to the quota rate, he may request that the merchandise not be released from Customs custody until Headquarters has determined the quantity entitled to the quota rate.

(ii) *Absolute*. Except as provided for in §142.21 (e)(2) and (g) of this chapter, absolute quota merchandise shall not be released under the immediate delivery procedure. An entry summary for consumption, or its electronic equivalent, with estimated duties attached, setting forth the quantity desired to be entered, shall be presented to CBP, either at the port of entry or electronically. However, the merchandise shall not be released until Customs has determined the quantity entitled to absolute quota status and priority.

(iii) *Quota Proration*. When it is determined that entry summaries for consumption or withdrawals for consumption must be amended to permit only the quantity of tariff-rate and absolute quota merchandise determined to be within the quota, the entry summaries for consumption or withdrawals for consumption must be returned to the importer for adjustment. The time of presentation for quota purposes in that event shall be the same as the time of the initial presentation of the entry summaries for consumption or withdrawals for consumption or their electronic equivalents, provided:

(A) An adjusted entry summary for consumption, or withdrawals for consumption, or their electronic equivalents, with estimated duties attached, is deposited within 5 working days after Headquarters authorizes release of the merchandise, and

(B) The importer takes delivery of the merchandise within 15 working days after release is authorized.

(2) *Report of time of presentation*. The date, hour and minute that an entry summary for consumption or withdrawal for consumption, or their electronic equivalents, is presented to CBP, either at the port of entry or electronically must be indicated on the document by a method deemed acceptable by Customs. The appropriate Customs officer shall report this information to Headquarters.

(b) *Closing of the quota*. Except as provided by §132.12, at the closing of a quota all entries or withdrawals for consumption which have acquired quota status due to priority of presentation shall be entitled to quota benefits. All other entries or withdrawals are without quota status and are not entitled to any quota benefits. All the latter shall be disposed of in accordance with §132.5.

[T.D. 73–203, 38 FR 20230, July 30, 1973, as amended by T.D. 79–221, 44 FR 46815, Aug. 9, 1979; T.D. 80–26, 45 FR 3901, Jan. 21, 1980; T.D. 81–260, 46 FR 49841, Oct. 8, 1981; T.D. 88–27, 53 FR 19897, June 1, 1988; CBP Dec. 15–14, 80 FR 61287, Oct. 13, 2015; CBP Dec. 16–26, 81 FR 93017, Dec. 20, 2016]

§132.14 Special permits for immediate delivery; entry of merchandise before presenting entry summary for consumption; permits of delivery.

(a) *Effect of issuance of special permit for immediate delivery or filing entry documentation before presentation of entry summary*—(1) *Requirements for release*. Quota-class merchandise shall not be released upon filing entry documentation before the proper presentation of an entry summary for consumption, or a withdrawal for consumption, pursuant to §132.1 of this part. However, quota-class merchandise may be released under a special permit for immediate delivery in accordance with §142.21(e) of this chapter.

(2) *Effect of release under immediate delivery.* Release of quota-class merchandise under a special permit for immediate delivery before proper presentation of an entry summary for consumption, or a withdrawal for consumption, pursuant to §132.1 of this part, shall not accord merchandise any quota priority or status or entitle it to any other quota benefit.

(3) *Effect of inadvertent release.* Inadvertent release under a special permit for immediate delivery, or upon filing entry documentation, before proper presentation of an entry summary for consumption, or a withdrawal for consumption, pursuant to §132.1 of this part, shall not accord the merchandise any quota priority or status or entitle it to any other quota benefit.

(4) *Procedures following inadvertent release*—(i) *Quota nearing fulfillment.* If quota-class merchandise is released inadvertently under a special permit for immediate delivery, or under entry documentation, before the proper presentation of an entry summary for consumption, or a withdrawal for consumption, pursuant to §132.1 of this part, and the quota is nearing fulfillment:

(A) An authorized CBP official may demand the return to Customs custody of the released merchandise in accordance with §141.113 of this chapter;

(B) The Center director shall require the timely presentation to CBP, either at the port of entry or electronically, of the entry summary for consumption, or a withdrawal for consumption, with the estimated duties attached;

(C) The port director may assess liquidated damages under the bond on Customs Form 301, containing the basic importation and entry bond conditions set forth in §113.62 of this chapter in an amount equal to the value of the merchandise, plus estimated duties (computed at the over-quota rate for tariff-rate quota merchandise), if the merchandise is (*1*) released before presentation of an entry summary for consumption or a withdrawal for consumption, with estimated duties attached; (*2*) the merchandise is not returned to Customs custody within 30 days from the date of demand for redelivery; or (*3*) the entry summary for consumption, or the withdrawal for consumption, with estimated duties attached, is not presented timely; and

(D) The Fines, Penalties, and Forfeitures Officer may cancel the claim for liquidated damages if he is satisfied by the evidence that release was due to causes wholly beyond the control of the importer, that no act or omission on the part of the importer formed the basis for the release, and that there was no intent on the part of the importer to evade any law or regulation. The port director also may cancel the claim for liquidated damages if the merchandise is redelivered to Customs custody within 30 days from the date of the demand, or if the entry summary for consumption, or withdrawal for consumption, with estimated duties attached, is presented timely.

(ii) *Quota not nearing fulfillment.* If quota-class merchandise is released inadvertently under a special permit for immediate delivery, or under entry documentation, before the proper presentation of an entry summary for consumption, or a withdrawal for consumption, pursuant to §132.1 of this part, and the quota is not nearing fulfillment:

(A) The Center director shall require the timely presentation to CBP, either at the port of entry or electronically, of the entry summary for consumption, or a withdrawal for consumption, with estimated duties attached;

(B) The port director may assess liquidated damages under the bond on Customs Form 301, containing the basic importation and entry bond conditions set forth in §113.62 of this chapter in an amount equal to the value of the merchandise, plus estimated duties (computed at the over quota-rate for tariff-rate quota merchandise), if the merchandise is:

(*1*) Released before presentation of an entry summary for consumption, or a withdrawal for consumption, with estimated duties attached; or

(*2*) If the entry summary for consumption, or the withdrawal for consumption with estimated duties attached, is not presented timely; and

(C) The Fines, Penalties, and Forfeitures Officer may cancel the claim for liquidated damages if he is satisfied by the evidence that the release was due to causes wholly beyond the control of

the importer, that no act or omission on the part of the importer formed the basis for release, and that there was no intent on the part of the importer to evade any law or regulation. The port director also may cancel the claim for liquidated damages if the entry summary for consumption, or withdrawal for consumption, with estimated duties attached, is presented timely.

(b) *Permit of delivery*—(1) *Effect of filing*. The issuance of a permit of delivery shall not accord the merchandise any quota priority or status nor entitle it to any other quota benefit.

(2) *Time of issuance*—(i) *Absolute quota merchandise*. A permit of delivery for merchandise subject to an absolute quota shall not be issued before a determination of the quota status of the merchandise.

(ii) *Tariff-rate, quota merchandise*. A permit delivery for merchandise subject to a tariff-rate quota shall not be issued before a determination of the quota status of the merchandise unless estimated duties are deposited at the over-quota rate of duty.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 79–221, 44 FR 46815, Aug. 9, 1979, as amended by T.D. 84–213, 49 FR 41183, Oct. 19, 1984; T.D. 89–104, 54 FR 50498, Dec. 7, 1989; T.D. 99–27, 64 FR 13674, 13675, Mar. 22, 1999; CBP Dec. 16–26, 81 FR 93018, Dec. 20, 2016]

§ 132.15 Export certificate for beef subject to tariff-rate quota.

(a) *Requirement*. In order to claim the in-quota tariff rate of duty on beef, defined in 15 CFR 2012.2(a), that is the product of a participating country, defined in 15 CFR 2012.2(e), the importer must possess a valid export certificate at the time that such beef is entered, or withdrawn from warehouse for consumption. The importer must record the unique identifying number of the export certificate for the beef on the entry summary or warehouse withdrawal for consumption (Customs Form 7501, Column 34), or its electronic equivalent.

(b) *Validity of certificate*. The export certificate, to be valid, must meet the requirements of 15 CFR 2012.3(b), and with respect to the requirement of 15 CFR 2012.3(b)(3) that the certificate be distinct and uniquely identifiable, the certificate must have a distinct and unique identifying number composed of three elements set forth in the following order:

(1) The last digit of the year for which the export certificate is in effect;

(2) The 2-digit ISO country of origin code from Annex B of the HTSUS which identifies the participating country (see § 142.42(d) of this chapter); and

(3) Any 6-digit number issued by the participating country with respect to the export certificate.

(c) *Retention and submission of certificate to Customs*—(1) *Retention*. The export certificate must be retained by the importer for a period of at least 5 years from the date of entry, or withdrawal from warehouse, for consumption (see § 163.4(a) of this chapter).

(2) *Submission to Customs*. The importer shall submit a copy of the export certificate to Customs upon request.

[T.D. 95–58, 60 FR 39109, Aug. 1, 1995, as amended by T.D. 99–87, 64 FR 67483, Dec. 2, 1999; T.D. 00–7, 65 FR 5431, Feb. 4, 2000]

§ 132.16 [Reserved]

§ 132.17 Export certificate for sugar-containing products subject to tariff-rate quota.

(a) *Requirement*. For sugar-containing products defined in 15 CFR 2015.2(a), and as described in paragraph 15 of Appendix 2, Tariff Schedule of the United States—(Tariff Rate Quotas), to Annex 2–B of Chapter 2 of the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA), for which preferential tariff treatment is claimed under the USMCA, and that are products of a participating country, as defined in 15 CFR 2015.2(e), the importer must possess a valid export certificate in order to claim the in-quota tariff rate of duty on the products at the time they are entered or withdrawn from warehouse for consumption. The importer must record the unique identifier of the export certificate for these products on the entry summary or warehouse withdrawal for consumption

(Customs Form 7501, column 34), or its electronic equivalent.

(b) *Validity of export certificate.* To be valid, the export certificate must meet the requirements of 15 CFR 2015.3(b), and with respect to the requirement of 15 CFR 2015.3(b)(3) that the certificate have a distinct and uniquely identifiable number, this unique identifier must consist of 8 characters in any alpha/numeric combination.

(c) *Retention and production of certificate to Customs.* The export certificate is subject to the recordkeeping requirements of part 163 of this chapter (19 CFR part 163). Specifically, the certificate must be retained for a period of 5 years in accordance with §163.4(a) of this chapter, and must be made available to Customs upon request in accordance with §163.6(a) of this chapter.

[T.D. 00–7, 65 FR 5431, Feb. 4, 2000, as amended by CBP Dec. 21-10, 86 FR 35582, July 7, 2021]

§ 132.18 License for certain worsted wool fabric subject to tariff-rate quota.

(a) *Requirement.* For worsted wool fabric that is entered under HTSUS subheading 9902.51.11 or 9902.51.12, the importer must possess a valid license, or a written authorization from the licensee, pursuant to regulations of the U.S. Department of Commerce (15 CFR 335.5), in order to claim the in-quota rate of duty on the worsted wool fabric at the time it is entered or withdrawn from warehouse for consumption. The importer must record the distinct and unique 9-character number for the license covering the worsted wool fabric on the entry summary or warehouse withdrawal for consumption (Customs Form 7501, column 34), or its electronic equivalent (see paragraph (c)(1) of this section).

(b) *Importer certification.* By entering the worsted wool fabric under HTSUS subheading 9902.51.11 or 9902.51.12, the importer thus certifies that the worsted wool fabric is suitable for use in making suits, suit-type jackets, or trousers, as required under these subheadings.

(c) *Validity of license*—(1) *License number.* To be valid, the license, or written authorization issued under the license and including its unique control number, must meet the requirements of 15 CFR 335.5, and with respect to the requirement in 15 CFR 335.5(a) that the license have a unique control number, the license must have a distinct and unique identifying number consisting of 9 characters comprised of the following three elements:

(i) The first character must be a ''W'';

(ii) The second and third characters must consist of the last 2 digits of the calendar year for which the license is issued and during which it is in effect; and

(iii) The final 6 characters represent the distinct and unique identifier assigned to the license by the Department of Commerce.

(2) *Use of license.* A license covering worsted wool fabric that is entered under HTSUS subheading 9902.51.11 or 9902.51.12 is in effect, and may be used to obtain the applicable in-quota rate of duty for fabric that is entered or withdrawn for consumption, only during the specific calendar year (January 1—December 31, inclusive) for which the license is issued (see 15 CFR 335.2 and 335.5(b) and (d)).

(d) *Retention and production of license or authorization to Customs.* The license and any written authorization from the licensee to the importer are subject to the recordkeeping requirements of part 163 of this chapter (19 CFR part 163). Specifically, the license and any written authorization must be retained for a period of 5 years in accordance with §163.4(a) of this chapter, and must be made available to Customs upon request in accordance with §163.6(a) of this chapter.

[T.D. 01–35, 66 FR 21666, May 1, 2001]

Subpart C—Mail Importation of Absolute Quota Merchandise

§ 132.21 Regulations applicable.

In addition to the regulations applicable to all mail importations (see part 145 of this chapter), the regulations in this subpart shall apply to mail importations of absolute quota merchandise.

§ 132.22 When quota is filled.

Any packages containing merchandise subject to an absolute quota which

is filled shall be returned to the postmaster for return to the sender immediately as undeliverable mail. The addressee will be notified on Customs Form 3509 or in any other appropriate manner that entry has been denied because the quota is filled.

§ 132.23 Partial release procedure.

(a) *Notification of quota restrictions.* If because of quota restrictions, a mail importation cannot be released, the director of the port of destination shall notify the addressee on Customs Form 3509 of the procedure required by paragraph (b) of this section, and shall inform the addressee that upon return of the Acknowledgement of Delivery by Postal Service, the packages admissible under the absolute quota will be forwarded to him and the restricted packages will be returned to the sender as inadmissible. The port director may at his discretion hold packages if it appears that the absolute quota will reopen in less than 30 days.

(b) *Acknowledgement of delivery.* An Acknowledgement of Delivery by Postal Service shall be sent to the addressee. He shall be advised that if he desires to secure release of less than the total number of packages of the merchandise, the Acknowledgement of Delivery by Postal Service must be signed by him and returned to the port director. Such Acknowledgment of Delivery by Postal Service shall be in the following form:

ACKNOWLEDGMENT OF DELIVERY BY POSTAL SERVICE

In consideration of the fact that certain articles in a mail importation consisting of _____ (state number) packages mailed to me by _____ (name of sender) of _____ (address) on _____ (date of mailing), are subject to quota restrictions under which only a portion of such articles may be admitted to entry at one time, and the Postal Service permits no division of the importation before delivery thereof, and since I am desirous of receiving the packages of such importation which are admissible to entry under the quota administered by the United States Customs, I hereby agree and acknowledge that delivery of the package or packages to the United States Customs shall be regarded as delivery by the Postal Service to me.

_____
(Signature of addressee)

(c) *Agreement to less than full delivery.* If, in any case, the sender of a mail package has indicated his agreement to the delivery of less than the entire importation at one time, an Acknowledgment of Delivery by Postal Service need not be secured from the addressee.

(d) *Deposit required.* If a portion of a mail shipment may be released, the port director may require a deposit of an amount sufficient to defray the expenses of repacking merchandise for shipment by mail to the addressee. The shipment shall be under Government frank without new postage.

§ 132.24 Entry.

Unless a formal entry or entry by appraisement is required, a mail entry on Customs Form 3419 shall be issued and forwarded with the package to the postmaster for delivery to the addressee and collection of any duties in the same manner as for any other mail package subject to Customs treatment.

§ 132.25 Undeliverable shipment.

If within a reasonable time, but not to exceed 30 days, the addressee fails to indicate to the port director an intention to receive delivery of the packages or a portion thereof in accordance with the notice on Customs Form 3509 which was sent to him by the port director, the importation shall be treated in the same manner as other undeliverable mail.

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

Sec.
133.0 Scope.

Subpart A—Recordation of Trademarks

133.1 Recordation of trademarks.
133.2 Application to record trademark.
133.3 Documents and fee to accompany application.
133.4 Effective date, term, and cancellation of trademark recordation and renewals.
133.5 Change of ownership of recorded trademark.
133.6 Change in name of owner of recorded trademark.

AUTHORITY: 15 U.S.C. 1124, 1125, 1127; 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1202, 1499, 1526, 1624; 31 U.S.C. 9701.

Sections 133.21 through 133.25 also issued under 18 U.S.C. 1905; Sec. 818(g), Pub. L. 112–81 (10 U.S.C. 2302).

Section 133.61 also issued under Sec. 308(d), Pub. L. 114–125; Sec. 507, Pub. L. 108–90; Sec. 2, Pub. L. 114–279.

SOURCE: T.D. 72–266, 37 FR 20678, Oct. 3, 1972, unless otherwise noted.

§ 133.0 Scope.

This part provides for the recordation of trademarks, trade names, and copyrights with the U.S. Customs and Border Protection for the purpose of prohibiting the importation of certain articles. It also sets forth the procedures for the disposition of articles bearing prohibited marks or names, and copyrighted or piratical articles, including release to the importer in appropriate circumstances.

Subpart A—Recordation of Trademarks

§ 133.1 Recordation of trademarks.

(a) *Eligible trademarks.* Trademarks registered by the U.S. Patent and Trademark Office under the Trademark Act of March 3, 1881, the Trademark Act of February 20, 1905, or the Trademark Act of 1946 (15 U.S.C. 1051 *et seq.*) except those registered on the supplemental register under the 1946 Act (15 U.S.C. 1096), may be recorded with the U.S. Customs and Border Protection if the registration is current.

(b) *Notice of recordation and other action.* Applicants and recordants will be notified of the approval or denial of an application filed in accordance with §§ 133.2, 133.5, 133.6, and 133.7 of this subpart.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

§ 133.2 Application to record trademark.

An application to record one or more trademarks shall be in writing, addressed to the Intellectual Property Rights (IPR) & Restricted Merchandise Branch, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, and shall include the following information:

(a) The name, complete business address, and citizenship of the trademark owner or owners (if a partnership, the citizenship of each partner; if an association or corporation the State, country, or other political jurisdiction within which it was organized, incorporated, or created);

(b) The places of manufacture of goods bearing the recorded trademark;

(c) The name and principal business address of each foreign person or business entity authorized or licensed to use the trademark and a statement as to the use authorized; and

(d) The identity of any parent or subsidiary company or other foreign company under common ownership or control which uses the trademark abroad. For this purpose:

(1) *Common ownership* means individual or aggregate ownership of more than 50 percent of the business entity; and

(2) *Common control* means effective control in policy and operations and is not necessarily synonymous with common ownership.

(e) *Lever-rule protection*. For owners of U.S. trademarks who desire protection against gray market articles on the basis of physical and material differences (see *Lever Bros. Co. v. United States*, 981 F.2d 1330 (D.C. Cir. 1993)), a description of any physical and material difference between the specific articles authorized for importation or sale in the United States and those not so authorized. In each instance, owners who assert that physical and material differences exist must state the basis for such a claim with particularity, and must support such assertions by competent evidence and provide summaries of physical and material differences for publication. CBP determination of physical and material differences may include, but is not limited to, considerations of:

(1) The specific composition of both the authorized and gray market product(s) (including chemical composition);

(2) Formulation, product construction, structure, or composite product components, of both the authorized and gray market product;

(3) Performance and/or operational characteristics of both the authorized and gray market product;

(4) Differences resulting from legal or regulatory requirements, certification, etc.;

(5) Other distinguishing and explicitly defined factors that would likely result in consumer deception or confusion as proscribed under applicable law.

(f) CBP will publish in the Customs Bulletin a notice listing any trademark(s) and the specific products for which gray market protection for physically and materially different products has been requested. CBP will examine the request(s) before issuing a determination whether gray market protection is granted. For parties requesting protection, the application for trademark protection will not take effect until CBP has made and issued this determination. If protection is granted, CBP will publish in the Customs Bulletin a notice that a trademark will receive *Lever*-rule protection with regard to a specific product.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991; T.D. 99–21, 64 FR 9062, Feb. 24, 1999; T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 133.3 Documents and fee to accompany application.

(a) *Documents*. The application shall be accompanied by:

(1) A status copy of the certificate of registration certified by the U.S. Patent and Trademark Office showing title to be presently in the name of the applicant; and

(2) Five copies of this certificate, or of a U.S. Patent and Trademark Office facsimile. The copies may be reproduced privately and shall be on paper approximately 8″ × 10½″ in size. If the certificate consists of two or more pages, the copies may be reproduced on both sides of the paper.

(b) *Fee*. The application shall be accompanied by a fee of $190 for each

trademark to be recorded. However, if the trademark is registered for more than one class of goods (based on the class, or classes, first stated on the certificate of registration, without consideration of any class, or classes, also stated in parentheses) the fee for recordation shall be $190 for each class for which the applicant desires to record the trademark with the United States Customs Service. For example, to secure recordation of a trademark registered for three classes of goods, a fee of $570 is payable. A check or money order shall be made payable to the United States Customs Service.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 73–174, 38 FR 16850, June 27, 1973; T.D. 75–160, 40 FR 28790, July 9, 1975; T.D. 84–133, 49 FR 26571, June 28, 1984; T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

§ 133.4 Effective date, term, and cancellation of trademark recordation and renewals.

(a) *Effective date.* Recordation of trademark and protection thereunder shall be effective on the date an application for recordation is approved, as shown on the recordation notice issued by the U.S. Customs and Border Protection instructing U.S. Customs and Border Protection Officers as to the terms and conditions of import protection appropriate.

(b) *Term.* The recordation or renewal of an existing recordation of a trademark shall remain in force concurrently with the 20-year current registration period or last renewal thereof in the U.S. Patent and Trademark Office.

(c) *Cancellation of recordation.* Recordation of a trademark with the U.S. Customs and Border Protection shall be canceled if the trademark registration is finally canceled or revoked.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

§ 133.5 Change of ownership of recorded trademark.

If there is a change in ownership of a recorded trademark and the new owner wishes to continue the recordation with the United States Customs Service, he shall apply therefor by:

(a) Complying with § 133.2;

(b) Describing any time limit on the rights of ownership transferred;

(c) Submitting a status copy of the certificate of registration certified by the U.S. Patent and Trademark Office showing title to be presently in the name of the new owner; and

(d) Paying a fee of $80, which covers all trademarks included in the application which have been previously recorded with the United States Customs Service. A check or money order shall be made payable to the United States Customs Service.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 75–160, 40 FR 28791, July 9, 1975; T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

§ 133.6 Change in name of owner of recorded trademark.

If there is a change in the name of the owner of a recorded trademark, but no change in ownership, written notice thereof shall be given to the IPR & Restricted Merchandise Branch, CBP Headquarters, accompanied by:

(a) A status copy of the certificate of registration certified by the U.S. Patent and Trademark Office showing title to be presently in the name as changed; and

(b) A fee of $80, which covers all trademarks included in the application which have been previously recorded with the U.S. Customs and Border Protection. A check or money order shall be made payable to the U.S. Customs and Border Protection.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 75–160, 40 FR 28791, July 9, 1975; T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

§ 133.7 Renewal of trademark recordation.

(a) *Application to renew.* To continue uninterrupted CBP protection for trademarks, the trademark owner shall submit a written application to renew CBP recordation to the IPR & Restricted Merchandise Branch not later than 3 months after the date of expiration of the current 20–year trademark registration issued by the U.S. Patent and Trademark Office. A timely application to renew a CBP recordation must include the following:

(1) A status copy of the certificate of registration certified by the U.S. Patent and Trademark Office showing renewal of the trademark and title to be in the name of the applicant;

(2) A statement describing any change of ownership or in the name of owner, in compliance with §§ 133.5 and 133.6 of this part, and any change of addresses of owners or places of manufacture; and

(3) A fee of $80 for each renewal of a trademark recordation. Where the trademark covers several classes, a fee of $80 is required for each class. A check or money order shall be made payable to the U.S. Customs and Border Protection.

(b) *Delayed application*. Upon request made during the grace period of 3 months afforded by paragraph (a) of this section, a trademark owner whose application for renewal of recordation is unavoidably delayed may be afforded a reasonable extended period within which to comply with the requirements of paragraph (a) of this section. The request shall be in writing, addressed to the IPR & Restricted Merchandise Branch, and shall set forth the circumstances due to which application is delayed.

(c) *Untimely application*. Failure of the trademark owner to submit a renewal application within the 3–month grace period afforded in accordance with paragraph (a) of this section or within an extension of time granted in accordance with paragraph (b) of this section, shall deprive the trademark owner of the renewal process. A delinquent applicant will be required to apply anew to record the renewed trademark in accordance with the procedures and requirements of §§ 133.2 and 133.3.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 75–160, 40 FR 28791, July 9, 1975; T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

Subpart B—Recordation of Trade Names

§ 133.11 Trade names eligible for recordation.

The name or trade style used for at least 6 months to identify a manufacturer or trader may be recorded with the United States Customs Service. Words or designs used as trademarks, whether or not registered in the U.S. Patent and Trademark Office shall not be accepted for recordation as a trade name. Generally, the complete business name will be recorded unless convincing proof establishes that only a part of the complete name is customarily used.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

§ 133.12 Application to record a trade name.

An application to record a trade name shall be in writing addressed to the IPR & Restricted Merchandise Branch, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, and shall include the following information:

(a) The name, complete business address, and citizenship of the trade name owner or owners (if a partnership, the citizenship of each partner; if an association or corporation, the State, country, or other political jurisdiction within which it was organized, incorporated or created);

(b) The name or trade style to be recorded;

(c) The name and principal business address of each foreign person or business entity authorized or licensed to use the trade name and a statement as to the use authorized;

(d) The identity of any parent or subsidiary company, or other foreign company under common ownership or control which uses the trade name abroad (see § 133.2(d)); and

(e) A description of the merchandise with which the trade name is associated.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991; T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 133.13 Documents and fee to accompany application.

(a) *Documents*. The application shall be accompanied by a statement of the owner, partners, or principal corporate officer, and by statements by at least two other persons not associated with or related to the applicant but having actual knowledge of the facts, stating that to his best knowledge and belief:

(1) The applicant has used the trade name in connection with the class or kind of merchandise described in the application for at least 6 months;

(2) The trade name is not identical or confusingly similar to any other trade name or registered trademark used in connection with such class or kind of merchandise; and

(3) The applicant has the sole and exclusive right to the use of such trade name in connection with the merchandise of that class or kind.

(b) *Fee.* The application shall be accompanied by a fee of $190 for each trade name to be recorded. A check or money order shall be made payable to the U.S. Customs and Border Protection.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 75–160, 40 FR 28791, July 9, 1975]

§ 133.14 Publication of trade name recordation.

(a) *Notice of tentative recordation.* Notice of tentative recordation of a trade name shall be published in the FEDERAL REGISTER and the Customs Bulletin. The notice shall specify a procedure and a time period within which interested parties may oppose the recordation.

(b) *Notice of final action.* After consideration of any claims, rebuttals, and other relevant evidence, notice of final approval or disapproval of the application shall be published in the FEDERAL REGISTER and the Customs Bulletin.

§ 133.15 Term of CBP trade name recordation.

Protection for a recorded trade name shall remain in force as long as the trade name is used. The recordation shall be canceled upon request of the recordant or upon evidence of disuse. From time to time, the IPR & Restricted Merchandise Branch may request the trade name owner to advise whether the name is still in use. The failure of a trade name owner to respond to such a request shall be regarded as evidence of disuse.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

Subpart C—Importations Bearing Recorded Marks or Trade Names

SOURCE: T.D. 99–21, 64 FR 9062, Feb. 24, 1999, unless otherwise noted.

§ 133.21 Articles suspected of bearing counterfeit marks.

(a) *Counterfeit mark defined.* A ''counterfeit mark'' is a spurious mark that is identical with, or substantially indistinguishable from, a mark registered on the Principal Register of the U.S. Patent and Trademark Office.

(b) *Detention, notice, and disclosure of information*—(1) *Detention period.* CBP may detain any article of domestic or foreign manufacture imported into the United States that bears a mark suspected by CBP of being a counterfeit version of a mark that is registered with the U.S. Patent and Trademark Office and is recorded with CBP pursuant to subpart A of this part. The detention will be for a period of up to 30 days from the date on which the merchandise is presented for examination. In accordance with 19 U.S.C. 1499(c), if, after the detention period, the article is not released, the article will be deemed excluded for the purposes of 19 U.S.C. 1514(a)(4).

(2) *Notice of detention to importer and disclosure to owner of the mark*—(i) *Notice and seven business day response period.* Within five business days from the date of a decision to detain suspect merchandise, CBP will notify the importer in writing of the detention as set forth in §151.16(c) of this chapter and 19 U.S.C. 1499. CBP will also inform the importer that for purposes of assisting CBP in determining whether the detained merchandise bears counterfeit marks:

(A) CBP may have previously disclosed to the owner of the mark, prior to issuance of the notice of detention, limited importation information concerning the detained merchandise, as described in paragraph (b)(4) of this section, and, in any event, such information will be released to the owner of the mark, if available, no later than the date of issuance of the notice of detention; and

(B) CBP may disclose to the owner of the mark information that appears on

the detained merchandise and/or its retail packaging, including unredacted photographs, images, or samples, as described in paragraph (b)(3) of this section, unless the importer presents information within seven business days of the notification establishing that the detained merchandise does not bear a counterfeit mark.

(ii) *Failure of importer to respond or insufficient response to notice.* Where the importer does not provide information within the seven business day response period, or the information provided is insufficient for CBP to determine that the merchandise does not bear a counterfeit mark, CBP may proceed with the disclosure of information described in paragraph (b)(3) of this section to the owner of the mark and will so notify the importer.

(3) *Disclosure to owner of the mark of information appearing on detained merchandise and/or its retail packaging, including unredacted photographs, images or samples.* When making a disclosure to the owner of the mark under paragraph (b)(2)(ii) of this section, CBP may disclose information appearing on the merchandise and/or its retail packaging (including labels), images (including photographs) of the merchandise and/or its retail packaging in its condition as presented for examination (*i.e.*, an unredacted condition), or a sample of the merchandise and/or its retail packaging in its condition as presented for examination. The release of a sample will be in accordance with, and subject to, the bond and return requirements of paragraph (c) of this section. The disclosure may include any serial numbers, dates of manufacture, lot codes, batch numbers, universal product codes, or other identifying marks appearing on the merchandise or its retail packaging (including labels), in alphanumeric or other formats.

(4) *Disclosure to owner of the mark of limited importation information.* From the time merchandise is presented for examination, CBP may disclose to the owner of the mark limited importation information in order to obtain assistance in determining whether an imported article bears a counterfeit mark. Where CBP does not disclose this information to the owner of the mark prior to issuance of the notice of detention, it will do so concurrently with the issuance of the notice of detention, unless the information is unavailable, in which case CBP will release the information as soon as possible after issuance of the notice of detention. The limited importation information CBP will disclose to the owner of the mark consists of:

(i) The date of importation;

(ii) The port of entry;

(iii) The description of the merchandise, for merchandise not yet detained, from the paper or electronic equivalent of the entry (as defined in §142.3(a)(1) or (b) of this chapter), the CBP Form 7512, cargo manifest, advance electronic information or other entry document as appropriate, or, for detained merchandise, from the notice of detention;

(iv) The quantity, for merchandise not yet detained, as declared on the paper or electronic equivalent of the entry (as defined in §142.3(a)(1) or (b) of this chapter), the CBP Form 7512, cargo manifest, advance electronic information, or other entry document as appropriate, or, for detained merchandise, from the notice of detention; and

(v) The country of origin of the merchandise.

(5) *Disclosure to owner of the mark of redacted photographs, images and samples.* Notwithstanding the notice and seven business day response procedure of paragraph (b)(2) of this section, CBP may, in order to obtain assistance in determining whether an imported article bears a counterfeit mark and at any time after presentation of the merchandise for examination, provide to the owner of the mark photographs, images, or a sample of the suspect merchandise or its retail packaging (including labels), provided that identifying information has been removed, obliterated, or otherwise obscured. Identifying information includes, but is not limited to, serial numbers, dates of manufacture, lot codes, batch numbers, universal product codes, the name or address of the manufacturer, exporter, or importer of the merchandise, or any mark that could reveal the name or address of the manufacturer, exporter, or

importer of the merchandise, in alphanumeric or other formats. CBP may release to the owner of the mark a sample under this paragraph when the owner furnishes to CBP a bond in the form and amount specified by CBP, conditioned to indemnify the importer or owner of the imported article against any loss or damage resulting from the furnishing of the sample by CBP to the owner of the mark. CBP may demand the return of the sample at any time. The owner of the mark must return the sample to CBP upon demand or at the conclusion of any examination, testing, or similar procedure performed on the sample. In the event that the sample is damaged, destroyed, or lost while in the possession of the owner of the mark, the owner must, in lieu of return of the sample, certify to CBP that: ''The sample described as [insert description] and provided pursuant to 19 CFR 133.21(b)(5) was (damaged/destroyed/lost) during examination, testing, or other use.''

(c) *Conditions of disclosure to owner of the mark of information appearing on detained merchandise and/or its retail packaging, including unredacted photographs, images and samples*—(1) *Disclosure for limited purpose of assisting CBP in counterfeit mark determinations.* In order to obtain assistance in determining whether an imported article bears a counterfeit mark, CBP may disclose to the owner of the mark, prior to seizure, information appearing on the merchandise and/or its retail packaging (including labels), unredacted photographs or images of the merchandise and/or its retail packaging in its condition as presented for examination, or an unredacted sample of the imported merchandise and/or its retail packaging in its condition as presented for examination, in accordance with paragraphs (b)(2)(ii) and (3) of this section. Upon release of such information, photographs, images, or samples, CBP will notify the owner of the mark that some or all of the information being released may be subject to the protections of the Trade Secrets Act, and that CBP is only disclosing the information to the owner of the mark for the purpose of assisting CBP in determining whether the merchandise bears a counterfeit mark.

(2) *Bond.* CBP may release to the owner of the mark a sample under paragraphs (b)(2)(ii) and (3) of this section when the owner furnishes to CBP a bond in the form and amount specified by CBP, conditioned to indemnify the importer or owner of the imported article against any loss or damage resulting from the furnishing of the sample by CBP to the owner of the mark. CBP may demand the return of the sample at any time. The owner of the mark must return the sample to CBP upon demand or at the conclusion of any examination, testing, or similar procedure performed on the sample. In the event that the sample is damaged, destroyed, or lost while in the possession of the owner of the mark, the owner must, in lieu of return of the sample, certify to CBP that: ''The sample described as [insert description] and provided pursuant to 19 CFR 133.21(c) was (damaged/destroyed/lost) during examination, testing, or other use.''

(d) *Disclosure to importer of unredacted photographs, images, and samples.* CBP will disclose to the importer unredacted photographs, images, or an unredacted sample of imported merchandise suspected of bearing a counterfeit mark at any time after the merchandise is presented to CBP for examination. CBP may demand the return of the sample at any time. The importer must return the sample to CBP upon demand or at the conclusion of any examination, testing, or similar procedure performed on the sample. In the event that the sample is damaged, destroyed, or lost while in the possession of the importer, the importer must, in lieu of return of the sample, certify to CBP that: ''The sample described as [insert description] and provided pursuant to 19 CFR 133.21(d) was (damaged/destroyed/lost) during examination, testing, or other use.''

(e) *Seizure and disclosure to owner of the mark of comprehensive importation information.* Upon a determination by CBP, made any time after the merchandise has been presented for examination, that an article of domestic or foreign manufacture imported into the United States bears a counterfeit mark, CBP will seize such merchandise

and, in the absence of the written consent of the owner of the mark, forfeit the seized merchandise in accordance with the customs laws. When merchandise is seized under this section, CBP will disclose to the owner of the mark the following comprehensive importation information, if available, within 30 business days from the date of the notice of the seizure:

(1) The date of importation;

(2) The port of entry;

(3) The description of the merchandise from the notice of seizure;

(4) The quantity as set forth in the notice of seizure;

(5) The country of origin of the merchandise;

(6) The name and address of the manufacturer;

(7) The name and address of the exporter; and

(8) The name and address of the importer.

(f) *Disclosure to owner of the mark, following seizure, of unredacted photographs, images, and samples.* At any time following a seizure of merchandise bearing a counterfeit mark under this section, and upon receipt of a proper request from the owner of the mark, CBP may provide, if available, photographs, images, or a sample of the seized merchandise and its retail packaging, in its condition as presented for examination, to the owner of the mark. To obtain a sample under this paragraph, the owner of the mark must furnish to CBP a bond in the form and amount specified by CBP, conditioned to indemnify the importer or owner of the imported article against any loss or damage resulting from the furnishing of the sample by CBP to the owner of the mark. CBP may demand the return of the sample at any time. The owner of the mark must return the sample to CBP upon demand or at the conclusion of the examination, testing, or other use in pursuit of a related private civil remedy for infringement. In the event that the sample is damaged, destroyed, or lost while in the possession of the owner of the mark, the owner must, in lieu of return of the sample, certify to CBP that: ''The sample described as [insert description] and provided pursuant to 19 CFR 133.21(f) was (damaged/destroyed/lost) during examination, testing, or other use.''

(g) *Consent of the mark owner; failure to make appropriate disposition.* The owner of the mark, within thirty days from notification of seizure, may provide written consent to the importer allowing the importation of the seized merchandise in its condition as imported or its exportation, entry after obliteration of the mark, or other appropriate disposition. Otherwise, the merchandise will be disposed of in accordance with §133.52 of this part, subject to the importer's right to petition for relief from forfeiture under the provisions of part 171 of this chapter.

[CBP Dec. 12–10, 77 FR 24379, Apr. 24, 2012, as amended by CBP Dec. 15–12, 80 FR 56379, Sept. 18, 2015]

§ 133.22 Restrictions on importation of articles bearing copying or simulating trademarks.

(a) *Copying or simulating trademark or trade name defined.* A ''copying or simulating'' trademark or trade name is one which may so resemble a recorded mark or name as to be likely to cause the public to associate the copying or simulating mark or name with the recorded mark or name.

(b) *Denial of entry.* Any articles of foreign or domestic manufacture imported into the United States bearing a mark or name copying or simulating a recorded mark or name shall be denied entry and subject to detention as provided in §133.25.

(c) *Relief from detention of articles bearing copying or simulating trademarks.* Articles subject to the restrictions of this section shall be detained for 30 days from the date on which the goods are presented for Customs examination, to permit the importer to establish that any of the following circumstances are applicable:

(1) The objectionable mark is removed or obliterated as a condition to entry in such a manner as to be illegible and incapable of being reconstituted, for example by:

(i) Grinding off imprinted trademarks wherever they appear;

(ii) Removing and disposing of plates bearing a trademark or trade name;

(2) The merchandise is imported by the recordant of the trademark or trade name or his designate;

(3) The recordant gives written consent to an importation of articles otherwise subject to the restrictions set forth in paragraph (b) of this section or §133.23(c) of this subpart, and such consent is furnished to appropriate Customs officials;

(4) The articles of foreign manufacture bear a recorded trademark and the one-item personal exemption is claimed and allowed under §148.55 of this chapter.

(d) *Exceptions for articles bearing counterfeit trademarks.* The provisions of paragraph (c)(1) of this section are not applicable to articles bearing counterfeit trademarks at the time of importation (see §133.26).

(e) *Release of detained articles.* Articles detained in accordance with §133.25 may be released to the importer during the 30-day period of detention if any of the circumstances allowing exemption from trademark or trade name restriction set forth in paragraph (c) of this section are established.

(f) *Seizure.* If the importer has not obtained release of detained articles within the period of detention as provided in §133.25 of this subpart, the merchandise shall be seized and forfeiture proceedings instituted. The importer shall be promptly notified of the seizure and liability to forfeiture and his right to petition for relief in accordance with the provisions of part 171 of this chapter.

[T.D. 99–21, 64 FR 9062, Feb. 24, 1999, as amended at CBP Dec. 12–10, 77 FR 24380, Apr. 24, 2012]

§ 133.23 Restrictions on importation of gray market articles.

(a) *Restricted gray market articles defined.* ''Restricted gray market articles'' are foreign-made articles bearing a genuine trademark or trade name identical with or substantially indistinguishable from one owned and recorded by a citizen of the United States or a corporation or association created or organized within the United States and imported without the authorization of the U.S. owner. ''Restricted gray market goods'' include goods bearing a genuine trademark or trade name which is:

(1) *Independent licensee.* Applied by a licensee (including a manufacturer) independent of the U.S. owner, or

(2) *Foreign owner.* Applied under the authority of a foreign trademark or trade name owner other than the U.S. owner, a parent or subsidiary of the U.S. owner, or a party otherwise subject to common ownership or control with the U.S. owner (see §§133.2(d) and 133.12(d) of this part), from whom the U.S. owner acquired the domestic title, or to whom the U.S. owner sold the foreign title(s); or

(3) ''*Lever-rule*''. Applied by the U.S. owner, a parent or subsidiary of the U.S. owner, or a party otherwise subject to common ownership or control with the U.S. owner (see §§133.2(d) and 133.12(d) of this part), to goods that the Customs Service has determined to be physically and materially different from the articles authorized by the U.S. trademark owner for importation or sale in the U.S. (as defined in §133.2 of this part).

(b) *Labeling of physically and materially different goods.* Goods determined by the Customs Service to be physically and materially different under the procedures of this part, bearing a genuine mark applied under the authority of the U.S. owner, a parent or subsidiary of the U.S. owner, or a party otherwise subject to common ownership or control with the U.S. owner (see §§133.2(d) and 133.12(d) of this part), shall not be detained under the provisions of paragraph (c) of this section where the merchandise or its packaging bears a conspicuous and legible label designed to remain on the product until the first point of sale to a retail consumer in the United States stating that: ''This product is not a product authorized by the United States trademark owner for importation and is physically and materially different from the authorized product.'' The label must be in close proximity to the trademark as it appears in its most prominent location on the article itself or the retail package or container. Other information designed to dispel consumer confusion may also be added.

(c) *Denial of entry.* All restricted gray market goods imported into the United

States shall be denied entry and subject to detention as provided in §133.25, except as provided in paragraph (b) of this section.

(d) *Relief from detention of gray market articles.* Gray market goods subject to the restrictions of this section shall be detained for 30 days from the date on which the goods are presented for Customs examination, to permit the importer to establish that any of the following exceptions, as well as the circumstances described above in §133.22(c), are applicable:

(1) The trademark or trade name was applied under the authority of a foreign trademark or trade name owner who is the same as the U.S. owner, a parent or subsidiary of the U.S. owner, or a party otherwise subject to common ownership or control with the U.S. owner (in an instance covered by §§133.2(d) and 133.12(d) of this part); and/or

(2) For goods bearing a genuine mark applied under the authority of the U.S. owner, a parent or subsidiary of the U.S. owner, or a party otherwise subject to common ownership or control with the U.S. owner, that the merchandise as imported is not physically and materially different, as described in §133.2(e), from articles authorized by the U.S. owner for importation or sale in the United States; or

(3) Where goods are detained for violation of §133.23(a)(3), as physically and materially different from the articles authorized by the U.S. trademark owner for importation or sale in the U.S., a label in compliance with §133.23(b) is applied to the goods.

(e) *Release of detained articles.* Articles detained in accordance with §133.25 may be released to the importer during the 30-day period of detention if any of the circumstances allowing exemption from trademark restriction set forth in §133.22(c) of this subpart or in paragraph (d) of this section are established.

(f) *Seizure.* If the importer has not obtained release of detained articles within the period of detention as provided in §133.25 of this subpart, the merchandise shall be seized and forfeiture proceedings instituted. The importer shall be notified of the seizure and liability of forfeiture and his right to petition for relief in accordance with the provisions of part 171 of this chapter.

[T.D. 99–21, 64 FR 9062, Feb. 24, 1999, as amended at CBP Dec. 12–10, 77 FR 24380, Apr. 24, 2012]

§ 133.24 Restrictions on articles accompanying importer and mail importations.

(a) *Detention.* Articles accompanying an importer and mail importations subject to the restrictions of §§133.22 and 133.23 shall be detained for 30 days from the date of notice that such restrictions apply, to permit the establishment of whether any of the circumstances described in §133.22(c) or §133.23(d) are applicable.

(b) *Notice of detention.* Notice of detention shall be given in the following manner:

(1) *Articles accompanying importer.* When the articles are carried as accompanying baggage or on the person of persons arriving in the United States, the Customs inspector shall orally advise the importer that the articles are subject to detention.

(2) *Mail importations.* When the articles arrive by mail in noncommercial shipments, or in commercial shipments valued at $250 or less, notice of the detention shall be given on Customs Form 8.

(c) *Release of detained articles*—(1) *General.* Articles detained in accordance with paragraph (a) of this section may be released to the importer during the 30-day period of detention if any of the circumstances allowing exemption from trademark or trade name restriction(s) set forth in §133.22(c) or §133.23(d) of this subpart are established.

(2) *Articles accompanying importer.* Articles arriving as accompanying baggage or on the person of the importer may be exported or destroyed under Customs supervision at the request of the importer, or may be released if:

(i) The importer removes or obliterates the marks in a manner acceptable to the Customs officer at the time of examination of the articles; or

(ii) The request of the importer to obtain skillful removal of the marks is granted by the port director under such conditions as he may deem necessary,

and upon return of the article to Customs for verification, the marks are found to be satisfactorily removed.

(3) *Mail importations.* Articles arriving by mail in noncommercial shipments, or in commercial shipments valued at $250 or less, may be exported or destroyed at the request of the addressee or may be released if:

(i) The addressee appears in person at the appropriate Customs office and at that time removes or obliterates the marks in a manner acceptable to the Customs officer; or

(ii) The request of the addressee appearing in person to obtain skillful removal of the marks is granted by the port director under such conditions as he may deem necessary, and upon return of the article to Customs for verification, the marks are found to be satisfactorily removed.

(d) *Seizure.* If the importer has not obtained release of detained articles within the 30-day period of detention, the merchandise shall be seized and forfeiture proceedings instituted. The importer shall be promptly notified of the seizure and liability to forfeiture and his right to petition for relief in accordance with the provisions of part 171 of this chapter.

§ 133.25 Procedure on detention of articles subject to restriction.

(a) *In general.* Articles subject to the restrictions of §§ 133.22 and 133.23 shall be detained for 30 days from the date on which the merchandise is presented for Customs examination. The importer shall be notified of the decision to detain within 5 days of the decision that such restrictions apply. The importer may, during the 30-day period, establish that any of the circumstances described in § 133.22(c) or § 133.23(d) are applicable. Extensions of the 30-day time period may be freely granted for good cause shown.

(b) *Notice of detention and disclosure of information.* From the time merchandise is presented for Customs examination until the time a notice of detention is issued, Customs may disclose to the owner of the trademark or trade name any of the following information in order to obtain assistance in determining whether an imported article bears an infringing trademark or trade name. Once a notice of detention is issued, Customs shall disclose to the owner of the trademark or trade name the following information, if available, within 30 days, excluding weekends and holidays, of the date of detention:

(1) The date of importation;

(2) The port of entry;

(3) A description of the merchandise;

(4) The quantity involved; and

(5) The country of origin of the merchandise.

(c) *Disclosure to the trademark or trade name owner.* At any time following presentation of the merchandise for CBP's examination, but prior to seizure, CBP may release a sample of the suspect merchandise to the owner of the trademark or trade name for examination or testing to assist in determining whether the article imported bears an infringing trademark or trade name. To obtain a sample under this paragraph, the owner of the mark must furnish to CBP a bond in the form and amount specified by CBP, conditioned to indemnify the importer or owner of the imported article against any loss or damage resulting from the furnishing of the sample by CBP to the owner of the mark. CBP may demand the return of the sample at any time. The owner must return the sample to CBP upon demand or at the conclusion of the examination or testing, whichever occurs sooner. In the event that the sample is damaged, destroyed, or lost while in the possession of the trademark or trade name owner, the owner must, in lieu of returning the sample, certify to CBP that: ''The sample described as [insert description] and provided pursuant to 19 CFR 133.25(c) was (damaged/destroyed/lost) during examination or testing for trademark infringement.''

(d) *Form of notice.* Notice of detention of articles found subject to the restrictions of § 133.22 or § 133.23 shall be given the importer in writing.

[T.D. 99–21, 64 FR 9062, Feb. 24, 1999, as amended by CBP Dec. 15–15, 80 FR 70170, Nov. 13, 2015]

§ 133.26 Demand for redelivery of released merchandise.

If it is determined that merchandise which has been released from CBP custody is subject to the restrictions of

§ 133.21, § 133.22 or § 133.23 of this subpart, an authorized CBP official shall promptly make demand for the redelivery of the merchandise under the terms of the bond on CBP Form 301, containing the bond conditions set forth in § 113.62 of this chapter, in accordance with § 141.113 of this chapter. If the merchandise is not redelivered to CBP custody, a claim for liquidated damages shall be made in accordance with § 141.113(h) of this chapter.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 99–64, 64 FR 43266, Aug. 10, 1999; CBP Dec. 12–10, 77 FR 24380, Apr. 24, 2012; CBP Dec. 16–26, 81 FR 93018, Dec. 20, 2016]

§ 133.27 Civil fines for those involved in the importation of merchandise bearing a counterfeit mark.

In addition to any other penalty or remedy authorized by law, CBP may impose a civil fine under 19 U.S.C. 1526(f) on any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise for sale or public distribution that bears a counterfeit mark resulting in a seizure of the merchandise under 19 U.S.C. 1526(e) (see § 133.21 of this subpart), as follows:

(a) *First violation*. For the first seizure of merchandise under this section, the fine imposed will not be more than the value the merchandise would have had if it were genuine, according to the manufacturer's suggested retail price in the United States at the time of seizure.

(b) *Subsequent violations:* For the second and each subsequent seizure under this section, the fine imposed will not be more than twice the value the merchandise would have had if it were genuine, according to the manufacturer's suggested retail price in the United States at the time of seizure.

[CBP Dec. 03–12, 68 FR 43637, July 24, 2003]

Subpart D—Recordation of Copyrights

§ 133.31 Recordation of copyrighted works.

(a) *Eligible works*. Claims to copyright which have been registered in accordance with the Copyright Act of July 30, 1947, as amended, or the Copyright Act of 1976, as amended, may be recorded with Customs for import protection.

(b) *Persons eligible to record*. The copyright owner, including any person who has acquired copyright ownership through an exclusive license, assignment, or otherwise, and claims actual or potential injury because of actual or contemplated importations of copies (or phonorecords) of eligible works, may file an application to record a copyright. ''Copyright owner,'' with respect to any one of the exclusive rights comprised in a copyright, refers to the owner of that particular right.

(c) *Notice of recordation and other action*. Applicants and recordants will be notified of the approval or denial of an application filed in accordance with § 133.32, § 133.35, § 133.36, or § 133.37.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 73–212, 38 FR 21397, Aug. 8, 1973; T.D. 87–40, 52 FR 9474, Mar. 25, 1987]

§ 133.32 Application to record copyright.

An application to record a copyright to secure customs protection against the importation of infringing copies or phonorecords shall be in writing addressed to the IPR & Restricted Merchandise Branch, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, Washington, DC 20229, and shall include the following information:

(a) The name and complete address of the copyright owner or owners;

(b) If the applicant is a person claiming actual or potential injury by reason of actual or contemplated importations of copies or phonorecords of the eligible work, a statement setting forth the circumstances of such actual or potential injury;

(c) The country of manufacture of genuine copies or phonorecords of the protected work;

(d) The name and principal address of any foreign person or business entity authorized or licensed to use the protected work, and a statement as to the exclusive rights authorized;

(e) The foreign title of the work, if different from the U.S. title; and

(f) In the case of an application to record a copyright in a sound recording, a statement setting forth the name(s) of the performing artist(s), and

any other identifying names appearing on the surface of reproduction of the sound recording, or its label or container.

[T.D. 87–40, 52 FR 9474, Mar. 25, 1987, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991; T.D. 99–27, 64 FR 13675, Mar. 22, 1999]

§ 133.33 Documents and fee to accompany application.

(a) *Documents.* The application for recordation shall be accompanied by the following documents:

(1) An ''additional certificate'' of copyright registration issued by the U.S. Copyright Office. If the name of the applicant differs from the name of the copyright owner identified in the certificate, the application shall be accompanied by a certified copy of any assignment, exclusive license, or other document recorded in the U.S. Copyright Office showing that the applicant has acquired copyright ownership in the copyright.

(2) Five photographic or other likenesses reproduced on paper approximately 8″ × 10½″ in size of any copyrighted work. An application shall be excepted from this requirement if it covers a work such as a book, magazine, periodical, or similar copyrighted matter readily identifiable by title and author or if it covers a sound recording. Five likenesses of a component part of a copyrighted work, together with the name or title, if any, by which the part depicted is identifiable, may accompany an application covering an entire copyrighted work.

(b) *Fee.* Each application shall be accompanied by a fee of $190 for each copyright to be recorded. A check or money order shall be made payable to the United States Customs Service.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1973, as amended by T.D. 75–160, 40 FR 28791, July 9, 1975; T.D. 84–133, 49 FR 26571, June 28, 1984; T.D. 87–40, 52 FR 9475, Mar. 25, 1987]

§ 133.34 Effective date, term, and cancellation of recordation.

(a) *Effective date.* Recordation of copyright and protection thereunder shall be effective on the date an application for recordation is approved, as shown on the recordation notice issued by the United States Customs Service instructing Customs officers as to the terms and conditions of import protection appropriate.

(b) *Term.* The recordation of copyright shall remain in effect for 20 years unless the copyright ownership of the recordant expires before that time. If the ownership expires in less than 20 years, recordation shall remain in effect until the ownership expires. If the ownership has not expired after 20 years, recordation may be renewed as provided in § 133.37.

(c) *Cancellation.* Recordation of a copyright with the United States Customs Service shall be canceled upon request of the recordant, or if the registration in the U.S. Copyright Office is finally canceled or revoked.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 87–40, 52 FR 9475, Mar. 25, 1987]

§ 133.35 Change of ownership of recorded copyright.

(a) *Application.* If the ownership of a recorded copyright is transferred and the owner wishes to continue the recordation with the CBP, he shall make written application to the IPR & Restricted Merchandise Branch as follows:

(1) Comply, as appropriate, with § 133.32; and

(2) Describe any time limit on the rights of ownership transferred.

(b) *Document and fee.* The application shall be accompanied by:

(1) A certified copy of any assignment, exclusive license, or other document recorded in the U.S. Copyright Office showing the applicant has acquired an ownership interest in the copyright; and

(2) A fee of $80, which covers all copyrights included in the application which have been previously recorded with the U.S. Customs and Border Protection. A check or money order shall be made payable to the U.S. Customs and Border Protection.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 75–160, 40 FR 28791, July 9, 1975; T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

§ 133.36 Change in name of owner of recorded copyright.

If there is a change in the name of the owner of a recorded copyright, but

no transfer of ownership, written notice specifying the change shall be given to the IPR & Restricted Merchandise Branch accompanied by the following:

(a) A certified copy of any document recorded in the U.S. Copyright Office showing the change in the name of the owner; and

(b) Payment of a fee of $80, which covers all copyrights included in the application which have been previously recorded with the CBP. A check or money order shall be made payable to U.S. Customs and Border Protection.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 75–160, 40 FR 28791, July 9, 1975; T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

§ 133.37 Renewal of copyright recordation.

(a) *Term of renewal.* If a recorded copyright has a term which exceeds the original 20-year recordation, continued Customs protection may be obtained by renewing the recordation. The renewed recordation shall remain in effect for 20 years, unless the recordant's copyright ownership expires sooner, in which case it shall remain in effect until the ownership expires. There is no limit to the number of times recordation of a subsisting copyright may be renewed.

(b) *Application for renewal.* An application to renew recordation shall be made no later than 3 months before the date the recordation then in effect expires. The application shall be in writing addressed to the IPR & Restricted Merchandise Branch.

(c) *Materials to be submitted with application.* An application to renew Customs recordation shall include:

(1) Proof that the recordant's copyright ownership is valid. The proof required shall vary with the date that the work was first copyrighted as follows:

(i) *Works in which copyright subsists on or after January 1, 1978.* An affidavit signed by the recordant attesting to the continued validity of the copyright, stating the date the copyright was registered with the U.S. Copyright Office, whether the author of the work is still alive and, if not, the date of his death, and any additional information that Customs may require of the recordant.

(ii) *Works under statutory copyright on December 31, 1977.* If the copyright is still in its first term when recordation expires, a certificate of registration issued by the U.S. Copyright Office or, if the copyright has been renewed, a certificate of renewal registration issued by the U.S. Copyright Office.

(2) A statement describing any change of ownership or name of owner, in compliance with §§ 133.35 and 133.36, and any change of address of the owner.

(3) Payment of a fee of $80. A check or money order shall be made payable to the U.S. Customs and Border Protection.

(d) *Untimely application.* If the recordant fails to submit a renewal application at least 3 months before the recordation expires, he may not renew the recordation. The recordant shall be required to reapply to record the copyright in accordance with the procedures and requirements of §§ 133.32 and 133.33.

[T.D. 87–40, 52 FR 9475, Mar. 25, 1987, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

Subpart E—Importations Violating Copyright Laws

§ 133.41 [Reserved]

§ 133.42 Infringing copies or phonorecords.

(a) *Definition.* Infringing copies or phonorecords are ''piratical'' articles, i.e., copies or phonorecords which are unlawfully made (without the authorization of the copyright owner).

(b) *Importation prohibited.* The importation of infringing copies or phonorecords of works copyrighted in the U.S. is prohibited by Customs. The importation of lawfully made copies is not a Customs violation.

(c) *Seizure and forfeiture.* The port director shall seize any imported article which he determines is an infringing copy or phonorecord of a copyrighted work protected by Customs. The port director also shall seize an imported article if the importer does not deny a

representation that the article is an infringing copy or phonorecord as provided in §133.43(a). In either case, the port director also shall institute forfeiture proceedings in accordance with part 162 of this chapter. Lawfully made copies are not subject to seizure and forfeiture by Customs.

(d) *Disclosure*. When merchandise is seized under this section, Customs shall disclose to the owner of the copyright the following information, if available, within 30 days, excluding weekends and holidays, of the date of the notice of seizure:

(1) The date of importation;

(2) The port of entry;

(3) A description of the merchandise;

(4) The quantity involved;

(5) The name and address of the manufacturer;

(6) The country of origin of the merchandise;

(7) The name and address of the exporter; and

(8) The name and address of the importer.

(e) *Samples available to the copyright owner*. At any time following seizure of the merchandise, Customs may provide a sample of the suspect merchandise to the owner of the copyright for examination, testing, or any other use in pursuit of a related private civil remedy for copyright infringement. To obtain a sample under this section, the copyright owner must furnish to Customs a bond in the form and amount specified by the port director, conditioned to hold the United States, its officers and employees, and the importer or owner of the imported article harmless from any loss or damage resulting from the furnishing of a sample by Customs to the copyright owner. Customs may demand the return of the sample at any time. The owner must return the sample to Customs upon demand or at the conclusion of the examination, testing, or other use in pursuit of a related private civil remedy for copyright infringement. In the event that the sample is damaged, destroyed, or lost while in the possession of the copyright owner, the owner shall, in lieu of return of the sample, certify to Customs that: ''The sample described as [insert description] provided pursuant to 19 CFR 133.42(e) was (damaged/destroyed/lost) during examination, testing, or other use.''

(f) *Referral to the U.S. Attorney*. In the event that phonorecords or copies of motion pictures arrive in the U.S. bearing counterfeit labels, Customs officers should consider referring the violation to the U.S. Attorney, Department of Justice, for possible criminal prosecution pursuant to the ''Piracy and Counterfeiting Amendments Act of 1982'' (18 U.S.C. 2318). This law provides a minimum fine of $25,000 or imprisonment for not more than one year, or both, for willful infringement of a copyright for commercial advantage, and a maximum fine of $250,000 or imprisonment for not more than 5 years, or both, where trafficking in counterfeit labels for phonorecords or copies of motion pictures or other audiovisual works is involved.

[T.D. 87–40, 52 FR 9475, Mar. 25, 1987; 52 FR 10668, Apr. 2, 1987, as amended by T.D. 97–30, 62 FR 19493, Apr. 22, 1997; T.D. 98–21, 63 FR 12000, Mar. 12, 1998]

§133.43 Procedure on suspicion of infringing copies.

(a) *Notice to the importer*. If the port director has any reason to believe that an imported article may be an infringing copy or phonorecord of a recorded copyrighted work, he shall withhold delivery, notify the importer of his action, and advise him that if the facts so warrant he may file a statement denying that the article is in fact an infringing copy and alleging that the detention of the article will result in a material depreciation of its value, or a loss or damage to him. The port director also shall advise the importer that in the absence of receipt within 30 days of a denial by the importer that the article constitutes an infringing copy or phonorecord, it shall be considered to be such a copy and shall be subject to seizure and forfeiture.

(b) *Notice to copyright owner*. If the importer of suspected infringing copies or phonorecords files a denial as provided in paragraph (a) of this section, the port director shall furnish to the copyright owner the following information, if available, within 30 days, excluding weekends and holidays, of the receipt of the importer's denial:

(1) The date of importation;

(2) The port of entry;

(3) A description of the merchandise;

(4) The quantity involved;

(5) The country of origin of the merchandise; and

(6) Notice that the imported article will be released to the importer unless, within 30 days from the date of the notice, the copyright owner files with the port director:

(i) A written demand for the exclusion from entry of the detained imported article; and

(ii) A bond, in the form and amount specified by the port director, conditioned to hold the importer or owner of the imported article harmless from any loss or damage resulting from Customs detention in the event the Commissioner or his designee determines that the article is not an infringing copy prohibited importation under section 602 of the Copyright Act of 1976 (17 U.S.C. 602) (See part 113 of this chapter).

(c) *Samples available to the copyright owner.* At any time following presentation of the merchandise for Customs examination, but prior to seizure, Customs may provide a sample of the suspect merchandise to the owner of the copyright for examination or testing to assist in determining whether the article imported is a piratical copy. To obtain a sample under this section, the copyright owner must furnish Customs a bond in the form and amount specified by the port director, conditioned to hold the United States, its officers and employees, and the importer or owner of the imported article harmless from any loss or damage resulting from the furnishing of a sample by Customs to the copyright owner. Customs may demand the return of the sample at any time. The owner must return the sample to Customs upon demand or at the conclusion of the examination or testing. In the event that the sample is damaged, destroyed, or lost while in the possession of the copyright owner, the owner shall, in lieu of return of the sample, certify to Customs that: ''The sample described as [insert description] provided pursuant to 19 CFR 133.43(c) was (damaged/destroyed/lost) during examination or testing for copyright infringement.

(d) *Result of action or inaction by copyright owner.* After notice to the copyright owner that delivery is being withheld for imported articles suspected of being infringing copies of his recorded copyrighted work, the port director shall proceed in accordance with the following procedures:

(1) *Demand and bond; exchange of briefs.* If the copyright owner files a written demand for exclusion of the suspected infringing copies together with a proper bond, the port director shall promptly notify the importer and copyright owner that, during a specified time limited to not more than 30 days, they may submit any evidence, legal briefs or other pertinent material to substantiate the claim or denial of infringement. The burden of proof shall be upon the party claiming that the article is in fact an infringing copy.

(i) *Exchange of briefs.* Before timely submitting the additional evidence, legal briefs, or other pertinent material to Customs, pursuant to paragraph (c)(1) of this section, in regard to the disputed claim of infringement, the importer and the copyright owner shall first provide each other with a copy of all such information, including the importer's denial of infringement and the copyright owner's demand for exclusion. The subsequent submission of this information to Customs shall be accompanied by a written statement confirming that a copy has already been provided to the opposing party. The port director shall notify the importer and the copyright owner that they shall have additional time, not to exceed 30 days, in which to provide a response to the arguments submitted by the opposing party, and that rebuttal arguments, timely submitted, shall be fully considered in the decision-making process. During this rebuttal period and before timely submitting the rebuttal arguments to Customs, the importer and the copyright owner shall first provide each other with a copy of all such material. The submission of this rebuttal material to Customs shall be accompanied by a written statement confirming that a copy has been provided to the opposing party. The port

director shall not accept any additional material from the parties to substantiate the claim or denial of infringement after the final 30-day rebuttal period expires.

(ii) *Decision.* Upon receipt of rebuttal arguments, or 30 days after notification if no rebuttal arguments are submitted, the port director shall forward the entire file, together with a sample of each style that is considered possibly infringing, to CBP Headquarters, (Attention: Border Security and Trade Compliance Division, Regulations and Rulings, Office of International Trade), for decision on the disputed claim of infringement. The final decision on the disputed claim of infringement shall be forwarded to the port director who shall send a copy thereof to the copyright owner as well as to the importer.

(2) *Infringement disclaimed or unsupported.* If the copyright owner disclaims that the specified imported article is an infringing copy of his recorded copyrighted work, or fails to present sufficient evidence or proof to substantiate a claim of infringement, the port director shall release the detained shipment to the importer and all further importations of the same article, by whomever imported, without further notice to the copyright owner.

(3) *Failure to file demand or bond.* If the copyright owner fails to file a written demand for exclusion and bond as required by paragraph (b) of this section, the port director shall release the detained articles to the importer and notify the copyright owner of the release.

(4) *Withdrawal of bond.* Where the copyright owner has posted a bond on the grounds that the imported article is infringing, the copyright owner may not withdraw the bond until a decision on the issue of infringement has been reached.

(e) *Alternative procedure: court action.* As an alternative to the administrative procedure described in this section, the copyright owner, whether or not he has recorded his copyright with Customs, may seek a court order enjoining importation of the article. To obtain Customs enforcement of an injunction, the copyright owner shall submit a certified copy of the court order to the Commissioner of Customs, Attention: Office of the Chief Counsel, Washington, DC 20229. In addition, if the copyright in question is not recorded with Customs, the copyright owner shall submit the $190 fee required by §133.33(b) and, if the work is a three-dimensional or other work not readily identifiable by title and author, 5 photographic or other likenesses reproduced on paper approximately 8″ × 10½″ in size.

[T.D. 87–40, 52 FR 9475, Mar. 25, 1987, as amended by T.D. 93–87, 58 FR 57740, Oct. 27, 1993; T.D. 98–21, 63 FR 12000, Mar. 12, 1998; 63 FR 15088, Mar. 30, 1998]

§ 133.44 Decision of disputed claim of infringement.

(a) *Claim of infringement sustained.* Upon determination by the Commissioner of Customs or his designee that the detained article forwarded in accordance with §133.43(c)(1) is an infringing copy, the port director shall seize the imported article and institute forfeiture proceedings in accordance with part 162 of this chapter. The bond of the copyright owner shall be returned.

(b) *Denial of infringement sustained.* Upon determination by the Commissioner of Customs or his designee that the detained article forwarded in accordance with §133.43(c)(1) is not an infringing copy, the port director shall release all detained merchandise and transmit the copyright owner's bond to the importer.

[T.D. 87–40, 52 FR 9476, Mar. 25, 1987, as amended by T.D. 97–30, 62 FR 19493, Apr. 22, 1997]

§ 133.45 [Reserved]

§ 133.46 Demand for redelivery of released articles.

If it is determined that articles which have been released from Customs custody are subject to the prohibitions or restrictions of this subpart, an authorized CBP official shall promptly make demand for redelivery of the articles under the terms of the bond on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter, in accordance with §141.113 of this chapter. If the articles are not redelivered to Customs custody, a claim for liquidated damages shall be made

in accordance with §141.113(h) of this chapter.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 73–175, 38 FR 17447, July 2, 1973; T.D. 74–227, 39 FR 32023, Sept. 4, 1974; T.D. 84–213, 49 FR 41183, Oct. 19, 1984; T.D. 99–64, 64 FR 43266, Aug. 10, 1999; CBP Dec. 16–26, 81 FR 93018, Dec. 20, 2016]

Subpart F—Procedure Following Forfeiture or Assessment of Liquidated Damages

§133.51 Relief from forfeiture or liquidated damages.

(a) *Petition for relief.* The importer may petition in accordance with parts 171 and 172 of this chapter for relief from, or cancellation of, a forfeiture incurred for violation of the trademark or copyright laws, or a claim for liquidated damages for failure to redeliver released merchandise incurred under the provisions of §133.24 or §133.46.

(b) *Conditioned relief.* In appropriate cases, except for articles bearing a counterfeit trademark, relief from a forfeiture may be granted pursuant to a petition for relief upon the following conditions and such other conditions as may be specified by the appropriate Customs authority:

(1) The unlawfully imported or prohibited articles are exported or destroyed under Customs supervision and at no expense to the Government;

(2) All offending trademarks or trade names are removed or obliterated prior to release of the articles:

(3) In the case of books or periodicals manufactured abroad contrary to the terms of the ''American manufacturing clause'' of the Copyright Act of 1976 (17 U.S.C. 602, 603):

(i) Satisfactory evidence is submitted that a statement of abandonment has been filed and recorded in the Copyright Office by the copyright owner in accordance with the procedures of the Copyright Office; and

(ii) The notice of copyright is completely obliterated prior to release of the books or periodicals.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 79–159, 44 FR 31968, June 4, 1979; T.D. 87–40, 52 FR 9476, Mar. 25, 1987]

§133.52 Disposition of forfeited merchandise.

(a) *Trademark (other than counterfeit) or trade name violations.* Articles forfeited for violation of the trademark laws, other than articles bearing a counterfeit trademark, shall be disposed of in accordance with the procedures applicable to forfeitures for violation of the Customs laws, after the removal or obliteration of the name, mark, or trademark by reason of which the articles were seized.

(b) *Copyright violations.* Articles forfeited for violation of the copyright laws shall be destroyed.

(c) *Articles bearing a counterfeit trademark.* Merchandise forfeited for violation of the trademark laws shall be destroyed, unless it is determined that the merchandise is not unsafe or a hazard to health and the Commissioner of Customs or his designee has the written consent of the U.S. trademark owner, in which case the Commissioner of Customs or his designee may dispose of the merchandise, after obliteration of the trademark, where feasible, by:

(1) Delivery to any Federal, State, or local government agency that, in the opinion of the Commissioner or his designee, has established a need for the merchandise; or

(2) Gift to any charitable institution that, in the opinion of the Commissioner or his designee, has established a need for the merchandise; or

(3) Sale at public auction, if more than 90 days has passed since the forfeiture and Customs has determined that no need for the merchandise has been established under paragraph (c)(1) or (c)(2) of this section.

[T.D. 79–159, 44 FR 31969, June 4, 1969, as amended by T.D. 94–90, 59 FR 55997, Nov. 10, 1994; T.D. 97–91, 62 FR 61232, Nov. 17, 1997]

§133.53 Refund of duty.

If a violation of the trademark or copyright laws is not discovered until after entry and deposit of estimated duty, the entry shall be endorsed with an appropriate notation and the duty refunded as an erroneous collection upon exportation or destruction of the

prohibited articles in accordance with §158.41 or §158.45 of this chapter.

[T.D. 72–266, 37 FR 20678, Oct. 3, 1972, as amended by T.D. 73–175, 38 FR 17447, July 2, 1973]

Subpart G [Reserved]

Subpart H—Donations of Intellectual Property Rights Technology and Related Support Services

SOURCE: CBP Dec. 17-21, 82 FR 59513, Dec. 15, 2017, unless otherwise noted.

§ 133.61 Donations of intellectual property rights technology and related support services.

(a) *Scope.* The Commissioner of U.S. Customs and Border Protection (CBP) is authorized to accept donations of hardware, software, equipment, and similar technologies, as well as related support services and training, from private sector entities, for the purpose of assisting CBP in enforcing intellectual property rights. Such acceptance must be consistent with the conditions set forth in this section and section 308(d) of the Trade Facilitation and Trade Enforcement Act of 2015 (19 U.S.C. 4301 note), as well as either section 482 of the Homeland Security Act of 2002, as amended by section 2 of the Cross-Border Trade Enhancement Act of 2016 (6 U.S.C. 301a), or section 507 of the Department of Homeland Security Appropriations Act of 2004 (Pub. L. 108–90). However, this section does not apply to merchandise provided to CBP as samples, *e.g.*, as referenced in §§151.10 and 177.2 of this chapter.

(b) *Donation offer.* A donation offer must be submitted to CBP either via email, to *dap@cbp.dhs.gov*, or mailed to the attention of the Executive Assistant Commissioner, Office of Field Operations, or his/her designee. The donation offer must describe the proposed donation in sufficient detail to enable CBP to determine its compatibility with existing CBP technologies, networks, and facilities (*e.g.* operating system or similar requirements, power supply requirements, item size and weight, *etc.*). The donation offer must also include information pertaining to the donation's scope, purpose, expected benefits, intended use, costs, and attached conditions, as applicable, that is sufficient to enable CBP to evaluate the donation and make a determination as to whether to accept it. CBP will notify the donor, in writing, if additional information is requested or if CBP has determined that it will not accept the donation.

(c) *Agreement to accept donation.* If CBP accepts a donation of hardware, software, equipment, technologies, or related support services and training, for the purpose of enforcing intellectual property rights, CBP will enter into a signed, written agreement with an authorized representative of the donor. The agreement must contain all applicable terms and conditions of the donation. An agreement to accept a donation must provide that the hardware, software, equipment, technologies, or related support services and training are offered without the expectation of payment, and that the donor expressly waives any future claims, except those expressly reserved in the agreement, against the government related to the donation.

PART 134—COUNTRY OF ORIGIN MARKING

Sec.

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1304, 1624.

SOURCE: T.D. 72–262, 37 FR 20318, Sept. 29, 1972, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 134 appear by CBP Dec. 16–26, 81 FR 93018, Dec. 20, 2016.

§ 134.0 Scope.

This part sets forth regulations implementing the country of origin marking requirements and exceptions of section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), together with certain marking provisions of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202). The consequences and procedures to be followed when articles are not legally marked are set forth in this part. The consequences and procedures to be followed when articles are falsely marked are set forth in §11.13 of this chapter. Special marking and labeling requirements are covered elsewhere. Provisions regarding the review and appeal rights of exporters and producers resulting from adverse North American Free Trade Agreement marking decisions are contained in subpart J of part 181 of this chapter.

[T.D. 81–290, 46 FR 58070, Nov. 30, 1981, as amended by T.D. 89–1, 53 FR 51255, Dec. 21, 1988; T.D. 94–1, 58 FR 69471, Dec. 30, 1993]

Subpart A—General Provisions

§ 134.1 Definitions.

When used in this part, the following terms shall have the meaning indicated:

(a) *Country*. ''Country'' means the political entity known as a nation. Colonies, possessions, or protectorates outside the boundaries of the mother country are considered separate countries.

(b) *Country of origin*. ''Country of origin'' means the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the ''country of origin'' within the meaning of this part; however, for a good of a NAFTA or USMCA country, the marking rules set forth in part 102 of this chapter (hereinafter referred to as the part 102 Rules) will determine the country of origin.

(c) *Foreign origin*. ''Foreign origin'' refers to a country of origin other than the United States, as defined in paragraph (e) of this section, or its possessions and territories.

(d) *Ultimate purchaser*. The ''ultimate purchaser'' is generally the last person in the United States who will receive the article in the form in which it was imported; however, for a good of a NAFTA or USMCA country, the ''ultimate purchaser'' is the last person in the United States who purchases the

good in the form in which it was imported. It is not feasible to state who will be the ''ultimate purchaser'' in every circumstance. The following examples may be helpful:

(1) If an imported article will be used in manufacture, the manufacturer may be the ''ultimate purchaser'' if he subjects the imported article to a process which results in a substantial transformation of the article, even though the process may not result in a new or different article, or for a good of a NAFTA or USMCA country, a process which results in one of the changes prescribed in the part 102 Rules as effecting a change in the article's country of origin.

(2) If the manufacturing process is merely a minor one which leaves the identity of the imported article intact, the consumer or user of the article, who obtains the article after the processing, will be regarded as the ''ultimate purchaser.'' With respect to a good of a NAFTA or USMCA country, if the manufacturing process does not result in one of the changes prescribed in the part 102 Rules as effecting a change in the article's country of origin, the consumer who purchases the article after processing will be regarded as the ultimate purchaser.

(3) If an article is to be sold at retail in its imported form, the purchaser at retail is the ''ultimate purchaser.''

(4) If the imported article is distributed as a gift the recipient is the ''ultimate purchaser'', unless the good is a good of a NAFTA or USMCA country. In that case, the purchaser of the gift is the ultimate purchaser.

(e) *United States.* ''United States'' includes all territories and possessions of the United States, except the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and the island of Guam.

(f) *Customs territory of the United States.* ''Customs territory of the United States,'' as used in this chapter includes the States, the District of Columbia, and the Commonwealth of Puerto Rico.

(g) *Good of a NAFTA or USMCA country.* A ''good of a NAFTA or USMCA country'' is an article for which the country of origin is Canada, Mexico or the United States as determined under the part 102 Rules.

(h) *NAFTA.* ''NAFTA'' means the North American Free Trade Agreement entered into by the United States, Canada and Mexico on August 13, 1992. NAFTA is not applicable to goods entered for consumption, or withdrawn from warehouse for consumption, on or after July 1, 2020.

(i) *NAFTA or USMCA country.* ''NAFTA or USMCA country'' means the territory of the United States, Canada or Mexico, as defined in Annex 201.1 of NAFTA and Chapter 1, Section C of the USMCA.

(j) *Part 102 Rules.* ''Part 102 Rules'' are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country, as set forth in part 102 of this chapter. The rules also apply to determine the country of origin for marking purposes for goods imported under the USMCA.

(k) *Conspicuous.* ''Conspicuous'' means capable of being easily seen with normal handling of the article or container.

(l) *USMCA.* ''USMCA'' means the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA), entered into force by the United States, Canada and Mexico on July 1, 2020.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 94–1, 58 FR 69471, Dec. 30, 1993; T.D. 95–68, 60 FR 46362, Sept. 6, 1995; CBP Dec. 21-10, 86 FR 35582, July 6, 2021]

§ 134.2 Additional duties.

Articles not marked as required by this part shall be subject to additional duties of 10 percent of the final appraised value unless exported or destroyed under Customs supervision prior to liquidation of the entry, as provided in 19 U.S.C. 1304(f). The 10 percent additional duty is assessable for failure either to mark the article (or container) to indicate the English name of the country of origin of the article or to include words or symbols required to prevent deception or mistake.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 90–51, 55 FR 28190, July 10, 1990]

§ 134.3 Delivery withheld until marked and redelivery ordered.

(a) Any imported article (or its container) held in CBP custody for inspection, examination, or appraisement will not be delivered until marked with its country of origin, or until estimated duties payable under 19 U.S.C. 1304(f), or adequate security for those duties (see § 134.53(a)(2)), are deposited.

(b) An authorized CBP official may demand redelivery to CBP custody of any article (or its container) previously released which is found to be not marked legally with its country of origin for the purpose of requiring the article (or its container) to be properly marked. A demand for redelivery will be made, as required under § 141.113(a) of this chapter, not later than 30 days after—

(1) The date of entry, in the case of merchandise examined in public stores and places of arrival, such as docks, wharfs, or piers; or

(2) The date of examination, in the case of merchandise examined at the importer's premises or such other appropriate places as determined by the port director.

(c) Nothing in this part shall be construed as excepting any article (or its container) from the particular requirements of marking provided for in any other provision of law.

[T.D. 80–88, 45 FR 18921, Mar. 24, 1980, as amended by T.D. 90–51, 55 FR 28190, July 10, 1990; CBP Dec. 08–25, 73 FR 40726, July 16, 2008]

§ 134.4 Penalties for removal, defacement, or alteration of marking.

Any intentional removal, defacement, destruction, or alteration of a marking of the country of origin required by section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), and this part in order to conceal this information may result in criminal penalties of up to $5,000 and/or imprisonment for 1 year, as provided in 19 U.S.C. 1304(h).

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 90–51, 55 FR 28191, July 10, 1990]

Subpart B—Articles Subject to Marking

§ 134.11 Country of origin marking required.

Unless excepted by law, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article, at the time of importation into the Customs territory of the United States. Containers of articles excepted from marking shall be marked with the name of the country of origin of the article unless the container is also excepted from marking.

§ 134.12 Foreign articles reshipped from a U.S. possession.

Articles of foreign origin imported into any possession of the United States outside its Customs territory and reshipped to the United States are subject to all marking requirements applicable to like articles of foreign origin imported directly from a foreign country to the United States.

§ 134.13 Imported articles repacked or manipulated.

(a) *Marking requirement.* An article within the provisions of this section shall be marked with the name of the country of origin at the time the article is withdrawn for consumption unless the article and its container are exempted from marking under provisions of subpart D of this part at the time of importation.

(b) *Applicability.* The provisions of this section are applicable to the following articles:

(1) Articles repacked in a bonded warehouse under § 19.8 of this chapter;

(2) Articles manipulated under section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562), and § 19.11 of this chapter;

(3) Articles manipulated, but not manufactured, in a foreign-trade zone under § 146.32 of this chapter.

§ 134.14 Articles usually combined.

(a) *Articles combined before delivery to purchaser*. When an imported article is of a kind which is usually combined with another article after importation but before delivery to an ultimate purchaser and the name indicating the country of origin of the article appears in a place on the article so that the name will be visible after such combining, the marking shall include, in addition to the name of the country of origin, words or symbols which shall clearly show that the origin indicated is that of the imported article only and not that of any other article with which the imported article may be combined after importation.

(b) *Example*. Labels and similar articles so marked that the name of the country of origin of the label or article is visible after it is affixed to another article in this country shall be marked with additional descriptive words such as ''Label made (or printed) in (name of country)'' or words of similar meaning. See subpart C of this part for marking of bottles, drums, or other containers.

(c) *Applicability*. This section shall not apply to articles of a kind which are ordinarily so substantially changed in the United States that the articles in their changed condition become products of the United States. An article excepted from marking under subpart D of this part is not within the scope of section 304(a)(2), Tariff Act of 1930, as amended (19 U.S.C. 1304(a)(2)), and is not subject to the requirements of this section.

Subpart C—Marking of Containers or Holders

§ 134.21 Special marking.

This subpart includes only country of origin marking requirements and exceptions under section 304(b), Tariff Act of 1930, as amended (19 U.S.C. 1304(b)), for containers or holders. Special marking may be required by the Internal Revenue Service on alcoholic beverage bottles and other requirements may be imposed by reason of the nature of the contents by other Government agencies.

§ 134.22 General rules for marking of containers or holders.

(a) *Contents excepted from marking*. When an article is excepted from the marking requirements by subpart D of this part, the outermost container or holder in which the article ordinarily reaches the ultimate purchaser shall be marked to indicate the country of origin of the article whether or not the article is marked to indicate its country of origin.

(b) *Containers or holders treated as imported articles*. Containers or holders for imported merchandise which are subject to treatment as imported articles under the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), shall be marked to indicate clearly the country of their own origin in addition to any marking which may be required to show the country of origin of their contents; however, no marking is required for any good of a NAFTA or USMCA country which is a usual container.

(c) *Containers or holders bearing a U.S. address*. Containers or holders of imported merchandise bearing the name and address of an importer, distributor, or other person or company in the United States shall be marked in close proximity to the U.S. address to indicate clearly the country of origin of the contents with a marking such as ''Contents made in France'' or ''Contents Product of Spain.''

(d) *Usual containers*—(1) *''Usual container'' defined*. For purposes of this subpart, a usual container means the container in which a good will ordinarily reach its ultimate purchaser. Containers which are not included in the price of the goods with which they are sold, or which impart the essential character to the whole, or which have significant uses, or lasting value independent of the contents, will generally not be regarded as usual containers. However, the fact that a container is sturdy and capable of repeated use with its contents does not preclude it from being considered a usual container so long as it is the type of container in which its contents are ordinarily sold. A usual container may be any type of container, including one which is specially shaped or fitted to contain a specific good or set of goods such as a

camera case or an eyeglass case, or packing, storage and transportation materials.

(2) *A good of a NAFTA or USMCA country which is a usual container.* A good of a NAFTA or USMCA country which is a usual container, whether or not disposable and whether or not imported empty or filled, is not required to be marked with its own country of origin. If imported empty, the importer must be able to provide satisfactory evidence to Customs at the time of importation that it will be used only as a usual container (that it is to be filled with goods after importation and that such container is of a type in which these goods ordinarily reach the ultimate purchaser).

(e) *Exceptions.* Containers or holders of imported articles are not required to be marked if:

(1) *Excepted articles.* They are containers or holders of articles within the exceptions set forth in paragraph (f), (g), or (h) in §134.32 or they are containers of a good of a NAFTA or USMCA country within the exceptions set forth in paragraph (e), (f), (g), (h), (i), (p) or (q) of §134.32.

(2) *Excepted containers or holders.* The container or holder itself is within an exception set forth in subpart D of this part.

(3) *To be filled by the importer.* The container or holder is within the exception set forth in §134.24(c).

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 94–1, 58 FR 69471, Dec. 30, 1993; CBP Dec. 21-10, 86 FR 35582, July 6, 2021]

§ 134.23 Containers or holders designed for or capable of reuse.

(a) *Usual and ordinary reusable containers or holders.* Except for goods of a NAFTA or USMCA country which are usual containers, containers or holders designed for or capable of reuse after the contents have been consumed, whether imported full or empty, must be individually marked to indicate the country of their own origin with a marking such as, ''Container Made in (name of country).'' Examples of the containers or holders contemplated are heavy duty steel drums, tanks, and other similar shipping, storage, transportation containers or holders capable of reuse. These containers or holders are subject to the treatment specified in General Rule of Interpretation 5(b), Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(b) *Other reusable containers or holders.* Containers or holders which give the whole importation its essential character, as described in General Rule of Interpretation 5(a) (19 U.S.C. 1202), must be individually marked to clearly indicate their own origin with a marking such as, ''Container made in (name of country).'' Examples of the containers contemplated are mustard jars reusable as beer mugs; shaving soap containers reusable as shaving mugs; fancy cologne bottles reusable as flower vases, and other containers which have a lasting value or decorative use.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 89–1, 53 FR 51256, Dec. 21, 1988; T.D. 94–1, 58 FR 69471, Dec. 30, 1993; CBP Dec. 21-10, 86 FR 35582, July 6, 2021]

§ 134.24 Containers or holders not designed for or capable of reuse.

(a) *Containers ordinarily discarded after use.* Disposable containers or holders subject to the provisions of this section are the usual ordinary types of containers or holders, including cans, bottles, paper or polyethylene bags, paperboard boxes, and similar containers or holders which are ordinarily discarded after the contents have been consumed.

(b) *Imported empty.* Disposable containers or holders imported for distribution or sale are subject to treatment as imported articles in accordance with the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), and shall be marked to indicate clearly the country of their own origin. However, when the containers are packed and sold in multiple units (dozens, gross, etc.), this requirement ordinarily may be met by marking the outermost container which reaches the ultimate purchaser.

(c) *Imported to be filled*—(1) *If unmarked.* When disposable containers or holders or usual containers which are goods of a NAFTA or USMCA country are imported by persons or firms who fill or package them with various products which they sell, these persons or firms are the ''ultimate purchasers'' of these containers or holders or usual

containers which are goods of a NAFTA or USMCA country and they may be excepted from individual marking pursuant to 19 U.S.C. 1304(a)(3)(D). The outside wrappings or packages containing the containers shall be clearly marked to indicate the country of origin.

(2) *If marked.* If the disposable containers or holders or the usual containers which are goods of a NAFTA or USMCA country are marked with the country of origin at the time of importation and the marking will be visible after they are filled, the marking shall clearly indicate that the container only and not the contents were made in the named country. For example, bottles, drums, or other containers imported empty, to be filled in the United States, shall be marked with such words as ''Bottle (or container) made in (name of country).''

(d) *Imported full*—(1) *When contents are excepted from marking.* Usual disposable containers in use as such at the time of importation shall not be required to be marked to show the country of their own origin, but shall be marked to indicate the origin of their contents regardless of the fact that the contents are excepted from marking requirements; however, such marking is not required if the contents are excepted from marking requirements under paragraph (f), (g), or (h) of §134.32 or, in the case of a good of a NAFTA or USMCA country, under paragraph (e), (f), (g), (h), (i), (p) or (q) of that section.

(2) *Sealed containers or holders.* Disposable containers or holders of imported merchandise, which are sold without normally being opened by the ultimate purchaser (e.g., individually wrapped soap bars or tennis balls in a vacuum sealed can), shall be marked to indicate the country of origin of their contents.

(3) *Unsealed containers.* Unsealed disposable containers of imported merchandise normally unopened by the ultimate purchaser, may be excepted from marking if the article is so marked that the country of origin is clearly visible without unpacking the container. However, if the container is normally opened by the ultimate purchaser prior to purchase, only the article need be marked.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 89–1, 53 FR 51255, Dec. 21, 1988; T.D. 94–1, 58 FR 69471, Dec. 30, 1993; CBP Dec. 21-10, 86 FR 35582, July 6, 2021]

§ 134.25 Containers or holders for repacked J-list articles and articles incapable of being marked.

(a) *Certification requirements.* If an article subject to these requirements is intended to be repacked in new containers for sale to an ultimate purchaser after its release from Customs custody, or if the Center director has reason to believe such article will be repacked after its release, the importer shall certify to the Center director that: (1) If the importer does the repacking, the new container shall be marked to indicate the country of origin of the article in accordance with the requirements of this part; or (2) if the article is intended to be sold or transferred to a subsequent purchaser or repacker, the importer shall notify such purchaser or transferee, in writing, at the time of sale or transfer, that any repacking of the article must conform to these requirements. The importer, or his authorized agent, shall sign the following statement.

CERTIFICATE OF MARKING—REPACKED J-LIST ARTICLES AND ARTICLES INCAPABLE OF BEING MARKED

(Port of entry) _____

I, of , certify that if the article(s) covered by this entry (entry no.(s) dated), is (are) repacked in a new container(s), while still in my possession, the new containers, unless excepted, shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the container(s) will permit, in such manner as to indicate the country of origin of the article(s) to the ultimate purchaser(s) in accordance with the requirements of 19 U.S.C. 1304 and 19 CFR part 134. I further certify that if the article(s) is (are) intended to be sold or transferred by me to a subsequent purchaser or repacker, I will notify such purchaser or transferee, in writing, at the time of sale or transfer, of the marking requirements.

Date _____

Importer _____

The certification statement may appear as a typed or stamped statement on an appropriate entry document or

commercial invoice, or on a preprinted attachment to such entry or invoice; or it may be submitted in blanket form to cover all importations of a particular product for a given period (e.g., calendar year). If the blanket procedure is used, a certification must be filed with CBP, either at the port of entry or electronically.

(b) *Facsimile signatures.* The certification statement may be signed by means of an authorized facsimile signature.

(c) *Time of filing.* The certification statement shall be filed with the Center director at the time of entry summary. If the certification is not available at that time, a bond shall be given for its production in accordance with §141.66, Customs Regulations (19 CFR 141.66). In case of repeated failure to timely file the certification required under this section, the Center director may decline to accept a bond for the missing document and demand redelivery of the merchandise under §134.51, Customs Regulations (19 CFR 134.51).

(d) *Notice to subsequent purchaser or repacker.* If the article is sold or transferred to a subsequent purchaser or repacker the following notice shall be given to the purchaser or repacker:

NOTICE TO SUBSEQUENT PURCHASER OR REPACKER

These articles are imported. The requirements of 19 U.S.C. 1304 and 19 CFR part 134 provide that the articles or their containers must be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article or container will permit, in such a manner as to indicate to an ultimate purchaser in the United States, the English name of the country of origin of the article.

(e) *Duties and penalties.* Failure to comply with the certification requirements in paragraph (a) may subject the importer to a demand for liquidated damages under §134.54(a) and for the additional duty under 19 U.S.C. 1304. Fraud or negligence by any person in furnishing the required certification may also result in a penalty under 19 U.S.C. 1592.

[T.D. 83–155, 48 FR 33863, July 26, 1983, as amended by CBP Dec. 16–26, 81 FR 93018, Dec. 20, 2016]

§ 134.26 Imported articles repacked or manipulated.

(a) *Certification requirements.* If an article subject to these requirements is intended to be repacked in retail containers (e.g., blister packs) after its release from Customs custody, or if the Center director has reason to believe such article will be repacked after its release, the importer shall certify to the Center director that: (1) If the importer does the repacking, he shall not obscure or conceal the country of origin marking appearing on the article, or else the new container shall be marked to indicate the country of origin of the article in accordance with the requirements of this part; or (2) if the article is intended to be sold or transferred to a subsequent purchaser or repacker, the importer shall notify such purchaser or transferee, in writing, at the time of sale or transfer, that any repacking of the article must conform to these requirements. The importer, or his authorized agent, shall sign the following statement.

CERTIFICATE OF MARKING BY IMPORTER—REPACKED ARTICLES SUBJECT TO MARKING

(Port of entry) _____

I, _____ of _____, certify that if the article(s) covered by this entry (entry no.(s) ____ dated ____), is (are) repacked in retail container(s) e.g., blister packs), while still in my possession, the new container(s) will not conceal or obscure the country of origin marking appearing on the article(s), or else the new container(s), unless excepted, shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the container(s) will permit, in such manner as to indicate the country of origin of the article(s) to the ultimate purchaser(s) in accordance with the requirements of 19 U.S.C. 1304 and 19 CFR part 134. I further certify that if the article(s) is (are) intended to be sold or transferred by me to a subsequent purchaser or repacker, I will notify such purchaser or transferee, in writing, at the time of sale or transfer, of the marking requirements.

Date _____

Importer _____

The certification statement may appear as a typed or stamped statement on an appropriate entry document or commercial invoice, or on a preprinted attachment to such entry or invoice; or it may be submitted in blanket form to cover all importations of a particular

product for a given period (e.g., calendar year). If the blanket procedure is used, a certification must be filed with CBP, either at the port of entry or electronically.

(b) *Facsimile signatures.* The certification statement may be signed by means of an authorized facsimile signature.

(c) *Time of filing.* The certification statement shall be filed with the Center director at the time of entry summary. If the certification is not available at that time, a bond shall be given for its production in accordance with §141.66, Customs Regulations (19 CFR 141.66). In case of repeated failure to timely file the certification required under this subsection, the Center director may decline to accept a bond for the missing document and demand redelivery of the merchandise under §134.51, Customs Regulations (19 CFR 134.51).

(d) *Notice to subsequent purchaser or repacker.* If the article is sold or transferred to a subsequent purchaser or repacker the following notice shall be given to the purchaser or repacker:

NOTICE TO SUBSEQUENT PURCHASER OR REPACKER

These articles are imported. The requirements of 19 U.S.C. 1304 and 19 CFR part 134 provide that the articles in their containers must be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article or container will permit, in such a manner as to indicate to an ultimate purchaser in the United States, the English name of the country of origin of the article.

(e) *Duties and penalties.* Failure to comply with the certification requirements in paragraph (a) may subject the importer to a demand for liquidated damages under §134.54(a) and for the additional duty under 19 U.S.C. 1304. Fraud or negligence by any person in furnishing the required certification may also result in a penalty under 19 U.S.C. 1592.

(f) *Exceptions.* The requirements of this section do not apply to repackaging in a container that can readily be opened for inspection by the ultimate purchaser in the United States, unless such container bears a U.S. address or other potentially misleading marking.

[T.D. 84–127, 49 FR 22795, June 1, 1984, as amended by CBP Dec. 16–26, 81 FR 93018, Dec. 20, 2016]

Subpart D—Exceptions to Marking Requirements

§134.31 Requirements of other agencies.

Nothing in this subpart shall be construed as excepting any article (or its container) from the particular requirements of marking provided for in any other provision of any law, such as those of the Federal Trade Commission, Food and Drug Administration, and other agencies.

§134.32 General exceptions to marking requirements.

The articles described or meeting the specified conditions set forth below are excepted from marking requirements (see subpart C of this part for marking of the containers):

(a) Articles that are incapable of being marked;

(b) Articles that cannot be marked prior to shipment to the United States without injury;

(c) Articles that cannot be marked prior to shipment to the United States except at an expense economically prohibitive of its importation;

(d) Articles for which the marking of the containers will reasonably indicate the origin of the articles;

(e) Articles which are crude substances;

(f) Articles imported for use by the importer and not intended for sale in their imported or any other form;

(g) Articles to be processed in the United States by the importer or for his account otherwise than for the purpose of concealing the origin of such articles and in such manner that any mark contemplated by this part would necessarily be obliterated, destroyed, or permanently concealed;

(h) Articles for which the ultimate purchaser must necessarily know, or in the case of a good of a NAFTA or USMCA country, must reasonably know, the country of origin by reason of the circumstances of their importation or by reason of the character of

the articles even though they are not marked to indicate their origin;

(i) Articles which were produced more than 20 years prior to their importation into the United States;

(j) Articles entered or withdrawn from warehouse for immediate exportation or for transportation and exportation;

(k) Products of American fisheries which are free of duty;

(l) Products of possessions of the United States;

(m) Products of the United States exported and returned;

(n) Articles exempt from duty under §§ 10.151 through 10.153, § 145.31 or § 145.32 of this chapter;

(o) Articles which cannot be marked after importation except at an expense that would be economically prohibitive unless the importer, producer, seller, or shipper failed to mark the articles before importation to avoid meeting the requirements of the law;

(p) Goods of a NAFTA or USMCA country which are original works of art; and

(q) Goods of a NAFTA or USMCA country which are provided for in subheading 6904.10 or heading 8541 or 8542 of the Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202).

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 73–135, 38 FR 13369, May 21, 1973; T.D. 73–175, 38 FR 17447, July 2, 1973; T.D. 94–1, 58 FR 69471, Dec. 30, 1993; T.D. 94–4, 59 FR 140, Jan. 3, 1994; T.D. 96–48, 61 FR 28980, June 6, 1996; CBP Dec. 21-10, 86 FR 35582, July 6, 2021]

§ 134.33 J-List exceptions.

Articles of a class or kind listed below are excepted from the requirements of country of origin marking in accordance with the provisions of section 304(a)(3)(J), Tariff Act of 1930, as amended (19 U.S.C. 1304(a)(3)(J)). However, in the case of any article described in this list which is imported in a container, the outermost container in which the article ordinarily reaches the ultimate purchaser is required to be marked to indicate the origin of its contents in accordance with the requirements of subpart C of this part. All articles are listed in Treasury Decisions 49690, 49835, and 49896. A reference different from the foregoing indicates an amendment.

Articles	References
Art, works of.	
Articles classified under subheadings 9810.00.15, 9810.00.25, 9810.00.40 and 9810.00.45, Harmonized Tariff Schedule of the United States.	T.D. 66–153.
Articles entered in good faith as antiques and rejected as unauthentic.	
Bagging, waste.	
Bags, jute.	
Bands, steel.	
Beads, unstrung.	
Bearings, ball, 5/8–inch or less in diameter.	
Blanks, metal, to be plated.	
Bodies, harvest hat.	
Bolts, nuts, and washers.	
Briarwood in blocks.	
Briquettes, coal or coke.	
Buckles, 1 inch or less in greatest dimension.	
Burlap.	
Buttons.	
Cards, playing.	
Cellophane and celluloid in sheets, bands, or strips.	
Chemicals, drugs, medicinal, and similar substances, when imported in capsules, pills, tablets, lozenges, or troches.	
Cigars and cigarettes.	
Covers, straw bottle.	
Dies, diamond wire, unmounted.	
Dowels, wooden.	
Effects, theatrical.	
Eggs.	
Feathers.	
Firewood.	
Flooring, not further manufactured than planed, tongued and grooved.	T.D.s 49750; 50366(6).
Flowers, artificial, except bunches.	
Flowers, cut.	
Glass, cut to shape and size for use in clocks, hand, pocket, and purse mirrors, and other glass of similar shapes and sizes, not including lenses or watch crystals.	
Glides, furniture, except glides with prongs.	
Hairnets.	
Hides, raw.	
Hooks, fish (except snelled fish hooks).	T.D. 50205(3).
Hoops (wood), barrel.	
Laths.	
Leather, except finished.	
Livestock.	
Lumber, sawed	T.D.s 49750; 50366(6).
Metal bars, except concrete reinforcement bars; billets, blocks, blooms; ingots; pigs; plates; sheets, except galvanized sheets; shafting; slabs; and metal in similar forms.	
Mica not further manufactured than cut or stamped to dimensions, shape or form.	

Articles	References
Monuments.	
Nails, spikes, and staples.	
Natural products, such as vegetables, fruits, nuts, berries, and live or dead animals, fish and birds; all the foregoing which are in their natural state or not advanced in any manner further than is necessary for their safe transportation.	
Nets, bottle, wire.	
Paper, newsprint.	
Paper, stencil.	
Paper, stock.	
Parchment and vellum.	
Parts for machines imported from same country as parts.	
Pickets (wood).	
Pins, tuning.	
Plants, shrubs and other nursery stock.	
Plugs, tie.	
Poles, bamboo.	
Posts (wood), fence.	
Pulpwood.	
Rags (including wiping rags)	
Rails, joint bars, and tie plates covered by subheadings 7302.10.10 through 7302.90.00, Harmonized Tariff Schedule of the United States.	
Ribbon.	
Rivets.	
Rope, including wire rope; cordage; cords; twines, threads, and yarns.	
Scrap and waste.	
Screws.	
Shims, track.	
Shingles (wood), bundles of (except bundles of red-cedar shingles).	T.D. 49750.
Skins, fur, dressed or dyed.	
Skins, raw fur.	
Sponges.	
Springs, watch.	
Stamps, postage and revenue, and other articles covered in subheadings 9704.00.00 and 4807.00.00, Harmonized Tariff Schedule of the United States.	T.D. 66–153.
Staves (wood), barrel.	
Steel, hoop.	
Sugar, maple.	
Ties (wood), railroad.	
Tides, not over 1 inch in greatest dimension.	
Timbers, sawed.	
Tips, penholder.	
Trees, Christmas.	
Weights, analytical and precision in sets	T.D.s 49750; 51802.
Wicking, candle.	
Wire, except barbed.	

[T.D. 72–262, 35 FR 20318, Sept. 29, 1972, as amended by T.D. 85–123, 50 FR 29954, July 23, 1985; T.D. 89–1, 53 FR 51256, Dec. 21, 1988; T.D. 95–79, 60 FR 49752, Sept. 27, 1995]

§ 134.34 Certain repacked articles.

(a) *Exception for repacked articles.* An exception under §134.32(d) may be authorized in the discretion of the Center director for imported articles which are to be repacked after release from Customs custody under the following conditions:

(1) The containers in which the articles are repacked will indicate the origin of the articles to an ultimate purchaser in the United States.

(2) The importer arranges for supervision of the marking of the containers by Customs officers at the importer's expense or secures such verification, as may be necessary, by certification and the submission of a sample or otherwise, of the marking prior to the liquidation of the entry.

(b) *Liquidation of entries.* The liquidation of such entries may be deferred for a period of not more than 60 days from the date that a request for repacking is granted. Extensions of the 60-day deferral period may be granted by the Center director in his discretion upon written application by the importer.

[T.D. 84–127, 49 FR 22795, June 1, 1984]

§ 134.35 Articles substantially changed by manufacture.

(a) *Articles other than goods of a NAFTA or USMCA country.* An article used in the United States in manufacture which results in an article having a name, character, or use differing from that of the imported article, will be within the principle of the decision in the case of United States v. Gibson-Thomsen Co., Inc., 27 C.C.P.A. 267 (C.A.D. 98). Under this principle, the manufacturer or processor in the United States who converts or combines the imported article into the different article will be considered the ''ultimate purchaser'' of the imported article within the contemplation of section 304(a), Tariff Act of 1930, as amended (19 U.S.C. 1304(a)), and the article shall be excepted from marking. The outermost containers of the imported articles shall be marked in accord with this part.

(b) *Goods of a NAFTA or USMCA country.* A good of a NAFTA or USMCA country which is to be processed in the United States in a manner that would

result in the good becoming a good of the United States under the part 102 Rules is excepted from marking. Unless the good is processed by the importer or on its behalf, the outermost container of the good shall be marked in accord with this part.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 94–1, 58 FR 69472, Dec. 30, 1993; CBP Dec. 21-10, 86 FR 35582, July 6, 2021]

§ 134.36 Inapplicability of marking exception for articles processed by importer.

An article which is to be processed in the United States by the importer or for his account shall not be considered to be within the specifications of section 304(a)(3)(G), of the Tariff Act of 1930, as amended (19 U.S.C. 1304(a)(3)(G)), if there is a reasonable method of marking which will not be obliterated, destroyed, or permanently concealed by such processing.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 97–72, 62 FR 44214, Aug. 20, 1997]

Subpart E—Method and Location of Marking Imported Articles

§ 134.41 Methods and manner of marking.

(a) *Suggested methods of marking.* Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), requires that the marking of the country of origin be legible, indelible, and permanent. Definite methods of marking are prescribed only for articles provided for in § 134.43 and for articles which are the objects of special rulings by the Commissioner of Customs. As a general rule, marking requirements are best met by marking worked into the article at the time of manufacture. For example, it is suggested that the country of origin on metal articles be die sunk, molded in or etched; on earthenware or chinaware be glazed on in the process of firing; and on paper articles be imprinted.

(b) *Degree of permanence and visibility.* The degree of permanence should be at least sufficient to insure that in any reasonably foreseeable circumstance, the marking shall remain on the article (or its container) until it reaches the ultimate purchaser unless it is deliberately removed. The marking must survive normal distribution and store handling. The ultimate purchaser in the United States must be able to find the marking easily and read it without strain.

§ 134.42 Specific method may be required.

Marking merchandise by specific methods, such as die stamping, cast-in-the-mold lettering, etching, or engraving, or cloth labels may be required by the Commissioner of Customs in accordance with section 304(a), Tariff Act of 1930, as amended (19 U.S.C. 1304(a)). Notices of such rulings shall be published in the FEDERAL REGISTER and the Customs Bulletin.

§ 134.43 Methods of marking specific articles.

(a) *Marking previously required by certain provisions of the Tariff Act of 1930.* Except for goods of a NAFTA or USMCA country, articles of a class or kind listed below shall be marked legibly and conspicuously by die stamping, cast-in-the-mold lettering, etching (acid or electrolytic), engraving, or by means of metal plates which bear the prescribed marking and which are securely attached to the article in a conspicuous place by welding, screws, or rivets: knives, forks, steels, cleavers, clippers, shears, scissors, safety razors, blades for safety razors, surgical instruments, dental instruments, scientific and laboratory instruments, pliers, pincers, nippers and hinged hand tools for holding and splicing wire, vacuum containers, and parts of the above articles. Goods of a NAFTA or USMCA country shall be marked by any reasonable method which is legible, conspicuous and permanent as otherwise provided in this part.

(b) *Watch, clock, and timing apparatus.* The country of origin marking requirements on watches, clocks, and timing apparatus are intensive and require special methods. (See § 11.9 of this chapter and Chapter 91, Additional U.S. Note 4, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202)).

(c) *Native American-style jewelry*—(1) *Definition.* For the purpose of this provision, Native American-style jewelry is jewelry which incorporates traditional Native American design motifs,

materials and/or construction and therefore looks like, and could possibly be mistaken for, jewelry made by Native Americans.

(2) *Method of marking.* Except as provided in 19 U.S.C. 1304(a)(3) and in paragraph (c)(3) of this section, Native American-style jewelry must be indelibly marked with the country of origin by cutting, die-sinking, engraving, stamping, or some other permanent method. The indelible marking must appear legibly on the clasp or in some other conspicuous location, or alternatively, on a metal or plastic tag indelibly marked with the country of origin and permanently attached to the article.

(3) *Exception.* If it is technically or commercially infeasible to mark in the manner specified in paragraph (c)(2) of this section, or in the case of a good of a NAFTA or USMCA country, the article may be marked by means of a string tag or adhesive label securely affixed, or some other similar method.

(d) *Native American-style arts and crafts*—(1) *Definition.* For the purpose of this provision, Native American-style arts and crafts are arts and crafts, such as pottery, rugs, kachina dolls, baskets and beadwork, which incorporate traditional Native American design motifs, materials and/or construction and therefore look like, and could possibly be mistaken for, arts and crafts made by Native Americans.

(2) *Method of Marking.* Except as provided for in 19 U.S.C. 1304(a)(3) and §134.32 of this part, Native American-style arts and crafts must be indelibly marked with the country of origin by means of cutting, die-sinking, engraving, stamping, or some other equally permanent method. On textile articles, such as rugs, a sewn in label is considered to be an equally permanent method.

(3) *Exception.* Where it is technically or commercially infeasible to mark in the manner specified in paragraph (d)(2) of this section, or in the case of a good of a NAFTA or USMCA country, the article may be marked by means of a string tag or adhesive label securely affixed, or some other similar method.

(e) *Assembled articles.* Where an article is produced as a result of an assembly operation and the country of origin of such article is determined under this chapter to be the country in which the article was finally assembled, such article may be marked, as appropriate, in a manner such as the following:

(1) Assembled in (country of final assembly);

(2) Assembled in (country of final assembly) from components of (name of country or countries of origin of all components); or

(3) Made in, or product of, (country of final assembly).

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 89–1, 53 FR 51255, Dec. 21, 1988; T.D. 89–88, 54 FR 39524, Sept. 27, 1989; T.D. 90–75, 55 FR 38317, Sept. 18, 1990; T.D. 90–78, 55 FR 40166, Oct. 2, 1990; T.D. 94–1, 58 FR 69472, Dec. 30, 1993; T.D. 94–4, 59 FR 140, Jan. 3, 1994; T.D. 96–48, 61 FR 28980, June 6, 1996; CBP Dec. 21-10, 86 FR 35582, July 6, 2021]

§134.44 Location and other acceptable methods of marking.

(a) *Other acceptable methods.* Except for articles described in §134.43 of this part or the subject of a ruling by the Commissioner of Customs, any method of marking at any location insuring that country of origin will conspicuously appear on the article shall be acceptable. Such marking must be legible and sufficiently permanent so that it will remain on the article (or its container when the container and not the article is required to be marked) until it reaches the ultimate purchaser unless deliberately removed.

(b) *Articles marked with paper sticker labels.* If paper sticker or pressure sensitive labels are used, they must be affixed in a conspicuous place and so securely that unless deliberately removed they will remain on the article while it is in storage or on display and until it is delivered to the ultimate purchaser.

(c) *Articles marked with tags.* When tags are used, they must be attached in a conspicuous place and in a manner which assures that unless deliberately removed they will remain on the article until it reaches the ultimate purchaser.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 94–1, 58 FR 69472, Dec. 30, 1993]

§ 134.45 Approved markings of country name.

(a) *Language.* (1) Except as otherwise provided in paragraph (a)(2) of this section, the markings required by this part shall include the full English name of the country of origin, unless another marking to indicate the English name of the country of origin is specifically authorized by the Commissioner of Customs. Notice of acceptable markings other than the full English name of the country of origin shall be published in the FEDERAL REGISTER and the Customs Bulletin.

(2) A good of a NAFTA or USMCA country may be marked with the name of the country of origin in English, French or Spanish.

(b) *Abbreviations and variant spellings.* Abbreviations which unmistakably indicate the name of a country, such as ''Gt. Britain'' for ''Great Britain'' or ''Luxemb'' and ''Luxembg'' for ''Luxembourg'' are acceptable. Variant spellings which clearly indicate the English name of the country of origin, such as ''Brasil'' for ''Brazil'' and ''Italie'' for ''Italy,'' are acceptable.

(c) *Adjectival form.* The adjectival form of the name of a country shall be accepted as a proper indication of the name of the country of origin of imported merchandise provided the adjectival form of the name does not appear with other words so as to refer to a kind or species of product. For example, such terms as ''English walnuts'' or ''Brazil nuts'' are unacceptable.

(d) *Colonies, possessions, or protectorates.* The name of a colony, possession, or protectorate outside the boundaries of the mother country shall usually be considered acceptable marking. When the Commissioner of Customs finds that the name is not sufficiently well known to insure that the ultimate purchasers will be fully informed of the country of origin, or where the name appearing alone may cause confusion, deception, or mistake, clarifying words shall be required. In such cases, the Commissioner of Customs shall specify in decisions published in the FEDERAL REGISTER and the Customs Bulletin the additional wording to be used in conjunction with the name of the colony, possession, or protectorate.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 94–1, 58 FR 69472, Dec. 30, 1993; CBP Dec. 21-10, 86 FR 35582, July 6, 2021]

§ 134.46 Marking when name of country or locality other than country of origin appears.

In any case in which the words ''United States,'' or ''American,'' the letters ''U.S.A.,'' any variation of such words or letters, or the name of any city or location in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced appear on an imported article or its container, and those words, letters or names may mislead or deceive the ultimate purchaser as to the actual country of origin of the article, there shall appear legibly and permanently in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by ''Made in,'' ''Product of,'' or other words of similar meaning.

[T.D. 97–72, 62 FR 44214, Aug. 20, 1997]

§ 134.47 Souvenirs and articles marked with trademarks or trade names.

When as part of a trademark or trade name or as part of a souvenir marking, the name of a location in the United States or ''United States'' or ''America'' appear, the article shall be legibly, conspicuously, and permanently marked to indicate the name of the country of origin of the article preceded by ''Made in,'' ''Product of,'' or other similar words, in close proximity or in some other conspicuous location.

Subpart F—Articles Found Not Legally Marked

§ 134.51 Procedure when importation found not legally marked.

(a) *Notice to mark or redeliver.* When articles or containers are found upon examination not to be legally marked, the Center director shall notify the importer on Customs Form 4647, or its electronic equivalent, to arrange with the Center director's office to properly mark the article or containers, or to

return all released articles to Customs custody for marking, exportation, or destruction.

(b) *Identification of articles.* When an imported article which is not legally marked is to be exported, destroyed, or marked under Customs supervision, the identity of the imported article shall be established to the satisfaction of the Center director.

(c) *Supervision.* Verification of marking, exportation, or destruction of articles found not to be legally marked shall be at the expense of the importer and shall be performed under Customs supervision unless the Center director accepts a certificate of marking as provided for in §134.52 in lieu of marking under Customs supervision.

[T.D. 72-262, 37 FR 20318, Sept. 29, 1972, as amended by CBP Dec. 15–14, 80 FR 61288, Oct. 13, 2015]

§134.52 Certificate of marking.

(a) *Applicability.* Center directors may accept certificates of marking supported by samples of articles required to be marked, for which Customs Form 4647, or its electronic equivalent, was issued, from importers or from actual owners complying with the provision of §141.20 of this chapter, to certify that marking of the country of origin on imported articles as required by this part has been accomplished.

(b) *Filing of certificates of marking.* The certificates of marking shall be filed in duplicate with CBP, either at the port of entry or electronically, and a sample of the marked merchandise shall accompany the certificate. The Center director may waive the production of the marked sample when he is satisfied that the submission of such sample is impracticable.

(c) *Notice of acceptance.* The Center director shall notify the importer or actual owner when the certificate of marking is accepted. Such notice of acceptance may be granted on the duplicate copy of the certificate of marking by use of a stamped notation of acceptance. The Center director is authorized to spot check the marking of articles on which a certificate has been filed. If a spot check is performed, the approved copy of the certificate, if approval is granted, shall be returned to the importer or actual owner after the spot check is completed.

(d) *Filing of false certificate of marking.* If a false certificate of marking is filed with the Center director indicating that goods have been properly marked when in fact they have not been so marked, a seizure shall be made or claim for monetary penalty reported under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592). In addition, in cases involving, willful deceit, a criminal case report may be made charging a violation of section 1001, title 18, United States Code, which provides for a fine up to $10,000 and/or imprisonment up to 5 years for anyone who willfully conceals a material fact or uses any document knowing the same to contain any false or fraudulent statement in connection with any matter within the jurisdiction of an agency of the United States.

(e) *Authority to require physical supervision when deemed necessary.* The Center director may require physical supervision of marking as specified in §134.51(c) in those cases in which he determines that such action is necessary to insure compliance with this part. In such cases the expenses of the Customs officer shall be reimbursed to the Government as provided for in §134.55.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 73–175, 38 FR 17447, July 2, 1973; T.D. 84–18, 49 FR 1678, Jan. 13, 1984; CBP Dec. 15–14, 80 FR 61288, Oct. 13, 2015; CBP Dec. 16–26, 81 FR 93018, Dec. 20, 2016]

§134.53 Examination packages.

(a) *Site of marking*—(1) *Customs custody.* Articles (or containers) in examination packages may be marked by the importer at the place where they have been discharged from the importing or bonded carrier or in the public stores.

(2) *Importer's premises or elsewhere.* If it is impracticable to mark the articles (or containers) in examination packages as provided in paragraph (a)(1) of this section, the merchandise may be turned over to the importer after the amount of duty, estimated to be payable under 19 U.S.C. 1304(f) has been deposited to insure compliance with the marking requirements and the payment of any additional expense which will be incurred on account of Customs

supervision. (See §134.55.) The Center director may at his discretion accept the bond on Customs Form 301, containing the basic importation and entry bond conditions set forth in §113.62 of this chapter as security for the requirements of 19 U.S.C. 1304 (f) and (g).

(b) *Failure to export, destroy, or properly mark merchandise in examination packages.* If the articles (or containers) in examination packages are not exported, destroyed, or properly marked by the importer within a reasonable time (not more than 30 days), they shall be sent to general-order stores for disposition in accordance with part 127 of this chapter, unless covered by a warehouse entry. If covered by a warehouse entry, they shall be sent to the warehouse containing the rest of the shipment for marking prior to withdrawal.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 78–99, 43 FR 13061, Mar. 29, 1978; T.D. 84–213, 49 FR 41183, Oct. 19, 1984; T.D. 90–51, 55 FR 28191, July 10, 1990]

§134.54 Articles released from Customs custody.

(a) *Demand for liquidated damages.* If within 30 days from the date of the notice of redelivery, or such additional period as the Center director may allow for good cause shown, the importer does not properly mark or redeliver all merchandise previously released to him, the port director shall demand payment of liquidated damages incurred under the bond in an amount equal to the entered value of the articles not properly marked or redelivered.

(b) *Failure to petition for relief.* A written petition addressed to the Commissioner of Customs for relief from the payment of liquidated damages may be filed with the Fines, Penalties, and Forfeitures Officer in accord with part 172 of this chapter.

(c) *Relief from full liquidated damages.* Any relief from the payment of the full liquidated damages incurred will be contingent upon the deposit of the marking duty required by 19 U.S.C. 1304(f), and the satisfaction of the Fines, Penalties, and Forfeitures Officer that the importer was not guilty of bad faith in permitting the illegally marked articles to be distributed, has been diligent in attempting to secure compliance with the marking requirements, and has attempted by all reasonable means to effect redelivery of the merchandise.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 79–159, 44 FR 31969, June 4, 1979; T.D. 83–217, 48 FR 48659, Oct. 20, 1983; T.D. 90–51, 55 FR 28191, July 10, 1990; T.D. 99–27, 64 FR 13675, Mar. 22, 1999; T.D. 00–57, 65 FR 53575, Sept. 5, 2000; CBP Dec. 16–26, 81 FR 93018, Dec. 20, 2016]

§134.55 Compensation of Customs officers and employees.

(a) *Time for which compensation is charged.* The time for which compensation is charged shall include all periods devoted to supervision and all periods during which Customs officers or employees are away from their regular posts of duty by reason of such assignment and for which compensation to such officers and employees is provided for by law.

(b) *Applicability*—(1) *Official hours.* The compensation of Customs Officers or employees assigned to supervise the exportation, destruction, or marking of articles so as to exempt them from the application of marking duties shall be computed in accordance with the provisions of §§24.16 or 24.17(a)(3), respectively, of this chapter when such supervision is performed during a regularly-scheduled tour of duty.

(2) *Overtime.* When such supervision is performed by a Customs Officer or employee in an overtime status, the compensation with respect to the overtime shall be computed in accordance with the provisions of §24.16 or §24.17, respectively, of this chapter.

(c) *Expenses included.* In formulating charges for expenses pertaining to supervision of exportation, destruction, or marking, there shall be included all expenses of transportation, per diem allowance in lieu of subsistence, and all other expenses incurred by reason of such supervision from the time the Customs officer leaves his official station until he returns thereto.

(d) *Services rendered for more than one importer.* If the importations of more than one importer are concurrently supervised, the service rendered for each

importer shall be regarded as a separate assignment, but the total amount of the compensation, and any expenses properly applicable to more than one importer, shall be equitably apportioned among the importers concerned.

[T.D. 72–262, 37 FR 20318, Sept. 29, 1972, as amended by T.D. 94–74, 59 FR 46757, Sept. 12, 1994]

PARTS 135–140 [RESERVED]

FINDING AIDS

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EDITORIAL NOTE: This listing is provided for information purposes only. It is compiled and kept up-to-date by the U.S. Customs and Border Protection, Department of Homeland Security, Department of the Treasury. This index is updated as of April 1, 2023.

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List of CFR Sections Affected

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For changes to this volume of the CFR prior to this listing, consult the annual edition of the monthly List of CFR Sections Affected (LSA). The LSA is available at *www.govinfo.gov*. For changes to this volume of the CFR prior to 2001, see the ''List of CFR Sections Affected, 1949–1963, 1964–1972, 1973–1985, and 1986–2000'' published in 11 separate volumes. The ''List of CFR Sections Affected 1986–2000'' is available at *www.govinfo.gov*.

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24 Authority citation amended 40676
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CODE OF FEDERAL REGULATIONS

Title 19
Customs Duties

Parts 141 to 199

Revised as of April 1, 2022

Containing a codification of documents
of general applicability and future effect

As of April 1, 2022

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OLIVER A. POTTS,
Director,
Office of the Federal Register
April 1, 2022

THIS TITLE

Title 19—CUSTOMS DUTIES is composed of three volumes. The first two volumes, parts 0—140 and parts 141—199 contain the regulations in Chapter I—U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury. The third volume, part 200 to end, contains the regulations in Chapter II—United States International Trade Commission; Chapter III—International Trade Administration, Department of Commerce; and Chapter IV—U.S. Immigration and Customs Enforcement, Department of Homeland Security. The contents of these volumes represent all current regulations issued under this title of the CFR as of April 1, 2022.

A Subject Index to Chapter I—U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury appears in the Finding Aids section of the first two volumes.

For this volume, Cheryl E. Sirofchuck was Chief Editor. The Code of Federal Regulations publication program is under the direction of John Hyrum Martinez, assisted by Stephen J. Frattini.

Title 19—Customs Duties

(This book contains parts 141 to 199)

CHAPTER I—U.S. CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY; DEPARTMENT OF THE TREASURY (CONTINUED)

EDITORIAL NOTE: Nomenclature changes to chapter I appear by T.D. 95–78, 60 FR 50021, Sept. 27, 1995, and by CBP Dec. 07–82, 72 FR 59167, Oct. 19, 2007.

PART 141—ENTRY OF MERCHANDISE

AUTHORITY: 19 U.S.C. 66, 1448, 1484, 1498, 1624.

Subpart F also issued under 19 U.S.C. 1481;
Subpart G also issued under 19 U.S.C. 1505;
Section 141.1 also issued under 11 U.S.C. 507(a)(7)(F), 31 U.S.C. 191, 192;
Section 141.4 also issued under 19 U.S.C. 1202 (General Note 3(e); Chapter 86, Additional U.S. Note 1; Chapter 89, Additional U.S. Note 1; Chapter 98, Subchapter III, U.S. Notes 3 and 4; Harmonized Tariff Schedule of the United States), 1498;
Section 141.19 also issued under 19 U.S.C. 1485, 1486;
Section 141.20 also issued under 19 U.S.C. 1485, 1623;
Section 141.66 also issued under 19 U.S.C. 1490, 1623;
Section 141.68 also issued under 19 U.S.C. 1315;
Section 141.69 also issued under 19 U.S.C. 1315;
Section 141.88 also issued under 19 U.S.C. 1401a(d), 1402(f);
Section 141.90 also issued under 19 U.S.C. 1487;
Section 141.112 also issued under 19 U.S.C. 1564;
Section 141.113 also issued under 19 U.S.C. 1499, 1623.

SOURCE: T.D. 73–175, 38 FR 17447, July 2, 1973, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 141 appear by CBP Dec. No. 16–26, 81 FR 93019, Dec. 20, 2016.

§ 141.0 Scope.

This part sets forth general requirements and procedures for the entry of imported merchandise, except entries under carnet, and entries for transportation in bond or exportation, for foreign-trade zones, or for trade fairs, which are covered in parts 114, 18, 146, and 147 of this chapter. More specific requirements and procedures in addition to those in this part are set forth in parts 143, 144, and 145 of this chapter for consumption, appraisement and informal entries, for warehouse entries, and for mail entries.

§ 141.0a Definitions.

Unless the context requires otherwise or a different definition is prescribed, the following terms will have the meanings indicated when used in connection with the entry of merchandise:

(a) *Entry*. ''Entry'' means that documentation or data required by §142.3 of this chapter to be filed with the appropriate CBP officer or submitted electronically to the Automated Commercial Environment (ACE) or any other CBP-authorized electronic data interchange system to secure the release of imported merchandise from CBP custody, or the act of filing that documentation. ''Entry'' also means that documentation or data required by §181.53 of this chapter to be filed with CBP to withdraw merchandise from a duty-deferral program in the United States for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico.

(b) *Entry summary*. ''Entry summary'' means any other documentation or electronic submission of data necessary to enable CBP to assess duties, and collect statistics on imported merchandise, and determine whether other requirements of law or regulation are met.

(c) *Submission*. ''Submission'' means the voluntary delivery to the appropriate CBP officer or electronic submission to the Automated Commercial Environment (ACE) or any other CBP-authorized electronic data interchange system of the entry summary documentation or data for preliminary review or of entry documentation or data for other purposes.

(d) *Filing*. ''Filing'' means:

(1) The delivery to CBP, including electronic submission to the Automated Commercial Environment (ACE) or any other CBP-authorized electronic data interchange system, of the entry documentation or data required by section 484(a), Tariff Act of 1930, as amended (19 U.S.C. 1484(a)), to obtain the release of merchandise, or

(2) The delivery to CBP, including electronic submission to the Automated Commercial Environment (ACE) or any other CBP-authorized electronic data interchange system, together with the deposit of estimated duties, of the entry summary documentation or data required to assess duties, collect statistics, and determine whether other requirements of law and regulation are met, or

(3) The delivery to CBP, including electronic submission to the Automated Commercial Environment (ACE) or any other CBP-authorized electronic data interchange system, together with the deposit of estimated duties, of the entry summary documentation or data,

which will serve as both the entry and the entry summary.

(e) *Presentation.* ''*Presentation*'' is used only in connection with quota-class merchandise and is defined in § 132.1(d) of this chapter.

(f) *Entered for consumption.* ''Entered for consumption'' means that an entry summary for consumption has been filed with CBP in proper form, including electronic submission to the Automated Commercial Environment (ACE) or any other CBP-authorized electronic data interchange system, with estimated duties attached. ''Entered for consumption'' also means the necessary documentation has been filed with CBP to withdraw merchandise from a duty-deferral program in the United States for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico (see § 181.53 of this chapter).

(g) *Entered for warehouse.* ''Entered for warehouse'' means that an entry summary for warehouse has been filed with CBP in proper form, including electronic submission to the Automated Commercial Environment (ACE) or any other CBP-authorized electronic data interchange system.

(h) *Entered temporarily under bond.* ''Entered temporarily under bond'' means that an entry summary supporting a temporary importation under bond has been filed with CBP in proper form, including electronic submission to the Automated Commercial Environment (ACE) or any other CBP-authorized electronic data interchange system.

(i) *Released conditionally.* ''Released conditionally'' means any release from CBP custody before liquidation.

[CBP Dec. No. 15–14, 80 FR 61288, Oct. 13, 2015]

Subpart A—Liability for Duties and Requirement To Enter Merchandise

§ 141.1 Liability of importer for duties.

(a) *Time duties accrue.* Duties and the liability for their payment accrue upon imported merchandise on arrival of the importing vessel within a Customs port with the intent then and there to unlade, or at the time of arrival within the Customs territory of the United States if the merchandise arrives otherwise than by vessel, unless otherwise specially provided for by law.

(b) *Payment of duties*—(1) *Personal debt of importer.* The liability for duties, both regular and additional, attaching on importation, constitutes a personal debt due from the importer to the United States which can be discharged only by payment in full of all duties legally accruing, unless relieved by law or regulation. Payment to a broker covering duties does not relieve the importer of liability if the duties are not paid by the broker. The liability may be enforced notwithstanding the fact that an erroneous construction of law or regulation may have enabled the importer to pass his goods through the customhouse without payment. Delivery of a Customs bond with an entry is solely to protect the revenue of the United States and does not relieve the importer of liabilities incurred from the importation of merchandise into the United States.

(2) *Means of payment.* An importer or his agent may pay Customs by using any of the applicable means provided in § 24.1(a).

(3) *Methods of payment.* An importer may pay duties either:

(i) Directly to Customs whether or not a licensed customhouse broker is used; or

(ii) Through a licensed customhouse broker. When an importer uses a broker and elects to pay by check or bank draft, the importer may issue the broker either:

(A) One check or bank draft payable to the broker covering both duties and the broker's fees and charges, in which case the broker shall pay the duties to Customs on behalf of the importer, or

(B) Separate checks or bank drafts, one covering duties payable to the ''U.S. Customs Service,'' for transmittal by the broker to Customs, and the other covering the broker's fees and charges. The importer's check or bank draft for duties shall be delivered to Customs by the broker.

(c) *Claim against estate of importer.* The claim of the Government for unpaid duties against the estate of a deceased or insolvent importer has priority over obligations to creditors other than the United States. To the

extent that a broker or a surety pays duties on behalf of an importer which files for bankruptcy protection, the broker or surety shall be entitled to assume the priority status of Customs under section 507(a)(7) of the Bankruptcy Code for that portion of Customs claim which the surety or broker has paid.

(d) *Lien against merchandise.* The liability for duties also constitutes a lien upon the merchandise imported which may be enforced while such merchandise is in the custody or subject to the control of the United States.

(e) *States and their instrumentalities.* Neither the States nor their instrumentalities are entitled to any constitutional exemption from the payment of Customs duties.

(f) *Unordered merchandise.* There shall be no liability for the payment of duties on the part of anyone to whom merchandise is consigned without his authority, if he refuses it. Such merchandise shall be treated as unclaimed (see part 27 of this chapter).

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 82–134, 47 FR 32419, July 27, 1982; T.D. 92–58, 57 FR 27160, June 18, 1992; T.D. 97–82, 62 FR 51770, Oct. 3, 1997]

§ 141.2 Liability for duties on reimportation.

Dutiable merchandise imported and afterwards exported, even though duty thereon may have been paid on the first importation, is liable to duty on every subsequent importation into the Customs territory of the United States, but this does not apply to the following:

(a) Personal and household effects taken abroad by a resident of the United States and brought back on his return to this country (see §148.31 of this chapter);

(b) Professional books, implements, instruments, and tools of trade, occupation, or employment taken abroad by an individual and brought back on his return to this country (see §148.53 of this chapter);

(c) Automobiles and other vehicles taken abroad for noncommercial use (see §148.32 of this chapter);

(d) Metal boxes, casks, barrels, carboys, bags, quicksilver flasks or bottles, metal drums, or other substantial outer containers exported from the United States empty and returned as usual containers or coverings of merchandise, or exported filled with products of the United States and returned empty or as the usual containers or coverings of merchandise (see §10.7(b), (c), (d), and (e) of this chapter);

(e) Articles exported from the United States for repairs or alterations, which may be returned upon the payment of duty on the value of repairs or alterations at the rate or rates which would otherwise apply to the articles in their repaired or altered conditions (see §10.8 of this chapter);

(f) Articles exported for exhibition under certain conditions (see §§10.66 and 10.67 of this chapter);

(g) Domestic animals taken abroad for temporary pasturage purposes and returned within 8 months (see §10.74 of this chapter);

(h) Articles exported under lease to a foreign manufacturer (see §10.108 of this chapter); or

(i) Any other reimported articles for which free entry is specifically provided.

§ 141.3 Liability for duties includes liability for taxes.

The importer's liability for duties includes a liability for any internal revenue taxes which attach upon the importation of merchandise, unless otherwise provided by law or regulation.

§ 141.4 Entry required.

(a) *General.* All merchandise imported into the United States is required to be entered, unless specifically excepted.

(b) *Exceptions.* The following are the exceptions to the general rule:

(1) The exemptions listed in General Note 3(e) to the Harmonized Tariff Schedule of the United States (HTSUS).

(2) Vessels (not including vessels classified in headings 8903 and 8907 and subheadings 8905.90.10 and 8906.00.10 or in Chapter 98, HTSUS, such as under subheadings 9804.00.35 or 9813.00.35). See also Chapter 89, Additional U.S. Note 1, HTSUS.

(3) Instruments of international traffic described in §10.41a and §10.41b(b) of this chapter, under the conditions provided for in those sections. See also

Chapter 98, Subpart III, U.S. Notes 3 and 4, HTSUS.

(4) Railway locomotives classified in heading 8601 or 8602, HTSUS, and freight cars classified in heading 8606, HTSUS, on which no duty is owed (see paragraph (d) of this section). See Chapter 86, Additional U.S. Note 1, HTSUS; see also 19 CFR part 123 for reporting requirements for railway equipment brought into the United States from Canada or Mexico.

(c) *Undeliverable articles.* The exemption from entry for undeliverable articles under General Note 3(e), HTSUS, is subject to the following conditions:

(1) The person claiming the exemption must submit a certification (documentary or electronic) that:

(i) The merchandise was intended to be exported to a foreign country;

(ii) The merchandise is being returned within 45 days of departure from the United States;

(iii) The merchandise did not leave the custody of the carrier or foreign customs;

(iv) The merchandise is being returned to the United States because it was undeliverable to the foreign consignee; and

(v) The merchandise was not sent abroad to receive benefit from, or fulfill obligations to, the United States as a result of exportation.

(2) Upon request by CBP, the person claiming the exemption shall provide evidence required to support the claim for exemption.

(d) *Railway locomotives and freight cars.* For railway locomotives and freight cars described in Additional U.S. Note 1 of Chapter 86, HTSUS, to be excepted and released in accordance with paragraph (b)(4) of this section, the importer must first file a bond on CBP Form 301, containing the bond conditions set forth in either §113.62 or 113.64 of this chapter.

(e) *Informal entry.* Merchandise qualifying for informal entry by regulation, pursuant to 19 U.S.C. 1498, is exempt from formal entry under 19 U.S.C. 1484 and this part, but must be entered as required under applicable regulations (see part 143, subpart C, and §§10.151 through 10.153, 128.24, 145.31, 145.32, 148.12, 148.13, 148.51, and 148.62 of this chapter).

[T.D. 94–51, 59 FR 30295, June 13, 1994]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §141.4, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§141.5 Time limit for entry.

Merchandise for which entry is required will be entered within 15 calendar days after landing from a vessel, aircraft or vehicle, or after arrival at the port of destination in the case of merchandise transported in bond. Merchandise for which timely entry is not made will be treated in accordance with §4.37 or §122.50 or §123.10 of this chapter.

[T.D. 02–65, 67 FR 68035, Nov. 8, 2002]

Subpart B—Right To Make Entry and Declarations on Entry

§141.11 Evidence of right to make entry for importations by common carrier.

(a) *Merchandise not released directly to carrier.* Except where merchandise is released directly to the carrier in accordance with paragraph (b) of this section, one of the following types of evidence of the right to make entry shall be filed in connection with the entry of merchandise imported by common carrier:

(1) A bill of lading or air waybill, presented by the holder thereof, properly endorsed when endorsement is required under the law. A nonnegotiable bill of lading, or air waybill, may not be endorsed by the named consignee to give someone else the right to make entry. If the person making entry intends to use the original bill of lading or air waybill to obtain a duplicate bill of lading, duplicate air waybill, or carrier's certificate from the carrier, the exchange shall be made before the entry is filed, and the duplicate bill of lading, duplicate air waybill, or carrier's certificate shall be used to make entry in accordance with paragraph (a)(3) or (4) of this section. For purposes of this part, the rights of the consignor relating to an air waybill as prescribed

by the Warsaw Convention (49 Stat. 3017) shall be protected.

(2) An extract from a bill of lading or air waybill certified to be genuine by the carrier bringing the merchandise to the port of entry. Customs officers shall not certify extracts from bills of lading or air waybills.

(3) A certified duplicate bill of lading or air waybill, with the carrier's certificate being in substantially the following form:

DUPLICATE BILL OF LADING OR AIR WAYBILL CERTIFICATE

_____, 19—

The undersigned carrier, bringing the within-described merchandise to this port, hereby certifies that this signed copy of the bill of lading or air waybill is genuine and may be used for the purpose of making Customs entry as provided for in section 484(i), Tariff Act of 1930.

_____
(Name of carrier)

_____
(Agent)

(4) A carrier's certificate, which may be executed on the official entry form, or, in appropriate cases, by means of a rubber-stamped or typewritten combined carrier's certificate and release order with one signature on a copy of the bill of lading, airway bill, shipping receipt, or other comparable document. The rubber-stamped or typewritten certificate shall be in substantially the following form, which may be varied to include any of the qualifications on release shown in §141.111(d):

Date _____

The undersigned carrier, to whom or upon whose order the articles described herein or in the attached document must be released, hereby certifies that the consignee named in this document is the owner or consignee of such articles within the purview of section 484(h), Tariff Act of 1930. In accordance with the provisions of section 484(j), Tariff Act of 1930, authority is hereby given to release the articles covered by the aforementioned statement to such consignee.

_____
(Name of carrier)

_____
(Agent)

(5) A blanket carrier's release order on an appropriately modified bill of lading or air waybill covering any or all shipments which will arrive at the port on the carrier's conveyance during the period specified in the release order.

(6) A shipping receipt or other document presented in lieu of a bill of lading or air waybill shall be accepted as authority for making entry only if it bears a carrier's certificate in accordance with paragraph (a)(4) of this section, or if entry is made by the actual consignee in person or in his name by a duly authorized agent.

(b) *Merchandise released directly to carrier.* Where, in accordance with subsection (j) of section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), merchandise is released from Customs custody (either under immediate delivery procedures in accordance with the provisions of subpart C of part 142 of this chapter, or after an entry has been filed in accordance with subpart A of part 142 of this chapter, or after an entry summary, which shall serve as both the entry and entry summary has been filed with estimated duties attached where appropriate in accordance with subpart B of part 142 of this chapter), to the carrier by whom the merchandise was brought to the port, the delivery of the merchandise by the carrier to the person filing the entry summary with estimated duties attached shall be deemed to be the certification required by subsection (h), section 484, Tariff Act of 1930. Customs responsibility under this optional entry procedure is limited to the collection of duties, and constitutes no representation whatsoever regarding the right of any person to obtain possession of the merchandise from the carrier. Consequently, no Customs official shall be liable to any person in respect to the delivery of merchandise released from Customs custody in accordance with the provisions of this paragraph.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 78–394, 43 FR 49787, Oct. 25, 1978; T.D. 82–224, 47 FR 53727, Nov. 29, 1982; T.D. 87–75, 52 FR 20068, May 29, 1987; T.D. 90–87, 55 FR 47052, Nov. 9, 1990; T.D. 97–82, 62 FR 51770, Oct. 3, 1997]

§141.12 Right to make entry of importations by other than common carrier.

When merchandise is not imported by a common carrier, possession of the

merchandise at the time of arrival in the United States shall be deemed sufficient evidence of the right to make entry.

§ 141.13 Right to make entry of abandoned or salvaged merchandise.

Underwriters of abandoned merchandise or salvors of merchandise saved from a wreck who are unable to produce a bill of lading, air waybill, certified duplicate bill of lading or air waybill, or carrier's certificate, shall produce evidence satisfactory to the port director of their right to act.

[T.D. 78–394, 43 FR 49787, Oct. 25, 1978]

§ 141.14 Deceased or insolvent consignees and court-appointed administrators.

The executor or administrator of the estate of a deceased consignee, the receiver or other legal representative of an insolvent consignee, or the representative appointed in any action or proceeding at law to act for a consignee shall not be permitted to make entry unless he produces a duly endorsed bill of lading or air waybill, a carrier's certificate, or a duplicate bill of lading or air waybill, executed in accordance with subsections (h) or (i) of section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), showing him to be the consignee for Customs purposes.

[T.D. 78–394, 43 FR 49787, Oct. 25, 1978]

§ 141.15 Bond for production of bill of lading or air waybill.

(a) *When appropriate.* If the person desiring to make entry is unable to present a bill of lading, air waybill, or other evidence of right to make entry in accordance with § 141.11, the port director may accept a bond for the production of a bill of lading or air waybill under the provisions of section 484(c), Tariff Act of 1930, as amended (19 U.S.C. 1484(c)). The bond shall be for the production of a bill of lading or air waybill, unless the person making entry intends to produce a carrier's certificate or certified duplicate bill of lading or air waybill. In that case, no bond is required because section 484(c) does not apply to entries made on a carrier's certificate or certified duplicate bill of lading or air waybill. If the port director is in doubt as to the propriety of accepting entry on a bond for the production of a bill of lading or air waybill, he shall request authority to do so from the Commissioner of Customs.

(b) *Form.* The bond shall be on Customs Form 301 and contain the bond conditions set forth in § 113.69 of this chapter.

(c) *Documents acceptable to satisfy bond.* A bond given for the production of a bill of lading or air waybill shall be considered as canceled upon production of a bill of lading or air waybill, and may be considered as satisfied but shall not be canceled upon the production of a carrier's certificate or certified duplicate bill of lading or air waybill.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 78–394, 43 FR 49788, Oct. 25, 1978; T.D. 84–213, 49 FR 41184, Oct. 19, 1984]

§ 141.16 Disposition of documents.

(a) *Bill of lading or air waybill.* When the return of the bill of lading or air waybill to the person making entry is requested in accordance with section 484(j), Tariff Act of 1930, as amended (19 U.S.C. 1484(j)), the port director shall obtain a receipt showing sufficient data from the bill of lading or air waybill to completely identify it and enable the auditor to verify the production of proper evidence of the right to make entry. The receipt shall also show any freight charges and weights that appear on the bill of lading or air waybill. The port director shall then return the bill of lading or air waybill to the person making entry with a notation thereon to the effect that entry has been made for the merchandise.

(b) *Other documents.* When any of the other documents specified in § 141.11(a)(2) through (6) is used in making entry, it shall be retained by the port director as evidence that the person making entry is authorized to do so.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 78–394, 43 FR 49788, Oct. 25, 1978]

§ 141.17 Entry by nonresident consignee.

A nonresident consignee has the right to make entry, but any bond

taken in connection with the entry shall have a resident corporate surety or, when a carnet issued under part 114 of this chapter is used as an entry form, an approved resident guaranteeing association.

§ 141.18 Entry by nonresident corporation.

A nonresident corporation (*i.e.*, one which is not incorporated within the customs territory of the United States or in the Virgin Islands of the United States) may not enter merchandise for consumption unless it:

(a) Has a resident agent in the State where the port of entry is located who is authorized to accept service of process against that corporation or, in the case of an entry filed from a remote location pursuant to subpart E of part 143 of this chapter, has a resident agent authorized to accept service of process against that corporation either in the State where the port of entry is located or in the State from which the remote location filing originates; and

(b) Files a bond on CBP Form 301, containing the bond conditions set forth in § 113.62 of this chapter having a resident corporate surety to secure the payment of any increased and additional duties which may be found due.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 84–213, 49 FR 41184, Oct. 19, 1984; CBP Dec. 09–47, 74 FR 69018, Dec. 30, 2009]

§ 141.19 Declaration of entry.

(a) *Declaration by consignee.* The consignee in whose name an entry is made under the provisions of section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), shall execute the declaration specified in section 485(a), Tariff Act of 1930, as amended (19 U.S.C. 1485(a)) on:

(1) The entry summary for merchandise entered for consumption, for warehouse, or for temporary importation under bond, or

(2) The rewarehouse or the bonded manufacturing warehouse entry.

The declaration need not be under oath. When the consignee is a partnership, any partner may execute the declaration, and when the consignee is a corporation any officer of the corporation may execute the declaration.

(b) *Declaration by agent of consignee—*(1) *Authorized agent with knowledge of the facts.* When entry is made in a consignee's name by an agent who has knowledge of the facts and who is authorized under a proper power of attorney by that consignee to make declarations in accordance with section 485(f), Tariff Act of 1930, as amended (19 U.S.C. 1485(f)), a declaration on the entry or entry summary executed by that agent is sufficient and no bond to produce a declaration of the consignee is required.

(2) *Other agents.* When entry is made in a consignee's name by an agent who does not meet the qualifications in paragraph (b)(1) of this section either:

(i) A declaration of the consignee on Customs Form 3347–A shall be filed with the entry documentation or entry summary or

(ii) A charge for the production of the declaration shall be made against the bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. No separate bond of the agent shall be required, since a charge against the bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter satisfies the requirements of section 485(c), Tariff Act of 1930, as amended (19 U.S.C. 1485(c)).

(3) *Nominal consignee.* A nominal consignee who makes entry in his own name is not considered an agent within the purview of section 485(c), Tariff Act of 1930, as amended (19 U.S.C. 1485(c)), and he shall execute a declaration in accordance with paragraph (a) of this section.

(c) *Books, newspapers, and periodicals.* In the case of successive importations of books, magazines, newspapers, and periodicals within the scope of section 485(b), Tariff Act of 1930, as amended (19 U.S.C. 1485(b)), one declaration filed at the time of arrival of the first importation will be sufficient.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 79–221, 44 FR 46816, June 4, 1979; T.D. 84–213, 49 FR 41184, Oct. 19, 1984]

§ 141.20 Actual owner's declaration and superseding bond of actual owner.

(a) *Filing*—(1) *Declaration of owner*. A consignee in whose name an entry summary for consumption, warehouse, or temporary importation under bond is filed, or in whose name a rewarehouse entry or a manufacturing warehouse entry is made, and who desires, under the provisions of section 485(d), Tariff Act of 1930, as amended (19 U.S.C. 1485(d)), to be relieved from statutory liability for the payment of increased and additional duties shall declare at the time of the filing of the entry summary or entry documentation, as provided in §141.19(a), that he is not the actual owner of the merchandise, furnish the name and address of the owner, and file with CBP, either at the port of entry or electronically within 90 days from the time of entry (see §141.68) a declaration of the actual owner of the merchandise acknowledging that the actual owner will pay all additional and increased duties. The declaration of owner shall be filed on Customs Form 3347.

(2) *Bond of actual owner*. If the consignee desires to be relieved from contractual liability for the payment of increased and additional duties voluntarily assumed by him under the single-entry bond which he filed in connection with the entry documentation and/or entry summary, or under his continuous bond against which the entry and/or entry summary is charged, he shall file a bond of the actual owner on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter, with CBP, either at the port of entry or electronically within 90 days from the time of entry.

(b) *Appropriate party to execute and file*. Neither the declaration of the actual owner nor the bond of the actual owner shall be accepted unless executed by the actual owner or his duly authorized agent, and filed by the nominal consignee or his duly authorized agent.

(c) *Nonresident actual owner*. If the actual owner is a nonresident, the actual owner's declaration shall not be accepted as compliance with section 485(d), Tariff Act of 1930, as amended (19 U.S.C. 1485(d)), unless there is filed therewith the owner's bond on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter, with a resident corporate surety.

(d) *Filing of declaration of owner for purposes other than relief from liability*. Nothing in this section shall be construed to prevent the nominal consignee from filing the actual owner's declaration without the superseding bond for purposes other than relief from statutory liability for the payment of increased and additional duties under the provisions of section 485(d), Tariff Act of 1930, as amended (19 U.S.C. 1485(d)).

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 74–212, 39 FR 28420, Aug. 7, 1974; T.D. 79–221, 44 FR 46816, Aug. 9, 1979; T.D. 84–213, 49 FR 41184, Oct. 19, 1984]

Subpart C—Powers of Attorney

§ 141.31 General requirements and definitions.

(a) *Limited or general power of attorney*. A power of attorney may be executed for the transaction by an agent or attorney of a specified part or all the Customs business of the principal.

(b) [Reserved]

(c) *Minor agents*. A power of attorney to a minor shall not be accepted.

(d) *Definitions of resident and nonresident*. For the purposes of this subpart, ''resident'' means an individual who resides within, or a partnership one or more of whose partners reside within, the Customs territory of the United States or the Virgin Islands of the United States, or a corporation incorporated in any jurisdiction within the Customs territory of the United States or in the Virgin Islands of the United States. A ''nonresident'' means an individual, partnership, or corporation not meeting the definition of ''resident.''

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 84–93, 49 FR 17754, Apr. 25, 1984]

§ 141.32 Form for power of attorney.

Customs Form 5291 may be used for giving power of attorney to transact Customs business. If a Customs power of attorney is not on a Customs Form 5291, it shall be either a general power

of attorney with unlimited authority or a limited power of attorney as explicit in its terms and executed in the same manner as a Customs Form 5291. The following is an example of an acceptable general power of attorney with unlimited authority:

KNOW ALL MEN BY THESE PRESENTS, THAT

_____
(Name of principal)

_____,
(State legal designation, such as corporation, individual, etc.) residing at _____ and doing business under the laws of the State of _____, hereby appoints _____

(Name, legal designation, and address)

as a true and lawful agent and attorney of the principal named above with full power and authority to do and perform every lawful act and thing the said agent and attorney may deem requisite and necessary to be done for and on behalf of the said principal without limitation of any kind as fully as said principal could do if present and acting, and hereby ratify and confirm all that said agent and attorney shall lawfully do or cause to be done by virtue of these presents until and including _____, (date) or until notice of revocation in writing is duly given before that date.

Date _____, 19____;.

_____
(Principal's signature)

§ 141.33 Alternative form for noncommercial shipment.

An individual (but not a partnership, association, or corporation) who is not a regular importer may appoint another individual as his unpaid agent for Customs purposes by executing a power of attorney applicable to a single noncommercial shipment by writing, printing, or stamping on the invoice, or on a separate paper attached thereto, the following statement:

_____; of
(Name)

_____
(Address)

is hereby authorized to execute, as an unpaid agent who has knowledge of the facts, pursuant to the provisions of section 485(f), Tariff Act of 1930, as amended, the consignee's and owner's declarations provided for in section 485 (a) and (d), Tariff Act of 1930, as amended, and to enter on my behalf or for my account the goods described in the attached invoice which contains a true and complete statement of the facts concerning the shipment.

Date _____, 19____.

_____
(Signature of importer)

_____
(Address)

§ 141.34 Duration of power of attorney.

Powers of attorney issued by a partnership shall be limited to a period not to exceed 2 years from the date of execution. All other powers of attorney may be granted for an unlimited period.

[T.D. 84–93, 49 FR 17754, Apr. 25, 1984]

§ 141.35 Revocation of power of attorney.

Any power of attorney shall be subject to revocation at any time by written notice given to and received by CBP, either at the port of entry or electronically.

§ 141.36 Nonresident principals in general.

A power of attorney executed by a nonresident principal shall not be accepted unless the agent designated thereby is a resident and is authorized to accept service of process against such nonresident.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 84–93, 49 FR 17754, Apr. 25, 1984]

§ 141.37 Additional requirements for nonresident corporations.

If a nonresident corporation has not qualified to conduct business under state law in the state in which Customs district the agent is empowered to perform the delegated authority, the power of attorney shall be supported by documentation establishing the authority of the grantor designated to execute the power of attorney on behalf of the corporation.

[T.D. 84–93, 49 FR 17754, Apr. 25, 1984]

§ 141.38 Resident corporations.

A power of attorney shall not be required if the person signing Customs documents on behalf of a resident corporation is known to CBP to be the president, vice president, treasurer, or secretary of the corporation. When a

power of attorney is required for a resident corporation, it shall be executed by a person duly authorized to do so.

[T.D. 84–93, 49 FR 17754, Apr. 25, 1984]

§ 141.39 Partnerships.

(a)(1) *General.* A power of attorney granted by a partnership shall state the names of all members of the partnership. One member of the partnership may execute a power of attorney in the name of the partnership for the transaction of all its Customs business.

(2) *Limited partnership.* A power of attorney granted by a limited partnership need only state the names of the general partners who have authority to bind the firm unless the partnership agreement provides otherwise. A copy of the partnership agreement must accompany the power of attorney. For this purpose, a partnership or limited partnership means any business association recognized as such under the laws of the state where the association is organized.

(b) *Change in partners.* When a new firm is formed by a change in membership, no power of attorney filed by the antecedent firm shall thereafter be recognized for any Customs purpose.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 86–204, 51 FR 42999, Nov. 28, 1986]

§ 141.40 Trusteeships.

A trustee may execute a power of attorney for the transaction of Customs business incident to the trusteeship.

§ 141.41 Surety on Customs bonds.

Powers of attorney to sign as surety on Customs bonds are subject to the requirements set forth in part 113 of this chapter.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 74–227, 39 FR 32023, Sept. 4, 1974]

§ 141.42 Protests.

Powers of attorney to file protests are subject to the requirements set forth in § 174.3 of this chapter.

§ 141.43 Delegation to subagents.

(a) *Resident principals.* Except as otherwise provided for in paragraph (c) of this section, the holder of a power of attorney for a resident principal cannot appoint a subagent except for the purpose of filing Electronic Export Information (EEI). A subagent so appointed cannot delegate his power.

(b) *Nonresident principals.* Except as otherwise provided for in paragraph (c) of this section, an agent who has power of attorney for a nonresident principal may execute a power of attorney delegating authority to a subagent only if the original power of attorney contains express authority from the principal for the appointment of a subagent or subagents. Any subagent so appointed must be a resident authorized to accept service of process in accordance with § 141.36.

(c) *Customhouse brokers.* A power of attorney executed in favor of a licensed customhouse broker may specify that the power of attorney is granted to the broker to act through any of its licensed officers or authorized employees as provided in part 111 of this chapter.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by CBP Dec. 17–06, 82 FR 32239, July 13, 2017]

§ 141.44 Designation of Center and Customs ports in which power of attorney is valid.

Unless a power of attorney specifically authorizes the agent to act thereunder at the appropriate Center and at all CBP ports, the name of the appropriate Center or each port where the agent is authorized to act thereunder shall be stated in the power of attorney. The power of attorney shall be filed with CBP, either at the port of entry or electronically, in a sufficient number of copies for distribution to the appropriate Center and each port where the agent is to act, unless exempted from filing by § 141.46. The Center director or port director with whom a power of attorney is filed, irrespective of whether his Center or port is named, shall approve it, if it is in the correct form and the provisions of this subpart are complied with, and forward any copies intended for other ports or another Center as appropriate.

[81 FR 93015, Dec. 20, 2016]

§ 141.45 Certified copies of power of attorney.

Upon request of a party in interest, a Center Director or port director having on file an original power of attorney document (which is not limited to transactions in a specific Customs location) will forward a certified copy of the document to another Center director or port director.

[T.D. 95–77, 60 FR 50020, Sept. 27, 1995]

§ 141.46 Power of attorney retained by customhouse broker.

Before transacting Customs business in the name of his principal, a customhouse broker is required to obtain a valid power of attorney to do so. He is not required to file the power of attorney with CBP. Customhouse brokers shall retain powers of attorney with their books and papers, and make them available to representatives of the Department of the Treasury as provided in subpart C of part 111 of this chapter.

Subpart D—Quantity of Merchandise To Be Included in an Entry

§ 141.51 Quantity usually required to be in one entry.

All merchandise arriving on one conveyance and consigned to one consignee must be included on one entry, except as provided in § 141.52. In addition, a shipment of merchandise that arrives by separate conveyances at the same port of entry in multiple portions, either as a shipment split by the carrier or as components of a large unassembled or disassembled entity, may be processed under a single entry, as prescribed, respectively, in §§ 141.57 and 141.58.

[CBP Dec. 06–11, 71 FR 31925, June 2, 2006]

§ 141.52 Separate entries for different portions.

If the Center director is satisfied that there will be no prejudice to: Import admissibility enforcement efforts; the revenue; and the efficient conduct of Customs business, separate entries may be made for different portions of all merchandise arriving on one vessel or vehicle and consigned to one consignee under any of the following circumstances:

(a) Each portion of a consolidated shipment addressed to one consignee for various ultimate consignees may be entered separately under the procedure set forth in § 141.54.

(b) One or more of the enclosed packages in a packaged package may be entered separately under any appropriate form of formal or informal entry. No entry is required for an enclosed package which contains merchandise unconditionally free of duty and not exceeding $250 in value. A packed package is an outer package in which are contained inner packages addressed for delivery to two or more different persons, as described in section 484(f), Tariff Act of 1930, as amended (19 U.S.C. 1484(f)). Each outer container shall be marked to indicate that it is a packed package.

(c) The consignee desires to enter different portions under different forms of entry, for transportation to different ports of entry, or for warehousing in separate warehouses.

(d) Appraisement is being withheld upon merchandise of the class or kind for which a separate entry is tendered.

(e) The several portions of the consignment for which separate entries are tendered are covered by separate bills of lading.

(f) The consignment consists of different classes of merchandise which are to be processed by different Customs commodity specialist teams.

(g) The consignment contains merchandise subject to entry under a bond given to assure accounting for final disposition, such as a temporary importation under bond.

(h) The consignment consists of different importations which arrived under a consolidated entry for immediate transportation made pursuant to § 18.11(g) of this chapter.

(i) A special application is submitted to the Commissioner of Customs with the recommendation of the Center director concerned and is approved by the Commissioner.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 84–171, 49 FR 31253, Aug. 3, 1984; T.D. 84–213, 49 FR 41184, Oct. 19, 1984; T.D. 85–38, 50 FR 8723, Mar. 5, 1985]

§ 141.53 Procedure for separate entries.

When separate entries for one consignment are made in accordance with § 141.52 (b) through (i), the following procedures shall apply:

(a) The entries shall be presented simultaneously when practicable.

(b) A separate consignee's declaration shall be filed for each entry.

(c) Each entry shall cover whole packages or not less than 1 ton of bulk merchandise, except when a portion of the merchandise is entered under a temporary importation bond in accordance with Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(d) When separate entries are made for merchandise covered by a single bill of lading or air waybill, the provisions of § 141.54 shall be complied with, except that the endorsement on the bill of lading or air waybill required by § 141.54(b) shall read as follows:

As portions of the within-described merchandise will be covered by separate entries, the undersigned consignee expressly waives the right granted by section 484(j), Tariff Act of 1930, as amended, to have this bill of lading or air waybill returned.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 78–394, 43 FR 49788, Oct. 25, 1978; T.D. 89–1, 53 FR 51256, Dec. 21, 1988]

§ 141.54 Separate entries for consolidated shipments.

When separate entries for consolidated shipments are made in accordance with § 141.52(a), the following procedures shall apply except where the merchandise is released directly to the carrier in accordance with § 141.11(b):

(a) *Deposit of evidence of right to make entry*. The nominal consignee of a consolidated shipment covering merchandise for various ultimate consignees who desire to make separate entries shall deposit with the port director evidence of the right to make entry as set forth in § 141.11(a), and such evidence shall be permanently retained by the port director.

(b) *Waiver of right to have bill of lading or air waybill returned*. If a bill of lading or air waybill is filed, it shall contain the following endorsement signed by the consignee named therein:

As the within-described merchandise belongs to various ultimate consignees who desire to make separate entries therefor, the undersigned consignee thereof hereby expressly waives the right granted by section 484(j), Tariff Act of 1930, as amended, to have this bill of lading or air waybill returned.

(c) *Certificate by nominal consignee*. Except when an authority to make entry for a portion of a consolidated shipment is executed on the entry form in the space provided, at the time of depositing the bill of lading, air waybill, or other document, the named consignee shall produce a certificate prepared and signed by him for each portion of the shipment for which separate entry is desired. The authority to make entry carried by such a certificate may be transferred by endorsement. The certificate shall be in the following form:

Port of _____
_____, 19____

AUTHORITY TO MAKE ENTRY

Of merchandise imported at _____, 19____, per _____, from _____ shipped by _____, consigned to _____, endorsed to _____, covered by[1] _____ dated _____, 19____, at _____ on file with the port director at _____.

Marks	Numbers	Description

(We) (I) _____, the consignee(s) in the above-mentioned document covering merchandise for various ultimate consignees, hereby authorize _____ or order to make Customs entry for the above described merchandise.

_____
(Consignee(s))

(d) *Verification of certificate*. When a certificate on a separate document as described in paragraph (c) of this section is presented, it shall be compared with the supporting document and after being initialed by the ministerial clerk shall be returned to the consignee for transmittal to the person

[1] Insert ''bill of lading,'' ''air waybill,'' ''certified duplicate bill of lading,'' ''certified duplicate air waybill,'' ''carrier's certificate,'' or ''shipping receipt.''

who will make entry. When an entry is received having executed in the space provided thereon an authority to make entry for a portion of a consolidated shipment, such authority shall be compared with the supporting document.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 78–394, 43 FR 49788, Oct. 25, 1978]

§ 141.55 Single entry summary for shipments arriving under one transportation entry.

Except for merchandise subject to a quantitative or tariff-rate quota, port directors are authorized to accept one entry summary for consumption or for warehouse for the entire quantity of merchandise covered by an entry for immediate transportation after the arrival of any part of the merchandise at the port of destination or at a place of deposit outside the port as may be authorized in accordance with §18.11(c) of this chapter.

[T.D. 79–221, 44 FR 46817, Aug. 9, 1979]

§ 141.56 Single entry summary for multiple transportation entries consigned to the same consignee.

(a) *Requirement.* CBP may accept, either at the port of entry or electronically one entry summary for consumption or for warehouse for merchandise covered by multiple entries for immediate transportation, subject to the requirements of §142.17(a) of this chapter, provided the merchandise covered by each immediate transportation entry is released at the port of destination under a separate entry, in accordance with §142.3 of this chapter.

(b) *Limitation.* A single entry summary for multiple transportation entries shall not be accepted for any merchandise listed in §142.17(b) of this chapter.

(c) *Information on the entry summary.* Each entry for immediate transportation shall be identified separately on the entry summary by the immediate transportation entry number and the corresponding entry number.

[T.D. 79–221, 44 FR 46817, Aug. 9, 1979]

§ 141.57 Single entry for split shipments.

(a) *At election of importer of record.* At the election of the importer of record, Customs may process a split shipment, pursuant to section 484(j)(2), Tariff Act of 1930 (19 U.S.C. 1484(j)(2)), under a single entry, as prescribed under the procedures set forth in this section.

(b) *Split shipment defined.* A ''split shipment'', for purposes of this section, means a shipment:

(1) Which may be accommodated on a single conveyance, and which is delivered to and accepted by a carrier in the exporting country under one bill of lading or waybill, and is thus intended by the importer of record to arrive in the United States as a single shipment;

(2) Which is thereafter divided by the carrier, acting on its own, into different portions which are transported and consigned to the same party in the United States; and

(3) Of which the first portion and all succeeding portions arrive at the same port of entry in the United States, as listed in the original bill of lading or waybill; and all the succeeding portions arrive at the port of entry within 10 calendar days of the date of the first portion. If any portion of the shipment arrives at a different port, such portion must be transported in-bond to the port of destination where entry of the shipment is made.

(c) *Notification by importer of record.* The importer of record must notify Customs, in writing, that the shipment has been split at the carrier's initiative, that the remainder of the shipment will arrive by subsequent conveyance(s), and that an election is being made to file a single entry for all portions. The required notification must be given as soon as the importer of record becomes aware that the shipment has been split, but in all cases notification must be made before the entry summary is filed.

(d) *Entry or special permit for immediate delivery.* In order to make a single entry for a split shipment or obtain a special permit for the release of a split shipment under immediate delivery, an importer of record may follow the procedure prescribed in paragraph (d)(1) or (d)(2) of this section, as applicable.

(1) *Entry or special permit after arrival of entire shipment.* An importer of record may file an entry at such time as all portions of the split shipment have arrived at the port of entry (see paragraph (b)(3) of this section). In the alternative, again after the arrival of all portions of a split shipment at the port of entry, the importer of record may instead file a special permit for immediate delivery provided that the merchandise is eligible for such a permit under §142.21(a)–(f) and (h) of this chapter. In either case, the importer of record must file Customs Form (CF) 3461 or CF 3461 alternate (CF 3461 ALT) as appropriate, or electronic equivalent, with Customs. The entry or special permit must indicate the total number of pieces in, as well as the total value of, the entire shipment as reflected on the invoice(s) covering the shipment.

(2) *Special permit prior to arrival of entire shipment.* As provided in §142.21(g) of this chapter, an importer of record may also file a special permit for immediate delivery after the arrival of the first portion of a split shipment at the port of entry (see paragraph (b)(3) of this section), but before the arrival of the entire shipment at such port, thus qualifying the split shipment for incremental release, under paragraph (e) of this section, as each portion of the shipment arrives at the port of entry (see paragraph (g)(2)(ii) of this section). In such case, a CF 3461 or CF 3461 ALT as appropriate, or electronic equivalent, must be filed with Customs. As each portion arrives at the port of entry, the importer of record must submit a copy of the CF 3461/CF 3461 ALT, or its electronic equivalent, adjusted to reflect the quantity of that particular portion relative to the quantity contained in the entire split shipment (see paragraph (b)(1) of this section); however, if both the carrier and the importer of record are automated, such adjustments may instead be made electronically to the CBP Automated Commercial Environment (ACE) or any other CBP-authorized electronic data interchange system. In the event that an entry has been pre-filed with Customs (see §142.2(b) of this chapter), notification to Customs by the importer of record that a single entry will be filed for shipments released incrementally will serve as a request that the pre-filed entry be converted to an application for a special permit for immediate delivery (see §142.21(g) of this chapter). The special permit must indicate the total number of pieces in, as well as the total value of, the entire shipment as reflected on the invoice(s) covering the shipment. Customs may limit the release of each portion of the split shipment upon arrival at the port of entry, as permitted under this paragraph, due to the need to examine the merchandise in accordance with paragraph (f) of this section.

(e) *Release.* To secure the separate release upon arrival of each portion of a split shipment at the port of destination under paragraph (d)(2) of this section, the carrier responsible for initially splitting the shipment must present to Customs, either on a paper manifest or through an authorized electronic data interchange system, manifest information relating to the shipment that reflects exact information for each portion of the split shipment. The carrier responsible for splitting the shipment must notify other obligated entities (such as another carrier or freight forwarder) that have submitted electronic manifest information to Customs about the shipment that was split so that these parties can update their manifest information to Customs.

(f) *Examination.* Customs may require examination of any or all parts of the split shipment. For split shipments subject to the immediate delivery procedure of paragraph (d)(2) of this section, Customs reserves the right to deny incremental release should such an examination of the merchandise be necessary. The denial of incremental release does not preclude the use of the procedures specified in paragraph (d)(1) of this section.

(g) *Entry summary*—(1) *Entry.* For merchandise entered under paragraph (d)(1) of this section, the importer of record must file an entry summary within 10 working days from the time of entry.

(2) *Release for immediate delivery*—(i) *Release under paragraph (d)(1) of this section.* For merchandise released under a special permit for immediate delivery

pursuant to paragraph (d)(1) of this section, the importer of record must file the entry summary, which serves as both the entry and the entry summary, within 10 working days after the merchandise or any part of the merchandise is authorized for release under the special permit or, for quota class merchandise, within the quota period, whichever expires first (see §142.23 of this chapter).

(ii) *Release under paragraph (d)(2) of this section.* For merchandise released under a special permit for immediate delivery pursuant to paragraph (d)(2) of this section, the importer of record must file the entry summary, which serves as both the entry and the entry summary, within 10 working days from the date of the first release of a portion of the split shipment. The filed entry summary must reflect all portions of the split shipment which have been released, to include quantity, value, correct classification and rate of duty. The entry summary cannot include any portions of the split shipment which have not been released.

(3) *Duty payment.* With the entry summary filed under paragraphs (g)(1) and (g)(2)(i) and (g)(2)(ii) of this section, the importer of record must attach estimated duties, taxes and fees applicable to the released merchandise. If the entry summary is filed electronically, the estimated duties, taxes and fees must be scheduled for payment at such time pursuant to the Automated Clearinghouse (see §24.25 of this chapter).

(h) *Classification.* For purposes of section 484(j)(2), Tariff Act of 1930 (19 U.S.C. 1484(j)(2)), the merchandise comprising the separate portions of a split shipment included on one entry will be classified as though imported together.

(i) *Separate entry required*—(1) *Untimely arrival.* The importer of record must enter separately those portions of a split shipment that do not arrive at the port of entry within 10 calendar days of the portion that arrived there first (see paragraph (b)(3) of this section).

(2) *Different rates of duty for identically classified merchandise.* An importer of record will be required to file a separate entry for any portion of a split shipment if necessary to preclude the application of different rates of duty on a split shipment entry for merchandise that is classifiable under the same subheading of the Harmonized Tariff Schedule of the United States (HTSUS).

(j) *Requirement of importer of record to review entry and maintain evidence substantiating splitting of shipment*—(1) *Review of entry.* The importer of record will be responsible for reviewing the total manifested quantity shown on the CF 3461/CF 3461 ALT, or electronic equivalent, in relation to all portions of the split shipment that arrived at the port of entry under paragraph (b)(3) of this section within the specified 10 calendar day period. At the conclusion of the specified 10 calendar day period, the importer of record must make any adjustments necessary to reflect the actual amount, value, correct classification and rate of duty of the merchandise that was released incrementally under the split shipment procedures. If all portions of the split shipment do not arrive within the required 10 calendar day period, the importer of record must file an additional entry or entries as appropriate to cover any remaining portions of the split shipment that subsequently arrive (see paragraph (i)(1) of this section).

(2) *Evidence for splitting of shipment; recordkeeping.* The importer of record must maintain sufficient documentary evidence to substantiate that the splitting of the shipment was done by the carrier acting on its own, and not at the request of the foreign shipper and/or the importer of record. This documentation should include a copy of the originating bill of lading or waybill under which the shipment was delivered to the carrier in the country of exportation or other supporting documentary evidence, such as a letter from the carrier confirming that the splitting of the shipment was done by the carrier on its own initiative. This documentary evidence as well as all other necessary records received or generated by or on behalf of the importer of record under this section must be maintained and produced, if requested, in accordance with part 163 of this chapter.

(k) *Single entry limited; exclusions from single entry under incremental release*

procedure—(1) *Quota/visa merchandise.* Merchandise subject to quota and/or visa requirements is excluded from incremental release under the immediate delivery procedure set forth in paragraph (d)(2) of this section and §142.21(g) of this chapter. Additionally, if by splitting a shipment any portion of it is subject to quota, no portion of the split shipment may be released incrementally.

(2) *Other merchandise.* In addition, the port director may deny the use of the incremental release procedure set forth in paragraph (d)(2) of this section and §142.21(g) of this chapter, as circumstances warrant.

(3) *Limited single entry available.* For merchandise described in paragraphs (k)(1) and (k)(2) of this section, that is excluded from the immediate delivery procedure of paragraph (d)(2) of this section and §142.21(g) of this chapter, the importer of record may still file a single entry or special permit for immediate delivery under paragraph (d)(1) of this section covering the entire split shipment of such merchandise following, and to the extent of, its arrival within the required 10 calendar day period.

[T.D. 03–09, 68 FR 8719, Feb. 25, 2003, as amended by CBP Dec. 15–14, 80 FR 61288, Oct. 13, 2015; 80 FR 65135, Oct. 26, 2015]

§ 141.58 Single entry for separately arriving portions of unassembled or disassembled entities.

(a) *At election of importer of record.* At the election of the importer of record, an unassembled or disassembled entity arriving on multiple conveyances as contemplated under section 484(j)(1), Tariff Act of 1930 (19 U.S.C. 1484(j)(1)), may be processed as a single entry, as prescribed under the procedures set forth in this section.

(b) *Unassembled or disassembled entities covered.* An unassembled or disassembled entity for purposes of this section is an entity which:

(1) Cannot, due to its size or nature, be shipped on a single conveyance, and is thus imported in an unassembled or disassembled condition;

(2) Is ordered, invoiced and is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS), as a single entity and is consigned to one person in the United States;

(3) Is imported on more than one conveyance to the same port of entry in the United States; and

(4) Involves the first portion and all succeeding portions arriving at the same United States port of entry within either:

(i) 15 calendar days after the unlading of the first portion or arrival at the destination port if transported in bond for entities entered under the ''hold all'' method permitted in paragraph (d)(1) of this section; or

(ii) 10 calendar days after the release of the first portion under special permit procedures for entities released incrementally as permitted in paragraph (d)(2) of this section.

(c) *Application by importer.* The importer of record must apply to file a single entry covering an entity described in paragraph (b) of this section. Applications may be made either by appropriately annotating a Customs and Border Protection (CBP) Form 3461, CBP Form 3461 ALT, or electronic equivalent, or by submitting a letter to CBP. The required application must be made no later than 5 working days in advance of the arrival of the first conveyance. Justification for the need for more than one conveyance must be provided in the application, which must include an affirmative statement that the entity cannot, due to its size or nature, be shipped on one conveyance. A copy of the relevant invoice or purchase order, or electronic equivalent, must accompany the application, along with the proposed appropriate single tariff number under the HTSUS. The port director will notify the applicant of the approval or denial of the application within 3 working days of the receipt of the application.

(d) *Entry or special permit for immediate delivery.* In order to make a single entry for portions of an entity covered under this section that arrive at different times, an importer of record must follow the procedure prescribed in paragraphs (d)(1) or (d)(2) of this section, as applicable.

(1) *Entry or special permit after arrival of all portions (Hold All).* An importer may file an entry at such time as all portions of the entity have arrived at

the same port of entry in the United States. Any portion that arrives at a different port must be transported in-bond to the destination port where entry will be made. In the alternative, the importer may file a special permit for immediate delivery after arrival of all portions of the entity provided that it is eligible for such a permit under §142.21(a)–(d), (f) and (i) of this chapter.

(2) *Special permit for immediate delivery after arrival of first portion (Incremental Release).* As provided in §142.21(h) of this chapter, an importer of record may file an application for a special permit for immediate delivery after the arrival of the first portion of the entity covered by paragraph (b) of this section, and its remaining portions may be released incrementally pursuant to the requirements set forth in paragraph (e) of this section. All portions of the shipment must timely arrive at the same port of entry in the United States. Any portion that arrives at a different port must be transported in-bond to the destination port where entry will be made.

(e) *Release.* If an importer wishes to secure release of an entity under paragraph (d)(1) of this section after the entity's arrival, the importer must file with CBP a CBP Form 3461 or CBP Form 3461 ALT, as appropriate, or electronic equivalent. To secure the separate release upon arrival of each portion of a shipment under paragraph (d)(2) of this section, the importer must file with CBP a CBP Form 3461 or CBP Form 3461 ALT, as appropriate, or electronic equivalent after arrival of the first portion. As each successive portion arrives, the importer must submit a copy of the originally submitted CBP Form 3461/CBP Form 3461 ALT, annotated to specifically identify that particular portion. The CBP Form 3461/CBP Form 3461 ALT must indicate the order of the arriving portion in relation to the entire shipment as reflected on the invoice (for example, third of six portions). If both the carrier and the importer are automated, such adjustments may be made electronically through the CBP Automated Commercial System (ACS). The release of each portion upon arrival as permitted under this paragraph may be restricted due to CBP's need to examine the merchandise in accordance with paragraph (f) of this section. In addition, the importer of record must present to CBP either on paper or through an authorized electronic equivalent, specific and detailed information supplementing the CBP Form 3461 or 3461 ALT, relating to the merchandise on each conveyance which reflects exact information for that portion of the ordered entity (for example, detailed packing lists).

(f) *Examination.* CBP may require examination of any or all portions of the entity. CBP reserves the right to deny the release of each portion of such shipments as they arrive (*i.e.*, incremental release) should such an examination of the merchandise be necessary. The denial of incremental release does not preclude the use of the procedures specified in paragraph (d)(1) of this section.

(g) *Entry summary.* (1) For merchandise entered under paragraph (d)(1) of this section, an entry summary must be filed within 10 working days from the time of entry. For merchandise released under a special permit for immediate delivery, the entry summary, which serves as both the entry and entry summary, must be filed within 10 working days after the first portion of the entity is authorized for release under the special permit.

(2) For merchandise released under a special permit for immediate delivery pursuant to paragraph (d)(2) of this section, the entry summary, which serves as both the entry and the entry summary, must be filed within 10 working days from the date of the first release of a portion of the unassembled or disassembled entity. However, the entry/entry summary for the entity cannot be filed before the last portion of the entity which is to be included on the entry has arrived.

(3) *Duty payment.* At the time the entry summary is filed under paragraphs (g)(1) and (g)(2) of this section, estimated duties, taxes and fees must be attached. If the entry summary is filed electronically, the estimated duties, taxes and fees must be scheduled for payment at such time pursuant to the Automated Clearinghouse procedures (*see* 19 CFR 24.25).

(h) *Classification*. Except as provided in paragraph (j) of this section, for purposes of section 484(j)(1), Tariff Act of 1930 (19 U.S.C. 1484(j)(1)), the merchandise comprising the separate portions of an entity covered by paragraph (b) of this section included on one entry will be classified as though imported together. Any spare parts accompanying a portion of an entity must be classified and entered separately.

(i) *When separate entry and entry summary required*. When all portions of an entity do not arrive at the port of entry within the time constraints of paragraphs (b)(4)(i) and (ii) of this section, as applicable, a separate entry and entry summary must be filed for each portion that has already arrived, and for each portion that subsequently will arrive on separate conveyances. The merchandise included on each separate entry shall be classified in its condition as imported. Each entry would reflect the quantities, values, classifications and rates of duty, as appropriate, of the various components conveyed in each shipment, and not the value or classification of the ordered single entity.

(j) *Exclusions*. Merchandise subject to quota and/or visa requirements is entirely excluded from the procedures set forth in this section. Also, CBP reserves the right for the port director to deny use of the incremental release procedure and only release the shipment in its entirety as circumstances warrant, such as in the case where a particular shipment has been selected for examination.

[CBP Dec. 06–11, 71 FR 31925, June 2, 2006]

EDITORIAL NOTE: At 80 FR 61289, Oct. 13, 2015, §141.58 was amended; however, the amendment could not be incorporated due to inaccurate amendatory instruction.

Subpart E—Presentation of Entry Papers

§ 141.61 Completion of entry and entry summary documentation.

(a) *Preparation*—(1) *Paper entry and entry summary documentation*. Except when entry and entry summary documentation is filed with CBP electronically pursuant to the provisions of part 143 of this chapter:

(i) Such documentation must be prepared on a typewriter (keyboard), or with ink, indelible pencil, or other permanent medium, and all copies must be legible;

(ii) The entry summary must be signed by the importer (*see* §101.1 of this chapter); and

(iii) Entries, entry summaries, and accompanying documentation must be on the appropriate forms specified by the regulations and must clearly set forth all required information.

(2) *Electronic entry and entry summary documentation*. Entry and entry summary documentation that is filed electronically pursuant to part 143 of this chapter must contain the information required by this section and must be certified (*see* §§143.35 and 143.44 of this chapter) by the importer of record or his duly authorized customs broker as being true and correct to the best of his knowledge. The importer of record, customs broker, or a duly authorized agent must be resident in the United States for purposes of receiving service of process. A certified electronic transmission is binding in the same manner and to the same extent as a signed document.

(b) *Marks and numbers previously provided*. An importer may omit from entry summary (CBP Form 7501, or its electronic equivalent) the marks and numbers previously provided for packages released or withdrawn.

(c) *Identification number for merchandise subject to an antidumping or countervailing duty order*. The entry summary filed for merchandise subject to an antidumping or countervailing duty order must include the unique identifying number assigned by the Department of Commerce, International Trade Administration. Any entry summary filed for merchandise subject to an antidumping or countervailing duty order not containing the identifying number will be rejected.

(d) *Importer number*. The importer number must be reported on CBP Form 7501, or its electronic equivalent, as follows:

(1) *Generally*. Except as provided in paragraph (d)(2) of this section, the importer number of the importer of record and the consignee number of the ultimate consignee must be reported

for each entry summary and for each drawback entry. When the importer of record and the ultimate consignee are the same, the importer number may be entered in both spaces provided on CBP Form 7501 (boxes 10 and 12), or its electronic equivalent, or the importer number may be entered in the space provided for the importer (box 12, or its electronic equivalent) and the word ''SAME'' may be entered in the space provided for the ultimate consignee (box 10, or its electronic equivalent).

(2) *Exception*. In the case of a consolidated entry summary covering the merchandise of more than one ultimate consignee, the importer number must be reported on CBP Form 7501 (box 12, or its electronic equivalent) and the notation ''CONSOLIDATED'' must be made in the space provided for the consignee number (box 10, or its electronic equivalent).

(3) *When refunds, bills, or notices of liquidation are to be mailed to agent*. If an importer of record desires to have refunds, bills, or notices of liquidation mailed in care of his agent, the agent's importer number must be reported on CBP Form 7501 in the box designated ''Reference No'' (box 22, or its electronic equivalent). In this case, the importer of record must file, or must have filed previously, a CBP Form 4811 authorizing the mailing of refunds, bills, or notices of liquidation to the agent.

(4) *Broker No*. If a broker is used, the broker's number must be reported in the appropriate location on CBP Form 7501, or its electronic equivalent.

(e) *Statistical information*—(1) *Information required on entry summary or withdrawal form*—(i) *Where form provides space*—(A) *Single invoice*. For each class or kind of merchandise subject to a separate statistical reporting number, the applicable information required by the General Statistical Notes, Harmonized Tariff Schedule of the United States (HTSUS), must be shown on the entry summary, CBP Form 7501. The applicable information must also be shown on the in-bond application filed pursuant to part 18 of this chapter when it is used to document an incoming vessel shipment proceeding to a third country pursuant to an entry for transportation and exportation, or immediate exportation.

(B) *Multiple invoices*. If a class or kind of merchandise from the same country of origin subject to the same statistical reporting number is included in more than one invoice, the importer may, at his option (*1*) list each invoice separately on the appropriate form listed under paragraph (e)(1)(i)(A) of this section and for each class or kind of merchandise within each invoice subject to a separate statistical reporting number, report the applicable information required by the General Statistical Notes, HTSUS; or (*2*) combine the information for each class or kind of merchandise and report it under one statistical reporting number for all invoices. When consolidating information from several invoices under one reporting number, a worksheet itemizing the entered value of the merchandise from each invoice in the manner prescribed in paragraph (f)(2)(ii) of this section must be attached to the appropriate form.

(ii) *Where form does not provide space*. In addition to the information required by paragraph (e)(1)(i) of this section, statistical information for which spaces are not provided on the appropriate form, must be shown as follows:

(A) The name, the abbreviated designation or 4 digit code of the country of registry (flag) of the vessel expressed in terms of Annex B, HTSUS, must be placed in the block on the entry document for the name of the importing vessel or carrier.

(B) The notation ''Y'' or ''N'' as appropriate, must be placed in column 33 of CBP Form 7501, or its electronic equivalent, and in the top right hand portion of CBP Form 7519, to identify the transaction as one between a buyer and a seller who are related in any manner, or as one between a buyer and a seller who are not so related.

(C) The charges (aggregate cost of freight, insurance and all other charges), must be listed on CBP Form 7501 in column 33. The charges must be listed on CBP Form 7519, or its electronic equivalent in the rate column.

(2) *Responsibility*. The person filing the form is responsible for providing the information required by paragraph (e)(1) of this section. If the information required by subparagraph General Statistical Note 1(a)(xiv)(xvii), HTSUS,

cannot be obtained readily, the person filing the form must provide reasonable estimates of the required information. The acceptance of an estimate for a particular transaction does not relieve the person filing the form from obtaining the necessary information for similar future transactions. The Center director may require additional documentation to substantiate the statistical information required by paragraph (e)(1) of this section. The importer must give an appropriate bond for the production of the required documentation, as follows:

(i) Except for merchandise entered for warehouse, the documentation must be produced within 50 days after the entry summary (or the entry, if there is no entry summary) is required to be filed.

(ii) If merchandise is entered for warehouse, the documentation must be produced within 2 months after the date of withdrawal, except that if an invoice is part of the documentation, the invoice must be produced within 50 days after the entry summary for warehouse is required to be filed.

The Center director may grant a reasonable extension of time to produce the required documentation for good cause shown. (See §141.91(d) for bond requirements relating to failure to produce an invoice.)

(3) *Estimates of statistical information.* When the person filing the form estimates any of the values or charges, as provided for in General Statistical Note 1(b)(ii), HTSUS, except Canadian rail and truck charges, he must place either ''(estimate)'', ''(est)'', or (''E'') after the amount of each value or charge.

(4) *Rejection of form.* The Center director will reject a form for failure to provide required statistical information if the information is omitted or if the information provided clearly appears on its face, or is known to the CBP officer, to be erroneous.

(5) *Penalty procedures; when not invoked.* Penalty procedures relating to erroneous statistical information will not be invoked against any person who in good faith attempts to comply with the statistical requirements of the General Statistical Note, HTSUS.

(f) *Value of each invoice*—(1) *Single invoice.* If the entry, entry summary, or withdrawal documentation, as specified in paragraph (e)(1)(i) of this section, covers a single invoice, the invoice information must be restated to show:

(i) Gross amount of the invoice;

(ii) Deduction of the aggregate amount of any non-dutiable charges involved in the amount;

(iii) Further deduction of the aggregate of any deductions from the invoice values to make entered values; and

(iv) Addition of the aggregate of any dutiable charges not included in the gross amount of the invoice and of any other additions to the invoice values to make entered values. The final amount in the summary computations must represent the aggregate of the entered values of all the merchandise covered by the invoice. The required information must be shown on a worksheet attached to the form or placed across columns 30 and 31 on CBP Form 7501, or its electronic equivalent and in the same general location on CBP Forms 7505, 7506.

(2) *Multiple invoices.* (i) If the importer or his agent elects the first option specified in paragraph (e)(1)(i)(B) of this section, the information required to be restated by paragraph (f)(1) of this section for a single invoice must be restated for each invoice. The required information must be shown on a worksheet attached to the form or placed across columns 30 and 31 on CBP Form 7501, or its electronic equivalent.

(ii) If the importer or his agent elects the second option specified in paragraph (e)(1)(i)(B) of this section, the information required to be restated by paragraph (f)(1) of this section for a single invoice must be restated for each invoice. The final amount in the summary computation must represent the aggregate of the entered values of all the merchandise on each of the multiple invoices. The required information must be shown on an attached worksheet.

(iii) The worksheet also must contain:

(A) A statistical reporting number restatement for the merchandise from

each invoice subject to the same statistical reporting number from the same country of origin, and

(B) An aggregate total value which represents the entered value.

(iv) To permit the identification of the merchandise entered under each reporting number, each class or kind of merchandise, from one country reported under a single statistical reporting number must be coded identically on each invoice and on the worksheet.

[T.D. 79–221, 44 FR 46817, Aug. 9, 1979]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §141.61, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§141.62 Place and time of filing.

(a) *Place.* An application for immediate delivery and entry, entry summary, or withdrawal documentation shall be filed at the customhouse or at any other Customs location approved by the director of the port where the merchandise is to be or has been released.

(b) *Time*—(1) *Normal business hours.* (i) Except as provided in paragraph (b)(2) of this section, an application for immediate delivery or entry documentation shall be filed when the customhouse is open for the general transaction of business, or when Customs has established a regular tour of duty in accordance with §101.6(f) of this chapter.

(ii) Except as provided in paragraph (b)(2) of this section, entry summary or withdrawal documentation shall be filed when the customhouse is open for the general transaction of business, as provided in §101.6 of this chapter.

(2) *Overtime services*—(i) *Generally.* Except as provided in paragraph (b)(2)(ii) of this section, an application for immediate delivery or entry documentation may be filed when the customhouse is not open for the general transaction of Customs business and no regular tour of duty has been established; and entry summary or withdrawal documentation may be filed when the customhouse is not open for the general transaction of business, if:

(A) The person desiring to transact business has applied for and received authorization for overtime services on a reimbursable basis, as provided for in §24.16 of this chapter, and

(B) Overtime services of Customs officers are available.

(ii) *Quota-class merchandise.* Overtime shall not be authorized for the presentation of entry summary documentation which serves as both the entry and entry summary or withdrawal documentation, for quota-class merchandise without Headquarters authorization. If Headquarters authorization is granted, the time of delivery of the entry summary or withdrawal documentation, with the estimated duties attached, or without the estimated duties attached, if the entry/entry summary information and a scheduled statement date have been successfully received by Customs via the Automated Broker Interface, shall be the time of presentation for quota purposes. However, if an entry summary or withdrawal for quota-class merchandise is delivered inadvertently during overtime hours without Headquarters authorization, the time of presentation for quota purposes shall be the opening of business on the next business day.

[T.D. 79–221, 44 FR 46818, Aug. 9, 1979, as amended by T.D. 89–104, 54 FR 50498, Dec. 7, 1989]

§141.63 Submission of entry summary documentation for preliminary review.

(a) *Before arrival of merchandise.* Entry summary documentation may be submitted at the customhouse for preliminary review, without estimated duties attached, within such time before arrival of the merchandise as may be fixed by the Center director—

(1) If the entry summary documentation will be filed at time of entry to serve as both the entry and the entry summary, as provided in §142.3(b) of this chapter, or

(2) In the case of quota-class merchandise, if the entry summary for consumption will be presented at time of entry, as provided in §132.11a of this chapter. Estimated duties will not be accepted before arrival of the merchandise within the port limits.

(b) *After arrival of merchandise.* Entry summary documentation may be submitted at the customhouse for preliminary review, without estimated duties

attached, within such time after arrival of quota-class merchandise as may be fixed by the Center director, if the entry summary for consumption will be presented at the opening of the quota period, as provided in §132.12(a) of this chapter. Estimated duties will not be accepted before the opening of the quota period.

[T.D. 79–221, 44 FR 46819, Aug. 9, 1979, as amended by T.D. 87–78, 52 FR 24155, June 29, 1987; CBP Dec. 09–47, 74 FR 69019, Dec. 30, 2009]

§141.64 Review and correction of entry and entry summary documentation.

Entry and entry summary documentation may be reviewed before acceptance to ensure that all entry and statistical requirements are complied with and that the indicated values and rates of duty appear to be correct. If any errors are found, the entry and the entry summary documentation shall not be considered to have been filed in proper form and shall be returned to the importer for correction.

[T.D. 79–221, 44 FR 46819, Aug. 9, 1979, as amended by T.D. 99–64, 64 FR 43266, Aug. 10, 1999]

§141.65 [Reserved]

§141.66 Bond for missing documentation.

Unless otherwise prescribed in these regulations, a bond on Customs Form 301, containing the bond conditions set forth in §113.62 or §113.69 of this chapter, as appropriate, may be given for the production of any required documentation which is not available at the time of entry. (See §141.91 for the procedure applicable to incomplete or missing invoices.)

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 84–213, 49 FR 41184, Oct. 19, 1984; CBP Dec. 15–14, 80 FR 61289, Oct. 13, 2015]

§141.67 Recall of documentation.

The importer may recall the entry and entry summary documentation at any time before the effective time of entry set forth in §141.68. The entry shall be considered canceled, and documents shall be returned to the importer.

[T.D. 79–221, 44 FR 46819, Aug. 9, 1979]

§141.68 Time of entry.

(a) *When entry documentation is filed without entry summary.* When the entry documentation is filed in proper form without an entry summary, the ''time of entry'' will be:

(1) The time the appropriate CBP officer authorizes the release of the merchandise or any part of the merchandise covered by the entry documentation, or

(2) The time the entry documentation is filed, if requested by the importer on the entry documentation at the time of filing, and the merchandise already has arrived within the port limits; or

(3) The time the merchandise arrives within the port limits, if the entry documentation is submitted before arrival, and if requested by the importer on the entry documentation at the time of submission.

(b) *When entry summary serves as entry and entry summary.* When an entry summary serves as both the entry documentation and entry summary, in accordance with §142.3(b) of this chapter, the time of entry will be the time the entry summary is filed in proper form with estimated duties attached except as provided in §142.13(b).

(c) *When merchandise is released under the immediate delivery procedure.* The time of entry of merchandise released under the immediate delivery procedure will be the time the entry summary is filed in proper form, with estimated duties attached.

(d) *Quota-class merchandise.* The time of entry for quota-class merchandise will be the time of presentation of the entry summary or withdrawal for consumption in proper form, with estimated duties attached, or if the entry/entry summary information and a valid scheduled statement date (pursuant to §24.25 of this chapter) have been successfully received by CBP via the Automated Broker Interface, without the estimated duties attached, as provided in §132.11a of this chapter.

(e) *When merchandise has not arrived.* Merchandise will not be authorized for release, nor will an entry or an entry

summary which serves as both the entry and entry summary be considered filed or presented, until the merchandise has arrived within the port limits with the intent to unlade.

(f) *Informal mail entry.* The time of entry of merchandise under an informal mail entry, CBP Form 3419 or 3419A or CBP Form 368 or 368A, is the time the preparation of the entry documentation by a CBP employee is completed.

(g) *Withdrawal from warehouse for consumption.* The time of entry of merchandise withdrawn from warehouse for consumption (the process preparatory to the issuance of a permit for the release of the merchandise to or upon the order of the warehouse proprietor) is when:

(1) CBP Form 7501, or its electronic equivalent, is executed in proper form and filed together with any related documentation required by these regulations to be filed at the time of withdrawal, and

(2) Estimated duties, if any, required to be paid at the time of withdrawal have been deposited.

Unless the requirements of this paragraph and section 315(a), Tariff Act of 1930, as amended (19 U.S.C. 1315(a)), including the deposit of estimated duties, if any, are completed within 60 days from the date of presentation of CBP Form 7501, or its electronic equivalent, the request for withdrawal will be considered abandoned.

(h) *Appraisement entry, informal entry, combined entry for rewarehouse and withdrawal for consumption, and entry under carnet.* The time of entry of merchandise under an appraisement entry, or informal entry, CBP Form 7501, or its electronic equivalent, an informal entry, CBP Form 368 or 368A (serially numbered) (or other form prescribed in §143.23 or elsewhere in the chapter for use as an informal entry), a combined entry for rewarehouse and withdrawal for consumption, CBP Form 7519, or an A.T.A. carnet issued under part 114 of this chapter, will be the time the specified form is executed in proper form and filed, together with any related documents required by these regulations, and estimated duties, if any, have been deposited. If merchandise eligible for informal entry is released under a special permit for immediate delivery and CBP Form 368 or 368A (serially numbered) or 7501, or its electronic equivalent, is filed in accordance with §142.23 of this chapter, the time of entry will be the time CBP Form 368 or 368A or 7501 is filed in proper form, together with any related documents required by this chapter, and estimated duties, if any, have been deposited. However, if merchandise eligible for informal entry is released under the entry documentation set forth in §142.3(a) of this chapter and CBP Form 368 or 368A (serially numbered) or 7501 is filed in accordance with §142.23, the time of entry will be in accordance with paragraph (a) of this section.

(i) *Exportation to Canada or Mexico of goods imported into the United States under a duty-deferral program defined in §181.53 of this chapter.* When merchandise in a U.S. duty-deferral program is withdrawn for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico, the date of entry is the date the entry is required to be filed under §181.53(a)(2)(iii) of this chapter.

[T.D. 79–221, 44 FR 46819, Aug. 9, 1979]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §141.68, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§141.69 Applicable rates of duty.

The rates of duty applicable to merchandise shall be the rates in effect at time of entry, as specified in §141.68, except as otherwise specifically provided for by Executive Order, and in the following cases:

(a) *Warehouse entries.* Merchandise entered for warehouse is dutiable at the rates in effect at the time withdrawal from warehouse for consumption is made in accordance with §141.68(g).

(b) *Merchandise entered for immediate transportation.* Merchandise which is not subject to a quantitative or tariff-rate quota and which is covered by an entry for immediate transportation made at the port of original importation, if entered for consumption at the port designated by the consignee or his agent in such transportation entry

without having been taken into custody by the port director for general order under section 490, Tariff Act of 1930, as amended (19 U.S.C. 1490), shall be subject to the rates in effect when the immediate transportation entry was accepted at the port of original importation.

(c) *Overcarried merchandise returned to port of entry.* If merchandise which has been entered for consumption, but not yet released from Customs custody, is removed from the port or place of intended release because of overcarriage, inaccessibility, strike, act of God, or unforeseen contingency, and is returned to such port or place within 90 days after removal, such merchandise shall be subject to the rates in effect at the time of the original entry, provided the merchandise is identified with the original entry by the usual Customs examination and by any documentary evidence as to its movement between its removal and return which CBP may reasonably require. A new entry shall be required, unless the original entry has not been liquidated and the consignee at the time of original importation and at the time of return is the same person.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 79–221, 44 FR 46820, Aug. 9, 1979; T.D. 90–34, 55 FR 17597, Apr. 26, 1990; T.D. 97–82, 62 FR 51771, Oct. 3, 1997]

Subpart F—Invoices

§ 141.81 Invoice for each shipment.

A commercial invoice shall be presented for each shipment of merchandise at the time the entry summary is filed, subject to the conditions set forth in these regulations. Except in the case of installment shipments provided for in § 141.82, an invoice shall not represent more than one distinct shipment of merchandise by one consignor to one consignee by one vessel or conveyance.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 78–53, 43 FR 6069, Feb. 13, 1978; T.D. 79–221, 44 FR 46820, Aug. 9, 1979; T.D. 85–39, 50 FR 9612, Mar. 11, 1985; T.D. 93–66, 58 FR 44130, Aug. 19, 1993]

§ 141.82 Invoice for installment shipments arriving within a period of 10 days.

(a) *One invoice sufficient.* Installments of a shipment covered by a single order or contract and shipped from one consignor to one consignee may be included in one invoice if the installments arrive at the port of entry by any means of transportation within a period of not to exceed 10 consecutive days.

(b) *Preparation of invoice.* The invoice must be prepared in the manner provided for in this subpart and, when practicable, must show the quantities, values, and other invoice data with respect to each installment, the date of shipment of each installment, and the car number or other identification of the importing conveyance in which it was shipped.

(c) *Pro forma invoice.* If the required invoice is not filed with the first entry of an installment series, a pro forma invoice must be filed with each entry made before the required invoice is produced, and in accordance with § 141.91 a bond must be given, or charge against a continuous bond made, for the production of the required invoice. Liquidated damages will accrue in the case of each entry if more than 6 months expire without the production of an invoice for such entry.

(d) *Informal entry.* Any bona fide installment valued at not over $2,500 (except for articles valued in excess of $250 classified in Chapter 99, Subchapters III and IV. Harmonized Tariff Schedule of the United States) may be entered on an informal entry in accordance with subpart C of part 143 of this chapter, in which case such installment need not be considered in connection with invoice requirements for the balance of the series.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 75–27, 40 FR 3449, Jan. 22, 1975; T.D. 78–53, 43 FR 6069, Feb. 13, 1978; T.D. 84–213, 49 FR 41184, Oct. 19, 1984; T.D. 85–123, 50 FR 29954, July 23, 1985; T.D. 89–1, 53 FR 51256, Dec. 21, 1988; T.D. 89–82, 54 FR 36026, Aug. 31, 1989; T.D. 93–66, 58 FR 44130, Aug. 19, 1993; T.D. 98–28, 63 FR 16417, Apr. 3, 1998; CBP Dec. 12–19, 77 FR 72720, Dec. 6, 2012]

§ 141.83 Type of invoice required.

(a)–(b) [Reserved]

(c) *Commercial invoice.* (1) A commercial invoice shall be filed for each shipment of merchandise not exempted by paragraph (d) of this section. The commercial invoice shall be prepared in the manner customary in the trade, contain the information required by §§141.86 through 141.89, and substantiate the statistical information required by §141.61(e) to be given on the entry, entry summary, or withdrawal documentation.

(2) CBP may accept a copy of a required commercial invoice in place of the original. A copy, other than a photostatic or photographic copy, shall contain a declaration by the foreign seller, the shipper, or the importer that it is a true copy.

(d) *Commercial invoice not required.* A commercial invoice shall not be required in connection with the filing of the entry, entry summary, or withdrawal documentation for merchandise listed in this paragraph. The importer, however, shall present any invoice, memorandum invoice, or bill pertaining to the merchandise which may be in his possession or available to him. If no invoice or bill is available, a pro forma (or substitute) invoice, as provided for in §141.85, shall be filed, and shall contain information adequate for the examination of merchandise and the determination of duties, and information and documentation which verify the information required for statistical purposes by §141.61(e). The merchandise subject to the foregoing requirements is as follows:

(1) [Reserved]

(2) Merchandise not intended for sale or any commercial use in its imported condition or any other form, and not brought in on commission for any person other than the importer.

(3)–(4) [Reserved]

(5) Merchandise returned to the United States after having been exported for repairs or alteration under subheadings 9802.00.40 and 9802.00.60, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(6) Merchandise shipped abroad, not delivered to the consignee, and returned to the United States.

(7) Merchandise exported from continuous Customs custody within 6 months after the date of entry.

(8) Merchandise consigned to, or entered in the name of, any agency of the U.S. Government.

(9) Merchandise for which an appraisement entry is accepted.

(10) Merchandise entered temporarily into the Customs territory of the United States under bond or for permanent exhibition under bond.

(11) Merchandise provided for in section 466, Tariff Act of 1930 (19 U.S.C. 1466), which pertain to certain equipment, repair parts, and supplies for vessels.

(12) Merchandise imported as supplies, stores, and equipment of the importing carrier and subsequently made subject to entry pursuant to section 446, Tariff Act of 1930, as amended (19 U.S.C. 1446).

(13) Ballast (not including cargo used for ballast) landed from a vessel and delivered for consumption.

(14) Merchandise, whether privileged or nonprivileged, resulting from manipulation or manufacture in a foreign trade zone.

(15) Screenings contained in bulk importations of grain or seeds.

[T.D. 73–175, 38 FR 17447, July 2, 1973]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §141.83, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§141.84 Photocopies of invoice for separate entries of same shipment.

(a) *Entries at one port.* If by reason of accident or short shipment a portion of the quantity covered by one invoice fails to arrive, or if for any other reason only a portion of the quantity covered by one invoice is entered under one entry, a photocopy of the commercial invoice used in connection with the first entry, covering the quantity to be entered under another entry, may be used in connection with the subsequent entry of any portion of the merchandise not cleared under the first entry.

(b) *Entries from foreign-trade zone at one port.* A photocopy of the invoice filed with the first entry for consumption from a foreign-trade zone of a portion of the merchandise shown on the invoice will not be required for any subsequent entry for consumption from

that zone at the same port of a portion of any merchandise covered by such invoice, if a pro forma invoice is filed and identifies the entry first made and the invoice then filed.

(c) *Entries at different ports.* When portions of a single shipment requiring a commercial invoice are entered at different ports, the importer may submit to the port director where the original invoice or latest photocopy of the original invoice is on file, two photocopies of the latest of such invoices to be certified as to merchandise previously received, and the official seal affixed thereto.

(d) *Pro forma invoice.* In a case in which a portion of the shipment is entered at the first port on a pro forma invoice, an entry at a subsequent port may be made by means of a new pro forma invoice which may cover only the merchandise then entered.

(e) *Photocopy to satisfy bond for invoice.* A properly certified photocopy of a commercial invoice presented within 6 months after the date of entry may be accepted to cancel the charges against the bond given for the production of the commercial invoice.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 84–213, 49 FR 41184, Oct. 19, 1984; T.D. 85–39, 50 FR 9612, Mar. 11, 1985]

§ 141.85 Pro forma invoice.

A pro forma invoice submitted in accordance with any provision of this chapter shall be in substantially the following form:

PRO FORMA INVOICE

IMPORTERS STATEMENT OF VALUE OR THE PRICE PAID IN THE FORM OF AN INVOICE

Not being in possession of a commercial seller's or shipper's invoice I request that you accept the statement of value or the price paid in the form of an invoice submitted below:

Name of shipper _____
address _____
Name of seller _____
address _____;.
Name of consignee _____
address _____.
Name of purchaser _____
address _____.

The merchandise (has) (has not) been purchased or agreed to be purchased by me.

The prices, or in the case of consigned goods the values, given below are true and correct to the best of my knowledge and belief, and are based upon: (Check basis with an "X")

(a) The price paid or agreed to be paid (__) as per order dated _____.

(b) Advices from exporter by letter (—) by cable (__) dated _____.

(c) Comparative values of shipments previously received (__) dated _____.

(d) Knowledge of the market in the country of exportation (__) _____.

(e) Knowledge of the market in the United States (if U.S. Value) (__) _____.

(f) Advice by CBP (__) _____.

(g) Other (__) _____.

A—Case marks numbers	B—Manufacturer's item No. symbol or brand	C—Quantities and full description	D—Unit purchase price (currency)	E—Total purchase price (currency)	F—Unit foreign value	G—Total foreign value
	.....	.....	.....	.....	.....	.....
	.....	.....	.....	.....	.....	.....

Check which of the charges below are, and which are not included in the prices listed in columns "D" and "E":

Amount	Included	Not included
Packing	.....	.....
Cartage	.....	.....
Inlandfreight	.....	.....
Wharfage and loading abroad	.....	.....
Lighterage	.....	.....
Ocean freight	.....	.....
U.S. duties	.....	.....
Other charges (identify by name and amount)	.....	.....
Total	.....	.....

Country of origin _____.

If any other invoice is received, I will immediately file it with an authorized CBP official.

_____
(Signature of person making invoice)

_____
(Title and firm name)

Date _____

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 85–39, 50 FR 9612, Mar. 11, 1985]

§ 141.86 Contents of invoices and general requirements.

(a) *General information required on the invoice.* Each invoice of imported merchandise, must set forth the following information:

(1) The port of entry to which the merchandise is destined;

(2) The time when, the place where, and the person by whom and the person to whom the merchandise is sold or agreed to be sold, or if to be imported otherwise than in pursuance of a purchase, the place from which shipped, the time when and the person to whom and the person by whom it is shipped;

(3) A detailed description of the merchandise, including the name by which each item is known, the grade or quality, and the marks, numbers, and symbols under which sold by the seller or manufacturer to the trade in the country of exportation, together with the marks and numbers of the packages in which the merchandise is packed;

(4) The quantities in the weights and measures of the country or place from which the merchandise is shipped, or in the weights and measures of the United States;

(5) The purchase price of each item in the currency of the purchase, if the merchandise is shipped in pursuance of a purchase or an agreement to purchase;

(6) If the merchandise is shipped otherwise than in pursuance of a purchase or an agreement to purchase, the value for each item, in the currency in which the transactions are usually made, or, in the absence of such value, the price in such currency that the manufacturer, seller, shipper, or owner would have received, or was willing to receive, for such merchandise if sold in the ordinary course of trade and in the usual wholesale quantities in the country of exportation;

(7) The kind of currency, whether gold, silver, or paper;

(8) All charges upon the merchandise itemized by name and amount, including freight, insurance, commission, cases, containers, coverings, and cost of packing; and if not included above, all charges, costs, and expenses incurred in bringing the merchandise from alongside the carrier at the port of exportation in the country of exportation and placing it alongside the carrier at the first United States port of entry. The cost of packing, cases, containers, and inland freight to the port of exportation need not be itemized by amount if included in the invoice price, and so identified. Where the required information does not appear on the invoice as originally prepared, it must be shown on an attachment to the invoice;

(9) All rebates, drawbacks, and bounties, separately itemized, allowed upon the exportation of the merchandise;

(10) The country of origin of the merchandise; and,

(11) All goods or services furnished for the production of the merchandise (e.g., assists such as dies, molds, tools, engineering work) not included in the invoice price. However, goods or services furnished in the United States are excluded. Annual reports for goods and services, when approved by the Center director, will be accepted as proof that the goods or services were provided.

(b) *Nonpurchased merchandise shipped by other than manufacturer.* Each invoice of imported merchandise shipped to a person in the United States by a person other than the manufacturer and otherwise than pursuant to a purchase or agreement to purchase must set forth the time when, the place where, the person from whom such merchandise was purchased, and the price paid therefor in the currency of the purchase, stating whether gold, silver, or paper.

(c) *Merchandise sold in transit.* If the merchandise is sold on the documents while in transit from the port of exportation to the port of entry, the original invoice reflecting the transaction under which the merchandise actually began its journey to the United States, and the resale invoice or a statement of sale showing the price paid for each item by the purchaser, must be filed as part of the entry, entry summary, or withdrawal documentation. If the original invoice cannot be obtained, a pro forma invoice showing the values and transaction reflected by the original invoice must be filed together with the resale invoice or statement.

(d) *Invoice to be in English.* The invoice and all attachments must be in

the English language, or must have attached thereto an accurate English translation containing adequate information for examination of the merchandise and determination of duties.

(e) *Packing list.* Each invoice must state in adequate detail what merchandise is contained in each individual package.

(f) *Weights and measures.* If the invoice or entry does not disclose the weight, gage, or measure of the merchandise which is necessary to ascertain duties, the consignee must pay the expense of weighing, gaging, or measuring prior to the release of the merchandise from CBP custody.

(g) *Discounts.* Each invoice must set forth in detail, for each class or kind of merchandise, every discount from list or other base price which has been or may be allowed in fixing each purchase price or value.

(h) *Numbering of invoices and pages*—(1) *Invoices.* Except when electronic invoice data are transmitted to CBP under the provisions of part 143 of this chapter, when more than one invoice is included in the same entry, each invoice with its attachments must be numbered consecutively by the importer on the bottom of the face of each page, beginning with No. 1.

(2) *Pages.* Except when electronic invoice data are transmitted to CBP under the provisions of part 143 of this chapter, if the invoice or invoices filed with one entry consist of more than two pages, each page must be numbered consecutively by the importer on the bottom of the face of each page, with the page numbering beginning with No. 1 for the first page of the first invoice and continuing in a single series of numbers through all the invoices and attachments included in one entry.

(3) *Both invoices and pages.* Except when electronic invoice data are transmitted to CBP under the provisions of part 143 of this chapter, both the invoice number and the page number must be shown at the bottom of each page when applicable. For example, an entry covering one invoice of one page and a second invoice of two pages must be paginated as follows:

Inv. 1, p. 1.
Inv. 2, p. 2.
Inv. 2, p. 3

(i) *Information may be on invoice or attached thereto.* Any information required on an invoice by any provision of this subpart may be set forth either on the invoice or on an attachment thereto.

(j) *Name of responsible individual.* Each invoice of imported merchandise must identify by name a responsible employee of the exporter, who has knowledge, or who can readily obtain knowledge, of the transaction.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 79–221, 44 FR 46820, Aug. 9, 1979; T.D. 85–39, 50 FR 9612, Mar. 11, 1985; CBP Dec. 09–47, 74 FR 69019, Dec. 30, 2009]

§ 141.87 Breakdown on component materials.

Whenever the classification or appraisement of merchandise depends on the component materials, the invoice shall set forth a breakdown giving the value, weight, or other necessary measurement of each component material in sufficient detail to determine the correct duties.

§ 141.88 Computed value.

When the Center director determines that information as to computed value is necessary in the appraisement of any class or kind of merchandise, he shall so notify the importer, and thereafter invoices of such merchandise shall contain a verified statement by the manufacturer or producer of computed value as defined in § 402(e), Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. 1401a(e)).

[T.D. 87–89, 52 FR 24445, July 1, 1987]

§ 141.89 Additional information for certain classes of merchandise.

(a) Invoices for the following classes of merchandise, classifiable under the Harmonized Tariff Schedule of the United States (HTSUS), shall set forth the additional information specified: [75–42, 75–239, 78–53, 83–251, 84–149.]

Aluminum and alloys of aluminum classifiable under subheadings 7601.10.60, 7601.20.60, 7601.20.90, or 7602.00.00, HTSUS (T.D. 53092, 55977, 56143)—Statement of the percentages by weight of any metallic element contained in the article.

Articles manufactured of textile materials, Coated or laminated with plastics or rubber,

classifiable in Chapter(s) 39, 40, and 42—Include a description indicating whether the fabric is coated or laminated on both sides, on the exterior surface or on the interior surface.

Bags manufactured of plastic sheeting and not of a reinforced or laminated construction, classified in Chapter 39 or in heading 4202—Indicate the gauge of the plastic sheeting.

Ball or roller bearings classifiable under subheading 8482.10.50 through 8482.80.00, HTSUS (T.D. 68–306)—(1) Type of bearing (*i.e.*, whether a ball or roller bearing); (2) If a roller bearing, whether a spherical, tapered, cylindrical, needled or other type; (3) Whether a combination bearing (*i.e.*, a bearing containing both ball and roller bearings, etc.); and (4) If a ball bearing (not including ball bearing with integral shafts or parts of ball bearings), whether or not radial, the following: (a) outside diameter of each bearing; and (b) whether or not a radial bearing (the definition of radial bearing is, for Customs purposes, an antifriction bearing primarily designed to support a load perpendicular to shaft axis).

Beads (T.D. 50088, 55977)—(1) The length of the string, if strung; (2) The size of the beads expressed in millimeters; (3) The material of which the beads are composed, *i.e.*, ivory, glass, imitation pearl, etc.

Bed linen and Bedspreads—Statement as to whether or not the article contains any embroidery, lace, braid, edging, trimming, piping or applique work.

Chemicals—Furnish the use and Chemical Abstracts Service number of chemical compounds classified in Chapters 27, 28 and 29, HTSUS.

Colors, dyes, stains and related products provided for under heading 3204, HTSUS—The following information is required: (1) Invoice name of product; (2) Trade name of product; (3) Identity and percent by weight of each component; (4) Color Index number (if none, so state); (5) Color Index generic name (if none so state); (6) Chemical Abstracts Service number of the active ingredient; (7) Class of merchandise (state whether acid type dye, basic dye, disperse dye, fluorescent brightener, soluble dye, vat dye, toner or other (describe); (8) Material to which applied (name the material for which the color, dye, or toner is primarily designed).

Copper (T.D. 45878, 50158, 55977) articles classifiable under the provisions of Chapter 74, HTSUS—A statement of the weight of articles of copper, and a statement of percentage of copper content and all other elements—by weight—to articles classifiable according to copper content.

Copper ores and concentrates (T.D. 45878, 50158, 55977) classifiable in heading 2603, and subheadings 2620.19.60, 2620.20.00, 2620.30.00, and heading 7401—Statement of the percentages by weight of the copper content and any other metallic elements.

Cotton fabrics classifiable under the following HTSUS headings: 5208, 5209, 5210, 5211, and 5212—(1) Marks on shipping packages; (2) Numbers on shipping packages; (3) Customer's call number, if any; (4) Exact width of the merchandise; (5) Detailed description of the merchandise; trade name, if any; whether bleached, unbleached, printed, composed of yarns of different color, or dyed; if composed of cotton and other materials, state the percentage of each component material by weight; (6) Number of single threads per square centimeter (All ply yarns must be counted in accordance with the number of single threads contained in the yarn; to illustrate: a cloth containing 100 two-ply yarns in one square centimeter must be reported as 200 single threads); (7) Exact weight per square meter in grams; (8) Average yarn number use this formula:

$$\frac{100 \times (\text{Total Single Yarns Per Square Centimeter})}{(\text{Number of Grams Per Square Meter})}$$

(9) Yarn size or sizes in the warp; (10) Yarn size or sizes in the filling; (11) Specify whether the yarns are combed or carded; (12) Number of colors or kinds (different yarn sizes or materials) in the filling; (13) Specify whether the fabric is napped or not napped; and (14) Specify the type of weave, for example, plain, twill, sateen, oxford, etc., and (15) Specify the type of machine on which woven: if with Jacquard (Jacq), if with Swivel (Swiv), if with Lappet (Lpt.), if with Dobby (Dobby).

Cotton raw See §151.82 of this chapter for additional information required on invoices.

Cotton waste (T.D. 5044)—(1) The name by which the cotton waste is known, such as ''cotton card strips''; ''cotton comber waste''; ''cotton lap waste''; ''cotton sliver waste''; ''cotton roving waste''; ''cotton fly waste''; etc.; (2) Whether the length of the cotton staple forming any cotton card strips covered by the invoice were made is less than 3.016 centimeters (1$^{3}/_{16}$ inches) or is 3.016 centimeters (1$^{3}/_{16}$ inches) or more.

Earthenware or crockeryware composed of a nonvitrified absorbent body (including white granite and semiporcelain earthenware and cream-colored ware, stoneware, and terra

cotta, but not including common brown, gray, red, or yellow earthenware), embossed or plain; common salt-glazed stoneware; stoneware or earthenware crucibles; Rockingham earthenware; china, porcelain, or other vitrified wares, composed of a vitrified nonabsorbent body which, when broken, shows a vitrified, vitreous, semi-vitrified, or semivitreous fracture; and bisque or parian ware (T.D. 53236)—(1) If in sets, the kinds of articles in each set in the shipment and the quantity of each kind of article in each set in the shipment; (2) The exact maximum diameter, expressed in centimeters, of each size of all plates in the shipment; (3) The unit value for each style and size of plate, cup, saucer, or other separate piece in the shipment.

Fish or fish livers (T.D. 50725, 49640, 55977) imported in airtight containers classifiable under Chapter 3, HTSUS—(1) Statement whether the articles contain an oil, fat, or grease which has had a separate existence as an oil, fat, or grease, (2) The name and quantity of any such oil, fat, or grease.

Footwear, classifiable in headings 6401 through 6405 of the HTSUS—

1. Manufacturer's style number.
2. Importer's style and/or stock number.
3. Percent by area of external surface area of upper (excluding reinforcements and accessories) which is:

Leather a. _____%
Composition Leather b. _____%
Rubber and/or plastics c. _____%
Textile materials d. _____%
Other (give separate e. _____%
Percent for each f. _____%
Type of material)

4. Percent by area of external Surface area of outersole (excluding reinforcements and accessories) which is:

Leather a. _____%
Composition Leather b. _____%
Rubber and/or plastics c. _____%
Textile materials d. _____%
Other (give separate e. _____%
Percent for each f. _____%
Type of material)

You may skip this section if you choose to answer *all* questions A through Z below.

I. If 3(a) is larger than any other percent in 3 and if 4(a) is larger than any other percent in 4, answer questions F, G, L, M, O, Q, R, S, and X.

II. If 3(a) is larger than any other percent in 3 and if 4(c) is larger than any other percent in 4, answer questions F, G, L, M, N, O, Q, S and X.

III. If 3(a) plus 3(b) is larger than any single percent in 3 and if 4(d), 4(e) or 4(f) is larger than any other percent in 4, stop.

IV. If 3(c) is larger than any other percent in 3 and if 4(a) or 4(b) is larger than any other percent in 4, stop.

V. If 3(c) is larger than any other percent in 3 and if 4(c) is larger than any other percent in 4, answer questions B, E, F, G, H, J, K, L, M, N, O, P, T and W.

VI. If 3(d) is larger than any other percent in 3 and if 4(a) plus 4(b) is larger than any single percent in 4, answer questions C and D.

VII. If 3(d) is larger than any other percent in 3 and if 4(c) is larger than any other percent in 4, answer questions A, C, J, K, M, N, P and T.

VIII. If 3(d) is larger than any other percent in 3 and if 4(d) is larger than any other percent in 4, answer questions U, Y and Z.

IX. If the article is made of paper, answer questions V and Z.

If the article does not meet any of conditions I through IX above, answer all questions A through Z, below.

A Percent of external surface area of upper (including leather reinforcements and accessories)
Which is leather _____%
B Percent by area of external surface area of upper (*including* all reinforcements and accessories).
Which is rubber and/or plastics _____%
C Percent by weight of rubber and/or plastics is _____%
D Percent by weight of textile materials plus rubber and/or plastics is _____%
E Is it waterproof?
F Does it have a protective metal toe cap?
G Will it cover the wearer's ankle bone?
H Will it cover the wearer's knee cap?
I [Reserved]
J Is it designed to protect against water, oil, grease, or chemicals, or cold or inclement weather?
K Is it a slip-on?
L Is it a downhill or cross-country skiboot?
M Is it serious sports footwear other than skiboots? (Chapter 64 subheading note defines sports footwear.)
N Is it a tennis, basketball, gym, or training shoe or the like?
O Is it made on a base or platform of wood?
P Does it have open toes or open heels?
Q Is it made by the (lipped insole) welt construction?
R Is it made by the turned construction?
S Is it worn exclusively by men, boys or youths?
T Is it made by an exclusively adhesive construction?
U Are the fibers of the upper, by weight, predominately vegetable fibers?
V Is it disposable, *i.e.*, intended for one-time use?
W Is it a ''Zori''?
X Is the leather in the upper pigskin?
Y Are the sole and upper made of woolfelt?
Z Is there a line of demarcation between the outer sole and upper?

The information requested above may be furnished on CF 5523 or other appropriate format by the exporter, manufacturer or shipper.

Also, the following information must be furnished by the importer or his authorized agent if classification is claimed under one of the subheadings below:

If subheading 6401.99.80, 6402.19.10, 6402.30.30, 6402.91.40, 6402.99.15, 6402.99.30, 6406.11.40, 6404.11.60, 6404.19.35, 6404.19.40, or 6404.19.60 is claimed:

Does the shoe have a foxing or foxing-like band? If so, state its materials(s).

Does the sole overlap the upper other than just at the front of the toe and/or at the back of the heel?

Definitions for some of the terms used in questions A to Z above: For the purpose of this section, the following terms have the approximate definitions below. If either a more complete definition or a decision as to its application to a particular article is needed, the maker or importer of record (or the agent of either) should contact Customs prior to entry of the article.

a. In an *exclusively adhesive construction*, all of the piece(s) of the bottom would separate from the upper or from each other if all adhesives, cements, and glues were dissolved. It includes shoes in which the pieces of the upper are stitched to each other, but not to any part of the bottom. Examples include:

1. Vulcanized construction footwear;

2. Simultaneous molded construction footwear;

3. Molded footwear in which the upper and the bottom are one piece of molded rubber or plastic, and

4. Footwear in which staples, rivets, stitching, or any of the methods above are either primary or just extra or auxiliary, even though adhesive is a major part of the reason the bottom will not separate from the upper.

b. *Composition leather* is made by binding together leather fibers or small pieces of natural leather. It does not include imitation leathers not based on natural leather.

c. *Leather* is the tanned skin of any animal from which the fur or hair has been removed. Tanned skins coated or laminated with rubber and/or plastics are ''leather'' only if the leather gives the material its essential character.

d. A *line of demarcation* exists if one can indicate where the sole ends and the upper begins. For example, knit booties do not normally have a line of demarcation.

e. *Men's, boys' and youths'* sizes cover footwear of American youths sizes 11½ and larger for males, and do not include footwear commonly worn by both sexes. If more than 4% of the shoes sold in a given size will be worn by females, that size is ''commonly worn by both sexes.''

f. Footwear is designed to *protect* against water, oil or cold or inclement weather only if it is substantially more of a protection against those items than the usual shoes of that type. For example, leather oxfords will clearly keep one's feet warmer and drier than going barefoot, but they are not a protection in this sense. On the other hand the snow-jobber is the protective version of the nonprotective jogging shoe.

g. *Rubber and/or plastics* includes any textile material visibly coated (or covered) externally with one or both of those materials.

h. *Slip-on* includes:

1. A boot which must be pulled on.

2. Footwear with elastic cores which must be stretched to get it on, but not bootwear having a separate piece of elasticized fabric which forms a full circle around the foot or ankle.

i. *Sports footwear* includes only:

(1) Footwear which is designed for a sporting activity and has, or has provision for, the attachment of spikes, sprigs, cleats, stops, clips, bars or the like;

(2) Skating boots (without skates attached), ski boots and cross-country ski footwear, wrestling boots, boxing boots and cycling shoes.

j. *Tennis shoes, basketball shoes, gym shoes, training shoes and the like* covers athletic footwear other than sports footwear, whether or not principally used for such athletic games or purposes.

k. *Textile materials* are made from cotton, other vegetable fibers, wool, hair, silk or man-made fibers. Note: Cork, wood carboard and leather are not textile materials.

l. In *turned* construction, the upper is stitched to the leather sole wrong side out and the shoe is then turned right side out.

m. *Vegetable fibers* include cotton, flax and ramie, but do not include either rayon or plaiting materials such as rattan or wood strips.

n. *Waterproof footwear* includes footwear designed to protect against penetration by water or other liquids, whether or not such footwear is primarily designed for such purposes.

o. *Welt footwear* means footwear constructed with a welt, which extends around the edge of the outer sole, and in which the welt and shoe upper are sewed to a lip on the surface of the insole, and the outer sole is sewed or cemented to the welt.

p. A *zori* has an upper consisting only of straps or thongs of molded rubber or plastic. This upper is assembled to a foamed rubber or plastic sole by means of plugs.

Fur products and furs (T.D. 53064)—(1) Name or names (as set forth in the Fur Products Name Guide (16 CFR 301.0) of the animal or animals that produced the fur, and such qualifying statements as may be required pursuant to §7(c) of the Fur Products Labeling Act (15 U.S.C. 69e(c)); (2) A statement that the fur product contains or is composed

of used fur, when such is the fact; (3) A statement that fur product contains or is composed of bleached, dyed, or otherwise artificially colored fur, when such is the fact; (4) A statement that the fur product is composed wholly or in substantial part of paws, tails, bellies, or waste fur, when such is the fact; (5) Name and address of the manufacturer of the fur product; (6) Name of the country of origin of the furs or those contained in the fur product.

Glassware and other glass products (T.D. 53079, 55977)—Classifiable under Heading 7013 HTSUS—Statement of the separate value of each component article in the set.

Gloves—State if the merchandise has a plastics or a rubber exterior. (See Chapter 59, Note 2(a)(3)).

Grain or grain and screenings (T.D. 51284)—Statement on Customs invoices for cultivated grain or grain and screenings that no screenings are included with the grain, or, if there are screenings included, the percentage of the shipment which consists of screenings commingled with the principal grain.

Handkerchiefs—(1) State the exact dimensions (length and width) of the merchandise; (2) If of cotton indicate whether the handkerchief is hemmed and whether it contains lace or embroidery.

Hats or headgear—(1) If classifiable under subheading 6502.00.40 or 6502.00.60, HTSUS—Statement as to whether or not the article has been bleached or colored; (2) If classifiable under subheadings 6502.00.20 through 6502.00.60 or 6504.00.30 through 6504.00.90, HTSUS—Statement as to whether or not the article is sewed or not sewed, exclusive of any ornamentation or trimming.

Hosiery—(1) Indicate whether a single yarn measures less than 67 decitex. (2) Indicate whether the hosiery is full length, knee length, or less than knee length. (3) Indicate whether it contains lace or net.

Iron or steel classifiable in Chapter 72 or headings 7301 to 7307, HTSUS (T.D. 53092, 55977)—Statement of the percentages by weight or carbon and any metallic elements contained in the articles, in the form of a mill analysis or mill test certificate.

Iron oxide (T.D. 49989, 50107)—For iron oxide to which a reduced rate of duty is applicable, a statement of the method of preparation of the oxide, together with the patent number, if any.

Machines, equipment and apparatus—Chapters 84 and 85, HTSUS—A statement as to the use or method of operation of each type of machine.

Machine parts (T.D. 51616)—Statement specifying the kind of machine for which the parts are intended, or if this is not known to the shipper, the kinds of machines for which the parts are suitable.

Machine tools: (1) Headings 8456 through 8462—machine tools covered by these headings equipped with a CNC (Computer Numerical Control) or the facings (electrical interface) for a CNC must state so; (2) Headings 8458 through 8463—machine tools covered by these headings if used or rebuilt must state so; (3) Subheading 8456.30.10—EDM: (Electical Discharge Machines) if a Traveling Wire (Wire Cut) type must state so. Wire EDM's use a copper or brass wire for the electrode; (4) Subheading 8457.10.00—Machining Centers. Must state whether or not they have an ATC (Automatic Tool Changer). Vertical spindle maching centers with an ATC must also indicate the Y-travel; (5) Subheading 8458.11.0030 through 8458.11.0090—horizontal lathes: numerically controlled. Must indicate the rated HP (or KW rating) of the main spindle motor. Use the continuous rather than the 30 minute rating.

Madeira embroideries (T.D. 49988)—(1) With respect to the materials used, furnish: (a) country of production; (b) width of the material in the piece; (c) name of the manufacturer; (d) kind of material, indicating manufacturer's quality number; (e) landed cost of the material used in each item; (f) date of the order; (g) date of the invoice; (h) invoice unit value in the currency of the purchase; (i) discount from purchase price allowed, if any; (2) With respect to the finished embroidered articles, furnish: (a) manufacturers's name, design number, and quality number; (b) importer's design number, if any; (c) finished size; (d) number of embroidery points per unit of quantity; (e) total for overhead and profit added in arriving at the price or value of the merchandise covered by the invoice.

Motion-picture films—(1) Statement of footage, title, and subject matter of each film; (2) Declaration of shipper, cameraman, or other person with knowledge of the facts identifying the films with the invoice and stating that the basic films were to the best of his knowledge and belief exposed abroad and returned for use as newsreel; (3) Declaration of importer that he believes the films entered by him are the ones covered by the preceding declaration and that the films are intended for use as newsreel.

Paper classifiable in Chapter 48—Invoices covering paper shall contain the following information, or will be accompanied by specification sheets containing such information:

(1) Weight of paper in grams per square meter; (2) Thickness, in micrometers (microns); (3) If imported in rectangular sheets, length and width of sheets, in cm; (4) if imported in strips, or rolls, the width, in cm. In the case of rolls, the diameter of rolls in cm; (5) Whether the paper is coated or impregnated, and with what materials; (6) Weight of coating, in grams per square meter; (7) Percentage by weight of the total fiber content consisting of wood fibers obtained by a mechanical process, chemical sulfate or soda process, chemical sulfite process, or semi-

chemical process, as appropriate; (8) Commercial designation, as ''Writing'', ''Cover'', ''Drawing'', ''Bristol'', ''Newsprint'', etc.; (9) Ash content; (10) Color; (11) Glaze, or finish; (12) Mullen bursting strength, and Mullen index; (13) Stretch factor, in machine direction and in cross direction; (14) Tear and tensile readings; in machine direction, in cross direction, and in machine direction plus cross direction; (15) Identification of fibers as ''hardwood'' where appropriate; (16) Crush resistance; (17) Brightness; (18) Smoothness; (19) If bleached, whether bleached uniformly throughout the mass; (20) Whether embossed, perforated, creped or crinkled.

Plastic plates, sheets, film, foil and strip of headings 3920 and 3921—(1) Statement as to whether the plastic is cellular or noncellular; (2) Specification of the type of plastic; (3) Indication of whether or not flexible and whether combined with textile or other material.

Printed matter classificable in Chapter 49—Printed matter entered in the following headings shall have, on or with the invoices covering such matter, the following information: (1) *Heading 4901*—(a) Whether the books are: dictionaries, encyclopedias, textbooks, bound newspapers or journals or periodicals, directories, bibles or other prayer books, technical, scientific or professional books, art or pictorial books, or ''other'' books; (b) if ''other'' books, whether hardbound or paperbound; (c) if ''other'' books, paperbound, other than ''rack size'': number of pages (excluding covers). (2) *Heading 4902*—(a) Whether the journal or periodical appears at least four times a week. If the journal or periodical appears other than at least four times a week, whether it is a newspaper supplement printed by a gravure process, is it a newspaper, business or professional journal or periodical, or other than these; (3) *Heading 4904*—Whether the printed or manuscript music is sheet music, not bound (except by stapling or folding); (4) *Heading 4905*—(a) Whether globes or not; (b) if not globes, whether in book form or not; (c) in any case, whether or not in relief; (5) *Heading 4908*—Whether or not vitrifiable; (6) *Heading 4904*—Whether post cards, greeting cards, or other; (7) *Heading 4910*—(a) Whether or not printed on paper by a lithographic process; (b) if printed on paper by a lithographic process, the thickness of the paper, in mm; (8) *Subheading 4911.91*—(a) Whether or not printed over 20 years at time of importation; (b) if printed not over 20 years at time of importation, whether suitable for use in the production of articles of heading 4901; (c) if not printed over 20 years at time of importation, and not suitable for use in the production of articles of heading 4901, whether the merchandise is lithographs on paper or paperboard; (d) if lithographs on paper or paperboard, under the terms of the immediately preceding description, thickness of the paper or paperboard, and whether or not posters; (e) in any case, whether or not posters; (f) in any case, whether or not photographic negatives or positives on transparent bases; (g) *Subheading 4911.99*—If not carnets, or parts thereof, in English or French, whether or not printed on paper in whole or in part by a lithographic process.

Pulp classifiable in Chapter 47—(1) Invoices covering chemical woodpulp, dissolving grades, in *Heading 4702* shall state the insoluble fraction (as a percentage) after 1 hour in a caustic soda solution containing 18% sodium hydroxide (NaOH) at 20 °C; (2) *Subheading 4702.00.0020*—Pulp entered under this subheading shall in addition contain on or with the invoice the ash content as a percentage to the third decimal point, by weight.

Refrigeration equipment—(1) Refrigerator-freezers classifiable under subheading 8418.10.00 and (2) refrigerators classifiable under subheading 8418.21.00—(a) Statement as to whether they are compression or absorption type; (b) Statement of their refrigerated volume in liters. (3) Freezers classifiable under subheading 8418.30.00 and 8418.40.00—Statement as to whether they are chest or upright type. (4) Liquid chilling refrigerating units classifiable under subheadings 8418.69.0045 through 8418.69.0060—Statement as to whether they are centrifugal open-type, centrifugal hermetic-type, absorption-type or reciprocating type.

Rolling mills—Subheadings 8455.30.0005 through 8455.30.0085. Rolls for rolling mills: Indicate the composition of the roll—gray iron, cast steel or other—and the weight of each roll.

Rubber products of Chapter 40—(1) Statement as to whether combined with textile or other material; (2) Statement whether the rubber is cellular or noncellular, unvulcanized or vulcanized, and if vulcanized, whether hard rubber or other than hard rubber.

Screenings or scalpings of grains or seeds (T.D. 51096)—(1) Whether the commodity is the product of a screening process; (2) If so, whether any cultivated grains have been added to such commodity; (3) If any such grains have been added, the kind and percentage of each.

Textile fiber products (T.D. 55095)—(1) The constituent fiber or combination of fibers in the textile fiber product, designating with equal prominence each natural or manufactured fiber in the textile fiber product by its generic name in the order of predominance by the weight thereof if the weight of such fiber is 5 per centum or more of the total fiber weight of the product; (2) The percentage of each fiber present, by weight, in the total fiber content of the textile fiber product; (3) The name, or other identification issued and registered by the Federal Trade Commission, of the manufacturer of the

product or one or more persons subject to §3 of the Textile Fiber Products Identification Act (15 U.S.C. 70a) with respect to such product; (4) The name of the country where processed or manufactured. *See also* ''Wearing Apparel'' below.

Tires and tubes for tires, of rubber or plastics—(1) Specify the kind of vehicle for which the tire is intended, *i.e.*, airplane, bicycle, passenger car, on-the-highway light or heavy truck or bus, motorcycle; (2) If designed for tractors provided for in subheading 8701.90.10 or for agricultural or horticultural machinery or implements provided for in Chapter 84 or in subheading 8716.80.10, designate whether the tire is new, recapped, or used; pneumatic or solid; (3) Indicate whether the tube is designed for tires provided for in subheading 4011.91.10, 4011.99.10, 4012.10.20, or 4012.20.20.

Tobacco (including tobacco in its natural state) (T.D. 44854, 45871)—(1) Specify in detail the character of the tobacco in each bale by giving (a) country and province of origin, (b) year of production, (c) grade or grades in each bale, (d) number of carrots or pounds of each grade if more than one grade is packed in a bale, (e) the time when, place where, and person from whom purchased, (f) price paid or to be paid for each bale or package, or price for the vega or lot if purchased in bulk, or if obtained otherwise than by purchase, state the actual market value per bale; (2) If an invoice covers or includes bales of tobacco which are part of a vega or lot purchased in bulk, the invoice must contain or be accompanied by a full description of the vega or lot purchased; or if such description has been furnished with a previous importation, the date and identity of such shipment; (3) Packages or bales containing only filler leaf shall be invoiced as filler; when containing filler and wrapper but not more than 35 percent of wrapper, they shall be invoiced as mixed; and when containing more than 35 percent of wrapper, they shall be invoiced as wrapper.

Watches and watch movements classifiable in Chapter 91 of the HTSUS—For all commercial shipments of such articles, there shall be required to be shown on the invoice, or on a separate sheet attached to and constituting a part of the invoice, such information as will reflect with respect to each group, type, or model, the following:

(A) For watches, a thorough description of the composition of the watch cases, the bracelets, bands or straps; the commercial description (ebauche caliber number, ligne size and number of jewels) of the movements contained in the watches; and the type of battery (manufacturer's name and reference number), if the watch is battery-operated;

(B) For watch movements, the commercial description (ebauche caliber number, ligne size and number of jewels). If battery-operated, the type of battery (manufacturer's name and reference number);

(C) The name of the manufacturer of the exported watch movements and the name of the country in which the movements were manufactured.

Wearing apparel—(1) All invoices for textile wearing apparel should indicate a component material breakdown in percentages by weight for all component fibers present in the entire garment, as well as separate breakdowns of the fibers in the (outer) shell (exclusive of linings, cuffs, waistbands, collars and other trimmings) and in the lining. (2) For garments which are constructed of more than one component or material (combinations of knit and not knit fabric or combinations of knit and/or not knit fabric with leather, fur, plastic including vinyl, etc.), the invoice must show a fiber breakdown in percentages by weight for each separate textile material in the garment and a breakdown in percentages by weight for each nontextile material for the entire garment; (3) For woven garments—Indicate whether the fabric is yarn dyed and whether there are ''two or more colors in the warp and/or filling''; (4) For all-white T-shirts and singlets—Indicate whether or not the garment contains pockets, trim, or embroidery; (5) For mufflers—State the exact dimensions (length and width) of the merchandise.

Wood products—(1) Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6 mm (lumber), classifiable under Chapter 44, heading 4407, HTSUS, and wood continuously shaped along any of its edges or faces, whether or not planed, sanded or finger-jointed: Coniferous: Subheading 4409.10.90 and Nonconiferous: Subheading 4409.20.90, HTSUS, and dutiable on the basis of cubic meters—

Quantity in cubic meters (m) before dressing; (2) Fiberboard of wood or other ligneous materials whether or not bonded with resins or other organic substances, under Chapter 44, Heading 4411, HTSUS, and classifiable according to its density—Density in grams per cubic centimeter (cm); (3) Plywood consisting solely of sheets of wood, classifiable under Chapter 44, Subheading 4412.11, 4412.12, and 4412.19, HTSUS, and classifiable according to the thickness of the wood sheets—Thickness of each ply in millimeter (mm).

Wool and hair—See §151.62 of this chapter for additional information required on invoices.

Wool products, except carpets, rugs, mats, and upholsteries, and wool products made more than 20 years before importation (T.D. 50388, 51019)—(1) The percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (a) wool; (b) reprocessed wool; (c) reused wool; (d) each fiber other than wool if said percentage by weight

of such fiber is 5 per centum or more; and (e) the aggregate of all other fibers; (2) the maximum percentage of the total weight of the wool product, of any nonfibrous loading, filling, or adulterating matter; and (3) the name of the manufacturer of the wool product, except when such product consists of mixed wastes, residues, and similar merchandise obtained from several suppliers or unknown sources.

Woven fabric of man-made fibers in headings 5407, 5408, 5512, 5513, 5514, 5515, 5516—

(1) State the exact width of the fabric;

(2) Provide a detailed description of the merchandise, (trade name, if any);

(3) Indicate whether bleached, unbleached, dyed, of yarns of different colors and/or printed;

(4) If composed of more than one material, list percentage by weight in each;

(5) Identify the man-made fibers as artificial or synthetic, filament or staple, and state whether the yarns are high tenacity. Specify the number of turns per meter in each yarn;

(6) Specify yarn sizes in warp and filling;

(7) Specify how the fabric is woven (plain weave, twill, sateen, dobby, jacquard, swivel, lappet, etc.);

(8) Indicate the number of single threads per square centimeter in both warp and filling;

(9) Supply the weight per square meter in grams;

(10) Provide the average yarn number using this formula:

$$\frac{100 \times \text{number of single threads per square centimeter}}{\text{(number of grams per square meter)}};$$

(11) For spun yarns, specify whether combed or carded.

(12) For filament yarns, specify whether textured or not textured.

Yarns—(1) All yarn invoices should show: (a) Fiber content by weight; (b) whether single or plied; (c) whether or not put up for retail sale (*See* Section XI, Note 4, HTSUS); (d) whether or not intended for use as sewing thread;

(2) If chief weight of silk—show whether spun or filament;

(3) If chief weight of cotton—show:

(a) Whether combed or uncombed

(b) Metric number (mn)

(c) Whether bleached and/or mercerized;

(4) If chief weight of man-made fiber—show:

(a) Whether filament, or spun, or a combination of filament and spun

(b) If a combination of filament and spun—give percentage of filament and spun by weight.

(5) If chief weight of filament man-made fiber—show:

(a) Whether high tenacity (See Section XI, note 6 HTSUS).

(b) Whether monofilament, multifilament or strip

(c) Whether texturized

(d) Yarn number in decitex

(e) Number of turns per meter

(f) For monofilaments—show cross sectional dimension in millimeters

(g) For strips—show the width of the strip in millimeters (measure in folded or twisted condition if so imported).

[T.D. 73–175, 38 FR 17447, July 2, 1973]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §141.89, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 141.90 Notation of tariff classification and value on invoice.

(a) [Reserved]

(b) *Classification and rate of duty.* The importer or customs broker must include on the invoice or with the invoice data the appropriate subheading under the provisions of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) and the rate of duty for the merchandise being entered. Except when invoice line data are linked to an entry summary line and transmitted to CBP electronically under the provisions of part 143, that information must be noted by the importer or customs broker in the left-hand portion of the invoice, next to the articles to which they apply.

(c) *Value.* The importer must show in clear detail on the invoice or on an attached statement the computation of all deductions from total invoice value, such as nondutiable charges, and all additions to invoice value which have been made to arrive at the aggregate entered value. In addition, the entered unit value for each article on the invoice must be shown where it is different from the invoiced unit value.

(d) *Importer's notations in blue or black ink.* Except when invoice line data are linked to an entry summary line and transmitted to CBP electronically under the provisions of part 143, all notations made on the invoice by the importer or customs broker must be in blue or black ink.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 89–1, 53 FR 51262, Dec. 21, 1988; T.D. 99–64, 64 FR 43266, Aug. 10, 1999; CBP Dec. 09–47, 74 FR 69019, Dec. 30, 2009]

§ 141.91 Entry without required invoice.

If a required invoice is not available in proper form at the time the entry or entry summary documentation is filed and a waiver is not granted in accordance with § 141.92, the entry or entry summary documentation shall be accepted only under the following conditions:

(a) CBP is satisfied that the failure to produce the required invoice is due to a cause beyond the control of the importer;

(b) The importer files:

(1) A written declaration that he is unable to produce such invoice, and

(2) Any seller's or shipper's invoices available to him or, if none are available, a pro forma invoice in accordance with § 141.85;

(c) The invoices and other documents contain information adequate for the examination of merchandise, the determination of estimated duties, if any, and statistical purposes; and

(d) The importer files a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, in an amount equal to one and one-half the invoice value of the merchandise, for the production of the required invoice, which must be produced within 120 days after the date of the filing of the entry summary (or the entry, if there is no entry summary) documentation, unless the invoice is needed for statistical purposes. If needed for statistical purposes, the invoice shall be produced within 50 days after the date of the entry summary (or the entry, if there is no entry summary) is required to be filed, unless a reasonable extension of time is granted by the Center director for good cause shown.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 79–221, 44 FR 46821, Aug. 9, 1979; T.D. 84–213, 49 FR 41184, Oct. 19, 1984; T.D. 85-167, 50 FR 40363, Oct. 3, 1985; T.D. 93–66, 58 FR 44130, Aug. 19, 1993]

§ 141.92 Waiver of invoice requirements.

(a) *When waiver may be granted.* CBP may waive production of a required invoice when he is satisfied that either:

(1) The importer cannot by reason of conditions beyond his control furnish a complete and accurate invoice; or

(2) The examination of merchandise, final determination of duties, and collection of statistics can be effected properly without the production of the required invoice.

(b) *Documents to be filed by importer.* As a condition to the granting of a waiver, the importer shall file the following documents with the entry:

(1) Any invoice or invoices received from the seller or shipper;

(2) A statement pointing out in exact detail any inaccuracies, omissions, or other defects in such invoice or invoices;

(3) An executed pro forma invoice in accordance with § 141.85; and

(4) Any other information required by the Center director for either appraisement or classification of the merchandise, or for statistical purposes.

(c) *Satisfaction of bond liability.* The liability under the bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter for the production of a correct invoice shall be deemed satisfied when a waiver has been granted pursuant to this section.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 78–53, 43 FR 6070, Feb. 13, 1978; T.D. 79–221, 44 FR 46821, Aug. 9, 1979; T.D. 84–213, 49 FR 41184, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984; T.D. 93–66, 58 FR 44130, Aug. 19, 1993]

Subpart G—Deposit of Estimated Duties

§ 141.101 Time of deposit.

Estimated duties shall either be deposited with the Customs officer designated to receive the duties at the time of the filing of the entry documentation or the entry summary documentation when it serves as both the entry and entry summary, or be transmitted to Customs according to the statement processing method as described in § 24.25 of this chapter, except in the following cases:

(a) *Merchandise released under entry documentation.* In the case of merchandise released under the entry documentation listed in § 142.3 of this chapter before filing of the entry summary, deposit of estimated duties shall be made at the time the entry summary is filed unless the merchandise is entered for warehouse. If the merchandise is entered for warehouse, estimated duties shall be deposited in accordance with paragraph (b) of this section.

(b) *Warehouse entry.* In the case of merchandise entered for warehouse, deposit of estimated duties shall be made at the time the withdrawal for consumption is presented.

(c) *Informal mail entry.* In the case of merchandise entered under an informal mail entry, duties shall be paid to the postal employee at the time he delivers the merchandise to the addressee (see part 145 of this chapter).

(d) *Appraisement entries.* In the case of merchandise entered under an appraisement entry, deposit of estimated duties shall be made immediately after notification by the appropriate Customs officer of the amount of duties due.

(e) *Entry for transportation or under bond.* No deposit of estimated duties is applicable in the case of merchandise entered for transportation or temporarily imported under bond, entered for permanent exhibition under bond, entered for a trade fair under bond or entered under bond for similar reasons.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 79–221, 44 FR 46821, Aug. 9, 1979; T.D. 84–213, 49 FR 41184, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984; T.D. 89–104, 54 FR 50498, Dec. 7, 1989]

§ 141.102 When deposit of estimated duties, estimated taxes, or both not required.

Entry or withdrawal for consumption in the following situations may be made without depositing the estimated Customs duties, or estimated taxes, or both, as specifically noted:

(a) *Cigars and cigarettes.* A qualified dealer or manufacturer may enter or withdraw for consumption cigars, cigarettes, and cigarette papers and tubes without payment of internal revenue tax in accordance with § 11.2a of this chapter.

(b) *Bulk distilled spirits transferred to the bonded premises of a distilled spirits plant.* An importer may transfer distilled spirits in bulk to the bonded premises of a distilled spirits plant, without the payment of tax, under the provisions of section 5232(a), Internal Revenue Code of 1986 (26 U.S.C. 5232(a)), and the regulations of the Bureau of Alcohol, Tobacco and Firearms (27 CFR part 251).

(c) *Deferral of payment of taxes on alcoholic beverages.* An importer may pay on a semimonthly basis the estimated internal revenue taxes on all the alcoholic beverages entered or withdrawn for consumption during that period, under the procedures set forth in § 24.4 of this chapter.

(d) *Government entries.* If a shipment is entered or withdrawn for consumption by a U.S. Government department or agency, or an authorized representative thereof, no deposit of estimated Customs duties or taxes shall be required if a stipulation is furnished in lieu of the bond. The proper department or agency will then be billed after liquidation of the entry for any duties or charges due. The stipulation shall be in the following form:

I, _____ (title), a duly authorized representative of the _____

_____

(name of U.S. Government department or agency) stipulate and agree on behalf of such department or agency that all applicable provisions of the Tariff Act of 1930, as amended, and the regulations thereunder, and of all other laws and regulations, relating to _____

_____

(type of entry)

_____

entry No. _____, of _____ (date) will be observed and complied with in all respects.

_____
(Signature)

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 78–329, 43 FR 43455, Sept. 26, 1978; T.D. 84–213, 49 FR 41184, Oct. 19, 1984; T.D. 89–65, 54 FR 28414, July 6, 1989; T.D. 92–31, 57 FR 10989, Apr. 1, 1992; CBP Dec. 08–25, 73 FR 40727, July 16, 2008]

§ 141.103 Amount to be deposited.

Estimated duties shall be deposited in an amount to sufficiently cover the prospective duties on each item being entered or withdrawn.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 99–64, 64 FR 43266, Aug. 10, 1999]

§ 141.104 Computation of duties.

In computing estimated duties, fractional parts of dollars and quantities shall be rounded off in accordance with § 159.3 of this chapter.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 99–64, 64 FR 43266, Aug. 10, 1999]

§ 141.105 Voluntary deposit of additional duties.

If either the importer of record or the actual owner whose declaration and superseding bond have been filed in accordance with § 141.20 desires, he may estimate, on the basis of information contained in the entry papers or obtainable from the Center director, the probable amount of unpaid duties which will be found due on the entire entry and deposit them in whole or in part with CBP, either at the port of entry or electronically. The deposit shall be tendered in writing in the following form in the number of copies required for the purposes of local administration, and an official receipt shall be given for the deposit:

Date _____.

To CBP, _____

_____.

Tender is hereby voluntarily made of $_____ as a supplemental deposit of estimated duties and taxes on _____ entry No. _____, dated _____, in the name of _____. Please provide an official receipt.

_____
(Importer of record) or (actual owner)

_____
(Street address)

_____
(City) (State)

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by CBP Dec. No. 16–26, 81 FR 93019, Dec. 20, 2016]

Subpart H—Release of Merchandise

§ 141.111 Carrier's release order.

(a) *When required.* Except where release is made directly to the carrier in accordance with § 141.11(b), no merchandise shall be released from Customs custody until a release order has been executed by the carrier, or, in the case of merchandise in a bonded warehouse, by the warehouse proprietor.

(b) *Form of release.* The release order may be executed on any of the following documents:

(1) [Reserved]

(2) The official entry form;

(3) A combined carrier's certificate and release order issued in accordance with § 141.11(a)(4); or

(4) If a certified duplicate bill of lading or air waybill is used for entry purposes in accordance with § 141.11(a)(3), the carrier's release order may be endorsed thereon in substantially the following form:

In accordance with the provisions of section 484(j), Tariff Act of 1930, authority is hereby given to release the articles covered by this certified duplicate bill of lading or air waybill to: _____.

(c) *Blanket release order.* Merchandise may be released to the person named in the bill of lading or air waybill in the absence of a specific release order from the carrier, if the carrier concerned has filed a blanket order authorizing release to the owner or consignee in such cases. A carrier's certificate in the form shown in § 141.11(a)(4), may be modified and executed to make it a blanket release order for the shipments covered by a blanket carrier's release order under § 141.11(a)(5).

(d) *Qualified release order.* In the case of merchandise which is entered for warehousing, for transportation in bond, for exportation, or is to be admitted to a foreign trade zone, the release order may be qualified as follows:

(1) ''For transfer to the bonded warehouse designated in the warehouse entry,'' if the merchandise is entered for warehousing;

(2) ''For transfer to the bonded carrier designated in the transportation entry,'' if the merchandise is entered for transportation in bond;

(3) ''For transfer to the carrier designated in the export entry,'' if the merchandise is entered for exportation; or

(4) ''For transfer to the foreign trade zone designated in Customs Form 214,'' if the merchandise is to be admitted to a foreign trade zone.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 78–394, 43 FR 49788, Oct. 25, 1978; T.D. 86–16, 51 FR 5063, Feb. 11, 1986; T.D. 87–75, 52 FR 20068, May 29, 1987; T.D. 90–87, 55 FR 47052, Nov. 9, 1990]

§ 141.112 Liens for freight, charges, or contribution in general average.

(a) *Definitions.* The following are general definitions for the purposes of this section:

(1) *Freight.* ''Freight'' means the charges for the transportation of the goods from the place of shipment in the foreign country to the final destination in the United States.

(2) *Charges.* ''Charges'' means the charges due to or assumed by the claimant of the lien which are incident to the shipment and forwarding of the goods to the destination in the United States, but does not include the purchase price, whether advanced or to be collected, nor other claims not connected with the transportation of the goods.

(3) *General average.* ''General average'' means the liability to contribution of the owners of a cargo which arises when a sacrifice of a part of such cargo has been made for the preservation of the residue or when money is expended to preserve the whole. It only arises from actions impelled by necessity.

(4) *Claimant.* ''Claimant'' means a carrier, customs broker or the successors or assigns of either.

(b) *Notice of lien.* A notice of lien for freight, charges, or contribution in general average pursuant to section 564, Tariff Act of 1930, as amended (19 U.S.C. 1564), shall be filed with the port director on Customs Form 3485, signed by the authorized agent of the claimant and certified by him.

(c) *Preliminary notice of lien for contribution in general average.* When the cargo of a vessel is subject to contribution in general average, a preliminary notice thereof may be filed with the port director and individual notices of lien filed thereafter. Upon receipt of a preliminary notice, the port director shall withhold release of any merchandise imported in the vessel for 2 days (exclusive of Sunday and holidays) after such merchandise is taken into Customs custody, unless proof is submitted that the claim for contribution in general average has been paid or secured.

(d) *Merchandise entered for immediate transportation.* A notice of lien upon merchandise entered for immediate transportation shall be filed by the claimant with the port director at the destination.

(e) *Limitations on acceptance of notice of lien.* A notice of lien shall be rejected and returned with the reason for rejection noted thereon if it is filed after any of the following actions have been taken concerning the merchandise:

(1) Release from Customs custody;

(2) Forfeiture under any provision of law;

(3) Sale as unclaimed or abandoned merchandise under section 491 or 559, Tariff Act of 1930, as amended (19 U.S.C. 1491 or 1559); or

(4) Receipt and acceptance of a notice of abandonment to the Government under section 506(1) or 563(b), Tariff Act of 1930, as amended (19 U.S.C. 1506(1) or 1563(b)).

(f) *Forfeited or abandoned merchandise.* The acceptance of a notice of lien shall not in any manner affect the order of disposition and accounting for the proceeds of sales of forfeited and abandoned property provided for in Subpart D of part 127 and §§ 158.44 and 162.51 of this chapter.

(g) *Bond may be required.* When any doubt exists as to the validity of a lien filed with the port director, he may require a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, to hold him harmless from any liability which may

result from withholding the release of the merchandise.

(h) *Satisfaction of lien.* The port director shall not adjudicate any dispute respecting the validity of any lien, but when the amount of such lien depends upon the quantity or weight of merchandise actually landed, the port director shall hold the lien satisfied upon the payment of an amount computed upon the basis of the official Customs report of quantity and weight. In all other cases, proof that the lien has been satisfied or discharged shall consist of a written release or receipt signed by the claimant and filed with the port director, showing payment of the claim in full.

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by T.D. 74–114, 39 FR 32023, Apr. 3, 1974; T.D. 84–213, 49 FR 41184, Oct. 19, 1984; T.D. 88–7, 53 FR 4962, Feb. 19, 1988; T.D. 97–82, 62 FR 51771, Oct. 3, 1997]

§ 141.113 Recall of merchandise released from Customs and Border Protection custody.

(a)(1) *Merchandise not legally marked.* Certain merchandise is required to be marked or labeled pursuant to the following provisions:

(i) Section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), pertaining to marking with country of origin;

(ii) Textile Fiber Products Identification Act (15 U.S.C. 70);

(iii) Wool Products Labeling Act (15 U.S.C. 68);

(iv) Fur Products Labeling Act (15 U.S.C. 69); and

(v) Chapter 91, Additional U.S. Note 4, Harmonized Tariff Schedule of the United States (HTSUS), pertaining to special marking for watch and clock movements, cases, and dials.

(2) If such merchandise is found after release to be not legally marked, the Center director may demand its return to CBP custody for the purpose of requiring it to be properly marked or labeled. The demand for marking or labeling shall be made not later than 30 days after the date of entry in the case of merchandise examined in public stores, and places of arrival, such as docks, wharfs, or piers. Demand may be made no later than 30 days after the date of examination in the case of merchandise examined at the importer's premises or such other appropriate places as determined by the port director or Center director.

(b) *Textiles and textile products.* For purposes of determining whether the country of origin of textiles and textile products subject to the provisions of § 102.21 or § 102.22 of this chapter, as applicable, has been accurately represented to CBP, the release from CBP custody of any such textile or textile product shall be deemed conditional during the 180-day period following the date of release. If the Center director finds during the conditional release period that a textile or textile product is not entitled to admission into the commerce of the United States because the country of origin of the textile or textile product was not accurately represented to CBP, he shall promptly demand its return to CBP custody. Notwithstanding the provisions of paragraph (h) of this section and § 113.62(n)(1) of this chapter, a failure to comply with a demand for return to CBP custody made under this paragraph shall result in the assessment of liquidated damages equal to the value of the merchandise involved.

(c) *Food, drugs, devices, cosmetics, and tobacco products*—(1) *Conditional release period.* For purposes of determining the admissibility of any food, drug, device, cosmetic, or tobacco product imported pursuant to section 801(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(a)), as amended, the release from CBP custody of any such product will be deemed conditional. Unless extended in accordance with paragraph (c)(2) of this section, the conditional release period will terminate upon the earliest occurring of the following events:

(i) The date that FDA issues a notice of refusal of admission;

(ii) The date that FDA issues a notice that the merchandise may proceed; or

(iii) Upon the end of the 30-day period following the date of release.

(2) *Extension of conditional release period.* The conditional release period provided under this paragraph (c) may be extended. The FDA must issue a written or electronic notice of sampling, detention, or other FDA action to the bond principal (*i.e.*, importer of record) within 30 days of the release of

the merchandise in order for the extension of the conditional release period to be valid.

(3) *Issuance of a redelivery notice.* If FDA refuses admission of a food, drug, device, cosmetic, or tobacco product into the United States, or if any notice of sampling or other request is not complied with, FDA will communicate that fact to the Center director. An authorized CBP official will demand the redelivery of the product to CBP custody. CBP will issue a notice of redelivery within 30 days from the date the product was refused admission by the FDA or from the date FDA determined the noncompliance with a notice of sampling or other request. The demand for redelivery may be made contemporaneously with the notice of refusal issued by the FDA. Notwithstanding the provisions of paragraph (i) of this section, a failure to comply with a demand for redelivery made under this paragraph (c) will result in the assessment of liquidated damages equal to three times the value of the merchandise involved unless the port director has prescribed a bond equal to the domestic value of the merchandise pursuant to §12.3(b) of this Chapter.

(d) *Other merchandise not entitled to admission.* If at any time after entry an authorized CBP official finds that any merchandise contained in an importation is not entitled to admission into the commerce of the United States for any reason not enumerated in paragraph (a), (b), or (c) of this section, an authorized CBP official shall promptly demand the return to CBP custody of any such merchandise which has been released.

(e) *Request for samples or additional examination packages not complied with by importer.* If the importer has not promptly complied with a request for samples or additional examination packages made by an authorized CBP official pursuant to §151.11 of this chapter, an authorized CBP official may demand the return of the necessary merchandise to CBP custody.

(f) *Demand to importer of record or actual owner.* A demand for the return of merchandise to CBP custody shall be made on the importer of record, except that it shall be made on the actual owner if an actual owner's declaration and superseding bond have been filed in accordance with §141.20 before the date of the demand.

(g) *Form of demand.* A demand for the return of merchandise to CBP custody shall be made on Customs Form 4647, or its electronic equivalent, or other appropriate form, or by letter. One copy, with the date of mailing or delivery noted thereon, shall be retained by an authorized CBP official and made part of the entry record.

(h) *Time limitation.* A demand for the return of merchandise to CBP custody shall not be made after the liquidation of the entry covering such merchandise has become final.

(i) *Demand not complied with.* When the demand of an authorized CBP official for return of merchandise to CBP custody is not complied with, liquidated damages shall be assessed, except in the case of merchandise entered under chapter 98, subchapter XIII, HTSUS (19 U.S.C. 1202), in an amount equal to the value of the merchandise not returned or three times the value of the merchandise not returned if the merchandise is restricted or prohibited merchandise or alcoholic beverages, as determined at the time of entry. The amount of liquidated damages to be assessed on merchandise entered under chapter 98, subchapter XIII, HTSUS is set forth in §10.39(d)(3) of this chapter.

[T.D. 73–175, 38 FR 17447, July 2, 1973]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §141.113, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

PART 142—ENTRY PROCESS

Sec.

AUTHORITY: 19 U.S.C. 66, 1448, 1484, 1624.

SOURCE: T.D. 79–221, 44 FR 46821, Aug. 9, 1979, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 142 appear by CBP Dec. No. 16–26, 81 FR 93019, Dec. 20, 2016.

§ 142.0 Scope.

This part sets forth requirements and procedures relating to (a) the entry of merchandise, as authorized by section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), and (b) special permits for immediate delivery of merchandise, as authorized by section 448(b), Tariff Act of 1930, as amended (19 U.S.C. 1448(b)).

Subpart A—Entry Documentation

§ 142.1 Definitions.

For definitions of ''entry'', ''entry summary'', ''submission'', ''filing'', ''presentation'', ''entered for consumption'', ''entered for warehouse'', and ''entered temporarily under bond'', as these terms relate to the entry of merchandise, see § 141.0a of this chapter.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 84–213, 49 FR 41184, Oct. 19, 1984]

§ 142.2 Time for filing entry.

(a) *General rule: After arrival of merchandise.* Merchandise for which entry is required will be entered within 15 calendar days after landing from a vessel, aircraft or vehicle, or after arrival at the port of destination in the case of merchandise transported in bond.

(b) *Before arrival of merchandise*—(1) *Entry.* The entry documentation required by § 142.3(a) may be submitted before the merchandise arrives within the limits of the port where entry is to be made, in which case the time of entry shall be the time specified in § 141.68(a).

(2) *When entry summary serves as entry.* The entry summary when it will be filed at time of entry to serve as both the entry and the entry summary, as provided in § 142.3(b), may be submitted for preliminary review in accordance with §§ 141.63(a) and 142.12(a)(2).

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 02–65, 67 FR 68035, Nov. 8, 2002]

§ 142.3 Entry documentation required.

(a) *Contents.* Except as provided in paragraph (b) of this section, the entry

documentation required to secure the release of merchandise must consist of the following:

(1) *Entry*. CBP Form 3461 (appropriately modified), or its electronic equivalent, except that CBP Form 7533 (appropriately modified), or its electronic equivalent, in duplicate, may be used in place of CBP Form 3461 for merchandise imported from a contiguous country. The form used must be prepared in accordance with §141.61(a)(1) of this chapter.

(2) *Evidence of the right to make entry*. Evidence of the right to make entry, as set forth in §141.11 of this chapter.

(3) *Commercial invoice*. A commercial invoice, except that in those instances listed in §141.83(d) of this chapter where a commercial invoice is not required, a pro forma invoice or other acceptable documentation listed in that section may be submitted in place of a commercial invoice.

(4) *Packing list*. A packing list, where appropriate.

(5) *Other documentation*. Other documents which may be required by CBP or other Federal, State, or local agencies for a particular shipment.

(6) *Identification*. When merchandise is imported having been sold, or consigned, to a person in the United States, the name, street address, and appropriate identification number of that person, as provided in §24.5 of this chapter, must be shown on the entry documents (CBP Form 3461, 3461 ALT, 7501), or their electronic equivalents. When, at the time of immediate delivery, entry or release, there is no known buyer, the name, street address, and appropriate identification number (as above) of the premises in the United States to which the merchandise is to be delivered must be shown on the entry or release documents.

(b) *Entry summary filed at time of entry*. When the entry summary is filed at time of entry in accordance with §142.12(a)(1) or §142.13:

(1) CBP Form 3461 or 7533, or their electronic equivalents, will not be required; and

(2) CBP Form 7501 or CBP Form 3311, or their electronic equivalent, (as appropriate, *see* §142.11) may serve as both the entry and the entry summary documentation if the additional documentation set forth in paragraphs (a)(2), (3), (4) and (5) of this section and §142.16(b) is filed.

(c) *Extra copies*. The CBP may require additional copies of the documentation.

(d) *Electronic format*. The entry documentation identified in this section may be submitted to CBP in either a paper or, where appropriate, an electronic format.

(R.S. 251, as amended (19 U.S.C. 66), secs. 484, 624, 46 Stat. 722, as amended, 759 (19 U.S.C. 1484, 1624); sec. 301, 80 Stat. 379 (5 U.S.C. 301), Pub. L. 95–410 (Oct. 3, 1978); Pub. L. 96–511 (Dec. 11, 1980))

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 84–129, 49 FR 23167, June 5, 1984; T.D. 90–92, 55 FR 49884, Dec. 3, 1990; CBP Dec. 09–47, 74 FR 69020, Dec. 30, 2009; CBP Dec. 15–14, 80 FR 61289, Oct. 13, 2015]

§142.3a Entry numbers.

(a) *Placement on CBP forms*. The importer or broker shall place an 11 character entry number on the entry and corresponding entry summary documentation. For documentation prepared on data processing equipment, the number shall be printed directly on the form. For manually prepared documentation, the number shall be preprinted in a machine readable format specified by CBP. The same number shall not be used for more than one entry transaction.

(b) *Format*. The following format, including hyphens, must be used when showing the entry number:

XXX-NNNNNNN-N

XXX represents an entry filer code assigned by CBP, NNNNNNN is a unique number which is assigned by the broker or importer, and N is a check digit computed from the first 10 characters based on a formula provided by CBP.

(1) *Assignment of entry filer code*. CBP will assign a unique 3 character (alphabetic, numeric, or alpha numeric) entry filer code to all licensed brokers filing CBP entries. CBP will assign an entry filer code to certain importers filing CBP entries based on importer entry volume, frequency of entry filing, and other considerations. The broker or importer shall use this assigned code as the beginning three characters of the

number for all CBP entries, regardless of where the entries are filed.

(2) *Entry filer assigned number.* For each entry, the broker or importer shall assign a unique 7 digit number. This number shall not be assigned to more than one transaction.

(3) *Check digit.* The broker or importer is responsible for ensuring that the check digit is computed by data processing equipment.

(c) *Pulication of entry filer codes.* CBP shall make available electronically a listing of filer codes and the importers, consignees, and customs brokers assigned those filer codes. The listing will be updated periodically.

(d) *Misuse of the entry filer code.* The Assistant Commissioner, Office of International Trade, or his designee may refuse to allow use of an assigned entry filer code if it is misused by the importer or broker.

(e) *Alternative procedure.* If an importer does not have an assigned entry filer code, or if the Assistant Commissioner, Office of International Trade, or his designee, in accordance with paragraph (d) of this section refuses to allow use of an assigned entry filer code, the importer or broker shall obtain forms with a CBP assigned preprinted machine readable entry number with a computed check digit. These forms will be available for sale by CBP and must be obtained and used before the merchandise may be released from CBP custody.

[T.D. 86–106, 51 FR 19167, May 28, 1986, as amended by T.D. 98–25, 63 FR 12996, Mar. 17, 1998]

§ 142.4 Bond requirements.

(a) *At the time of entry.* Except as provided in §10.101(d) of this chapter, or paragraph (c) of this section, merchandise shall not be released from Customs custody at the time Customs receives the entry documentation or the entry summary documentation which serves as both the entry and the entry summary, as required by §142.3 unless a single entry or continuous bond on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter, executed by an approved corporate surety, or secured by cash deposits or obligations of the United States, as provided for in §113.40 of this chapter, has been filed. When any of the imported merchandise is subject to a tariff-rate quota and is to be released at a time when the applicable quota is filled, the full rates shall be used in computing the estimated duties to determine the amount of the bond.

(b) *If entry summary is filed after entry.* (1) Except as provided in §141.102(d) of this chapter, if the entry summary is filed after the entry, the bond filed at the time of entry, as required by paragraph (a) of this section or by §142.19, shall continue to be obligated unless a superseding bond is filed, as provided in §141.20 of this chapter, or unless a bond of the type described in paragraph (a) of this section is filed under the circumstances described in paragraph (b)(2) of this section. If a superseding bond is filed, or if a bond is filed under the circumstances described in paragraph (b)(2) of this section, the obligations of the initial bond shall be terminated as to any liability which may accrue after the superseding or other bond becomes effective.

(2) If entry is made in the name of an agent, supported by the agent's bond, or in the name of a principal, supported by the principal's bond, and the entry summary thereafter is filed in the name of the other party, the party named in the entry summary shall file a bond on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter. In this circumstance, the bond obligation of the party in whose name entry was made shall be terminated, as to liability which may accrue after the bond filed by the party named in the entry summary becomes effective, and the party filing the entry summary need not file the separate declaration of the actual owner and the superseding bond otherwise required under §141.20 of this chapter.

(c) *Waiver of surety or cash deposit.* (1) The port director may waive the requirement for surety or cash deposit on the bond required by this section when (i) the value of the merchandise which the bond secures does not exceed $2,500, (ii) the entry summary documentation is filed and estimatedduties, if any, are deposited prior to release of the merchandise and (iii) the importer has not

been delinquent or otherwise remiss in any transaction with Customs.

(2) This authority to waive surety or cash deposit does not apply to (i) quota merchandise, (ii) any type of merchandise which, in the opinion of the port director, cannot be easily appraised or classified, or (iii) any type of merchandise where there may be, in the opinion of the port director based on past experience, a question of redelivery.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 84–213, 49 FR 41184, Oct. 19, 1984; T.D. 85-161, 50 FR 38981, Sept. 26, 1985]

§ 142.5 [Reserved]

§ 142.6 Invoice requirements.

(a) *Contents.* The commercial invoice, or the documentation acceptable in place of a commercial invoice in those instances listed in §141.83(d) of this chapter, shall be furnished with the entry and before release of the merchandise is authorized. The commercial invoice or other acceptable documentation shall contain:

(1) An adequate description of the merchandise.

(2) The quantities of the merchandise.

(3) The values or approximate values of the merchandise.

(4) The appropriate eight-digit subheading from the Harmonized Tariff Schedule of the United States. If the importer is uncertain of the appropriate subheading number, Customs shall assist him at his request. The port director may waive this requirement if he is satisfied that the information is not available at the time release of the merchandise is authorized.

(5) The name and complete address of the foreign individual or firm who is responsible for invoicing the merchandise, ordinarily the manufacturer/seller, but where the manufacturer is not the seller, the party who sold the merchandise for export to the U.S., or made the merchandise available for sale.

(b) *Information not required when filing entry.* In addition to the information specified in paragraph (a) of this section, the commercial invoice or substitute document filed with the entry documentation also may include any other invoice information required by §§141.86 through 141.89 of this chapter. However, if this information does not appear on the invoice or substitute document filed with the entry documentation, it shall be included in the invoice or substitute document delivered at the time the entry summary documentation is filed.

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979; T.D. 80–26, 45 FR 3901, Jan. 21, 1980, as amended by T.D. 90–25, 55 FR 12343, Apr. 3, 1990; T.D. 90–78, 55 FR 40167, Oct. 2, 1990]

§ 142.7 Examination of merchandise.

No merchandise for which the entry documentation required by §142.3 has been filed shall be released until it has been examined, or until adequate samples have been taken in the case of merchandise which is to be classified and appraised by means of samples, unless this requirement is waived by the port director in accordance with section 499, Tariff Act of 1930, as amended (19 U.S.C. 1499).

§ 142.8 Failure to file entry timely.

Merchandise for which timely entry is not filed as required by §142.2 shall be treated in accordance with §4.37 and part 127 of this chapter.

Subpart B—Entry Summary Documentation

§ 142.11 Entry summary form.

(a) *CBP Form 7501.* The entry summary must be on the CBP Form 7501, or its electronic equivalent, unless a different form or format is prescribed elsewhere in this chapter. CBP Form 7501, or its electronic equivalent, must be used for merchandise formally entered for consumption, formally entered for warehouse, or rewarehouse in accordance with §144.11 of this chapter, and formally entered temporarily under bond under §10.31 of this chapter. The entry summary for merchandise which may be entered free of duty in accordance with §10.1(g) or (h) may be on CBP Form 3311, or its electronic equivalent, instead of on a CBP Form 7501 (or its electronic equivalent). For merchandise entitled to be entered

under an informal entry, see §143.23 of this chapter.

(b) *Extra copies.* The CBP may require additional copies of the entry summary if filed in paper.

[CBP Dec. No. 15–14, 80 FR 61289, Oct. 13, 2015]

§ 142.12 Time for filing or submission for preliminary review.

(a) *At option of importer*—(1) *Filing.* Except as provided in §142.13, the importer may file the entry summary documentation at the time of entry in which case the entry summary, with estimated duties attached, shall serve as both the entry and the entry summary.

(2) *Submission for preliminary review.* If the importer intends to file the entry summary documentation at the time of entry, he may submit the entry summary documentation for preliminary review before arrival of the merchandise, in accordance with §141.63(a) of this chapter. After preliminary review is completed, the entry summary shall be returned to the importer for filing in accordance with paragraph (a)(1) of this section.

(b) *When required.* If the importer is not required to file the entry summary documentation at the time of entry under the provisions of §142.13, or if he does not elect to do so, the entry summary documentation shall be filed, with estimated duties attached, within 10 working days after the time of entry.

(c) *Estimated duties.* Estimated duties, if any, shall be deposited in accordance with the provisions of subpart G of part 141 of this chapter.

§ 142.13 When entry summary must be filed at time of entry.

(a) *Authority of CBP.* The CBP may require that the entry summary documentation be filed and that estimated duties, if any, be deposited at the time of entry before the merchandise is released if the importer:

(1) Has failed repeatedly to file timely entry summary documentation without justification,

(2) Has not taken prompt action to settle a claim for liquidated damages issued under §142.15 for failure to file entry summary documentation timely, or a claim for liquidated damages issued under the basic importation and entry bond for failure to deposit estimated duties, taxes and charges timely, as provided in such bond. ''Prompt action'' means that the importer, within the time specified in a claim for liquidated damages, shall petition for relief or pay the amount claimed and, in appropriate cases, file the entry summary documentation and deposit estimated duties, if any, or

(3) Has repeatedly delivered entry summary documentation, which is incomplete or which contains erroneous information.

(4) Is substantially or habitually delinquent in the payment of Customs bills. See §142.14.

(b) *Special classes of merchandise*—(1) *Quota-class merchandise.* Quota-class merchandise shall not be released upon delivery of entry documentation before presentation of:

(i) An entry summary for consumption with estimated duties attached; or

(ii) A withdrawal for consumption with estimated duties attached; or

(iii) An entry summary for consumption, without the estimated duties attached, if the entry/entry summary information and a valid scheduled statement date have been successfully received by Customs via the Automated Broker Interface. (See part 132 and §24.25 of this chapter.)

(2) *Other classes of merchandise.* Entry summary documentation, with estimated duties attached, or a withdrawal for consumption with estimated duties attached, or an entry summary for consumption, without the estimated duties attached if the entry/entry summary information and a valid scheduled statement date have previously been transmitted to Customs via the Automated Broker Interface (see §24.25 of this chapter) shall be filed at the time of entry before release of any other merchandise of a class designated by Customs Headquarters.

(c) [Reserved]

(d) *Brokers; restriction.* A broker shall not circumvent an action taken under this section by applying for release of

the importer's merchandise in the broker's name and under the broker's bond.

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 89–104, 54 FR 50498, Dec. 7, 1989; T.D. 93–37, 58 FR 30984, May 28, 1993; T.D. 95–77, 60 FR 50020, Sept. 27, 1995; CBP Dec. No. 16–26, 81 FR 93020, Dec. 20, 2016]

§ 142.14 Delinquent payment of Customs bills.

The following procedure shall be followed if an importer is substantially or habitually delinquent in the payment of Customs bills:

(a) *Notice.* The importer shall be advised in writing by the port director in which he is substantially or habitually delinquent that he shall file the entry summary documentation with estimated duties attached, before his merchandise may be released from Customs custody at that port. The notice shall state the reason for the action and advise the importer that if payment of all his delinquent Customs bills is not made within 10 working days from the date of the notice, he shall be required to file the entry summary document with estimated duties attached, before his merchandise may be released. In either case, the entry summary shall serve as both the entry and the entry summary.

(b) *Removal of requirement by port.* If the importer pays all his delinquent Customs bills within 10 working days after the date of the notice, the requirement shall be removed, and the importer need file only the entry documentation specified in §142.3 to secure release of his merchandise.

(c) *Removal of requirement by Headquarters.* If the importer has not paid all his delinquent Customs bills within 10 working days after the date of the notice, he also shall be required to file the entry summary documentation, with estimated duties attached, at each Customs port. In this case, the entry summary shall serve as both the entry and the entry summary. This requirement shall remain in effect in each port of entry until notification is received from Headquarters that the requirement is removed and that the importer need submit only the entry documentation listed in §142.3 to secure release of his merchandise.

§ 142.15 Failure to file entry summary timely.

If the entry summary documentation is not filed timely, the port director shall make an immediate demand for liquidated damages in the entire amount of the bond in the case of a single entry bond. When the transaction has been charged against a continuous bond, the demand shall be for the amount that would have been demanded if the merchandise had been released under a single entry bond. Any application to cancel liquidated damages incurred shall be made in accordance with part 172 of this chapter.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 84–213, 49 FR 41185, Oct. 19, 1984]

§ 142.16 Entry summary documentation.

(a) *Entry summary not filed at time of entry.* When the entry documentation is filed in paper before the entry summary documentation, one copy of the entry document and the commercial invoice, or the documentation filed in place of a commercial invoice in the instances listed in §141.83(d) of this chapter, will be returned to the importer after CBP authorizes release of the merchandise. Entry documentation may also be transmitted electronically to the CBP Automated Commercial Environment (ACE) or any other CBP-authorized electronic data interchange system. The importer may use these documents in preparing the entry summary, CBP Form 7501, or its electronic equivalent, and must file them with the entry summary documentation within the time period stated in §142.12(b). The entry summary documentation also must include any other documentation required for a particular shipment unless a bond for missing documentation is on file, as provided in §141.66 of this chapter.

(b) *Entry summary filed at time of entry.* When the entry summary documentation is filed or transmitted electronically at time of entry, the documentation listed in §142.3 must be filed at the same time, except that CBP Form 3461 or 7533, or their electronic

equivalents, will not be required. The importer also must file any additional invoice required for a particular shipment.

[CBP Dec. 15–14, 80 FR 61289, Oct. 13, 2015]

§ 142.17 One entry summary for multiple entries.

(a) *Requirements.* Except as provided in paragraph (b) of this section, the Center director may permit the filing of one entry summary for merchandise the subject of separate entries if:

(1) The merchandise has the same country of exportation, and the same country of origin,

(2) The merchandise arrives by land, by the same vessel or by the same air carrier,

(3) The merchandise is consigned to the same consignee,

(4) The time between the date of the first entry and the date of the last entry does not exceed 1 week,

(5) The entry summary document is filed within 10 working days from the date of the first entry, and

(6) Each entry is identified separately by entry number on the entry summary.

(b) *Merchandise not eligible.* One entry summary shall not be used for multiple entries of the following:

(1) Quota-class merchandise,

(2) Prohibited merchandise,

(3) Merchandise subject to restrictions which require processing and documentation more frequently than on a weekly basis,

(4) Merchandise for which liquidation has been withheld, and

(5) Merchandise classifiable under the same Harmonized Tariff Schedule of the United States subheading number, to the eight-digit level having different rates of duty for which entries or immediate transportation entries have been filed. However, this provision is not applicable in the following circumstances:

(i) *Entries.* Entries may be consolidated if the time of entry is:

(A) Before the date of change in rate of duty, or

(B) On or after the date of change in rate of duty.

(ii) *Immediate transportation entries.* Immediate transportation entries may be consolidated if the date of acceptance is:

(A) Before the date of change in the rate of duty, or

(B) On or after the date of change in rate of duty.

(c) *Entry documentation not in proper form.* If an entry summary covering multiple entries refers to entry documentation which is not in proper form, the entry summary and the entry documentation shall be returned for correction.

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 89–1, 53 FR 51262, Dec. 21, 1988]

§ 142.17a One consolidated entry summary for multiple ultimate consignees.

(a) *Applicability.* The Center director may permit a broker as nominal consignee to file a consolidated entry summary in his own name under his own bond covering shipments of like or similar merchandise consigned to various ultimate consignees provided that all the merchandise is:

(1) Imported on the same day,

(2) Itemized as to each category of merchandise by Harmonized Tariff Schedule of the United States Annotated subheading to the ten-digit level, and

(3) Released on the same day, either under the entry documentation specified in § 142.3, or under a special permit for immediate delivery. A consolidated entry summary may be filed for merchandise arriving by land, by the same vessel, or by the same air carrier.

(b) *Information required on the entry summary*—(1) *Separate listing according to ultimate consignee.* The broker shall list separately on the face of the consolidated entry summary the merchandise for each ultimate consignee, together with the appropriate entry or special permit numbers.

(2) *If different land carriers are involved.* If merchandise arriving by different land carriers is included on one entry summary, necessary information pertaining to each carrier shall be

shown on the face of the entry summary, related to the applicable shipment.

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 89–1, 53 FR 51262, Dec. 21, 1988]

§ 142.18 Entry summary not required for prohibited merchandise.

(a) *Exportation or destruction of prohibited merchandise.* If merchandise released at time of entry is later found to be prohibited, an authorized CBP official shall demand its return to Customs custody in accordance with § 141.113 of this chapter, and an entry summary and the deposit of estimated duties, if any, shall not be required provided:

(1) An entry for exportation filed using an in-bond application pursuant to part 18 of this chapter, or an application to destroy the merchandise under CBP supervision is made within 10 days after the time of entry, and the exportation or destruction is accomplished promptly, or

(2) An entry for transportation and exportation, filed using an in-bond application pursuant to part 18 of this chapter, is made within 10 days after the time of entry and domestic carriage of the merchandise does not conflict with the requirements of another Federal agency.

(b) *Procedures for exportation or destruction.* The exportation or destruction of prohibited merchandise as required by paragraph (a) shall be in accordance with §§ 158.41 and 158.45(c) of this chapter.

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979, as amended by CBP Dec. 17–13, 82 FR 45406, Sept. 28, 2017]

§ 142.19 Release of merchandise under the entry summary.

Merchandise, for which an entry summary serves as both an entry and an entry summary, shall not be released from Customs custody until a bond has been filed, or the entry has been liquidated, as follows:

(a) *Bond.* Merchandise not designated for examination may be released to, or upon the order of, the carrier if a bond is filed on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter. Merchandise designated for examination may be released under the bond after examination has been completed if:

(1) It has been found to be truly and correctly invoiced,

(2) It is entitled to admission into the commerce of the United States, and

(3) Its release is not precluded by any law or regulation. If merchandise is entered by or on behalf of a United States Government department or agency, the stipulation prescribed in § 141.102(d) of this chapter shall be accepted in place of a bond.

(b) *After liquidation.* If a bond has not been filed in accordance with paragraph (a) of this section, the merchandise shall not be released before:

(1) The entry has been liquidated and the full amount of all duties and taxes due, including dumping or other special duties and charges, has been paid, or the right to free entry established.

(2) The port director determines that the merchandise may be admitted into the commerce of the United States, and

(3) All documents relating to the merchandise which are required by law or regulation have been filed.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 84–213, 49 FR 41185, Oct. 19, 1984]

Subpart C—Special Permit for Immediate Delivery

§ 142.21 Merchandise eligible for special permit for immediate delivery.

Merchandise may be released under a special permit for immediate delivery, in accordance with section 448(b), Tariff Act of 1930, as amended (19 U.S.C. 1448(b)), in the following circumstances:

(a) *Contiguous countries.* At the discretion of the port director, merchandise arriving by land from Canada or Mexico may be released under a special permit for immediate delivery provided the importer has on file a bond on CBP Form 301, containing the bond conditions set forth in § 113.62 of this chapter. An entry summary shall be filed in accordance with § 142.22(b)(1), and estimated duties, if any, shall be deposited,

within the time period specified in §142.23 for all merchandise from contiguous countries released under a special permit except for fresh fruits and vegetables for human consumption released under the provisions of paragraph (b) of this section.

(b) *Fresh fruits and vegetables.* (1) An application for a special permit for immediate delivery may be made for the transportation of fresh fruits and vegetables for human consumption arriving from Canada or Mexico to the importer's premises within the port of importation, but removed from the area immediately contiguous to the border.

(2) The application shall be accompanied by a continuous bond on CBP Form 301, containing the bond conditions set forth in §113.62 of this chapter.

(3) The fresh fruits and vegetables shall be transported to the importer's premises in the vehicles in which they crossed the border or, if transshipment is necessary in vehicles provided by the importer. The fresh fruits and vegetables may be examined at the importer's premises. Those portions without commercial value may be disposed of in accordance with the provisions of §158.11(b) of this chapter, and the balance shall be entered for consumption or transported in bond under an entry for immediate transportation without appraisement or under an entry for transportation and exportation.

(c) *Agency of U.S. Government.* Merchandise may be released under the immediate delivery procedure if the shipment is consigned to or for the account of any agency or office of the United States Government, or to an officer or official of any such agency in his official capacity, as provided in §10.101 of this chapter.

(d) *Articles of a trade fair.* Articles for a trade fair may be released under the immediate delivery procedure, as provided in §147.13 of this chapter.

(e) *Quota-class merchandise*—(1) *Tariff rate quotas.* At the discretion of the port director, merchandise subject to a tariff-rate quota may be released under a special permit for immediate delivery provided the importer has on file a bond on CBP Form 301, containing the bond conditions set forth in §113.62 of this chapter. However, merchandise subject to a tariff-rate quota may not be incrementally released under a special permit for immediate delivery as provided in paragraphs (g) and (h) of this section. Nor is such merchandise eligible for release under a special permit pursuant to 19 CFR 141.58(d)(1). Where a special permit is authorized, an entry summary will be properly presented pursuant to §132.1 of this chapter within the time specified in §142.23, or within the quota period, whichever expires first. If proper presentation is not made until after the tariff-rate quota is filled, the merchandise shall not be entitled to the quota rate of duty, and the importer shall pay duties at the over-quota rate.

(2) *Absolute quotas.* At the discretion of the port director, perishable merchandise of a class approved by CBP Headquarters which is subject to an absolute quota may be released under a special permit for immediate delivery for removal to the importer's premises, or to any other location approved by the port director, until an entry summary is properly presented pursuant to §132.1 of this chapter. However, merchandise subject to an absolute quota under this paragraph may not be incrementally released under a special permit for immediate delivery as provided in paragraphs (g) and (h) of this section. Nor is such merchandise eligible for release under a special permit pursuant to §141.58(d)(1) of this chapter. Where a special permit is authorized, a proper entry summary must be presented for merchandise so released within the time specified in §142.23, or within the quota period, whichever expires first. If the absolute quota is filled before the importer has properly presented an entry summary, he may either present an entry summary for warehouse or, under CBP supervision, export or destroy the merchandise.

(f) *Release from warehouse followed by warehouse withdrawal for consumption.* Merchandise may be released from warehouse under a special permit:

(1) At the discretion of the port director when:

(i) The warehouse is located a considerable distance from the customhouse and actual release of the merchandise from the warehouse may not be effected within the next full business day

after the day of the payment of duty, and

(ii) The port has sufficient manpower to permit such practice;

(2) The importer shall have on file a bond on CBP Form 301, containing the bond conditions set forth in §113.62 of this chapter; and

(3) The immediate delivery permit shall be annotated to state that a warehouse withdrawal for consumption will be filed for this merchandise.

(g) *Split shipments.* Merchandise subject to §141.57(d)(2) of this chapter, which is invoiced and delivered to the carrier as a single shipment, but which, due to the carrier's inability to accommodate the merchandise on a single conveyance, is shipped by the carrier in separate portions to the same port of entry in the United States as listed on the original bill of lading, may be released incrementally under a special permit. Incremental release means releasing each portion of such shipments separately as they arrive.

(h) *Entities shipped unassembled or disassembled on multiple conveyances.* Merchandise subject to §141.58(d)(2) of this chapter, which is purchased, invoiced, and classified as a single entity under the Harmonized Tariff Schedule of the United States (HTSUS), and which is shipped in separate portions because its size or nature prevents shipping the entity on a single conveyance, may be released incrementally under a special permit.

(i) *When authorized by Headquarters.* Headquarters may authorize the release of merchandise under the immediate delivery procedure in circumstances other than those described in §142.21(a) through (h) provided a bond on CBP Form 301 containing the bond conditions set forth in §113.62 of this chapter is on file.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 81–260, 46 FR 49842, Oct. 8, 1981; T.D. 84–213, 49 FR 41185, Oct. 19, 1984; T.D. 89–104, 54 FR 50499, Dec. 7, 1989; T.D. 03–09, 68 FR 8721, Feb. 25, 2003; CBP Dec. 06–11, 71 FR 31927, June 2, 2006]

§142.22 Application for special permit for immediate delivery.

(a) *Form.* An application for a special permit for immediate delivery will be made on CBP Form 3461, or its electronic equivalent, supported by the documentation provided for in §142.3. A commercial invoice will not be required, except for merchandise released under the provisions of 19 U.S.C. 1484(j). Instead of a commercial invoice, the importer may deliver to CBP a pro forma invoice, waybill, or other document setting forth an adequate description of the merchandise and the quantities, together with the values or approximate values when values are needed for the purpose of examination. If the merchandise is to be released under a term special permit, the documentation also shall show the term special permit number, as provided for in §142.24.

(b) *CBP custody.* Merchandise for which a special permit for immediate delivery has been issued under §142.21 of this part shall be considered to remain in CBP custody until the filing of one of the following:

(1) An entry summary for consumption, with estimated duties attached; an entry summary for consumption without estimated duties attached, if entry/entry summary information and a valid scheduled statement date (pursuant to §24.25 of this chapter) have successfully been received by CBP via the Automated Broker Interface; an entry summary for warehouse; or an entry summary for entry temporarily under bond, which may be filed in any of the circumstances under §142.21 of this part except for merchandise released from warehouse under §142.21(f) of this part;

(2) A withdrawal for consumption, with estimated duties attached, which shall be filed only for merchandise released from warehouse under §142.21(f) of this part;

(3) An entry for transportation and exportation, immediate transportation without appraisement, or direct exportation, which shall be filed in those circumstances under §142.21(b) and (e)(2) of this part; or entry for transportation and exportation, or direct exportation,

which shall be filed in the circumstances under §142.28 of this part or

(4) An application to destroy, which shall be filed in those circumstances under §§142.21(b) and (e)(2), and §142.28 of this part.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 81–260, 46 FR 49842, Oct. 8, 1981; T.D. 89–104, 54 FR 50499, Dec. 7, 1989; T.D. 03–09, 68 FR 8721, Feb. 25, 2003; CBP Dec. 06–11, 71 FR 31927, June 2, 2006; CBP Dec. 15–14, 80 FR 61289, Oct. 13, 2015]

§142.23 Time limit for filing documentation after release.

The applicable documentation described in §142.22(b) shall be filed, and estimated duties, if any, shall be deposited, within 10 working days after the merchandise or any part of the merchandise is authorized for release under a special permit for immediate delivery or, for quota class merchandise within the quota period, whichever expires first.

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979; T.D. 80–26, 45 FR 3901, Jan. 21, 1980; T.D. 98–34, 63 FR 19399, Apr. 20, 1998]

§142.24 Special permit.

(a) *Conditions for issuance.* At the discretion of the port director, a special permit for immediate delivery may be issued on Customs Form 3461, or its electronic equivalent, appropriately modified, for a class or classes of merchandise particularly described in the application for the permit.

(b) *Notation of value for each shipment.* When applying for the release of a shipment of merchandise under a special permit for immediate delivery, the importer shall note a value for the shipment on the documentation presented. The value so noted shall not be less than the invoice value.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 84–213, 49 FR 41185, Oct. 19, 1984; CBP Dec. 15–14, 80 FR 61289, Oct. 13, 2015]

§142.25 Discontinuance of immediate delivery privileges.

(a) *Authority of port director.* The port director may discontinue immediate delivery privileges if the importer:

(1) Has failed repeatedly to file the applicable Customs documentation set forth in §142.22(b) timely without justification, or

(2) Has not taken prompt action to settle a claim for liquidated damages issued under §142.27 for failure to file the applicable Customs documentation set forth in §142.22(b) timely, or a claim for liquidated damages issued under the basic importation and entry bond for failure to deposit estimated duties, taxes and charges timely, as provided in such bond. ''Prompt action'' means that the importer, within the time specified in a claim for liquidated damages shall petition for relief or pay the amount claimed and, file the applicable documentation and deposit estimated duties, if any.

(3) Has repeatedly delivered documentation required by §142.22(b) which is incomplete or which contains erroneous information.

(4) Is substantially or habitually delinquent in the payment of Customs bills. See §142.26.

(b) *Brokers; restriction.* A broker shall not circumvent an action taken under this section by applying for the immediate release of the importer's merchandise in the broker's name and under the broker's bond.

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 93–37, 58 FR 30984, May 28, 1993; T.D. 95–77, 60 FR 50020, Sept. 27, 1995]

§142.26 Delinquent payment of Customs bills.

The following procedures shall be followed if an importer is substantially or habitually delinquent in the payment of Customs bills:

(a) *Notice.* The importer shall be advised in writing by the director of the port in which he is substantially or habitually delinquent that his immediate delivery privileges have been suspended. The notice shall state the reason for the action and advise the importer that if payment of all his delinquent Customs bills is not made within 10 working days from the date of the

notice, the importer's immediate delivery privileges also shall be suspended at all Customs ports.

(b) *Reinstatement of privileges by port.* If the importer pays all his delinquent Customs bills within 10 working days after the date of the notice, the suspension shall be removed, and the importer's immediate delivery privileges shall be reinstated.

(c) *Reinstatement of privileges by Headquarters.* If the importer has not paid all his delinquent Customs bills within 10 working days after the date of the notice, his immediate delivery privileges shall be suspended at all Customs ports. This suspension shall remain in effect in each port of entry until notification is received from Headquarters that the suspension is removed and that the importer's immediate delivery privileges have been reinstated.

§ 142.27 Failure to file documentation timely.

If the applicable Customs documentation set forth in § 142.22(b) is not filed within the time provided in § 142.23, the port director shall make an immediate demand for liquidated damages in the amount of the bond in the case of a single entry bond. When the transaction has been charged against a continuous bond, the demand shall be for the amount that would have been demanded if the merchandise had been released under a single entry bond. Any application for cancellation of liquidated damages incurred shall be made in accordance with part 172 of this chapter.

(R.S. 251, as amended, secs. 623, as amended, 624, 46 Stat. 759, as amended (19 U.S.C. 66, 1623, 1624))

[T.D. 79–221, 44 FR 46821, Aug. 9, 1979, as amended by T.D. 84–213, 49 FR 41185, Oct. 19, 1984]

§ 142.28 Withdrawal or entry summary not required for prohibited merchandise.

(a) *Exportation or destruction of prohibited merchandise.* If merchandise released under a special permit for immediate delivery later is found to be prohibited, an authorized CBP official shall demand its recall in accordance with § 141.113 of this chapter (applicable to the recall of merchandise released from Customs custody), and withdrawal or entry summary documentation and the deposit of estimated duties, if any, shall not be required provided:

(1) The merchandise is exported or destroyed under Customs supervision within the time limit for entry specified in § 142.23, or

(2) An entry for exportation or for transportation and exportation filed using an in-bond application pursuant to part 18 of this chapter, or an application to destroy the merchandise, is made within the specified time limit, and the exportation or destruction is accomplished promptly.

(b) *Procedures for exportation or destruction.* The exportation or destruction of prohibited merchandise required by paragraph (a) of this section shall be under the same procedures as exportation or destruction of prohibited merchandise covered by a consumption entry with remission or refund of duties. See §§ 158.41 and 158.45(c) of this chapter.

(c) *Notation on exportation entry.* An entry for exportation or for transportation and exportation of prohibited merchandise for which no entry summary for consumption has been filed shall be stamped or imprinted conspicuously with the legend:

[T.D. 73–175, 38 FR 17447, July 2, 1973, as amended by CBP Dec 17–13, 82 FR 45406, Sept. 28, 2017]

PROHIBITED MERCHANDISE, NO OTHER ENTRY FILED

§ 142.29 Other procedures applicable.

Merchandise released under a special permit for immediate delivery shall be subject to the same procedures applicable to all other imported merchandise, unless specific procedures are set forth in this subpart.

Subpart D—Line Release

SOURCE: T.D. 92–93, 57 FR 44093, Sept. 24, 1992, unless otherwise noted.

§ 142.41 Line Release.

Line Release is an automated system designed to release and tract repetitive shipments. It is a method of entry or

immediate delivery extended to importers of merchandise which CBP deems to be repetitive and high volume. Line Release may be used only at locations approved by CBP for handling Line Release. At certain high-risk locations along the land borders of the United States (the locations to be published in the FEDERAL REGISTER), which are approved by CBP for handling Line Release, the use of Line Release for particular shipments may be denied by CBP unless the imported merchandise is transported by carriers that participate in a CBP-approved industry partnership program.

[T.D. 92–93, 57 FR 44093, as amended by T.D. 99–2, 64 FR 33, Jan. 4, 1999; CBP Dec. 11–04, 76 FR 6690, Feb. 8, 2011]

§ 142.42 Application for Line Release processing.

In order to obtain approval for processing import transactions through Line Release, a broker or importer filing its own entries (entry filer) must submit an application to the port director, signed by the entry filer, in a format described as a Line Release Data Loading Sheet. The application must be accompanied by a representative sample of an actual commercial invoice for the products sought to be processed under Line Release. The Line Release Data Loading Sheet must contain the following information with each information element appearing on a separate line.

(a) Port where application is being made.

(b) Initiating Company Information: name, address, city, state, contact person, phone number of contact person, and signature.

(c) Listing of all ports in which the initiating company has filed a similar application for Line Release.

(d) Country of origin codes (ISO codes from Annex B of HTSUS) for the merchandise.

(e) Shipper or manufacturer information: Name, address, city, province/state, country, postal code, indication by noting ''M'' or ''S'' whether this information relates to a manufacturer (M) or a shipper (S), and manufacturer identification number of the shipper or manufacturer.

(f) Importer information (if importer is different than filer): Name, address, city, state and country, zip code, importer number, bond number, and surety code.

(g) Entry filer information: Name, importer number, filer code, bond number, and surety code.

(h) Product information: Product description, manifest unit of measure, HTSUS number described to sub-heading level for particular product or range of HTSUS numbers at sub-heading levels for multiple products for which Line Release is sought.

(i) Election of whether the Line Release transaction is to be considered an entry or an immediate delivery.

§ 142.43 Line Release application approval process.

(a) *Port review*. The port director shall review each Line Release application to determine whether the shipments qualify for Line Release processing. The port director may contact the applicant for further information, if necessary. An application that fails to elect whether the Line Release transaction is to be considered an entry or an immediate delivery will be returned to the applicant. If all required information is submitted, the application will be forwarded to Headquarters for final processing.

(b) *Assignment of C–4 Codes*. A C–4 Code (Common Commodity Classification Code), which is a unique code identifying the shipper or manufacturer, importer, entry filer, and the product for each Line Release shipment, shall be assigned by Headquarters to each application approved for Line Release. Headquarters shall annotate each approved application with a C–4 Code and return the application to the port director who shall return the approved application to the entry filer.

(c) *Denial of Line Release application*. If the port director is considering the denial of a Line Release application, consideration shall be given to whether an application by the same filer for the same transaction has been approved at another port. If there is not an approved application at another port and the port director determines that the

application shall be denied, the application shall be noted denied and returned to the entry filer without a C–4 Code annotation by the port director. If an application has been approved at another port, but the port director still questions whether the application should be approved at his port, the port director shall forward the application to the Assistant Commissioner, Office of Information Management. The Office of Information and Technology will review the application and will notify the port director of the final determination.

§ 142.44 Entry number range.

After an application for Line Release has received final approval, filers must provide the port director, in writing, with a range of entry numbers for use in the system so that an entry number can be assigned automatically to each Line Release transaction. For the purposes of this subpart, ''entry number'', when the release is an immediate delivery, merely refers to the Line Release transaction number; this number does not become the actual entry number until an entry for the merchandise released under the immediate delivery procedure is filed. A separate range must be provided for each Line Release site at the port. These entry numbers shall be used for assignment within the Line Release system. Entry filers shall not assign these numbers to other entry transactions.

§ 142.45 Use of bar code by entry filer.

(a) *Printing of C–4 Code.* Upon receipt of an approved Line Release application, the entry filer, in accordance with instructions from the port director, shall preprint invoices with the C–4 Code in bar code and alpha-numeric format or print labels with the necessary information. Bar codes shall be printed in accordance with the specifications stated in Customs Publication 561 (*Line Release Overview*). Labels or preprinted invoices also shall state the name of the shipper or manufacturer of the product and the name of the importer of record, if other than the entry filer, above the bar code and the name of the entry filer and a product description below the bar code.

(b) *Multiple commodity processing.* Multiple commodity processing allows more than one product to be released under one entry number. The shipper/manufacturer, importer of record and the entry filer must be the same. The product description is the only variable allowed. The commodities should be listed on one invoice with C–4 Code labels for each commodity attached to the invoice.

(c) *Distribution of labels.* If labels are used, the labels shall be affixed to the invoices in accordance with instructions from the port director. The entry filer may either affix the labels or distribute the labels to the shippers/manufacturers and instruct them in the use and placement of the labels.

§ 142.46 Presentation of invoice and assignment of entry number.

(a) *Presentation of invoice.* When merchandise that has been approved for Line Release is imported at a Line Release site, the carrier, importer or filer shall present Customs with an invoice with the bar code or codes printed or affixed and, according to the method of transportation, the appropriate manifest document.

(b) *Verification of data.* If after scanning the bar code at the Line Release site, the Customs officer verifies the data on the bar code with the information on the invoice, he will key the quantity on the invoice and an entry number will be automatically assigned to the transaction. If there are any differences between the system data and the invoice and bar code, including any differences in entry filer, the Customs officer shall order an examination.

(c) *Other agency documentation.* If the Line Release shipment requires other agency documentation, the Customs officer at the Line Release site will be alerted to that requirement electronically when he verifies the data on the bar code with the information on the invoice. If the required form is presented to the officer with the documentation package, the shipment may be released.

§ 142.47 Examinations of Line Release transactions.

(a) *General.* Merchandise imported under Line Release generally may be

released without further CBP processing. CBP, however, may choose to inspect any Line Release shipment. Examinations may be either specifically ordered by the CBP officer or random.

(b) *Voiding of Line Release transaction.* CBP may void a Line Release transaction for the following reasons: Because of an examination, because a carrier transporting the Line Release merchandise is not a participant in a CBP-approved industry partnership program, or because a driver or conveyance is not authorized in accordance with the LBCIP. If this occurs, CBP will return the invoice to the carrier, and the entry filer, in order to enter merchandise, must prepare and submit either a CF 3461 or 3461 Alternate, or its electronic equivalent.

[T.D. 92–93, 57 FR 44093, Sept. 24, 1992, as amended by T.D. 99–2, 64 FR 33, Jan. 4, 1999; CBP Dec. 11–04, 76 FR 6690, Feb. 8, 2011; CBP Dec. 15–14, 80 FR 61289, Oct. 13, 2015]

§ 142.48 Release procedure.

(a) *General.* When the Customs officer at the Line Release site determines that a shipment is ready for release, release data, consisting of the entry number, the date and time of release, the inspector's badge number, the quantity and unit of measure, and the C–4 Code will be printed on the invoice and the manifest document and, when other agency documentation is presented, may be printed on that documentation. The invoice shall be returned to the entry filer and the manifest document shall be retained by Customs.

(b) *Notification to non-ABI participants.* The returned invoice with the release data shall be the release notification to non-ABI participants.

(c) *Notification to ABI participants.* If the Line Release entry filer is an operational ABI participant, the filer shall receive an electronic notification of the release consisting of the importer of record number, the port of entry, the filer code, the entry number, the date and time of release, the manufacturer code, the quantity and unit of measure, the release site, the HTSUS number(s), the C–4 Code and the country or countries of origin.

§ 142.49 Deletion of C–4 Code.

(a) *By Customs.* A port director may temporarily or permanently delete an entry filer's C–4 Code without providing the participant with any justification and without prior notification in cases of willfulness or when public health, interest, or safety so requires, thereby revoking the filer's use of Line Release.

(b) *By entry filer.* Entry filers may delete C–4 Codes from Line Release by notifying the port director in writing on a Deletion Data Loading Sheet. Such notification shall state the C–4 Code which is to be deleted, the port where the C–4 Code is to be deleted and the reason for the requested deletion. A copy of the originally approved Data Loading Sheet must be submitted with the Deletion Data Loading Sheet. If only a temporary deletion is desired, the filer shall state the requested effective date for the deletion and the date the C–4 Code is requested to be returned to Line Release processing.

§ 142.50 Line Release data base corrections or changes.

The applicant shall notify the port director of any changes in names, importer or filer numbers or bond information on a Line Release Data Loading Sheet as soon as possible. Notification shall be accomplished by the submission of a copy of the original loading sheet with a Correction Data Loading Sheet.

§ 142.51 Changing election of entry or immediate delivery.

An applicant who has already received a C–4 Code and wishes to change the election chosen on his Line Release application as to whether the release should be considered an entry or an immediate delivery must submit a letter requesting such change to the port director where the C–4 Code is used. This letter must include the C–4 Code to be changed and the date the change is to be effective. If the requested change is for a temporary time period, the letter shall include the date the releases are to return to the release type originally requested. Applications that fail to state the effective dates of the changes requested will be returned to the applicant.

§ 142.52 Port-wide and multiple port acceptance of Line Release.

(a) *Port-wide processing.* If a C–4 Code has been approved by the port director, the C–4 Code may be used at any Line Release site at the port.

(b) *Multiple port processing.* In order for a C–4 Code approved at one port to be used at another port, the entry filer must submit an application to the port director of the other port. While uniform criteria shall be applied to approving similar shipments for Line Release at all ports, a port director may exercise his discretion to deny Line Release at his port even though a similar shipment may be approved at another port.

PART 143—SPECIAL ENTRY PROCEDURES

Sec.

AUTHORITY: 19 U.S.C. 66, 1321, 1414, 1481, 1484, 1498, 1624, 1641.

SOURCE: T.D. 73–175, 38 FR 17463, July 2, 1973, unless otherwise noted.

§ 143.0 Scope.

This part sets forth the requirements and procedures for participation in the Automated Broker Interface (ABI), for the clearance of imported merchandise under appraisement and informal entries, and under electronic entry filing and under Remote Location Filing (RLF). All requirements and procedures set forth in this part are in addition to the general requirements and procedures for all entries set forth in part 141 of this chapter. More specific requirements and procedures are set forth elsewhere in this chapter; for example, part 145 concerns importations by mail and part 10 concerns merchandise conditionally free of duty or subject to a reduced rate.

[CBP Dec. 09–47, 74 FR 69020, Dec. 30, 2009]

Subpart A—Automated Broker Interface

SOURCE: T.D. 90–92, 55 FR 49884, Dec. 3, 1990, unless otherwise noted.

§ 143.1 Eligibility.

The Automated Broker Interface (ABI) allows participants to transmit

data electronically to CBP through ABI and to receive transmissions from Automated Commercial Environment (ACE) or any other CBP-authorized electronic data interchange system. Its purposes are to improve administrative efficiency, enhance enforcement of customs and related laws, lower costs and expedite the release of cargo.

(a) *Participants for entry and entry summary purposes.* Participants in ABI for the purposes of transmitting data relating to entry and entry summary may be:

(1) Customs brokers as defined in §111.1 of this chapter;

(2) Importers as defined in §101.1 of this chapter; and

(3) ABI service bureaus, that is, an individual, partnership, association or corporation which provides communications facilities and data processing services for brokers and importers, but which does not engage in the conduct of customs business as defined in §111.1 of this chapter.

(b) *Participants for Importer Security Filing purposes.* Any party may participate in ABI solely for the purposes of filing the Importer Security Filing pursuant to §149.2 of this chapter if that party fulfills the eligibility requirements contained in §149.5 of this chapter. If a party other than a customs broker as defined in §111.1 of this chapter or an importer as defined in 19 U.S.C. 1484 submits the Importer Security Filing, no portion of the Importer Security Filing can be used for entry or entry summary purposes pursuant to §149.5 of this chapter.

(c) *Participants for other purposes.* Upon approval by CBP, any party may participate in ABI for other purposes, including transmission of protests, filing of in-bond applications, and applications for FTZ admission (CBP Form 214).

[CBP Dec. 08–46, 73 FR 71782, Nov. 25, 2008, as amended by CBP Dec. 15–14, 80 FR 61290, Oct. 13, 2015; CBP Dec. 17–13, 82 FR 45406, Sept. 28, 2017]

§ 143.2 Application.

A prospective participant in ABI shall submit a letter of intent to the port director closest to his principal office, with a copy to the Assistant Commissioner, Information and Technology, or designee. The letter of intent shall set forth a commitment to develop, maintain and adhere to the performance requirements and operational standards of the ABI system in order to ensure the validity, integrity and confidentiality of the data transmitted. The letter of intent must also contain the following, as applicable:

(a) A description of the computer hardware, communications and entry processing systems to be used and the estimated completion date of the programming;

(b) If the participant has offices in more than one location, the location of each office and the estimated start-up date for each office listed;

(c) The name(s) of the participant's principal management and contact person(s) regarding the system;

(d) If the system is being developed or supported by a data processing company, the data processing company's name and the contact person;

(e) The software vendor's name and the contact person; and

(f) The participant's entry filer code and average monthly volume.

§ 143.3 Action on application.

(a) *Approval.* Permission to use ABI will be granted by the Assistant Commissioner, Information and Technology, or his designee, only to those applicants who are not delinquent or otherwise remiss in their transactions with Customs and are in compliance with the ABI system performance procedures and standards as described in §143.5 of this subpart. If there is any cause to question the qualifications or fitness of the applicant to participate in ABI, the application may be referred for investigation and report. The investigation may include, but need not be limited to:

(1) The accuracy of the information provided in the letter of intent;

(2) The business integrity of the applicant;

(3) The character and reputation of an individual applicant or a member of a partnership or an officer of an association or corporation; and

(4) The character and reputation of the software vendor.

(b) *Denial.* If permission to use ABI is denied to an applicant by the Assistant

Commissioner, Information and Technology, or his designee, written notice, including the grounds for the denial, will be given to him and to the port director. The applicant may appeal the denial in the manner prescribed in §143.8 of this subpart and those procedures for handling an appeal shall apply.

§ 143.4 Confidentiality of data.

The electronic data received and exchanged by a service bureau shall be considered confidential, and the service bureau shall maintain the accuracy of data received in the process of formatting and transmitting such data on behalf of a filer, and shall not disclose this data or any information connected therewith to any persons other than the filer or Customs (see §111.24 of this chapter).

§ 143.5 System performance requirements.

The performance requirements and operational standards for electronic data filing are detailed in Customs Publication 552, Customs And Trade Automated Interface Requirements (CATAIR), which is updated periodically. The User Support Services Division, Customs Headquarters, upon request, shall provide each prospective participant with a copy of this publication. Each prospective participant must demonstrate that his system can interface directly with the Customs computer and ensure accurate submission of required data. Such demonstration will include intensive testing of the participant's system and monitoring of its performance in accordance with Publication 552.

§ 143.6 Failure to maintain performance standards.

ABI participants must adhere to the performance requirements and operational standards of the ABI system and maintain a high level of quality in the transmission of data, as defined in Customs Publication 552 (CATAIR) and Customs directives and policy statements, in order to participate in ABI.

(a) *Probational status.* A participant who does not adhere to the requirements and standards of the ABI system or maintain a high level of quality as described above may be placed on probational status. The participant will be notified, electronically and in writing, by the Director, User Support Services Division, of any action to place the participant on probation. The notice will specifically set forth the grounds for the proposed probation, and advise the participant that he will have 15 days from the date of the notice to show cause why the probationary period should not take effect. If the participant fails to respond within the allotted time, or fails to show to the satisfaction of the Director, User Support Services Division, that the probationary period should not take effect, the Director will notify the participant of the effective date of the probationary period. The length of the probationary period may, in the discretion of the Director, User Support Services Division, be extended up to a maximum of 90 days, if the participant's performance remains below standard, but, except for immediate revocation under §143.7, participation will not be suspended or revoked until the probationary period has lasted a minimum of 30 days. The participant's performance will be closely monitored during this time, which will include working with the participant and providing any necessary guidance to assist the participant in bringing his performance back to standard.

(b) *Suspension following probationary period.* If deficiencies are not corrected within the probationary period, the participant will be suspended from operational status. The participant will be notified, electronically and in writing, by the Director, User Support Services Division, of any action to suspend participation. The notice will specifically set forth the grounds and effective date for the suspension, and the right to appeal the suspension to the Assistant Commissioner, Information and Technology, within 10 days following the date of the written notice of suspension (see §143.8).

(c) *Reinstatement following suspension.* To obtain reinstatement to operational status, a suspended participant must submit a letter to the Director, User Support Services Division, stating that the deficiencies for which the suspension was invoked have been corrected.

If, after the participant has demonstrated compliance with the system performance requirements and operational standards specified in §143.5 of this part, if required, the Director is satisfied that the deficiencies have been corrected, the participant will be reinstated.

§143.7 Revocation of ABI participation.

(a) *Fraud or misstatement of material fact.* If it is determined at any time that participation in the system was obtained through fraud or the misstatement of a material fact, the Executive Director, Trade Policy and Programs, Office of International Trade, will immediately revoke ABI participation.

(b) *Risk of significant harm to system.* If the participant's continued use of ABI would pose a potential risk of significant harm to the integrity and functioning of the system, the Director, User Support Services Division, will immediately revoke ABI participation.

(c) *Notification to participant.* The participant will be notified, electronically and in writing, by the applicable Director, of the revocation. The notice will specifically set forth the grounds and effective date of revocation, and the right to appeal the revocation to the Assistant Commissioner, Information and Technology, within 10 days following the date of the written notice of revocation.

§143.8 Appeal of suspension or revocation.

If the participant files a written appeal with the Assistant Commissioner, Information and Technology, within 10 days following the date of the written notice of action to suspend or revoke participation as provided in §§143.6 and 143.7, the suspension or revocation of participation shall not take effect until the appeal is decided, except in those cases where the Executive Director, Trade Policy and Programs, Office of International Trade, or the Director, User Support Services Division, respectively, determines that participation was obtained through fraud or the misstatement of a material fact, or that continued participation would pose a potential risk of significant harm to the integrity and functioning of the system. The CBP officer who receives the appeal shall stamp the date of receipt of the appeal and the stamped date is the date of receipt for purposes of the appeal. The Assistant Commissioner shall inform the participant of the date of receipt and the date that a response is due under this paragraph. The Assistant Commissioner shall render his decision to the participant, in writing, stating his reasons therefor, by letter mailed within 30 working days following receipt of the appeal, unless this period is extended with due notification to the participant.

Subpart B—Appraisement Entry

§143.11 Merchandise eligible for appraisement entry.

(a) *Without Commissioner's approval.* An application for entry by appraisement may be approved by the port director without securing the approval of the Commissioner of Customs for any of the following merchandise:

(1) Merchandise damaged on the voyage of importation, by fire or through marine casualty or any other cause, without fault on the part of the shipper;

(2) Merchandise recovered from a wrecked or stranded vessel;

(3) Household effects used abroad and personal effects, not imported in pursuance of a purchase or agreement for purchase and not intended for sale;

(4) Articles sent by persons in foreign countries as gifts to persons in the United States;

(5) Tools of trade of a person arriving in the United States;

(6) Personal effects of citizens of the United States who have died in a foreign country; and

(7) Any of the following articles, which are deemed in accordance with section 498(a)(10), Tariff Act of 1930, as amended (19 U.S.C. 1498(a)(10)), to be articles the value of which cannot be declared:

(i) Articles which are secondhand;

(ii) Articles which have become deteriorated or damaged before importation otherwise than as specified in paragraph (a)(1) of this section;

(iii) Articles which are not the subject of a commercial transaction; and

(iv) So-called overages or dock accumulations which cannot be identified with any particular shipment.

(b) *With Commissioner's approval.* Entry by appraisement for merchandise not provided for in paragraph (a) of this section shall be allowed only with the approval of the Commissioner of Customs. Each request for such approval shall be filed in triplicate with the port director and shall state in detail the reasons for the request for entry by appraisement.

(c) *Merchandise not eligible.* An application for an entry by appraisement shall not be approved after the merchandise has been appraised or released from Customs custody, nor for damaged merchandise when the damage occurs after importation.

§ 143.12 Form of entry.

Application for an entry by appraisement shall be made in triplicate on the entry summary, Customs Form 7501, or its electronic equivalent.

[T.D. 84–129, 49 FR 23168, June 5, 1984, as amended by CBP Dec. 15–14, 80 FR 61289, Oct. 13, 2015]

§ 143.13 Documents to be presented with entry.

The importer shall in all cases present:

(a) Any bills or statements of cost, or their electronic equivalents, relating to the merchandise which may be in his possession; and

(b) A declaration, or its electronic equivalent, that he has no other information as to the value of the articles and is unable to obtain such information or to determine the value of the articles for the purpose of making formal entry thereof.

[T.D. 73–175, 38 FR 17463, July 2, 1973, as amended by CBP Dec. 15–14, 80 FR 61289, Oct. 13, 2015]

§ 143.14 Payment of additional expenses.

Any additional expenses for cartage, storage, or labor occasioned by reason of an entry by appraisement shall be borne by the importer.

§ 143.15 Deposit of estimated duties and taxes.

Estimated duties shall be deposited in accordance with subpart G of part 141 of this chapter before the merchandise is released from Customs custody.

§ 143.16 Substitution of warehouse entry.

The importer may substitute an entry for warehouse at any time within 1 year from the date of importation, provided the merchandise has remained in continuous Customs custody.

Subpart C—Informal Entry

§ 143.21 Merchandise eligible for informal entry.

The following types of merchandise are among those which may be entered under informal entry (see §§ 141.52 and 143.22 of this chapter):

(a) Shipments of merchandise not exceeding $2,500 in value (except for articles valued in excess of $250 classified in Chapter 99, Subchapters III and IV, HTSUS);

(b) Any installment, not exceeding $2,500 in value, of a shipment arriving at different times, as described in § 141.82 of this chapter;

(c) A portion of one consignment, when such portion does not exceed $2,500 in value and may be entered separately pursuant to § 141.52 of this chapter. This paragraph does not apply to shipments of articles valued in excess of $250 classified under Chapter 99, Subchapters III and IV, HTSUS;

(d) Household or personal effects or tools of trade entitled to free entry under Chapter 98, Subchapter IV, HTSUS (19 U.S.C. 1202);

(e) Household effects used abroad and personal effects whether or not entitled to free entry, not imported in pursuance of a purchase or agreement for purchase and not intended for sale;

(f) Household and personal effects described in paragraph (e) of this section when entered under subheading 9802.00.40, HTSUS (19 U.S.C. 1202), and the value of the repairs and alterations thereto does not exceed $2,500;

(g) Personal effects not exceeding $2,500 in value of citizens of the United States who have died abroad;

(h) Books and other articles classifiable under subheadings 4903.00.00, 4904.00.00, 4905.91.00, 4905.99.00, 9701.10.00, 9701.90.00, 9810.00.05, HTSUS (19 U.S.C. 1202), imported by a library or other institution described in subheadings 9810.00.05 and 9810.00.30, HTSUS (19 U.S.C. 1202);

(i) Theatrical scenery, properties, and effects, motion-picture films, commercial travelers' samples and professional books, implements, instruments, and tools of trade, occupation, or employment, as set forth in §10.68 of this chapter;

(j) Merchandise which, upon written application to the Commissioner of CBP, is determined to be unique in character or design such that the value thereof cannot be declared and which is not intended for sale or imported in pursuance of a purchase or agreement for purchase; and

(k) Products of the United States, when the aggregate value of the shipment does not exceed $10,000 and the products are imported—

(1) For the purposes of repair or alteration prior to reexportation, or

(2) After having been either rejected or returned by the foreign purchaser to the United States for credit.

(l) Shipments of merchandise qualifying for the administrative exemptions under 19 U.S.C. 1321(a)(2) and provided for in—

(1) Section 10.151 or 145.31 of this chapter (certain importations not exceeding $800 in value);

(2) Section 10.152 or 145.32 of this chapter (certain bona-fide gifts not exceeding $100 in value ($200 in the case of articles sent from a person in the Virgin Islands, Guam, or American Samoa)); or

(3) Section 148.51 or 148.64 of this chapter (certain personal or household articles not exceeding $200 in value).

[T.D. 73–175, 38 FR 17463, July 2, 1973]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §143.21, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 143.22 Formal entry may be required.

CBP may require a formal consumption or appraisement entry for any merchandise if deemed necessary for import admissibility enforcement purposes; revenue protection; or the efficient conduct of customs business. Individual shipments for the same consignee, when such shipments are valued at $2,500 or less, may be consolidated on one such entry.

[CBP Dec. 12–19, 77 FR 72720, Dec. 6, 2012, as amended by CBP Dec. No. 16–26, 81 FR 93020, Dec. 20, 2016]

§ 143.23 Form of entry.

Except for the types of merchandise listed below which may be entered on the forms indicated, merchandise to be entered informally must be entered on a CBP Form 368 or 368A, (serially numbered) or CBP Form 7501, or its electronic equivalent or, if authorized by the Center director, upon the presentation of a commercial invoice which contains the following declaration, signed by the importer or his agent:

I declare that the information on this invoice is accurate to the best of my knowledge and belief; that the invoice quantities are true and correct manifest quantities; and that I have not received and do not know of any invoice other than this one.

(a) Articles in passengers' baggage which may be cleared on a baggage declaration in accordance with subpart B of part 148 of this chapter;

(b) Products of the United States being returned for which clearance on CBP Form 3311, or its electronic equivalent, is prescribed by §10.1 of this chapter;

(c) Personal effects and tools of trade for which clearance on CBP Form 3299, or its electronic equivalent, is prescribed by §148.6 of this chapter; and

(d) Shipments not exceeding $2,500 in value (except for articles valued in excess of $250 classified in Chapter 99, Subchapter III and IV, Harmonized Tariff Schedule of the United States) which are either (1) unconditionally free of duty and not subject to any quota or internal revenue tax, or (2) conditionally free (other than shipments of merchandise provided for in paragraph (g) of this section) and all conditions for free entry are met at the time of entry, which may be released upon the filing by the importer on CBP Form 7523, in duplicate, supported by evidence of the right to make entry.

(e) Merchandise for which informal entry may be made on a different form as prescribed elsewhere in this chapter.

(f) Merchandise released under the immediate delivery procedure or the entry documentation required by §142.3(a), and entry is made on CBP Form 7501, or its electronic equivalent annotated ''Informal Entry'' in the upper right hand corner.

(g) Merchandise, regardless of value, which is imported for noncommercial purposes, which qualifies for entry free of duty under the Generalized System of Preferences (see §§10.171 through 10.178 of this chapter), and for which informal entry may be made on CBP Form 7523, in duplicate.

(h) Products of the United States being returned for which informal entry is permitted by §143.21(j) may be cleared as follows:

(1) For products of the United States returned for the purposes of repair or alteration prior to reexportation. CBP Form 3311, or its electronic equivalent, will serve as informal entry.

(2) For products of the United States after having been either rejected or returned by the foreign purchaser for credit, CBP Form 7501, or its electronic equivalent, annotated ''informal entry'' in the upper right hand corner, and CBP Form 3311, or its electronic equivalent, will serve as informal entry.

(i) A shipment of merchandise not exceeding $2,500 in value which is imported by an express consignment operator or carrier and which meets the requirements in §128.24 of this chapter may be entered as provided in that section.

(j) Except for mail importations (see §§145.31 and 145.32 of this chapter), or in the case of personal written or oral declarations (see §§148.12, 148.13, and 148.62 of this chapter), ashipment of merchandise that qualifies for informal entry under 19 U.S.C. 1498 may be entered, including the information listed in paragraph (k) of this section, by presenting the bill of lading or a manifest listing each bill of lading when:

(1) The value of the shipment does not exceed $100 in the case of a bona fide gift from a person in a foreign country to a person in the United States and the shipment meets the requirements in §10.152 of this chapter (see §10.152 of this chapter);

(2) The value of the shipment does not exceed $200 in the case of articles (including bona fide gifts) from the Virgin Islands, Guam, and American Samoa and the shipment meets the requirements in §10.152 of this chapter (see §10.152 of this chapter); or

(3) The value of the shipment does not exceed $800 and the shipment satisfies the requirements in §10.151 of this chapter (see §§10.151 and 128.24(e) of this chapter).

(k) The following information is required to be filed as a part of entry made under paragraph (j) of this section:

(1) Country of origin of the merchandise;

(2) Shipper name, address and country;

(3) Ultimate consignee name and address;

(4) Specific description of the merchandise;

(5) Quantity;

(6) Shipping weight; and

(7) Value.

[T.D. 73–175, 38 FR 17463, July 2, 1973]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §143.23, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§143.24 Preparation of Customs Form 7501 and Customs Form 368 or 368A (serially numbered).

Customs Form 7501, or its electronic equivalent, may be prepared by importers or their agents or by Customs officers when it can be presented to a Customs cashier for payment of duties and taxes and for numbering of the entry before the merchandise is examined by a Customs officer. Where there is no Customs cashier, Customs Form 368 or 368A (serially numbered) or Customs Form 7501 must be used, and it shall be prepared by a Customs officer unless the form can be prepared under his control by the importer or agent for immediate use in clearing merchandise under the informal entry procedure. The conditions for the preparation of Customs Form 7501 by importers or their agents, as described in the first sentence of this section, do not apply

to the acceptance of these entries for shipments not exceeding $250 in value released under a special permit for immediate delivery in accordance with part 142 of this chapter.

[T.D. 84–129, 49 FR 23168, June 5, 1984, as amended by T.D. 87–75, 52 FR 26142, July 13, 1987; T.D. 89–82, 54 FR 36026, Aug. 31, 1989; T.D. 92–56, 57 FR 24944, June 12, 1992; CBP Dec. 15–14, 80 FR 61289, Oct. 13, 2015]

§ 143.25 Information on entry form, or its electronic equivalent.

Each Customs Form 368 or 368A (serially numbered) or, where used, Customs Form 7501, or its electronic equivalent, shall contain an adequate description of the merchandise and the item number of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), under which the merchandise is classified.

[T.D. 76–213, 41 FR 31812, July 30, 1976, as amended by T.D. 87–75, 52 FR 26142, July 13, 1987; T.D. 89–1, 53 FR 51263, Dec. 21, 1988; T.D. 92–56, 57 FR 24944, June 12, 1992; CBP Dec. 15–14, 80 FR 61289, Oct. 13, 2015]

§ 143.26 Party who may make informal entry of merchandise.

(a) *Shipments valued between $800 and $2,500.* A shipment of merchandise valued between $800 and $2,500 which qualifies for informal entry under 19 U.S.C. 1498 may be entered, using reasonable care, by the owner or purchaser of the shipment or, when appropriately designated by the owner, purchaser, or consignee of the shipment, a customs broker licensed under 19 U.S.C. 1641.

(b) *Shipments valued at $800 or less.* A shipment of merchandise valued at $800 or less which qualifies for informal entry under 19 U.S.C. 1498 and meets the requirements in 19 U.S.C. 1321(a)(2) (see §§ 10.151, 10.152, 10.153, 145.31, 145.32, 148.51, 148.64, of this chapter) may be entered, using reasonable care, by the owner, purchaser, or consignee of the shipment or, when appropriately designated by one of these persons, a customs broker licensed under 19 U.S.C. 1641.

[T.D. 94–51, 59 FR 30296, June 13, 1994, as amended by T.D. 95–31, 60 FR 18991, Apr. 14, 1995; T.D. 98–28, 63 FR 16417, Apr. 3, 1998; CBP Dec. 12–19, 77 FR 72720, Dec. 6, 2012; CBP Dec. No. 16–13, 81 FR 58834, Aug. 26, 2016]

§ 143.27 Invoices.

In the case of merchandise imported pursuant to a purchase or agreement to purchase, or intended for sale and entered informally, the importer shall produce the commercial invoice covering the transaction or, in the absence thereof, an itemized statement of value.

[T.D. 85–39, 50 FR 9612, Mar. 11, 1985]

§ 143.28 Deposit of duties and release of merchandise.

Unless statement processing and ACH are used pursuant to § 24.25 of this chapter, the estimated duties and taxes, if any, shall be deposited at the time the entry is presented and accepted by a Customs Officer, whether at the customhouse or elsewhere. If upon examination of the merchandise further duties or taxes are found due, they shall be deposited before release of the merchandise by Customs. When the entry is presented elsewhere than where the merchandise is to be examined, the permit copy shall be delivered through proper channels to the Customs officer who will examine the merchandise.

[T.D. 73–175, 38 FR 17463, July 2, 1973, as amended by T.D. 89–104, 54 FR 50499, Dec. 7, 1989]

Subpart D—Electronic Entry Filing

SOURCE: T.D. 90–92, 55 FR 49886, Dec. 3, 1990, unless otherwise noted.

§ 143.31 Applicability.

This subpart sets forth general requirements for the entry of imported merchandise processed electronically through the CBP Automated Commercial Environment (ACE) or any other CBP-authorized electronic data interchange system. Entries processed electronically are subject to the documentation, document retention and document retrievability requirements of this chapter as well as the general entry requirements of parts 141 and 142. Use of this system is voluntary and optional on behalf of the filer. Customs does not contemplate that processing

of non-electronic filings shall be delayed.

[T.D. 90–92, 55 FR 49886, Dec. 3, 1990, as amended by CBP Dec. 15–14, 80 FR 61290, Oct. 13, 2015]

§ 143.32 Definitions.

The following are definitions for purposes of subparts D and E of this part:

(a) *ABI.* ''ABI'' means the Automated Broker Interface functionality that allows entry filers to transmit immediate delivery, entry and entry summary data electronically to, and receive electronic messaging from, CBP and receive transmissions from Automated Commercial Environment (ACE) or any other CBP-authorized electronic data interchange system.

(b) *Authorized electronic data interchange system* means any established mechanism approved by the Commissioner of CBP through which information can be transferred electronically.

(c) *AII.* ''AII'' means Automated Invoice Interface and is a method of transmitting detailed invoice data through ABI.

(d) *Broker.* ''Broker'' means a customs broker licensed under part 111 of this chapter.

(e) *Certification.* ''Certification'' means the electronic equivalent of a signature for data transmitted through ABI. This electronic (facsimile) signature must be transmitted as part of the immediate delivery, entry or entry summary data. Such data are referred to as ''certified''.

(f) *Data.* ''Data'' when used in conjunction with immediate delivery, entryand/or entry summary means the information required to be submitted with the immediate delivery, entry and/or entry summary, respectively, in accordance with the CATAIR (CBP Publication 552, Customs and Trade Automated Interface Requirements) and/or CBP Headquarters directives. It does not mean the actual paper documents, but includes all of the information required to be in such documents.

(g) *Documentation.* ''Documentation'' when used in conjunction with immediate delivery, entry and/or entry summary means the documents set forth in §142.3 of this chapter, required to be submitted as part of an application for immediate delivery, entry and/or entry summary, but does not include the CBP Forms 7501, 3461, or their electronic equivalents (or alternative forms).

(h) *EDIFACT.* ''EDIFACT'' means the Electronic Data Interchange for Administration, Commerce and Transport that provides an electronic capability to transmit detailed CBP Forms 7501 and 3461, or their electronic equivalents and invoice data.

(i) *Electronic entry.* ''Electronic entry'' means the electronic transmission to CBP of:

(1) Entry information required for the entry of merchandise; and

(2) Entry summary information required for the classification and appraisement of the merchandise, the verification of statistical information, and the determination of compliance with applicable law.

(j) *Electronic immediate delivery.* ''Electronic immediate delivery'' means the electronic transmission of CBP Forms 3461 or 3461 alternate (CBP Form 3461 ALT) data to the Automated Commercial Environment (ACE) or any other CBP-authorized electronic data interchange system in order to obtain the release of goods under immediate delivery.

(k) *Electronic Invoice Program (EIP).* ''EIP'' refers to modules of the Automated Broker Interface (ABI) that allow entry filers to transmit detailed invoice data and includes Automated Invoice Interface (AII) and any other electronic invoice authorized by CBP.

(l) *Filer.* ''Filer'' means the party certifying the electronic filing of the application for immediate delivery, entry or entry summary. Filer may be a broker or an importer of record filing his own entries through ABI without the use of a broker.

(m) *Preclassification/binding ruling number.* ''Preclassification/binding ruling number'' means the system by which classifications are approved and assigned a unique identifying number. This number may be transmitted as part of the ABI data.

(n) *Records.* ''Records'' means the records as defined in part 163 of this chapter, which are required to be maintained pursuant to this chapter.

(o) *Selectivity criteria.* ''Selectivity criteria'' means the categories of information that guide CBP's judgment in evaluating and assessing the risk of an immediate delivery, entry, or entry summary transaction. Based upon these criteria, immediate delivery or entry transactions will be subject to either general examination, general examination with document review, or intensive examination. Entry summary transactions will be subject to either system review or summary document review. General examination (entry/immediate delivery) and system review (entry summary) procedures will constitute electronic processing provided all conditions necessary for electronic processing contained in this part are met.

(p) *Statement processing.* ''Statement processing'' means the method of collection and accounting which allows a filer to pay for more than one entry summary with one payment. ACS, or any other CBP-authorized electronic data interchange system, generates the statement, which is transmitted electronically to the filer, consisting of a list of entry summaries and the amount of duties, taxes or fees, if any, due for payment. Upon payment and collection of the statement, those entry summaries designated as electronic will be scheduled for liquidation (see § 24.25 of this chapter).

[T.D. 90–92, 55 FR 49886, Dec. 3, 1990, as amended by T.D. 98–56, 63 FR 32945, June 16, 1998; CBP Dec. 09–47, 74 FR 69020, Dec. 30, 2009; CBP Dec. 15–14, 80 FR 61289, 61290, Oct. 13, 2015]

§ 143.33 Eligibility criteria for participation.

To be eligible for electronic immediate delivery, electronic entry and electronic entry summary, the filer must be qualified to use the ABI feature, as prescribed in § 143.5. To be eligible for electronic entry summary processing, filers must be authorized to use the ABI statement processing system. Filers not so authorized would have to follow the electronic entry summary with the submission of an entry summary in paper form along with any duties, taxes or fees accruing.

[T.D. 90–92, 55 FR 49886, Dec. 3, 1990, as amended by CBP Dec. 15–14, 80 FR 61290, Oct. 13, 2015]

§ 143.34 Procedure for electronic immediate delivery or entry.

To file immediate delivery or entry electronically, the filer will submit certified immediate delivery or entry data electronically through ABI. Data will be validated and, if found error-free, will be accepted. If it is determined through selectivity criteria and review of data that documentation is not required to be physically submitted in paper form, merchandise will be released and Customs will electronically notify the filer.

§ 143.35 Procedure for electronic entry summary.

In order to obtain entry summary processing electronically, the filer will submit certified entry summary data electronically through ABI. Data will be validated and, if the transmission is found error-free, will be accepted. If it is determined through selectivity criteria and review of data that documentation is required for further processing of the entry summary, Customs will so notify the filer. Documentation submitted before being requested by Customs will not be accepted or retained by Customs. The entry summary will be scheduled for liquidation once payment is made under statement processing (see § 24.25 of this chapter).

[T.D. 98–56, 63 FR 32945, June 16, 1998]

§ 143.36 Form of immediate delivery, entry and entry summary.

(a) *Electronic form of data.* If Customs determines that the immediate delivery, entry or entry summary data is satisfactory under §§ 143.34 and 143.35, the electronic form of the immediate delivery, entry or entry summary through ABI shall be deemed to satisfy all filing requirements under this part. Further, the filer will not be required to produce or physically submit any official Customs forms of immediate delivery, entry or entry summary. The filer is responsible for the accuracy of the data submitted electronically to the same extent as if the documents

were produced, signed and physically submitted by the filer (see §111.32 of this chapter).

(b) *Accuracy of data.* Participation constitutes declaration by the electronic filer that, to the best of his knowledge, all transactions filed electronically fully disclose prices, values, quantities, rebates, drawbacks, fees, commissions, and royalties, which are true and correct, and that all goods or services provided either free or at a reduced cost to the seller of the merchandise are fully disclosed (see §111.32 of this chapter).

(c) *Submission of invoice.* The invoice will be retained by the filer unless requested by Customs. If the invoice is submitted by the filer before a request is made by Customs, it will not be accepted or retained by Customs. When Customs requests presentation of the invoice, invoice data must be submitted in one of the following forms:

(1) Paper form;

(2) AII or EDIFACT format.

(3) In appropriate cases where a party has obtained a preclassification/binding ruling number covering the merchandise being entered, or is a participant in a pre-approval program, and information is electronically transmitted which is adequate for the examination of the merchandise and the determination of duties, and for verifying the information required for statistical purposes by §141.61(e) of this chapter, such information will satisfy the invoice requirement of this part and part 141 of this chapter.

[T.D. 90–92, 55 FR 49886, Dec. 3, 1990, as amended by T.D. 98–56, 63 FR 32945, June 16, 1998]

§ 143.37 Retention of records.

(a) *Record maintenance requirements.* All records received or generated by a broker or importer must be maintained in accordance with part 163 of this chapter.

(b) *Termination of broker's responsibility.* If the broker is discharged by the importer, he shall retain the documentation for those deliveries, entries or entry summaries filed by him prior to such discharge. Documentation in possession of a broker at the time of permanent termination of the brokerage business shall be accounted for pursuant to §111.30(e) of this chapter.

[T.D. 90–92, 55 FR 49886, Dec. 3, 1990, as amended by T.D. 98–56, 63 FR 32945, June 16, 1998]

§ 143.38 [Reserved]

§ 143.39 Penalties.

(a) *Brokers.* Brokers unable to produce records requested by Customs under this chapter will be subject to disciplinary action or penalties pursuant to part 111 or part 163 of this chapter.

(b) *Importers.* Importers unable to produce records requested by Customs under this chapter will be subject to penalties pursuant to part 163 of this chapter.

[T.D. 98–56, 63 FR 32945, June 16, 1998]

Subpart E—Remote Location Filing

SOURCE: CBP Dec. 09–47, 74 FR 69020, Dec. 30, 2009, unless otherwise noted.

§ 143.41 Applicability.

This subpart sets forth the general requirements and procedures for Remote Location Filing (RLF). RLF entries are subject to the documentation, document retention and document retrieval requirements of this chapter as well as the general entry requirements of parts 141, 142 and 143 of this chapter. Participation in the RLF program is voluntary and at the option of the filer.

§ 143.42 Definitions.

The following definitions, in addition to the definitions set forth in §143.32 of this part, apply for purposes of this subpart E:

(a) *Remote Location Filing (RLF)*—''RLF'' is an elective method of making entry by which a customs broker with a national permit electronically transmits all data information associated with an entry that CBP can process in a completely electronic data interchange system to a RLF-operational CBP location from a remote location other than where the goods are being entered. (Importers filing on

their own behalf may file electronically in any port, subject to ABI filing requirements.)

(b) *RLF-operational CBP location*—''RLF-operational CBP location'' means a CBP location within the customs territory of the United States that is staffed with CBP personnel who have been trained in RLF procedures and who have operational experience with the Electronic Invoice Program (EIP). EIP is defined in §143.32 of this chapter. A list of all RLF-operational locations is available for viewing on the CBP Internet Web site located at*http://www.cbp.gov/xp/cgov/trade/trade_programs/remote_location_filing/*.

§143.43 RLF eligibility criteria.

(a) *Automation criteria*. To be eligible for RLF, a licensed customs broker or importer of record must be:

(1) Operational on the ABI (*see* 19 CFR part 143, subpart A);

(2) Operational on the EIP prior to applying for RLF; and

(3) Operational on the ACH (or any other CBP-approved method of electronic payment), for purposes of directing the electronic payment of duties, taxes and fees (*see* 19 CFR 24.25), 30 days before transmitting a RLF entry.

(b) *Broker must have national permit*. To be eligible for RLF, a licensed customs broker must hold a valid national permit (*see* 19 CFR 111.19(f)).

(c) *Continuous bond*. A RLF entry must be secured with a continuous bond.

§143.44 RLF procedure.

(a) *Electronic transmission of invoice data*. For RLF transactions, a customs broker or importer of record must transmit electronically, using EIP, any invoice data required by CBP.

(b) *Electronic transmission of payment*. For RLF transactions, a customs broker or importer of record must direct the electronic payment of duties, taxes and fees through the ACH (*see* 19 CFR 24.25) or any other method of electronic payment authorized by CBP.

(c) *Automation requirements*. Only those entries and entry summaries that CBP processes completely in an electronic data interchange system will be accepted for RLF. For a listing of entry types that may be filed via RLF, go to *http://www.cbp.gov/xp/cgov/trade/trade_programs/remote_location_filing/*.

(d) *Combined electronic entry and entry summary*. For RLF transactions using a combined electronic entry and entry summary, a customs broker must submit to CBP, through ABI or any other electronic interface authorized by CBP, a complete and error-free electronic data transmission constituting the entry summary that serves as both the entry and entry summary.

(e) *No line release or immediate delivery entries permitted under RLF*. Line release (*see* 19 CFR, Part 142, Subpart D) or immediate delivery procedures may not be combined with RLF transactions.

(f) *Data acceptance and release of merchandise*. Data that are complete and error free will be accepted by CBP. If electronic invoice or additional electronic documentation is required, CBP will so notify the RLF filer. If no documentation is required to be filed, CBP will so notify the RLF filer. If CBP accepts the RLF entry (including invoice data) under §§143.34 through 143.36 of this part, the RLF entry will be deemed to satisfy all filing requirements under this part and the merchandise may be released.

(g) *Liquidation*. The entry summary will be scheduled for liquidation once payment is made under statement processing (*see* 19 CFR 24.25).

§143.45 Filing of additional entry information.

When filing from a remote location, a RLF filer must electronically file all additional information required by CBP to be presented with the entry and entry summary information (including facsimile transmissions) that CBP can accept electronically. If CBP cannot accept additional information electronically, the RLF filer must file the additional information in a paper format at the CBP port of entry where the goods arrived.

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

Sec.

Subpart A—General Provisions

Subpart B—Requirements and Procedures for Warehouse Entry

Subpart C—Transfer of Right To Withdraw Merchandise from Warehouse

Subpart D—Withdrawals from Warehouse

Subpart E—Rewarehouse Entries

AUTHORITY: 19 U.S.C. 66, 1484, 1557, 1559, 1624.

Section 144.3 also issued under 19 U.S.C. 1563;

Section 144.33 also issued under 19 U.S.C. 1562;

Section 144.37 also issued under 19 U.S.C. 1555, 1562.

SOURCE: T.D. 73–175, 38 FR 17464, July 2, 1973, unless otherwise noted.

§ 144.0 Scope.

This part contains regulations pertaining to the entry and withdrawal of merchandise under the provisions of section 557, Tariff Act of 1930, as amended (19 U.S.C. 1557), which among other things provides that articles subject to duty may be entered for warehousing and deposited in a bonded warehouse at the expense and risk of the owner, importer, or consignee, and withdrawn from warehouse for consumption upon payment of duties and charges. The requirements and procedures set forth in this part are in addition to the general requirements and procedures for all entries set forth in part 141 of this chapter. Regulations pertaining to manipulation in warehouse, manufacturing warehouses, and smelting and refining warehouses are set forth in part 19 of this chapter.

Subpart A—General Provisions

§ 144.1 Merchandise eligible for warehousing.

(a) *Types of merchandise.* Any merchandise subject to duty may be entered for warehousing except for perishable merchandise and explosive substances (other than firecrackers). Dangerous and highly flammable merchandise, though not classified as explosive, shall not be entered for warehouse without the written consent of the insurance company insuring the warehouse in which the merchandise is to be stored.

(b) [Reserved]

(c) *Merchandise previously entered.* If merchandise has been entered under other than a warehouse entry and has remained in continuous Customs custody, a warehouse entry may be substituted for the previous entry. If estimated duties were deposited with the superseded previous entry, that entry shall be liquidated for refund of the estimated duties without awaiting liquidation of the warehouse entry. All copies of the warehouse entry shall bear the following notation: This entry is in substitution of _____; entry No.

_____, dated _____.

[T.D. 73–175, 38 FR 17464, July 2, 1973, as amended by T.D. 82–204, 47 FR 49376, Nov. 1, 1982; T.D. 84–149, 49 FR 28699, July 16, 1984]

§ 144.2 Liability of importers and sureties.

The importer of merchandise entered for warehouse is liable for the payment of all unpaid duties not only as principal on the bond filed on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, but also by reason of his personal liability as consignee. Under the conditions of the bond, the sureties on the bond shall be held liable for the payment of duties and Customs charges not paid by the principal on the bond, whether such duties and charges are finally ascertained before the merchandise is withdrawn from Customs custody or thereafter. Liability may be transferred in part along with the right to withdraw the merchandise, in accordance with Subpart C of this part.

[T.D. 73–175, 38 FR 17464, July 2, 1973, as amended by T.D. 84–213, 49 FR 41185, Oct. 19, 1984]

§ 144.3 Allowance for damage.

No abatement or allowance of duties shall be made on account of damage, loss, or deterioration of the merchandise while in warehouse, except as provided for by law (see part 158 of this chapter).

§ 144.4 Allowance for abandoned, destroyed, or exported merchandise.

Allowance in duties shall be made for merchandise in warehouse which is abandoned or destroyed in accordance with § 158.43 of this chapter or exported in accordance with § 144.37.

§ 144.5 Period of warehousing.

Merchandise must not remain in a bonded warehouse beyond 5 years from the date of importation or such longer period of time as the Center director may at his discretion permit upon proper request being filed and good cause shown.

[CBP Dec. 09–48, 74 FR 68686, Dec. 29, 2009, as amended by CBP Dec. No. 16–26, 81 FR 93020, Dec. 20, 2016]

§ 144.6 [Reserved]

§ 144.7 Disposition of merchandise after expiration of warehousing period.

Merchandise remaining in a bonded warehouse after the expiration of the warehousing period shall be disposed of in accordance with § 127.14 of this chapter.

[T.D. 79–221, 44 FR 46828, Aug. 9, 1979]

Subpart B—Requirements and Procedures for Warehouse Entry

§ 144.11 Form of entry.

(a) *Entry.* The documentation required by § 142.3 of this chapter shall be filed at the time of entry. If the entry summary, Customs Form 7501, or its electronic equivalent is filed at the time of entry for merchandise to be entered for warehouse, it shall serve as both the entry and the entry summary, and Customs Form 3461 or 7533, or their electronic equivalents, shall not be required. If the entry summary is not filed at the time of entry, it shall be filed within the time limit prescribed by § 142.12 of this chapter. If merchandise is released before the filing of the entry summary, the importer shall have a bond on file, as prescribed by § 142.4 of this chapter.

(b) *Customs Form 7501, or its electronic equivalent.* The entry summary for merchandise entered for warehouse shall be executed in triplicate on Customs Form 7501, or its electronic equivalent appropriately modified, and shall include all of the statistical information required by § 141.61(e) of this chapter. The port director may require an extra copy or copies of Customs Form 7501, annotated ''PERMIT'' for use in connection with delivery of the merchandise to the bonded warehouse.

(c) *Designation of warehouse.* The importer shall designate on the entry summary, Customs Form 7501, or its electronic equivalent the bonded warehouse in which he desires his merchandise deposited.

(d) *Specification list.* When packages which are not uniform in contents, quantities, values, or rates of duties are grouped together as one item on an entry summary, a specification list

(original only) shall be furnished with the entry summary, showing separately opposite the marks or numbers of each package, the quantity of each class of merchandise, the entered value of each class, and the rates of duty claimed for each. However, a specification list is not needed if one withdrawal is to be filed for all the merchandise covered by the entry summary.

[T.D. 79–221, 44 FR 46828, Aug. 9, 1979, as amended by T.D. 84–129, 49 FR 23168, June 5, 1984; CBP Dec. 15–14, 80 FR 61290, Oct. 13, 2015]

§ 144.12 Contents of entry summary; estimated duties.

The entry summary, Customs Form 7501, or its electronic equivalent shall show the value, classification, and rate of duty as approved by the Center director at the time the entry summary is filed. However, no deposit of estimated duties shall be required until the merchandise is withdrawn for consumption.

[T.D. 79–221, 44 FR 46828, Aug. 9, 1979, as amended by T.D. 84–129, 49 FR 23168, June 5, 1984; CBP Dec. 15–14, 80 FR 61290, Oct. 13, 2015; CBP Dec. No. 16–26, 81 FR 93020, Dec. 20, 2016]

§ 144.13 Bond requirements.

A bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter shall be filed in the amount required by the Center director to support the entry documentation.

[T.D, 84–213, 49 FR 41185, Oct. 19, 1984, as amended by CBP Dec. No. 16–26, 81 FR 93020, Dec. 20, 2016]

§ 144.14 Removal to warehouse.

When the entry summary, Customs Form 7501, or its electronic equivalent and the bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter have been filed, the merchandise shall be sent to the bonded warehouse, except for:

(a) Merchandise for which an immediate withdrawal if filed, or

(b) Packages designated for examination elsewhere than at the warehouse, which shall be sent to the warehouse after examination.

[T.D. 79–221, 44 FR 46828, Aug. 9, 1979, as amended by T.D. 84–129, 49 FR 23168, June 5, 1984; T.D. 84–213, 49 FR 41185, Oct. 19, 1984; CBP Dec. 15–14, 80 FR 61290, Oct. 13, 2015]

§ 144.15 Entry and withdrawal from Customs bonded warehouses of distilled spirits.

(a) *Distilled spirits entered in warehouse under section 5066(a), Internal Revenue Code*—(1) *General rule.* Except as otherwise provided in this section, distilled spirits entered into Customs bonded warehouse in accordance with section 5066(a), Internal Revenue Code, as amended (26 U.S.C. 5066(a)), shall be treated in the same manner as any other merchandise entered for warehouse.

(2) *Withdrawal from warehouse for domestic consumption.* Distilled spirits entered in warehouse under this paragraph may be withdrawn from warehouse for domestic consumption under section 5066(c), Internal Revenue Code, as amended (26 U.S.C. 5066(c)). In this case, the distilled spirits shall be subject to duty as American goods exported and returned under subheading 9801.00.80, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(b) *Distilled spirits transferred from a manufacturing warehouse to a storage warehouse under section 311, Tariff Act of 1930*—(1) *Prohibition on withdrawal from warehouse for domestic consumption.* Domestic distilled spirits which have been transferred from a Customs bonded manufacturing warehouse, Class 6, to a Customs bonded storage warehouse, Class 2 or 3, in accordance with section 311, Tariff Act of 1930, as amended (19 U.S.C. 1311), may not be withdrawn under section 5066(c) of the Internal Revenue Code, as amended (26 U.S.C. 5066(c)), for domestic consumption.

(2) *Procedure governing transfer of distilled spirits from manufacturing warehouse to storage warehouse.* For procedure concerning the transfer of such distilled spirits from Customs bonded manufacturing warehouse, Class 6, to Customs bonded storage warehouse, see § 19.15(g)(2) of this chapter.

(c) *Distilled spirits entered under section 5214(a)(9), Internal Revenue Code*—(1) *General rule.* Distilled spirits may be

entered into a Customs bonded storage warehouse under section 5214(a)(9), Internal Revenue Code, as amended (26 U.S.C. 5214(a)(9)), in the same manner as any other merchandise is entered for warehouse, unless otherwise provided in this section.

(2) *Withdrawal only for exportation.* Distilled spirits warehoused under section 5214(a)(9), Internal Revenue Code, may be withdrawn only for the purpose of exportation, either directly or after rewarehousing at the same or another port. The distilled spirits may not be withdrawn for domestic consumption.

[T.D. 73–175, 38 FR 17464, July 2, 1973, as amended by T.D. 78–298, 43 FR 38382, Aug. 28, 1978; T.D. 80–271, 45 FR 75641, Nov. 17, 1980; T.D. 84–213, 49 FR 41185, Oct. 19, 1984; T.D. 89–1, 53 FR 51263, Dec. 21, 1988]

Subpart C—Transfer of Right To Withdraw Merchandise from Warehouse

§ 144.21 Conditions for transfer.

Under the provisions of section 557(b) Tariff Act of 1930, as amended (19 U.S.C. 1557(b)), the right to withdraw all or part of merchandise entered for warehouse may be transferred by appropriate endorsement on the withdrawal form, provided that the transferee files a bond on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter. Upon the deposit of the endorsed form, properly executed, and the transferee's bond with the Customs officer designated to receive such form and bond, the transferor and his sureties shall be relieved from all undischarged liability.

[T.D. 73–175, 38 FR 17464, July 2, 1973, as amended by T.D. 84–213, 49 FR 41185, Oct. 19, 1984; 49 FR 44867, Nov. 9, 1984]

§ 144.22 Endorsement of transfer on withdrawal form.

Transfer of the right to withdraw merchandise entered for warehouse shall be established by an appropriate endorsement on the withdrawal form by the person primarily liable for payment of duties before the transfer is completed, *i.e.*, the person who made the warehouse or rewarehouse entry or a transferee of the withdrawal right of such person. Endorsement shall be made on whichever of the following withdrawal forms is applicable:

(a) Customs Form 7501, or its electronic equivalent, for:

(i) A duty paid warehouse withdrawal for consumption;

(ii) Withdrawal with no duty payment (diplomatic use);

(iii) Merchandise to be withdrawn as vessel or aircraft supplies and equipment under §10.60 of this chapter or other conditionally free merchandise;

(b) In-bond application filed pursuant to part 18 of this chapter, for merchandise to be withdrawn for transportation, exportation, or transportation and exportation.

[T.D. 82–204, 47 FR 49376, Nov. 1, 1982, as amended by T.D. 95–81, 60 FR 52295, Oct. 6, 1995; CBP Dec. 15–14, 80 FR 61290, Oct. 13, 2015; CBP Dec. No. 17–13, 82 FR 45406, Sept. 28, 2017]

§ 144.23 Endorsement in blank.

If the transferor wishes to do so, he may endorse the withdrawal form to authorize the right to withdraw the merchandise specified thereon but leave the space for the name of the transferee blank. A holder of a withdrawal form so endorsed and otherwise fully executed may insert his own name in the blank space, deposit such form and his transferee's bond with the Customs officer designated to receive such form and bond, and thereby establish his right to withdraw the merchandise.

§ 144.24 Transferee's bond.

The transferee's bond shall be on Customs Form 301 and contain the bond conditions set forth in §113.62 of this chapter.

[T.D. 84–213, 49 FR 41185, Oct. 19, 1984]

§ 144.25 Deposit of forms.

Either the transferor or the transferee may deposit the endorsed withdrawal form and transferee's bond with the Customs officer designated to receive such form and bond.

§ 144.26 Further transfer.

The right of a transferee to withdraw the merchandise may not be revoked

by the transferor but may be retransferred by the transferee.

§ 144.27 Withdrawal from warehouse by transferee.

At any time within the warehousing period, a transferee who has established his right to withdraw merchandise may withdraw all or part of the merchandise covered by the transfer by filing any authorized kind of withdrawal from warehouse in accordance with subpart D of this part.

§ 144.28 Protest by transferee.

(a) *Entries on or after January 12, 1971.* A transferee of merchandise entered for warehouse on or after January 12, 1971, shall have the right to file a protest under section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), to the same extent that such right would have been available to the transferor.

(b) *Entries prior to January 12, 1971.* A transferee of merchandise entered for warehouse prior to January 12, 1971, shall have no right to file a protest, except under the conditions set forth in section 557(b), Tariff Act of 1930, as amended (19 U.S.C. 1557(b)), prior to the amendments made thereto by Pub. L. 91–685, effective January 12, 1971 (T.D. 71–55).

Subpart D—Withdrawals from Warehouse

§ 144.31 Right to withdraw.

Withdrawals from bonded warehouse may be made only by the person primarily liable for the payment of duties on the merchandise being withdrawn, *i.e.*, the importer of record on the warehouse entry, the actual owner if an actual owner's declaration and superseding bond have been filed in accordance with §141.20 of this chapter, or the transferee if the right to withdraw the merchandise has been transferred in accordance with subpart C of this part. No new declaration of the consignee or agent is required.

§ 144.32 Statement of quantity; charges and liens.

(a) *On each withdrawal.* Each withdrawal filed shall have indicated thereon, preferably in the lower part of the left-hand margin if there is no space designated on the form for such information, a summary statement of the account to which it is related. The statement shall indicate:

(1) The quantity (*i.e.*, the number of outer containers, or tons, etc.) in the warehouse account before the withdrawal;

(2) The quantity being withdrawn; and

(3) The quantity remaining in warehouse after the withdrawal. The quantity in each instance may be shown as a cumulative total event though it may include a group of varied units such as boxes, cases, or cartons, and may consist of more than one commodity, such as distilled spirits, chinaware, etc.

(b) *Transferred merchandise.* When all or a portion of an original lot has been transferred to a new owner in accordance with subpart C of this part, each withdrawal by the transferee shall show only the quantity on hand in the transferee's name before the withdrawal, the quantity being withdrawn by the transferee, and the transferred quantity remaining in the warehouse after the withdrawal. The quantity retained by the original importer and the quantity transferred shall be treated as separate accounts.

(c) *Charges and liens.* Upon receipt of an application to withdraw merchandise the appropriate Customs officer shall determine whether there are any cartage, storage, labor, or any other charges due the Government in connection with the goods remaining unpaid or whether there is on file any notice of lien filed by a carrier. If there are no charges or liens or all charges and liens have been satisfied, and all other requirements of law or regulations have been met, the application to withdraw shall be approved.

[T.D. 73–175, 38 FR 17464, July 2, 1973, as amended by T.D. 82–204, 47 FR 49376, Nov. 1, 1982; T.D. 86–118, 51 FR 22516, June 20, 1986]

§ 144.33 Minimum quantities to be withdrawn.

Unless by special authority of the Commissioner of Customs, merchandise shall not be withdrawn from bonded warehouse in quantities less than an entire bale, cask, box, or other package, or, if in bulk, in quantities less

than 1 ton in weight or the entire quantity imported, whichever is smaller.

§ 144.34 Transfer to another warehouse.

(a) *At the same port.* With the concurrence of the proprietors of the delivering and receiving warehouses, merchandise may be transferred from one bonded warehouse to another at the same port under Customs supervision and at the expense of the importer upon his written request to the port director, who shall issue an order for such transfer on Customs Form 6043. However, the port director may require the filing of a rewarehouse entry under § 144.41 if he determines it necessary for proper control of the merchandise. All charges shall be paid before merchandise is transferred from a warehouse of class 1 (see § 19.1 of this chapter for classes of warehouses). The quantities of goods so transferred shall be subject to the joint determination of the warehouse proprietor and the cartman, lighterman, or private bonded carrier, as provided in § 19.6 of this chapter.

(b) *At another port.* Merchandise may be transferred to a warehouse which is under the jurisdiction of another port by withdrawing the merchandise for transportation in accordance with § 144.36 and entering it for rewarehouse in accordance with § 144.41 upon arrival at destination. All charges shall be paid before merchandise is transferred from the warehouse of class 1 (see § 19.1 of this chapter for classes of warehouses).

(c) *Transfers between integrated bonded warehouses*—(1) *Eligibility.* (i) Only an importer who will transfer warehoused merchandise among Class 2 and 9 warehouses listed on the application in paragraph (c)(2) of this section is eligible to participate.

(ii) The importer must have a centralized inventory control system that shows the location of all of the warehoused merchandise at all times, including merchandise in transit.

(iii) The importer and its surety must sign the application. If the application to use this alternative procedure is approved by the appropriate port director, the importer's entry bond containing the conditions provided under § 113.62 of this chapter will continue to attach to any merchandise transferred under these alternative procedures.

(iv) Each proprietor of a warehouse listed on the application and each surety who underwrites that proprietor's custodial bond coverage under § 113.63 of this chapter shall sign the application.

(2) *Application.* Application must be made in writing to the port director of the port in which the applicant's centralized inventory control system exists, with copies to all affected port directors, for exemptions from the requirements for transfer of merchandise from one bonded warehouse to another set forth in paragraphs (a) and (b) of this section. The application must list all bonded warehouses to and from which the merchandise may be transferred; all such warehouses must be covered by the same centralized inventory control system. Only blanket exemption requests will be considered; exemptions will not be considered for individual transfers. The application may be in letter form, signed by all participants, and contain a certification to the port director by the applicant that he maintains accounting records, documents and financial statements and reports that adequately support Customs activities.

(3) *Operation.* An importer who receives approval to transfer merchandise between bonded warehouses in accordance with the provisions of this section may, after entry into the first warehouse, transfer that merchandise to any other warehouse without filing a withdrawal from warehouse or a rewarehouse entry. The warehoused merchandise will be treated as though it remains in the first warehouse so long as the actual location of the merchandise at all times is recorded as provided under the provisions of this section.

(4) *Inventory control requirements.* The records required to be maintained must include a centralized inventory control system and supporting documentation which meets the following requirements:

(i) Provide Customs upon demand with the proper on-hand balance of each inventory item in each warehouse facility and each storage location within each warehouse;

(ii) Provide Customs upon demand with the proper on-hand balance for each open warehouse entry and the actual quantity in each warehouse facility;

(iii) If an alternative inventory system has been approved, provide Customs upon demand with the proper on-hand balance for each unique identifier and the quantity related to each open warehouse entry and the quantity in each warehouse facility;

(iv) Maintain documentation for all intracompany movements, including authorizations for the movement, shipping documents and receiving reports. These documents must show the appropriate warehouse entry number or unique identifier, the description and quantity of the merchandise transferred, and must be properly authorized and signed evidencing shipment from and delivery to each location;

(v) Maintain a consolidated permit file folder at the location where the merchandise was originally warehoused. The consolidated permit file folder must meet the requirements of §19.12(d)(4) of this chapter regardless of the warehouse facility in which the action occurred. Documentation for all intracompany movements, including authorizations for movement, shipping documents, receiving reports, as well as documentation showing ultimate disposition of the merchandise must be filed in the consolidated permit file folder within seven business days;

(vi) Maintain a subordinate permit file at all intracompany locations where merchandise is transferred containing copies of documentation required by §19.12(d)(4) of this chapter and by paragraph (c)(3)(v) of this section relating to merchandise quantities transferred to the location. A copy of all documents in the subordinate permit file folder must be filed in the consolidated permit file folder within seven business days; no exceptions will be granted to this requirement. When the final withdrawal is made on the respective entry, the subordinate permit file shall be considered closed and filed at the intracompany location to which the merchandise was transferred; and

(vii) File the withdrawal from Customs custody at the original warehouse location at which the merchandise was entered.

(5) *Waiver of permit file folder requirements.* The permit file folder requirements of paragraphs (c)(3)(v) and (c)(3)(vi) of this section may be waived if the proprietor's recordkeeping and inventory control system qualifies under the requirements of §19.12(d)(4)(iii) of this chapter at all locations where bonded merchandise is stored.

(6) *Procedure not available*—(i) *Liens.* The transfer procedures permitted under paragraph (c) of this section shall not be available for merchandise with respect to which Customs is notified of the existence of a lien, as prescribed in §141.112 of this chapter (see 19 U.S.C. 1564), until proof shall be produced at the original warehouse location that the lien has been satisfied or discharged.

(ii) *Restricted merchandise.* With the exception of alcohol and tobacco products, merchandise subject to a restriction on release such as covered by a licensing, quota or visa requirement, is not eligible.

[T.D. 73–175, 38 FR 17464, July 2, 1973, as amended by T.D. 82–204, 47 FR 49376, Nov. 1, 1982; T.D. 97–19, 62 FR 15840, Apr. 3, 1997]

§144.35 Withdrawal of vessel and aircraft supplies and equipment.

Supplies and equipment for vessels and aircraft may be withdrawn from warehouse under the procedures set forth in this subpart and in §§10.59 through 10.65 of this chapter.

§144.36 Withdrawal for transportation.

(a) *Time limit.* Merchandise may be withdrawn from warehouse for transportation to another port of entry if withdrawal for consumption or exportation can be accomplished at the port of destination before the expiration of the warehousing period.

(b) *Physical deposit in warehouse not needed.* All or any part of the merchandise covered by an entry summary, Customs Form 7501, or its electronic equivalent, may be withdrawn for transportation without deposit in a bonded warehouse and may be permitted to remain on the vessel or other vehicle or on the pier in a constructive

warehouse status pending examination. When any such merchandise not deposited in a warehouse is not forwarded under the withdrawal for transportation on account of damage or other cause, the importer shall be required to withdraw such merchandise immediately for consumption or exportation, or designate a warehouse to which it may be sent and, upon his failure to do so, it shall be treated as unclaimed.

(c) *Form.* (1) A withdrawal for transportation shall be filed by submitting an in-bond application pursuant to part 18 of this chapter.

(2) Separate withdrawals for transportation from a single warehouse, via a single conveyance, consigned to the same consignee, and deposited into a single warehouse, can be filed using one in-bond application, under one control number, provided that the information for each withdrawal, as required in paragraph (d) of this section is provided in the in-bond application for certification by CBP. With the exception of alcohol and tobacco products, this procedure will not be allowed for merchandise that is in any way restricted (for example, quota/visa).

(3) The requirement that an in-bond application be filed and the information required in paragraph (d) of this section be shown will not be required if the merchandise qualifies under the exemption in §144.34(c).

(d) *Information required.* In addition to the statement of quantity required by §144.32, the following information for the merchandise being withdrawn must be provided in the in-bond application:

(1) The original entry number, date of entry, date of entry summary, and port at which filed;

(2) The name of the consignee at the port of destination;

(3) Any ascertained weight, gauge, or measure;

(4) The entered value of the merchandise;

(5) Estimated duties, if any;

(6) A statement that the merchandise is or is not admissible for consumption and the reason for non-admissibility, if applicable; and

(7) The statistical information required by §141.61(e) of this chapter.

When the withdrawal is made after the merchandise has been rewarehoused, the rewarehouse entry number, date, and port at which filed also shall be shown.

(e) *Duty on samples withdrawn.* The duty on any samples withdrawn at the original port from a shipment covered by a withdrawal for transportation shall be collected at such port and a notation thereof made on the withdrawal form. No separate invoice or extract from the original invoice shall be required to cover such samples.

(f) *Forwarding procedure.* The merchandise must be forwarded in accordance with the general provisions for transportation in bond (§§18.1 through 18.9 of this chapter). However, when the alternate procedures for transfers between integrated bonded warehouses under §144.34(c) are employed, the merchandise need not be delivered to a bonded carrier for transportation, and an entry for transportation and a rewarehouse entry will not be required.

(g) *Procedure at destination.* Upon arrival at destination, the merchandise may be:

(1) Entered for rewarehouse in accordance with §144.41;

(2) Entered for combined rewarehouse and withdrawal for consumption in accordance with §144.42;

(3) Exported in accordance with paragraph (h) of this section;

(4) Forwarded to another port or returned to the origination port in accordance with §§18.5(c) or 18.9 of this chapter;

(5) Admitted to a foreign trade zone in zone-restricted status as provided in part 146 of this chapter; or

(6) Deposited into the proprietor's bonded warehouse or duty free store warehouse without rewarehouse entry as required in §144.41, if the merchandise qualifies for the exemption specified in §144.34(c).

(h) *Exportation.* A consignee of merchandise withdrawn for transportation who desires to export the merchandise upon arrival at destination shall so advise the port director at destination in writing. The port director shall then permit the exportation of the merchandise under Customs supervision in the

same manner as a withdrawal for indirect exportation under § 144.37.

[T.D. 73–175, 38 FR 17464, July 2, 1973, as amended by T.D. 79–221, 44 FR 46828, Aug. 9, 1979; T.D. 84–129, 49 FR 23168, June 5, 1984; T.D. 84–212, 49 FR 39047, Oct. 3, 1984; T.D. 86–16, 51 FR 5064, Feb. 11, 1986; T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 97–19, 62 FR 15841, Apr. 3, 1997; CBP Dec. 15–14, 80 FR 61290, Oct. 13, 2015; CBP Dec. 17–13, 82 FR 45406, Sept. 28, 2017]

§ 144.37 Withdrawal for exportation.

(a) *Form.* A withdrawal for either direct or indirect exportation must be filed by submitting an in-bond application pursuant to part 18 of this chapter or on CBP Form 7501 in 3 copies for merchandise being exported under cover of a TIR carnet. The in-bond application or CBP Form 7501 must contain all of the statistical information as provided in § 141.61(e) of this chapter. The port director may require an extra copy or copies of CBP Form 7501 for use in connection with the delivery of merchandise to the carrier.

(b) *Procedure for indirect exportation*—(1) *Forwarding.* Merchandise withdrawn for indirect exportation (transportation and exportation) must be forwarded to the port of exportation in accordance with the general provisions for transportation in bond (part 18 of this chapter).

(2) *Dividing of shipments.* The dividing up for exportation of shipments arriving under warehouse withdrawals for indirect exportation will be permitted only when various portions of a shipment are destined to different destinations, when the export vessel cannot properly accommodate the entire quantity, or in other similar circumstances. In the case of merchandise moving under cover of a TIR carnet, if the merchandise is not to be exported or if the shipment is to be divided, appropriate entry will be required and the carnet discharged. The provisions of §§ 18.23 and 18.24 of this chapter concerning change of destination or retention of merchandise on the dock must also be followed in applicable cases.

(c) *Exportation by mail.* Merchandise may be withdrawn from warehouse for exportation by mail in accordance with the provisions of subpart F of part 145 of this chapter.

(d) *Marks on packages.* The exportation must be made under the original marks of importation. Port marks may be added by authority of the port director under CBP supervision. The original and port marks must appear in all CBP papers pertaining to the exportation.

(e) *Weight, gauge, or measure.* Merchandise in bulk and packaged articles which are customarily bought and sold by weight, gauge, or measure may be withdrawn for exportation or transportation only at the actual quantities ascertained at the time of the original entry for warehouse, except as otherwise provided for by law. In any case, the port director may require a special report of weight, gauge, or measure of the merchandise being exported if he deems it necessary.

(f) *Merchandise not laden.* Merchandise withdrawn for exportation but not laden must be sent to general order unless other disposition is prescribed by the port director.

(g) *Exportation at a foreign trade zone.* Merchandise may be withdrawn for exportation at a foreign trade zone in the same or at a different port. The merchandise will be considered exported upon admission to a zone in zone-restricted status, as provided in § 146.44(c) of this chapter.

(h) *Class 9 warehouse withdrawals for exportation*—(1) *Applicability of sales ticket procedure.* Merchandise in a Class 9 warehouse (duty-free store) may be withdrawn for any of the purposes set forth in this subpart. However, only conditionally duty-free merchandise in a Class 9 warehouse intended for exportation or for delivery to persons and organizations set forth in subpart I, part 148, of this chapter, will be eligible for withdrawal under the sales ticket procedure specified in this paragraph.

(2) *Sales ticket content and handling.* Sales ticket withdrawals must be made only under a blanket permit to withdrawal (see § 19.6(d) of this chapter) and the sales ticket will serve as the equivalent of the supplementary withdrawal. A sales ticket is an invoice of the proprietor's design which will include:

(i) Serial number and date of preparation of each ticket;

(ii) Warehouse entry number or specific identifier, if approved by the port director;

(iii) Quantity of goods sold;

(iv) Brief description of the articles including the size of bottles;

(v) The full name and address of the purchaser. However, the port director may waive the address requirement for all merchandise except for alcoholic beverages in quantities in excess of 4 liters and cigarettes in quantities in excess of 3 cartons. Also, the address requirement is not applicable with respect to purchasers at airport duty-free enterprises; and

(vi) A statement on the original copy (purchaser's copy) to the effect that goods purchased in a duty-free store will be subject to duty and/or tax with personal exemption if returned to the United States. At the time of purchase, the original sales ticket must be made out in the name of the purchaser and given to the purchaser. One copy of the sales ticket must be retained by the proprietor. This copy may be maintained electronically. A permit file copy will be attached to the parcel containing the purchased articles unless the proprietor has established and maintained an effective method to match the parcel containing the purchased articles with the purchaser. Additional copies may be retained by the proprietor.

(3) *Sales ticket register*. In addition to the records required in §19.12(a) of this chapter, Class 9 warehouse proprietors must maintain a sales ticket register or similar accounting record for each warehouse entry. The sales ticket register of the proprietor must include the following information:

(i) Warehouse entry number;

(ii) Specific identifier, if applicable;

(iii) Sales ticket date and number;

(iv) Description;

(v) Quantity; and

(vi) Current balance.

As each warehouse entry is closed out, the warehouse proprietor must verify the sales ticket register total with the amount withdrawn so as to account for all merchandise so withdrawn and certify on the register that all the goods have been exported or sold to qualifying persons and organizations under part 148 of this chapter. The sales ticket register must be included in the permit file folder with or in lieu of the blanket permit summary, as provided in §19.6(d)(5) of this chapter. A copy of all sales tickets must be retained by the proprietor for not less than 5 years after the date of the last sales ticket in the entry. In lieu of placing a copy of sales tickets in each permit file folder, the warehouse proprietor may keep all sales tickets in a readily retrievable manner in a separate file.

[T.D. 73–175, 38 FR 17464, July 2, 1973]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §144.37, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§144.38 Withdrawal for consumption.

(a) *Form*. Withdrawals for consumption of merchandise in bonded warehouses shall be filed on Customs Form 7501, or its electronic equivalent, in triplicate, and shall contain all of the statistical information as provided in §141.61(e) of this chapter.

(b) *Withdrawal for exportation to Canada or Mexico*. A withdrawal for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico is considered a withdrawal for consumption pursuant to §181.53 of this chapter.

(c) *Information to be shown on withdrawal*. Each withdrawal shall show all information for which spaces are provided on the withdrawal form, and shall also show the separate value of each package and the total dutiable value of the merchandise being withdrawn. In the case of merchandise in packages which are uniform in kind, quantity, value, and duty, the number of each package to be withdrawn need not be shown on the withdrawal if the lowest and highest numbers in the number series of such packages are shown. In the case of merchandise subject to quota, or textiles and textile products subject to levels of restraint, the description shall reflect any correction thereof reported after the filing of the warehouse entry. Additionally, on each withdrawal of cigars, cigarettes, or cigarette papers or tubes subject to internal revenue tax, the statement for tax purposes required by

§ 275.81 of the regulations of the Internal Revenue Service (26 CFR § 275.81) shall be made on the withdrawal form.

(d) *Deposit of estimated duties.* Estimated duties on the merchandise being withdrawn shall be deposited in accordance with subpart G of part 141 of this chapter. The Center director may increase or decrease the amount of estimated duties to be deposited on the final withdrawal to bring the aggregate amount of duties deposited into balance with the amount which he estimates will be finally due upon liquidation.

(e) *Permit for release of merchandise.* When the duties and other charges have been paid, and all other requirements of law and regulations have been met, a permit on Customs Form 7501, or its electronic equivalent, shall be issued and delivered to the person making the warehouse withdrawal.

(f) *Textiles and textile products.* Textiles and textile products subject to quota, visa or export license requirements in their condition at the time of importation may not be withdrawn from warehouse for consumption if during the warehouse period there has been a change by manipulation or other means:

(1) In the country of origin of the merchandise as defined by § 102.21 or § 102.22 of this chapter, as applicable,

(2) To exempt from quota or visa or export license requirements other than a change brought about by statute, treaty, executive order or Presidential proclamation, or

(3) From one textile category to another textile category.

[T.D. 73–175, 38 FR 17464, July 2, 1973]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 144.38, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 144.39 Permit to transfer and withdraw merchandise.

With the exception of merchandise transferred under the procedures of § 144.34(c), if all legal and regulatory requirements are met, the appropriate Customs officer shall approve the application to transfer or withdraw merchandise from a bonded warehouse by endorsing the permit copy and returning it to the applicant. The approved permit shall be presented by the withdrawer to the warehouse proprietor as evidence of Customs authorization of the transfer or withdrawal. The approved permit copy shall thereafter be retained in the warehouse entry file of the proprietor. Goods covered by permit may be retained in the bonded warehouse at the option of the proprietor.

[T.D. 82–204, 47 FR 49376, Nov. 1, 1982, as amended by T.D. 97–19, 62 FR 15842, Apr. 3, 1997]

Subpart E—Rewarehouse Entries

§ 144.41 Entry for rewarehouse.

(a) *Applicability.* When merchandise which has been withdrawn from warehouse for transportation to another port has arrived at the port of destination, it may be entered for rewarehouse by the consignee named in the withdrawal.

(b) *Form of entry.* An entry for rewarehouse shall be made in duplicate on Customs Form 7501, or its electronic equivalent, and shall contain all of the statistical information as provided in § 141.61(e) of this chapter. The port director may require an extra copy or copies of Customs Form 7501, or its electronic equivalent, annotated ''PERMIT,'' for use in connection with the delivery of the merchandise to the warehouse. No declaration is required on the entry.

(c) *Combining separate shipments.* (1) Separate shipments consigned to the same consignee and received under separate withdrawals for transportation may be combined into one rewarehouse entry if the warehouse withdrawals are from the same original warehouse entry.

(2) Shipments covered by multiple warehouse entries, and shipped from a single warehouse under separate withdrawals for transportation, via a single conveyance, may be combined into one rewarehouse entry if consigned to the same consignee and deposited into a single warehouse. With the exception of alcohol and tobacco products, this procedure shall not be allowed for merchandise which is in any way restricted

(for example, quota/visa). The combined rewarehouse entry shall have attached either copies of each warehouse entry package which is being combined into the single rewarehouse entry or a summary with pertinent information, that is, the date of importation, commodity description, size, HTSUS and entry numbers, for all entries withdrawn for consolidation as one rewarehouse entry. Any combining of separate withdrawals into one rewarehouse entry shall result in the rewarehouse entry being assigned the import date of the oldest entry being combined into the rewarehouse entry.

(3) Combining of separate shipments shall be prohibited in all other circumstances.

(d) *Bond.* A bond on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter shall be filed before a permit is issued on Customs Form 7501 for sending the merchandise to the bonded warehouse. However, no bond shall be required if the merchandise is entered by the consignee named in the original bond filed at the original port of entry, or if it is entered by a transferee who has established his right to withdraw the merchandise and has filed a bond in accordance with subpart C of this part.

(e) *Value and classification.* The duties determined at the port where the original warehouse entry was filed shall be the duties chargeable under the rewarehouse entry, except in the cases provided for in §§159.7 (a) and (b) of this chapter, which pertain to certain classes of merchandise excluded from the liquidation of the original warehouse entry and merchandise on which rates of duty or tax are changed by an act of Congress or by a proclamation by the President.

(f) *Examination.* Any examination necessary for identification of the merchandise, determination of shortages, or other purposes shall be made.

(g) *Failure to enter.* If the rewarehouse entry is not filed within 15 calendar days after its arrival, the merchandise shall be disposed of in accordance with the applicable procedures in §4.37 or §122.50 or §123.10 of this chapter. However, merchandise sent to a general order warehouse shall not be sold or otherwise disposed of as unclaimed until the expiration of the original 5-year period during which the merchandise may remain in warehouse under bond.

(h) *Protest.* A protest may be filed with CBP, either at the port of entry or electronically, against a liquidation made under §159.7(a) or (b) of this chapter, or against a refusal to liquidate pursuant to said sections. In all other cases, any protest shall be filed against the original warehouse entry.

[T.D. 73–175, 38 FR 17464, July 2, 1973, as amended by T.D. 82–204, 47 FR 49376, Nov. 1, 1982; T.D. 84–129, 49 FR 23168, June 5, 1984; T.D. 84–213, 49 FR 41185, Oct. 19, 1984; T.D. 97–19, 62 FR 15842, Apr. 3, 1997; T.D. 98–74, 64 FR 15303, Mar. 31, 1999; CBP Dec. 15–14, 80 FR 61290, Oct. 13, 2015; CBP Dec. No. 16–26, 81 FR 93020, Dec. 20, 2016]

§ 144.42 Combined entry for rewarehouse and withdrawal for consumption.

(a) *Applicability.* If the consignee of merchandise withdrawn for transportation wishes to pay duty and obtain possession of the merchandise immediately upon arrival at destination, he may make a combined entry for rewarehouse and withdrawal for consumption.

(b) *Procedure for entry.* The procedures set forth in §144.41 are applicable to this type of entry, with the following exceptions:

(1) *Form of entry.* A combined entry for rewarehouse and withdrawal for consumption shall be made on Customs Form 7501, or its electronic equivalent, (Consumption Entry), in 4 copies, and shall contain all of the statistical information as provided in §141.61(e) of this chapter, one copy to be used as the permit. No declaration is required on the entry;

(2) *Extra copy for Internal Revenue.* An additional copy of Customs Form 7501, or its electronic equivalent marked or stamped ''For Internal Revenue Purposes,'' shall be presented for each entry of cigars, cigarettes, or cigarette papers or tubes, when the release from Customs custody of those articles is subject to part 275 of the regulations of the Internal Revenue Service (26 CFR part 275) and tax is payable to Customs; and

(3) *Deposit of duties.* Estimated Customs duties, taxes, and other charges,

as set forth in subpart G of part 141 of this chapter, shall be deposited upon presentation of the combined entry. The port director shall then issue a permit for release on Customs Form 7501, or its electronic equivalent.

[T.D. 73–175, 38 FR 17464, July 2, 1973, as amended by T.D. 73–312, 38 FR 30884, Nov. 8, 1973; T.D. 87–75, 52 FR 20068, May 29, 1987; CBP Dec. 15–14, 80 FR 61290, Oct. 13, 2015]

PART 145—MAIL IMPORTATIONS

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 3(i)), Harmonized Tariff Schedule of the United States, 1624.

Section 145.4 also issued under 18 U.S.C. 545, 19 U.S.C. 1618;

Section 145.11 also issued under 19 U.S.C. 1481, 1485, 1498;

Section 145.12 also issued under 19 U.S.C. 1315, 1484, 1498;

Sections 145.22 through 145.23 also issued under 19 U.S.C. 1501, 1514;

Section 145.31 also issued under 19 U.S.C. 1321;

Section 145.32 also issued under 19 U.S.C. 1321, 1498;

Sections 145.35 through 145.38, 145.41, also issued under 19 U.S.C. 1498;

Section 145.51 also issued under 19 U.S.C. 1305;

Section 145.54 also issued under 19 U.S.C. 1618;

Subpart G also issued under 19 U.S.C. 1415, 1436.

SOURCE: T.D. 73–135, 38 FR 13369, May 21, 1973, unless otherwise noted.

§ 145.0 Scope.

(a) The provisions of this part apply only to mail subject to Customs examination as set forth in § 145.2. This part contains regulations pertaining specifically to the importation of merchandise through the mail but does not contain all the regulations applicable to mail importations. Importations by mail are subject to the same requirements and restrictions as importations by any other means, except where more specific procedures for mail importations are set forth in this part. The fee applicable to each item of dutiable mail (other than Inbound Express Mail Service (EMS) items) for which Customs prepares documentation, and the fee applicable to all EMS items, is set forth in § 24.22 of this chapter.

(b) This part also contains regulations requiring the United States Postal Service (USPS) to transmit certain advance electronic data (AED) to U.S. Customs and Border Protection (CBP) for certain inbound international mail shipments as set forth in subpart G of this part.

[86 FR 14278, Mar. 15, 2021]

Subpart A—General Provisions

§ 145.1 Definitions.

(a) *Mail article.* ''Mail article'' means any posted parcel, packet, package, envelope, letter, aerogramme, box, card, or similar article or container, or any contents thereof, which is transmitted in mail subject to customs examination.

(b) *Letter class mail.* ''Letter class mail'' means any mail article, including packages, post cards, and aerogrammes, mailed at the letter rate or equivalent class or category of postage.

(c) *Sealed letter class mail.* ''Sealed letter class mail'' means letter class mail sealed against postal inspection by the sender.

[T.D. 78–102, 43 FR 14454, Apr. 6, 1978]

§ 145.2 Mail subject to Customs examination.

(a) *Restrictions.* Customs examination of mail as provided in paragraph (b) of this section is subject to the restrictions and safeguards relating to the opening of letter class mail set forth in § 145.3.

(b) *Generally.* All mail arriving from outside the Customs territory of the United States which is to be delivered within the Customs territory of the United States and all mail arriving from outside the U.S. Virgin Islands which is to be delivered within the U.S. Virgin Islands, is subject to Customs examination, except:

(1) Mail known or believed to contain only official documents addressed to officials of the U.S. Government;

(2) Mail addressed to Ambassadors and Ministers (Chiefs of Diplomatic Missions) of foreign countries; and

(3) Letter class mail known or believed to contain only correspondence or documents addressed to diplomatic missions, consular posts, or the officers thereof, or to international organizations designated by the President as public international organizations pursuant to the International Organizations Act (see § 148.87(b) of this chapter). Mail, other than letter class mail, addressed to the designated international organizations is subject to Customs examination except where the organization certifies under its official seal that the mail contains no dutiable or prohibited articles. Any Customs examination made shall, upon request of the addressee international organization, take place in the presence of an appropriate representative of that organization.

[T.D. 78–102, 43 FR 14454, Apr. 6, 1978]

§ 145.3 Opening of letter class mail; reading of correspondence prohibited.

(a) *Matter in addition to correspondence.* Except as provided in paragraph (e), Customs officers and employees may open and examine sealed letter class mail subject to Customs examination which appears to contain matter in addition to, or other than, correspondence, provided they have reasonable cause to suspect the presence of merchandise or contraband.

(b) *Only correspondence.* No Customs officer or employee shall open sealed letter class mail which appears to contain only correspondence unless prior to the opening:

(1) A search warrant authorizing that action has been obtained from an appropriate judge of United States magistrate, or

(2) The sender or the addressee has given written authorization for the opening.

(c) *Reading of correspondence.* No Customs officer or employee shall read, or authorize or allow any other person to read, any correspondence contained in any letter class mail, whether or not sealed, unless prior to the reading:

(1) A search warrant authorizing that action has been obtained from an appropriate judge or United States magistrate, or

(2) The sender or the addressee has given written authorization for the reading.

(d) *Other types of correspondence.* The provisions of paragraph (c) shall also apply to correspondence between school children and correspondence of the blind which are authorized to be mailed at other than the letter rate of postage in international mail.

(e) *Certain Virgin Islands mail.* First class mail originating in the Customs territory of the United States and arriving in the U.S. Virgin Islands, which is to be delivered within the U.S. Virgin Islands, shall not be opened unless:

(1) A search warrant authorizing that action has been obtained from an appropriate judge or United States magistrate, or

(2) The sender or the addressee has been given written authorization for the opening.

[T.D. 78–102, 43 FR 14454, Apr. 6, 1978]

§ 145.4 Dutiable merchandise without declaration or invoice, prohibited merchandise, and merchandise imported contrary to law.

(a) *Subject to seizure and forfeiture.* When, upon CBP examination, a mail article is found to contain merchandise subject to duty or tax, and the mail article is not accompanied by an appropriate customs declaration and invoice or statement of value required by §145.11, or is found to contain material prohibited importation or imported contrary to law, the merchandise is subject to seizure and forfeiture.

(b) *Mitigation of forfeiture.* Any claimant incurring a forfeiture of merchandise for violation of this section may file a petition for relief pursuant to part 171 of this chapter. Mitigation of that forfeiture may occur consistent with mitigation guidelines.

(c) *Collection of mitigated forfeiture.* When the shipment does not exceed $2,500 in value, CBP Form 3419 or 3419A or CBP Form 368 or 368A (serially numbered) or CBP Form 7501, or its electronic equivalent, must be used for the entry of the merchandise, and the duty, any tax, and the amount of the mitigated forfeiture must be entered as separate items thereon. If a mail article for which a mail fine entry has been issued in accordance with this paragraph is undeliverable, it will be returned to the director of the port where the entry was issued, for disposition in accordance with §145.59 relating to articles subject to seizure.

(d) *Petition for relief.* The addressee or sender may file a petition with the Fines, Penalties, and Forfeitures Officer having jurisdiction over the port where the mail fine entry was issued in accordance with part 171 of this chapter for relief from the forfeiture incurred and for release of the seized merchandise, or for additional relief from a mitigated forfeiture.

[T.D. 73–135, 38 FR 13369, May 21, 1973]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §145.4, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 145.5 Undeliverable packages.

Mail articles which are refused or undeliverable, except mail articles for which a mail fine entry has been issued in accordance with §145.4(c), will be marked by the postmaster to show why delivery was not made, and will be forwarded to the proper exchange post office for return to the country of origin. Mail entries will be removed from the mail articles and returned to Customs for cancellation. If, for any reason, an undeliverable mail article known or supposed to be dutiable is not returned to the country of origin or forwarded to another country in accordance with the Postal regulations, it will be delivered to Customs for disposition under

the Customs laws and regulations governing seized or unclaimed merchandise.

Subpart B—Requirements and Procedures

§ 145.11 Declarations of value and invoices.

(a) *Customs declaration.* A clear and complete Customs declaration on the form provided by the foreign post office, giving a full and accurate description of the contents and value of the merchandise, shall be securely attached to at least one mail article of each shipment, including shipments of special classes of merchandise treated in subpart D of this part. Although a Customs declaration is required to be attached to only one mail article of each shipment, examination and release of the merchandise will be expedited if such a declaration is attached to each individual mail article.

(b) *Invoice or statement of commercial value.* Each shipment of merchandise shall have an invoice or bill of sale (or, in the case of merchandise not purchased or consigned for sale, a statement of the fair retail value in the country of shipment), giving an accurate description and the purchase price of the merchandise, securely attached to the outside of the mail article or enclosed therein. If the shipment consists of more than one mail article, a copy of the invoice should accompany each mail article, or else the invoice shall accompany the mail article bearing the declaration, and that mail article shall be marked ''Invoice enclosed.''

(c) [Reserved]

(d) *Shipments without declaration and invoice.* Shipment of merchandise which are not accompanied by a Customs declaration and invoice in accordance with paragraphs (a) through (b) of this section may be subject to seizure and forfeiture in accordance with § 145.4.

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 76–103, 41 FR 14731, Apr. 7, 1976; T.D. 78–102, 43 FR 14454, Apr. 6, 1978; T.D. 85–39, 50 FR 9612, Mar. 11, 1985]

§ 145.12 Entry of merchandise.

(a) *Formal entries*—(1) *Discretionary.* CBP may require formal entry of any mail shipment regardless of value if it is necessary to protect the revenue.

(2) *Required.* Formal entry at the customhouse will be required for every importation in the mails which exceeds $2,500 in value, except for special classes of merchandise which can be released without entry (see subpart D of this part), and except as provided in subparts B and C of part 143 and § 10.1 of this chapter.

(3) *Separate shipments.* Separate shipments not exceeding $2,500 in value, if mailed abroad at different times (as shown by the declaration or other mailing indicia), cannot be combined for the purpose of requiring formal entry, even though they reach CBP at the same time and are covered by a single order or contract in excess of $2,500, unless there was a splitting of shipments in order to avoid the payment of customs duty.

(4) *Notice of formal entry requirement.* When a formal entry is required, the addressee will be notified of the arrival of the shipment and of the place at which entry is to be made. If the shipment is addressed to a point which is not a CBP port or customs station, the port of entry specified in the notice will be the port nearest the destination of the shipment. When a formal entry is filed, it must contain all the statistical information as provided in § 141.61(e) of this chapter.

(b) *Mail and informal entries*—(1) *Preparation of entry form.* Except as provided in paragraphs (c) and (e) of this section, CBP officers will prepare and attach a mail entry (CBP Form 3419 or 3419A) for each shipment not exceeding $2,500 in value which is to be delivered by the Postal Service, and return the shipment to the Postal Service for delivery and collection of duty. If the addressee has arranged to pick up such a shipment at the CBP office where it is being processed, the CBP officer will prepare an informal entry (CBP Form 368 or 368A (serially numbered), or an entry summary, CBP Form 7501, or its electronic equivalent and collect the duty in accordance with subpart C of part 143 of this chapter.

(2) *Rates of duty.* Merchandise released under a mail or informal entry will be dutiable at the rates of duty in effect when the preparation of the

entry is completed by a CBP employee, ready for transmittal with the merchandise to the addressee.

(c) *Dutiable shipments not over $2,500 for Government agencies.* When a dutiable shipment not exceeding $2,500 in value is addressed to a U.S. Government department or agency, the port director may release the merchandise prior to the payment of duties under an entry on CBP Form 368 or 368A (serially numbered) or CBP Form 7501, or its electronic equivalent upon the receipt of a stipulation in the form set forth in §141.102(d) of this chapter. If the stipulation does not accompany the shipment, the port director will notify the Government department or agency of the arrival of the shipment and request the stipulation. Upon receipt of the completed stipulation and preparation of the entry form, the port director will stamp all mail articles in the shipment to show that they have received customs treatment and will return the shipment to the Postal Service for delivery, unless the addressee has arranged to pick up the shipment at the CBP office where it is being processed. The proper Government department or agency will be billed later for any duties and taxes due.

(d) *Release without entry.* Certain types of merchandise may be passed free of duty without issuing an entry (see subpart D of this part).

(e) *Unaccompanied shipments*—(1) *Mail entry to be attached.* If the requirements of §148.115(a) of this chapter are met, CBP officers will prepare and attach a mail entry, CBP Form 3419 or 3419A, for each shipment for which entry is claimed under subheading 9816.00.40, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), which is to be delivered by the Postal Service, and return the shipment to the Postal Service for delivery and collection of duty. If the addressee has arranged to pick up the shipment at the CBP office where it is being processed, the CBP officer will prepare an informal entry, CBP Form 368 or 368A (serially numbered), or entry summary, CBP Form 7501, or its electronic equivalent and collect the duty in accordance with subpart C of part 143 of this chapter if the requirements of §148.115(a) of this chapter are met.

(2) *Disposition of CBP Form 255.* The Declaration of Unaccompanied Articles, CBP Form 255, affixed to the shipment must be removed by the CBP officer and retained for customs purposes. If a mail entry, CBP Form 3419 or 3419A, has been prepared, the mail entry number will be noted on the CBP Form 255.

[T.D. 73–135, 38 FR 13369, May 21, 1973]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §145.12, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§145.13 Internal revenue tax on mail entries.

(a) *Method of collection.* Any internal revenue tax assessed on a mail entry shall be shown as a separate item on the entry, and collected in the same manner as Customs duties.

(b) *Release without payment of tax.* A mail entry may not be used to release a shipment of cigars, cigarettes, or cigarette papers or tubes for a manufacturer without payment of tax as provided for in 27 CFR part 275 and §11.2a of this chapter. If a claim for release without payment of tax is made by the addressee at the time of delivery, the shipment will be returned by the Postal Service to the port of entry or sent to the nearest Customs office at which appropriate release as claimed may be arranged by the addressee.

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 78–329, 43 FR 43455, Sept. 26, 1978]

§145.14 Marking requirements.

(a) *Country of origin.* Merchandise imported by mail shall be marked with the country of origin in accordance with part 134 of this chapter. If merchandise without the required marking is to be delivered from the post office where it has been given Customs examination, the Customs officer shall require compliance with the marking law and regulations. If it is to be delivered from another post office, the Customs officer shall place in the envelope containing the mail entry a copy of Customs Form 3475, containing instructions to the postmaster concerning the marking to be required before delivery.

(b) *Other marking requirements.* Certain types of merchandise are subject to special marking requirements, such as those contained in the Textile Fiber Products Identification Act, the Wool Products Labeling Act, and the Trademark Act. Since there is no provision for post office supervision of these types of marking, the CBP shall require compliance with the law and regulations (see parts 11 and 133 of this chapter).

(c) *Failure to mark.* If the addressee fails to comply with the marking requirements, the mail article will be treated as undeliverable in accordance with §145.5.

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 78–102, 43 FR 14454, Apr. 6, 1978; CBP Dec. No. 16–26, 81 FR 93020, Dec. 20, 2016]

Subpart C—Administrative Review of Mail Entries

§145.21 Administrative review.

Requests for adjustment of the amount of duty assessed under mail entries shall be handled as requests for administrative review in accordance with this subpart.

§145.22 Procedures for obtaining administrative review.

If an addressee is dissatisfied with the amount of duty assessed under a mail entry made before December 18, 2004, he may obtain administrative review in the following ways:

(a) He may pay the assessed duty, take delivery of the merchandise, and send a copy of the mail entry to the issuing CBP office indicated on the mail entry, together with a statement of the reason it is believed the duty assessed is incorrect. Any invoices, bills of sale, or other evidence should be submitted with the statement. The addressee may show the mail entry number and date on his statement instead of sending a copy of the mail entry, but this may result in delay.

(b) He may postpone acceptance of the shipment, and within the time allowed by the Postal regulations provide the postmaster with a written statement of his objections. The postmaster will forward the mail entry together with the addressee's statement and any invoices, bills of sale, or other evidence submitted by the addressee to the port director who issued the entry, and retain custody of the shipment until advice is received from the port director as to the disposition to be made. If the addressee is located near one of the ports at which CBP officers are authorized to review mail entries (see 39 CFR 10.5), the postmaster may send the mail entry to that port, together with the addressee's statement and evidence, for reconsideration by the port director.

(c) He may pay the assessed duty and take delivery of the merchandise, and file a protest under section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), in the form and manner prescribed in part 174 of this chapter. For mail entries made before December 18, 2004, a protest must be filed no later than 90 days after payment of the duties by the addressee. All other mail entries must be protested within 180 days after payment of the duties by the addressee.

[T.D. 73–175, 38 FR 13369, May 21, 1973, as amended by T.D. 78–99, 43 FR 13061, Mar. 29, 1978; CBP Dec. 11–02, 76 FR 2575, Jan. 14, 2011]

§145.23 Time limits.

A mail entry made before December 18, 2004 may be amended under section 520(c), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)), only if the addressee requests such amendment within the time limits prescribed therein (see §§173.4 and 173.5 of this chapter), and the claim is allowable under section 520(c). Requests for adjustment in the amount of duty assessed under mail entries made under §145.22(a) must be made in such time that the request can be acted upon by the port director within 90 days after receipt of the mail article and payment of the duties by the addressee. For a mail entry made before December 18, 2004, protests under §145.22(c) of this chapter must be filed no later than 90 days after payment of the duties by the addressee, but may be acted upon by CBP after expiration of that 90-day period. For a mail entry made on or after December 18, 2004, protests under §145.22(c) of this chapter must be filed no later than 180 days after payment of the duties by the addressee, but may be acted upon by

CBP after expiration of that 180-day period.

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 78–102, 43 FR 14454, Apr. 6, 1978; CBP Dec. 11–02, 76 FR 2576, Jan. 14, 2011]

§ 145.24 Amendment of entry.

If the port director is satisfied that the objection is valid and timely, he shall amend the mail entry. If the duty has already been paid, Customs shall issue an appropriate refund of duty.

§ 145.25 Entry correct.

If the port director believes the duty originally assessed was correct, he shall send the addressee a notice in writing that the request for refund of duty has been denied. If the duty has not been paid, the mail entry shall be returned to the postmaster concerned, together with a copy of the notice sent to the addressee. The postmaster will then collect the duty and deliver the shipment, or, if the addressee refuses to pay the duty, will treat the shipment as undeliverable.

§ 145.26 Rates of duty not binding.

Rates of duty assessed on a mail entry, whether assessed on the original entry or as amendments under § 145.24, are not binding for future importations. A binding ruling on tariff classification may be obtained in accordance with the procedures set forth in part 177 of this chapter.

[T.D. 73–175, 38 FR 13369, May 21, 1973, as amended at 38 FR 17469, July 2, 1973; T.D. 78–99, 43 FR 13061, Mar. 29, 1978]

Subpart D—Special Classes of Merchandise

§ 145.31 Importations not over $800 in value.

The port director will pass free of duty and tax, without preparing an entry as provided for in § 145.12, packages containing merchandise having an aggregate fair retail value in the country of shipment of not over $800, subject to the requirements set forth in §§ 10.151 and 10.153 of this chapter.

[T.D. 94–51, 59 FR 30296, June 13, 1994, as amended by CBP Dec. 12–19, 77 FR 72721, Dec. 6, 2012; CBP Dec. No. 16–13, 81 FR 58834, Aug. 26, 2016]

§ 145.32 Bona-fide gifts.

The port director shall pass free of duty and tax, without preparing an entry as provided for in § 145.12, articles sent as bona-fide gifts from persons in foreign countries to persons in the United States having an aggregate fair retail value in the country of shipment not exceeding $100 ($200, in the case of articles sent from persons in the Virgin Islands, Guam, and American Samoa), subject to the requirements set forth in §§ 10.152 and 10.153 of this chapter.

[T.D. 94–51, 59 FR 30296, June 13, 1994]

§ 145.34 Personal and household effects and tools of trade.

(a) *U.S. military and civilian personnel returning from extended duty abroad.* Section 148.74 of this chapter sets forth specific requirements for exemptions from duty under subheading 9805.00.50, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), for personal and household effects of military and civilian personnel of the United States returning upon the completion of extended duty abroad. A copy of the official travel orders shall be attached to or enclosed in each mail article and the outside of each mail article shall be clearly marked to show that exemption from duty is being claimed.

(b) *Other personal and household effects, and tools of trade.* Certain personal and household effects and tools of trade may be passed free of duty without issuing an entry, in accordance with § 148.53 of this chapter.

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 78–102, 43 FR 14454, Apr. 6, 1978; T.D. 89–1, 53 FR 51263, Dec. 21, 1988]

§ 145.35 United States products returned.

Products of the United States returned after having been exported, which have not been advanced in value or improved in condition while abroad, may be passed free of duty without issuing an entry and without the declarations provided for in § 10.1(a) of this chapter, provided the shipment is valued at not over $2,500 and the port director is satisfied that the merchandise is free of duty under subheading

9801.00.10, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 85–123, 50 FR 29955, July 23, 1985; T.D. 89–1, 53 FR 51263, Dec. 21, 1988; T.D. 89–82, 54 FR 36026, Aug. 31, 1989; T.D. 94–47, 59 FR 25570, May 17, 1994; T.D. 98–28, 63 FR 16417, Apr. 3, 1998; CBP Dec. 12–19, 77 FR 72721, Dec. 6, 2012]

§ 145.36 Articles for institutions.

Books and other articles classifiable under subheading 4903.00.00, 4904.00.00, 4905.91.00, 4905.99.00, 9701.10.00, 9701.90.00, 9810.00.05, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), imported by and addressed directly to a library or other institution described in subheading 9810.00.05 or 9101.30, HTSUS may be passed free of duty without issuing an entry, if the port director is satisfied that the merchandise is entitled to free entry. A declaration may be required in accordance with §10.43 of this chapter under the procedure specified in §145.42.

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 85–123, 50 FR 29955, July 23, 1985; T.D. 89–1, 53 FR 51263, Dec. 21, 1988]

§ 145.37 Articles for the U.S. Government.

(a) *Mail articles for copyright.* Mail articles marked for copyright which are addressed to the Library of Congress, to the U.S. Copyright Office, or to the office of the Register of Copyrights, Washington, DC, shall be passed free of duty without issuing an entry.

(b) *Books, engravings, and other articles.* Books, classifiable under subheading 4903.00.00, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), and engravings, etchings, and other articles enumerated in subheading 9808.00.10, HTSUS, shall be passed free of duty without issuing an entry when they are addressed to the Library of Congress or any department or agency of the U.S. Government.

(c) *Official Government documents.* Other mail articles addressed to offices or officials of the U.S. Government, believed to contain only official documents, shall be passed free of duty without issuing an entry. Such mail articles, when believed to contain merchandise, shall be treated in the same manner as other mail articles of merchandise so addressed.

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 78–102, 43 FR 14454, Apr. 6, 1978; T.D. 89–1, 53 FR 51263, Dec. 21, 1988; T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

§ 145.38 Diplomatic pouches.

Mail articles bearing the official seal of a foreign government with which the United States has diplomatic relations, accompanied by certificates bearing such seal to the effect that they contain only official communications or documents, shall be admitted free of duty without Customs examination.

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 78–102, 43 FR 14454, Apr. 6, 1978]

§ 145.39 Articles for diplomatic officers, representatives of international organizations, and foreign military personnel.

Free entry of articles in mail articles addressed to diplomatic officers, representatives of certain international organizations, and similar persons is governed by subpart I of part 148 of this chapter.

[T.D. 73–175, 38 FR 13369, May 21, 1973, as amended by T.D. 73–227, 38 FR 22548, Aug. 22, 1973; T.D. 78–102, 43 FR 14454, Apr. 6, 1978]

§ 145.40 Plant material imported for immediate exportation.

Plant material may be imported by mail free of duty for immediate exportation by mail subject to the following regulations, which have been approved by the Department of Agriculture and the Postal Service. This procedure shall not affect the movement of plant material in the internal mails through the United States:

(a) *Permit for entry.* Each shipment shall be dispatched in the mails from abroad, accompanied by a yellow and green special mail tag bearing the serial number of the permit for entry for immediate exportation or immediate transportation and exportation, issued by the U.S. Department of Agriculture, and also by the postal form of Customs declaration.

(b) *Place of inspection.* Upon arrival, the shipment shall be detained by or redispatched to the postmaster at

Washington, DC, Brownsville, Tex., Hoboken, NJ, Honolulu, Hawaii, Laredo, Tex., Miami, Fla., San Francisco, Calif., San Juan, P.R., San Pedro, Calif., or Seattle, Wash., as may be appropriate, according to the address on the green and yellow tag, and there submitted to the Customs officer and the Federal quarantine inspector. The merchandise shall be accorded special handling only at these cities, and under no circumstances shall it be permitted to enter the commerce of the United States.

(c) *Special handling.* After inspection by the Customs and quarantine officers, and with their approval, the addressee or his authorized agent shall repack and readdress the mail package under Customs supervision; endorse and sign on the package a waiver of the addressee's right to withdraw the mail article from the mails; affix to the mail article the necessary postage; and comply with any other mailing and export requirements, after which the package shall be delivered under Customs supervision to the postmaster for exportation by mail in accordance with §145.71.

(d) *Entry not required.* It will not be necessary to issue a Customs mail entry nor to require a formal entry of the shipment.

[T.D. 73–175, 38 FR 13369, May 21, 1973, as amended by T.D. 78–102, 43 FR 14455, Apr. 6, 1978]

§145.41 Other conditionally and unconditionally free merchandise.

Shipments of conditionally or unconditionally free merchandise not specifically treated elsewhere in this part may be passed free of duty and tax without issuing an entry, if the value is not over $2,500 and the port director is satisfied that the merchandise is entitled to free entry.

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 85–123, 50 FR 29955, July 23, 1985; T.D. 89–82, 54 FR 36026, Aug. 31, 1989; T.D. 98–28, 63 FR 16417, Apr. 3, 1998; CBP Dec. 12–19, 77 FR 72721, Dec. 6, 2012]

§145.42 Proof for conditionally free merchandise.

The port director may, at his discretion, require appropriate proof of duty-free status before releasing conditionally free merchandise. This proof may be obtained by either of the following methods:

(a) *Retain shipment and request proof.* The shipment may be retained by the port director while the necessary proof is requested from the addressee. If the requested proof is not received within 30 days, a mail entry shall be issued at the ordinary rate of duty which would apply if the merchandise were not conditionally free, and the mail entry shall be forwarded with the shipment for collection of duties.

(b) *Send shipment with form and entry.* If the only proof required for free entry is a declaration signed by the addressee, the port director may issue a mail entry at the ordinary duty which would apply if the merchandise were not conditionally free. The shipment shall then be forwarded together with the mail entry, a copy of the appropriate declaration form, and instructions to the postmaster to deliver the shipment free of duty if the importer executes the declaration, and to collect the full duty shown on the mail entry if the importer does not execute the declaration.

§145.43 Unaccompanied tourist shipments

Unaccompanied tourist shipments for which entry is claimed under subheading 9804.00.70, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), may be passed free of duty and tax if the requirements of §148.115(a) of this chapter are met. The Declaration of Unaccompanied Articles, Customs Form 255, shall be removed by the Customs officer from the shipment and retained for Customs purposes.

[T.D. 78–394, 43 FR 49788, Oct. 25, 1978, as amended by T.D. 89–1, 53 FR 51263, Dec. 21, 1988]

Subpart E—Restricted and Prohibited Merchandise

§145.51 Articles prohibited by section 305, Tariff Act of 1930.

(a) *Types of articles.* Various articles, as described in section 305, Tariff Act of 1930, as amended (19 U.S.C. 1305), and

in part 12 of this chapter, are prohibited from importation. This prohibition includes the following types of articles:

(1) Obscene matter;

(2) Articles for causing unlawful abortion (see §145.52 for the treatment of literature pertaining to such articles);

(3) Matter advocating treason or insurrection against the United States or forcible resistance to any law of the United States;

(4) Matter containing any threat to take the life of or inflict bodily harm upon any person in the United States; and

(5) Lottery matter, except any lottery ticket, printed paper that may be used as a lottery ticket, or advertisement of any lottery, that is printed in Canada for use in connection with a lottery conducted in the United States.

(b) *Disposition of articles.* Mail found to contain lottery matter shall be disposed of by the Postal Service under the postal laws and regulations. Mail found to contain any of the other prohibited articles described in paragraphs (a)(1) through (a)(4) of this section shall be given appropriate treatment by Customs under the Customs laws and regulations (see §12.40 of this chapter).

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 92–80, 57 FR 37702, Aug. 20, 1992]

§145.52 Literature concerning devices for unlawful abortion.

Mail articles containing literature or advertisements concerning devices to produce unlawful abortions, are prohibited from the mails by 18 U.S.C. 1461, and shall be retained by, or delivered to, the Postal Service for disposition under the postal laws and regulations. If the Postal Service determines in any case that it is proper to release the material to the addressee, it shall be submitted for Customs treatment before delivery.

[T.D. 78–99, 43 FR 13061, Mar. 29, 1978, as amended by T.D. 78–102, 43 FR 14455, Apr. 6, 1978]

§145.53 Firearms and munitions of war.

Importations of firearms, munitions of war, and related articles are subject to the import permit requirements and other restrictions set forth in 27 CFR parts 47, 178, 179.

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 78–329, 43 FR 43455, Sept. 26, 1978]

§145.54 Alcoholic beverages.

(a) *Nonmailable.* Alcoholic beverages are nonmailable, with certain exceptions (see 18 U.S.C. 1716 and the postal regulations), and when imported in the mails are subject to seizure and forfeiture under 18 U.S.C. 545.

(b) *Seizure.* When alcoholic beverages are received in the mails, they shall be seized, and the addressee shall be advised that they are subject to forfeiture and that he has a right to file a petition for their release (see part 171 of this chapter).

(c) *Conditions for release.* If the port director is satisfied that there was no fraudulent intent involved, he may release the alcoholic beverages to the addressee upon the following conditions:

(1) Applicable duty and internal revenue tax shall be paid.

(2) The addressee shall comply with the alcoholic beverage laws of the State to which the shipment is destined.

(3) Any other conditions the port director may impose under his authority to remit or mitigate fines, penalties, and forfeitures shall be complied with.

(4) The addressee, his representative, or a common carrier shall pick up the merchandise at the Customs office where it is being held. Since the merchandise is nonmailable, it cannot be delivered by the Postal Service.

§145.55 Trademarks, trade names, and copyrights.

Merchandise bearing a trademark or trade name entitled to protection against imports, merchandise bearing a mark or name that copies or simulates such a trademark or trade name, and merchandise which is in violation of copyright law is subject to the restrictions and prohibitions set forth in part 133 of this chapter.

§145.56 Foreign Assets Control.

Merchandise subject to regulations of the Office of Foreign Assets Control of the Treasury Department prohibiting

or restricting entry of unlicensed importations of articles directly or indirectly from certain designated countries shall be detained until licensed or the question of its release, seizure, or other disposition has been determined under the Foreign Assets Control or Cuban Assets Control regulations (31 CFR parts 500 and 515) (See also 19 CFR 12.150).

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 96–42, 61 FR 24889, May 17, 1996]

§ 145.57 Regulations of other agencies.

Certain types of plants and plant products, food, drugs, cosmetics, hazardous or caustic and corrosive substances, viruses, serums, and various harmful articles are subject to examination and clearance by appropriate agencies before release to the addressee (see part 12 of this chapter).

§ 145.58 Other restricted and prohibited merchandise.

Other restrictions and prohibitions pertaining to certain types of imported merchandise are set forth in part 12 of this chapter and are applicable to importations by mail.

§ 145.59 Seizures.

(a) *Articles prohibited and contrary to law.* All mail shipments containing articles the importation of which is prohibited, or articles imported into the United States in any manner contrary to law, shall be seized or detained as appropriate and held by Customs officers for appropriate treatment, except for certain articles which will be handled by the Postal Service as specified in §§ 145.51 and 145.52.

(b) *Notification of seizure or detention.* In all cases where articles are seized or detained by Customs officers, the addressee shall be notified of the seizure or detention, of the reason for such action, and, if appropriate, of his right to petition for relief (see part 171 of this chapter).

Subpart F—Exportation by Mail

§ 145.71 Exportation from continuous Government custody.

(a) *Relief from duties.* Merchandise imported into the United States, unless nonmailable, may be exported by any class of mail without the payment of duties, if:

(1) The merchandise has remained continuously in the custody of the Government (Customs or postal authorities); and

(2) The mail articles containing such merchandise are inspected and mailed under Customs supervision.

(b) *Waiver of right to withdraw.* Waiver of the right to withdraw the mail article from the mails shall be endorsed on each mail article to be so exported and signed by the exporter.

(c) *Export entry or withdrawal required.* An export entry in accordance with § 18.25 of this chapter or a warehouse withdrawal for exportation in accordance with § 144.37 of this chapter, whichever is appropriate, shall be filed for merchandise being exported under this section, except for merchandise imported by mail which is either:

(1) Unclaimed or refused and being returned by the Postal Service to the country of origin as undeliverable mail; or

(2) For which a formal entry has not been filed and which is being remailed from continuous Customs or postal custody to Canada.

[T.D. 73–175, 38 FR 13369, May 21, 1973, as amended at 38 FR 17470, July 2, 1973; T.D. 78–102, 43 FR 14455, Apr. 6, 1978]

§ 145.72 Delivery to Customs custody for exportation.

In certain cases where merchandise has not been in continuous Government custody, delivery to Customs custody is appropriate before exportation by mail, as set forth in the following sections of this chapter:

(a) Section 10.8 (articles exported for repairs or alterations).

(b) Section 10.9 (articles exported for processing).

(c) Section 148.33 (merchandise which was imported free of duty under a personal exemption, found to be unsatisfactory, and is being exported for replacement).

(d) Section 10.38 (exportation of imported merchandise which was entered temporarily under bond).

(e) Section 191.42 (exportation of rejected imported merchandise, with drawback of duties).

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 98–16, 63 FR 11005, Mar. 5, 1998]

Subpart G—Mandatory Advance Electronic Data for Mail Shipments

SOURCE: 86 FR 14278, Mar. 15, 2021, unless otherwise noted.

§ 145.73 Definitions.

For purposes of this subpart:

Designated operator means an entity officially designated by a member country of the UPU to operate postal services and fulfill its treaty obligations to the UPU. USPS is thus considered a designated operator for the United States.

Express Mail Service or *EMS* means the optional supplementary postal express service for documents and merchandise.

International Mail Facility or *IMF* means an official international mail processing center operated by CBP.

Item ID means the unique item identifier, in both human-readable and barcode format.

Letter class mail—documents means letter class (in UPU terms, letter post) mail containing only documents. Documents consist of any piece of written, drawn, printed or digital information, excluding objects of merchandise and may include M-Bags to the extent that such items do not contain goods.

Letter class mail—goods means letter class (in UPU terms, letter post) mail up to 2 kilograms containing goods, also referred to as ''small packets''. Mail over 2 kilograms containing goods must use a postal service other than letter class.

Parcel post means any mail article mailed at the parcel rate or equivalent class or category of postage.

Universal Postal Union or *UPU* means the specialized agency of the United Nations that sets the rules for international postal service for member countries.

§ 145.74 Mandatory advance electronic data (AED).

(a) *General requirements.* Pursuant to section 343(a)(3)(K) of the Trade Act of 2002 (Pub. L. 107–210, 19 U.S.C. 1415), as amended, for certain inbound international mail shipments identified in paragraph (b) of this section, CBP must electronically receive from USPS within the time frames specified in paragraph (c)(1) of this section certain mandatory advance electronic data (AED) and updates thereto as set forth in paragraph (c)(2) of this section.

(b) *Inbound international mail shipments where*—(1) *AED is required.* Except as provided in paragraphs (b)(2) and (e) of this section, CBP must electronically receive AED from USPS for inbound international mail shipments containing goods classified as Express Mail Service (EMS), Parcel post, or Letter class mail—goods.

(2) *AED is not required.* AED is not required for:

(i) Letter class mail—documents;

(ii) Items for the blind consisting of correspondence, literature in whatever format including sound recordings, and equipment or materials of any kind made or adapted to assist blind persons in overcoming the problems of blindness (up to 7 kilograms);

(iii) Items sent as Parcel post or EMS that do not contain goods;

(iv) Returned U.S. origin items;

(v) Items transiting the U.S. in closed transit; and

(vi) Items sent as U.S. domestic mail, or mail treated as domestic, including mail to or from APO, FPO, and DPO addresses, mail to or from U.S. territories and possessions, and mail to, from or between the Freely Associated States of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

(c) *Time frames for providing and updating AED*—(1) *Providing AED.* CBP must electronically receive from USPS the AED identified in paragraph (d) of this section as soon as practicable, but no later than prior to loading the inbound international mail shipment onto the transporting conveyance.

(2) *Updating AED.* CBP must electronically receive from USPS updates to the AED if any of the submitted

data changes or more accurate data becomes available after USPS transmits the AED. USPS must provide these updates as soon as it becomes aware that any of the submitted data changes or as soon as it becomes aware that more accurate data is available. USPS must submit updated information up until the time frame specified in §122.48b(b)(2) of this chapter and may submit updates up until the time the mail shipment arrives at the CBP port of arrival in the United States.

(d) *Required AED.* CBP must electronically receive from USPS within the time frames specified in paragraph (c) of this section the AED set forth in paragraphs (d)(1) and (2) of this section:

(1) *Item attribute information.* The AED must include the following information about the attributes (characteristics) of mail items and their contents. This information may be provided through the item attribute or ''ITMATT'' information that USPS receives from the origin post in an electronic message that is the customs declaration equivalent to paper forms that satisfy the declaration requirements as set forth in §145.11. An ''M'' next to any listed data element indicates that the data element is mandatory in all cases; an ''O'' next to the listed data element indicates that the data element is not mandatory, but preferred.

(i) Sender's Name (M);

(ii) Sender's Address (M);

(iii) Sender's Telephone/fax/email (O);

(iv) Recipient's Name (M);

(v) Recipient's Address (M);

(vi) Recipient's Telephone/fax/email (O);

(vii) Detailed description of contents (M);

(viii) Quantity (M);

(ix) Weight (M);

(x) Item ID (M);

(xi) Category of Item (gift, documents, sale of goods, commercial sample, merchandise, returned goods, other) (O);

(xii) Declared Value (M);

(xiii) Date of Posting (O);

(xiv) Postal Charges/Fees (O);

(xv) 10-digit HS Tariff Number (for commercial items) (O);

(xvi) Country of Origin of Goods (for commercial items) (O);

(xvii) Importer's reference (tax code, VAT number, importer number, etc.) (O);

(xviii) Importer's telephone/fax/email (O);

(xix) License Number (O);

(xx) Certificate Number (O);

(xxi) Invoice Number (O);

(xxii) Details if the goods are subject to quarantine, sanitary/phytosanitary inspection, or other restrictions (O); and

(xxiii) Designated operator (M).

(2) *Pre-advice of despatch information.* In addition to the information about each mail item in paragraph (d)(1) of this section, the required AED must also include the following information about the shipment, referred to as the ''dispatch'' or ''despatch,'' of mail receptacles of the same mail category and class sent from one post to another that includes the mail item. This information may be provided through the pre-advice of despatch or ''PREDES'' information that USPS receives from the origin post in an electronic message advising USPS about the shipment being sent.

(i) Dispatch information including origin post, destination post, and dispatch number;

(ii) Scheduled date and time of departure of the transporting conveyance;

(iii) Scheduled date and time of arrival in the United States;

(iv) Transportation information including carrier and, as applicable, flight number, voyage number, trip number, and/or transportation reference number;

(v) Scheduled International Mail Facility in the United States (IMF);

(vi) Total weight of the dispatch; and

(vii) The information for receptacles contained within the dispatch, including receptacle type, receptacle ID, and weight, as well as item ID for items nested to the receptacles, if applicable.

(e) *Exclusions from AED requirements for mail shipments from specific countries.* Pursuant to section 343(a)(3)(K)(vi) of the Trade Act of 2002 (19 U.S.C. 1415(a)(3)(K)(vi)), CBP, in consultation with USPS, may determine that a specific country or countries do not have the capacity to collect and transmit AED, represent a low risk for mail shipments that violate relevant United

States laws and regulations, and account for low volumes of mail shipments that can be effectively screened for compliance with relevant United States laws and regulations through an alternate means. In such case(s), CBP will inform USPS that mail shipments from that specific country or countries are excluded from the AED requirements in this section. CBP will re-evaluate these determinations at a minimum on an annual basis.

(f) *Compliance date of this section—full compliance required not later than December 31, 2020.* Except for mail shipments from countries that are excluded from AED requirements as set forth in paragraph (e) of this section, USPS must comply with the requirements of this section for 100 percent of mail shipments described in paragraph (b) of this section not later than December 31, 2020, as set forth in section 343(a)(3)(K)(vi) of the Trade Act of 2002 (19 U.S.C. 1415(a)(3)(K)(vi)).

(g) *Shipments for which USPS has not complied with the AED requirements*—(1) *Shipments received after December 31, 2020.* Pursuant to section 343(a)(3)(K)(vii) of the Trade Act of 2002 (19 U.S.C. 1415(a)(3)(K)(vii)), USPS must, in consultation with CBP, refuse any shipments received after December 31, 2020, for which the AED required by this section is not received by CBP, unless remedial action is warranted in lieu of refusal of shipments. If remedial action is warranted, CBP and USPS will determine the appropriate remedial action. Remedial action includes, but is not limited to, destruction, seizure, controlled delivery or other law enforcement initiatives, or correction of the failure to provide the AED described in this section with respect to the shipments.

(2) *Certain shipments received during the period beginning on January 1, 2021, through March 15, 2021.* Pursuant to section 343(a)(3)(K)(vii) of the Trade Act of 2002 (19 U.S.C. 1415(a)(3)(K)(vii)) as amended by Sec. 802 Consolidated Appropriations Act, 2021, Public Law 116–260, notwithstanding paragraph (g)(1) of this section, during the period beginning on January 1, 2021, through March 15, 2021, the Postmaster General may accept a shipment without transmission of the information described in paragraph (d) of this section if the Commissioner determines, or concurs with the determination of the Postmaster General, that the shipment presents a low risk of violating any relevant United States statutes or regulations, including statutes or regulations relating to the importation of controlled substances such as fentanyl and other synthetic opioids.

[86 FR 14278, Mar. 15, 2021, as amended by CBP Dec. 21–08, 86 FR 38554, July 22, 2021]

§ 145.75 Liability for civil penalties.

(a)(1) Violation of § 145.74(g) after December 31, 2020, will result in USPS being liable for penalties in accordance with the provisions of 19 U.S.C. 1436(e)(1).

(2) The amount of the penalty will be $5,000 per violation.

(b) The penalty will be reduced or dismissed based on the factors specified in 19 U.S.C. 1436(e)(2).

Policy Statement to Part 145—Examination of Sealed Letter Class Mail

A. Customs officers and employees shall not open first class mail arriving in the U.S. Virgin Islands for delivery there, if it originated in the Customs territory of the United States, unless a search warrant or written authorization of the sender or addressee is obtained. Customs officers or employees may open and examine all other sealed letter class mail which is subject to the Customs mail regulations (see 19 CFR part 145) and which appears to contain matter in addition to, or other than, correspondence, provided they have ''reasonable cause to suspect'' the presence of merchandise or contraband.

B. Customs officers and employees shall not open any sealed letter class mail which appears to contain only correspondence unless a search warrant or written authorization of the sender or addressee is obtained in advance of the opening.

C. Customs officers and employees are prohibited from reading, or authorizing or allowing others to read, any correspondence contained in any letter class mail unless there has been obtained in advance either a search warrant or written authorization of the sender or addressee. This prohibition, which will continue to be strictly enforced, also applies to correspondence between school children and correspondence of the blind which are authorized to be mailed at other than the letter rate of postage in international mail.

D. If a violation of law is discovered upon opening any mail article referred to in paragraph C, and it is believed that the correspondence may provide additional information concerning the violation and is therefore needed for further investigation or use in court, a search warrant shall be obtained before any correspondence is seized, read, or referred to another agency. Search warrants shall be promptly sought. Correspondence may be detained while a search warrant is being sought.

E. If no controlled delivery is arranged and correspondence is not to be otherwise seized pursuant to a search warrant (see ''F'' below), the item which constitutes the violation shall be removed and any correspondence shall be replaced in the wrapper, or in a new wrapper if the original wrapper has been seized pursuant to 19 U.S.C. 1595a. The wrapper shall then be resealed, marked to indicate it was opened by Customs, and returned to postal channels. Appropriate seizure notices shall be sent in accordance with 19 CFR 145.59(b).

F. No mail article may be referred to another agency without a search warrant unless—

(1) Any correspondence has been removed and the mail article is being referred for examination and clearance under 19 CFR 145.57,

(2) Any correspondence has been removed and the mail article has been lawfully seized by Customs,

(3) The mail article is being referred to Postal Service channels to effect a controlled delivery in cooperation with other law enforcement agencies, or

(4) The mail article is being returned to Postal Service channels for normal processing.

G. Whenever sealed letter class mail is opened, the factors giving the Customs officer or employee ''reasonable cause to suspect'' the presence of merchandise or contraband shall be recorded on the appropriate form and on the opened envelope or other container by means of appropriate coded symbols. Should a seizure result, these factors shall also be recorded on the seizure report.

H. Sealed letter class mail with the green Customs label on a Customs declaration may be opened without additional cause. Correspondence in such mail is subject to the restrictions regarding the detention, reading, and referral of mail to other agencies found in paragraphs C through F.

I. Whenever any sealed letter class mail is opened for any of the reasons set forth in the above paragraphs, a Postal Service employee shall be present and shall observe the opening.

J. Any violation of the Customs mail regulations or any of these policies will lead to appropriate administrative sanctions, as well as possible criminal prosecution pursuant to 18 U.S.C. 1702.

[T.D. 73–135, 38 FR 13369, May 21, 1973, as amended by T.D. 84–213, 49 FR 41185, Oct. 19, 1984]

APPENDIX TO PART 145

A. *Scope.* The Customs Service is authorized to examine, with certain exceptions for diplomatic and governmental mail, all mail arriving from outside the Customs territory of the United States (CTUS) which is to be delivered within the CTUS, and all mail arriving from outside the U.S. Virgin Islands which is to be delivered within the U.S. Virgin Islands. The term ''Customs territory of the United States'' is limited to the States, the District of Columbia, and Puerto Rico. Consequently, mail arriving from other U.S. territories and possessions is subject to Customs examination even though it is designated ''domestic'' mail for Postal Service purposes. Likewise, mail in the APO/FPO military postal system is subject to Customs examination, even though it also is designated ''domestic'' mail for Postal Service purposes. The Customs Service therefor is responsible for examining all international mail to be delivered in the CTUS and certain limited categories of so-called ''domestic mail''.

B. *Definitions.* Under various international conventions and bilateral agreements, international mail falls within two main classes, Parcel Post and Postal Union mail.

Parcel Post is not permitted to contain correspondence but is to be used for the transmission of merchandise and is fully subject to Customs examination in the same manner as other merchandise shipments (e.g., luggage, cargo, containers, etc.). Postal Union mail is divided into ''LC'' mail (Lettres et Cartes) and ''AO'' mail (Aures Objets).

''LC mail consists of letters, packages paid at the letter rate of postage, post cards, and aerogrammes. The term ''letter class mail'' as used in the Customs Regulations and in this policy statement means ''LC'' mail as well as equivalent articles in ''domestic'' mail subject to Customs examination. Equivalent articles in ''domestic'' mail would include articles mailed at the letter rate, or equivalent class or category, in the APO/FPO military system or from a U.S. territory or possession outside the CTUS. Since the term ''letter class mail'' thus includes packages and bulky envelopes as long as they are mailed at the letter rate, or equivalent class or category, the restrictions relating to opening and reading of correspondence apply equally to such packages or bulky envelopes.

''AO'' mail is to be treated in the same manner as Parcel Post mail since the Universal Postal Union Convention requires

that they ''be made up in such a manner that they may be easily examined'' and generally are not permitted to ''contain any document having the character of current and personal correspondence.'' Exceptions to the latter requirement exist for matter for the blind and certain correspondence between school children. Because of these exceptions, the prohibition against reading correspondence without a search warrant or authorization of the sender or addressee applies to correspondence of the blind and correspondence between school children contained in ''AO'' mail. ''AO'' mail can usually be identified by the following words: ''Imprime'' or ''Printed Matter'', ''Cecogramme'' or ''Literature for the Blind'', ''Petit Paquet'' or ''Small Packet'' or similar terms or their equivalents.

C. *Reasonable Cause to Suspect.* Determining whether there is ''reasonable cause to suspect'' that merchandise or contraband is contained in sealed letter class mail is ultimately a matter of judgment for each Customs official, based on all relevant facts and circumstances. This judgment should be exercised within the framework of the Customs regulation that sealed letter class mail which appears to contain only correspondence is not to be opened unless a search warrant or written authorization from either the sender or the addressee has been obtained in advance of the opening.

Past practice indicates that the following circumstances (which are illustrative and not exhaustive) provide ''reasonable cause to suspect'' and permit the opening of sealed letter class mail without a search warrant or authorization of the sender or addressee.

1. A detector dog has alerted to the presence of narcotics or explosives in a specific mail article.

2. X-ray of fluoroscope examination indicates the presence of merchandise or contraband.

3. The weight, shape, feel, or sound of the mail article or its contents may indicate that merchandise or contraband (e.g., a hard object which may be jewelry, a stack of paper which may be counterfeit money, or coins) could be in the mail article. Contents of a mail article which feel lumpy, powdery, or spongy may, for example, indicate the presence of narcotics.

4. Information from a source previously shown to be reliable indicates that an identifiable mail article contains merchandise or contraband.

5. The mail article is insured.

6. The mail article is a box, carton, or wrapper other than a thin envelope.

7. The sender or addressee of the mail article is known to be fictitious.

On the other hand, certain facts standing alone generally will not provide ''reasonable cause to suspect'' the presence of merchandise or contraband and therefore do not permit the opening of sealed letter class mail. For example, sealed letter class mail may not be opened merely because:

1. The mail article is registered.

2. The feel of a letter-size envelope suggests that it contains one or a limited number of photographs.

3. The mail article appears to be part of a mass mailing.

4. The mail article is from a particular country, whether or not a known source country of contraband.

5. A detector dog has alerted to the presence of narcotics or explosives somewhere within a tray of mail (the individual articles of mail must then be examined individually).

6. The sender of addressee of the mail article is known to have mailed or received contraband or merchandise in violation of law in the past.

7. The wrapper contains writing or typing similar to that previously found on articles of mail which contained contraband or merchandise in violation of law.

In case where any one of the above facts is present, additional evidence must exist which in conjunction with that fact provides reasonable cause to suspect the presence of merchandise or contraband.

[T.D. 78–102, 43 FR 14454, Apr. 6, 1978, as amended by T.D. 83–212, 48 FR 46771, Oct. 14, 1983]

PART 146—FOREIGN TRADE ZONES

Sec.

Authority: 19 U.S.C. 66, 81a–81u, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624.

Source: T.D. 86–16, 51 FR 5049, Feb. 11, 1986, unless otherwise noted.

§ 146.0 Scope.

Foreign trade zones are established under the Foreign Trade Zones Act and the general regulations and rules of procedure of the Foreign Trade Zones Board contained in 15 CFR part 400. This part 146 of the Customs Regulations governs the admission of merchandise into a foreign trade zone, manipulation, manufacture, or exhibition in a zone; exportation of the merchandise from a zone; and transfer of merchandise from a zone into Customs territory.

Subpart A—General Provisions

§ 146.1 Definitions.

(a) The following words, defined in section 1 of the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a), are given the same meaning when used in this part, unless otherwise stated: ''Board'', ''Grantee'', and ''Zones''.

(b) The following are general definitions for the purpose of this part:

Act. ''Act'' means the Foreign-Trade Zones Act of June 18, 1934, as amended (48 Stat. 998–1003; 19 U.S.C. 81a-u).

Activation. ''Activation'' means approval by the grantee and port director for operations and for the admission and handling of merchandise in zone status.

Admit. ''Admit'' means to bring merchandise into a zone with zone status.

Alteration. ''Alteration'' means a change in the boundaries of an activated zone or subzone; activation of a

separate site of an already-activated zone or subzone with the same operator at the same port; or the relocation of an already-activated site with the same operator.

Conditionally admissible merchandise. ''Conditionally admissible merchandise'' is merchandise which may be imported into the U.S. under certain conditions. Merchandise which is subject to permits or licenses, or which may be reconditioned to bring it into compliance with the laws administered by various Federal agencies, is an example of conditionally admissible merchandise.

Constructive transfer. ''Constructive transfer'' is a legal fiction which permits acceptance of a Customs entry for merchandise in a zone before its physical transfer to the Customs territory.

Customs territory. ''Customs territory'' is the territory of the U.S. in which the general tariff laws of the U.S. apply. ''Customs territory of the United States'' includes only the States, the District of Columbia, and Puerto Rico. (General Note 2, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202)).

Deactivation. ''Deactivation'' means voluntary discontinuation of the activation of an entire zone or subzone by the grantee or operator. Discontinuance of the activated status of only a part of a zone site is an alteration.

Default. ''Default'' means an action or omission that will result in a claim for duties, taxes, charges, or liquidated damages under the Foreign Trade Zone Operator Bond.

Domestic merchandise. ''Domestic merchandise'' is merchandise which has been (i) produced in the U.S. and not exported therefrom, or (ii) previously imported into Customs territory and properly released from Customs custody.

Foreign merchandise. ''Foreign merchandise'' is imported merchandise which has not been properly released from Customs custody in Customs territory.

Fungible merchandise. ''Fungible merchandise'' means merchandise which for commercial purposes is identical and interchangeable in all situations.

Merchandise. ''Merchandise'' includes goods, wares and chattels of every description, except prohibited merchandise. Building materials, production equipment, and supplies for use in operation of a zone are not ''merchandise'' for the purpose of this part.

Operator. ''Operator'' is a corporation, partnership, or person that operates a zone or subzone under the terms of an agreement with the zone grantee. Where used in this part, the term ''operator'' also applies to a ''grantee'' that operates its own zone.

Port Director. For those foreign trade zones located within the geographical limits of a port of entry, the term ''port director'' means the director of that port of entry. For those foreign trade zones located outside the geographical limits of a port of entry, the term ''port director'' means the director of the port of entry geographically nearest to where the foreign trade zone is located.

Prohibited merchandise. ''Prohibited merchandise'' is merchandise the importation of which is prohibited by law on grounds of public policy or morals, or any merchandise which is excluded from a zone by order of the Board. Books urging treason or insurrection against the U.S., obscene pictures, and lottery tickets are examples of prohibited merchandise.

Reactivation. ''Reactivation'' means a resumption of the activated status of an entire area that was previously deactivated without any change in the operator or the area boundaries. If the boundaries are different, the action is an alteration. If the operator is different, it is an activation.

Subzone. ''Subzone'' is a special-purpose zone established as part of a zone project for a limited purpose, that cannot be accommodated within an existing zone. The term ''zone'' also applies to a subzone, unless specified otherwise.

Transfer. ''Transfer'' means to take merchandise with zone status from a zone for consumption, transportation, exportation, warehousing, cartage or lighterage, vessel supplies and equipment, admission to another zone, and like purposes.

Unique identifier. ''Unique identifier'' means the numbers, letters, or combination of numbers and letters that

identify merchandise admitted to a zone with zone status.

User. ''User'' means a person or firm using a zone or subzone for storage, handling, or processing of merchandise.

Zone lot. ''Zone lot'' means a collection of merchandise maintained under an inventory control method based on specific identification of merchandise admitted to a zone by lot.

Zone site. ''Zone site'' means the physical location of a zone or subzone.

Zone status. ''Zone status'' means the status of merchandise admitted to a zone, *i.e.*, nonprivileged foreign, privileged foreign, zone restricted, or domestic.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 89–1, 53 FR 51263, Dec. 21, 1988; T.D. 99–27, 64 FR 13674, Mar. 22, 1999]

§ 146.2 Port director as Board representative.

The appropriate port director shall be in charge of the zone as the representative of the Board.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

§ 146.3 Customs supervision.

(a) *Assignment of Customs officers*. Customs officers will be assigned or detailed to a zone as necessary to maintain appropriate Customs supervision of merchandise and records pertaining thereto in the zone, and to protect the revenue.

(b) *Supervision*. Customs supervision over any zone or transaction provided for in this part will be in accordance with §101.2(c) of this chapter. The port director may direct a Customs officer to supervise any transaction or procedure at a zone. Supervision may be performed through a periodic audit of the operator's records, quantity count of goods in a zone inventory, spot check of selected transactions or procedures, or review of recordkeeping, security, or conditions of storage in a zone.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 98–22, 63 FR 11826, Mar. 11, 1998]

§ 146.4 Operator responsibility and supervision.

(a) *Supervision*. The operator shall supervise all admissions, transfers, removals, recordkeeping, manipulations, manufacturing, destruction, exhibition, physical and procedural security, and conditions of storage in the zone as required by law and regulations. Supervision by the operator shall be that which a prudent manager of a storage, manipulation, or manufacturing facility would be expected to exercise, and may take into account the degree of supervision exercised by the zone user having physical possession of zone merchandise.

(b) *Customs access*. The operator shall permit any Customs officer access to a zone.

(c) *Safekeeping of merchandise and records*. The operator is responsible for safekeeping of merchandise and records concerning merchandise admitted to a zone. The operator, at its liability, may allow the zone importer or owner of the goods to store, safeguard, and otherwise maintain or handle the goods and the inventory records pertaining to them.

(d) *Records maintenance*. The operator shall (1) maintain the inventory control and recordkeeping system in accordance with the provisions of subpart B, (2) retain all records required in this part and defined in §162.1(a) of this chapter, pertaining to zone merchandise for 5 years after the merchandise is removed from the zone, and (3) protect proprietary information in its custody from unauthorized disclosure. Records shall be readily available for Customs review at the zone.

(e) *Merchandise security*. The operator shall maintain the zone and establish procedures adequate to ensure the security of merchandise located in the zone in accordance with applicable Customs security standards and specifications.

(f) *Storage and handling*. The operator shall store and handle merchandise in a zone in a safe and sanitary manner to minimize damage to the merchandise, avoid hazard to persons, and meet local, state, and Federal requirements applicable to a specific kind of goods. All trash and waste will be promptly

removed from a zone. Aisles will be established and maintained, and doors and entrances left unblocked for access by Customs officers and other persons in the performance of their official duties.

(g) *Guard service*. The operator is authorized to provide guards or contract for guard service to safeguard the merchandise and ensure the security of the zone. This authorization does not limit the authority of the port director to assign Customs guards to protect the revenue under section 4 of the Act (19 U.S.C. 81d).

(h) *Miscellaneous responsibilities*. The operator is responsible for complying with requirements for admission, manipulation, manufacture, exhibition, or destruction, shortage, or overage; inventory control and recordkeeping systems, transfer to Customs territory, and other requirements as specified in this part. If the operator elects to transfer merchandise from within the district boundaries (see definition of ''district'' at §112.1) to his zone, he shall receipt for the merchandise at the time he picks it up for transportation to his facility. He becomes liable for the merchandise at that time.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 94–81, 59 FR 51496, Oct. 12, 1994; T.D. 95–77, 60 FR 50020, Sept. 27, 1995; T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

§146.5 [Reserved]

§146.6 Procedure for activation.

(a) *Application*. A zone operator, or where there is no operator, a grantee, shall make written application to the port director to obtain approval of activation of a zone or zone site. The area to be activated may be all or any portion of the zone approved by the Board. The application must include a description of all the zone sites covered by the application, any operation to be conducted therein, and a statement of the general character of the merchandise to be admitted. The port director may also require the operator or grantee to submit fingerprints on form FD 258 or electronically at the time of filing the application. If the operator is an individual, that individual's fingerprints may be required. If the operator or grantee is a business entity, fingerprints of all officers and managing officials may be required.

(b) *Supporting documents*. The application must be accompanied by the following:

(1) [Reserved]

(2) A blueprint of the area approved by the Board to be activated showing area measurements, including all openings and buildings; and all outlets, inlets, and pipelines to any tank for the storage of liquid or similar product, that portion of the blueprint certified to be correct by the operator of the tank;

(3) A gauge table, when appropriate, showing the capacity, in the appropriate unit, of any tank, certified to be correct by the operator of the tank;

(4) A procedures manual describing the inventory control and recordkeeping system that will be used in the zone, certified by the operator or grantee to meet the requirements of subpart B; and

(5) The written concurrence of the grantee, when the operator applies for activation, in the requested zone activation.

(c) *Inquiry by port director*. As a condition of approval of the application, the port director may order an inquiry by a Customs officer into:

(1) The qualifications, character, and experience of an operator and/or grantee and their principal officers; and

(2) The security, suitability, and fitness of the facility to receive merchandise in a zone status.

(d) *Decision of the port director*. The port director shall promptly notify the applicant in writing of his decision to approve or deny the application to activate the zone. If the application is denied, the notification will state the grounds for denial which need not be limited to those listed in §146.82. The decision of the port director will be the final Customs administrative determination in the matter. On approval of the application, a Foreign Trade Zone Operator's Bond shall be executed on Customs Form 301, containing the bond conditions of §113.73 of this chapter.

(e) *Activation*. Upon the port director's approval of the application and acceptance of the executed bond, the

zone or zone site will be considered activated; and merchandise may be admitted to the zone. Execution of the bond by an operator does not lessen the liability of the grantee to comply with the Act and implementing regulations.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 93–18, 58 FR 15773, Mar. 24, 1993; T.D. 95–99, 60 FR 62733, Dec. 7, 1995; T.D. 99–27, 64 FR 13676, Mar. 22, 1999; T.D. 01–14, 66 FR 8767, Feb. 2, 2001]

§ 146.7 Zone changes.

(a) *Alteration of an activated area.* An operator shall make written application to the port director for approval of an alteration of an activated area, including an alteration resulting from a zone boundary modification. The application must be accompanied by the supporting document requirements specified in §146.6, as applicable. The port director may review the security, suitability, and fitness of the area, and shall reply to the applicant as provided for in §146.6.

(b) *Deactivation or reactivation.* A grantee, or an operator with the concurrence of a grantee, shall make written application to the port director for deactivation of a zone site, indicating by layout or blueprint the exact site to be deactivated. The port director shall not approve the application unless all merchandise in the site in zone status (other than domestic status) has been removed at the risk and expense of the operator. The port director may require an accounting of all merchandise in a zone as a condition of approving the deactivation. A zone may be reactivated using the above procedure if a sufficient bond is on file under §146.6(d).

(c) *Suspension of activated site.* When approval of an activated status has been suspended through the procedure in subpart G, the port director may require all goods in that area in zone status (other than domestic status) to be transferred to another zone, a bonded warehouse, or other location where they may lawfully be stored, if the port director considers that transfer advisable to protect the revenue or administer any Federal law or regulation.

(d) *New bond.* The port director may require an operator to furnish, on 10 days notice, a new Foreign Trade Zone Operator's Bond on Customs Form 301. If the operator fails to furnish the new bond, no more merchandise will be received in the zone in zone status. Merchandise in zone status (other than domestic status) will be removed at the risk and expense of the operator. A new bond may be required if (1) the activated zone area is substantially altered; (2) the character of merchandise admitted to the zone or operations performed in the zone are substantially changed; (3) the existing bond lacks good and sufficient surety; or (4) for any other reason that substantially affects the liability of the operator under the bond. Although a new bond may not be required, the operator shall obtain the consent of the surety to any material alteration in the boundaries of the zone.

(e) *New operator.* A grantee of an activated zone site shall make written application to the port director for approval of a new operator, submitting with the application a certification by the new operator that the inventory control and recordkeeping system meets the requirements of subpart B, and a copy of the system procedures manual if different from the previous operator's manual. The port director may order an inquiry into the qualifications, character, and experience of the operator and its principal officers.

(f) The bond in §146.6 shall be submitted by the operator before the operating agreement may become effective in respect to merchandise in zone status. The port director shall promptly notify the grantee, in writing, of the approval or disapproval of the application.

(g) *List of officers, employees, and other persons.* The port director may make a written demand upon the operator to submit, within 30 days after the date of the demand, a written list of the names, addresses, social security numbers, and dates and places of birth of officers and persons having a direct or indirect financial interest in the operator, and of persons employed in the carriage, receipt or delivery of merchandise in zone status, whether employed by the zone operator or a zone user. If a list was previously furnished, the port director may make a written

demand for the same information in respect to new persons employed in the carriage, receipt, or delivery of zone status merchandise within 10 days after such employment. The list need not include employees of common or contract carriers transporting goods to or from the zone.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 95–99, 60 FR 62733, Dec. 7, 1995]

§ 146.8 Seals, authority of operator to break and affix.

The port director may authorize an operator to break a Customs in-bond seal affixed under § 18.4 of this chapter, or under any Customs order or directive, on any vehicle or intermodal container containing merchandise approved for admission to the zone upon its arrival at the zone; or to affix a Customs in-bond seal to any vehicle or intermodal container of merchandise for which an entry, withdrawal, or other approval document has been obtained for movement in-bond from the zone. The authorized affixing or breaking of that seal will be considered to have been done under Customs supervision. The operator shall report to the port director, upon arrival of the vehicle or container at the zone, any seal found to be broken, missing, or improperly affixed, and hold the vehicle or container and its contents intact pending instructions from the port director. If the operator does not obtain the written concurrence of the carrier as to the condition of the seal or delivering conveyance, the port director shall deem the seal or delivering conveyance to be intact.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986; 51 FR 11012, Apr. 1, 1986]

§ 146.9 Permission of operator.

An application for permission to admit merchandise into a zone, or to manipulate, manufacture, exhibit, or destroy merchandise in a zone must include the written concurrence of the operator, except where the regulations of this part provide for the making of application by the operator itself or where the operator files a separate specific or blanket application. The written concurrence of the operator in the removal of merchandise from a zone is not required because the merchandise is released by the port director to the operator for delivery from the zone, as provided in § 146.71 (a).

§ 146.10 Authority to examine merchandise.

The port director may cause any merchandise to be examined before or at the time of admission to a zone, or at any time thereafter, if the examination is considered necessary to facilitate the proper administration of any law, regulation, or instruction which Customs is authorized to enforce.

§ 146.11 Transportation of merchandise to a zone.

(a) *From outside Customs territory.* Merchandise may be admitted directly to a zone from any place outside Customs territory.

(b) *Through Customs territory, foreign merchandise.* Foreign merchandise destined to a zone and transported in-bond through Customs territory will be subject to the laws and regulations applicable to other merchandise transported in-bond between two places in Customs territory.

(c) *From Customs territory, domestic merchandise.* Domestic merchandise may be admitted to a zone from Customs territory by any means of transportation which will not interfere with the orderly conduct of business in the zone.

(d) *From a bonded warehouse.* Merchandise may be withdrawn from a bonded warehouse under the procedures in § 144.37(g) of this chapter and transferred to a zone for admission in zone-restricted status.

§ 146.12 Use of zone by carrier.

(a) *Primary use; lading and unlading.* The water area docking facilities, and any lading and unlading stations of a zone are intended primarily for the unlading of merchandise into the zone or the lading of merchandise for removal from the zone. Their use for other purposes may be terminated by Customs if found to endanger the revenue, or by the Board if found to impede the primary use of the zone.

(b) *Carrier in zone not exempt from law or regulations.* Nothing in the Act or the regulations in this part shall be

construed as excepting any carrier entering, remaining in, or leaving a zone from the application of any other law or regulation.

§ 146.13 Customs forms and procedures.

Where a Customs form or other document is required in this part, the number of copies of the form or document required to be presented and their manner of distribution and processing shall be determined by the port director, except as otherwise specified in this part.

§ 146.14 Retail trade within a zone.

Retail trade is prohibited within a zone except as provided in 19 U.S.C. 81o(d). See also the regulations of the Board as contained in 15 CFR part 400.

Subpart B—Inventory Control and Recordkeeping System

§ 146.21 General requirements.

(a) *Systems capability*. The operator shall maintain either manual or automated inventory control and recordkeeping systems or combination manual and automated systems capable of:

(1) Accounting for all merchandise, including domestic status merchandise, temporarily deposited, admitted, granted a zone status and/or status change, stored, exhibited, manipulated, manufactured, destroyed, transferred, and/or removed from a zone;

(2) Producing accurate and timely reports and documents as required by this part;

(3) Identifying shortages and overages of merchandise in a zone in sufficient detail to determine the quantity, description, tariff classification, zone status, and value of the missing or excess merchandise;

(4) Providing all the information necessary to make entry for merchandise being transferred to the Customs territory;

(5) Providing an audit trail to Customs forms from admission through manipulation, manufacture, destruction or transfer of merchandise from a zone either by zone lot or Customs authorized inventory method.

(b) *Procedures manual*. (1) The operator shall provide the port director with an English language copy of its written inventory control and recordkeeping systems procedures manual in accordance with the requirements of this part.

(2) The operator shall keep current its procedures manual and shall submit to the port director any change at the time of its implementation.

(3) The operator may authorize a zone user to maintain its individual inventory control and recordkeeping system and procedures manual. The operator shall furnish a copy of the zone user's procedures manual, including any subsequent changes, to the port director. However, the operator will remain responsible to Customs and liable under its bond for supervision, defects in, or failures of a system.

(4) The operator's procedures manual and subsequent changes will be furnished to the port director for information purposes only. Customs receipt of a manual does not indicate approval or rejection of a system.

(c) *Liability of operator*. Upon zone activation approval the operator remains liable for complying with all inventory control and recordkeeping system requirements set forth in this part.

§ 146.22 Admission of merchandise to a zone.

(a) *Identification*. All merchandise will be recorded in a receiving report or document using a zone lot number or unique identifier. All merchandise, except domestic status merchandise for which no permit for admission is required under §146.43, will be traceable to a Customs Form 214 and accompanying documentation.

(b) *Reconciliation*. Quantities received will be reconciled to a receiving report or document such as an invoice with any discrepancy reported to the port director as provided in §146.37.

(c) *Incomplete documentation*. Merchandise received without complete Customs documentation or which is unacceptable to the inventory control and recordkeeping system will be recorded in a suspense account or record until documentation is complete or the system is capable of accepting the information, at which time it will be formally admitted to the zone under §146.32 or 146.40. The receiving report or

document will provide sufficient information to identify the merchandise and distinguish it from other merchandise. The suspense account or record will be completely documented for Customs review to explain the differences noted and corrections made.

(d) *Recordation.* Merchandise received will be accurately recorded in the inventory system records from the receiving report or document using the zone lot number or unique identifier for traceability. The inventory record will state the quantity and date admitted, cost or value where applicable, zone status, and description of the merchandise, including any part or stock number.

(e) *Harbor maintenance fee.* When imported cargo is unloaded from a commercial vessel at a U.S. port and admitted into a foreign trade zone, the applicant for admission of that cargo into the zone may be subject to the harbor maintenance fee as set forth in §24.24 of this chapter.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 87–44, 52 FR 10211, Mar. 30, 1987; 52 FR 10970, Apr. 6, 1987]

§146.23 Accountability for merchandise in a zone.

(a) *Identification of merchandise*—(1) *General.* A zone lot number or unique identifier will be used to identify and trace merchandise.

(2) *Fungible merchandise.* Fungible merchandise may be identified by an inventory method authorized by Customs, which is consistently applied, such as First-In-First-Out (FIFO) and using a unique identifier.

(b) *Inventory records.* The inventory records will specify by zone lot number or unique identifier:

(1) Location of merchandise;

(2) Zone status;

(3) Cost or value, unless operator's or user's financial records maintain cost or value and the records are made available for Customs review;

(4) Beginning balance, cumulative receipts and removals, adjustments, and current balance on hand by date and quantity;

(5) Destruction of merchandise; and

(6) Scrap, waste, and by-products.

(c) *Physical inventory.* The operator shall take at least an annual physical inventory of all merchandise in the zone (unless continuous cycle counts are taken as part of an ongoing inventory control program) with prior notification of the date(s) given to Customs for any supervision of the inventory deemed necessary. The operator shall notify the port director of any discrepancies in accordance with §146.53.

§146.24 Transfer of merchandise from a zone.

(a) *Accountability.* (1) All zone status merchandise transferred from a zone will be accurately recorded within the inventory control and recordkeeping system.

(2) The inventory control and recordkeeping system for merchandise transfers must have the capability to trace all transfers back to a zone admission under a Customs authorized inventory method.

(b) *Information.* The inventory control and recordkeeping system must be capable of providing all information necessary to make entry for transfer of merchandise from the zone.

§146.25 Annual reconciliation.

(a) *Report.* The operator shall prepare a reconciliation report within 90 days after the end of the zone/subzone year unless the port director authorizes an extension for reasonable cause. The operator shall retain that annual reconciliation report for a spot check or audit by Customs, and need not furnish it to Customs unless requested. There is no form specified for the preparation of the report.

(b) *Information required.* The report must contain a description of merchandise for each zone lot or unique identifer, zone status, quantity on hand at the beginning of the year, cumulative receipts and transfers (by unit), quantity on hand at the end of the year, and cumulative positive and negative adjustments (by unit) made during the year.

(c) *Certification.* The operator shall submit to the port director within 10 working days after the annual reconciliation report, a letter signed by the operator certifying that the annual reconciliation has been prepared, is available for Customs review, and is accurate. The certification letter must

contain the name and street address of the operator, where the required records are available for Customs review; and the name, title, and telephone number of the person having custody of the records. Reporting of shortages and overages based on the annual reconciliation will be made in accordance with §146.53. These reports must accompany the certification letter.

§ 146.26 System review.

The operator shall perform an annual internal review of the inventory control and recordkeeping system and shall report to the port director any deficiency discovered and corrective action taken, to ensure that the system meets the requirements of this part.

Subpart C—Admission of Merchandise to a Zone

§ 146.31 Admissibility of merchandise into a zone.

Merchandise of every description may be admitted into a zone unless prohibited by law. A distinction is made between prohibited and conditionally admissible merchandise.

(a) *Prohibited merchandise.* Port directors shall not admit prohibited merchandise. If there is a question as to whether the merchandise may be prohibited, port directors may permit the temporary deposit of the merchandise in a zone pending a final determination of its status. Any prohibited merchandise which is found within a zone will be disposed of in the manner provided for in the laws and regulations applicable to that merchandise.

(b) *Conditionally admissible merchandise.* The admission of this merchandise into a zone is subject to the regulations of the Federal agency concerned.

§ 146.32 Application and permit for admission of merchandise.

(a)(1) *Application on CBP Form 214 and permit.* Merchandise may be admitted into a zone only upon application on a uniquely and sequentially numbered CBP Form 214 (''Application for Foreign Trade Zone Admission and/or Status Designation'') and the issuance of a permit by the port director. Exceptions to the CBP Form 214 requirement are for merchandise temporarily deposited (§146.33), transiting merchandise (§146.34), or domestic merchandise admitted without permit (§146.43). The applicant for admission shall present the application to the port director and shall include a statistical copy on CBP Form 214–A for transmittal to the Bureau of Census, unless the applicant has made arrangements for the direct transmittal of statistical information to that agency.

(2) *CBP Form 214 and Importer Security Filing submitted via a single electronic transmission.* If an Importer Security Filing is filed pursuant to part 149 of this chapter via the same electronic transmission as CBP Form 214, the filer is only required to provide the following fields once to be used for Importer Security Filing and CBP Form 214 purposes:

(i) Country of origin; and

(ii) Commodity HTSUS number if this number is provided at the 10-digit level.

(b) *Supporting documents*—(1) *Commercial documentation.* The applicant shall submit with the application two copies of an examination invoice meeting the requirements of subpart F, part 141, of this chapter, for any merchandise, other than that excepted in paragraph (a) of this section, to be admitted to a zone. The notation of tariff classification and value required by §141.90 of this chapter need not be made, unless the merchandise is to be admitted in privileged status.

(2) *Evidence of right to make entry.* The applicant for admission shall submit with the application a document similar to that which would be required as evidence of the right to make entry for merchandise in Customs territory under §141.11 or §141.12 of this chapter.

(3) *Release order.* Merchandise will not be authorized for delivery by Customs to a zone until a release order has been executed by the carrier which brought the merchandise to the port, unless the merchandise is released back to that same carrier for delivery to the zone (see §141.11 of this chapter). When a release order is required, it will be made on any of the forms specified in §141.111 of this chapter, or by the following statement attached to CBP Form 214:

Authority is hereby given to release the merchandise described in this application to _____

_____

Name of Carrier _____

_____

Signature and title of carrier representative _____

_____

A blanket or qualified release order may be authorized for the transfer of merchandise to a zone as provided for in §141.111 of this chapter.

(4) *Application to unlade.* For merchandise unladen in the zone directly from the importing carrier, the application on CBP Form 214 will be supported by an application to unlade on Customs Form 3171.

(5) *Other documentation.* The port director may require additional information or documentation as needed to conduct an examination of merchandise under Customs selective entry processing criteria, or to determine whether the merchandise is admissible to the zone.

(c) *Conditions for issuance of a permit.* The port director will issue a permit for admission of merchandise to a zone when:

(1) The application is properly executed and includes the zone status desired for the merchandise, as provided in subpart D of this part;

(2) The operator's approval appears either on the application or in a separate specific or blanket approval;

(3) The merchandise is retained for examination at the place of unlading, the zone, or other location designated by the port director, except for merchandise for direct delivery to a zone under §§146.39 and 146.40. The merchandise may be examined as if it were to be entered for consumption or warehouse; and

(4) All requirements have been fulfilled.

(d) *Blanket application for admission of merchandise.* Merchandise may be admitted to a zone under blanket application upon presentation of a CBP Form 214 covering more than one shipment of merchandise. A blanket application for admission is for:

(1) Shipments which arrive under one transportation entry as described in §141.55 of this chapter, or

(2) Shipments which are destined to the same zone applicant on a single business day, in which case the applicant shall:

(i) Present the examination invoices required by paragraph (b) of this section to the port director before the merchadise is admitted into the zone,

(ii) Have been approved for the direct transmittal of statistical trade information to the Bureau of Census under an agreement with that agency; and

(iii) Have examination invoices containing a unique identifier to trace the shipment to the manifest of the carrier that brought the merchandise to the port having jurisdiction over the zone, as well as to the inventory control and recordkeeping system of the operator as described in subpart B.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by CBP Dec. 08–46, 73 FR 71782, Nov. 25, 2008]

§146.33 Temporary deposit for manipulation.

Imported merchandise for which an entry has been made and which has remained in continuous Customs custody may be brought temporarily to a zone for manipulation and return to Customs territory under Customs supervision, pursuant to section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562), and §19.11 of this chapter. That merchandise will not be considered within the purview of the Act but will be treated as though remaining in Customs territory. No zone form or procedure will be considered applicable, but the merchandise will remain subject to any requirements necessary for the enforcement of section 562 and other Customs laws while in the zone.

§146.34 Merchandise transiting a zone.

The following procedure is applicable when merchandise is to be unladen from any carrier in the zone for immediate transfer to Customs territory, or if it is to be transferred from Customs territory through the zone for immediate lading on any carrier in the zone:

(a) *Application.* Application for permission to lade or unlade will be filed with the port director on Customs Form 3171 prior to transfer of the merchandise into the zone.

(b) *Permit.* The port director shall permit the transfer unless he has reason to believe that the merchandise will not be moved promptly from the zone or will be made the subject of an application for admission in accordance with §146.32(a).

(c) *Treatment of merchandise.* Upon the issuance of a permit to lade, or unlade, the merchandise will be treated as though the lading or unlading were in the Customs territory.

(d) *Delay in zone transit.* Merchandise delayed while transiting a zone must be made the subject of an application for admission in accordance with §146.32, or it must be removed from the zone.

§146.35 Temporary deposit in a zone; incomplete documentation.

(a) *General.* Temporary deposit of merchandise in a zone is allowed in circumstances where the information or documentation necessary to complete the Customs Form 214 is not available at the time of arrival of merchandise within the jurisdiction of the port. The merchandise will be subject to examination as provided in §146.36.

(b) *Application.* An application for temporary deposit will be made to the port director on a properly signed and uniquely numbered Customs Form 214, annotated clearly ''Temporary Deposit in a Zone''.

(c) *Conditions.* Merchandise temporarily deposited under the provisions of this section has no zone status and is considered to be in the Customs territory. It will:

(1) Be physically segregated from all other zone merchandise;

(2) Be held under the bond and at the risk of the operator; and

(3) Be manipulated only to the extent necessary to obtain sufficient information about the merchandise to file the appropriate admission or entry documentation.

(d) *Approval.* The port director shall approve the application for temporary deposit of merchandise in a zone if the provisions of paragraphs (b) and (c) of this section are met.

(e) *Submission of CBP Form 214.* A complete and accurate CBP Form 214 must be submitted, as provided in §146.32, within 15 calendar days with no exceptions granted by the port director, or the merchandise will be placed in general order.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by CBP Dec. 10–29, 75 FR 52452, Aug. 26, 2010]

§146.36 Examination of merchandise.

Except for direct delivery procedures provided for in §146.39, all merchandise covered by a Customs Form 214 may be retained for Customs examination at the place of unlading, the zone, or another location, as designated by the port director. The port director may authorize release of the merchandise without examination, as provided in §151.2 of this chapter. If a physical examination is conducted, the Customs officer shall note the results of the examination on the examination invoices.

§146.37 Operator admission responsibilities.

(a) *Maintenance of admission documentation.* The operator shall maintain either:

(1) *Lot file.* The operator shall open and maintain a lot file containing a copy of the Customs Form 214, the examination invoice, and all other documentation necessary to account for the merchandise covered by each Customs Form 214. The lot file will be maintained in sequential order by using the unique number assigned to each Customs Form 214 as the file reference number; or

(2) *Authorized inventory method.* Where a Customs authorized inventory method other than a lot system (specific identification of merchandise) is used, e.g., First-In-First-Out (FIFO), no lot file is required but the operator shall maintain a file of all Customs Form's 214 in sequential order.

(b) *Examination invoice.* The operator shall give a copy of the examination invoice to the person making entry to transfer the merchandise from the zone upon request of that person or the port director.

(c) *Liability for merchandise.* The operator will be held liable under its bond for the receipt of merchandise admitted in the quantity and condition as

described on the Customs Form 214, except as modified by a discrepancy report:

(1) Signed jointly by the operator and carrier on the Customs Form 214 or other approved form within 15 days after admission of the merchandise, and reported to the port director within 2 working days thereafter; or

(2) Submitted on Customs Form 5931 under the provisions of subpart A, part 158, of this chapter within 20 days after admission of the merchandise. The operator may file a Customs Form 5931 on behalf of the person who applied for admission of merchandise to the zone.

(d) *Supervision of merchandise.* The port director may authorize the receipt of zone status merchandise at a zone without physical supervision by a Customs officer (see §146.3). In that case, the operator shall supervise the receipt of merchandise into the zone, report the receipt and condition of the merchandise, and mark packages with the unique Customs Form 214 number so that the merchandise can be traced to a particular Customs Form 214. Packages that are accounted for under a Customs-authorized inventory method other than specific identification, need not be marked with a unique Customs Form 214 number but must be adequately identified so Customs can conduct an inventory count. The operator shall submit the Custom Form 214 to Customs at the location specified by the port director.

§146.38 Certificate of arrival of merchandise.

Whenever a certificate prepared by Customs as to the arrival of any merchandise in a zone is required by a Federal agency, the port director shall issue the document certifying only that authorization to deliver the merchandise to a zone has been made. The operator shall issue a certificate of arrival of merchandise at a zone.

§146.39 Direct delivery procedures.

(a) *General.* This procedure is for delivery of merchandise to a zone without prior application and approval on Customs Form 214.

(b) *Application.* An operator, meeting the criteria of paragraph (c) of this section, shall file a written application with the port director at least 30 days before the special procedure is to become effective. The application will describe the merchandise to be handled or processed, and the kind of operation which it will undergo in the zone.

(c) *Criteria.* The port director shall approve the application if the following criteria are met:

(1) The merchandise is not restricted or of a type which requires Customs examination or documentation review before or upon its arrival at the zone;

(2) The merchandise to be admitted to the zone, and the operations to be conducted therein, are known well in advance, are predictable and stable over the long term, and are relatively fixed in variety by the nature of the business conducted at the site; and

(3) The operator is the owner or purchaser of the goods.

(d) *Application decision.* The port director shall promptly notify the operator, in writing, of Customs decision on the application. If the application is denied, the port director shall specify the reason for denial in his reply. The port director's decision will constitute the final Customs administrative determination concerning the application.

(e) *Revocation of approval.* The port director may revoke the approval given under this section if it becomes necessary for Customs routinely to examine the merchandise or documentation before or upon admission to the zone.

§146.40 Operator responsibilities for direct delivery.

(a) *Arrival of conveyance.* Upon arrival at a subzone or zone site of a conveyance containing foreign merchandise, the operator shall:

(1) Collect in-bond or cartage documentation from the carrier;

(2) Check the condition of any seal affixed to the conveyance, and if broken, missing or improperly affixed, notify the port director and receive instructions before unloading the merchandise;

(3) Check each incoming in-bond and cartage shipment to determine if the manifested quantity or the quantity on the cartage document agrees with the quantity actually received;

(4) Sign and date the in-bond or cartage documentation to accept responsibility for the merchandise under the Foreign Trade Zone Operator's Bond and to relieve the carrier of responsibility.

(5) Forward the in-bond or cartage documentation so as to reach the port director within 2 working days after the date of arrival of the conveyance at the subzone or zone site;

(6) Maintain a file of open in-bond manifests in chronological order of date of conveyance arrival to identify shipments that have arrived but the entire contents of which have not been admitted to the subzone or zone site; and

(7) Notify the port director, by annotation on the Customs Form 214, when the entire contents of a shipment have been admitted.

(b) *Transportation by operator.* If merchandise is transported to a subzone or zone site by the foreign trade zone operator from a location in the district (see definition of ''district'' at §112.1) in which the subzone or zone site is situated, the merchandise is deemed admitted at the time the foreign trade zone operator picks it up. At the time of pick-up, the operator is responsible for:

(1) Receipting for the merchandise and recording on the appropriate document any discrepancies regarding quantity, condition or the status of the seals;

(2) Transporting the merchandise to the zone or subzone; and

(3) Ensuring that the zone records reflect that the merchandise is received in the zone.

(c) *Admission of merchandise: alternative procedures*—(1) *Cumulative Customs Form 214.* If the operator has an agreement with the Bureau of Census for direct transmittal of statistical information, he shall submit to the port director each business day a properly signed and uniquely numbered Customs Form 214 listing all merchandise except for domestic status merchandise admitted under §146.43 recorded into the inventory control and recordkeeping system during the previous business day. The Customs Form 214 must contain a list of all in-bond (I.T.) numbers or the unique number of any cartage document, as well as the number of invoices for each I.T. or cartage document, pertaining to merchandise which has been entered into the system.

(2) *Individual Customs Form 214.* If a cumulative Customs Form 214 is not submitted as provided in paragraph (b)(1) of this section, the operator shall file with the port director each business day an individual Customs Form 214 and 214–A covering each shipment recorded into the inventory control and recordkeeping system during the previous business day. The forms shall be submitted within 10 days after the end of the month in which the merchandise was received in the zone, and no extension beyond that time will be approved by the port director.

(3) *General order.* Merchandise not admitted into a subzone or zone site as provided in this section within 15 calendar days after its arrival there shall be disposed of in accordance with the applicable procedures in §4.37 or §122.50 or §123.10 of this chapter.

(4) *Inventory control and recordkeeping system.* The operator shall establish and maintain a continuing input quality control program to ensure that information concerning merchandise in admission documents, verified or corrected by counts and checks, is accurately recorded in the inventory control and recordkeeping system. Quantities recorded in the system, after allowance by the port director for any discrepancies, will be the quantities of merchandise for which the operator shall be held liable under its bond for admission to the subzone or zone site. A discrepancy involving a within-case shortage (or overage) need not be reported on Customs Form 5931, if the operator is able to report that information in another manner so that the port director can determine whether there is liability for the discrepancy under the bond of any party to the importation.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 94–81, 59 FR 51497, Oct. 12, 1994; T.D. 95–77, 60 FR 50020, Sept. 27, 1995; T.D. 98–74, 64 FR 6801, Feb. 11, 1999]

Subpart D—Status of Merchandise in a Zone

§ 146.41 Privileged foreign status.

(a) *General.* Foreign merchandise which has not been manipulated or manufactured so as to effect a change in tariff classification will be given status as privileged foreign merchandise on proper application to the port director.

(b) *Application.* Each application for this status will be made on Customs Form 214 at the time of filing the application for admission of the merchandise into a zone or at any time thereafter before the merchandise has been manipulated or manufactured in the zone in a manner which has effected a change in tariff classification.

(c) *Supporting documentation.* Each applicant for this status shall submit to the port director, with the application, an invoice notated as provided for in § 141.90 of this chapter.

(d) *Determination of duties and taxes.* Upon receipt of the application and accompanying invoice, the port director may examine the merchandise to determine whether to approve the application. The merchandise will be subject to classification and valuation as provided in § 146.65.

(e) *Status as privileged foreign merchandise binding.* A status as privileged foreign merchandise cannot be abandoned and remains applicable to the merchandise even if changed in form by manipulation or manufacture, except in the case of recoverable waste (see § 146.42(b)), as long as the merchandise remains within the purview of the Act. However, privileged foreign merchandise may be exported or withdrawn for supplies, equipment, or repair material of vessels or aircraft without the payment of taxes and duties, in accordance with §§ 146.67 and 146.69.

§ 146.42 Nonprivileged foreign status.

All of the following will have the status of nonprivileged foreign merchandise:

(a) *Foreign merchandise.* Foreign merchandise properly in a zone which does not have the status of privileged foreign merchandise or of zone-restricted merchandise;

(b) *Waste.* Waste recovered from any manipulation or manufacture of privileged foreign merchandise in a zone; and

(c) *Certain domestic merchandise.* Domestic merchandise in a zone, which by reason of noncompliance with the regulations in this part has lost its identity as domestic merchandise, will be treated as foreign merchandise. Any domestic merchandise will be considered to have lost its identity if the port director determines that it cannot be identified positively by a Customs officer as domestic merchandise on the basis of an examination of the articles or consideration of any proof that may be submitted promptly by a party-in-interest.

§ 146.43 Domestic status.

(a) *General.* Domestic status may be granted to merchandise:

(1) The growth, product, or manufacture of the U.S. on which all internal-revenue taxes, if applicable, have been paid;

(2) Previously imported and on which duty and tax has been paid; or

(3) Previously entered free of duty and tax.

(b) *Application.* No application or permit is required for the admission of domestic status merchandise, including domestic packing and repair material, to a zone, except upon order of the Commissioner of Customs. No application or permit is required for the manipulation, manufacture, exhibition, destruction, or transfer to Customs territory of domestic status merchandise, including packing and repair materials, except: (1) When it is mixed or combined with merchandise in another zone status, or (2) upon order of the Commissioner of Customs. When the Commissioner orders a permit to be required for domestic status merchandise, he may also order the procedures, forms, and terms under which the permit will be received and processed.

(c) *Return of merchandise of Customs territory.* Upon compliance with the provisions of this section, any of the merchandise specified in paragraph (a) of this section, may subsequently be returned to Customs territory free of quotas, duty, or tax.

§ 146.44 Zone-restricted status.

(a) *General.* Merchandise taken into a zone for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage will be given zone-restricted status on proper application. That status may be requested at any time the merchandise is located in a zone, but cannot be abandoned once granted. Merchandise in zone-restricted status may not be removed to Customs territory for domestic consumption except where the Board determines the return to be in the public interest.

(b) *Application.* Application for zone-restricted status will be made on Customs Form 214.

(c) *Merchandise considered exported—*(1) *For Customs purposes.* If the applicant desires a zone-restricted status in order that the merchandise may be considered exported for the purpose of any Customs law, all pertinent Customs requirements relating to an actual exportation shall be complied with as though the admission of the merchandise into zone constituted a lading on an exporting carrier at a port of final exit from the U.S. Any declaration or form required for actual exportation will be modified to show the merchandise has been deposited in a zone in lieu of actual exportation, and a copy of the approved Customs Form 214 may be accepted in lieu of any proof of shipment required in cases of actual exportation.

(2) *For other purposes.* If the merchandise is to be considered exported for the purpose of any Federal law other than the Customs laws, the port director shall be satisfied that all pertinent laws, regulations, and rules administered by the Federal agency concerned have been complied with before the Customs Form 214 is approved.

(d) *Merchandise entered for warehousing transferred to a zone.* Merchandise entered for warehousing and transferred to a zone, other than temporarily for manipulation and return to Customs territory as provided for in §146.33, will have the status of zone-restricted merchandise when admitted into the zone. The application on Customs Form 214 will state that zone-restricted status is desired for the merchandise.

Subpart E—Handling of Merchandise in a Zone

§ 146.51 Customs control of merchandise.

No merchandise, other than domestic status merchandise provided for in §146.43, will be manipulated, manufactured, exhibited, destroyed, or transferred from a zone in any manner or for any purpose, except under Customs permit as provided for in this part. The port director may require segregation of any zone status merchandise whenever necessary to protect the revenue or properly administer U.S. laws or regulations.

§ 146.52 Manipulation, manufacture, exhibition or destruction; Customs Form 216.

(a) *Application.* Prior to any action, the operator shall file with the port director an application (or blanket application) on Customs Form 216 for permission to manipulate, manufacture, exhibit, or destroy merchandise in a zone. After Customs approves the application (or blanket application), the operator will retain in his recordkeeping system the approved application.

(b) *Approval.* (1) The port director shall approve the application unless (i) the proposed operation would be in violation of law or regulation; (ii) the place designated for its performance is not suitable for preventing confusion of the identity or status of the merchandise, or for safeguarding the revenue; (iii) the port director is not satisfied that the destruction will be effective; or (iv) the Executive Secretary of the Board has not granted approval of a new manufacturing operation.

(2) The port director is authorized to approve a blanket application for a period of up to one year for a continuous or repetitive operation. The port director may disapprove or revoke approval of any application, or may require the operator to file an individual application.

(c) *Appeal of adverse ruling.* If an approved application is subsequently rescinded by the port director for any

reason, the applicant or grantee may appeal the adverse ruling pursuant to the hearing provisions of §146.82(b)(2). The rescission shall remain in effect pending the decision on the appeal.

(d) *Report results*—(1) *Separate application*. The operator shall report on Customs Form 216 the results of an approved manipulation, manufacture, exhibition, or certification of destruction (other than by a blanket application), unless the port director chooses physically to supervise the operation.

(2) *Blanket application*. The operator shall maintain a record of an approved manipulation, manufacture, exhibition, or certification of destruction, in its inventory control and recordkeeping system so as to provide an accounting and audit trail of the merchandise through the approved operation.

(e) *Destruction*. The port director may permit destruction to be done outside the zone, in whole or in part and at the risk and expense of the applicant, and under such conditions as are necessary to protect the revenue, if proper destruction cannot be accomplished within the zone. Any residue from the destruction within a zone, which is determined to be without commercial value, may be removed to Customs territory for disposal.

§146.53 Shortages and overages.

(a) *Report required*. The operator shall report, in writing, to the port director upon identification, as such, of any:

(1) Theft or suspected theft of merchandise;

(2) Merchandise not properly admitted to the zone; or

(3) Shortage of one percent (1%) or more of the quantity of merchandise in a lot or covered by a unique identifier, if the missing merchandise would have been subject to duties and taxes of $100 or more upon entry into the Customs territory. The operator shall record upon identification all shortages and overages, whether or not they are required to be reported to the port director at that time, in its inventory control and recordkeeping system. The operator shall record all shortages and overages as required in the annual reconciliation report under §146.25.

(b) *Certain domestic merchandise*. Except in a case of theft or suspected theft, the operator need not file a report with the port director, or note in the annual reconciliation report, any shortage or overage concerning domestic status merchandise for which no permit is required.

(c) *Shortage*—(1) *Operator responsibility*. The operator is responsible under its Foreign Trade Zone Operator's Bond for any loss of merchandise or for any merchandise which cannot be located or otherwise accounted for (except domestic status merchandise for which no permit is required), unless the port director is satisfied that the merchandise was:

(i) Never received in the zone;

(ii) Removed from the zone under proper permit;

(iii) Not removed from the zone; or

(iv) Lost or destroyed in the zone through fire or other casualty, evaporation, spillage, leakage, absorption, or similar cause, and did not enter the commerce of the U.S.

(2) *Liability for duty and taxes*. Upon demand of the port director, the operator shall make entry for and pay duties and taxes applicable to merchandise which is missing or otherwise not accounted for.

(d) *Overage*. The person with the right to make entry shall file, within 5 days after identification of an overage, an application for admission of the merchandise to the zone on Customs Form 214 or file a Customs entry for the merchandise. If a Customs Form 214 or a Customs entry is not timely filed, and the port director has not granted an extension of the time provided, the merchandise shall be sent to general order.

(e) *Damage*. The liability of the operator under its Foreign Trade Zone Operator's Bond may be adjusted for the loss of value resulting from damage to merchandise occurring in the zone. The operator shall segregate, mark, and otherwise secure damaged merchandise to preserve its identity as damaged merchandise.

Subpart F—Transfer of Merchandise From a Zone

§ 146.61 Constructive transfer to Customs territory.

The port director shall accept receipt of any entry in proper form provided under this subpart, and the merchandise described therein will be considered to have been constructively transferred to Customs territory at that time, even though the merchandise remains physically in the zone. If the entry is thereafter rejected or cancelled, the merchandise will be considered at that time to be constructively transferred back into the zone in its previous zone status.

§ 146.62 Entry.

(a) *General.* Entry for foreign merchandise that is to be transferred from a zone, or removed from a zone for exportation or transportation to another port, for consumption or warehouse, will be made by filing an in-bond application pursuant to part 18 of this chapter, CBP Form 3461, CBP Form 7501, or other applicable CBP forms. If entry is made on CBP Form 3461, the person making entry shall file an entry summary for all the merchandise covered by the CBP Form 3461 within 10 business days after the time of entry.

(b) *Documentation.* (1) Customs Form 7501, or its electronic equivalent, or the entry summary will be accompanied by the entry documentation, including invoices as provided in parts 141 and 142 of this chapter. The person with the right to make entry shall submit any other supporting documents required by law or regulations that relate to the transferred merchandise and provide the information necessary to support the admissibility, the declared values, quantity, and classification of the merchandise. If the declared values are predicated on estimates or estimated costs, that information must be clearly stated in writing at the time an entry or entry summary is filed.

(2) An in-bond application for merchandise to be transferred to another port or zone or for exportation must provide that the merchandise covered is foreign trade zone merchandise; give the number of the zone from which the merchandise was transferred; state the status of the merchandise; and, if applicable, bear the notation or endorsement provided for in §146.64(c), §146.66(b), or §146.70(c).

(c) *Waiver of supporting documents.* The port director may waive presentation of an invoice and supporting documentation required in paragraph (b) of this section with the entry or entry summary, if satisfied that presentation of those documents would be impractical, and the person making entry or the operator either files invoices and supporting documentation with the port director or maintains and makes those records available for examination by Customs.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by CBP Dec. 15–14, 80 FR 61291, Oct. 13, 2015; CBP Dec. 17–13, 82 FR 45407, Sept. 28, 2017]

§ 146.63 Entry for consumption.

(a) *Foreign merchandise.* Merchandise in foreign status or composed in part of merchandise in foreign status may be entered for consumption from a zone.

(b) *Zone-restricted merchandise.* Merchandise in a zone-restricted status may be entered for consumption only when the Board has ruled that merchandise can be entered for consumption.

(c) *Estimated production*—(1) *Weekly entry.* When merchandise is manufactured or otherwise changed in a zone (exclusive of packing) to its physical condition as entered within 24 hours before physical transfer from the zone for consumption, the port director may allow the person making entry to file an entry on Customs Form 3461, or its electronic equivalent, for the estimated removals of merchandise during the calendar week. The Customs Form 3461, or its electronic equivalent, must be accompanied by a *pro forma* invoice or schedule showing the number of units of each type of merchandise to be removed during the week and their zone and dutiable values. Merchandise covered by an entry made under the provisions of this section will be considered to be entered and may be removed only when the port director has accepted the entry on Customs Form 3461, or its electronic equivalent. If the actual removals will exceed the estimate for the week, the person making

entry shall file an additional Customs Form 3461, or its electronic equivalent, to cover the additional units before their removal from the zone. Notwithstanding that a weekly entry may be allowed, all merchandise will be dutiable as provided in §146.65. When estimated removals exceed actual removals, that excess merchandise will not be considered to have been entered or constructively transferred to the Customs territory.

(2) *Individual transfers.* After acceptance of the weekly entry, individual transfers of merchandise covered by the entry may be made from the zone.

(d) *Textiles and textile products.* Subject to the existing statutory authority of the Board, textiles and textile products admitted into a zone, regardless of whether the merchandise has privileged or nonprivileged foreign status, which would have been subject to quota or visa or export license requirements in their condition at the time of importation (if entered for consumption rather than admitted to a zone), may not be subsequently transferred into Customs territory for consumption if, during the time the merchandise is in the zone, there has been a change by manipulation, manufacture, or other means:

(1) In the country of origin of the merchandise as defined by §102.21 or §102.22 of this chapter, as applicable;

(2) To exempt from quota or visa or export license requirements other than a change brought about by statute, treaty, executive order or Presidential proclamation; or

(3) From one textile category to another textile category.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by CBP Dec. 05–32, 70 FR 58016, Oct. 5, 2005; CBP Dec. 15–14, 80 FR 61291, Oct. 13, 2015]

§146.64 Entry for warehouse.

(a) *Foreign merchandise.* Merchandise in privileged foreign status or composed in part of merchandise in privileged foreign status may not be entered for warehouse from a zone. Merchandise in nonprivileged foreign status containing no components in privileged foreign status may be entered for warehouse in the same or at a different port.

(b) *Zone-restricted merchandise.* Foreign merchandise in zone-restricted status may be entered for warehouse in the same or at a different port only for storage pending exportation, unless the Board has approved another disposition.

(c) *Textiles and textile products.* Textiles and textile products which have been changed as provided for in §146.63(d) may be entered for warehouse only if the entry is endorsed by the port director to show that the merchandise may not be withdrawn for consumption.

(d) *Time limit.* Merchandise may neither be placed nor remain in a Customs bonded warehouse after 5 years from the date of importation of the merchandise.

§146.65 Classification, valuation, and liquidation.

(a) *Classification*—(1) *Privileged foreign merchandise.* Privileged foreign merchandise provided for in this section will be subject to tariff classification according to its character, condition and quantity, at the rate of duty and tax in force on the date of filing, in complete and proper form, the application for privileged status. Classification of merchandise subject to a tariff-rate import quota will be made only at the higher non-quota duty rate in effect on the date privileged foreign status was granted. Notwithstanding the grant of privileged status, Customs may correct any misclassification of any such entered merchandise when it posts the bulletin notice of liquidation under §159.9 of this chapter.

(2) *Nonprivileged foreign merchandise.* Nonprivileged foreign merchandise provided for in this section will be subject to tariff classification in accordance with its character, condition and quantity as constructively transferred to Customs territory at the time the entry or entry summary is filed with Customs.

(b) *Valuation*—(1) *Total zone value.* The total zone value of merchandise provided for in this section will be determined in accordance with the principles of valuation contained in sections 402 and 500 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. 1401a, 1500).

The total zone value shall be that price actually paid or payable to the zone seller in the transaction that caused the merchandise to be transferred from the zone. Where there is no price paid or payable, the total zone value shall be the cost of all materials and zone processing costs related to the merchandise transferred from the zone.

(2) *Dutiable value.* The dutiable value of merchandise provided for in this section shall be the price actually paid or payable for the merchandise in the transaction that caused the merchandise to be admitted into the zone, plus the statutory additions contained in section 402(b)(1) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. 1401a(b)(1)), less, if included, international shipment and insurance costs and U.S. inland freight costs. If there is no such price actually paid or payable, or no reasonable representation of that cost or of the statutory additions, the dutiable value may be determined by excluding from the zone value any included zone costs of processing or fabrication, general expenses and profit and the international shipment and insurance costs and U.S. inland freight costs related to the merchandise transferred from the zone. The dutiable value of recoverable waste or scrap provided for in §146.42(b) will be the price actually paid or payable to the zone seller in the transaction that caused the recoverable waste or scrap to be transferred from the zone.

(3) *Allowance.* An allowance in the dutiable value of zone merchandise may be made by the Center director in accordance with the provisions of subparts B and C of part 158 of this chapter, for damage, deterioration, or casualty while the merchandise is in the zone.

(c) *Liquidation; extension to update cost data.* When the declared value or values of the merchandise are based on an estimate or estimates, the person making entry may request an extension of liquidation pending the presentation of updated or actual cost data. A request for an extension may be granted at the discretion of the Center director.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 91–79, 56 FR 46372, Sept. 12, 1991; T.D. 95–35, 60 FR 20632, Apr. 27, 1995; CBP Dec. No. 16–26, 81 FR 93020, Dec. 20, 2016]

§146.66 Transfer of merchandise from one zone to another.

(a) *At the same port.* A transfer of merchandise to another zone with a different operator at the same port (including a consolidated port) must be made by a licensed cartman or a bonded carrier as provided for in §112.2(b) of this chapter or by the operator of the zone for which the merchandise is destined under an entry for immediate transportation filed via an in-bond application pursuant to part 18 of this chapter or other appropriate form with a CBP Form 214 filed at the destination zone. A transfer of merchandise between zone sites at the same port having the same operator may be made under a permit on CBP Form 6043 or under a local control system approved by the port director wherein any loss of merchandise between sites will be treated as if the loss occurred in the zone.

(b) *At a different port.* A transfer of merchandise from a zone at one port of entry to a zone at another port must be made by bonded carrier under an entry for immediate transportation filed via an in-bond application pursuant to part 18 of this chapter. All copies of the entry must bear a notation that the merchandise is being transferred to another zone designated by its number.

(c) *Forwarding of merchandise history; documentation.* When merchandise is transferred under the provisions of this section, the operator of the transferring zone shall provide the operator of the destination zone with the documented history of the merchandise being transferred.

(1) The following documentation must accompany merchandise maintained under a lot inventory control system:

(i) A copy of the original CBP Form(s) 214 with accompanying invoices for admission of the merchandise and all components thereof;

(ii) A copy of any CBP Form 214 filed subsequent to admission to change the

status of the merchandise or its components; and

(iii) A copy of any CBP Form 216 to manipulate or manufacture the merchandise.

(2) The following documentation must accompany merchandise not under a lot system, and not manufactured in a zone:

(i) A copy of the original CBP Form(s) 214 with accompanying invoices for admission of the merchandise as attributed under the particular zone inventory method;

(ii) A copy of any CBP Form 214 filed subsequent to admission to change the status of the merchandise as attributed under the particular zone inventory method; and

(iii) A copy of any CBP Form 216 to manipulate the merchandise as attributed under the particular zone inventory method.

(3) If the documents specified in paragraph (c)(2) of this section are not presented, the operator of the transferring zone shall submit the following:

(i) A statement of the zone value, dutiable value, quantity, description, unique identifier, and zone status (showing any changes of status after admission and whether the merchandise was manipulated so as to change its tariff classification) of all the merchandise in the shipment covered by the transportation entry; and

(ii) A certification that the statement in paragraph (c)(3)(i) of this section, is true and that the information contained therein is contained in the inventory control and recordkeeping system of the transferring zone.

(4) The following documentation must accompany merchandise not under a lot system, but manufactured in a zone:

(i) A statement by the transferring zone operator of the zone value, dutiable value, quantity, description, unique identifier, and zone status of all the merchandise (and components thereof, where applicable) covered by the transportation entry. The statement will also show any change in zone status in the transferring zone and whether the merchandise has been manufactured or manipulated in the zone so as to change its tariff classification; and

(ii) A certification by the operator of the transferring zone that the statement in paragraph (c)(4)(i) of this section is true and the information therein is contained in the inventory control and recordkeeping system of the zone.

(5) The operator of the transferring zone shall transmit the historical documentation of the merchandise to the receiving zone within 10 working days after it has been delivered to the bonded carrier for transportation. The documentation will be referenced to the I.T. number covering the merchandise.

(d) *Arrival at destination zone.* Upon arrival of the merchandise at the destination zone, it will be admitted under the procedure provided for in §146.32, except that no invoice or Customs examination will be required. When the historical documentation is received, the operator of the destination zone shall associate it with the CBP Form 214 for admission of the merchandise and incorporate that information into the zone inventory control and recordkeeping system.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 94–81, 59 FR 51497, Oct. 12, 1994; CBP Dec. 17–13, 82 FR 45407, Sept. 28, 2017]

§146.67 Transfer of merchandise for exportation.

(a) *Direct exportation.* Any merchandise in a zone may be exported directly therefrom (without transfer into Customs territory) upon compliance with the procedures of paragraph (b) of this section.

(b) *Immediate exportation.* Each transfer of merchandise to the customs territory for exportation at the port where the zone is located will be made under an entry for immediate exportation filed in an in-bond application pursuant to part 18 of this chapter. The person making entry must furnish an export bond on CBP Form 301 containing the bond conditions provided for in §113.63 of this chapter.

(c) *Transportation and exportation.* Each transfer of merchandise to the customs territory for transportation to and exportation from a different port will be made under an entry for transportation and exportation in an in-bond application pursuant to part 18 of this chapter. The bonded carrier will be

responsible for exportation of the merchandise in accordance with §18.26 of this chapter.

(d) *Textiles and textile products.* Textiles and textile products which have been changed as provided for in §146.63(d) may be exported and returned to Customs territory for warehousing provided the entry for warehouse is endorsed by the port director to show that the merchandise may not be withdrawn for consumption.

(e) *Merchandise produced or manufactured in a zone and returned to Customs territory after exportation.* Merchandise produced or manufactured in a zone and exported without having been transferred to Customs territory other than for exportation or for transportation and exportation will be subject, on its return to Customs territory, to the duties and taxes applicable to like articles of wholly foreign origin, unless it is conclusively established that it was produced or manufactured exclusively with the use of domestic merchandise. The identity of the domestic merchandise must have been maintained in accordance with the provisions of this part, in which case that merchandise will be subject to the provisions of Chapter 98, Subchapter I, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 89–1, 53 FR 51263, Dec. 21, 1988; CBP Dec. 17–13, 82 FR 45407, Sept. 28, 2017]

§146.68 Transfer for transportation or exportation; estimated production.

(a) *Weekly permit.* The port director may allow the person making entry for merchandise provided for in §146.63(c) to file an application for a weekly permit to enter and release merchandise during a calendar week for exportation, transportation, or transportation and exportation. The application will be made by filing an in-bond application pursuant to part 18 of this chapter. The in-bond application must provide invoice or schedule information like that required in §146.63(c)(1). If actual transfers will exceed the estimate for the week, the person with the right to make entry must file a supplemental in-bond application to cover the additional merchandise to be transferred from the subzone or zone site. No merchandise covered by the weekly permit may be transferred from the zone before approval of the application by the port director.

(b) *Individual entries.* After approval of the application for a weekly permit by the port director, the person making entry will be authorized to file individual in-bond applications for exportation, transportation, or transportation and exportation of the merchandise covered by permit. Upon transfer of the merchandise, the carrier must update the in-bond record via a CBP-approved EDI system to ensure its assumption of liability under the carrier's or cartman's bond. CBP will consider the time of entry to be when the removing carrier updates the in-bond record.

(c) *Statement of merchandise entered.* The person making entry for merchandise under an approved weekly permit must file with the port director, by the close of business on the second business day of the week following the week designated on the permit, a statement of the merchandise entered under that permit. The statement must list each in-bond application by its unique IT number, and must provide a reconciliation of the quantities on the weekly permit with the manifested quantities on the individual in-bond applications submitted to CBP, as well as an explanation of any discrepancy.

[CBP Dec. 17–13, 82 FR 45407, Sept. 28, 2017]

§146.69 Supplies, equipment, and repair material for vessels or aircraft.

(a) *General.* Any merchandise which may be withdrawn duty and tax free in Customs territory under section 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317), and under §§10.59 through 10.65 of this chapter, may similarly be transferred from a zone, regardless of its zone status, under those statutes and regulations. Each transfer from a zone for delivery to a qualified vessel or aircraft, will be made on Customs Form 5512 (see §10.60 of this chapter). The person making entry shall furnish a bond on Customs Form 301 containing the bond conditions provided for in §113.62 of this chapter.

(b) *Merchandise for delivery within zone.* Upon acceptance of the entry and bond, the port director shall release the merchandise to the operator for delivery to the qualified vessel or aircraft for lading in the zone.

(c) *Merchandise for delivery outside zone.* Upon acceptance of the entry and bond, the port director shall release the merchandise to the operator for delivery to the bonded cartmen, lighterman, or carrier, for transportation through the Customs territory to the qualified lading vessel or aircraft.

§ 146.70 Transfer of zone-restricted merchandise into Customs territory.

(a) *General.* Zone-restricted merchandise may be transferred to Customs territory only for entry for exportation, for entry for transportation and exportation, for warehousing pending exportation, for destruction (except destruction of distilled spirits, wines and fermented malt liquors), for transfer from one zone to another, or for delivery to a qualified vessel or aircraft or as ground equipment of a qualified aircraft under section 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317), unless the Board has ruled that the return of the merchandise to Customs territory for domestic consumption is in the public interest. With Board approval (See 15 CFR part 400), that merchandise may be entered for consumption, for warehousing, for immediate transportation without appraisement, or under any other provision of the Customs laws, unless the Board has specified the form of entry to be made.

(b) *For consumption.* If the return of zone-restricted merchandise to Customs territory for consumption has been ruled by the Board to be in the public interest, the entry shall be endorsed by the port director to show the authority under which it was made, and that the merchandise is subject to the provisions of Chapter 98, Subchapter I, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(c) *For warehousing.* Zone-restricted merchandise may be transferred from a zone to a Customs bonded warehouse for storage pending exportation. The Customs Form 7501, or its electronic equivalent, shall be endorsed by the port director to show that the merchandise may not be withdrawn for consumption. In the case of zone-restricted merchandise transported in bond to another port for warehousing and exportation, Customs Form 7512 shall be endorsed by the port director to show that the merchandise is foreign trade zone merchandise in zone-restricted status, which shall be entered for warehouse with proper endorsement on Customs Form 7501, and which may not be withdrawn for consumption. Zone-restricted merchandise transferred from a zone to a Customs bonded warehouse may not be manipulated, except for packing or unpacking incidental to exportation.

(d) *For other purposes.* Upon acceptance of an entry or withdrawal for zone-restricted merchandise for any purpose other than that described in a Board order, the entry shall be endorsed by the person making entry to show that actual exportation of the merchandise is required by the fourth proviso to section 3 of the Act, as amended, or the entry endorsed to require delivery to a qualified vessel or aircraft, under section 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317).

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 89–1, 53 FR 51263, Dec. 21, 1988; CBP Dec. 15–14, 80 FR 61291, Oct. 13, 2015]

§ 146.71 Release and removal of merchandise from zone.

(a) *General.* Except as provided for in § 146.43, no merchandise will be transferred from a zone without a Customs permit on the appropriate entry or withdrawal form or other document as required in this part. This port director may authorize transfer from a zone without physical supervision or examination by a Customs officer. Upon issuance of a permit, the port director will authorize delivery of the merchandise only to the operator, who then may release the merchandise to the importer or carrier.

(b) *Liability for discrepancy.* When a transfer is not physically supervised by a Customs officer, the operator will be relieved of responsibility only for the

merchandise in a zone in the condition and quantity as shown on the entry, withdrawal, or other appropriate form. The operator will be relieved of responsibility only if it receives the signed receipt on the document of the importer or the carrier named in that document. The responsibility of the operator may be adjusted by any discrepancy report made jointly by the operator and the bonded cartman, lighterman, or carrier, or the importer, and signed by the above or an authorized representative within 15 days after transfer of the merchandise from the zone. Any adjustment must be noted on the permit copy of the entry, withdrawal, or other appropriate form or document. A copy of any joint report of discrepancy must be submitted to the port director within 10 working days of signing by the parties.

(c) *Time limit.* Except in the case of articles for use in a zone, merchandise for which a Customs permit for transfer to Customs territory has been issued must be physically removed from the zone within 5 working days of issuance of that permit. The port director, upon request of the operator, may extend that period for good cause. Merchandise awaiting removal within the required time limit will not be further manipulated or manufactured in the zone, but will be segregated or otherwise identified by the operator as merchandise that has been constructively transferred to Customs territory.

(d) *Retention or return of merchandise to zone for consumption.* (1) The port director shall cancel any entry for consumption where: (i) The merchandise is not removed from the zone within the period specified in paragraph (c) of this section, or (ii) the merchandise was removed from the zone but did not enter the commerce of the U.S. in Customs territory and was subsequently readmitted to a zone in domestic status. If the port director has reason to believe any new entry would be cancelled under the provisions of this paragraph, he may reject the entry or demand a written stipulation, as a condition of entry acceptance, that the merchandise will not be returned to a zone in domestic status. Merchandise covered by an entry which has been cancelled under this paragraph shall be restored to its last foreign status.

(2) A component of merchandise which has been entered, but not physically removed from a zone, shall be restored to its last zone status, provided the port director determines that the component was included in the entry through clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of the law. Such an error, including that in appraisement of any entry or liquidation due to the above circumstances, may be corrected pursuant to section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)), in accordance with the procedures described in part 173 of this chapter. If the port director decides there has been no error, mistake, or inadvertence, or that the information was not timely provided, the component will be considered as an overage and subject to the provisions of § 146.53(d).

(3) When merchandise which has been entered for consumption is subsequently returned to a zone for a reason other than that specified in paragraph (d)(1) of this section, it shall be admitted in domestic status.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986; 51 FR 11012, Apr. 1, 1986]

Subpart G—Penalties; Suspension; Revocation

§ 146.81 Penalties.

(a) *Amount.* Upon violation of the Act, or any regulation issued under the Act, by the grantee, or any officer, agent, operator or employee thereof, the person responsible for or permitting the violation shall be subject to a fine of not more than $1,000. Each day during which a violation continues will constitute a separate offense. Liquidated damages, where applicable, will be imposed in addition to the fine (19 U.S.C. 81s).

(b) *Review.* All fines assessed by the port director under this section will be reviewed by the Assistant Commissioner, Office of International Trade, or his designee, Headquarters, to determine whether further action against

the grantee or operator, such as suspension or a recommendation for revocation of the grant, is warranted.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

§ 146.82 Suspension.

(a) *For cause.* The port director may suspend for cause the activated status of a zone or zone site, or the privilege to admit, manufacture, manipulate, exhibit, destroy, transfer or remove merchandise at a zone or zone site for a period not to exceed 90 days. Upon order of the Board the suspension may be continued. If appropriate, the suspension may be limited to an individual user or users and not to the zone or zone site as a whole, or may be limited to a particular activity of an operator or user, such as suspension of the privilege to admit merchandise or the privilege to manufacture. An action to suspend will be taken in accordance with the procedure in paragraph (b) of this section if:

(1) The approval of the application to activate the zone was obtained through fraud or the misstatement of a material fact;

(2) The operator neglects or refuses to obey any proper order of a Customs officer or any Customs order, rule, or regulation relating to the operation or administration of a zone;

(3) The operator, or any officer of a corporation which has been granted the right to operate a zone, is convicted of or has commited acts which would constitute a felony, or misdemeanor involving theft, smuggling, or a theft-connected crime. Any change in the employment status of the corporate officer (e.g., discharge, resignation, demotion, or promotion) prior to conviction of a felony or prior to conviction of a misdemeanor involving theft, smuggling, or a theft-connected crime, resulting from acts committed while a corporate officer, will not preclude application of this provision;

(4) The operator fails to furnish a current list of names, addresses, or other information as required by § 146.7;

(5) The operator does not provide a secure facility or properly safeguard merchandise within a zone;

(6) [Reserved]

(7) The operator, or any officer, agent, or employee of the operator, discloses to an unauthorized person proprietary information contained on a Customs form or in the inventory control and recordkeeping system; or

(8) The inventory control and recordkeeping system is impaired to the point where the identity of merchandise in zone status has been lost and cannot be reestablished without a suspension of zone operations.

(b) *Procedure*—(1) *Notice.* The port director may, at any time, serve notice, in writing, upon an operator to show cause why its right to continue operation of a zone should not be suspended or why an individual user or activities of an individual user should not be suspended, as provided for in paragraph (a) of this section. The notice will advise the operator of the grounds for the proposed action and will afford the operator an opportunity to respond, in writing, within 15 days after receipt of the notice. Thereafter, the port director shall consider the allegations and any response made by the operator and issue a decision, unless the operator requests a hearing in the matter.

(2) *Hearing.* If the operator requests a hearing, it will be held before a hearing officer designated by the Commissioner of Customs or his designee within 30 days following the operator's request. The operator may be represented by counsel at the hearing, and any evidence and testimony of witnesses in the proceeding, including substantiation of the allegations and the response thereto, will be presented. The right of cross-examination will be available to both parties. A stenographic record of the proceeding will be made and a copy will be delivered to the operator. At the conclusion of the hearing, the hearing officer shall transmit promptly all papers and the stenographic record of the hearing to the Assistant Commissioner, Office of Field Operations, or designee, together with a recommendation for final action.

(3) *Decision of Assistant Commissioner.* Within 10 calendar days after delivery to the operator of a copy of the stenographic record of the hearing, the operator may submit to the Assistant Commissioner, Office of Field Operations, or designee, in writing any additional

views or arguments. The Assistant Commissioner, Office of Field Operations, or designee, shall then render a written decision stating his reasons therefor. That decision will be served on the operator and will be considered the final Customs administrative action in the case.

(4) *Grantee.* If the grantee of the zone is not the operator, a copy of the notice to show cause will be served upon the grantee. The grantee, as a party-in-interest, may join the operator in any proceedings under this section.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 88–63, 53 FR 40220, Oct. 14, 1988; T.D. 95–99, 60 FR 62733, Dec. 7, 1995]

§ 146.83 Revocation of zone grant.

(a) *Recommendation of port director.* The port director may at any time recommend to the Board that the privilege of establishing, operating, and maintaining a zone or subzone under CBP jurisdiction be revoked for willful and repeated violations of the Act (19 U.S.C. 81r). If the port director believes that a substantial question of law exists as to whether willful and repeated violations of the Act have occurred, that officer may request internal advice under the provisions of part 177 of this chapter from the Executive Director, Regulations and Rulings, Office of International Trade, Headquarters. A recommendation to the Board that a zone or subzone grant be revoked does not preclude, and may be in addition to, any liquidated damages, penalty, or suspension for cause.

(b) *Decision of the Board.* The procedure for revocation of a grant, the decision of the Board, and appeal is covered by the provisions of the Act and title 15, chapter IV, part 400, Code of Federal Regulations.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991; T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

Subpart H—Petroleum Refineries in Foreign-Trade Subzones

SOURCE: T.D. 95–35, 60 FR 20632, Apr. 27, 1995, unless otherwise noted.

§ 146.91 Applicability.

This subpart applies only to a petroleum refinery (as defined herein) engaged in refining petroleum in a foreign-trade zone or subzone. Further, the provisions relating to zones generally, which are set forth elsewhere in this part, including documentation and document retention requirements, and entry procedures, such as weekly entry, shall apply as well to a refinery subzone, insofar as applicable to and not inconsistent with the specific provisions of this subpart. It does not cover zone-to-zone transfers in which the fact of removal from one zone is ignored.

§ 146.92 Definitions.

(a) *Attribution.* ''Attribution'' means the association of a final product with its source material.

(b) *Feedstocks.* ''Feedstocks'' means crude petroleum or intermediate product that is used in a petroleum refinery to make a final product.

(c) *Feedstock factor.* ''Feedstock factor'' means the relative value of final products utilizing T.D. 66–16 (see §146.92(h)), and which takes into account any volumetric loss or gain.

(d) *Final product.* ''Final product'' means any petroleum product that is produced in a refinery subzone and thereafter removed therefrom or consumed within the zone.

(e) *Manufacturing period.* ''Manufacturing period'' means a period selected by the refiner which must be no more than a calendar month basis, for which attribution to a source feedstock must be made for every final product made, consumed in, or removed from the refinery subzone.

(f) *Petroleum refinery.* ''Petroleum refinery'' means a facility that refines a feedstock listed on the top line of the tables set forth in T.D. 66–16 into a product listed in the left column of the tables set forth in T.D. 66–16.

(g) *Price of product.* ''Price of product'' means the average per unit market value of each final product for a given manufacturing period or the published standard product value if updated each month.

(h) *Producibility.* ''Producibility'' is a method of attributing products to feedstocks for petroleum manufacturing in

accordance with the Industry Standards of Potential Production set forth in T.D. 66–16.

(i) *Relative value.* ''Relative value'' means a value assigned to each final product attributed to the separation from a privileged foreign feedstock based on the ratio of the final product's value compared to the privileged foreign feedstock's duty.

(j) *Time of separation.* ''Time of separation'' means the manufacturing period in which a privileged foreign status feedstock is deemed to have been separated into two or more final products.

(k) *Weighted average.* ''Weighted average'' means the relative value of merchandise, which is determined by dividing the total value of shipments in a given period by the total quantity shipped in the same given period. See example in section VI of the appendix to this part.

§ 146.93 Inventory control and recordkeeping system.

(a) *Attribution.* All final products removed from or consumed within a petroleum refinery subzone must be attributed to feedstock admitted into said petroleum refinery subzone in the current or prior manufacturing period. Attribution must be based on records maintained by the operator. Attribution may be made by applying one of the authorized methods set forth in this section. Records must be maintained on a weight or volume basis.

(1) *Producibility.* The producibility method of attribution requires that records be kept to attribute final products to feedstocks which are eligible for attribution as set forth in this section during the current or prior manufacturing period.

(2) *Actual production records.* An operator may use its actual production records as provided for under § 146.95(b) of this subpart.

(3) *Other inventory method.* An operator may use the FIFO (first-in, first-out) method of accounting (see § 191.22(c) of this chapter). The use of this method is illustrated in the appendix to this part.

(b) *Feedstock eligible for attribution.* Only a feedstock that has been admitted into the refinery subzone is eligible for attribution. For a given manufacturing period, the quantity of feedstock eligible for attribution may be computed as beginning inventory, plus receipts less shipments of feedstock out of the subzone, and less ending inventory.

(c) *Consumption or removal of final product.* Each final product that is consumed in or removed from a refinery subzone must be attributed to a feedstock eligible for attribution during the current or a prior manufacturing period. Each final product attributed as being produced from the separation of a privileged foreign status feedstock must be assigned the proper relative value as set forth in paragraph (d) of this section.

(d) *Relative value.* A relative value calculation is required when two or more final products are produced as the result of the separation of privileged foreign status feedstock. Ad valorem and compound rates of duty must be converted to specific rates of duty in order to make a relative value calculation.

(e) *Privileged status after admission.* Nonprivileged status feedstock is eligible for privileged status only if the request shows to the satisfaction of the Customs Service that there was no manipulation or manufacture of the feedstock to change its tariff classification before the request is granted. The absence of such manipulation or manufacture can be shown by demonstrating that the feedstock was placed in an empty tank, in a tank that contained only feedstock with the same nominal specifications or providing a sample which shows there was no change in tariff status. The existence of negligible amounts of other feedstocks may be disregarded only in accordance with § 146.95(b). A request for after-admission privileged foreign status shall be denied unless the feedstock's tank records from admission to the time that the request is made accompany the request. A refiner who makes such a request shall not put any other feedstock having different nominal specifications into the tank until the request for privileged status is granted.

The Customs Service will deny or revoke a post-admission request if a refiner fails to retain the integrity of the feedstock in the tank.

(f) *Consistent use required.* The operator must use the selected method, measurement (weight or volume), and the price of product consistently (see §146.92(g) of this subpart and paragraph (a) of this section).

§146.94 Records concerning establishment of manufacturing period.

(a) *Feedstock admitted into the refinery subzone.* The operator must maintain appropriate inventory records during the manufacturing period to substantiate the feedstock(s) eligible for attribution under §146.93(b) and in accordance with the operator's selected attribution method.

(b) *Final product consumed in or removed from subzone.* The operator must record the date and amount of each final product consumed in, or removed from the subzone.

(c) *Consumption or removal.* The consumption or removal of a final product during a week may be considered to have occurred on the last day of that week for purposes of attribution and relative value calculation instead of the actual day on which the removal or consumption occurred, unless the refiner elects to attribute using the FIFO method (see section II of the appendix to this part).

(d) *Gain or loss.* A gain or loss that occurs during a manufacturing period must be taken into account in determining the attribution of a final product to a feedstock and the relative value calculation of privileged foreign feedstocks. Any gain in a final product attributed to a non-privileged foreign status feedstock is dutiable if entered for consumption unless otherwise exempt from duty.

(e) *Determining gain or loss; acceptable methods*—(1) *Converting volume to weight.* Volume measurements may be converted to weight measurements using American Petroleum Institute conversion factors to account for gain or loss.

(2) *Calculating feedstock factor to account for volume gain or loss.* A feedstock factor may be calculated by dividing the value per barrel of production per product category by the quotient of the total value of production divided by all feedstock consumed. This factor would be applied to a finished product that has been attributed to a feedstock to account for volume gain.

(3) *Calculating volume difference.* Volume difference may be determined by comparing the amount of feedstocks introduced for a given period with the amount of final products produced during the period, and then assigning the volume change to each final product proportionately.

§146.95 Methods of attribution.

(a) *Producibility*—(1) *General.* A subzone operator must attribute the source of each final product. The operator is limited in this regard to feedstocks which were eligible for attribution during the current or prior manufacturing period. Attribution of final products is allowable to the extent that the quantity of such products could have been produced from such feedstocks, using the industry standards of potential production on a practical operating basis, as published in T.D. 66–16. Once attribution is made for a particular product, that attribution is binding. Subsequent attributions of feedstock to product must take prior attributions into account. Each refiner shall keep records showing each attribution.

(2) *Industry standards of potential production.* The industry standards of potential production on a practical operating basis necessary for the producibility attribution method are contained in tables published in T.D. 66–16. With these tables, a subzone operator may attribute final products consumed in, or removed from, the subzone to feedstocks during the current or a prior manufacturing period.

(3) *Attribution to product or feedstock not listed in T.D. 66–16.* (i) For purposes of attribution, where a final product or a feedstock is not listed in T.D. 66–16, the operator must submit a proposed attribution schedule, supported by a technical memorandum, to the appropriate port director. The port director shall refer the request to the Director, Office of Regulatory Audit (''ORA''), who will verify the refiner's records

and will coordinate with the Director, Office of Laboratories and Scientific Services (''OLSS''). The Director, ORA, shall either approve or deny the request. If the request is approved, the Director, ORA, shall publish a modification of T.D. 66–16. If an operator elects to show attribution on a producibility basis, but fails to keep records on that basis, the operator shall use its actual operating records to determine attribution and any necessary relative value calculation upon the Customs Service demand and subject to verification.

(ii) An operator may attribute a final product to a feedstock in excess of the amount allowed under T.D. 66–16, when authorized by Customs, without losing the ability to attribute under T.D. 66–16 for all other feedstock-final product combinations. The operator must use its actual production records for the requested feedstock-final product combination. The operator must agree in writing that it will not, and it will not enable any other person, to file a drawback claim under 19 U.S.C. 1313 inconsistent with those actual production records for that feedstock-final product combination. The operator shall file its request in accordance with paragraph (a)(3) of this section. The Director, ORA, and the Director, OLSS, must determine whether T.D. 66–16 needs to be modified and shall publish in the Customs Bulletin each approval granted under this paragraph and request public comments with each such approval.

(4) *Attribution to privileged foreign feedstock; relative value.* If a final product is attributed to the separation of a privileged foreign feedstock a relative value must be assigned (see section IV of the appendix to this part).

(b) *Refinery operating records.* An operator may use the actual refinery operating records to attribute the feedstocks used to the removed or consumed products. Customs shall accept the operator's operating conventions to the extent that the operator demonstrates that it actually uses these conventions in its refinery operations. Whatever conventions are elected by the operator, they must be used consistently in order to be acceptable to Customs. Additionally, Customs may use these records to test the validity of admissions into the subzone, consumption within and removals from the subzone.

Example. If the operator mixes three equal quantities of material in a day tank and treats that product as a three-part mixture in its production unit, Customs will accept the resulting product as composed of the three materials. If, in the alternative, the operator assumes that the three products do not mix and treats the first product as being composed of the first material put into the day tank, the second product as composed of the second material put into the day tank, and the third product as being composed of the third material put into the day tank, Customs will accept that convention also.

§ 146.96 Approval of other recordkeeping systems.

(a) *Approval procedure.* An operator must seek prior approval of another recordkeeping procedure by submitting the following to the Director, Office of Regulatory Audit:

(1) An explanation of the method describing how attribution will be made when a finished product is removed from or consumed in the subzone, and how and when the feedstocks will be decremented;

(2) A mathematical example covering at least two months which shows the amounts attributed, all necessary relative value calculations, the dates of consumption and removal, and the amounts and dates that the transactions are reported to Customs.

(b) *Failure to comply.* Requests received that fail to comply with paragraph (a) of this section will be returned to the requester with the defects noted by the Director, Office of Regulatory Audit.

(c) *Determination by Director.* When the Director, Office of Regulatory Audit, determines that the recordkeeping procedures provide an acceptable basis for verifying the admissions and removals from or consumption in a refinery subzone, the Director will issue a written approval to the applicant.

APPENDIX TO PART 146—GUIDELINES FOR DETERMINING PRODUCIBILITY AND RELATIVE VALUES FOR OIL REFINERY ZONES

Where an example is set out in this appendix, the example is for purposes of illustrating the application of a provision, and where there is any inconsistency between the example and the provision, the provision prevails to the extent of the inconsistency. Alternative formats are also acceptable so long as they are consistent with the provisions of this part.

I. ATTRIBUTION USING PRODUCIBILITY SHOWING MANUFACTURING PERIODS FROM ADMISSION TO REMOVAL WITHIN A CALENDAR MONTH.

Volume losses and gains accounted for by weight.

Day 1

Receipt into the refinery subzone during a 30-day month:

50,000 pounds privileged foreign (PF) class II crude oil.
50,000 pounds PF class III crude oil.
50,000 pounds domestic status class III crude oil.

Day 10

Removal from the refinery subzone for exportation of 50,000 pounds of aviation gasoline.

The period of manufacture for the aviation gasoline is Day 1 to Day 10. The refiner must first attribute the designated source of the aviation gasoline.

In order to maximize the duty benefit conferred by the zone operation, the refiner chooses to attribute the exported aviation gasoline to the privileged foreign status crude oil. Under the tables for potential production (T.V. 66–16), class II crude has a 30% potential, and class III has a 40% potential. The maximum aviation gasoline producible from the class II crude oil is 15,000 pounds (50,000 × .30). The maximum aviation gasoline producible from the privileged foreign status class III crude oil is 20,000 pounds (50,000 × .40). The domestic class III crude would also make 20,000 pounds of aviation gasoline.

The refiner could attribute 15,000 pounds of the privileged foreign class II crude oil, 20,000 pounds of the privileged foreign class III crude oil, and 15,000 pounds of the domestic class III crude oil as the source of the 50,000 pounds of the aviation gasoline that was exported; 35,000 pounds of class II crude oil would be available for further production for other than aviation gasoline, 30,000 pounds of privileged foreign class III crude oil would be available for further production for other than aviation gasoline, and 35,000 pounds of domestic status class III crude oil would be available for further production, of which up to 5,000 pounds could be attributed to aviation gasoline.

Day 21

Receipt in the refinery subzone:

50,000 pounds PF status class I crude oil.
50,000 pounds PF status class IV crude oil.

Day 30

Removal from the refinery subzone:

30,000 pounds of motor gasoline for consumption.
10,000 pounds of jet fuel sold to the US Air Force for use in military aircraft.
10,000 pounds of aviation gasoline sold to a U.S. commuter airline for domestic flights.
10,000 pounds of kerosene for exportation.

To the extent that the crude oils that entered production on Day 1 are attributed as the designated sources for the products removed on Day 30, the period of manufacture is Day 1 to Day 30. If the refiner chooses to attribute the crude oils that were admitted on Day 21 as the designated sources of the products removed on Day 30 using the production standards published in T.D. 66–16, the manufacturing period is Day 21 to Day 30. This choice will be important if a relative value calculation on the privileged foreign status crude oil is required, because the law requires the value used for computing the relative value to be the average per unit value of each product for the manufacturing period. Relative value must be calculated if a source feedstock is separated into two or more products that are removed from the subzone refinery. If the average per unit value for each product differs between the manufacturing period from Day 1 to Day 30 and the manufacturing period from Day 21 to Day 30, the correct period must be used in the calculation.

In order to minimize duty liability, the refiner would try to attribute the production of the exported kerosene and the sale of the jet fuel to the US Air Force to the privileged foreign crude oils. For the same reason, the refiner would try to attribute the removed motor gasoline and the aviation gasoline for the commuter airline to the domestic crude oil.

Accordingly, the refiner chooses to attribute up to 5,000 pounds of the domestic status class III crude as the source of the 10,000 pounds of aviation gasoline removed from the subzone refinery for the commuter airline. Since no other aviation gasoline could have been produced from the crude oils that were admitted into the refinery subzone Day 1, the refiner must attribute the remainder to the crude oils that entered production on Day 21. Again, using the production standards from T.D. 66–16, the class I crude could produce aviation gasoline in an amount up to 10,000 pounds (50,000 × .20). Likewise, the class IV crude oil could

produce aviation gasoline in an amount up to 8,500 pounds (50,000 × .17).

The refiner selects use of the class I crude as the source of the aviation gasoline. The refiner could attribute up to 27,300 pounds (35,000 − 5,000 × .91) of the domestic class III crude oil as the source of the motor gasoline. This would leave 2,700 pounds of domestic class III crude available for further production for other than aviation gasoline or motor gasoline. The remaining motor gasoline removed (also 2,700 pounds) must be attributed to a privileged foreign crude oil. The refiner selects the privileged foreign class II crude oil that entered production on Day 1 as the source for the remaining 2,700 pounds of motor gasoline.

This would leave 32,300 pounds of privileged foreign class II crude oil available for further production, of which no more than 27,400 pounds could be designated as the source of motor gasoline. The refiner attributes the jet fuel that is removed from the refinery subzone for the US Air Force for use in military aircraft to the privileged foreign class II crude oil. The refiner could attribute up to 20,995 pounds of jet fuel from that class II crude oil (32,300 × .65). Designating that class II crude oil as the source of the 10,000 pounds of jet fuel leaves 22,300 pounds of privileged foreign class II crude oil available for further production, of which up to 10,995 pounds could be attributed as the source of the jet fuel. Because the motor gasoline and the jet fuel, under the foregoing attribution, would be considered to have been separated from the privileged foreign class II crude oil, a relative value calculation would be required.

The jet fuel is eligible for removal from the subzone free of duty by virtue of 19 U.S.C. 1309(a)(1)(A). The refiner could attribute the privileged foreign class II crude oil as being the source of the 10,000 pounds of jet fuel (22,300 × .65). The refiner chooses to attribute the privileged foreign class III crude oil as the source of the jet fuel. The refiner could attribute to that class III crude oil up to 15,000 pounds of kerosene (30,000 × .50).

II. Attribution on a FIFO Basis

(Accounting for volume losses or gains by the weight method)

Day 1–5

Transfer, into the Refinery Subzone, from one or more storage tanks into process 150 barrels of Privileged Foreign (PF) Class II crude oil, equivalent to 50,000 pounds.

Day 6

Removal from the refinery subzone 119 barrels of residual oils to customs territory, equivalent to 40,000 pounds.

Since the operator uses the FIFO method of attribution, as the product is removed from the subzone, or consumed or lost within the subzone, attribution must be to the oldest feedstock available for attribution. Accordingly, the 40,000 pounds of residual oils will be attributed to 40,000 pounds of the PF Class II crude oil from Day 1–5.

Day 10

Transfer, into the refinery subzone, from one or more storage tanks 4 barrels of domestic motor gasoline blend stock, equivalent to 1,000 pounds to motor gasoline blending tank.

Day 6–15

Transfer, into the refinery subzone, from one or more storage tanks into process 320 barrels of Domestic Class III crude oil, equivalent to 100,000 pounds.

Day 16

Removal from the refinery subzone 14 barrels of asphalt to customs territory, equivalent to 5,000 pounds.

The 5,000 pounds of asphalt will be attributed to 5,000 pounds of PF Class II crude oil from Day 1–5.

Day 17

Removal from the refinery subzone, 324 barrels of motor gasoline to customs territory, equivalent to 81,000 pounds.

The 81,000 pounds of motor gasoline will be attributed to 1,000 pounds of domestic motor gasoline blend stock from Day 10, to the remaining 5,000 pounds of PF Class II crude oil from Day 1–5 and 75,000 pounds of domestic Class III crude oil from Day 6–15.

Day 16–20

Transfer, into the refinery subzone, from one or more storage tanks into process 169 barrels of Privileged Foreign (PF) Class III crude oil, equivalent to 50,000 pounds.

Day 22

Removal from the refinery subzone, 214 barrels of jet fuel for exportation, equivalent to 60,000 pounds.

The 60,000 pounds of jet fuel will be attributed to the remaining 25,000 pounds of domestic Class III crude oil from Day 6–15 and 35,000 pounds of PF Class III crude oil from Day 16–20.

Day 21–25

Transfer, into the refinery subzone from one or more storage tanks into process, 143 barrels of domestic Class I crude oil, equivalent to 50,000 pounds.

Day 30 (End of the Manufacturing Period)

It is determined that during the manufacturing period just ended, that 34 barrels of

fuel, equivalent to 10,000 pounds was consumed, and 5 barrels of oil, equivalent to 1,500 pounds was lost in the refining production process within the refinery subzone.

The 10,000 pounds of fuel consumed will be attributed 10,000 pounds of PF Class III crude oil from Day 16–20. The 1,500 pounds of oil lost in the refining production process will be attributed to 1,500 pounds of PF Class III crude oil from Day 16–20. The remaining 3,500 pounds of PF Class III crude oil from Day 16–20 will be the first to be attributed during the next manufacturing period.

III. Relative Value Calculation

Because privileged foreign feedstocks transferred into process during Day 1–5 and Day 16–20 have two or more products attributed to them, each feedstock will require a relative value calculation.

Relative value calculation for UIN Day 1–5, 50,000 pounds, equivalent to 150 barrels.

	A Lbs	B BBLS	C $/BBL	D Product value	E R.V. Factor	F R.V. BBL	G Dutiable BBL
Residual oil	40,000	119	15.00	1,785	.9047	108	108
Asphalt	5,000	14	13.00	182	.7840	11	11
Motor gasoline	5,000	20	26.00	520	1.5682	31	31
Totals	50,000	153		2,487		150	150

A = Pounds Attributed.
B = Equivalent Barrels.
C = Price of Product.
D = B × C.
E = C/(Total of Column D/Attributed Crude BBLS).
Residual Oil RV Factor = 15.00/(2,487/150) = .9047.
F = B × E.
G = Dutiable Barrels.

Since all products attributed to the 50,000 pounds (150 BBLS) of PF Class II crude entered customs territory duty equals $7.88 (150 × .0525).

Feedstock factor calculation for UIN Day 16–20, 46,500 pounds equivalent to 157 barrels.

	Lbs	BBLS	$/BBL	Product value	Feedstock factor	R.V. BBL	Dutiable BBL
Jet Fuel	35,000	125	27.00	3,375	1.1030	138	0
Fuel	10,000	34	12.00	408	0.4902	17	0
Consumed Process Loss	1,500	5	12.00	60	0.4902	2	0
Totals	46,500	164		3,843		157	0

Since jet fuel was exported, no duty is applicable. Fuel consumed for refinery process was consumed within the subzone premises and did not enter customs territory, thus no duty is applicable (assume refinery not barred by duty-free consumption restriction). Likewise, the process loss occurred entirely within the subzone. Therefore, no duty is applicable.

IV. Attribution to Privileged Foreign Feedstock; Relative Value; Monthly Manufacturing Period, Weekly Entries, Attribution to a Prior Period; Volume Loss or Gain Shown by Volume Differences.

An operator who elects to attribute on a monthly basis files the following estimated removal of final products for the first week in September:

Jet Fuel (deemed exported on international flights)	20,000
Gasoline—Domestic Consumption	15,000
Duty-free certified as emergency war material	10,000
Petroleum coke exportations	10,000
Distillate for consumption	5,000
Petrochemicals exported	10,000
Total removals	70,000

Because it does not elect to make attributions for feedstocks that were charged to operating units during the same week, the operator attributes the estimated removals to final products made during August from the following feedstocks:

Class II PF (privileged foreign) crude	20,000
Class III PF crude	35,000
Class III D (domestic) crude	20,000
Class III NPF (nonprivileged foreign crude	20,000
	95,000

During August the operator produced from those feedstocks:

Jet	35,000
Gasoline	40,000
Petroleum Coke	10,000
Distillate	5,000
Petrochemicals	15,000

105,000

There is a gain of 105,000 − 95,000 = 10,000

Using the tables in T.D. 66–16, the following choices are available for attribution:

	Charged	Jet	Gasoline	Petrolum coke	Distillate	Petro-chemical
Class II PF Crude	20,000	13,000	17,200	4,400	17,200	5,000
Class III PF Crude	35,000	24,500	31,850	14,000	31,150	10,150
Class III D Crude	20,000	14,000	18,200	8,000	17,800	5,800
Class III NPF Crude	20,000	14,000	18,200	8,000	17,800	5,800

Feedstock factors are calculated:

	Barrels	Value barrels	Value	Feedstock factors
Gasoline	40,000	$25	$1,000,000	.9117
Jet Fuel	35,000	23	805,000	.8388
Distillate	5,000	20	100,000	.7294
Petroleum Coke	10,000	10	100,000	.3647
Petrochemicals	15,000	40	600,000	1.4587
	105,000		2,605,000	
Gain	− 10,000	$2,605,000		
Total	[1] 95,000	= $27.42 average value p/bbl		

Using the feedstock factor the refiner makes the following attributions:

Jet Fuel	24,192	(20,291 feedstock attributed to Class III PF Crude).
	10,808	Class III NPF Crude (attribution of 9066 solely for purpose of accounting for the amount of NPF used).
	35,000	
Gasoline	5,000	(4,559 feedstock attributed to Class III PF Crude).
	5,000	Class III NPF Crude (attribution of 4599 solely for purpose of accounting for the amount of NPF used).
	15,000	(13,676 feedstock attributed to Class III D Crude).
Petroleum Coke	8,418	(3,070 feedstock attributed to Class II PF Crude).
	1,582	Class III NPF Crude (attribution of 577 solely for purposes of accounting for the amount of NPF used).
	10,000	
Distillate	5,000	(3,647 feedstock attributed to Class III Domestic).
Petrochemicals	3,975	(5,800 feedstock attributed to Class III NPF Crude).
	6,025	(8,789 feedstock attributed to Class III PF Crude).
	10,000	

V. Weekly Entry, Weekly Manufacturing Period, and Relative Values Calculated on the Actual Weighted Average Values at the End of the Week.

On the weekly estimated production CF 3461, the refiner is required to provide a pro forma invoice or schedule showing the number of units of each type of merchandise to be removed during the week and their zone and dutiable values. For example, on CF 3461 the refiner estimates the following shipments and relative values for the next week and files this on the preceding Friday.

Product week 1	PF shipments (MBBLS)	Value/barrel (platts)	Total value
Motor Gasoline	20,000	$35	$700,000
Total Alkylate	25,000	35	875,000
Heavy Reformate	60,000	35	2,100,000
Reformer Feed	110,000	35	3,850,000
Raffinates	200,000	35	7,000,000
Jet Fuel	200,000	35	7,000,000
Total	615,000		$21,525,000

Attributed Feedstock—Class III Crude: 615,000@ $105 = $64,575 (estimated duties)

During that week the refiner actually removes the following products and reports those on the CF 7501, or its electronic equivalent, filed within 10 business days after the CF 3461 is filed. Column 3 is the actual ''weighted average'' value for the manufacturing period, therefore, no reconciliation is necessary.

1 Product	2 PF Shipments (mbbls)	3 Value/ barrel (wt. avg.)	4 Total value (2) × (3)	5 Relative value factor (3)/(8)	6 Feedstock distribu. (5) × (2)	7 Liq. duties (6) × (10) (9)
Week 1:						
Motor Gasoline	19,977	$35.70	$713,179	1.104545	22,065	$2,317
Total Alkylate	22,907	42.50	973,548	1.314935	30,121	3,163
Heavy Reformate ...	58,164	31.42	1,827,513	.972123	56,542	5,937
Reformer Feed	100,279	31.42	3,150,766	.972123	97,484	10,235
Raffinates	170,293	29.55	5,032,158	.914266	155,693	16,348
Jet Fuel	168,433	30.04	5,059,727	.929426	156,546	16,437
Total	540,053		16,756,891		518,451 (9)	54,437 (10)

Class III Crude Consumed 518,451 × $.105 = $54,437
Volumetric Gain 21,602
Avg. Value/Barrel Crude Consumed = $16,756,891 ÷ 518,451 = $32.321 (8)
This example shows volumetric gain of 21,602 mbbls. However, in that PF was requested, liquidated duties are only on actual feedstock (class III crude) used in the refining process. (518,451 @ $.105 = $54,437).

VI. Weekly Entry, Monthly Manufacturing Period, and Relative Values Calculated on the Actual Weighted Average Values at the End of the Month.

For example, on the CF 3461 the refiner estimates the following shipments and relative values for the next week and files this on the preceding Friday.

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (platts)	4 Total value
Week 1:			
Motor Gasoline	20,000	$35	$700,000
Total Alkylate	25,000	35	875,000
Heavy Reformate	60,000	35	2,100,000
Reformer Feed	110,000	35	3,850,000
Raffinates	200,000	35	7,000,000
Jet Fuel	200,000	35	7,000,000
Total	615,000		21,525,000

Attributed Feedstock—Class III Crude: 615,000 @ $.105 = $64,575 (estimated duties)

During the week the refiner actually removes the following products and reports those on the CF 7501, or its electronic equivalent, filed within 10 business days after the CF 3461 is filed. The reported relative values may be an estimate based on Platts, prior period actual prices, or the refiner's transfer prices. For this example, the estimates are based on the refiner's actual transfer prices. Listed below are the data to be shown on the weekly CF 7501s, or their electronic equivalents, with actual quantities shipped and estimated values for weeks 1–5.

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (estimates)	4 Total value (2) × (3)	5 Relative value factor (3)/(8)	6 Feedstock distrib. (5) × (2)	7 Liq. duties (6) × (10) (9)
Week 1:						
Motor Gasoline	19,977	$35.70	$713,179	1.104545	22,065	$2,317
Total Alkylate	22,907	42.50	973,548	1.314935	30,121	3,163
Heavy Reformate ...	58,164	31.42	1,827,513	.972123	56,542	5,937
Reformer Feed	100,279	31.42	3,150,766	.972123	97,484	10,235
Raffinates	170,293	29.55	5,032,158	.914266	155,693	16,348
Jet Fuel	168,433	30.04	5,059,727	.929426	156,546	16,437
Total	540,053		16,756,891		518,451 (9)	$54,437 (10)

Class III Crude Consumed 518,451 × $.105 = $54,437
Volumetric Gain 21,602
Avg. Value/Barrel Crude Consumed = $16,756,891 ÷ 518,451 = $32.321 (8)

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (estimated)	4 Total value	5 Relative value factor	6 Feedstock distrib.	7 Liq. duties
Week 2:						
Motor Gasoline	20,651	$36.90	$762,022	1.145429	23,654	$2,484
Total Alkylate	23,435	44.25	1,036,999	1.373584	32,190	3,380
Heavy Reformate ...	59,819	30.35	1,815,507	.942108	56,358	5,918

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (estimated)	4 Total value	5 Relative value factor	6 Feedstock distrib.	7 Liq. duties
Reformer Feed	101,167	30.10	3,045,127	.934347	94,526	9,925
Raffinates	172,317	29.30	5,048,888	.909514	156,726	16,456
Jet fuel	165,291	30.70	5,074,434	.952972	157,519	16,539
Total	542,680		$16,782,977		520,973	$54,702

Class III Crude Consumed 520,973 × $.105 = $54,702
Volumetric Gain 21,707
Avg. Value/Barrel Crude Consumed = $32.215

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (estimated)	4 Total value	5 Relative value factor	6 Feedstock distrib.	7 Liq. duties
Week 3:						
Motor Gasoline	18,689	$34.90	$652,246	1.091819	20,405	$2,142
Total Alkylate	21,511	40.25	865,818	1.259190	27,087	2,844
Heavy Reformate ...	57,371	30.90	1,772,764	.966682	55,460	5,823
Reformer Feed	99,707	30.90	3,080,946	.966682	96,386	10,121
Raffinates	168,112	29.65	4,984,521	.927577	155,938	16,374
Jet Fuel	172,092	29.85	5,136,946	.933834	160,707	16,874
Total	537,482		$16,493,241		515,983	$54,178

Class III Crude Consumed 515,983 × $.105 = $54,178
Volumetric Gain 21,499
Avg. Value/Barrel Crude Consumed = $31.965

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (estimated)	4 Total value	5 Relative value factor	6 Feedstock distrib.	7 Liq. duties
Week 4:						
Motor Gasoline	21,905	$32.85	$719,579	1.027237	22,502	$2,363
Total Alkylate	22,552	38.75	873,890	1.211733	27,327	2,869
Heavy Reformate ...	58,116	29.60	1,720,234	0.925607	53,791	5,648
Reformer Feed	101,058	29.40	2,971,105	0.919353	92,908	9,755
Raffinates	169,823	30.15	5,120,163	0.942806	160,110	16,812
Jet Fuel	171,493	31.05	5,324,858	0.970949	166,511	17,484
Total	544,947		$16,729,829		523,149	$54,931

Class III Crude Consumed 523,149 × $.105 = $54,931
Gain 21,798
Avg. Value/Barrel Crude Consumed = $31.979

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (estimated)	4 Total value	5 Relative value factor	6 Feedstock distrib.	7 Liq. duties
Week 5:						
Motor Gasoline	8,990	$37.25	$334,878	1.136260	10,215	$1,073
Total Alkylate	9,984	45.10	450,278	1.375713	13,735	1,442
Heavy Reformate ...	25,351	31.50	798,557	0.960864	24,360	2,558
Reformer Feed	43,492	31.35	1,363,474	0.956288	41,592	4,367
Raffinates	75,172	29.95	2,251,401	0.913583	68,677	7,211
Jet fuel	75,795	30.56	2,316,295	0.932190	70,654	7,418
Total	238,784		$7,514,883		229,233	$24,069

Class III Crude Consumed 229,233 × $.105 = $24,069
Gain 9,551
Avg. Value/Barrel Crude Consumed = $32.783

As provided in the regulations, the refiner files an amended CF 7501 for each week based on the refiner's actual weighted average values for the month, as shown below.

Product	Value/ barrel (MBBLS)
Month End:	
Motor Gasoline	$35.27
Total Alkylate	41.84
Heavy Reformate	30.66

Product	Value/ barrel (MBBLS)
Reformer Feed	30.54
Raffinates	29.69
Jet Fuel	30.42

RECONCILIATION OF WEEK 1 USING MONTH'S END ACTUAL WEIGHTED AVERAGE VALUES

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (wt. avg.) actual	4 Total value (2) × (3)	5 Relative value factor (3)/(8)	6 Feedstock distri. (5) × (2)	7 Amended wt. avg. duties (6) × (10) (9)
Motor Gasoline	19,977	$35.27	$704,589	1.095716	21,889	$2,298
Total Alkylate	22,907	41.84	958,429	1.299823	29,775	3,126
Heavy Reformate	58,164	30.66	1,783,308	.952499	55,401	5,817
Reformer Feed	100,279	30.54	3,062,521	.948771	95,141	9,990
Raffinates	170,293	29.69	5,055,999	.922365	157,072	16,493
Jet Fuel	168,433	30.42	5,123,732	.945043	159,176	16,713
Total	540,053		$16,688,578		518,454 (9)	54,437 (10)

Class III Crude Consumed = 518,454 × $.105 = $54,437
Volumetric Gain 21,599
Avg.Value/Bbl Crude Consumed = $16,688,578 ÷ 518,454 = $32.189 (8)
Note: No change in amended total duties, because duty is computed on total quantity of class III crude used. The difference is amongst the various products, *i.e.*, estimated weekly CF 7501 duties paid for Motor Gasoline was $2,317, while the reconciled amount as shown above is $2,298. Additional duties owed or refunds due would depend on the reconciliation of the weekly entry as an entirety.

VII. WEEKLY ENTRY, MONTHLY MANUFACTURING PERIOD, RELATIVE VALUES CALCULATED ON PRIOR MANUFACTURING PERIOD'S ACTUAL WEIGHTED AVERAGE VALUES. THE PRIOR PERIOD (PP) VALUES ARE SET FORTH BELOW:

Product	Value/Barrel (wt. avg.)
Motor Gasoline	§35.28
Total Alkylate	41.90
Heavy Reformate	31.78
Reformer Feed	30.02
Raffinates	31.10
Jet Fuel	28.80

Thereafter, the information provided or both the CF 3461, or its electronic equivalent, and CF 7501 filed for each weekly entry with respect to relative values would remain the same. The only estimated amount would be the quantity to be removed on the CF 3461, or its electronic equivalent, as shown below. On the CF 3461, or its electronic equivalent, the refiner estimates the following shipments and uses a prior manufacturing period's actual weighted average values.

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (PP) (wt. avg.)	4 Total value
Week 1			
Motor Gasoline	20,000	$35.28	$705,600
Total Alkylate	25,000	41.90	1,047,500
Heavy Reformate	60,000	31.78	1,906,800
Reformer Feed	110,000	30.02	3,302,200
Raffinates	200,000	31.10	6,220,000
Jet Fuel	200,000	28.80	5,760,000
Total	615,000		18,942,100

Attributed Feedstock—Class III Crude: 615,000 @ $.105 = $64,575 (estimated duties)
On the CF 7501, the refiner reports the following shipments and uses a prior manufacturing period's actual average values.

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (PP) (wt. avg.)	4 Total value (2) × (3)	5 Relative value factor (3)/(8)	6 Feedstock distri. (5) × (2)	7 Liq. duties (6) × (10) (9)
Week 1:						
Motor Gasoline	19,977	$35.28	$704,789	1.097219	21,919	$2,902
Total Alkylate	22,907	41.90	959,803	1.303104	29,850	3,134

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (PP) (wt. avg.)	4 Total value (2) × (3)	5 Relative value factor (3)/(8)	6 Feedstock distri. (5) × (2)	7 Liq. duties (6) × (10) (9)
Heavy Reformate ...	58,164	31.78	1,848,452	.988368	57,486	6,036
Reformer Feed	100,279	30.02	3,010,376	.933632	93,623	9,830
Raffinates	170,293	31.10	5,296,112	.967220	164,710	17,295
Jet Fuel	168,433	28.80	4,850,870	.895689	150,863	15,840
Total	540,053		$16,670,402		518,451 (9)	$54,437 (10)

Class III Crude Used 518,451 × $.105 = $54,437
Volumetric Gain 21,602
Avg. Value/Barrel Crude Used = $16,670,402 ÷ 518,451 = $32.154 (8)

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (PP) (wt. avg.)	4 Total value	5 Relative value factor	6 Feedstock distri.	7 Liq. duties
Week 2:						
Motor Gasoline	20,651	$35.28	$728,567	1.096128	22,636	$2,377
Total Alkylate	23,435	41.90	981,926	1.301808	30,508	3,203
Heavy Reformate ...	59,819	31.78	1,901,048	.987386	59,064	6,202
Reformer Feed	101,167	30.02	3,037,033	.932704	94,359	9,908
Raffinates	172,317	31.10	5,359,059	.966259	166,503	17,483
Jet Fuel	165,291	28.80	4,760,381	.894799	147,903	15,529
Total	542,680		16,768,014		520,973	54,702

Class III Crude Used 520,973 × $.105 = $54,702
Volumetric Gain 21,707
Avg. Value/Barrel Crude Used = $32.186

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (PP) (wt. avg.)	4 Total value	5 Relative value factor	6 Feedstock distri.	7 Liq. duties
Week 3:						
Motor Gasoline	18,689	$35.28	$659,348	1.099168	20,542	$2,157
Total Alkylate	21,511	41.90	901,311	1.305418	28,081	2,948
Heavy Reformate ...	57,371	31.78	1,823,250	.990124	56,803	5,964
Reformer Feed	99,707	30.02	2,993,204	.935290	93,254	9,792
Raffinates	168,112	31.10	5,228,283	.968938	162,889	17,103
Jet Fuel	172,092	28.80	4,956,250	.897280	154,414	16,214
Total	537,482		16,561,646		515,983	54,178

Class III Crude Used 515,983 × $.105 = $54,178
Volumetric Gain 21,499
Avg. Value/Barrel Crude Used = $32.097

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (PP) (wt. avg.)	4 Total value	5 Relative value factor	6 Feedstock distri.	7 Liq. duties
Week 4:						
Motor Gasoline	21,905	$35.28	$772,808	1.097390	24,038	$2,524
Total Alkylate	22,552	41.90	944,929	1.303306	29,391	3,086
Heavy Reformate ...	58,116	31.78	1,846,926	.988522	57,447	6,032
Reformer Feed	101,058	30.02	3,033,761	.933777	94,365	9,908
Raffinates	169,823	31.10	5,281,495	.967371	164,281	17,250
Jet Fuel	171,493	28.80	4,938,998	.895829	153,627	16,131
Total	544,947		16,818,917		523,149	54,931

Class III Crude Used 523,149 × $.105 = $54,931
Volumetric Gain 21,798
Avg. Value/Barrel Crude Used = $32.149

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (PP) (wt. avg.)	4 Total value	5 Relative value factor	6 Feedstock distri.	7 Liq. duties
Week 5:						
Motor Gasoline	8,990	$35.28	$317,167	1.097698	9,868	$1,036
Total Alkylate	9,984	41.90	418,330	1.303671	13,016	1,367
Heavy Reformate ...	25,351	31.78	805,655	.988799	25,067	2,632
Reformer Feed	43,492	30.02	1,305,630	.934039	40,623	4,265
Raffinates	75,172	31.10	2,337,849	.967642	72,740	7,638
Jet Fuel	75,795	28.80	2,182,896	.896080	67,919	7,131
Total	238,784		7,367,527		229,233	24,069

Class III Crude Used 229,233 × $.105 = $24,069
Volumetric Gain 9,551
Avg. Value/Barrel Crude Used = $32.14
At the end of the month, the refiner must calculate its actual weighted average values for use in the subsequent period.

RECONCILIATION OF RELATIVE VALUE FOR THE SUBSEQUENT PERIOD

1 Product	2 PF shipments (mbbls)	3 Value/ barrel (PP) (wt. avg.)	4 Total value (2 × 3)	5 Relative value factor (3)/(8)	6 Feedstock distri. (5 × 2)	7 Liq. duties (6 × (10) (9)
Month End:						
Motor Gasoline	90,212	$35.27	$3,181,777	1.095682	98,844	$10,379
Total Alkylate	100,389	41.84	4,200,276	1.299783	130,484	13,701
Heavy Reformate ...	258,821	30.66	7,935,452	.952470	246,519	25,885
Reformer Feed	445,703	30.54	13,611,770	.948742	422,857	44,400
Raffinates	755,717	29.69	22,437,238	.922336	697,025	73,188
Jet Fuel	753,104	30.42	22,909,424	.945014	711,694	74,726
Total	2,403,946		74,275,937		2,307,423 (9)	242,279 (10)

Class III Crude Used 2,307,423 × $.105 = $242,279
Volumetric Gain 96,523
Avg. Value/Barrel Crude Used = $74,275,937 ÷ 2,307,423 = $32.19 (8)
Note: Actual monthly reconciliation data could result in attributions on a product basis that are less than or greater than weekly distributions. This is due to the ''weighing'' of the data *i.e.*, motor gasoline on a weekly basis was $10,996 as compared to $10,379 as above. No additional duties are due to the averaging.

[T.D. 86–16, 51 FR 5049, Feb. 11, 1986, as amended by CBP Dec. 15–14, 80 FR 61291, Oct. 13, 2015]

PART 147—TRADE FAIRS

Sec.

AUTHORITY: 19 U.S.C. 66, 1623, 1624, 1751–1756, unless otherwise noted.

SOURCE: T.D. 70–134, 35 FR 9268, June 13, 1970, unless otherwise noted.

§ 147.0 Scope.

This part governs the entry of merchandise intended for exhibition or for use in constructing, installing, or maintaining foreign exhibits at trade fairs which have been so designated by the Secretary of Commerce. It also contains provisions concerning Customs supervision of the merchandise, and the disposition of the merchandise after the fair has closed. The entry of articles which may be admitted free of duty under other provisions of this chapter may be governed by those provisions rather than the regulations in this part.

Subpart A—General Provisions

§ 147.1 Definitions.

The following are general definitions for the purposes of part 147:

(a) *The Act.* ''The Act'' means the Trade Fair Act of 1959. (Secs. 2–7, 73 Stat. 18, 19; 19 U.S.C. 1751–1756.)

(b) *Fair.* ''Fair'' means a fair, exhibition, or exposition designated by the Secretary of Commerce pursuant to the Trade Fair Act.

(c) *Fair operator.* ''Fair operator'' means the party named by the Secretary of Commerce as the operator of the fair.

(d) *Port.* ''Port'' means the port at which the fair is to be held, or if the fair is not to be held within the limits of a port, the port nearest to the location of the fair.

(e) *Closing date.* ''Closing date'' means the date designated by the Secretary of Commerce as the date when the fair will close, including any extension granted by the Secretary of Commerce, or, if the fair closes earlier, the date on which the fair actually closes.

(f) *Articles for a fair.* ''Articles for a fair'' includes, but is not limited to:

(1) Actual exhibit items;

(2) Pamphlets, brochures, and explanatory material in reasonable quantities relating to foreign exhibits at a fair;

(3) Material for use in constructing, installing, or maintaining foreign exhibits at a fair.

[T.D. 70–134, 35 FR 9268, June 13, 1970, as amended by T.D. 82–145, 47 FR 35478, Aug. 16, 1982]

§ 147.2 Articles which may be entered for a fair.

(a) *General.* Any article imported or brought into the United States may be entered under bond under the regulations of this part for the purpose of exhibition at a fair, or for use in constructing, installing, or maintaining foreign exhibits at a fair, if no duty or internal revenue tax has been paid, and the article is:

(1) In a foreign-trade zone; or

(2) Imported for exhibition under Chapter 98, Subchapter XII, Harmonized Tariff Schedule of the United States; or

(3) In continuous Customs custody, including but not limited to articles:

(i) Imported or brought into the United States for the purpose of direct entry at a particular fair;

(ii) In Customs bonded warehouses;

(iii) Unentered under the Customs laws and held in general order pending entry or exportation;

(iv) On exhibition at another fair designated by the Secretary of Commerce.

(b) *Exception.* Articles which have been entered under Chapter 98, Subchapter XIII, HTSUS, may not be entered under the regulations of this part.

[T.D. 70–134, 35 FR 9268, June 13, 1970, as amended by T.D. 84–213, 49 FR 41186, Oct. 19, 1984; T.D. 89–1, 53 FR 51263, Dec. 21, 1988]

§ 147.3 Bond required.

The fair operator shall file a bond on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter in such amount as the port director requires. Liquidated damages shall be assessed by the port director under the bond if payments required by §§147.33, 147.41 or 147.43 are not paid upon demand.

[T.D. 84–213, 49 FR 41186, Oct. 19, 1984]

Subpart B—Procedure for Importation

§ 147.11 Entry.

(a) *Made in name of fair operator.* All entries of articles for a fair shall be made at the port in the name of the fair operator which shall be deemed for Customs purposes the sole consignee of the merchandise entered under the Act and responsible to the Government for all duties and charges due the United States on account of such entries.

(b) *Merchandise arriving at port other than port of the fair.* Articles to be entered under this subpart which arrive at ports other than the port of the fair shall be entered for immediate transportation without appraisement to the latter port in the manner prescribed in part 18 of this chapter.

(c) *Form of entry.* Articles shall be entered upon arrival at the port of the fair on a special form of entry to read substantially as follows:

ENTRY FOR EXHIBITION

Entry No. _____

Entry at the port of _____ of articles consigned or transferred to _____ (Fair operator) under _____ I.T. No. _____ ex S.S. _____ from _____ on the _____ day of _____, 19___, for exhibition purposes under the Trade Fair Act of 1959.

Mark	Number	Package and contents	Quality	Invoice value
	.....	.....	.....	.....
	.....	.....	.....	.....
	.....	.....	.....	.....
	.....	.....	.....	.....

_____

(Fair operator)

By _____

(d) *Supersedes previous entry.* When entry for a fair is made under this part, such entry shall supersede any previous entry.

§ 147.12 Invoices.

Articles intended for a fair under the provisions of the Act are subject to the invoice requirements of subpart F, part 141 of this chapter.

(R.S. 251, as amended, secs. 481, 484, 624, 46 Stat. 719, 722, as amended, 759 (19 U.S.C. 66, 1481, 1484, 1624))

[T.D. 85–39, 50 FR 9612, Mar. 11, 1985]

§ 147.13 Transfer to fair building.

(a) *Immediate delivery.* The provisions governing immediate delivery in part 142 of this chapter are applicable to articles for a fair.

(b) *After entry.* Upon the entry being made, a permit may be issued by the port director for the transfer of the articles covered thereby to the buildings in which they are to be exhibited or used, or, in his discretion, to the public stores for examination and subsequent delivery to the buildings in which they are to be exhibited or used.

[T.D. 70–134, 35 FR 9268, June 13, 1970, as amended by T.D. 73–175, 38 FR 17470, July 2, 1973]

§ 147.14 Articles not to be immediately entered and delivered to a fair.

(a) *Placed in bonded warehouses.* If for any reason articles imported for a fair are not to be entered and delivered to a fair upon their arrival, the fair operator should request the port director, in writing, to cause such articles to be placed in a bonded warehouse under a ''general order permit'' at the risk and expense of the fair operator. If no request is made and the articles remain unentered after 5 days from the date of arrival, they will be placed in general order.

(b) *Entry within 1 year.* At any time within 1 year from the date such articles are imported or brought in, they may be entered under this part for a fair or entered under the general tariff law, or for exportation.

(c) *Abandonment.* If not entered within such period, they will be regarded as abandoned to the Government.

§ 147.15 Tentative appraisement.

All articles entered for a fair shall be tentatively appraised prior to exhibition or use.

Subpart C—Requirements of Other Laws

§ 147.21 Marking under the Tariff Act of 1930.

The marking requirements of the Tariff Act of 1930, as amended, and the regulations thereunder will not apply to articles for a fair, except, when such articles are entered for consumption. When entered for consumption, such articles shall be released from Customs custody only upon a full compliance with these marking requirements.

§ 147.22 Compliance with the internal revenue laws and Federal Alcohol Administration Act.

The packaging, marking, and labeling requirements of the internal-revenue laws, and the Federal Alcohol Administration Act (27 U.S.C. 201 to 212), will not apply to articles entered under this part, but any article failing to comply with such requirements shall be conspicuously marked prior to exhibition ''Not labeled or packaged as required by law—not for sale.'' When any such article is withdrawn for consumption, it shall be released from Customs custody only upon a full compliance with such packaging, marking, and labeling requirements.

§ 147.23 Compliance with Plant Quarantine Act and Federal Food, Drug, and Cosmetic Act.

(a) *Plant Quarantine Act.* The entry of plant material subject to restriction under the Plant Quarantine Act of 1912, as amended (7 U.S.C. 151 through 164a, 167), shall not be permitted except under permits issued by the Plant Quarantine Division of the Agricultural Research Service, Department of Agriculture, and in accordance with the plant quarantine regulations.

(b) *Federal Food, Drug, and Cosmetic Act.* The entry of food products shall conform to the requirements of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301 *et seq.)*, and the regulations issued thereunder.

§ 147.24 Merchandise subject to licensing.

Merchandise, the importation of which is subject to the licensing regulations of any agency of the U.S. Government, may be entered for a fair only upon the presentation of the required license, or a waiver of such license.

Subpart D—Customs Supervision

§ 147.31 Articles to be kept separate.

Articles for exhibit at a fair shall be segregated from domestic articles and from imported articles entered under the provisions of the general Customs laws and released from Customs custody.

§ 147.32 Detail of officers to protect the revenue.

The Center director shall detail an officer to act as his representative at the fair and shall station inside the buildings as many additional Custom officers and employees as may be necessary to properly protect the revenue.

[T.D. 70–134, 35 FR 9268, June 13, 1970, as amended by CBP Dec. No. 16–26, 81 FR 93021, Dec. 20, 2016]

§ 147.33 Reimbursement by fair operator.

All actual and necessary charges for labor, services, and other expenses in connection with the entry, examination, appraisement, custody, abandonment, destruction, or release of articles entered under the regulations of this part, together with the necessary charges for salaries of Customs officers and employees in connection with the accounting for, custody of, and supervision over, such articles, shall be reimbursed by the fair operator to the Government, payment to be made to CBP, either at the port of entry or electronically, on the port director's or Center director's demand made before January 19, 2017 or on the Center director's demand made on or after January 19, 2017, for deposit to the appropriation from which paid.

[CBP Dec. No. 16–26, 81 FR 93021, Dec. 20, 2016]

Subpart E—Disposition of Articles Entered for Fairs

§ 147.41 Removal or disposition pursuant to regulation.

Articles for a fair entered under this part shall not be removed from the fair

premises, or otherwise disposed of, except in accordance with this subpart. The fair operator shall be liable for the payment of any unpaid duty, tax, fees, charges, or exaction due on any article removed from the fair premises or disposed of contrary to this subpart, including any article lost or stolen regardless of the fair operator's fault. The payment shall be made on the Center director's demand to CBP, either at the port of entry or electronically.

[T.D. 70–134, 35 FR 9268, June 13, 1970, as amended by T.D. 84–213, 49 FR 41186, Oct. 19, 1984; CBP Dec. No. 16–26, 81 FR 93021, Dec. 20, 2016]

§ 147.42 Disposition generally.

(a) *Kinds of disposition.* Any article entered for a fair under this part may be entered for consumption, for warehouse, or under any other provision of the Customs laws, or for another fair, or may be transferred to other Customs custody status or to a foreign-trade zone, or abandoned to the Government, or destroyed under Customs supervision, or exported, at any time before, or within 3 months after, the closing date of the fair.

(b) *Appraisement.* Upon entry under any provision of the Customs laws, or at the expiration of 3 months after the closing date of the fair in the case of articles not previously entered or transferred, articles entered for fairs shall be appraised.

(c) *Period for performance of certain acts.* In the case of any article entered under a provision of the Customs laws, or for another fair, or transferred to other Customs custody status, or to a foreign-trade zone, the period prescribed for the performance of any act required by the provision governing the status under which the article is entered, or to which it is transferred, shall be computed from the date of such entry or transfer.

[T.D. 70–134, 35 FR 9268, June 13, 1970, as amended by T.D. 70–181, 35 FR 13436, Aug. 22, 1970]

§ 147.43 Entry under the Customs laws.

(a) *Payment of duties and taxes.* Any applicable duties and internal revenue taxes on any article entered under any provision of the Customs laws must be paid on such article in its condition and quantity, and at the rate in effect, at the time of such entry.

(b) *Person to make entry.* Entry of merchandise under the Customs laws from a fair may be made in the name of any person duly authorized in writing by the fair operator to make such entry.

§ 147.44 Entry for another fair.

Articles entered for a fair which are to be entered for another fair under the provisions of this part shall be retained in continuous Customs custody.

§ 147.45 Merchandise from a foreign-trade zone.

Articles entered for a fair from a foreign-trade zone status of ''zone-restricted merchandise'' can afterwards be entered for consumption from a fair if the Foreign-Trade Zones Board has approved the entry for consumption as being in the public interest. Articles entered in the above manner are subject to the provisions of subheading 9801.00.70, if aircraft, or subheading 9801.00.80, if not aircraft, unless excluded by U.S. Note 1(c), Chapter 98, Subchapter I, Harmonized Tariff Schedule of the United States.

(R.S. 251, as amended; secs. 1–21, 48 Stat. 998, 999, as amended; 1000, 1002, as amended, 1003, 77A Stat. 14, sec. 624, 46 Stat. 759 (19 U.S.C 66, 81a–81u, 1202 (Gen, Hdnt. 11)1624))

[T.D. 83–240, 48 FR 53098, Nov. 24, 1983, as amended by T.D. 89–1, 53 FR 51263, Dec. 21, 1988]

§ 147.46 Voluntary abandonment or destruction.

At any time before or within 3 months after the closing date of the fair any article entered for a fair may be abandoned to the Government or destroyed under Customs supervision, upon compliance with §158.43 of this chapter.

[T.D. 70–134, 35 FR 9268, June 13, 1970, as amended by T.D. 72–258, 37 FR 20174, Sept. 27, 1972]

§ 147.47 Mandatory abandonment.

Any article entered for a fair, and not disposed of under the provisions of this subpart prior to the expiration of 3 months after the close of the fair shall be regarded as abandoned to the

Government, and subject to sale or destruction. Proceeds of sale shall be disposed of in the manner provided in sections 491, 492, and 493, Tariff Act of 1930, as amended, and the regulations thereunder. (See subpart D of part 127 of this chapter.) Any duties or internal revenue taxes on such article shall be computed on the basis of its condition and quantity at the time it becomes subject to sale.

[T.D. 70–134, 35 FR 9268, June 13, 1970, as amended by T.D. 74–114, 39 FR 12095, Apr. 3, 1974]

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

Sec.

AUTHORITY: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States).

Section 148.21 also issued under 19 U.S.C. 1461, 1462.

Section 148.22 also issued under 19 U.S.C. 1629;

Sections 148.43, 148.51, 148.63, 148.64, 148.74 also issued under 19 U.S.C. 1321;

Section 148.87 also issued under 22 U.S.C. 288.

SOURCE: T.D. 73–27, 38 FR 2449, Jan. 26, 1973, unless otherwise noted.

§ 148.0 Scope.

This part contains the regulations governing the allowance of exemptions for residents and nonresidents arriving in the United States, for crewmembers of carriers engaged in international traffic, for military and civilian employees of the United States, for certain evacuees, and for certain personnel of foreign governments and international organizations. Procedures and requirements are also set forth pertaining to registration of articles to be taken abroad, declaration and entry, and examination of baggage, and collection of duties and taxes.

Subpart A—General Provisions

§ 148.1 Registration of effects to be taken abroad.

(a) *Persons who may use procedure.* Any person, except a nonresident seaman, airman, or person engaged in similar employment, who intends to take effects of foreign origin abroad may register such articles before departure from the United States in order to facilitate their identification on return to the United States. Only articles of foreign origin having serial numbers or other distinctive, permanently affixed unique markings can be registered.

(b) *Procedures for registration.* Applicants for registration of articles of foreign origin shall present the articles, together with a completed, but unsigned, Customs Form 4457, or its electronic equivalent, which may be obtained in advance of departure, to a Customs officer. After the Customs officer has examined the articles and verified their description, he shall have the applicant sign the form. The Customs officer shall then sign the form

and return it to the applicant for presentation on return of the articles. Customs form 4455, or its electronic equivalent, may be required in any case in which Customs form 4457, or its electronic equivalent, will not adequately serve the purpose of registration.

(c) *Presentation on return and reuse.* The form shall be presented to the Customs officer when the registered articles are returned to the United States. The form shall be valid for reuse as long as the document is legible to identify the registered articles.

[T.D. 82–102, 47 FR 24119, June 3, 1982, as amended by T.D. 91–35, 56 FR 19260, Apr. 26, 1991; CBP Dec. No. 15–14, 80 FR 61291, Oct. 13, 2015]

§ 148.2 Residence status of arriving persons.

(a) *General.* Persons arriving from foreign countries will be divided into two classes for Customs purposes:

(1) Residents of the United States returning from abroad, and

(2) All other persons, hereinafter referred to as nonresidents.

(b) *Status as returning resident.* Citizens of the United States, or persons who have formerly resided in the United States, (including American citizens who are residents of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States) will be deemed residents of the United States returning from abroad within the meaning of ''residents'' as used in Chapter 98, Subchapter IV, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), in the absence of satisfactory evidence that they have established a home elsewhere. The residence of a minor child will be presumed to be the residence of the child's parents.

(c) *Status as nonresident.* Any person arriving in the United States who is not a resident of the United States or who, though a resident of the United States, is not returning from abroad, will be treated for the purpose of these regulations as a nonresident.

(d) *Optional claim of nonresident status.* Any person arriving in the United States who would otherwise be considered a returning resident, may claim at his option the status of a nonresident if he intends to remain in the United States for only a short period of time before returning abroad. If the status as a nonresident claimed by an arriving person is allowed, the procedures in § 148.8 will be followed.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78–394, 43 FR 49788, Oct. 25, 1978; T.D. 89–1, 53 FR 51263, Dec. 21, 1988; T.D. 97–75, 62 FR 46441, Sept. 3, 1997; CBP Dec. 13–19, 78 FR 76532, Dec. 18, 2013]

§ 148.3 Customs treatment after transiting the Panama Canal.

Passengers' baggage and effects and purchases of officers and crewmembers landed in the United States from vessels which have transited the Panama Canal are subject to Customs examination and treatment in the same manner as arrivals from any other foreign country.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 79–276, 44 FR 61957, Oct. 29, 1979]

§ 148.4 Accompanying articles.

(a) *Generally.* Articles shall be considered as accompanying a passenger or brought in by him if the articles arrive on the same vessel, vehicle, or aircraft on the same date as that of his arrival in the United States.

(b) *Baggage shipped as freight.* Articles in baggage shipped as freight on a bill of lading or airway bill shall be considered as accompanying a passenger when the baggage arrives on the conveyance on which he arrives in the United States.

(c) *Precleared articles.* Articles in baggage, or in baggage shipped as freight, shall be considered as accompanying a passenger if examined at an established preclearance station and the baggage is hand-carried, checked or manifested on the conveyance on which he arrives in the United States.

(d) *Automobiles.* An automobile which arrives on the same mode of conveyance on the same date as a passenger arrives in the United States shall be considered as accompanying him.

(e) *Misdirected baggage.* Baggage which arrives on the same mode of conveyance ahead of, or after a passenger, shall be treated as accompanying him if it is fully evident to the examining officer from the circumstances that:

(1) The passenger intended the baggage to arrive with him; and

(2) It was misdirected through no fault of the passenger.

§ 148.5 Regular entry of articles in baggage.

Subject to any applicable exemption from entry requirements, articles imported as baggage but not passed under a baggage declaration or under the procedure provided in § 148.6 for unaccompanied shipments of effects subject to personal exemptions shall be entered in the same manner as a cargo importation of like goods. In making regular entry for articles imported in baggage, the value of articles entitled to free entry under subheadings 9804.00.10, or 9804.00.45, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), shall be disregarded in determining whether formal or informal entry is required.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 89–1, 53 FR 51263, Dec. 21, 1988]

§ 148.6 Entry of unaccompanied shipments of effects subject to personal exemptions.

(a) *Declaration to support free entry.* When effects claimed to be free of duty under subheadings 9804.00.10, 9804.00.20, 9804.00.25, 9804.00.35 or 9804.00.45, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), do not accompany the importer on his arrival in the United States or are forwarded in bond, a declaration of the importer on Customs Form 3299, or its electronic equivalent, shall be required to support the claim for free entry. However, an oral declaration may be accepted in lieu of a written declaration on Customs Form 3299, for effects of a resident which are free of duty under subheadings 9804.00.10 or 9804.00.45. Effects of returning residents entitled to free entry under subheadings 9804.00.10 or 9804.00.45 (except automobiles and other vehicles of residents returning from countries other than Canada or Mexico) need not be itemized if a written declaration is required.

(b) *Exemption from entry.* If the port director is satisfied that an entry would serve no good purpose, none need be required, but evidence of ownership for Customs purposes, such as a carrier's certificate or properly endorsed bill of lading, shall be required with the declaration. Such exemption from entry may also be applied with respect to household effects or tools of trade entitled to free entry (see §§ 148.52 and 148.53 respectively) which are unaccompanied or forwarded in bond.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 89–1, 53 FR 51264, Dec. 21, 1988; CBP Dec. 15–14, 80 FR 61291, Oct. 13, 2015]

§ 148.7 Unclaimed baggage.

Articles in passengers' baggage on which duties due are not paid and baggage not claimed within a reasonable time shall be treated as unclaimed and sent to general order.

§ 148.8 Temporary importation by residents arriving for short visits.

A person claiming the status of a nonresident upon arrival for a short visit in the United States before returning abroad may import articles free of duty under subheadings 9804.00.20, 9804.00.25, 9804.00.30, 9804.00.35, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), in accordance with the following procedure:

(a) The person claiming the status shall agree to export all such articles upon his departure from the United States, except articles imported as gifts under subheading 9804.00.30, and articles consumed during his visit;

(b) When required to do so, the person claiming the status shall list all articles of substantial value which he is importing on Customs Form 4455, or its electronic equivalent in duplicate, noting thereon the expected duration of his visit. He shall present the completed form to the inspecting officer who will initial both copies and return the duplicate to him;

(c) Upon his departure from the United States at the completion of his visit, the person claiming the status of a nonresident shall present to a Customs officer the duplicate copy of Customs Form 4455, or its electronic equivalent initialed by the inspecting officer, and the articles listed thereon shall be subject to inspection; and

(d) If he decides not to return abroad, the person claiming the status shall

immediately notify the director of the port of entry. The port director will advise him of the amount of duties and taxes due by reason of his failure to return abroad.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 89–1, 53 FR 51264, Dec. 21, 1988; CBP Dec. 15–14, 80 FR 61291 Oct. 13, 2015]

Subpart B—Declarations

§ 148.11 Declaration required.

All articles brought into the United States by any individual must be declared to a CBP officer at the port of first arrival in the United States, on a conveyance en route to the United States on which a CBP officer is assigned for that purpose, or at a preclearance office in a foreign country where a United States CBP officer is stationed for that purpose.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by CBP Dec. 09–37, 74 FR 48854, Sept. 25, 2009]

§ 148.12 Oral declarations.

(a) *Generally*. Returning residents and nonresidents arriving in the United States may make an oral declaration under the conditions set forth in paragraph (b) of this section. However, written declarations may be required generally or in respect to particular types of traffic at any port if necessary to effect prompt and orderly clearance of passengers and their effects, and may be required in particular cases at any port if deemed necessary to protect the revenue. If an oral declaration is permitted, completion of the identifying information on CBP Form 6059–B may be required.

(b) *When permitted*. Oral declarations may be permitted under the following conditions:

(1) *Residents*. A returning resident may make an oral declaration if:

(i) The aggregate fair retail value in the country of acquisition of all accompanying articles acquired abroad by him and of alterations and dutiable repairs made abroad to personal and household effects taken out and brought back by him does not exceed:

(A) $800; or

(B) $800 in the case of a direct arrival from a beneficiary country as defined in U.S. Note 4 to Chapter 98, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202); or

(C) $1,600 in the case of a direct or indirect arrival from American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States, not more than $800 of which must have been acquired elsewhere than in such locations.

(ii) None of his accompanying articles are forwarded in bond; and

(iii) None of his accompanying articles are imported for the account of any other person or for sale.

(2) *Nonresidents*. An arriving nonresident may make an oral declaration if all the articles he has to declare are:

(i) Entitled to free entry under his personal exemptions (see Subpart E of this part); or

(ii) Eligible for the administrative exemption for articles not exceeding $200 in aggregate value, provided in section 321(a)(2)(B), Tariff Act of 1930, as amended (19 U.S.C. 1321(a)(2)(B)) (see § 148.51).

(c) *Memorandum baggage declaration for dutiable articles*. When an arriving person is carrying a few dutiable or taxable articles which can be readily identified and segregated from articles entitled to free entry under his personal exemptions, the CBP officer may prepare a memorandum baggage declaration using a cash receipt, CBP Form 368 or 368A, for dutiable or taxable articles if he determines that a written declaration by the arriving person is not essential.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78–394, 43 FR 49788, Oct. 25, 1978; T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 92–56, 57 FR 24944, June 12, 1992; T.D. 94–51, 59 FR 30296, June 13, 1994; T.D. 97–75, 62 FR 46441, Sept. 3, 1997; CBP Dec. 09–37, 74 FR 48854, Sept. 25, 2009]

§ 148.13 Written declarations.

(a) *When required*. Unless an oral declaration is accepted under § 148.12, the declaration required of a person arriving in the United States shall be in writing on Customs Form 6059–B.

(b) *Completion and presentation of written declarations*. The person arriving in the United States shall complete the information required by Customs Form

6059–B and shall list all articles acquired abroad which are in his possession at the time of arrival. Individual items not exceeding $5 per item in fair retail value in the country of acquisition may be grouped on the written declaration as ''Miscellaneous'' up to but not exceeding a total value of $50. Articles not requiring itemization as set forth in paragraph (c) of this section shall be declared orally to the Customs officer. The form shall be presented to the Customs officer who will inspect the passenger's baggage.

(c) *Itemization of certain articles not required*. Except as required by §148.62 or §148.66 for crewmembers' articles, the following need not be itemized in written declarations:

(1) Effects of a returning resident entitled to free entry under subheading 9804.00.10, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), for tools of trade taken abroad, or under subheading, 9804.00.45, HTSUS, for personal or household effects taken abroad. However, automobiles and other vehicles of residents returning from countries other than Canada or Mexico and the cost of all repairs or alterations to articles taken abroad must be itemized.

(2) Effects of a nonresident entitled to free entry under subheading 9804.00.20, HTSUS (19 U.S.C. 1202), for wearing apparel and other similar personal effects; subheading 9804.00.25, HTSUS, for tobacco products and alcoholic beverages; subheading 9804.00.30, HTSUS, for articles to be disposed of as bona fide gifts; or subheading 9804.00.40, HTSUS, for articles accompanying a person in transit to a place outside U.S. customs territory.

(3) Books, libraries, furniture, and similar household effects entitled to free entry under subheading 9804.00.05, HTSUS.

(d) *Value*. Opposite the description of each article required to be declared specifically in a written declaration, the passenger shall state either:

(1) The price actually paid for the article in the currency of purchase, or its equivalent in U.S. currency; or

(2) The fair retail value in the country of acquisition if the article was not acquired by purchase, in the currency of the country in which the article was acquired, or its equivalent in U.S. currency.

(e) *Acknowledgment before Customs officer*. Each written declaration shall be acknowledged by the declarant before the Customs officer who examines the baggage covered by the declaration.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 87–89, 52 FR 24445, July 1, 1987; T.D. 89–1, 53 FR 51264, Dec. 21, 1988]

§148.14 Family declarations.

A family group residing in one household, traveling together, and having the same residence status may be permitted to declare orally articles acquired abroad for the personal or household use of any member of the family if the value of such articles does not exceed the total amount of the exemption to which the family group is entitled. (See §148.34.) Where a written declaration is required, one member of a family group may declare for all. ''A family group residing in one household'' means persons who are related by blood, marriage, domestic relationship (as defined in §148.34(c)), or adoption. Individuals who are employed by the household but not related by blood, marriage, domestic relationship, or adoption will not be included in the family declaration.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by CBP Dec, 13–19, 78 FR 76532, Dec. 18, 2013]

§148.15 Inclusion of articles not for personal or household use.

Articles not personal in character, or which are intended for sale or are brought in on commission for another person, may be included in the baggage declaration of a resident or nonresident under the conditions specified in §148.23(c). If not so included, regular entry shall be required.

§148.16 Amendment of declaration.

(a) *Before examination*. A passenger shall be permitted to add an article to his declaration if, before examination of his baggage has begun, the fact that the article has not been declared is brought to the attention of the examining officer by the passenger.

(b) *After examination is begun.* A passenger shall be permitted to add an article to his declaration after examination of his baggage has begun if, before any undeclared article is found, the passenger advises the examining officer that he has such an article and the officer is satisfied that there was no fraudulent intent. Under no circumstances shall a passenger be permitted to add any undeclared article to his declaration after such article has been discovered by the examining officer.

§ 148.17 Declaration on arrival incidental to further foreign travel.

(a) *Declaration on incidental arrival.* A resident who enters the United States merely as an incident of foreign travel and who will continue his foreign travel before finally returning to the United States from a continuous trip must declare, but need not clear through CBP, any articles he has acquired or had repaired or altered while abroad. The incidental character of the arrival must be made known to the CBP officer.

(b) *Treatment of articles on incidental arrival.* In order that a resident may claim the $800 or $1,600 exemption upon his final arrival in the United States from a continuous trip, articles accompanying him at the time of an incidental arrival may be exported directly from CBP custody or after transportation in bond, or the articles may be left in CBP custody if the resident upon his final return is to arrive at the CBP facility where the articles are deposited.

(c) *Failure to advise of incidental character of arrival.* If the traveler fails to advise the CBP officer of the incidental character of his arrival, or for other reason declares any articles for allowance of the $800 or $1,600 exemption, such declaration will mark the beginning of the respective period or periods during which a further exemption cannot be granted.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 97–75, 62 FR 46441, Sept. 3, 1997; CBP Dec. 09–37, 74 FR 48854, Sept. 25, 2009]

§ 148.18 Failure to declare.

(a) *Penalty incurred.* Any article in the baggage of a passenger arriving from a foreign country which is not declared as required by this subpart shall be seized if it is available for seizure at the time the violation is detected, and the personal penalty prescribed by section 497, Tariff Act of 1930 (19 U.S.C. 1497), shall be demanded from the passenger. If the article is not seized, a claim for the personal penalty shall be made against the person who imported the article without declaration. No duty shall be collected, because undeclared articles are treated as smuggled.

(b) *Remission of liability.* When an article not declared as required by this subpart is found in the baggage of a person arriving in the United States, the personal penalty and forfeiture may be mitigated or remitted in accordance with the Guidelines for Disposition of Violations of 19 U.S.C. 1497 in the appendix to part 171 of this chapter.

[T.D. 83–145, 48 FR 30100, June 30, 1983]

§ 148.19 False or fraudulent statement.

A passenger who makes any false or fraudulent statement or engages in other conduct within the purview of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), whereby a Customs officer is or may be induced to pass an article free of duty or at less than the proper amount of duty, or to treat an article in some other manner in order to obtain a benefit, shall be deemed to have violated 19 U.S.C. 1592. In any such case the article involved shall be seized only if one or more of the conditions set forth in section 162.75 of this chapter are present, if it is available for seizure at the time the violation is detected, and if such seizure is otherwise practicable, unless the article is in the possession of an innocent holder for value who has full right to possession as against any party to the Customs violation. If seizure is not made, an amount equivalent to the maximum penalty which may be assessed in accordance with the passenger's degree of culpability as provided in 19 U.S.C. 1592(c) shall be demanded from the passenger. The amount demanded in lieu of seizure shall be determined in accordance with the guidelines contained in the appendix to part 171 of this chapter. In all

cases, the estimated duties shall be demanded of the passenger as soon as possible after the discovery of the violation. Any applicable internal revenue tax shall also be demanded unless the merchandise is to be, or has been, forfeited.

[T.D. 84–18, 49 FR 1678, Jan. 13, 1984; 49 FR 3986, Feb. 1, 1984]

Subpart C—Examination of Baggage and Collection of Duties and Taxes

§ 148.21 Opening of baggage, compartments, or vehicles.

A Customs officer has the right to open and examine all baggage, compartments and vehicles brought into the United States under Sections 461, 462, 496 and 582, Tariff Act of 1930, as amended (19 U.S.C. 1461, 1462, 1496, and 1582) and 19 U.S.C. 482. To the extent practical, the owner or his agent shall be asked to open the baggage, compartment or vehicle first. If the owner or his agent is unavailable or refuses to open the baggage, compartment, or vehicle, it shall be opened by the Customs officer. If any article subject to duty, or any prohibited article is found upon opening by the Customs officer, the whole contents and the baggage or vehicle shall be subject to forfeiture, pursuant to 19 U.S.C. 1462.

[T.D. 95–86, 60 FR 54188, Oct. 20, 1995]

§ 148.22 Examination of air travelers' baggage in foreign territory.

(a) *Examination and surrender of declaration.* When places have been established in a foreign country where U.S. Customs officers have been stationed for the purpose of conducting Customs inspections and examinations (see §§ 101.5 and 162.8 of this chapter), persons destined to the United States on flights shall present themselves to those officers for inspection and examination of their baggage which may be passed in accordance with § 148.23 prior to boarding the flight. They shall comply with all U.S. Customs laws and other civil and criminal laws of the United States relating to importation of merchandise, including baggage, to the filing of false or fraudulent statements, and to the unlawful removal of merchandise from Customs custody, in the same manner as if the passengers, were arriving at an airport within the Customs territory of the United States. When baggage is examined in foreign territory, the baggage declaration shall be surrendered to the Customs officer at the airport of departure for the United States prior to boarding the flight.

(b) *Subsequently acquired articles.* When a person whose baggage has been examined and passed in foreign territory in accordance with paragraph (a) of this section subsequently acquires additional articles prior to return to the United States, the Customs officer to whom the declaration was surrendered may permit the amendment of that declaration to include the additional articles.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 77–241, 42 FR 54944, Oct. 12, 1977; T.D. 89–22, 54 FR 5076, Feb. 1, 1989]

§ 148.23 Examination and clearance of baggage.

(a) *Articles free of duty.* The inspector, including inspectors on trains or ferries, who examines the baggage of any person arriving in the United States may examine and pass, without limitation as to value, the following articles in such baggage or otherwise accompanying such person:

(1) All articles which are for the personal or household use of the arriving person and are free of duty under Chapter 98, Subchapter IV, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), including automobiles and other articles under § 148.32.

(2) Works of art classifiable under subheadings 9701.10.00 or 9701.90.00, HTSUS.

(3) Works of art classifiable under subheadings 9702.00.00 or 9703.00.00, HTSUS, upon compliance with § 10.48 of this chapter.

(b) *Articles subject to duty.* The inspector who examines the baggage of any person arriving in the United States may examine, determine the dutiable value of, collect duty on, and pass articles accompanying the arriving person which are for his personal or household use but are subject to duty, including

articles imported to be disposed of by him as bona fide gifts.

(c) *Articles not for personal use*—(1) *Valued at not more than $2,500 (with exceptions).* The inspector may also examine, determine the dutiable value of, collect duty on, and pass articles accompanying any person arriving in the United States properly listed on the baggage declaration which are not for the personal or household use of the declarant or which are intended for sale or are brought in on commission for another, provided the aggregate value of such articles is not more than $2,500 (except for articles valued in excess of $250 classified in Chapter 99, Subchapter III and IV, HTSUS).

(2) *Valued over $2,500 (with exceptions).* Articles in the baggage of or otherwise accompanying any person arriving in the United States which have an aggregate value over $2,500 (except for articles valued in excess of $250 classified in Chapter 99, Subchapters III and IV, HTSUS) and are not intended for his personal or household use, or are intended for sale or are brought in on commission for another, may be examined and entered and cleared on a baggage declaration at the place of their arrival with a passenger if:

(i) The articles are accompanied by a proper invoice if one is required (see §141.83 of this chapter); and

(ii) It is practicable to appraise the articles at the place of arrival.

(d) *Examination of tea for personal use imported in baggage.* Tea for personal use in one or more packages weighing not more than 5 pounds each, when imported in a passenger's baggage, may be delivered without examination for purity under 21 U.S.C. 41–50 and without payment of the examination fee prescribed in 21 U.S.C. 46a.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 84–149, 49 FR 28699, July 16, 1984; T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 89–1, 53 FR 51264, Dec. 21, 1988; T.D. 89–82, 54 FR 36026, Aug. 31, 1989; T.D. 98–28, 63 FR 16417, Apr. 3, 1998; CBP Dec. 12–19, 77 FR 72721, Dec. 6, 2012]

§148.24 Determination of dutiable value.

(a) *Principles applied.* In determining the dutiable value of articles examined under §148.23, the Customs inspector shall apply the principles of section 402, Tariff Act of 1930, as amended (19 U.S.C. 1401a), and shall not regard the declared value or price as conclusive.

(b) *Adjustment of value declared.* An adjustment shall be made by the Customs inspector whenever the purchase price or value declared differs from the fair retail value, whether by reason of depreciation due to wear or use, circumstances of purchase, or acquisition, or for any other reason. He shall give due consideration to the condition of the articles at the time of importation, but he shall not make any allowance for wear and use in excess of 25 per centum of the declared price or value of a worn or used article. A passenger who desires to claim a larger allowance may arrange for formal entry and appraisement of his goods.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 87–89, 52 FR 24445, July 1, 1987]

§148.25 Reexamination and protest.

(a) *Reexamination.* Whenever the Customs officer deems it advisable any or all of a passenger's baggage may be sent to the public stores for examination or reexamination. Passengers dissatisfied with the assessment of duty on their baggage may demand a reexamination, provided the articles have not been removed from Customs custody. In either case, a receipt for the baggage to be examined or reexamined shall be given on Customs Form 6051.

(b) *Protest.* If the passenger remains dissatisfied with the assessment of duty after reexamination, he shall pay the duty assessed and may protest the decision of the port director in accordance with part 174 of this chapter.

§148.26 Collection of internal revenue taxes.

(a) *Cigars and cigarettes.* The internal revenue tax on taxable cigars and cigarettes in a passenger's baggage shall be paid to Customs, using the Customs entry form as a return. Any such return shall show the kind, the quantity, and the tax by class on cigars and cigarettes separately from the statement of duty. Unless for the personal consumption of the importer or disposition as his bona fide gift, cigars and cigarettes

are subject to the packaging and marking requirements in the regulations of the Bureau of Alcohol, Tobacco, and Firearms.

(b) *Alcoholic beverages.* The internal revenue tax shall be collected on all wines and liquors in excess of the quantity entitled to exemption as specified in this part.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 89–1, 53 FR 51264, Dec. 21, 1988]

§ 148.27 Receipt for payment.

When duties and internal revenue taxes on articles in a passenger's baggage are collected, a receipt on Customs Form 368 or 368A shall be issued to the passenger if such duties and taxes are paid in cash. If such duties and taxes are paid by personal check, the check shall be the passenger's receipt unless a receipt is requested.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 92–56, 57 FR 24944, June 12, 1992]

Subpart D—Exemptions for Returning Residents

§ 148.31 Effects taken abroad.

(a) *Exemption.* Each returning resident (including American citizens who are residents of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States) is entitled to bring in free of duty and internal revenue tax under subheading 9804.00.45, and Chapter 98, U.S Note 3, Harmonized Tariff Schedule of the United States, (19 U.S.C. 1202), all personal and household effects taken abroad. To ensure allowance of the exemption, articles of foreign origin should be registered in accordance with §148.1. Automobiles and other vehicles, aircraft, boats, teams and saddle horses, together with their accessories, may be brought in free of duty if taken abroad for noncommercial use (see §148.32).

(b) *Repair or alteration while abroad.* If any such personal or household effect taken abroad has been advanced in value or improved in condition while abroad by repairs (including cleaning) not merely incidental to wear or use while abroad, or by alterations (including additions) which did not change the identity of the article, the cost or value of such repairs or alterations is subject to duty unless all or part of such cost or value is covered by an allowance of the $800 or $1,600 exemption for articles acquired abroad (see §148.33). An effect taken abroad and there changed into a different article is dutiable at its full value when returned to the United States, unless covered in whole or in part by some provision for free entry.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78–394, 43 FR 49788, Oct. 25, 1978; T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 89–1, 53 FR 51264, Dec. 21, 1988; T.D. 97–75, 62 FR 46441, Sept. 3, 1997; CBP Dec. 09–37, 74 FR 48854, Sept. 25, 2009]

§ 148.32 Vehicles, aircraft, boats, teams and saddle horses taken abroad.

(a) *Admission free of duty.* Automobiles and other vehicles, aircraft, boats, teams and saddle horses, together with their accessories, taken abroad for noncommercial use and returned by a returning resident will be admitted free of duty upon being satisfactorily identified.

(b) *Identification of articles taken abroad.* Upon the request of the owner or his agent, the port director will cause any article described in paragraph (a) of this section to be examined before it is taken abroad, and will issue a certificate of registration therefor on CBP Form 4455, or its electronic equivalent. On the return of the article, the certificate may be accepted as satisfactory identification of the described article for the purpose of admitting the article free of duty. In lieu of CBP Form 4455, or its electronic equivalent, the following may be accepted as satisfactory identification of such articles taken abroad:

(1) For an automobile, the State registration card;

(2) For an aircraft, the certificate of registration issued by the Federal Aviation Administration; and

(3) For a pleasure boat, the yacht license or motorboat identification certificate.

(c) *Repairs, alterations, and accessories.* Repairs made abroad to articles described in paragraph (a) of this section,

if incidental to use abroad, are not subject to duty. Repairs not incidental to use abroad, and alterations and additions made abroad, will be assessed with duty upon their value at the rate at which the article itself would be dutiable if imported. Accessories for articles described in paragraph (a) of this section which are acquired abroad are dutiable as if separately imported. Any accessories, repairs, alterations, or additions, which accompany the returning resident at the time of his return to the United States must be included in his baggage declaration.

(d) *Entry.* Entry on a baggage declaration or regular entry (see §148.5) will be required if:

(1) The owner or his agent is unable to produce a proper registration card or certificate to cover the article;

(2) A claim for free entry of repairs, alterations, additions, or accessories is to be made under the $800 or $1,600 returning resident's exemption for articles acquired abroad; or

(3) Duty is to be collected.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 97–75, 62 FR 46441, Sept. 3, 1997; CBP Dec. 09–37, 74 FR 48854, Sept. 25, 2009; CBP Dec. 15–14, 80 FR 61291, Oct. 13, 2015]

§ 148.33 Articles acquired abroad.

(a) *Exemption.* Each returning resident is entitled to bring in free of duty and internal revenue tax under subheadings 9804.00.65, 9804.00.70 and 9804.00.72, and Chapter 98, U.S. Note 3, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), articles for his personal or household use which were purchased or otherwise acquired abroad merely as an incident of the foreign journey from which he is returning, subject to the limitations and conditions set forth in this section and §§148.34–148.38. The aggregate fair retail value in the country of acquisition of such articles for personal and household use must not exceed:

(1) $800, and provided that the articles accompany the returning resident;

(2) $800 in the case of a direct arrival from a beneficiary country, as defined in U.S. Note 4 to Chapter 98, Harmonized Tariff Schedule of the United States, whether or not the articles accompany the returning resident. Articles acquired elsewhere than in such beneficiary country that do not accompany the returning resident are not entitled to the duty exemption; or

(3) $1,600 in the case of a direct or indirect arrival from American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States, whether or not the articles accompany the returning resident, not more than $800 of which may have been acquired elsewhere than in such locations. Articles acquired elsewhere than in such insular possessions that do not accompany the returning resident are not entitled to the duty exemption.

(b) *Application to articles of highest rate of duty.* The $800 or $1,600 exemption will be applied to the aggregate fair retail value in the country of acquisition of the articles acquired abroad which are subject to the highest rates of duty. If an internal revenue tax is applicable, it will be combined with the duty in determining which rates are highest.

(c) *Gifts.* An article acquired abroad by a returning resident and imported by him to be disposed of after importation as his bona fide gift is considered to be for the personal use of the returning resident and may be included in the exemption.

(d) *Tobacco products and alcoholic beverages.* Cigars, cigarettes, manufactured tobacco, and alcoholic beverages may be included in the exemption to which a returning resident is entitled, with the following limits:

(1) No more than 200 cigarettes and 100 cigars may be included, except that in the case of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands and the Virgin Islands of the United States the cigarette limit is 1,000, not more than 200 of which shall have been acquired elsewhere than in such locations;

(2) No alcoholic beverages will be included in the case of an individual who has not attained the age of 21; and

(3) No more than 1 liter of alcoholic beverages may be included, except that:

(i) An individual returning directly or indirectly from American Samoa, Guam, the Commonwealth of the Northern Mariana Islands or the Virgin

Islands of the United States may include in the exemption not more than 5 liters of alcoholic beverages, not more than 1 liter of which was acquired elsewhere than in such locations and not more than 4 liters of which were produced elsewhere than in such locations; and

(ii) An individual returning directly from a beneficiary country as defined in U.S. Note 4 to Chapter 98, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) may include in the exemption not more than 2 liters of alcoholic beverages if at least 1 liter is the product of one or more beneficiary countries.

(e) *Exemption not applicable.* The exemption does not apply to articles intended for sale or acquired on commission, *i.e.*, for the account of another person, with or without compensation for the service rendered. Articles acquired on one journey and left in a foreign country cannot be allowed the exemption accruing upon the return of the resident from a subsequent journey.

(f) *Remainder not applicable to subsequent journey.* A returning resident who has received a total exemption of less than the $800 or $1,600 maximum in connection with his return from one journey is not entitled to apply the unused portion of that maximum amount to articles acquired abroad on a subsequent journey.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78–394, 43 FR 49788, Oct. 25, 1978; T.D. 80–179, 45 FR 45580, July 7, 1980; T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 89–1, 53 FR 51264, Dec. 21, 1988; T.D. 97–75, 62 FR 46441, Sept. 3, 1997; CBP Dec. 09–37, 74 FR 48854, Sept. 25, 2009]

§ 148.34 Family grouping of exemptions for articles acquired abroad.

(a) *Grouping of exemptions.* Each member of a family is entitled to the $800 or $1,600 exemption for articles acquired abroad, subject to the conditions prescribed in this subpart. When members of a family residing in one household travel together on their return to the United States, the $800 or $1,600 exemption to which the several members of the family may be entitled may be grouped and allowed without regard to which member of the family is the owner of the articles. However, a group exemption will not include an exemption for a family member not entitled to it in his own right, nor will a group exemption be applied to any property of such a member. The exemption of a family member who has not attained the age of 21 will not be applied under the group exemption to alcoholic beverages. No exemptions allowable to individuals employed by the household and accompanying the family but not related by blood, marriage, domestic relationship, or adoption will be included in the family grouping.

(b) *Members of a family residing in one household.* ''Members of a family residing in one household'' includes all persons who:

(1) Are related by blood, marriage, domestic relationship, or adoption;

(2) Lived together in one household at their last permanent residence; and

(3) Intend to live in one household after their arrival in the United States.

(c) *Domestic relationship.* As used in paragraph (b)(1) of this section, the term ''domestic relationship'' includes foster children, stepchildren, half-siblings, legal wards, other dependents, individuals with an *in loco parentis* or guardianship relationship, and two adults who are in a committed relationship including, but not limited to, long-time companions, and couples in civil unions, or domestic partnerships, wherein the partners are financially interdependent, and are not married to, or a partner of, anyone else. The term ''domestic relationship'' does not extend to roommates or other cohabitants not otherwise meeting this definition.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 97–75, 62 FR 46442, Sept. 3, 1997; CBP Dec. 09–37, 74 FR 48855, Sept. 25, 2009; CBP Dec, 13–19, 78 FR 76532, Dec. 18, 2013]

§ 148.35 Length of stay for exemption of articles acquired abroad.

(a) *Requirements for allowance of $800 or $1,600 exemption.* Except as otherwise provided in this paragraph or in paragraph (b) of this section, the $800 or $1,600 exemption for articles acquired abroad will not be allowed unless the returning resident has remained beyond the territorial limits of the

United States for a period of not less than 48 hours. The $800 exemption may be allowed on articles acquired abroad by a returning resident arriving directly from Mexico without regard to the length of time the person has remained outside the territorial limits of the United States.

(b) *Not required for allowance of $1,600 exemption on return from the Virgin Islands.* The $1,600 exemption applicable in the case of the arrival of a returning resident directly or indirectly from the Virgin Islands of the United States may be allowed without regard to the length of time such person has remained outside the territorial limits of the United States.

(c) *Computation of time.* The 48-hour period a returning resident must have completed abroad to be entitled to an exemption will be computed exactly. For example, a resident leaving United States territory at 1:30 p.m. on June 1 would complete the 48-hour period at 1:30 p.m. on June 3.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 97–75, 62 FR 46442, Sept. 3, 1997; CBP Dec. 09–37, 74 FR 48855, Sept. 25, 2009]

§ 148.36 Frequency of allowance of exemption for articles acquired abroad.

(a) *30-day period.* The $800 or $1,600 exemption for articles acquired abroad will not be granted to a returning resident who has taken advantage of such exemption within the 30-day period immediately preceding his return to the United States. The date of the returning resident's latest prior arrival on which he declared articles acquired abroad for allowance of the $800 or $1,600 exemption will be deemed the date he took advantage of the applicable exemption.

(b) *Computation of time.* The 30-day period immediately preceding the resident's return will be computed by excluding the day of arrival and counting backward 30 days. For example, in the case of an arrival on May 28, the resident would not be entitled to the $800 or $1,600 exemption if he had taken advantage of such exemption on or after the preceding April 28.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 97–75, 62 FR 46442, Sept. 3, 1997; CBP Dec. 09–37, 74 FR 48855, Sept. 25, 2009]

§ 148.37 Replacement of unsatisfactory articles acquired abroad.

(a) *Free entry of replacement articles.* An article furnished by a foreign supplier to replace a like article of comparable value previously exempted from duty under the $800 or $1,600 exemptions for articles acquired abroad will be allowed free entry if the original article is found by the importer to be unsatisfactory and the procedures provided by paragraph (b) of this section are followed. In any case in which the importer has failed to follow these procedures, the port director may allow free entry of the replacement article if he is satisfied that the unsatisfactory article was timely exported and that the failure to comply with the procedures of paragraph (b) of this section was due to inadvertence or lack of experience in customs matters and was without willful intent to avoid CBP supervision.

(b) *Procedure for replacement.* Any article previously exempted from duty under the $800 or $1,600 exemptions found by the importer to be unsatisfactory must be returned to CBP custody and exported under CBP supervision at the expense of the importer within 60 days after its importation. A certificate of registration on CBP Form 4455, or its electronic equivalent, will be issued to the importer with instructions as to its use when the unsatisfactory article is exported for replacement under the provisions of subheading 9804.00.75, Harmonized Tariff Schedule of the United States.

(c) *Articles found damaged upon declaration.* The requirement that the original article be exported under CBP supervision does not apply when a duplicate article is furnished by a foreign supplier as a replacement for an article declared for entry under the $800 or $1,600 exemption and found by the CBP inspector or other examining officer to be so damaged as to constitute a nonimportation (§158.11 of this chapter). In

such a case, CBP Form 4455, or its electronic equivalent, will be issued to the importer at the time the determination of nonimportation is made and the duplicate replacement will be considered to have been acquired abroad for the purposes of the $800 or $1,600 exemption provision, provided no charge is made to the importer for the duplicate replacement.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 89–1, 53 FR 51264, Dec. 21, 1988; T.D. 97–75, 62 FR 46442, Sept. 3, 1997; CBP Dec. 09–37, 74 FR 48855, Sept. 25, 2009; CBP Dec. 15–14, 80 FR 61291, Oct. 13, 2015]

§ 148.38 Sale of articles acquired abroad.

An article brought in under the $800 or $1,600 exemption for articles acquired abroad for personal or household use and subsequently sold is not dutiable or subject to forfeiture by reason of the sale if the returning resident actually acquired and imported the article for his bona fide personal or household use and not for sale.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 97–75, 62 FR 46442, Sept. 3, 1997; CBP Dec. 09–37, 74 FR 48855, Sept. 25, 2009]

§ 148.39 Rented automobiles.

(a) *Importation for temporary period.* An automobile rented by a resident of the United States while abroad may be brought into the United States by or on behalf of such resident for a temporary period not to exceed 30 days under subheading 9804.00.60, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), without payment of duty. The automobile shall be used for the transportation of the resident and that of his family and guests, and for such incidental carriage of articles as may be appropriate to his personal use of the automobile. No entry or security for exportation shall be required.

(b) *Unauthorized use or failure to export.* If any automobile exempted from duty under subheading 9804.00.60, HTSUS (19 U.S.C. 1202), is used otherwise than for the purpose expressed or is not returned abroad within 30 days, without prior payment to a port director of the duty which would have been payable at the time of entry if entered without benefit of the exemption, the automobile or its value (to be recovered from the importer) shall be subject to forfeiture.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 89–1, 53 FR 51264, Dec. 21, 1988]

Subpart E—Exemptions for Nonresidents

§ 148.41 Articles carried through the United States.

An arriving nonresident who is in transit to a place outside U.S. Customs territory may take with him through U.S. Customs territory for carriage to such place articles not exceeding $200 in aggregate value (including not more than 4 liters of alcoholic beverages) without the payment of duty or internal revenue taxes as provided in subheading 9804.00.40, Chapter 98, U.S. Note 3, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78–394, 43 FR 49788, Oct. 25, 1978; T.D. 89–1, 53 FR 51264, Dec. 21, 1988; T.D. 97–82, 62 FR 51771, Oct. 3, 1997]

§ 148.42 Personal effects.

(a) *Exemption.* A nonresident arriving in the United States, regardless of age, is entitled under subheading 9804.00.20, and Chapter 98, U.S. Note 3, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), to entry free of duty and internal revenue tax for his wearing apparel, articles of personal adornment, toilet articles, and similar personal effects. ''Similar personal effects'' include all articles intended and appropriate for the personal use of the nonresident while traveling, such as hunting and fishing equipment, wheelchairs for invalids or crippled persons, pet and hunting dogs, and the like.

(b) *Application of exemption.* The exemption applies only to articles which were actually owned by the nonresident and in his possession abroad at the time of, or prior to, his departure for the United States. The articles must be appropriate for the personal use of the nonresident, and intended

only for such use and not as a gift for another person nor for sale.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 89–1, 53 FR 51264, Dec. 21, 1988]

§ 148.43 Tobacco products and alcoholic beverages.

(a) *For personal use.* Fifty cigars, or 200 cigarettes, or 2 kilograms of smoking tobacco, and not exceeding 1 liter of alcoholic beverages may be passed free of duty and internal revenue tax under subheading 9804.00.25 and Chapter 98, U.S. Note 3, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), when brought in by an adult nonresident for his personal use, and not for commercial use or to be given to another person. This exemption for tobacco products may be applied proportionately. The exemption may be applied to more than one kind of alcoholic beverages but not to an aggregate volume of more than 1 liter for one adult nonresident.

(b) *For gifts.* A nonresident who is allowed the $100 gift exemption (see §148.44) may include not more than 100 cigars under such exemption from duty and internal revenue tax, provided the cigars accompany him and are to be disposed of only as bona fide gifts.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78–394, 43 FR 49789, Oct. 25, 1978; T.D. 80–19, 45 FR 45580, July 7, 1980; T.D. 89–1, 53 FR 51264, Dec. 21, 1988]

§ 148.44 Gifts.

(a) *Exemption.* An arriving nonresident who intends to remain in the United States for not less than 72 hours is entitled to claim as free of duty and internal revenue tax under subheading 9804.00.30 and Chapter 98, U.S. Note 3, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), articles not over $100 in aggregate value (not including alcoholic beverages and cigarettes, but including not more than 100 cigars) which accompany him and are to be disposed of by him as bona fide gifts. See §148.43(b) for limitations on cigars under this exemption.

(b) *Frequency of allowance.* The exemption for gifts may be allowed only if the nonresident has not claimed the exemption within the immediately preceding 6 months.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78–394, 43 FR 49789, Oct. 25, 1978; T.D. 89–1, 53 FR 51265, Dec. 21, 1988]

§ 148.45 Vehicles and other conveyances.

Nonresidents are entitled to entry free of duty and internal revenue tax under subheading 9804.00.35 and Chapter 98, U.S. Note 3, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), for automobiles, trailers, aircraft, motorcycles, bicycles, baby carriages, boats, horse-drawn conveyances, horses, and similar means of transportation and the usual equipment accompanying them, if such articles are imported in connection with the arrival of the nonresident to be used in the United States only for the transportation of the nonresident, his family and guests, and such incidental carriage of articles as may be appropriate to his personal use of the conveyance.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 89–1, 53 FR 51265, Dec. 21, 1988]

§ 148.46 Sale of exempted articles.

(a) *Sale resulting in forfeiture.* The following articles or their value (to be recovered from the importer) upon their sale, shall be subject to forfeiture in accordance with the provisions of Chapter 98, Subchapter IV, U.S. Note 1, HTSUS (19 U.S.C. 1202), unless the procedure set forth in paragraph (b) of this section is followed:

(1) Any jewelry or similar articles of personal adornment having an aggregate value of $300 or more which have been allowed an exemption under §148.42, if sold within 3 years of the date of importation.

(2) Any conveyance or its equipment allowed an exemption under §148.45, if sold within 1 year after the date of importation.

(b) *Procedure permitting sale.* Articles described in paragraph (a) of this section may be sold if, prior to the time of sale, payment is made to a port director of the duty which would have been payable at the time of entry if the article had been entered without the benefit of the applicable exemption.

(c) *Permissible sales.* A sale pursuant to a judicial order or in liquidation of the estate of a decedent is not a basis for any liability for duty or forfeiture.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 89–1, 53 FR 51265, Dec. 21, 1988]

Subpart F—Other Exemptions

§ 148.51 Special exemption for personal or household articles.

(a) *Application of exemption.* The exemption from duty and internal revenue tax contemplated by section 321(a)(2)(B), Tariff Act of 1930, as amended (19 U.S.C. 1321(a)(2)(B)), may be applied to articles for his personal or household use including gifts, but not for any business or commercial use, accompanying:

(1) A nonresident arriving in the United States who is not entitled to an exemption for gifts under subheading 9804.00.30 Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202) (see § 148.44); or

(2) A returning resident who is not entitled to the $800 or $1,600 exemption for articles acquired abroad under subheading 9804.00.65, 9804.00.70 or 9804.00.72, HTSUS (see Subpart D of this part).

(b) *Limitations.* No article accompanying a person arriving in the United States will be exempted from duty or internal revenue tax under section 321(a)(2)(B), Tariff Act of 1930, as amended, if any article accompanying such person is subject to duty or tax by reason of the following limitations on the application of this exemption:

(1) *Value of articles.* The exemption shall be allowed only when the aggregate fair retail value of all articles not otherwise entitled to an exemption does not exceed $200.

(2) *Articles subject to internal revenue tax.* The exemption will not be applied to articles subject to internal revenue tax other than:

(i) Cigarettes not in excess of 50;

(ii) Cigars not in excess of 10;

(iii) Alcoholic beverages not in excess of 150 milliliters; or

(iv) Alcoholic perfumery not in excess of 150 milliliters; or

(c) *Family grouping.* Family grouping of the exemption shall not be allowed.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 148.51, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov.*

§ 148.52 Exemption for household effects used abroad.

(a) *Exemption.* Furniture, carpets, paintings, tableware, books, libraries, and other usual household furnishings and effects actually used abroad for not less than 1 year by resident or nonresidents, and not intended for any other person or for sale may be allowed entry free of duty and tax under subheading 9804.00.05, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202). Household effects used abroad not less than 1 year by a family of which the importer was a resident member for not less than 1 year during the period of use may be allowed free entry whether or not the importer owned the effects at the time of such use. The year of use need not be continuous, nor need it immediately precede the time of importation.

(b) *Proof of use.* In order to obtain free entry for household effects under this section, the use of the effects abroad for 1 year must be proven to the satisfaction of the port director. The port director, in his discretion, may require evidence of use other than the declaration provided for in paragraph (c) of this section.

(c) *Declaration.* When household effects are claimed to be free of duty a declaration of the owner on Customs Form 3299, or its electronic equivalent, shall be required to support the claim for free entry. If it is impracticable to produce the declaration at the time of entry, the importer may give a bond on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, for the production of the owner's declaration within 6 months.

(d) *Arrival of effects more than 10 years after arrival of importer.* As a general rule, household effects arriving more than 10 years after the last arrival of the importer from the country in which the effects were used shall not be

admitted free of duty under this exemption unless the port director is satisfied from the importer's explanation that the effects were unavoidably detained beyond the 10-year period. However, in no case shall free entry be allowed under this provision when a period of 25 years or more has elapsed since the last arrival of the importer in the United States from the country in which the effects were used.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 84–213, 49 FR 41186, Oct. 19, 1984; T.D. 89–1, 53 FR 51265, Dec. 21, 1988; CBP Dec. 15–14, 80 FR 61291, Oct. 13, 2015]

§ 148.53 Exemption for tools of trade.

(a) *Exemption.* Professional books, implements, instruments, or tools of trade, occupation or employment, may be allowed entry free of duty and tax under the provisions of subheading 9804.00.15, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), for such articles owned and used abroad by any person emigrating to the United States, or subheading 9804.00.10 for such articles taken abroad by or for the account of any person arriving in the United States. The exemption for emigrants under subheading 9804.00.15, HTSUS shall not be applied to:

(1) Theatrical scenery, properties, or apparel;

(2) Articles for use in any manufacturing establishment;

(3) Articles for any other person; or

(4) Articles for sale.

(b) *Declaration.* A declaration of the emigrant or returning individual on Customs Form 3299, or its electronic equivalent, shall be required to support the claim of free entry. However, an oral declaration may be accepted from a returning individual in lieu of a written declaration for any such articles claimed to be free of duty under subheading 9804.00.10, HTSUS (19 U.S.C. 1202).

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 89–1, 53 FR 51265, Dec. 21, 1988; CBP Dec. 15–14, 80 FR 61291, Oct. 13, 2015]

§ 148.54 Exemption for effects of citizens dying abroad.

(a) *Exemption.* Articles claimed to be personal and household effects, not stock in trade, the title to which is in the estate of a citizen of the United States who died abroad may be allowed entry free of duty and tax under subheading 9804.00.85, and Chapter 98, U.S. Note 3, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(b) *Entry.* Such effects must be entered in accordance with the provisions of §§ 143.11 through 143.16 of this chapter, or if the value of such effects does not exceed $2500, entry may be permitted under the provisions of §§ 143.21 through 143.28 of this chapter.

(c) *Statement of facts required.* The port director will require in connection with the entry the written statement of a person having knowledge of the facts or will otherwise satisfy himself as to the citizenship of the deceased owner of the effects at the time of death.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78–99, 43 FR 13061, Mar. 28, 1978; T.D. 89–1, 53 FR 51265, Dec. 21, 1988; CBP Dec. 12–19, 77 FR 72721, Dec. 6, 2012]

§ 148.55 Exemption for articles bearing American trademark.

(a) *Application of exemption.* An exemption is provided for trademarked articles accompanying any person arriving in the United States which would be prohibited entry under section 526, Tariff Act of 1930, as amended (19 U.S.C. 1526), or section 42 of the Act of July 5, 1946 (60 Stat. 440; 15 U.S.C. 1124), because the trademark has been registered with the U.S. Patent and Trademark Office and recorded with Customs. The exemption may be applied to those trademarked articles of foreign manufacture bearing a trademark owned by a citizen of, or a corporation or association created or organized within, the United States when imported for the arriving person's personal use in the quantities provided in pararaph (c) of this section. Unregistered and unrecorded trademarked articles are not subject to quantity limitation.

(b) *Limitations*—(1) *30-day period.* The exemption in paragraph (a) of this section shall not be granted to any person who has taken advantage of the exemption for the same type of article within the 30-day period immediately prior to his arrival in the United States. The date of the person's last arrival on

which he claimed this exemption shall be considered to be the date he last took advantage of the exemption.

(2) *Sale of exempted articles.* If an article which has been exempted is sold within one year of the date of importation, the article or its value (to be recovered from the importer), is subject to forfeiture. A sale subject to judicial order or in the liquidation of an estate is not subject to the provisions of this paragraph.

(c) *Quantities.* Generally, each person arriving in the United States may apply the exemption to one article of the type bearing a protected trademark. The Commissioner shall determine if a quantity of an article in excess of one may be entered and, with the approval of the Secretary of the Treasury, publish in the FEDERAL REGISTER a list of types of articles and the quantities of each entitled to the exemption. If the holder of a protected trademark allows importation of a quantity in excess of one of its particular trademarked article, the total of those trademarked articles authorized by the trademark holder may be entered without penalty.

[T.D. 79–159, 44 FR 31969, June 4, 1979; 44 FR 35208, June 19, 1979, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

Subpart G—Crewmember Declarations and Exemptions

§ 148.61 Status as crewmembers.

The following persons arriving in the United States shall not be treated as crewmembers:

(a) Members of the uniformed services of the United States and persons in the civil service of the United States engaged in the operation of a vessel, vehicle, or aircraft owned by, or under the complete control and management of, the United States or any of its agencies.

(b) Persons engaged in the operation of a private or public aircraft.

(c) Persons not connected with the operation, navigation, ownership, or business of a vessel, vehicle or aircraft engaged in international traffic.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 76–338, 41 FR 54167, Dec. 13, 1976]

§ 148.62 Declaration and entry of articles by crewmembers.

(a) *Declaration required.* Articles which are to be landed by a crewmember, including any person traveling on board a vessel, vehicle, or aircraft engaged in international traffic who is returning from a trip on which he was employed as a crewmember, shall be declared upon arrival of the vessel, vehicle, or aircraft in the United States. When practicable, the clearance of articles through Customs shall be made and permission to unlade obtained before the articles are taken from the carrier. However, if no danger to the revenue will result, articles may be submitted for examination and clearance to the Customs office on the pier or at the landing place.

(b) *Form of declaration*—(1) *Oral declaration.* A crewmember may be permitted to make an oral declaration and entry if all articles he has to declare, in addition to articles for use in port on temporary leave for which no entry is required in accordance with § 148.63, may be admitted free of duty and tax under section 321(a)(2)(B), Tariff Act of 1930, as amended (19 U.S.C. 1321(a)(2)(B)) (See § 148.64).

(2) *Written declaration.* A written declaration on Customs Form 5129, Crewmember's Declaration shall be required in any case in which an oral declaration is not permitted. A written declaration may be required in any case if necessary to effect prompt and orderly clearance of crewmembers and their effects or if deemed necessary to protect the revenue.

(c) *Transfer without declaration.* Articles belonging to a crewmember may be transferred from one carrier to another in international traffic without declaration, entry, or assessment of duty if the transfer is carried out under the supervision of Customs officers, or by a bonded cartman if necessary.

(d) *Entry at port where articles to be landed.* Articles in the possession of or owned by a crewmember of a character for which entry must be made when they are brought into the United States shall be entered at the port where the articles are to be landed. However, if the crewmember remains on a vessel, vehicle, or aircraft which is to proceed to another port of the

United States in a movement in which entry of the vessel, vehicle, or aircraft will not be required, entry of the articles shall be made at the port at which such movement begins.

(e) *Collection of duty and taxes.* Any duties and taxes found due shall be collected as in the case of arriving passengers.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78–99, 43 FR 13061, Mar. 29, 1978]

§ 148.63 Articles for use while on temporary leave.

(a) *Exemption.* Articles in the possession of and exclusively for use by any crewmember during the trip or voyage, such as necessary clothing, toiletries, and purely personal effects, may be landed by such crewmember for use on temporary leave without a written declaration or entry, and without payment of duty or internal revenue tax under subheading 9804.00.80, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), if the port director is satisfied that:

(1) The articles are reasonable and appropriate for the crewmember's accommodation while on temporary leave, and are to be taken out of the United States, except for articles consumed in use;

(2) The articles are intended exclusively for the crewmember's bona fide personal use;

(3) The quantities are reasonable, depending on the circumstances in each particular case; and

(4) In the case of tobacco products and alcoholic beverages, the containers have been opened and the total quantity landed shall not exceed 50 cigars, 300 cigarettes, or 2 kilograms of smoking tobacco, or a proportionate amount of each, and 1 liter of alcoholic beverages.

(b) *Temporary leave.* A crewmember is not considered to be on temporary leave from a vessel, vehicle, or aircraft engaged in international traffic or entitled to the exemption under this section upon disembarkation when he is to remain in the confines of a pier, terminal, airport, or area immediately adjacent thereto, in order to timely embark on the carrier in the course of a continuous journey or on a concurrently scheduled arrival and departure.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 80–179, 45 FR 45580, July 7, 1980; T.D. 89–1, 53 FR 51265, Dec. 21, 1988]

§ 148.64 Administrative exemption.

(a) *Application of exemption.* The exemption from duty and internal revenue tax contemplated by section 321(a)(2)(B), Tariff Act of 1930, as amended (19 U.S.C. 1321(a)(2)(B)), may be applied to articles for the personal and household use, including gifts, of a crewmember arriving in the United States who is not entitled to an exemption under subheading 9804.00.30, 9804.00.65, 9804.00.70, or 9804.00.72, Harmonized Tariff Schedule of the United States (HTSUS) (see §§ 148.66(c) and 148.65). The exemption may be applied when the crewmember is entitled to an exemption under subheading 9804.00.80, HTSUS (19 U.S.C. 1202), for articles for use while on temporary leave (§ 148.63).

(b) *Limitations.* No article accompanying a crewmember arriving in the United States shall be exempted from duty or internal revenue tax under section 321(a)(2)(B), Tariff Act of 1930, as amended, if any article accompanying such crewmember is subject to duty or internal revenue tax by reason of the following limitations.

(1) *Value of articles.* The exemption shall be allowed only when the aggregate fair retail value of all articles not otherwise entitled to an exemption does not exceed $200.

(2) *Articles subject to internal revenue tax.* The exemption shall not be applied to any article subject to internal revenue tax in addition to any articles allowed an exemption under subheading 9804.00.80, HTSUS (19 U.S.C. 1202), other than:

(i) Cigarettes not in excess of 50;

(ii) Cigars not in excess of 10;

(iii) Alcoholic beverages not in excess of 150 milliliters; or

(iv) Alcoholic perfumery not in excess of 150 milliliters (Subheading

9805.00.50, HTSUS (19 U.S.C. 1202, 1321)). [T.D. 80–179.].

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 80–179, 45 FR 45580, July 7, 1980; T.D. 84–149, 49 FR 28699, July 16, 1984; T.D. 89–1, 53 FR 51265, Dec. 21, 1988; T.D. 94–51, 59 FR 30296, June 13, 1994; T.D. 97–75, 62 FR 46442, Sept. 3, 1997]

§ 148.65 Exemption for resident crewmembers.

(a) *Status as returning resident.* A crewmember arriving in a vessel, vehicle, or aircraft from a foreign port who is a resident of the United States shall be considered a returning resident qualifying for the exemptions allowed under Chapter 98, Subchapter IV, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), and subpart D of this part if he permanently leaves the carrier without the intention of resuming his employment on the same or any other carrier that is engaged in international traffic.

(b) *Statement of declaration.* A resident crewmember who claims that articles declared by him are entitled to be passed free of duty and tax under the returning resident's exemption, shall include a legible statement on the declaration, Customs Form 5129, of the basis for his claim for entitlement to the resident's exemption.

[T.D. 81–218, 46 FR 42657, Aug. 24, 1981, as amended by T.D. 89–1, 53 FR 51265, Dec. 21, 1988]

§ 148.66 Exemptions for nonresident crewmembers.

(a) *Status as arriving nonresident.* A nonresident crewmember will be treated as an arriving nonresident for purposes of claiming the exemptions allowable under Chapter 98, Subchapter IV, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), and subpart E of this part when he permanently leaves his employment with a vessel, vehicle, or aircraft at a port in the United States without intention of resuming employment on the same or another carrier in international traffic. However, a nonresident crewmember shall not be treated as an arriving nonresident for this purpose when he departs a carrier for temporary leave but retains his employment with the carrier so that he will be going foreign again in the course of his continuing employment (see § 148.63).

(b) *Articles carried through the United States.* A nonresident crewmember, permanently leaving a carrier in a U.S. port to travel as a passenger on another carrier which will take him to a place outside the United States, who desires to take with him articles not exceeding $200 in aggregate value (including not more than 4 liters of alcoholic beverages) without the payment of duty or internal revenue tax as provided in item 812.40 (see § 148.41), may be accorded free entry of the articles under the following procedure:

(1) *Declaration and supporting statement.* The nonresident crewmember shall itemize the articles on his declaration and entry, Customs Form 5129, required by § 148.62(b)(2), and shall state in writing in support of his declaration that:

(i) He has been finally discharged from the carrier, with the date of discharge;

(ii) He intends to depart from the same or another U.S. port as a passenger on another carrier for a place outside U.S. Customs territory; and

(iii) The articles will be taken with him on such carrier and will not remain in the United States.

(2) *Allowance by port director.* The port director may require verification of the crewmember's discharge and a statement as to the accuracy of the second and third supporting statements of the crewmember from the person in charge of the carrier, the vessel agent, or the port captain. If the port director is satisfied that the crewmember's statements are correct, the articles may be passed free of duty and internal revenue tax under subheading 9808.00.40, HTSUS (19 U.S.C. 1202).

(c) *Articles to be disposed of as gifts.* A nonresident crewmember shall itemize on his baggage declaration and entry, Customs Form 5123 or 5129, required by § 148.62, all articles in his possession for which he seeks entry under subheading 9804.00.30, HTSUS (19 U.S.C. 1202), as bona fide gifts. The crewmember must be permanently leaving his employment on the international carrier for a stay in the United States of at least 72

hours before departing for a place outside the United States as a passenger.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 78–99, 43 FR 13061, Mar. 29, 1978; T.D. 78–394, 43 FR 49789, Oct. 25, 1978; T.D. 89–1, 53 FR 51265, Dec. 21, 1988]

§ 148.67 Penalties for failure to declare articles.

(a) *Avoidance of inspection.* When articles may be presented to the Customs office on the pier or at the landing place for inspection and clearance, if the circumstances under which the articles are landed indicate an attempt to avoid inspection, the penalties prescribed in section 453, Tariff Act of 1930, as amended (19 U.S.C. 1453), shall be assessed.

(b) *Articles landed without declaration.* Any article landed without having been properly declared as provided in § 148.62 shall be considered as having been unladen without a permit and the penalties provided in 19 U.S.C. 1453 or 19 U.S.C. 1644 and 1644a shall be assessed as applicable.

(c) *Articles omitted from declaration.* If the declaration does not include all the articles landed, the crewmember shall be subject to the penalties prescribed in section 497, Tariff Act of 1930 (19 U.S.C. 1497), with respect to the articles omitted. The penalties prescribed in section 453, Tariff Act of 1930, as amended (19 U.S.C. 1453), shall not be assessed if any, though not all, of the articles are declared, except as provided in paragraph (a) of this section.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 98–74, 63 FR 51290, Sept. 25, 1998]

Subpart H—Military and Civilian Employees of the United States, and Evacuees

§ 148.71 Status of persons in service of United States as returning residents.

A person in the service of the United States and members of his family arriving in the United States are ordinarily considered returning residents for the purpose of Chapter 98, Subchapter IV, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), except that the following persons are treated as nonresidents:

(a) A wife or husband of any person in the service of the United States emigrating to the United States, and

(b) A child born abroad of any person in the service of the United States who is arriving in the United States for the first time.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 89–1, 53 FR 51265, Dec. 21, 1988]

§ 148.72 [Reserved]

§ 148.73 Baggage on carriers operated by the Department of Defense.

(a) *Declaration.* All persons, including crewmembers, entering the United States on carriers operated by or for the Department of Defense shall execute written baggage declarations.

(b) *Exemptions applicable.* Passengers on transports shall be granted the applicable exemptions from duty provided for in Chapter 98, Subchapter IV, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202). Members of the Armed Forces of the United States and personnel in the civil service of the United States engaged in the operation of the vessel shall be accorded the same privilege. Civilian officers and crewmembers not in the service of the United States shall be subject to the provisions of subpart G of this part with respect to exemption from duty.

(c) *Examination of baggage.* Baggage on transports shall be examined at the port where landed in the same manner as baggage on commercial vessels.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 82–213, 48 FR 46979, Oct. 17, 1983; T.D. 89–1, 53 FR 51265, Dec. 21, 1988]

§ 148.74 Exemption on termination of assignment to extended duty or on evacuation.

(a) *Exemption.* With the limitation on alcoholic beverages and tobacco products provided in paragraph (c) of this section, entry free of duty and tax under subheading 9805.00.50, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), may be accorded personal and household effects of:

(1) Any person in the service of the United States who returns to the United States upon the termination of assignment to extended duty at a post

or station outside the Customs territory of the United States;

(2) Members of his family who have resided with him at such post or station and are returning upon the termination of his assignment; or

(3) Any person evacuated to the United States under Government orders or instructions.

(b) The term ''personal effects'' as used in subheading 9805.00.50, HTSUS, is not confined to that class of articles described in subheading 9804.00.20, HTSUS, nor is any period of use, such as prescribed by subheading 9804.00.05, HTSUS, applicable to household effects entered under subheading 9805.00.50, HTSUS. The privilege of free entry under subheading 9805.00.50, HTSUS, does not apply to:

(1) Articles imported for sale, or for the account of any person not specified in subheading 9805.00.50, HTSUS; or

(2) Articles which have not been in the direct personal possession of the claimant, or a member of his household, while abroad.

(c) *Limitation on alcoholic beverages and tobacco products.* A total of not more than 4 liters of alcoholic beverages and not more than 100 cigars shall be accorded free entry under subheading 9805.00.50, HTSUS, subject to the conditions that:

(1) These articles accompany the person making the claim for free entry upon his arrival in the U.S.;

(2) Not more than 1 liter of any such alcoholic beverages shall have been distilled or otherwise manufactured and bottled in any place other than the United States or its possessions;

(3) Such individual has not concurrently claimed exemption as a returning resident under subheading 9804.00.65, 9804.00.70, or 9804.00.72, HTSUS; and

(4) Such person, if other than one in the service of the U.S., shall have attained the age of 21.

(d) *Termination of assignment to extended duty.* The requirement of subheading 9805.00.50, HTSUS that the person ''returns to the United States upon the termination of assignment to extended duty'' shall be considered met upon the necessary proof being submitted that any one of the following is applicable:

(1) The person is returning upon the termination of a tour of duty outside the Customs territory of the United States of at least 140 days' duration.

(2) The person is returning after the termination of an assignment under permanent change of station orders to duty at a post or station outside the Customs territory of the United States, regardless of the duration of the duty. A crewmember, including a member of a command, serving on a United States naval vessel when it departs from the United States on an intended deployment of 120 days or more outside the Customs territory of the United States and who continues to serve on the vessel until it returns to the United States may be considered as returning after the termination of an assignment of duty under permanent change of station orders.

(3) The person is returning to the United States upon the termination of a tour of duty at any time after leaving the United States for duty of not less than 140 days outside the Customs territory of the United States.

(4) The person, although not returning to the United States, is ordered by the Government agency involved from duty at a post or station outside the Customs territory of the United States to duty at another post or station outside the Customs territory of the United States necessitating the return to the United States of his personal and household effects.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 80–179, 45 FR 45580, July 7, 1980; T.D. 89–1, 53 FR 51265, Dec. 21, 1988; T.D. 97–75, 62 FR 46442, Sept. 3, 1997]

§ 148.75 Persons ineligible for exemption on termination of assignment.

(a) *Persons returning from temporary assignment.* No person, or member of his family, shall be allowed free entry of personal and household effects under subheading 9805.00.50, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), where the person returns to the United States pursuant to Government orders or instructions which authorized him initially to proceed to a foreign post or station and return to the United States upon termination of temporary duty, except as it may otherwise be deemed

proper in accordance with the provisions of §148.74(d) or §148.76.

(b) *Persons returning on leave or before termination of extended duty assignment.* A person returning on leave, other than on reemployment leave at the termination of assignment to extended duty as defined in §148.74(d), or otherwise returning before the termination of an assignment to extended duty outside the Customs territory of the United States, with or without orders covering the return, is not eligible for an exemption under subheading 9805.00.50, HTSUS (19 U.S.C. 1202).

(c) *Person returning on temporary duty assignment.* A person returning to the United States under orders on temporary duty assignment at the termination of which he is returned to his duty station abroad to resume his regular duties is not regarded as returning to the United States at the termination of extended duty outside the Customs territory of the United States and is not eligible for an exemption under subheading 9805.00.50, HTSUS (19 U.S.C. 1202).

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 89–1, 53 FR 51266, Dec. 21, 1988]

§148.76 Waiver of requirements or limitations.

In any case in which the limitation on the quantity of alcoholic beverages and tobacco products which may be exempted from duty and tax under §148.74(c) or the failure of the person to meet the requirements that he be returning upon the termination of assignment to ''extended duty,'' as explained in §148.74(d), will cause undue hardship to the person through no fault of his own, but rather because of the nature of his assignment or other hardship circumstances, the Commissioner of Customs, upon receipt of a request from the Government agency involved, may waive the limitation or the requirement, as the case may be, if he deems such waiver warranted by the facts.

§148.77 Entry of effects on termination of assignment to extended duty, or on evacuation.

(a) *General procedure.* All articles for which free entry is claimed under subheading 9805.00.50, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), shall be entered or withdrawn in accordance with the requirements prescribed by the Tariff Act of 1930, as amended. Port directors shall be satisfied in all cases that the articles for which free entry is claimed under subheading 9805.00.50, HTSUS, are personal and household effects of the importer entitled to the benefits of item 817.00, particularly in those cases where the quantity of effects imported may appear to be unreasonable for personal or household use. No invoice shall be required for articles accorded free entry under this provision.

(b) *Declaration and entry*—(1) *Person entitled to exemption.* Declaration and entry for articles claimed to be exempt from duty and tax under subheading 9805.00.50, HTSUS (19 U.S.C. 1202), may be made on Customs Form 3299, or its electronic equivalent or Department of Defense Form (DD) 1252 when entry is made in the name of the person who is entitled to the benefits of the exemption. The date of the person's last departure from the United States shall be indicated on the declaration and entry.

(2) *Designated official.* Customs Form 3299, or its electronic equivalent, or Department of Defense Form 1252 executed on behalf of the owner of unaccompanied personal and household effects by either a United States Dispatch Agent or a designated responsible military official in his own name, may be accepted by the Customs officer as the declaration and entry if there is a valid reason evident from the owner's travel orders or information at hand why the United States Government agency concerned is unable to present Department of Defense Form (DD) 1252 or Customs Form 3299 executed by the owner. The date of the owner's last departure from the United States need not be indicated on the form. The following statement shall be added across the face or to the back of Customs Form 3299 or Department of Defense Form 1252.

This form is completed on behalf of (Name of Government employee) Travel orders and information on hand in this office show that the named person has met all requirements of section 148.74, Customs Regulations, and is entitled to the benefits of subheading

9805.00.50, Harmonized Tariff Schedule of the United States. The shipment imported consists of nothing but personal and household effects of the named person, which effects are not imported for sale or as an accommodation for others.

(c) *Verification of claim for exemption*—(1) *By travel orders.* The declaration and entry shall be verified by the Customs officer by an inspection of the owner's travel orders. If the port director accepts an inspection of the owner's travel orders as evidence that the effects were brought into the United States within the requirements of subheading 9805.00.50, the owner's travel orders shall be identified on the entry, which shall be handled like a free baggage declaration.

(2) *By other evidence.* The declaration and entry may be verified by other evidence which satisfies the port director that the effects were brought into the United States in connection with:

(i) The person's return to the United States upon the termination of assignment to extended duty, as explained in §148.74(d);

(ii) The return of members of his family who have resided with him at his post or station upon the termination of his assignment; or

(iii) The evacuation of a person to the United States under Government orders or instructions.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 82–145, 47 FR 35478, Aug. 16, 1982; T.D. 85–123, 50 FR 29955, July 23, 1985; T.D. 89–1, 53 FR 51266, Dec. 21, 1988; CBP Dec. 15–14, 80 FR 61291, Oct. 13, 2015]

Subpart I—Personnel of Foreign Governments and International Organizations and Special Treatment for Returning Individuals

§148.81 General provisions.

(a) *Reciprocal privileges.* The privileges provided for in §§148.81 through 148.86 and §148.90 of this chapter shall be accorded only if reciprocal privileges are granted by the foreign government involved to U.S. personnel of comparable status.

(b) *Baggage and effects.* The term ''baggage and effects,'' as used in this subpart includes all articles which were in the possession of a person abroad, and are being imported in connection with his arrival, and which are intended for his bona fide personal or household use. It does not include articles imported as an accommodation to others or for sale or other commercial use.

(c) *Aliens.* The privileges provided in this subpart shall be accorded only to alien representatives, officers, employees, and members of the armed forces of foreign governments and designated public international organizations.

(d) *Internal revenue tax.* Any article exempted from the payment of duty under this subpart shall be exempt also from the payment of any internal revenue tax imposed upon or by reason of importation.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 73–227, 38 FR 22548, Aug. 22, 1973]

§148.82 Diplomatic, consular, and other privileged personnel.

(a) *Inviolability of the person of diplomatic personnel.* The person of the representatives of foreign governments and members of their families set forth below shall be free from arrest, search, or detention:

(1) Ambassadors, ministers, chargés d'affaires, secretaries, counselors, attachés of foreign embassies and legations, and other heads of diplomatic missions or members of the diplomatic staffs of such missions, accredited to the United States or en route between other countries to which accredited and their own countries.

(2) Members of the families forming part of the households of the diplomatic personnel listed in the preceding subparagraph, who are accompanying them or traveling separately to join them incidental to their official travel, excluding those members of families who are U.S. nationals.

(3) Members of the administrative and technical staffs of diplomatic missions accredited to the United States and members of their families forming part of their household, all of whom are not nationals or permanent residents of the United States who are accompanying them or traveling separately to join them incidental to their official travel.

(4) Diplomatic and consular couriers.

(b) *Exemption for baggage and effects and admission without entry.* The baggage and effects of the following representatives of foreign governments shall be admitted free of duty without the filing of an entry, upon the request of the Department of State and appropriate instructions from the United States Customs Service in each instance:

(1) Ambassadors, ministers, chargés d'affaires, secretaries, counselors, attachés of embassies and legations, and other members of the diplomatic staffs of such missions accredited to the United States or en route to or from other countries to which assigned, as well as recognized consular officers, and the immediate families, suites, and servants of all the above under subheading 9806.00.05, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202).

(2) Members of the administrative and technical staffs of diplomatic missions and members of their families forming part of their households, all of whom are not nationals or permanent residents of the United States under subheading 9806.00.05, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202). Unless more extensive privileges are provided in treaties or special agreements between the United States and the foreign country concerned, this privilege is limited to baggage and effects imported at the time of first installation.

(3) Consular employees who are not nationals or permanent residents of the United States. Unless more extensive privileges are provided in treaties or special agreements between the United States and the foreign country concerned, this privilege is limited to articles imported at the time of first installation.

(4) Other high officials of foreign governments and such distinguished foreign visitors as may be designated by the Department of State, and their immediate families under subheading 9806.00.25, HTSUS.

(5) Foreign government personnel entitled to privileges under statutes or treaties under subheading 9806.00.30, HTSUS.

(6) Diplomatic couriers, limited to accompanying baggage and effects.

(c) *Absence of special request.* In the absence of special request from the Department of State prior to the arrival of representatives of foreign governments enumerated in paragraph (b)(1) of this section, their immediate families as well as accompanying suites and servants, and diplomatic couriers, their baggage and effects may be admitted free of duty without entry upon presentation of their credentials or other proof of their identity.

(d) *Delay in arrival of baggage or effects.* If by accident or unavoidable delay in shipment the baggage or other effects of a person entitled to the privileges of this section shall arrive after him upon satisfactory proof of ownership, such baggage or effects may be passed free of duty without entry.

(e) *Inspection of baggage*—(1) *Exemption for representatives of foreign governments.* The personal baggage of the following representatives of foreign governments and their families is ordinarily exempt from inspection:

(i) Ambassadors, ministers, chargés d'affaires, secretaries, counselors, attachés of foreign embassies or legations, and other members of the diplomatic staffs of such missions, who are accredited to the United States or en route between other countries to which accredited and their own countries and members of their families forming part of their household who are not nationals of the United States.

(ii) Consular officers recognized by the United States and members of their families forming part of their household who are not nationals or permanent residents of the United States, provided the baggage accompanies them.

(iii) Diplomatic couriers, provided the baggage accompanies them.

(2) *Conditions permitting inspection.* The personal baggage of representatives of foreign governments listed in paragraph (e)(1) of this section and members of their families may be inspected if there is serious reason to believe that it contains:

(i) Articles other than those for the personal use of such persons or for the use of their establishments or for official mission use.

(ii) In the case of consular officers and their families, articles intended for

consumption in excess of the quantities necessary for direct use by the person concerned.

(iii) Articles which are absolutely or conditionally prohibited importation or exportation under the laws or regulations of the United States, or which are subject to the quarantine laws or regulations of the United States.

(3) *Presence of foreign representative.* When inspection of personal baggage is permitted under paragraph (e)(2) of this section, the inspection shall take place only in the presence of the affected representative of a foreign government, or his authorized agent.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 89–1, 53 FR 51266, Dec. 21, 1988]

§ 148.83 Diplomatic and consular bags.

(a) *Diplomatic bags.* The contents of diplomatic bags are restricted to diplomatic documents and articles intended exclusively for official use and packages constituting the diplomatic bag must bear visible marks of their character. Diplomatic bags shall not be opened or detained nor shall they be subject to duty or entry.

(b) *Consular bags.* Consular bags must bear visible external marks of their character and their contents are restricted to official correspondence and documents or articles intended exclusively for official use. Consular bags shall not be subject to duty and ordinarily shall not be opened or detained. However, if Customs officers have serious reason to believe that a consular bag contains other than permissible materials, they may request that the bag be opened in their presence by an authorized representative of the foreign government concerned. If this request is refused, the consular bag shall be returned to its place of origin.

§ 148.84 Special treatment for returning individuals.

(a) Except as otherwise provided by law, an individual returning to the United States from abroad:

(1) Shall not have his or her baggage and effects admitted free of duty without entry.

(2) Shall not be entitled to expedited Customs examination and clearance of his or her baggage and effects unless the port director finds:

(i) That the individual:

(A) Is seriously ill or infirm;

(B) Was summoned by news of affliction or disaster; or

(C) Is accompanying the body of a deceased relative; or

(ii) That a special circumstance exists which warrants expedited examination and clearance.

(b) For purposes of this section, the term ''baggage and effects'' means any article which was in the possession of the individual while abroad, is being imported in connection with his or her arrival, and is intended for his or her bona fide personal or household use. This term does not include any article imported as an accommodation to others or for sale or other commercial use.

[T.D. 78–394, 43 FR 49789, Oct. 25, 1978]

§ 148.85 Subsequent importations for the personal or family use of diplomatic, consular and other privileged personnel.

The privilege of importing free of duty and without the filing of any entry articles for personal or family use, but not as an accommodation for others or for sale or other commercial use, shall be granted upon the request of the Department of State and upon appropriate instructions from the United States Customs Service in each instance, to the following:

(a) Ambassadors, ministers, chargés d'affaires, secretaries, counselors and attachés of foreign embassies and legations accredited to the United States under subheading 9806.00.40, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202);

(b) Other representatives, officers and employees of foreign governments, under subheading 9806.00.50, HTSUS; and

(c) Other persons designated pursuant to statute or pursuant to treaties between the United States and the countries which they represent, under subheading 9806.00.55, HTSUS.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 89–1, 53 FR 51266, Dec. 21, 1988]

§ 148.86 Articles for official use of representatives of foreign governments and public international organizations.

Office supplies and equipment and other articles for the official use of members and attaches of foreign embassies and legations, consular officers, and other representatives of foreign governments or of personnel of public international organizations, may be admitted free of duty under subheading 9809.00.20, Harmonized Tariff Schedule of the United States, without the filing of an entry, upon the request of the Department of State.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 82–145, 47 FR 35478, Aug. 16, 1982; T.D. 89–1, 53 FR 51266, Dec. 21, 1988]

§ 148.87 Officers and employees of, and representatives to public international organizations.

(a) *Exemption for baggage and effects.* The baggage and effects of the alien officers and employees of, or representatives of foreign governments, to the organizations designated by the President as public international organizations pursuant to section 1 of the International Organizations Immunities Act (22 U.S.C. 288), and the baggage and effects of their families, suites, and servants, shall be admitted free of duty and without entry under subheading 9806.00.15, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), but only upon the receipt in each instance of instructions from the United States Customs Service issued at the request of the Department of State.

(b) *Designated public international organizations.* The President, by virtue of the authority vested in him by section 1 of the International Organizations Immunities Act of December 29, 1945 (22 U.S.C. 288), has designated certain organizations as public international organizations entitled to the free entry privileges of that statute. The following is a list of the public international organizations currently entitled to such free entry privileges and the Executive orders by which they were designated:

Organization	Executive Order	Date
African Development Bank	12403	Feb. 8, 1983.
African Development Fund	11977	Mar. 14, 1977.
Asian Development Bank	11334	Mar. 7, 1967.
Border Environment Cooperation Commission.	12904	Mar. 16, 1994.
Caribbean Organization	10983	Dec. 30, 1961.
Commission for Environmental Cooperation.	12904	Mar. 16, 1994.
Commission for Labor Cooperation.	12904	Mar. 16, 1994.
Commission for the Study of Alternatives to the Panama Canal.	12567	Oct. 2, 1986.
Council of Europe in Respect of the Group of States Against Corruption (GRECO).	13240	Dec. 18, 2001.
Customs Cooperation Council ..	11596	June 5, 1971.
European Bank for Reconstruction and Development.	12766	June 18, 1991.
European Space Agency (formerly the European Space Research Organization (ESRO)).	12766	June 18, 1991.
Food and Agriculture Organization.	9698	Feb. 19, 1946.
Great Lakes Fishery Commission.	11059	Oct. 23, 1962.
Hong Kong Economic and Trade Offices.	13052	June 30, 1997.
Inter-American Defense Board	10228	Mar. 26, 1951.
Inter-American Development Bank.	10873	Apr. 8, 1960.
Inter-American Institute of Agricultural Sciences.	9751	July 11, 1946.
Inter-American Investment Corporation.	12567	Oct. 2, 1986.
Inter-American Statistical Institute.	9751	Do.
Inter-American Tropical Tuna Commission.	11059	Oct. 23, 1962.
Intergovernmental Maritime Consultative Organization.	10795	Dec. 13, 1958.
International Atomic Energy Agency.	10727	Aug. 31, 1957.
International Bank for Reconstruction and Development.	9751	July 11, 1946.
International Boundary and Water Commission, United States & Mexico.	12467	Mar. 2, 1984.
International Centre for Settlement of Investment Disputes.	11966	Jan. 19, 1977.
International Civil Aviation Organization.	9863	May 31, 1947.
International Coffee Organization.	11225	May 22, 1965.
International Committee of the Red Cross.	12643	June 23, 1988.
International Cotton Advisory Committee.	9911	Dec. 19, 1947.
International Cotton Institute	11283	May 27, 1966.
International Criminal Police Organization (INTERPOL)—Limited privileges..	12425	June 16, 1983.
	12971	Sep. 15, 1995.
International Development Association.	11966	Jan. 19, 1977.
International Development Law Institute.	12842	Mar. 29, 1993.
International Fertilizer Development Center.	11977	Mar. 14, 1977.
International Finance Corporation.	10680	Oct. 2, 1956.

Organization	Executive Order	Date
International Food Policy Research Institute—Limited privileges only.	12359	Apr. 22, 1982.
International Fund for Agricultural Development.	12732	Oct. 31, 1990.
International Hydrographic Bureau.	10769	May 29, 1958.
International Joint Commission—United States and Canada.	9972	June 25, 1948.
International Labor Organization	9698	Feb. 19, 1946.
International Maritime Satellite Organization.	12238	Sept. 12, 1980.
International Monetary Fund	9751	July 11, 1946.
International Pacific Halibut Commission.	11059	Oct. 23, 1962.
International Secretariat for Volunteer Service.	11363	July 20, 1967.
International Telecommunications Satellite Organization (INTELSAT).	11966	Jan. 19, 1977.
International Telecommunication Union.	9863	May 31, 1947.
International Union for Conservation of Nature and Natural Resources—Limited privileges.	12986	Jan. 18, 1996.
International Wheat Advisory Committee (International Wheat Council).	9823	Jan. 24, 1947.
Interparliamentary Union	13097	Aug. 7, 1998.
Israel-United States Binational Industrial Research and Development Foundation.	12956	Mar. 13, 1995.
Korean Peninsula Energy Development Organization.	12997	Apr. 1, 1996.
Multilateral Investment Guarantee Agency.	12647	Aug. 2, 1988.
Multinational Force and Observers.	12359	Apr. 22, 1982.
North American Development Bank.	12904	Mar. 16, 1994.
North Pacific Anadromous Fish Commission.	12895	Jan. 26, 1994.
North Pacific Marine Science Organization.	12894	Jan. 26, 1994.
Organization for Economic Cooperation and Development [formerly Organization for European Economic Cooperation].	10133	June 27, 1950.
Organization for the Prohibition of Chemical Weapons..	13049	June 11, 1997.
Organization of African Unity (OAU).	11767	Feb. 19, 1974.
Organization of American States.	10533	June 3, 1954.
Organization of Eastern Caribbean States.	12669	Feb. 20, 1989.
Pacific Salmon Commission	12567	Oct. 2, 1986.
Pan American Health Organization (includes the Pan American Sanitary Bureau).	10864	Feb. 18, 1960.
Preparatory Commission of the International Atomic Energy Agency.	10727	Aug. 31, 1957.
Provisional Intergovernmental Committee for the Movement of Migrants from Europe (now known as the Intergovernmental Committee for European Migration).	10335	Mar. 28, 1952.
South Pacific Commission	10086	Nov. 25, 1949.
United International Bureau for the Protection of Intellectual Property.	11484	Sept. 29, 1969.
United Nations	9698	Feb. 19, 1946.
United Nations Educational, Scientific, and Cultural Organization.	9863	May 31, 1947.
United Nations Industrial Development Organization.	12628	Mar. 8, 1988.
Universal Postal Union	10727	Aug. 31, 1957.
World Health Organization	10025	Dec. 30, 1948.
World Intellectual Property Organization.	11866	June 18, 1975.
World Meteorological Organization.	10676	Sept. 1, 1956.
World Tourism Organization	12508	Mar. 22, 1985.
World Trade Organization	13042	Apr. 9, 1997.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §148.87, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§148.88 Certain representatives to and officers of the United Nations and the Organization of American States.

(a) *Exemption for baggage and effects and admission without entry.* At the request of the Department of State and upon appropriate instructions from the United States Customs Service in each instance, the privilege of admission free of duty without the filing of an entry may be extended to the baggage and effects of the following alien representatives, officers, and members of the staff of the United Nations and the Organization of American States, and their personal baggage is ordinarily exempt from inspection, subject to §148.82(e)(2):

(1) Every person designated by a United Nations member nation as the principal resident representative to the United Nations of such member or as a resident representative with the rank of ambassador or minister plenipotentiary and members of their families;

(2) Such resident members of their staffs as may be agreed upon between the Secretary-General of the United Nations, the Government of the United States, and the Government of the United Nations member concerned and members of their families;

(3) Every person designated by a United Nations member of a specialized United Nations agency as its principal resident representative, with the rank of ambassador or minister plenipotentiary at the headquarters of such agency in the United States and members of their families;

(4) Such other principal resident representatives of United Nations members to a specialized United Nations agency and such resident members of the staffs of representatives to a specialized United Nations agency as may be agreed upon between the principal executive officer of the specialized agency, the Government of the United States, and the Government of the United Nations member concerned and members of their families;

(5) The Secretary-General, Under Secretaries-General, and Assistant Secretaries-General to the United Nations and members of their families;

(6) Representatives of members to the principal and subsidiary organs of the United Nations and to conferences convened by the United Nations, while exercising their functions and during their journey to and from the place of meeting, with regard to personal baggage only;

(7) Experts performing missions for the United Nations, the same facilities for personal baggage as are accorded diplomatic envoys;

(8) Any person designated by a member of the Organization of American States as its representative or interim representative on the council of the Organization of American States and members of their families; and

(9) All other permanent members of the Delegation of a member of the Organization of American States and members of their families regarding whom there is agreement for that purpose between the government of the member state concerned, the Secretary-General of the Organization of American States, and the Government of the United States of America.

(b) *Absence of special request.* In the absence of a special request from the Department of State prior to the arrival of persons of the classes enumerated in paragraph (a) of this section, the privilege of admission free of duty without entry may be extended to their baggage and effects upon presentation of their credentials or other proof of identity.

(c) *Importations for personal or family use.* Upon the request of the Department of State and appropriate instructions from the United States Customs Service, the privilege of importing without entry and free of duty articles for their personal or family use but not as an accommodation for others or for sale or other commercial use may be granted to persons of the classes enumerated in paragraph (a) of this section except those in paragraph (a) (6) and (7) of this section, under subheading 9806.00.55, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(d) *Personal inviolability.* The person of the representatives to and officers of the United Nations and the Organization of American States set forth in paragraph (a) of this section shall be free from arrest, search, and detention except that persons of the rank set forth in paragraph (a) (6) and (7) of this section shall be accorded this privilege only while exercising their function and traveling to and from the place of meeting.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 89–1, 53 FR 51266, Dec. 21, 1988]

§ 148.89 Property of public international organizations and foreign governments.

(a) *Exemption from duty.* Property of designated international organizations listed in paragraph (b) of § 148.87 or of foreign governments shall be admitted free of duty and internal-revenue taxes imposed upon or by reason of importation under 22 U.S.C. 288a(d), but such exemption shall be granted only upon the receipt in each instance of instruction from the United States Customs Service issued at the request of the Department of State.

(b) *Bond.* Any Customs bond which may be required from a designated international organization (see paragraph (b) of § 148.87) in connection with

the importation or entry of merchandise into, or the exportation of merchandise from, the United States may be accepted without surety.

[T.D. 73–27, 38 FR 2449, Jan. 26, 1973, as amended by T.D. 82–145, 47 FR 35479, Aug. 16, 1982]

§ 148.90 Foreign military personnel.

(a) *Exemptions allowed.* Port directors shall in accordance with the provisions of this section admit the following free of duty and internal revenue tax imposed upon or by reason of importation:

(1) The baggage and effects of persons on duty in the United States as members of the armed forces of any foreign country, and of their immediate families under subheading 9806.00.20, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202);

(2) Articles entered or withdrawn from warehouse for consumption by a member of the armed forces of any foreign country on duty in the United States, for his personal use or that of any member of his immediate family but not as an accommodation to others or for sale or other commercial use, under subheading 9806.00.45, HTSUS; and

(3) Articles entered or withdrawn from warehouse for consumption for the official use of members of the armed forces of any foreign country on duty in the United States, under subheading 9809.00.30, HTSUS.

(b) *Reciprocity limitation.* When port directors have been advised officially of a finding by the Secretary of the Treasury that a foreign country does not reciprocate to members of the armed forces of the United States on duty in its country and members of their immediate families the privileges accorded its members and their families in the United States, the port directors shall accord to the personnel of such foreign government privileges under the law only to the extent to which the foreign government accords similar treatment to members of the armed forces of the United States and members of their immediate families.

(c) *Status of importer questioned.* If any question arises as to the status of the importer under subheadings 9806.00.20, 9806.00.45 and 9809.00.30, HTSUS, or whether articles entered thereunder are for official use or for personal or family use, but not as an accommodation to others or for sale or other commercial use, the port director shall report the available facts to the Commissioner of Customs for instructions.

(d) *Alcoholic beverages for personal or family use*—(1) *General rule*—(i) *Limitation stated.* Except in the case of exceptional circumstances set forth in paragraph (d)(2) of this section, entry of alcoholic beverages (other than malt beverages) for personal or family use but not as an accommodation to others or for sale or other commercial use under subheading 9806.00.45, HTSUS, is limited to one case each month.

(ii) *Advance entry or withdrawal.* A maximum of three cases (the initial one plus two cases in advance) may be entered or withdrawn at any one time in a given 3-month period if the port director is satisfied they are for personal or family use but not as an accommodation to others or for sale or other commercial use. Such advance entry or withdrawal shall not be deemed to broaden the one case per month limitation.

(iii) *Certification.* At the time of each entry or withdrawal, the member of the Armed Forces must certify that since his last entry or withdrawal there have expired a number of months equal to the numbers of cases last entered or withdrawn.

(2) *Exceptional circumstances.* In exceptional circumstances an additional quantity of alcoholic beverages for personal or family use but not as an accommodation to others or for sale or other commercial use, in excess of the one case per month limitation may be allowed under the following procedure:

(i) A statement signed by the member of the Armed Forces and attached to his declaration for free entry will be submitted to the port director, setting forth the reason for requesting the additional quantity;

(ii) The statement of request must be approved by the officer or person in charge of the Armed Forces involved, or a person specifically authorized by such officer or person to approve such requests; and

(iii) The port director must be satisfied that the need for the additional

quantity is justified. Questionable cases shall be referred to the Commissioner of Customs for instructions.

(3) *Retention and verification of the warehouse proprietors' records.* The warehouse proprietor shall retain all records relating to the entry and withdrawal of alcoholic beverages under subheading 9806.00.45, HTSUS, for 3 years from the date of the entry against which the withdrawal of the alcoholic beverages is charged.

(e) *Entry requirements.* The entry requirements prescribed in the Tariff Act of 1930, as amended (Title 19, United States Code), and the regulations thereunder are applicable to articles for which free entry is claimed under subheadings 9806.00.20, 9806.00.45, 9809.00.30, HTSUS. No invoices shall be required.

[T.D. 73–227, 38 FR 22548, Aug. 22, 1973, as amended by T.D. 79–159, 44 FR 31969, June 4, 1979; T.D. 89–1, 53 FR 51266, Dec. 21, 1988]

Subpart J—Noncommercial Importations of Limited Value

§ 148.101 Applicability.

Each person, including a crewmember, arriving in the United States who enters articles for his personal or household use, or as bona fide gifts not imported for sale nor for the account of another person, valued in the aggregate at not over $1,000 fair retail value in the country of acquisition, shall be assessed a flat rate of duty on the articles, as provided in § 148.102. The entry shall be made under subheading 9816.00.20 or 9816.00.40, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), and is subject to the limitations and conditions in this subpart. Except as provided in § 148.105, the flat rate of duty shall be assessed in place of any rates of duty other than free rates of duty. If the dutiable amount of the article(s) is over $1,000 fair retail value, the flat rate of duty provisions shall apply to the amount not over $1,000 fair retail value, and the excess amount shall be valued under section 402, Tariff Act of 1930, as amended (19 U.S.C. 1401a). The article(s) shall be classified under the appropriate subheading number of the tariff schedule. For purposes of this subpart, ''fair retail value'' in the country of acquisition means the price at which the merchandise is freely offered there for sale at retail and ''country of acquisition'' includes America Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands of the United States.

Two examples of the application of this subpart are set forth below:

Example 1: B returned from Europe where he acquired merchandise having a fair retail value of $1,950. Assume for purposes of this example that (1) in addition to the personal exemption of $400, $100 of the merchandise carries a free rate of duty, (2) allowances and exemptions have not been used within the past 30 days, and (3) all articles in excess of allowances and exemptions and duty-free articles are dutiable at rates other than the flat rate.

B presents his baggage to the Customs officer for examination and his declaration for verification. Duty is figured as follows:

	Fair retail value	Duty
(a) The $400 personal exemption	$400	.....
(b) Articles which carry a free rate of duty	100	.....
(c) The $1,000 flat rate of duty allowance calculated at:	1,000	.....
4 percent (effective 01/01/01 through 12/31/01)		$40
3 percent (effective from 01/01/02)		30
(d) Balance of articles subject to duty at rates other than flat rate	[1] 450	([1])
Total	[1] 1,950	([1])

[1] The articles not covered by exemptions, allowances, and duty-free rates will be valued under section 402, Tariff Act of 1930, as amended, and duty calculated at rates other than the flat rate.

Example 2: Mr. and Mrs. B return from the U.S. Virgin Islands. During the trip, they acquired merchandise having a fair retail value of $4,900. Assume for purposes of this example that (1) in addition to the personal exemption of $1,200 for each returning resident, $100 of the merchandise carries a free rate of duty, (2) allowances and exemptions have not been used within the past 30 days, (3) all articles in excess of allowances and exemptions and duty-free articles are dutiable at rates other than the flat rate, and (4) Mrs. B made $400 in purchases on the trip, none of which carries a free rate of duty.

Mr. and Mrs. B present their baggage to the Customs officer for examination and their declaration for verification. Duty is figured as follows:

	Fair retail value	Duty
(a) The $1,200 personal exemptions for residents returning from the U.S. Virgin Islands are grouped for a total of	$2,400	.....
(b) Articles which carry a free rate of duty	100	.....
(c) The $1,000 flat rate of duty allowance calculated at:	2,000	.....
2 percent (effective 01/01/01 through 12/31/01)		$40
1.5 percent (effective from 01/01/02)		30
(d) Balance of articles subject to duty at rates other than flat rate	[1] 400	(1)
Total	[1] 4,900	(1)

[1] The articles not covered by exemptions, allowances, and duty-free rates will be valued under section 402, Tariff Act of 1930, as amended, and duty calculated at rates other than the flat rate.

[T.D. 78–394, 43 FR 49789, Oct. 25, 1978, as amended by T.D. 86–118, 51 FR 22516, June 20, 1986; 52 FR 12149, Apr. 15, 1987; T.D. 87–89, 52 FR 24446, July 1, 1987; T.D. 89–1, 53 FR 51266, Dec. 21, 1988; T.D. 97–75, 62 FR 46442, Sept. 3, 1997; T.D. 01–61, 66 FR 46218, Sept. 4, 2001]

§ 148.102 Flat rate of duty.

(a) *Generally*. The rate of duty on articles accompanying any person, including a crewmember, arriving in the United States (exclusive of duty-free articles and articles acquired in American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States) shall be 4 percent, effective January 1, 2001, and 3 percent, effective January 1, 2002, of the fair retail value in the country of acquisition.

(b) *American Samoa, Guam, the Northern Mariana Islands, and the Virgin Islands*. The rate of duty on articles accompanying any person, including a crewmember, arriving in the United States directly or indirectly from American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States (exclusive of duty-free articles), acquired in these locations as an incident of the person's physical presence there, shall be 2 percent, effective January 1, 2001, and 1.5 percent, effective January 1, 2002, of the fair retail value in the location in which acquired.

[T.D. 01–61, 66 FR 46218, Sept. 4, 2001]

§ 148.103 Family grouping of allowances.

(a) *Generally*. When members of a family residing in one household travel together on their return to the United States, the flat rate of duty allowance will be grouped and allowed without regard to which member of the family is the owner of the articles. A group allowance shall not include an allowance for a family member not entitled to it in his own right, nor shall a group allowance be applied to any property of that member.

(b) *Members of a family residing in one household*. ''Members of a family residing in one household'' includes all persons who:

(1) Are related by blood, marriage, domestic relationship (as defined in §148.34(c)), or adoption;

(2) Lived together in one household at their last permanent residence; and

(3) Intend to live in one household after their arrival in the United States.

[T.D. 78–394, 43 FR 49789, Oct. 25, 1978, as amended at CBP Dec, 13–19, 78 FR 76532, Dec. 18, 2013]

§ 148.104 Frequency of use.

(a) *30-day period*. The flat rate of duty shall not apply to a person who has used the provision within the 30-day period immediately prior to his arrival in the United States. The date of the person's last arrival on which he declared articles for which the flat rate of duty was applicable shall be considered the date that rate was last used.

(b) *Computation of time*. The 30-day period immediately prior to the person's arrival in the United States shall be computed by excluding the day of arrival and counting backward 30 days.

(c) *Remainder not applicable to subsequent journey*. A person who has received a flat rate of duty allowance of less than $1,000 in connection with his return from one journey is not entitled to apply the remainder to articles acquired abroad on a subsequent journey.

[T.D. 78–394, 43 FR 49789, Oct. 25, 1978, as amended by T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 97–75, 62 FR 46443, Sept. 3, 1997]

§ 148.105 Procedure for excluding articles from flat rate of duty.

(a) *Generally*. Any person who has information that merchandise is being imported into the United States under the provisions of subheading 9816.00.20 or 9816.00.40, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), and this subpart which adversely affects the economic interest of the United States may communicate the information in writing to the Commissioner of Customs, Attention: Office of Field Operations, Washington, DC 20229.

(b) *Content of communication*. The communication to the Commissioner need not be in any particular form but shall contain the following:

(1) The name of the individual and the person, firm, or association the individual represents, if any;

(2) The nature of the individual's interest in the matter, if any;

(3) A description of the merchandise, which it is alleged affects the economic interest of the United States adversely, including subheadings of the HTSUS, if known;

(4) The country of acquisition and the ports and dates of entry of the merchandise, if known; and

(5) A statement and supporting evidence as to the manner in which the individual believes the economic interest of the United States is being adversely affected.

(c) *Inquiry to be conducted*. Upon receipt of a communication containing the information required by paragraph (b) of this section, an inquiry will be conducted.

(d) *Negative determination*. If the inquiry results in a finding that no reasonable cause exists to believe that the application of the flat rate of duty provisions to a particular article of merchandise is adversely affecting the economic interest of the United States, the inquirer shall be advised in writing of the finding and the matter shall be closed.

(e) *Publication of tentative finding*. If the inquiry results in a finding by the Secretary of the Treasury that reasonable cause exists to believe that the application of the flat rate of duty provisions to a particular article of merchandise is affecting the economic interest of the United States adversely, a notice of the finding will be published in the FEDERAL REGISTER and Customs Bulletin, along with a statement of intent to exclude the articles from application of the flat rate of duty provisions. Interested persons will be given an opportunity to submit written comments on the notice.

(f) *Final determination*. Based upon the comments received and the results of any additional inquiry as may be necessary, if it is determined by the Secretary of the Treasury that application of the flat rate of duty provisions adversely affects the economic interest of the United States, a Treasury Decision will be published in the FEDERAL REGISTER and Customs Bulletin announcing that the merchandise will be excluded from application of the flat rate of duty provisions. Excluded articles of merchandise shall be listed in § 148.106. If it is determined by the Secretary of the Treasury that a valid basis for excluding the merchandise from the flat rate of duty provisions does not exist, the notice proposing to exclude the article will be withdrawn by publishing a notice in the FEDERAL REGISTER and the Customs Bulletin.

[T.D. 78–394, 43 FR 49789, Oct. 25, 1978, as amended by T.D. 89–1, 53 FR 51267, Dec. 21, 1988; T.D. 91–77, 56 FR 46115, Sept. 10, 1991; T.D. 93–66, 58 FR 44130, Aug. 19, 1993]

§ 148.106 Excluded articles of merchandise.

The following articles of merchandise have been found to affect the economic interest of the United States adversely, and they are excluded from the application of the flat rate of duty provisions.

[Reserved for listing.]

[T.D. 78–394, 43 FR 49789, Oct. 25, 1978]

Subpart K—Unaccompanied Shipments From American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States

§ 148.110 Applicability.

The provisions of this subpart are applicable to articles not accompanying a person, including a crewmember, which

are purchased in *and* shipped from American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States. However, this subpart is not applicable to the importation of unaccompanied articles in a manner prohibited by law or regulation (e.g., mail shipments of alcoholic beverages or alcoholic beverages shipped other than by mail in excess of quantities authorized by State laws or regulations).

The following is a summary of the procedure to be followed to obtain the benefits of this subpart: A person purchasing articles in American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States would receive a sales slip, invoice, or other evidence of purchase which he would present to the Customs officer along with his baggage declaration, Customs Form 6059–B, and a Declaration of Unaccompanied Articles, Customs Form 255. The latter form is prepared in triplicate for each shipment to follow. The Customs officer would verify the information, indicate on the form whether the article or articles were free of duty, dutiable at the flat rate, or a combination of the foregoing, and validate the form. Two copies would be returned to the traveler, who would send one form to the vendor. Upon receipt of the form the vendor would place it in an envelope, affix it to the outside of the package, clearly mark the package ''Unaccompanied Tourist Shipment,'' and send the package to the traveler, generally via mail, although it could be sent by other means. If sent through the mail, the package would be examined by Customs and forwarded to the Postal Service for delivery. Any duties due would be collected by the mailman. If the shipment arrives other than through the mail, the traveler would be notified by the carrier when the article arrives. Entry would be made by the carrier or the traveler at the customhouse. Any duties due would be collected at that time.

[T.D. 78–394, 43 FR 49790, Oct. 25, 1978; 43 FR 55758, Nov. 29, 1978; T.D. 97–75, 62 FR 46443, Sept. 3, 1997]

§ 148.111 Written declaration for unaccompanied articles.

The baggage declaration, Customs Form 6059–B, of a person (the crewmembers declaration, Customs Form 5129, in the case of a returning crewmember) arriving directly or indirectly from American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States shall be in writing if it covers articles which do not accompany him and:

(a) The articles are entitled to free entry under the $1,200 exemption provided by subheading 9804.00.70, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), or

(b) The articles are noncommerical importations of limited value subject to a flat rate of duty under subheading 9816.00.40, HTSUS.

[T.D. 78–394, 43 FR 49790, Oct. 25, 1978, as amended by T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 89–1, 53 FR 51267, Dec. 21, 1988; T.D. 97–75, 62 FR 46443, Sept. 3, 1997]

§ 148.112 Evidence of purchase.

A sales slip, invoice, or other evidence of purchase, shall be presented with the declaration for all unaccompanied articles.

[T.D. 78–394, 43 FR 49790, Oct. 25, 1978]

§ 148.113 Declaration, entry, and collection of duty.

(a) *Declaration and entry for unaccompanied articles*—(1) *Declaration.* A baggage declaration covering articles for which a claim of free entry, in whole or in part, is made under the $1,600 exemption provided by subheading 9804.00.70, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), or a baggage or crewmembers declaration covering articles for which the flat rate of duty provision of subheading 9816.00.40, HTSUS appears to be applicable, must be accompanied by a Declaration of Unaccompanied Articles, CBP Form 255. CBP Form 255 must be prepared in triplicate by the vendor or declarant for each shipment of declared articles not accompanying the person. A shipment consists of one or more packages or containers sent as a unit.

(2) *Verification.* The CBP officer must verify the information from the declaration, sales slip, invoice, or other evidence of purchase furnished by the person. The completed CBP Form 255 must be validated by the CBP officer and two copies given to the person.

(b) *Collection of duty.* Duties shall be collected before release of the articles, after their arrival in the United States, as provided in § 145.12 or § 148.115.

[T.D. 78–394, 43 FR 49790, Oct. 25, 1978, as amended by T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 89–1, 53 FR 51267, Dec. 21, 1988; T.D. 93–66, 58 FR 44131, Aug. 19, 1993; T.D. 97–75, 62 FR 46443, Sept. 3, 1997; CBP Dec. 09–37, 74 FR 48855, Sept. 25, 2009]

§ 148.114 Shipment of unaccompanied articles.

One copy of the validated Customs Form 255 shall be returned to the vendor. The vendor shall place the form in an envelope, affix it to the outside of the shipment, and clearly mark the outside of the shipment ''Unaccompanied Tourist Shipment.''

[T.D. 78–394, 43 FR 49790, Oct. 25, 1978]

§ 148.115 Release of shipment.

(a) *Release after examination.* Unaccompanied tourist shipments:

(1) To which the personal exemption provided in subheading 9804.00.70, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), is applicable, or

(2) For which entry is made under the flat rate of duty provisions of subheading 9816.00.40, HTSUS, or under those provisions in conjunction with the regular rate of duty provision of another subheading of the tariff schedule, shall be released if:

(i) The shipment is properly marked and accompanied by a validated copy of Customs Form 255,

(ii) The examining Customs officer is satisfied that the contents of the shipment are as stated on the Customs Form 255 and, if applicable, that they are properly classified,

(iii) The declared value conforms to the fair retail value in the country of acquisition, and

(iv) In respect to shipments for which entry is made under subheading 9816.00.40, HTSUS, any duties found to be due are paid.

(b) *Removal of Customs Form 255.* The copy of Customs Form 255 attached to the shipment shall be removed by the Customs officer and retained for Customs purposes.

(c) *Missing Customs Form 255.* If a validated copy of Customs Form 255 does not accompany the shipment, entry shall be made under the provisions of part 141 or 145 of this chapter.

(d) *Restricted or prohibited shipments.* No shipment containing prohibited or restricted merchandise for which exemption is claimed under subheading 9804.00.70, HTSUS, or for which entry is claimed under subheading 9816.00.40, HTSUS, shall be released except upon compliance with the provisions of part 12 and §§ 145.51 through 145.59 of this chapter, and other applicable laws and regulations.

(e) *Verification of claim.* The port director may withhold release of any shipment for which exemption is claimed under subheading 9804.00.70, HTSUS, or for which entry is claimed under subheading 9816.00.40, HTSUS, to verify the validity of the claim. If he is unable to verify the claim, the merchandise shall be released under the provisions of part 141 or 145 of this chapter.

[T.D. 78–394, 43 FR 49790, Oct. 25, 1978; 43 FR 55758, Nov. 29, 1978, as amended by T.D. 89–1, 53 FR 51267, Dec. 21, 1988; T.D. 93–66, 58 FR 44131, Aug. 19, 1993]

§ 148.116 Claim for refund.

Any person who has filed a declaration of unaccompanied articles under §§ 148.112 and 148.113 and who is dissatisfied with the amount of duty assessed on the articles upon their arrival in the United States may file a claim for administrative review under subpart C, part 145, of this chapter if the articles arrived by mail, or under parts 173 and 174 if the articles arrived other than by mail. Any supporting documents, including a copy of Customs Form 255, should be submitted with the claim.

[T.D. 78–394, 43 FR 49790, Oct. 25, 1978; 43 FR 55758, Nov. 29, 1978]

PART 149—IMPORTER SECURITY FILING

Sec.

AUTHORITY: 5 U.S.C. 301; 6 U.S.C. 943; 19 U.S.C. 66, 1415, 1624, 2071 note.

SOURCE: CBP Dec. 08–46, 73 FR 71782, Nov. 25, 2008, unless otherwise noted.

§ 149.1 Definitions.

(a) *Importer Security Filing Importer*. For purposes of this part, Importer Security Filing (ISF) Importer means the party causing goods to arrive within the limits of a port in the United States by vessel. For shipments other than foreign cargo remaining on board (FROB), the ISF Importer will be the goods' owner, purchaser, consignee, or agent such as a licensed customs broker. For immediate exportation (IE) and transportation and exportation (T&E) in-bond shipments, and goods to be delivered to a Foreign Trade Zone (FTZ), the ISF Importer may also be the party filing the IE, T&E, or FTZ documentation. For FROB cargo, the ISF Importer will be the carrier or the non-vessel operating common carrier. For the purposes of this part the United States Postal Service is not an ISF Importer. Regulations related to the transmittal of advance electronic information for inbound international mail shipments are set forth in § 145.74 of this chapter.

(b) *Importation*. For purposes of this part, ''importation'' means the point at which cargo arrives within the limits of a port in the United States.

(c) *Bulk cargo*. For purposes of this part, ''bulk cargo'' is defined as homogeneous cargo that is stowed loose in the hold and is not enclosed in any container such as a box, bale, bag, cask, or the like. Such cargo is also described as bulk freight. Specifically, bulk cargo is composed of either:

(1) Free flowing articles such as oil, grain, coal, ore, and the like, which can be pumped or run through a chute or handled by dumping; or

(2) Articles that require mechanical handling such as bricks, pig iron, lumber, steel beams, and the like.

(d) *Break bulk cargo*. For purposes of this part, ''break bulk cargo'' is defined as cargo that is not containerized, but which is otherwise packaged or bundled.

[CBP Dec. 08–46, 73 FR 71782, Nov. 25, 2008, as amended by USCBP–2016–0040, 83 FR 15740, Apr. 12, 2018; CBP Dec. 21–04, 86 FR 14279, Mar. 15, 2021]

§ 149.2 Importer security filing—requirement, time of transmission, verification of information, update, withdrawal, compliance date.

(a) *Importer security filing required*. For cargo arriving by vessel, with the exception of any bulk cargo pursuant to § 149.4(a) of this part, the ISF Importer, as defined in § 149.1 of this part, or authorized agent (*see* § 149.5 of this part) must submit in English the Importer Security Filing elements prescribed in § 149.3 of this part within the time specified in paragraph (b) of this section via a CBP-approved electronic interchange system.

(b) *Time of transmission*. With the exception of any break bulk cargo pursuant to § 149.4(b) of this part, ISF Importers must submit:

(1) Seller, buyer, importer of record number / foreign trade zone applicant identification number, and consignee number(s) (as defined in § 149.3(a)(1) through (4) of this part) no later than 24 hours before the cargo is laden aboard the vessel at the foreign port.

(2) Manufacturer (or supplier), ship to party, country of origin, and commodity HTSUS number (as defined in § 149.3(a)(5) through (8) of this part) no later than 24 hours before the cargo is laden aboard the vessel at the foreign port.

(3) Container stuffing location and consolidator (stuffer) (as defined in § 149.3(a)(9) and (10) of this part) as early as possible, in no event later than 24 hours prior to arrival in a United States port (or upon lading at a foreign

port that is less than a 24 hour voyage to the closest United States port).

(4) The data elements required under §149.3(b) of this part for FROB, prior to lading aboard the vessel at the foreign port.

(5) The data elements required under §149.3(b) of this part for shipments intended to be transported in-bond as an immediate exportation (IE) or transportation and exportation (T&E), no later than 24 hours before cargo is laden aboard the vessel at the foreign port.

(c) *Verification of information.* Where the party electronically presenting to CBP the Importer Security Filing required in paragraph (a) of this section receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the presenting party acquired such information, and whether and how the presenting party is able to verify this information. Where the presenting party is not reasonably able to verify such information, CBP will permit the party to electronically present the information on the basis of what the party reasonably believes to be true.

(d) *Update of Importer Security Filing.* The party who submitted the Importer Security Filing pursuant to paragraph (a) of this section must update the filing if, after the filing is submitted and before the goods enter the limits of a port in the United States, any of the information submitted changes or more accurate information becomes available.

(e) *Withdrawal of Importer Security Filing.* If, after an Importer Security Filing is submitted pursuant to paragraph (a) of this section, the goods associated with the Importer Security Filing are no longer intended to be imported to the United States, the party who submitted the Importer Security Filing must withdraw the Importer Security Filing and transmit to CBP the reason for such withdrawal.

(f) *Flexible requirements.* For each of the four data elements required under paragraph (b)(2) of this section ISF Importers will be permitted to submit an initial response or responses based on the best available data available at the time that, in accordance with paragraph (d) of this section, ISF Importers will be required to update as soon as more precise or more accurate information is available, in no event less than 24 hours prior to arrival at a U.S. port (or upon lading at a foreign port that is less than a 24 hour voyage to the closest U.S. port).

(g) *Compliance date of this section.* (1) *General.* Subject to paragraph (g)(2) of this section, ISF Importers must comply with the requirements of this section on and after January 26, 2010.

(2) *Delay in compliance date of section.* CBP may, at its sole discretion, delay the general compliance date set forth in paragraph (g)(1) of this section in the event that any necessary modifications to the approved electronic data interchange system are not yet in place or for any other reason. Notice of any such delay will be provided in the FEDERAL REGISTER.

[CBP Dec. 08–46, 73 FR 71782, Nov. 25, 2008, as amended by USCBP–2007–0077, 74 FR 33922, July 14, 2009]

§ 149.3 Data elements.

(a) *Shipments intended to be entered into the United States and shipments intended to be delivered to a foreign trade zone.* Except as otherwise provided for in paragraph (b) of this section, the following elements must be provided for each good listed at the six-digit HTSUS number at the lowest bill of lading level (*i.e.*, at the house bill of lading level, if applicable). The manufacturer (or supplier), country of origin, and commodity HTSUS number must be linked to one another at the line item level.

(1) *Seller.* Name and address of the last known entity *by whom* the goods are sold or agreed to be sold. If the goods are to be imported otherwise than in pursuance of a purchase, the name and address of the owner of the goods must be provided. A widely recognized commercially accepted identification number for this party may be provided in lieu of the name and address.

(2) *Buyer.* Name and address of the last known entity *to whom* the goods are sold or agreed to be sold. If the goods are to be imported otherwise than in pursuance of a purchase, the name and address of the owner of the

goods must be provided. A widely recognized commercially accepted identification number for this party may be provided in lieu of the name and address.

(3) *Importer of record number/Foreign trade zone applicant identification number.* Internal Revenue Service (IRS) number, Employer Identification Number (EIN), Social Security Number (SSN), or CBP assigned number of the entity liable for payment of all duties and responsible for meeting all statutory and regulatory requirements incurred as a result of importation. For goods intended to be delivered to a foreign trade zone (FTZ), the IRS number, EIN, SSN, or CBP assigned number of the party filing the FTZ documentation with CBP must be provided.

(4) *Consignee number(s).* Internal Revenue Service (IRS) number, Employer Identification Number (EIN), Social Security Number (SSN), or CBP assigned number of the individual(s) or firm(s) in the United States on whose account the merchandise is shipped.

(5) *Manufacturer (or supplier).* Name and address of the entity that last manufactures, assembles, produces, or grows the commodity or name and address of the party supplying the finished goods in the country from which the goods are leaving. In the alternative the name and address of the manufacturer (or supplier) that is currently required by the import laws, rules and regulations of the United States (*i.e.*, entry procedures) may be provided (this is the information that is used to create the existing manufacturer identification (MID) number for entry purposes). A widely recognized commercially accepted identification number for this party may be provided in lieu of the name and address.

(6) *Ship to party.* Name and address of the first deliver-to party scheduled to physically receive the goods after the goods have been released from customs custody. A widely recognized commercially accepted identification number for this party may be provided in lieu of the name and address.

(7) *Country of origin.* Country of manufacture, production, or growth of the article, based upon the import laws, rules and regulations of the United States.

(8) *Commodity HTSUS number.* Duty/statistical reporting number under which the article is classified in the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS number must be provided to the six-digit level. The HTSUS number may be provided up to the 10-digit level. This element can only be used for entry purposes if it is provided at the 10-digit level or greater by the importer of record or its licensed customs broker.

(9) *Container stuffing location.* Name and address(es) of the physical location(s) where the goods were stuffed into the container. For break bulk shipments, as defined in §149.1 of this part, the name and address(es) of the physical location(s) where the goods were made ''ship ready'' must be provided. A widely recognized commercially accepted identification number for this element may be provided in lieu of the name and address.

(10) *Consolidator (stuffer).* Name and address of the party who stuffed the container or arranged for the stuffing of the container. For break bulk shipments, as defined in §149.1 of this part, the name and address of the party who made the goods ''ship ready'' or the party who arranged for the goods to be made ''ship ready'' must be provided. A widely recognized commercially accepted identification number for this party may be provided in lieu of the name and address.

(b) *FROB, IE shipments, and T&E shipments.* For shipments consisting entirely of foreign cargo remaining on board (FROB) and shipments intended to be transported in-bond as an immediate exportation (IE) or transportation and exportation (T&E), the following elements must be provided for each good listed at the six-digit HTSUS number at the lowest bill of lading level (*i.e.*, at the house bill of lading level, if applicable).

(1) *Booking party.* Name and address of the party who initiates the reservation of the cargo space for the shipment. A widely recognized commercially accepted identification number for this party may be provided in lieu of the name and address.

(2) *Foreign port of unlading.* Port code for the foreign port of unlading at the intended final destination.

(3) *Place of delivery*. City code for the place of delivery.

(4) *Ship to party*. Name and address of the first deliver-to party scheduled to physically receive the goods after the goods have been released from customs custody. A widely recognized commercially accepted identification number for this party may be provided in lieu of the name and address.

(5) *Commodity HTSUS number*. Duty/statistical reporting number under which the article is classified in the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS number must be provided to the six-digit level. The HTSUS number may be provided to the 10-digit level.

§ 149.4 Bulk and break bulk cargo.

(a) *Bulk cargo exempted from filing requirement*. For bulk cargo that is exempt from the requirement set forth in § 4.7(b)(2) of this chapter that a cargo declaration be filed with Customs and Border Protection (CBP) 24 hours before such cargo is laden aboard the vessel at the foreign port, ISF Importers, as defined in § 149.1 of this part, of bulk cargo are also exempt from filing an Importer Security Filing with respect to that cargo.

(b) *Break bulk cargo exempted from time requirement*. For break bulk cargo that is exempt from the requirement set forth in § 4.7(b)(2) of this chapter for carriers to file a cargo declaration with Customs and Border Protection (CBP) 24 hours before such cargo is laden aboard the vessel at the foreign port, ISF Importers, as defined in § 149.1 of this part, of break bulk cargo are also exempt with respect to that cargo from the requirement set forth in § 149.2 of this part to file an Importer Security Filing with CBP 24 hours before such cargo is laden aboard the vessel at the foreign port. Any importers of break bulk cargo that are exempted from the filing requirement of § 149.2 of this part must present the Importer Security Filing to CBP 24 hours prior to the cargo's arrival in the United States. These ISF Importers must still report 24 hours in advance of loading any containerized or non-qualifying break bulk cargo they will be importing.

§ 149.5 Eligibility to file an Importer Security Filing, authorized agents.

(a) *Eligibility*. To be qualified to file Importer Security Filing information electronically, a party must establish the communication protocol required by Customs and Border Protection for properly presenting the Importer Security Filing through the approved data interchange system. If the Importer Security Filing and entry or entry summary are provided via a single electronic transmission to CBP pursuant to § 149.6(b) of this part, the party making the transmission must be an importer acting on its own behalf or a licensed customs broker.

(b) *Bond required*. The ISF Importer must possess a basic importation and entry bond containing all the necessary provisions of § 113.62 of this chapter, a basic custodial bond containing all the necessary provisions of § 113.63 of this chapter, an international carrier bond containing all the necessary provisions of § 113.64 of this chapter, a foreign trade zone operator bond containing all the necessary provisions of § 113.73 of this chapter, or an importer security filing bond as provided in Appendix D to part 113 of this chapter. If an ISF Importer does not have a required bond, the agent submitting the Importer Security Filing on behalf of the ISF Importer may post the agent's bond.

(c) *Powers of attorney*. Authorized agents must retain powers of attorney in English until revoked. Revoked powers of attorney and letters of revocation must be retained for five years after the date of revocation. Authorized agents must make powers of attorney and letters of revocation available to representatives of Customs and Border Protection upon request.

§ 149.6 Entry and entry summary documentation and Importer Security Filing submitted via a single electronic transmission.

If the Importer Security Filing is filed pursuant to § 149.2 of this part via the same electronic transmission as entry or entry/entry summary documentation pursuant to § 142.3 of this chapter, the importer is only required to provide the following fields once to be used for Importer Security Filing,

entry, or entry/entry summary purposes, as applicable:

(a) Importer of record number;

(b) Consignee number;

(c) Country of origin; and

(d) Commodity HTSUS number if this number is provided at the 10-digit level.

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

Sec.

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 3(i) and (j), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

Section 151.11 also issued under 21 U.S.C. 381;

Section 151.21 also issued under the provisions of Chapters 17 and 18, HTSUS;

Section 151.42 also issued under 19 U.S.C. 1460, 1584, 1592;

Section 151.43 also issued under 19 U.S.C. 1592;

Section 151.46 also issued under 19 U.S.C. 1507;
Section 151.62 also issued under 19 U.S.C. 1481;
Section 151.63 also issued under 19 U.S.C. 1484;
Section 151.66 also issued under 19 U.S.C. 1562;
Section 151.68 also issued under 19 U.S.C. 1311, 1562;
Section 151.69 also issued under 19 U.S.C. 1557, 1562;
Section 151.82 also issued under 19 U.S.C. 1481;
Section 151.91 also issued under the Additional U.S. Notes to Chapter 20, HTSUS.

SOURCE: T.D. 73–175, 38 FR 17470, July 2, 1973, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 151 appear by CBP Dec. No. 16–26, 81 FR 93021, Dec. 20, 2016.

§ 151.0 Scope.

This part sets forth general provisions governing the examination and sampling of imported merchandise, as well as specific provisions governing the examination, sampling, and testing of certain particular types of merchandise.

Subpart A—General

§ 151.1 Merchandise to be examined.

The port director shall examine such packages or quantities of merchandise as he deems necessary for the determination of duties and for compliance with the Customs laws and any other laws enforced by the Customs Service.

[T.D. 81–240, 46 FR 45130, Sept. 10, 1981]

§ 151.2 Quantities to be examined.

(a)(1) *Minimum quantities.* Not less than one package of every 10 packages of merchandise shall be examined, unless a special regulation permits a lesser number of packages to be examined. Port directors are specially authorized to examine less than one package of every 10 packages, but not less than one package of every invoice, in the case of any merchandise which is:

(i) Imported in packages the contents and values of which are uniform, or

(ii) Imported in packages the contents of which are identical as to character although differing as to quantity and value per package.

(2) *Exceptions to minimum quantities.* At ports of entry specifically designated by the Commissioner of Customs, the port director is authorized to release, without examination, merchandise of a character which the port director has determined need not be examined in every instance to ensure the protection of the revenue and compliance with the Customs laws and any other laws enforced by the Customs Service.

[T.D. 81–240, 46 FR 45130, Sept. 10, 1981]

§ 151.3 Disclosure of examination packages.

Information as to the particular packages which will be examined shall not be made available to the importer, his agent, or any person other than Customs officers necessarily concerned, until the merchandise has arrived within the limits of the port of entry.

§ 151.4 Time of examination.

Imported merchandise shall not be opened, examined, or inspected until it has been entered under some form of entry for consumption or warehouse, except in the following cases:

(a) *Official Government examination and sampling.* Authorized employees of the Customs Service, Food and Drug Administration, Animal and Plant Health Inspection Service, Public Health Service, or other Government agency may for official purposes examine or take samples of merchandise for which entry has not been filed, including merchandise being released under a special permit for immediate delivery.

(b) *Perishable merchandise, benzenoid chemicals, and merchandise received without an invoice.* An application by the importer to examine merchandise, whether or not covered by an entry for transportation in bond or for exportation, may be granted by the port director, under the conditions listed in §151.5, in the following cases:

(1) Examination of perishable merchandise is desired solely to determine its condition. This is not limited to a single examination, and there is no objection to incidental display to prospective buyers during the examination.

(2) [Reserved]

(3) The importer has been unable to obtain the required documents or information to make the necessary entry, and examination of the merchandise is required to obtain information for the preparation of a pro forma invoice to be used in making entry.

(c) *Examination of merchandise entered for transportation under bond or for exportation*—(1) *Examination, sampling, weighing or emergency operation.* As a bona fide incident to exportation or further transportation, the importer of merchandise entered or withdrawn for transportation under bond or for exportation may, upon written application to the port director supported by a valid business reason for the request, be permitted to examine, sample, weigh, or subject his merchandise to an operation required by reason of an emergency, provided that any operation performed on the merchandise does not constitute a manufacture, and that §151.5 is complied with. For conditions governing transshipment and emergency access to the shipment by the carrier, see §18.3 of this chapter.

(2) *Nonemergency operation.* In cases not involving an emergency, an operation not constituting a manufacture may be permitted under the conditions listed in paragraph (c)(1) of this section if neither the protection of the revenue nor the proper conduct of Customs business requires that the operation be done in a Customs bonded warehouse, provided that the importer's written application for such operation is approved by the port director.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 95–99, 60 FR 62733, Dec. 7, 1995; T.D. 97–82, 62 FR 51771, Oct. 3, 1997]

§ 151.5 Conditions for examination prior to entry.

Examination, sampling, weighing, or operation upon merchandise at the importer's request prior to entry for consumption or warehouse, as provided for in §151.4 (b) and (c), shall be subject to the following conditions:

(a) The operation permitted shall be executed under Customs supervision;

(b) If the merchandise is in possession or joint possession of a carrier or container station operator, the concurrence of such carrier or operator shall be obtained; and

(c) The Government shall be reimbursed for the compensation, computed in accordance with §24.17(d) of this chapter, and other expenses of the Customs officer or employee supervising the action permitted.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 95–99, 60 FR 62733, Dec. 7, 1995]

§ 151.6 Place of examination.

All merchandise will be examined at the place of arrival, unless examination at another place is required or authorized by the port director in accordance with §151.7 or §151.15 of this part. Except where the merchandise is required by the port director to be examined at the public stores, the importer shall bear any expense involved in preparing the merchandise for Customs examination and in the closing of packages.

[T.D. 84–152, 49 FR 29374, July 20, 1984, as amended by T.D. 93–6, 58 FR 5606, Jan. 22, 1993]

§ 151.7 Examination elsewhere than at place of arrival or public stores.

The port director may require or authorize examination at a place other than the place of arrival or the public stores, such as at the importer's premises or at a centralized examination station under §151.15 of this part. If examination at a place other than at the place of arrival or the public stores is authorized it will be subject to the following conditions:

(a) *Sealing of packages.* If examination is to be made at the importer's premises or other place not under the control of Customs, the port director may require the packages to be corded and sealed by a Customs officer before the packages are removed from the place of arrival. The packages shall be opened only in the presence of the Customs officer authorized to examine their contents.

(b) *Preparation for Customs examination and closing of packages.* Except when merchandise is required by the port director to be examined at the public stores, the importer shall arrange and bear any expense for preparation of the merchandise for Customs examination and closing of packages.

(c) *Reimbursement of expenses outside port limits.* If the place of examination is not located within the limits of a port of entry or at a Customs station at which Customs is permanently located, whether or not that location is the place of arrival, the importer shall pay any additional expenses, including actual expenses of travel and subsistence but not the salary during regular hours of duty of the examining officer. However, no collection will be made if the total amount chargeable against one importer for one day amounts to less than 50 cents. If the total amount chargeable amounts to 50 cents or more but less than $1, a minimum charge of $1 will be made.

(d) *Bond for removal from Customs custody.* Before permitting the removal of merchandise for examination elsewhere than at the public stores, wharf, or other place under the control of Customs, the port director shall require the importer to execute a bond on Customs Form 301, containing the bond conditions set forth in §113.62 of this chapter.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 84–152, 49 FR 29374, July 20, 1984; T.D. 84–213, 49 FR 41186, Oct. 19, 1984; T.D. 93–6, 58 FR 5606, Jan. 22, 1993]

§ 151.8 Examination after assembly.

(a) *Application by importer.* Upon application by the importer, machinery, altars, shrines, and other articles which must be set up or assembled prior to examination may be examined at the mill, factory, or other suitable place after being assembled.

(b) *Conditions applicable.* The importer shall comply with the conditions set forth in §151.7 (b) through (d). The port director may also require that a deposit be made of the estimated additional expense. The packages need not be corded and sealed in accordance with §151.7(a), but the port director may make such preliminary examination as he deems necessary to identify the merchandise with the invoice.

(c) *Removal of merchandise and notification of assembly.* After the bond required by §151.7(d) has been filed and any necessary preliminary examination has been made, the port director may permit the merchandise to be removed to the place at which it is to be assembled for examination. Within 90 days after such removal, unless an extension has been applied for and granted by the port director, the importer shall notify the port director that the merchandise has been assembled and is ready for examination, whereupon final examination shall be made.

§ 151.9 Immediate transportation entry delivered outside port limits.

When merchandise covered by an immediate transportation entry has been authorized by the port director to be delivered to a place outside a port of entry as provided for in §18.11(a) of this chapter, the provisions of §151.7 must be complied with to the same extent as if the merchandise had been delivered to the port of entry, and then authorized to be examined elsewhere than at the public stores, wharf, or other place under the control of CBP.

[CBP Dec. 17–13, 82 FR 45407, Sept. 28, 2017]

§ 151.10 Sampling.

When necessary, an authorized CBP official may obtain samples of merchandise for appraisement, classification, or other official purposes. Samples shall be taken by Customs or a commercial gauger approved in accordance with §151.13. Samples shall be marked to ensure identification and retained according to established policies.

[T.D. 87–39, 52 FR 9787, Mar. 26, 1987]

§ 151.11 Request for samples or additional examination packages after release of merchandise.

If an authorized CBP official requires samples or additional examination packages of merchandise which has been released from CBP custody, an authorized CBP official will send the importer a written request, on Customs Form 28, or its electronic equivalent, Request for Information, or other appropriate form, to submit the necessary samples or packages. If the request is not promptly complied with, an authorized CBP official may make a demand under the bond for the return of the necessary merchandise to CBP custody in accordance with §141.113 of this chapter. For purposes of determining admissibility, representatives

of the Food and Drug Administration may obtain samples of any food, drug, device, or cosmetic, the importation of which is governed by section 801 of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 381).

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 75–152, 40 FR 27444, June 30, 1975; T.D. 84–213, 49 FR 41186, Oct. 19, 1984; CBP Dec. 07–02, 72 FR 4430, Jan. 31, 2007; CBP Dec. 15–14, 80 FR 61291, Oct. 13, 2015]

§ 151.12 Accreditation of commercial laboratories.

This section sets forth the requirements for commercial laboratories to obtain accreditation by CBP for the testing of certain commodities, and explains the operation of such accredited laboratories. This section also provides for the imposition of accreditation and reaccreditation fees, sets forth grounds for the suspension and revocation of accreditation, and provides for the imposition of a monetary penalty for an accredited commercial laboratory that fails to adhere to the provisions of this section.

(a) *Definitions.* For purposes of this section, the following words and phrases have the meanings indicated:

Analysis record. An ''analysis record'' is a compilation of all documents which have been generated during the course of analysis of a particular sample which, under normal circumstances, may include, both in paper and electronic-form, such documents as work sheets, notes, associated spectra (both spectra of the actual product and any standard spectra used for comparison), photographs and microphotographs, and the laboratory report.

Assistant Commissioner. In §§ 151.12 and 151.13, references to the ''Assistant Commissioner'' mean the Assistant Commissioner, Office of Information and Technology, or his designee, located in Washington, D.C.

Check samples. ''Check samples'' are samples which have been distributed by CBP to accredited laboratories to test their proficiency in a certain area of accreditation.

Commodity Group Brochure. A ''Commodity Group Brochure'' is a booklet which contains a listing of laboratory methods which commercial laboratories are required to have the capability to perform to qualify for CBP-accreditation in a particular commodity group. The brochures and the Customs and Border Protection Laboratory (CBPL) Methods will specify the particular laboratory testing methods required for particular commodity groups, unless written permission from the Executive Director is given to use an alternate method. Procedures required by the Executive Director may reference applicable general industry testing standards, published by such organizations as the American Society for Testing and Materials (ASTM) and the American Petroleum Institute (API). Commodity Group Brochures and a listing of the methods found in the U.S. Customs Laboratory Methods Manual are available from the U.S. Customs and Border Protection, Attention: Executive Director, Laboratories and Scientific Services, Washington, D.C. 20229 and can also be found on the CBP Web site: *www.cbp.gov*.

Executive Director. In §§ 151.12 and 151.13, references to the ''Executive Director'' mean the Executive Director, Laboratories and Scientific Services, located in Washington, D.C.

(b) *What is a ''Customs-accredited laboratory''?* ''Commercial laboratories'' are individuals and commercial organizations that analyze merchandise, *i.e.*, determine its composition and/or characteristics, through laboratory analysis. A ''Customs-accredited laboratory'' is a commercial laboratory, within the United States, that has demonstrated, to the satisfaction of the Executive Director, pursuant to this section, the capability to perform analysis of certain commodities to determine elements relating to the admissibility, quantity, composition, or characteristics of imported merchandise. Customs accreditation extends only to the performance of such functions as are vested in, or delegated to, Customs.

(c) *What are the obligations of a Customs-accredited laboratory?* A commercial laboratory accredited by Customs agrees to the following conditions and requirements:

(1) To comply with the requirements of part 151, Customs Regulations (19

CFR part 151), and to conduct professional services in conformance with approved standards and procedures, including procedures which may be required by the Commissioner of Customs or the Executive Director;

(2) To have no interest in or other connection with any business or other activity which might affect the unbiased performance of duties as a Customs-accredited laboratory. It is understood that this does not prohibit acceptance of the usual fees for professional services;

(3) To maintain the ability, *i.e.*, the instrumentation, equipment, qualified staff, facilities, etc., to perform the services for which the laboratory is accredited, and allow the Executive Director to evaluate that ability on a periodic basis by such means as on-site inspections, demonstrations of analysis procedures, reviews of submitted records, and proficiency testing through check samples;

(4) To retain those laboratory records beyond the five-year record-retention period and samples (see paragraph (j)(1) of this section) specified by Customs as necessary to address matters concerned in pending litigation, and, if laboratory operations or accreditation cease, to contact Customs immediately regarding the disposition of records/samples retained;

(5) To promptly investigate any circumstance which might affect the accuracy of work performed as an accredited laboratory, to correct the situation immediately, and to notify the port director, the Executive Director, and the Center director of such matters, their consequences, and any corrective action taken or that needs to be taken; and

(6) To immediately notify the port director, the Executive Director, and the Center director of any attempt to impede, influence, or coerce laboratory personnel in the performance of their duties, or of any decision to terminate laboratory operations or accredited status. Further, within 5 days of any changes involving legal name, address, ownership, parent-subsidiary relationships, bond, other offices or sites, or approved signatories to notify the Executive Director by certified mail.

(d) *What are the commodity groups for which accreditation may be sought?* (1) Commercial laboratories may apply for accreditation to perform tests for any of the commodity groups listed in paragraph (d)(2) of this section. Applicable test procedures are listed in Commodity Group Brochures and the U.S. Customs Laboratory Methods Manual. Application may be made for accreditation in more than one commodity group. At the discretion of the Executive Director accreditation may be granted for subgroups of tests within a commodity group or for commodity groups not specifically enumerated. Once accredited, a Customs-accredited laboratory may apply at any time to expand its accreditation, to add new testing sites, or increase the number of commodity groups or subgroups accredited.

(2) The commodity groups for which accreditation may be sought without special permission from the Executive Director are:

(i) Dairy and Chocolate Products entered under Chapters 4, 18, and 21 of the Harmonized Tariff Schedule of the United States (HTSUS);

(ii) Food and Food Products entered under Chapters 7–12, 15, 16, and 19–21, HTSUS;

(iii) Botanical Identification—materials and products entered under Chapters 14 and 44–46, HTSUS;

(iv) Sugar, Sugar Syrups, and Confectionery products entered under Chapter 17, HTSUS;

(v) Spirituous Beverages entered under Chapter 22, HTSUS;

(vi) Building Stone, Ceramics, Glassware, and Other Mineral Substances entered under Chapters 25 and 68–70, HTSUS;

(vii) Inorganic Materials, including Inorganic Compounds and Ores, entered under Chapters 26, 28, 31, and 36–38, HTSUS;

(viii) Petroleum and Petroleum Products entered under Chapters 27 and 29, HTSUS;

(ix) Organic Materials, including Intermediates and Pharmaceuticals, entered under Chapters 29, 30, 34, 35, and 38, HTSUS;

(x) Rubber, Plastics, Polymers, Pigments and Paints entered under Chapters 32, 39, and 40, HTSUS;

(xi) Essential Oils and Perfumes entered under Chapter 33, HTSUS;

(xii) Leather and Articles of Leather entered under Chapters 41 and 42, HTSUS;

(xiii) Paper and Paper Products entered under Chapters 47–49, HTSUS;

(xiv) Textiles and Related Products, including footwear and hats, entered under Chapters 50–67, HTSUS; and,

(xv) Metals and Alloys entered under Chapters 72–83, HTSUS.

(e) *What are the approved methods of analysis?* Customs-accredited laboratories must follow the general or specific testing methods set forth in Commodity Group Brochures and the U.S. Customs Laboratory Methods Manual in the testing of designated commodities, unless the Executive Director gives written permission to use an alternate method. Alternative methods will be considered and approved on a case-by-case basis.

(f) *How would a commercial laboratory become a Customs-accredited laboratory?*—(1) *What should an application contain?* An application for Customs accreditation must contain the following information:

(i) The applicant's legal name and the address of its principal place of business and any other facility out of which it will work;

(ii) Detailed statements of ownership and any partnerships, parent-subsidiary relationships, or affiliations with any other domestic or foreign organizations, including, but not limited to, importers, other commercial laboratories, producers, refiners, Customs brokers, or carriers;

(iii) A statement of financial condition;

(iv) If a corporation, a copy of the articles of incorporation and the names of all officers and directors;

(v) The names, titles, and qualifications of each person who will be authorized to sign or approve analysis reports on behalf of the commercial laboratory;

(vi) A complete description of the applicant's facilities, instruments, and equipment;

(vii) An express agreement that if notified by Customs of pending accreditation to execute a bond in accordance with part 113, Customs Regulations (19 CFR part 113), and submit it to the Customs port nearest to the applicant's main office. (The limits of liability on the bond will be established by the Customs port in consultation with the Executive Director. In order to retain Customs accreditation, the laboratory must maintain an adequate bond, as determined by the port director);

(viii) A listing of each commodity group for which accreditation is being sought and, if methods are being submitted for approval which are not specifically provided for in a Commodity Group Brochure and the U.S. Customs Laboratory Methods Manual, a listing of such methods;

(ix) A listing by commodity group of each method according to its Customs Laboratory Method Number for which the laboratory is seeking accreditation;

(x) An express agreement to be bound by the obligations contained in paragraph (c) of this section; and,

(xi) A nonrefundable pre-payment equal to 50 percent of the fixed accreditation fee, as published in the FEDERAL REGISTER and Customs Bulletin, to cover preliminary processing costs. Further, the applicant agrees to pay Customs within 30 days of notification of preliminary accreditation the associated charges assessed for accreditation, *i.e.*, those charges for actual travel and background investigation costs, and the balance of the fixed accreditation fee.

(2) *Where should an application be sent?* A commercial laboratory seeking accreditation or an extension of an existing accreditation must send a letter of application to the U.S. Customs Service, Attention: Executive Director, Laboratories & Scientific Services, 1300 Pennsylvania Ave., NW, Washington, D.C. 20229.

(3) *How will an application be reviewed?*—(i) *Physical plant and management system.* The facility of the applicant will be inspected to ensure that it is properly equipped to perform the necessary tests and that staff personnel are capable of performing required tests. Customs evaluation of an applicant's professional abilities will be in accordance with the general criteria contained in either the American Society for Testing and Materials

(ASTM) E548 (Standard Guide for General Criteria Used for Evaluating Laboratory Competence) or the ISO/IEC Guide 25 (General Requirements for the Competence of Calibration and Testing Laboratories). This review will ascertain the laboratory's ability to manage and control the acquisition of technical data. The review will be performed at the time of initial application and upon reaccreditation at three-year intervals.

(ii) *Ability to perform tests on specified commodity groups.* For each commodity group applied for, the applicant will undergo a separate review of testing capabilities. The specific accreditation will be based on the laboratory's ability to perform the tests required for that commodity group. This will include the qualifications of the technical personnel in this field and the instrument availability required by the test methods. Maintenance of accreditation will be ongoing and may require the submission of test results on periodic check samples. The criteria for acceptance will be based on the laboratory's ability to produce a work product that assists in the proper classification and entry of imported merchandise.

(iii) *Determination of competence.* The Executive Director will determine the applicant's overall competence, independence, and character by conducting on-site inspections, which may include demonstrations by the applicant of analysis procedures and a review of analysis records submitted, and background investigations. The Executive Director may also conduct proficiency testing through check samples.

(iv) *Evaluation of technical and operational requirements.* Customs will determine whether the following technical and operational requirements are met:

(A) *Equipment.* The laboratory must be equipped with all of the instruments and equipment needed to conduct the tests for which it is accredited. The laboratory must ensure that all instruments and equipment are properly calibrated, checked, and maintained.

(B) *Facilities.* The laboratory must have, at a minimum, adequate space, lighting, and environmental controls to ensure compliance with the conditions prescribed for appropriate test procedures.

(C) *Personnel.* The laboratory must be staffed with persons having the necessary education, training, knowledge, and experience for their assigned functions (e.g., maintaining equipment, calibrating instruments, performing laboratory analyses, evaluating analytical results, and signing analysis reports on behalf of the laboratory). In general, each technical staff member should hold, at a minimum, a bachelor's degree in science or have two years related experience in an analytical laboratory.

(g) *How will an applicant be notified concerning accreditation?*—(1) *Notice of accreditation or nonselection.* When Customs evaluation of a laboratory's credentials is completed, the Executive Director will notify the laboratory in writing of its preliminary accreditation or nonselection. (Final accreditation determinations will not be made until the applicant has satisfied all bond requirements and made payment on all assessed charges and the balance of the applicable accreditation fee). All final notices of accreditation, reaccreditation, or extension of existing Customs accreditation will be published in the FEDERAL REGISTER and Customs Bulletin.

(2) *Grounds for nonselection.* The Executive Director may deny a laboratory's application for any of the following reasons:

(i) The application contains false or misleading information concerning a material fact;

(ii) The laboratory, a principal of the laboratory, or a person the Executive Director determines is exercising substantial ownership or control over the laboratory operation is indicted for, convicted of, or has committed acts which would:

(A) Under United States federal or state law, constitute a felony or misdemeanor involving misstatements, fraud, or a theft-related offense; or

(B) Reflect adversely on the business integrity of the applicant;

(iii) A determination is made that the laboratory-applicant does not possess the technical capability, have adequate facilities, or management to perform the approved methods of analysis for Customs purposes;

(iv) A determination is made that the laboratory has submitted false reports or statements concerning the sampling of merchandise, or that the applicant was subject to sanctions by state, local, or professional administrative bodies for such conduct;

(v) Nonpayment of assessed charges and the balance of the fixed accreditation fee; or

(vi) Failure to execute a bond in accordance with part 113 of this chapter.

(3) *Adverse accreditation decisions; appeal procedures*—(i) *Preliminary notice.* A laboratory which is not selected for accreditation will be sent a preliminary notice of nonselection. The preliminary notice of nonselection will state the specific grounds for the proposed nonselection decision and advise the laboratory that it may file a response addressing the grounds for the action proposed with the Executive Director within 30 calendar days of the date the preliminary notice of nonselection was received by the laboratory.

(ii) *Final notice*—(A) *Based on nonresponse.* If the laboratory does not respond to the preliminary notice, the Executive Director will issue a final notice of nonselection within 60 calendar days of the date the preliminary notice of nonselection was received by the laboratory applicant. The final notice of nonselection will state the specific grounds for the nonselection and advise the laboratory that it may choose to pursue one of the following two options:

(*1*) Submit a new application for accreditation, in accordance with the provisions of paragraph (f)(1) of this section, 180 days after the date of the final notice of nonselection; or

(*2*) Administratively appeal the final notice of nonselection to the Assistant Commissioner within 30 calendar days of the date of the final notice of nonselection.

(B) *Based on response.* If the laboratory files a timely response, the Executive Director will issue a final determination regarding the laboratory's accreditation within 30 calendar days of the date the applicant's response is received by the Executive Director. If this final determination is adverse to the laboratory, then the final notice of nonselection will state the specific grounds for nonselection and advise the laboratory that it may choose to pursue one of the two options provided at paragraphs (g)(3)(ii)(A)(1) and (2) of this section.

(iii) *Appeal decision.* The Assistant Commissioner will issue a decision on the appeal within 30 calendar days of the date the appeal is received. If the appeal decision is adverse to the laboratory, then the decision notice will advise the laboratory that it may choose to pursue one of the following two options:

(A) Submit a new application for accreditation, in accordance with the provisions of paragraph (f)(1) of this section, 120 days after the date of the appeal decision; or

(B) File an action with the Court of International Trade, pursuant to chapter 169 of title 28, United States Code, within 60 days of the date of the appeal decision.

(h) *What are the accreditation/reaccreditation fee requirements?*—(1) *In general.* A fixed fee, representing Customs administrative overhead expense, will be assessed for each application for accreditation or reaccreditation. In addition, associated assessments, representing the actual costs associated with travel and per diem of Customs employees related to verification of application criteria and background investigations will be charged. The combination of the fixed fee and associated assessments represent reimbursement to Customs for costs related to accreditation and reaccreditation. The fixed fee will be published in the Customs Bulletin and the FEDERAL REGISTER. Based on a review of the actual costs associated with the program, the fixed fee may be adjusted periodically; any changes will be published in the Customs Bulletin and the FEDERAL REGISTER.

(i) *Accreditation fees.* A nonrefundable pre-payment equal to 50 percent of the

fixed accreditation fee to cover preliminary processing costs must accompany each application for accreditation. Before a laboratory will be accredited, it must remit to Customs, at the address specified in the billing, within the 30 day billing period, the associated charges assessed for the accreditation and the balance of the fixed accreditation fee.

(ii) *Reaccreditation fees.* Before a laboratory will be reaccredited, it must submit to Customs, at the billing address specified, within the 30 day billing period the fixed reaccreditation fee.

(2) *Disputes.* In the event a laboratory disputes the charges assessed for travel and per diem costs associated with scheduled inspection visits, it may file an appeal within 30 calendar days of the date of the assessment with the Executive Director. The appeal letter must specify which charges are in dispute and provide such supporting documentation as may be available for each allegation. The Executive Director will make findings of fact concerning the merits of an appeal and communicate the agency decision to the laboratory in writing within 30 calendar days of the date of the appeal.

(i) *Can existing Customs-accredited laboratories continue to operate?* Commercial laboratories accredited by the Executive Director prior to December 8, 1993, will retain that accreditation under these regulations provided they conduct their business in a manner consistent with the administrative portions of this section. This paragraph does not pertain to any laboratory which has had its accreditation suspended or revoked. Laboratories which have had their accreditations continued under this section will have their status reevaluated on their next triennial inspection date which is no earlier than three years after the effective date of this regulation. At the time of reaccreditation, these laboratories must meet the requirements of this section and remit to Customs, at the address specified in the billing, within the 30 day billing period, the fixed reaccreditation fee. Failure to meet these requirements will result in revocation or suspension of the accreditation.

(j) *How will Customs-accredited laboratories operate?*—(1) *Samples for testing.* Upon request by the importer of record of merchandise, the port director will release a representative sample of the merchandise for testing by a Customs-accredited laboratory at the expense of the importer. Under Customs supervision, the sample will be split into two essentially equal parts and given to the Customs-accredited laboratory. One portion of the sample may be used by the Customs-accredited laboratory for its testing. The other portion must be retained by the laboratory, under appropriate storage conditions, for Customs use, as necessary, unless Customs requires other specific procedures. Upon request, the sample portion reserved for Customs purposes must be surrendered to Customs.

(i) *Retention of non-perishable samples.* Non-perishable samples reserved for Customs and sample remnants from any testing must be retained by the accredited laboratory for a period of four months from the date of the laboratory's final analysis report, unless other instructions are issued in writing by Customs. At the end of this retention time period, the accredited laboratory may dispose of the retained samples and sample remnants in a manner consistent with federal, state, and local statutes.

(ii) *Retention of perishable samples.* Perishable samples reserved for Customs and sample remnants from any testing can be disposed of more expeditiously than provided for at paragraph (j)(1)(i) of this section, if done in accordance with acceptable laboratory procedures, unless other instructions are issued in writing by Customs.

(2) *Reports*—(i) *Contents of reports.* Testing data must be obtained using methods approved by the Executive Director. The testing results from a Customs-accredited laboratory that are submitted by an importer of record with respect to merchandise in an entry, in the absence of testing conducted by Customs laboratories, will be accepted by Customs, provided that the importer of record certifies that the sample tested was taken from the merchandise in the entry and the report establishes elements relating to the admissibility, quantity, composition, or

characteristics of the merchandise entered, as required by law.

(ii) *Status of commercial reports where Customs also tests merchandise.* Nothing in these regulations will preclude Customs from sampling and testing merchandise from a shipment which has been sampled and tested by a Customs-accredited laboratory at the request of an importer. In cases where a shipment has been analyzed by both Customs and a Customs-accredited laboratory, all Customs actions will be based upon the analysis provided by the Customs laboratory, unless the Executive Director advises otherwise. If Customs tests merchandise, it will release the results of its test to the importer of record or its agent upon request unless the testing information is proprietary to the holder of a copyright or patent, or developed by Customs for enforcement purposes.

(3) *Recordkeeping requirements.* Customs-accredited laboratories must maintain records of the type normally kept in the ordinary course of business in accordance with the provisions of this chapter and any other applicable provision of law, and make them available during normal business hours for Customs inspection. In addition, these laboratories must maintain all records necessary to permit the evaluation and verification of all Customs-related work, including, as appropriate, those described below. All records must be maintained for five years, unless the laboratory is notified in writing by Customs that a longer retention time is necessary for particular records. Electronic data storage and transmission may be approved by Customs.

(i) *Sample records.* Records for each sample tested for Customs purposes must be readily accessible and contain the following information:

(A) A unique identifying number;

(B) The date when the sample was received or taken;

(C) The identity of the commodity (e.g., crude oil);

(D) The name of the client;

(E) The source of the sample (e.g., name of vessel, flight number of airline, name of individual taking the sample); and

(F) If available, the Customs entry date, entry number, and port of entry and the names of the importer, exporter, manufacturer, and country-of-origin.

(ii) *Major equipment records.* Records for each major piece of equipment or instrument (including analytical balances) used in Customs-related work must identify the name and type of instrument, the manufacturer's name, the instrument's model and any serial numbers, and the occurrence of all servicing performed on the equipment or instrument, to include recalibration and any repair work, identifying who performed the service and when.

(iii) *Records of analytical procedures.* The Customs-accredited laboratory must maintain complete and up-to-date copies of all approved analytical procedures, calibration methods, etc., and must document the procedures each staff member is authorized to perform. These procedures must be readily available to appropriate staff.

(iv) *Laboratory analysis records.* The Customs-accredited laboratory must identify each analysis by sample record number (see paragraph (j)(3)(i) of this section) and must maintain all information or data (such as sample weights, temperatures, references to filed spectra, etc.) associated with each Customs-related laboratory analysis. Each analysis record must be dated and initialed or signed by the staff member(s) who did the work.

(v) *Laboratory analysis reports.* Each laboratory analysis report submitted to Customs must include:

(A) The name and address of the Customs-accredited laboratory;

(B) A description and identification of the sample, including its unique identifying number;

(C) The designations of each analysis procedure used;

(D) The analysis report itself (*i.e.,* the pertinent characteristics of the sample);

(E) The date of the report; and

(F) The typed name and signature of the person accepting technical responsibility for the analysis report (*i.e.,* an approved signatory).

(4) *Representation of Customs-accredited status.* Commercial laboratories accredited by Customs must limit statements or wording regarding their accreditation to an accurate description

of the tests for the commodity group(s) for which accreditation has been obtained. Use of terms other than those appearing in the notice of accreditation (see paragraph (g) of this section) is prohibited.

(5) *Subcontracting prohibited.* Customs-accredited laboratories must not subcontract Customs-related analysis work to non Customs-accredited laboratories or non Customs-approved gaugers, but may subcontract to other facilities that are Customs-accredited/approved and in good standing.

(k) *How can a laboratory have its accreditation suspended or revoked or be required to pay a monetary penalty?*—(1) *Grounds for suspension, revocation, or assessment of a monetary penalty*—(i) *In general.* The Executive Director may immediately suspend or revoke a laboratory's accreditation only in cases where the laboratory's actions are intentional violations of any Customs law or when required by public health or safety. In other situations where the Executive Director has cause, the Executive Director will propose the suspension or revocation of a laboratory's accreditation or propose a monetary penalty and provide the laboratory with the opportunity to respond to the notice of proposed action.

(ii) *Specific grounds.* A laboratory's accreditation may be suspended or revoked, or a monetary penalty may be assessed because:

(A) The selection was obtained through fraud or the misstatement of a material fact by the laboratory;

(B) The laboratory, a principal of the laboratory, or a person the port director determines is exercising substantial ownership or control over the laboratory operation is indicted for, convicted of, or has committed acts which would: under United States federal or state law, constitute a felony or misdemeanor involving misstatements, fraud, or a theft-related offense; or reflect adversely on the business integrity of the applicant. In the absence of an indictment, conviction, or other legal process, the port director must have probable cause to believe the proscribed acts occurred;

(C) Staff laboratory personnel refuse or otherwise fail to follow any proper order of a Customs officer or any Customs order, rule, or regulation;

(D) The laboratory fails to operate in accordance with the obligations of paragraph (c) of this section;

(E) A determination is made that the laboratory is no longer technically or operationally proficient at performing the approved methods of analysis for Customs purposes;

(F) The laboratory fails to remit to Customs, at the billing address specified, within the 30 day billing period the associated charges assessed for the accreditation and the balance of the fixed accreditation fee;

(G) The laboratory fails to maintain its bond;

(H) The laboratory fails to remit to Customs, at the billing address specified, within the 30 day billing period, the fixed reaccreditation fee; or

(I) The laboratory fails to remit any monetary penalty assessed under this section.

(iii) *Assessment of monetary penalties.* The assessment of a monetary penalty under this section, may be in lieu of, or in addition to, a suspension or revocation of accreditation under this section. The monetary penalty may not exceed $100,000 per violation and will be assessed and administered pursuant to published guidelines. Any monetary penalty under this section can be in addition to the recovery of:

(A) Any loss of revenue, in cases where the laboratory intentionally falsified the analysis report in collusion with the importer, pursuant to 19 U.S.C. 1499(b)(1)(B)(i); or

(B) Liquidated damages assessed under the laboratory's Customs bond.

(2) *Notice of adverse action.* When a decision to suspend or revoke accreditation, and/or assess a monetary penalty is made, the Executive Director will immediately notify the laboratory in writing, indicating whether the action is effective immediately or is proposed.

(i) *Immediate suspension or revocation.* Where the suspension or revocation of accreditation is immediate, the Executive Director will issue a final notice of adverse determination. The final notice of adverse determination will state the specific grounds for the immediate suspension or revocation, direct the laboratory to cease performing any

Customs-accredited functions, and advise the laboratory that it may choose to pursue one of the following two options:

(A) Submit a new application for accreditation, in accordance with the provisions of paragraph (f)(1) of this section, 180 days after the date of the final notice of adverse determination; or

(B) Administratively appeal the final notice of adverse determination to the Assistant Commissioner within 30 calendar days of the date of the final notice of adverse determination.

(ii) *Proposed suspension, revocation, or assessment of monetary penalty*—(A) *Preliminary notice.* Where the suspension or revocation of accreditation, and/or the assessment of a monetary penalty is proposed, the Executive Director will issue a preliminary notice of proposed action. The preliminary notice of proposed action will state the specific grounds for the proposed action, inform the laboratory that it may continue to perform those functions requiring Customs-accreditation until the Executive Director's final notice is issued, and advise the laboratory that it may file a response addressing the grounds for the action proposed with the Executive Director within 30 calendar days of the date the preliminary notice of proposed action was received by the laboratory. The laboratory may respond by accepting responsibility, explaining extenuating circumstances, and/or providing rebuttal evidence. The laboratory also may ask for a meeting with the Executive Director or his designee to discuss the proposed action.

(B) *Final notice*—(*1*) *Based on nonresponse.* If the laboratory does not respond to the preliminary notice of proposed action, the Executive Director will issue a final notice of adverse determination within 60 calendar days of the date the preliminary notice of proposed action was received by the laboratory. The final notice of adverse determination will state the specific grounds for the adverse determination, direct the laboratory to cease performing any Customs-accredited functions, and advise the laboratory that it may choose to pursue one of the two options provided at paragraphs (k)(2)(i)(A) and (B) of this section.

(*2*) *Based on response.* If the laboratory files a timely response, the Executive Director will issue a final determination regarding the status of the laboratory's accreditation within 30 calendar days of the date the laboratory's response is received by the Executive Director. If this final determination is adverse to the laboratory, then the final notice of adverse determination will state the specific grounds for the adverse action, advise the laboratory to cease performing any functions requiring Customs accreditation, and advise the laboratory that it may choose to pursue one of the two options provided at paragraphs (k)(2)(i)(A) and (B) of this section.

(*3*) *Publication of final notices of adverse determination.* Any final notices of adverse determination issued by the Executive Director resulting in a laboratory being directed to cease performing Customs-accredited functions will be published in the FEDERAL REGISTER and Customs Bulletin and the notice published will include the effective date, duration, and scope of the determination.

(*4*) *Appeal decision.* The Assistant Commissioner will issue a decision on the appeal within 30 calendar days of the date the appeal is received. If the appeal decision is adverse to the laboratory, then the decision notice will advise the laboratory that it may choose to pursue one of the following two options:

(i) Submit a new application for accreditation, in accordance with the provisions of paragraph (f)(1) of this section, 120 days after the date of the appeal decision; or

(ii) File an action with the Court of International Trade, pursuant to chapter 169 of title 28, United States Code, within 60 days of the date of the appeal decision.

[T.D. 99–67, 64 FR 48534, Sept. 7, 1999; T.D. 99–67, 65 FR 10009, 10010, Feb. 25, 2000]

§ 151.13 Approval of commercial gaugers.

This section sets forth the requirements for commercial gaugers to obtain approval by Customs for the measuring of certain merchandise, and explains the operation of such approved gaugers. This section also provides for

the imposition of approval and reapproval fees, sets forth grounds for the suspension or revocation of approval, and provides for the imposition of a monetary penalty for an approved commercial gauger that fails to adhere to the provisions of this section.

(a) *What is a ''Customs-approved gauger''?* ''Commercial gaugers'' are individuals and commercial organizations that measure, gauge, or sample merchandise (usually merchandise in bulk form) and who deal mainly with animal and vegetable oils, petroleum, petroleum products, and bulk chemicals. A ''Customs-approved gauger'' is a commercial concern, within the United States, that has demonstrated, to the satisfaction of the Executive Director (defined at §151.12(a)), pursuant to this section, the capability to perform certain gauging and measurement procedures for certain commodities. Customs approval extends only to the performance of such functions as are vested in, or delegated to, Customs.

(b) *What are the obligations of a Customs-approved gauger?* A commercial gauger approved by Customs agrees to the following conditions and requirements:

(1) To comply with the requirements of part 151, Customs Regulations (19 CFR part 151), and to conduct professional services in conformance with approved standards and procedures, including procedures which may be required by the Commissioner of Customs or the Executive Director;

(2) To have no interest in or other connection with any business or other activity which might affect the unbiased performance of duties as a Customs-approved gauger. It is understood that this does not prohibit acceptance of the usual fees for professional services;

(3) To maintain the ability, *i.e.*, the instrumentation, equipment, qualified staff, facilities, etc., to perform the services for which the gauger is approved, and allow the Executive Director to evaluate that ability on a periodic basis by such means as on-site inspections, demonstrations of gauging procedures, and reviews of submitted records;

(4) To retain those gauger records beyond the five-year record-retention period specified by Customs as necessary to address matters concerned in pending litigation, and, if gauger operations or approval cease, to contact Customs immediately regarding the disposition of records retained;

(5) To promptly investigate any circumstance which might affect the accuracy of work performed as an approved gauger, to correct the situation immediately, and to notify the port director, the Executive Director, and the Center director of such matters, their consequences, and any corrective action taken or that needs to be taken; and

(6) To immediately notify the port director, the Executive Director, and the Center director of any attempt to impede, influence, or coerce gauger personnel in the performance of their duties, or of any decision to terminate gauger operations or approval status. Further, within 5 days of any changes involving legal name, address, ownership, parent-subsidiary relationships, bond, other offices or sites, or approved signatories to notify the Executive Director by certified mail.

(c) *What are the approved measurement procedures?* Customs-approved gaugers must comply with appropriate procedures published by such professional organizations as the American Society for Testing and Materials (ASTM) and the American Petroleum Institute (API), unless the Executive Director gives written permission to use an alternate method. Alternative methods will be considered and approved on a case-by-case basis.

(d) *How would a commercial gauger become a Customs-approved gauger?*—(1) *What should an application contain?* An application for Customs approval must contain the following information:

(i) The applicant's legal name and the address of its principal place of business and any other facility out of which it will work;

(ii) Detailed statements of ownership and any partnerships, parent-subsidiary relationships, or affiliations with any other domestic or foreign organizations, including, but not limited to, importers, producers, refiners, Customs brokers, or carriers;

(iii) A statement of financial condition;

(iv) If a corporation, a copy of the articles of incorporation and the names of all officers and directors;

(v) The names, titles, and qualifications of each person who will be authorized to sign or approve gauging reports on behalf of the commercial gauger;

(vi) A complete description of the applicant's facilities, instruments, and equipment;

(vii) An express agreement that if notified by Customs of pending approval to execute a bond in accordance with part 113, Customs Regulations (19 CFR part 113), and submit it to the Customs port nearest to the applicant's main office. (The limits of liability on the bond will be established by the Customs port in consultation with the Executive Director. In order to retain Customs approval, the gauger must maintain an adequate bond, as determined by the port director);

(viii) An express agreement to be bound by the obligations contained in paragraph (b) of this section; and,

(ix) A nonrefundable pre-payment equal to 50 percent of the fixed approval fee, as published in the FEDERAL REGISTER and Customs Bulletin, to cover preliminary processing costs. Further, the applicant agrees to pay Customs within 30 days of notification of preliminary approval the associated charges assessed for approval, *i.e.*, those charges for actual travel and background investigation costs, and the balance of the fixed approval fee.

(2) *Where should an application be sent?* A commercial gauger seeking approval or an extension of an existing approval must send a letter of application to the U.S. Customs Service, Attention: Executive Director, Laboratories & Scientific Services, 1300 Pennsylvania Ave., NW, Washington, D.C. 20229.

(3) *How will an application be reviewed?*—(i) *Determination of competence.* The Executive Director will determine the applicant's overall competence, independence, and character by conducting on-site inspections, which may include demonstrations by the applicant of gauging procedures and a review of records submitted, and background investigations. The Executive Director may also conduct proficiency testing through check samples.

(ii) *Evaluation of technical and operational requirements.* Customs will determine whether the following technical and operational requirements are met:

(A) *Equipment.* The facility must be equipped with all of the instruments and equipment needed to conduct approved services. The gauger must ensure that all instruments and equipment are properly calibrated, checked, and maintained.

(B) *Facilities.* The facility must have, at a minimum, adequate space, lighting, and environmental controls to ensure compliance with the conditions prescribed for appropriate measurements.

(C) *Personnel.* The facility must be staffed with persons having the necessary education, training, knowledge, and experience for their assigned functions (e.g., maintaining equipment, calibrating instruments, performing gauging services, evaluating gauging results, and signing gauging reports on behalf of the commercial gauger). In general, each technical staff member should have, at a minimum, six months training and experience in gauging.

(e) *How will an applicant be notified concerning approval?*—(1) *Notice of approval or nonselection.* When Customs evaluation of a gauger's credentials is completed, the Executive Director will notify the gauger in writing of its preliminary approval or nonselection. (Final approval determinations will not be made until the applicant has satisfied all bond requirements and made payment on all assessed charges and the balance of the applicable approval fee). All final notices of approval, reapproval, or extension of existing Customs approval will be published in the FEDERAL REGISTER and Customs Bulletin.

(2) *Grounds for nonselection.* The Executive Director may deny a gauger's application for any of the following reasons:

(i) The application contains false or misleading information concerning a material fact;

(ii) The gauger, a principal of the gauging facility, or a person the Executive Director determines is exercising

substantial ownership or control over the gauger operation is indicted for, convicted of, or has committed acts which would:

(A) Under United States federal or state law, constitute a felony or misdemeanor involving misstatements, fraud, or a theft-related offense; or

(B) Reflect adversely on the business integrity of the applicant;

(iii) A determination is made that the gauger-applicant does not possess the technical capability, have adequate facilities, or management to perform the approved methods of measurement for Customs purposes;

(iv) A determination is made that the gauger has submitted false reports or statements concerning the measurement of merchandise, or that the applicant was subject to sanctions by state, local, or professional administrative bodies for such conduct;

(v) Nonpayment of assessed charges and the balance of the fixed approval fee; or

(vi) Failure to execute a bond in accordance with part 113 of this chapter.

(3) *Adverse approval decisions; appeal procedures.* (i) *Preliminary notice.* A gauger which is not selected for approval will be sent a preliminary notice of nonselection. The preliminary notice of nonselection will state the specific grounds for the proposed nonselection decision and advise the gauger that it may file a response addressing the grounds for the action proposed with the Executive Director within 30 calendar days of the date the preliminary notice of nonselection was received by the gauger.

(ii) *Final notice*—(A) *Based on nonresponse.* If the gauger does not respond to the preliminary notice, the Executive Director will issue a final notice of nonselection within 60 calendar days of the date the preliminary notice of nonselection was received by the gauger applicant. The final notice of nonselection will state the specific grounds for the nonselection and advise the gauger that it may choose to pursue one of the following two options:

(*1*) Submit a new application for approval, in accordance with the provisions of paragraph (d)(1) of this section, 180 days after the date of the final notice of nonselection; or

(*2*) Administratively appeal the final notice of nonselection to the Assistant Commissioner within 30 calendar days of the date of the final notice of nonselection.

(B) *Based on response.* If the gauger files a timely response, the Executive Director will issue a final determination regarding the gauger's approval within 30 calendar days of the date the applicant's response is received by the Executive Director. If this final determination is adverse to the gauger, then the final notice of nonselection will state the specific grounds for nonselection and advise the gauger that it may choose to pursue one of the two options provided at paragraphs (e)(3)(ii)(A)(1) and (2) of this section.

(iii) *Appeal decision.* The Assistant Commissioner will issue a decision on the appeal within 30 calendar days of the date the appeal is received. If the appeal decision is adverse to the gauger, then the decision notice will advise the gauger that it may choose to pursue one of the following two options:

(A) Submit a new application for approval, in accordance with the provisions of paragraph (d)(1) of this section, 120 days after the date of the appeal decision; or

(B) File an action with the Court of International Trade, pursuant to chapter 169 of title 28, United States Code, within 60 days of the date of the appeal decision.

(f) *What are the approval/reapproval fee requirements?*—(1) *In general.* A fixed fee, representing Customs administrative overhead expense, will be assessed for each application for approval or reapproval. In addition, associated assessments, representing the actual costs associated with travel and per diem of Customs employees related to verification of application criteria and background investigations will be charged. The combination of the fixed fee and associated assessments represent reimbursement to Customs for costs related to approval and reapproval. The fixed fee will be published in the Customs Bulletin and the FEDERAL REGISTER. Based on a review of the actual costs associated with the program, the fixed fee may be adjusted

periodically; any changes will be published in the Customs Bulletin and the FEDERAL REGISTER.

(i) *Approval fees.* A nonrefundable prepayment equal to 50 percent of the fixed approval fee to cover preliminary processing costs must accompany each application for approval. Before a gauger will be approved, it must submit to Customs, at the address specified in the billing, within the 30 day billing period the associated charges assessed for the approval and the balance of the fixed approval fee.

(ii) *Reapproval fees.* Before a gauger will be reapproved, it must submit to Customs, at the billing address specified, within the 30 day billing period, the fixed reapproval fee.

(2) *Disputes.* In the event a gauger disputes the charges assessed for travel and per diem costs associated with scheduled inspection visits, it may file an appeal within 30 calendar days of the date of the assessment with the Executive Director. The appeal letter must specify which charges are in dispute and provide such supporting documentation as may be available for each allegation. The Executive Director will make findings of fact concerning the merits of an appeal and communicate the agency decision to the gauger in writing within 30 calendar days of the date of the appeal.

(g) *Can existing Customs-approved gaugers continue to operate?* Commercial gaugers approved by the Executive Director prior to December 8, 1993, will retain approval under these regulations provided that they conduct their business in a manner consistent with the administrative portions of this section. This paragraph does not pertain to any gauger which has had its approval suspended or revoked. Gaugers which have had their approvals continued under this section will have their status reevaluated on their next triennial inspection date which is no earlier than three years after the effective date of this regulation. At the time of reapproval, these gaugers must meet the requirements of this section and remit to Customs, at the address specified in the billing, within the 30 day billing period the fixed reapproval fee. Failure to meet these requirements will result in revocation or suspension of the approval.

(h) *How will Customs-approved gaugers operate?*—(1) *Reports*—(i) *Contents of reports.* The measurement results from a Customs-approved gauger that are submitted by an importer of record with respect to merchandise in an entry, in the absence of measurements conducted by Customs, will be accepted by Customs, provided that the importer of record certifies that the measurement was of the merchandise in the entry. All reports must measure net landed quantity, except in the case of crude petroleum of Heading 2709, Harmonized Tariff Schedule of the United States (HTSUS), which may be measured by gross quantity. Reports must use the appropriate HTSUS units of quantity, e.g., liters, barrels, or kilograms.

HTSUS	Product	Unit of quantity
Headings 1501–1515	Animal and vegetable oils	Kilogram.
Subheadings 2707.10–2707.30 and 2902.20–2902.44.	Benzene, toluene and xylene	Liter.
Heading 2709	Crude Petroleum	Barrel.
Heading 2710 (various subheadings)	Fuel oils, motor oils, kerosene, naphtha, lubricating oils.	Barrel.
Chapter 29 (various subheadings)	Organic compounds in bulk and liquid form.	Kilogram, liter, etc.

(ii) *Status of commercial reports where Customs also gauges merchandise.* Nothing in these regulations will preclude Customs from gauging a shipment which has been gauged by a Customs-approved gauger at the request of an importer. In cases where a shipment has been gauged by both Customs and a Customs-approved gauger, all Customs actions will be based upon the gauging reports issued by Customs, unless the Executive Director advises other actions. If Customs gauges merchandise, it will release the report of its measurements to the importer of record or

its agent upon request unless the gauging information is proprietary to the holder of a copyright or patent, or developed by Customs for enforcement purposes.

(2) *Recordkeeping requirements.* Customs-approved gaugers must maintain records of the type normally kept in the ordinary course of business in accordance with the provisions of this chapter and any other applicable provisions of law, and make them available during normal business hours for Customs inspection. In addition, these gaugers must maintain all records necessary to permit the evaluation and verification of all Customs-related work, including, as appropriate, those described below. All records must be maintained for five years, unless the gauger is notified in writing by Customs that a longer retention time is necessary for particular records. Electronic data storage and transmission may be approved by Customs.

(i) *Transaction records.* Records for each Customs-related transaction must be readily accessible and have the following:

(A) A unique identifying number;

(B) The date and location where the transaction occurred;

(C) The identity of the product (e.g., crude oil);

(D) The name of the client;

(E) The source of the product (e.g., name of vessel, flight number of airline); and

(F) If available, the Customs entry date, entry number, and port of entry and the names of the importer, exporter, manufacturer, and country-of-origin.

(ii) *Major equipment records.* Records for each major piece of equipment used in Customs-related work must identify the name and type of instrument, the manufacturer's name, the instrument's model and any serial numbers, and the occurrence of all servicing performed on the equipment or instrument, to include recalibration and any repair work, identifying who performed the service and when.

(iii) *Records of gauging procedures.* The Customs-approved gauger must maintain complete and up-to-date copies of all approved gauging procedures, calibration methods, etc., and must document the procedures that each staff member is authorized to perform. These procedures must be readily available to appropriate staff.

(iv) *Gauging records.* The Customs-approved gauger must identify each transaction by transaction record number (see paragraph (h)(2)(i) of this section) and must maintain all information or data (such as temperatures, etc.) associated with each Customs-related gauging transaction. Each gauging record (*i.e.*, the complete file of all data for each separate transaction) must be dated and initialed or signed by the staff member(s) who did the work.

(v) *Gauging reports.* Each gauging report submitted to Customs must include:

(A) The name and address of the Customs-approved gauger;

(B) A description and identification of the transaction, including its unique identifying number;

(C) The designations of each gauging procedure used;

(D) The gauging report itself (*i.e.*, the quantity of the merchandise);

(E) The date of the report; and

(F) The typed name and signature of the person accepting technical responsibility for the gauging report (*i.e.*, an approved signatory).

(3) *Representation of Customs-approved status.* Commercial gaugers approved by Customs must limit statements or wording regarding their approval to an accurate description of the commodities for which approval has been obtained. Use of terms other than those appearing in the notice of approval (see paragraph (e) of this section) is prohibited.

(4) *Subcontracting prohibited.* Customs-approved gaugers must not subcontract Customs-related work to non Customs-approved gaugers or non Customs-accredited laboratories, but may subcontract to other facilities that are Customs-approved/accredited and in good standing.

(i) *How can a gauger have its approval suspended or revoked or be required to pay a monetary penalty?*—(1) *Grounds for suspension, revocation, or assessment of a monetary penalty*—(i) *In general.* The Executive Director may immediately suspend or revoke a gauger's approval

only in cases where the gauger's actions are intentional violations of any Customs law or when required by public health or safety. In other situations where the Executive Director has cause, the Executive Director will propose the suspension or revocation of a gauger's approval or propose a monetary penalty and provide the gauger with the opportunity to respond to the notice of proposed action.

(ii) *Specific grounds.* A gauger's approval may be suspended or revoked, or a monetary penalty may be assessed because:

(A) The selection was obtained through fraud or the misstatement of a material fact by the gauger;

(B) The gauger, a principal of the gauging facility, or a person the port director determines is exercising substantial ownership or control over the gauger operation is indicted for, convicted of, or has committed acts which would: under United States federal or state law, constitute a felony or misdemeanor involving misstatements, fraud, or a theft-related offense; or reflect adversely on the business integrity of the applicant. In the absence of an indictment, conviction, or other legal process, the port director must have probable cause to believe the proscribed acts occurred;

(C) Staff gauger personnel refuse or otherwise fail to follow any proper order of a Customs officer or any Customs order, rule, or regulation;

(D) The gauger fails to operate in accordance with the obligations of paragraph (b) of this section;

(E) A determination is made that the gauger is no longer technically or operationally proficient at performing the approved methods of measurement for Customs purposes;

(F) The gauger fails to remit to Customs, at the billing address specified, within the 30 day billing period the associated charges assessed for the approval and the balance of the fixed approval fee;

(G) The gauger fails to maintain its bond;

(H) The gauger fails to remit to Customs, at the billing address specified, within the 30 day billing period the fixed reapproval fee; or

(I) The gauger fails to remit any monetary penalty assessed under this section.

(iii) *Assessment of monetary penalties.* The assessment of a monetary penalty under this section, may be in lieu of, or in addition to, a suspension or revocation of approval under this section. The monetary penalty may not exceed $100,000 per violation and will be assessed and administered pursuant to published guidelines. Any monetary penalty under this section can be in addition to the recovery of:

(A) Any loss of revenue, in cases where the gauger intentionally falsified the gauging report in collusion with the importer, pursuant to 19 U.S.C. 1499(b)(1)(B)(i); or

(B) Liquidated damages assessed under the gauger's Customs bond.

(2) *Notice of adverse action.* When a decision to suspend or revoke approval, and/or assess a monetary penalty is made, the Executive Director will immediately notify the gauger in writing, indicating whether the action is effective immediately or is proposed.

(i) *Immediate suspension or revocation.* Where the suspension or revocation of approval is immediate, the Executive Director will issue a final notice of adverse determination. The final notice of adverse determination will state the specific grounds for the immediate suspension or revocation, direct the gauger to cease performing any Customs-approved functions, and advise the gauger that it may choose to pursue one of the following two options:

(A) Submit a new application for approval, in accordance with the provisions of paragraph (d)(1) of this section, 180 days after the date of the final notice of nonselection; or

(B) Administratively appeal the final notice of adverse determination to the Assistant Commissioner within 30 calendar days of the date of the final notice of adverse determination.

(ii) *Proposed suspension, revocation, or assessment of monetary penalty*—(A) *Preliminary notice.* Where the suspension or revocation of approval, and/or the assessment of a monetary penalty is proposed, the Executive Director will issue a preliminary notice of proposed action. The preliminary notice of proposed action will state the specific

grounds for the proposed action, inform the gauger that it may continue to perform those functions requiring Customs-approval until the Executive Director's final notice is issued, and advise the gauger that it may file a response addressing the grounds for the action proposed with the Executive Director within 30 calendar days of the date the preliminary notice of proposed action was received by the gauger. The gauger may respond by accepting responsibility, explaining extenuating circumstances, and/or providing rebuttal evidence. The gauger also may ask for a meeting with the Executive Director or his designee to discuss the proposed action.

(B) *Final notice—(1) Based on nonresponse.* If the gauger does not respond to the preliminary notice of proposed action, the Executive Director will issue a final notice of adverse determination within 60 calendar days of the date the preliminary notice of proposed action was received by the gauger. The final notice of adverse determination will state the specific grounds for the adverse determination, direct the gauger to cease performing any Customs-approved functions, and advise the gauger that it may choose to pursue one of the two options provided at paragraphs (i)(2)(i)(A) and (B) of this section.

(*2*) *Based on response.* If the gauger files a timely response, the Executive Director will issue a final determination regarding the status of the gauger's approval within 30 calendar days of the date the gauger's response is received by the Executive Director. If this final determination is adverse to the gauger, then the final notice of adverse determination will state the specific grounds for the adverse action, advise the gauger to cease performing any functions requiring Customs approval, and advise the gauger that it may choose to pursue one of the two options provided at paragraphs (i)(2)(i))(A) and (B) of this section.

(*3*) *Publication of final notices of adverse determination.* Any final notices of adverse determination issued by the Executive Director resulting in a gauger being directed to cease performing Customs-approved functions will be published in the FEDERAL REGISTER and Customs Bulletin and the notice published will include the effective date, duration, and scope of the determination.

(*4*) *Appeal decision.* The Assistant Commissioner will issue a decision on the appeal within 30 calendar days of the date the appeal is received. If the appeal decision is adverse to the gauger, then the decision notice will advise the gauger that it may choose to pursue one of the following two options:

(i) Submit a new application for approval, in accordance with the provisions of paragraph (d)(1) of this section, 120 days after the date of the appeal decision; or

(ii) File an action with the Court of International Trade, pursuant to chapter 169 of title 28, United States Code, within 60 calendar days of the date of the appeal decision.

[T.D. 99–67, 64 FR 48539, Sept. 7, 1999; 65 FR 10011, Feb. 25, 2000]

§ 151.14 Use of commercial laboratory tests in liquidation.

The analysis method for crude petroleum contained in ASTM D96 or other approved analysis method and as determined by a Customs-accredited commercial laboratory shall be used for Customs purposes if the difference between the value found by the commercial laboratory and the value found by the Customs laboratory does not exceed 0.11 percent. If the difference exceeds this limit and the Customs-accredited commercial laboratory cannot establish that Customs is in error, then the Customs results shall be used.

[T.D. 90–78, 55 FR 40167, Oct. 2, 1990, as amended by T.D. 99–67, 64 FR 48543, Sept. 7, 1999]

§ 151.15 Movement of merchandise to a centralized examination station.

(a) *Permission to transfer merchandise for examination.* When a shipment requires examination at a centralized examination station (CES), Customs Form 3461, or Customs Form 3461 (ALT), or their electronic equivalents, for land border cargo, or an attachment to either, may be used to request permission to transfer the merchandise to a CES. The entry filer must write, type or stamp the following lines on

the form or attachment, and must supply the information called for on the first three lines:

Containers to be transferred: _____ All or,
Container #'s _____, _____, _____
To CES_____
Approved by: U.S. Customs Inspector_____
Date_____

Unless the port director exercises his authority pursuant to paragraph (d) of this section, the reviewing inspector will initial and date the form or attachment being used, or stamp one copy of the Customs Form 3461 or 3461 (ALT), or their electronic equivalents if required by the port director. A copy of this document will act as notification and authorization to the entry filer that the merchandise must be transferred to the importer-designated CES unless another CES is designated by the port director under paragraph (d) of this section.

(b) *Assumption of liability during transfer.* Merchandise designated for examination may be transferred from the importing carrier's point of unlading or from a bonded facility, to a CES, only if the transfer takes place under bond. The entry filer shall select one of the following bonded movements for the transfer to the CES unless the type of bonded movement to be used is specified by the port director under paragraph (d) of this section:

(1) If the merchandise is tranferred directly to a CES by an importing carrier, the importing carrier shall remain liable under the terms of its international carrier bond for the proper safekeeping and delivery of the merchandise until it is receipted for by the CES operator.

(2) If the merchandise is transferred directly from a bonded carrier's facility to a CES or is delivered directly to the CES by a bonded carrier, the bonded carrier shall remain liable under the terms of its custodial bond for the proper safekeeping and delivery of the merchandise until it is receipted for by the CES operator.

(3) If containerized cargo, including excess loose cargo that is part of the containerized cargo, is transferred to a CES operator's own facility using his own vehicles, the CES operator shall be liable under the terms of his custodial bond for the proper safekeeping and delivery of the merchandise to the CES facility.

(4) If the importer or his agent acting as importer of record transfers the merchandise to a CES, that importer or agent shall assume liability under his importation and entry bond (see §151.7(d) of this part) for the proper transfer of the merchandise until it is receipted for by the CES operator.

(c) *Annual blanket transfer.* Port directors may institute an annual blanket transfer application procedure to facilitate any of the bonded movements described in paragraph (b) of this section.

(d) *Designation of bonded movement and CES to be used.* In the event the port director deems it necessary, he may direct the type of bonded movement to be used to transfer merchandise to a CES and may designate the CES at which examination must take place. In either case the port director's action will be noted on the Customs Form 3461 or 3461 (ALT), or their electronic equivalents, or attachment thereto.

[T.D. 93–6, 58 FR 5606, Jan. 22, 1993, as amended by CBP Dec. 15–14, 80 FR 61290, Oct. 13, 2015]

§ 151.16 Detention of merchandise.

(a) *Exemptions from applicability.* The provisions of this section are not applicable to detentions effected by CBP on behalf of other agencies of the U.S. Government in whom the determination of admissibility is vested and to detentions arising from possibly piratical copies (see part 133, subpart E, of this Chapter), goods bearing marks which are confusingly similar to recorded trademarks, or restricted gray market merchandise (see part 133, subpart C, of this chapter.)

(b) *Decision to detain or release.* Within the 5-day period (excluding weekends and holidays) following the date on which merchandise is presented for Customs examination, Customs shall decide whether to release or detain merchandise. Merchandise which is not released within such 5-day period shall be considered to be detained merchandise. For purposes of this section, merchandise shall be considered to be presented for Customs examination when

it is in a condition to be viewed and examined by a Customs officer. Mere presentation to the examining officer of a cargo van, container or instrument of international traffic in which the merchandise to be examined is contained will not be considered to be presentation of merchandise for Customs examination for purposes of this section. Except when merchandise is examined at the public stores, the importer shall pay all costs relating to the preparation and transportation of merchandise for examination.

(c) *Notice of detention.* If a decision to detain merchandise is made, or the merchandise is not released within the 5-day period, Customs shall issue a notice to the importer or other party having an interest in such merchandise no later than 5 days (excluding weekends and holidays) after such decision or failure to release (see paragraph (b) of this section). Issuance of a notice of detention is not to be construed as a final determination as to admissibility of the merchandise. The notice shall be prepared by the Customs officer detaining the merchandise and shall advise the importer or other interested party of the:

(1) Initiation of the detention, including the date the merchandise was presented for examination;

(2) Specific reason for the detention;

(3) Anticipated length of the detention;

(4) Nature of the tests or inquiries to be conducted; and

(5) Nature of any information which, if supplied to the Customs Service, may accelerate the disposition of the detention.

(d) *Providing testing results.* Upon written request by the importer or other party having an interest in detained merchandise, Customs shall provide copies of the results of any testing conducted on the merchandise together with a description of the testing procedures and methodologies used (unless such procedures or methodologies are proprietary to the holder of a copyright or patent or were developed by Customs for enforcement purposes). The results and test description shall be in sufficient detail to permit the duplication and analysis of the testing and the results.

(e) *Final determinations.* A final determination with respect to admissibility of detained merchandise will be made within 30 days from the date the merchandise is presented for Customs examination. Such a determination may be the subject of a protest.

(f) *Effect of failure to make a determination.* The failure by Customs to make a final determination with respect to the admissibility of detained merchandise within 30 days after the merchandise has been presented for Customs examination, or such longer period if specifically authorized by law, shall be treated as a decision by Customs to exclude the merchandise for purposes of section 514(a)(4) of the Tariff Act of 1930, as amended (19 U.S.C. 1514(a)(4)). Such a deemed exclusion may be the subject of a protest.

(g) *Failure to decide protest.* If a protest which is filed as a result of a final determination or a deemed exclusion of detained merchandise is not allowed or denied in whole or in part before the 30th day after the day on which the protest was filed, it shall be treated as having been denied on such 30th day for purposes of 28 U.S.C. 1581.

(h) *Decision before commencement of court action.* Customs may at any time after a deemed denial of a protest as provided in paragraph (g) of this section, but before commencement of a court action as provided in paragraph (i) of this section, grant a protest and permit release of detained merchandise, or deny a protest in accordance with §174.30 of this chapter.

(i) *Commencement of court action; burden of proof and decisions of the court.* Once a court action respecting a detention is commenced, unless Customs establishes by a preponderance of the evidence that an admissibility decision has not been reached for good cause, the court shall grant the appropriate relief which may include, but is not limited to, an order to cancel the detention and release the merchandise.

(j) *Seizure and forfeiture; denial of entry or exportation.* If otherwise provided by law, detained merchandise may be seized and forfeited. In lieu of seizure and forfeiture, where authorized by law, Customs may deny entry

and permit the merchandise to be exported, with the importer responsible for paying all expenses of exportation.

[T.D. 99–65, 64 FR 43611, Aug. 11, 1999, as amended by CBP Dec. 12–10, 77 FR 24380, Apr. 24, 2012; USCBP–2012–0011, 80 FR 56381, Sept. 18, 2015]

Subpart B—Sugars, Sirups, and Molasses

§ 151.21 Definitions.

The following are general definitions for the purposes of this subpart in applying the provisions of Chapters 17 and 18, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202):

(a) *Degree.* ''Degree'' or ''sugar degree'' means an International Sugar Degree as determined by polarimetric test performed in accordance with procedures recognized by the International Commission for Uniform Methods of Sugar Analysis. This test discloses the percentage of sucrose contained in the sugar.

(b) *Total sugars.* ''Total sugars'' means the sum of the sucrose, the raffinose, and the reducing sugars.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 89–1, 53 FR 51268, Dec. 21, 1988]

§ 151.22 Estimated duties on raw sugar.

Estimated duties shall be taken on raw sugar, as defined in Subheading Note 1 to Chapter 17, Harmonized Tariff Schedule of the United States, on the basis of not less than 96° polariscopic test unless the invoice shows that the sugar is of a lower grade than that of the ordinary commercial shipment.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 89–1, 53 FR 51268, Dec. 21, 1988]

§ 151.23 Allowance for moisture in raw sugar.

Inasmuch as the absorption of sea water or moisture reduces the polariscopic test of sugar, there shall be no allowance on account of increased weight of raw sugar importations due to unusual absorption of sea water or other moisture while on the voyage of importation. Any portion of the cargo claimed by the importer to have absorbed sea water or moisture on the voyage of importation shall be weighed, sampled, and tested separately. No such claim shall be considered if made after the sugar claimed to have been damaged has been weighed.

§ 151.24 Unlading facilities for bulk sugar.

When dutiable sugar is to be imported in bulk, a full description of the facilities to be used in unlading the sugar shall be submitted to the Commissioner of Customs as far as possible in advance of the date of importation, and special instructions will be issued as to the methods to be applied in weighing and sampling such sugar.

§ 151.25 Mixing classes of sugar.

No regulations relative to the weighing, taring, sampling, classifying, and testing of imported sugar shall be so construed as to permit mixing together sugar of different classes, such as centrifugal, beet, molasses, or any sugar different in character from those mentioned, for the purpose of weighing, taring, sampling, or testing.

§ 151.26 Molasses in tank cars.

When molasses is imported in tank cars, the importer shall file with the port director a certificate showing whether there is any substantial difference either in the total sugars or the character of the molasses in the different cars.

§ 151.27 Weighing and sampling done at time of unlading.

Sugar, sirup, and molasses requiring either weighing or sampling shall be weighed or sampled at the time of unlading. When such merchandise requires both weighing and sampling, these operations shall be performed simultaneously.

§ 151.28 Gauging of sirup or molasses discharged into storage tanks.

(a) *Plans of storage tank to be filed.* When sirup or molasses is imported in bulk in tank vessels and is to be pumped or discharged into storage tanks, before the discharging is permitted there shall be filed with the port director a certified copy of the

plans and gauge table of the storage tank showing all inlets and outlets and stating accurately the capacity in liters per centimeter of height of the tank from an indicated starting point.

(b) *Settling before gauging.* After the discharge is completed, all inlets to the tank shall be carefully sealed and the sirup or molasses left undisturbed for a period not to exceed 20 days to allow for settling before being gauged. When a request for immediate gauging is made in writing by the importer, it shall be allowed by the port director.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 80–142, 45 FR 36384, May 30, 1980; T.D. 89–1, 53 FR 51268, Dec. 21, 1988]

§ 151.29 Expense of unlading and handling.

No expense incidental to the unlading, transporting, or handling of sugar, sirup, or molasses for convenient weighing, gaging, measuring, sampling, or marking shall be borne by the Government.

§ 151.30 Sugar closets.

Sugar closets for samples shall be substantially built and secured by locks furnished by Customs. They shall be conveniently located as near as possible to the points of discharge they are intended to serve. They shall be provided by the owner of the premises on which they are located and shall be so situated that sugar, sirup, and molasses stored therein shall not be subjected to extremes of temperature or humidity.

§ 151.31 [Reserved]

Subpart C—Petroleum and Petroleum Products

§ 151.41 Information on entry summary.

On the entry summary for petroleum or petroleum products in bulk, the importer shall show the API gravity at 60 °Fahrenheit, in accordance with the current edition of the ASTM-IP Petroleum Measurement Tables (American Edition), approved by the American Society for Testing and Materials. The appropriate unabridged table shall be used in the reduction of volume to 60 °F. If the exact volumetric quantity cannot be determined in advance, the entry summary may be made for ''__ barrels, more or less'', but in no case may the estimate vary by more than three percent from the gross quantity unladen. The term ''barrels'' is defined in Chapter 27, Additional U.S. Note 7, Harmonized Tariff Schedule of the United States. The information required by this section also shall be shown on the entry summary permit if the entry summary is filed at the time of entry, and on each entry summary continuation sheet regardless of when the entry summary is filed.

[T.D. 80–142, 45 FR 36384, May 30, 1980, as amended by T.D. 82–224, 47 FR 53728, Nov. 29, 1982; T.D. 89–1, 53 FR 51268, Dec. 21, 1988]

§ 151.42 Controls on unlading and gauging.

(a) *Methods of control.* (1) Each port director shall establish controls and checks on the unlading and measurement of petroleum and petroleum products imported in bulk by vessel, truck, railroad car, pipeline, or other carrier. One of the following methods of control shall be employed:

(i) Customs-approved metering and sampling installations provided by the importer;

(ii) Shore tank gauging; or

(iii) Weighing for trucks and railroad cars.

(2) Vessel ullages shall be taken in every case unless the port director determines that it is impracticable to do so for safety or technological reasons. Ullages may be taken for trucks and railroad cars if weighing or shore tank gauging is not available as a method of control. Vessel ullages will not be used to determine the quantity unladen unless none of the other methods provided for in this paragraph is available or adequate.

(3) The metering and sampling installations described in paragraph (a)(1)(i) of this section are approved by Customs on a case-by-case basis. Importers seeking approval shall send a complete description of the installation to the port director who, with the concurrence of the Director, Laboratory & Scientific Services, or his designee, shall give approval or shall state, in writing, the reasons for disapproval. Approved installations are subject to

periodic verification by Customs. Importers desiring to modify a Customs-approved installation shall obtain Customs approval beforehand.

(b) *Duties of Customs officers.* Customs officers may perform or witness ullaging and gauging as follows:

(1) Opening ullages.

(2) Closing ullages of carriers which have not completely discharged cargo, or if an importer or carrier requests Customs to witness closing ullages because of special problems.

(3) Shore tank gauges performed by company or related-party employees.

(4) Between 5 and 10 per cent of shore tank gauges conducted by commercial gaugers.

(5) Shore tank gauges, including those conducted by a commercial gauger if no carrier ullages are taken.

(c) *Manifest discrepancies.* Manifest discrepancies (shortages and overages) shall be reported by or on behalf of the carrier in the manner specified in §4.12 of this chapter. If a reported discrepancy is not explained to the satisfaction of the port director, the master or other person in charge, or the owner of the vessel or vehicle, or any person directly or indirectly responsible for the discrepancy, will be subject to the imposition of the appropriate penalty under section 460, 584, or 592, Tariff Act of 1930, as amended (19 U.S.C. 1460, 1584, 1592).

[T.D. 80–142, 45 FR 36384, May 30, 1980, as amended by T.D. 82–224, 47 FR 53728, Nov. 29, 1982; T.D. 87–39, 52 FR 9790, Mar. 26, 1987; T.D. 89–1, 53 FR 51268, Dec. 21, 1988; T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

§ 151.43 [Reserved]

§ 151.44 Storage tanks.

(a) *Plans and gauge tables.* When petroleum or petroleum products subject to duty at a specific rate per barrel are imported in bulk in tank vessels and are to be transferred into shore storage tanks, both the plans of each shore tank showing all outlets and inlets and the gauge table for each tank showing its capacity in barrels per centimeter or tenth of a centimeter of height shall be certified as correct by the proprietor of the tank. One set of these plans and gauge tables so certified shall be kept on file at the plant of the oil company and shall be available at all times to Customs officers. Another certified set of the shore tank plans and gauge tables shall be filed with the port director for use in verifying the Customs officers' reports. The port director may require such additional sets of shore tank plans, including subsidiary pipeline plans, and gauge tables as he may deem necessary. The storage tank proprietor shall maintain the plans and gauge tables for 3 years after discontinuing use of the storage tanks as bonded warehouses for the storage of imported petroleum or petroleum products.

(b) *Tags required on valves.* The inlet and outlet valves of each tank shall have tags of a permanent type affixed by the proprietor or lessee indicating the use of the valves.

(c) *Verification of gauge tables.* Whenever he has reason to suspect their reliability, the port director may require the measurement and calibrations shown on the gauge tables to be verified by a Customs officer. If no qualified Customs officer is available, the port director may accept an independent certification verifying the measurements and calibrations. The independent verification shall be performed at the expense of the storage tank proprietor.

[T.D. 80–142, 45 FR 36384, May 30, 1980, as amended by T.D. 89–1, 53 FR 51268, Dec. 21, 1988]

§ 151.45 Storage tanks bonded as warehouses.

(a) *Application.* Tanks for the storage of imported petroleum or petroleum products in bulk may be bonded as warehouses of class 2 if to be used exclusively for the storage of petroleum or petroleum products belonging or consigned to the owner or lessee of the tank. In addition to the documents and bonds required to be filed with the application to bond (see §19.2 of this chapter), the certified plans and gauge tables required by §151.44 shall be filed.

(b) *Removal of nonbonded petroleum.* If a bonded tank is not empty at the time the first importation of bonded petroleum or petroleum products is to be stored therein, the amount of nonbonded petroleum or petroleum products in the tank shall be withdrawn by

the proprietor as soon as possible. The request to withdraw shall be in the form of a letter and no formal withdrawal need be filed. Domestic or duty-paid petroleum or petroleum products shall not thereafter be stored in the tank as long as the tank remains bonded.

(c) *Information on warehouse withdrawal.* Warehouse withdrawals of petroleum or petroleum products from bonded tanks shall show the information specified in §151.41, as well as the designation of the tank from which the merchandise is to be withdrawn. Such withdrawals may be made for ''____ U.S. gallons, more or less'', but in no case may the estimate vary by more than three percent from the gross quantity unladen.

[T.D. 80–142, 45 FR 36384, May 30, 1980, as amended by T.D. 87–39, 52 FR 9790, Mar. 26, 1987]

§151.46 Allowance for detectable moisture and impurities.

An allowance for all detectable moisture and impurities present in or upon imported petroleum or petroleum products shall be made in accordance with §158.13 of this chapter.

[T.D. 90–78, 55 FR 40167, Oct. 2, 1990]

§151.47 Optional entry of net quantity of petroleum or petroleum products.

Instead of stating the gross quantity of petroleum or petroleum products on the entry summary, the importer may state the net quantity. The analytical report from the Customs-accredited commercial laboratory shall be filed with the entry summary.

[T.D. 87–39, 52 FR 9790, Mar. 26, 1987, as amended by T.D. 89–1, 53 FR 51269, Dec. 21, 1988]

Subpart D—Metal-Bearing Ores and Other Metal-Bearing Materials

§151.51 Sampling requirements.

(a) *General.* Except as provided in paragraph (b) of this section, when metal-bearing ores and other metal-bearing materials which are classifiable under Chapter 26, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), are entered for consumption or warehousing at the port of first arrival, they shall be sampled for assay and moisture purposes in accordance with §151.52. If proper facilities for weighing or sampling are not available at the port of entry, the merchandise shall be transported under bond to the place of sampling. The sampling or weighing of metal-bearing ores or materials at any place other than the port of entry shall be at the expense of the parties in interest.

(b) *Ores of low metal content.* When, on the basis of invoice information, the nature of any available sample, knowledge of prior importations of similar materials, and other data, the Center director is satisfied that metal-bearing ores entered under heading 2617, HTSUS, as containing less than 1 percent of metals dutiable under headings 2603, 2607, and 2608, HTSUS, are properly entered, he may liquidate the entry on the basis of the assay information contained in the entry papers. However, the sampling and testing procedures prescribed in §§151.52 and 151.54 shall be followed at random intervals for verification purposes.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 89–1, 53 FR 51269, Dec. 21, 1988]

§151.52 Sampling procedures.

(a) *Commercial samples taken under Customs supervision.* Representative commercial moisture and assay samples shall be taken under Customs supervision for testing by the Customs laboratory. The samples used for the moisture test shall be representative of the shipment at the time the shipment is weighed for Customs purposes. When a shipment is made up of a number of lots a composite sample of the shipment shall be drawn for assay, providing composite sampling is feasible and assays of the individual lots are not required for tariff classification or other Customs purposes. The composite sample shall consist of proportional parts by weight of the prepared sample drawn from the various lots represented and shall be thoroughly mixed.

(b) *Commercial samples furnished by importer.* When commercial samples

cannot be taken under Customs supervision, the importer shall be required to furnish a verified commercial moisture sample and prepared assay sample certified to be representative of the shipment at the time the shipment was weighed for Customs purposes. The samples shall be in appropriate containers, properly labeled, and shall be accompanied by a statement including:

(1) Entry number,

(2) Lots represented,

(3) Kind of ore or material,

(4) Date and place where sampling occurred, and

(5) The name and address of the sampling concern.

(c) *Samples taken by Customs.* Where no commercial samples have been taken, an authorized CBP official shall take representative samples from different parts of the shipment.

§ 151.53 Sample lockers.

A suitable place or containers shall be provided for the safekeeping of all Customs samples under Customs lock or seal.

§ 151.54 Testing by Customs laboratory.

Samples taken in accordance with § 151.52 shall be promptly forwarded to the appropriate Customs laboratory for testing in accordance with commercial methods. An authorized CBP official may secure from the importer a certified copy of the commercial settlement tests for moisture and for assay which shall be transmitted with the commercial samples to the Custom laboratory. If the Customs tests are not in substantial agreement with the settlement tests, the Customs laboratory director shall review his tests. The Customs tests shall be used in determining the final duties on the merchandise, except that the settlement tests shall be used if, in the opinion of the Customs laboratory director:

(a) The settlement and Customs tests differ by no more than is to be expected between qualified laboratories, and

(b) The use of the settlement test results will not require a different tariff classification or rate of duty than is indicated by the Customs test.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 87–39, 52 FR 9791, Mar. 26, 1987]

§ 151.55 Deductions for loss during processing.

Deductions for the loss of copper, lead, or zinc content during processing, as authorized by Chapter 26, Additional U.S. Note 1, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), shall be made by the Center director in the liquidation of any entry only if the importer has followed the procedures set forth in that headnote. See §§ 19.17 through 19.25 of this chapter for procedures applicable to bonded smelting and refining warehouses.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 89–1, 53 FR 51269, Dec. 21, 1988]

Subpart E—Wool and Hair

§ 151.61 Definitions.

The following are general definitions for the purposes of this subpart:

(a) *Clean kg.* 'Clean kg' means kilograms of clean yield as defined in paragraph (b) of this section.

(b) *Clean yield.* Except for the purposes of carbonized fibers, ''Clean yield'' means the absolute clean content (that is, all that portion of the merchandise which consists exclusively of wool or hair free of all vegetable and other foreign material, containing by weight 12 percent of moisture and 1.5 percent of material removable from the wool or hair by extraction with alcohol, and having an ash content of not over 0.5 percent by weight), less an allowance, equal by weight to 0.5 percent of the absolute clean content plus 60 percent of the vegetable matter present, but not exceeding 15 percent by weight of the absolute clean content, for wool or hair that would ordinarily be lost during commercial cleaning operations.

(c) For the purposes of carbonized fibers, the term clean yield means the condition as entered.

(d) *Sampling unit.* ''Sampling unit'' means all the similar packages covered by one entry or withdrawal containing

wool or hair of the same kind or same general condition and character, produced in the same country, packed in substantially the same manner, and entered as or found to be subject to the same rate of entry.

(e) *General sample.* ''General sample'' means the composite of the individual portions of wool or hair drawn from a sampling unit.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 89–1, 53 FR 51269, Dec. 21, 1988]

§ 151.62 Information on invoices.

Invoices of wool or hair subject to duty at a rate per clean kilogram under Chapter 51, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), shall show the following detailed information in addition to other information required:

(a) Condition, that is, whether in the grease, washed, pulled, on the skin, scoured, carbonized, burr-picked, willowed, handshaken, or beaten;

(b) Whether free of vegetable matter, practically free, slightly burry, medium burry, heavy burry;

(c) Whether in the fleece, skirted, matchings, or sorted;

(d) Length, that is, whether super combing, ordinary combing, clothing, or filling;

(e) Country of origin, and, if possible, the province, section, or locality of production;

(f) If wool, the type symbol by which it is bought and sold in the country of origin and the grade of each lot covered by the invoice, specifying the standard or basis used, that is, whether U.S. Official Standards or the commercial terms to designate grade in the country of shipment; and

(g) Net weight of each lot of wool or hair covered by the invoice in the condition in which it is shipped, and the shipper's estimate of the clean yield of each lot by weight or by percentage.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 89–1, 53 FR 51269, Dec. 21, 1988]

§ 151.63 Information on entry summary.

Each entry summary covering wool or hair subject to duty at a rate per clean kilogram under Chapter 51, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), shall show as to each lot of wool or hair covered thereby, in addition to other information required, the total estimated or actual net weight of the wool or hair in its condition as imported, its total estimated clean yield in kilograms, and the estimated percentage clean yield. (19 U.S.C. 1484.)

[T.D. 89–1, 53 FR 51269, Dec. 21, 1988]

§ 151.64 Extra copy of entry summary.

One extra copy of the entry summary covering wool or hair subject to duty at a rate per clean kilogram shall be filed in addition to the copies otherwise required.

[T.D. 93–52, 58 FR 37854, July 14, 1993]

§ 151.65 Duties.

Duties on wool or hair subject to duty at a rate per clean kilogram may be estimated at the time of filing the entry summary on the basis of the clean yield shown on the entry summary if the Center director is satisfied that the revenue will be properly protected. Liquidated duties shall be based upon the Center director's final determination of clean yield. Estimated and liquidated duties on wool or hair tested for clean yield pursuant to the provisions of § 151.71, and withdrawn for consumption without a change in condition which affects the duties and in a quantity less than an entire sampling unit shall be determined on the basis of an appropriate adjustment of the estimated percentage clean yield shown on the entry summary for the wool or hair included in each of the lots covered by the withdrawal. This adjustment shall be made by increasing or decreasing such estimated percentage clean yield of each lot by the difference between the percentage clean yield of the related sampling unit, as determined by the Center director, and the weighted average percentage clean yield for the sampling unit, as computed from the estimated percentages clean yield and net weights shown on the entry summary for the lots included in the sampling unit.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 79–221, 44 FR 46829, Aug. 9, 1979; T.D. 89–1, 53 FR 51269, Dec. 21, 1988]

§ 151.66 Duty on samples.

Duty shall be assessed and collected on samples taken pursuant to any provision in this subpart, whether taken by the importer or by Customs, unless an exemption or remission is obtained by compliance with an applicable provision of the law or regulations. The duty shall be assessed upon the samples in accordance with their condition at the time of importation, except in the case of merchandise manipulated in warehouse pursuant to section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562). The collection of duty on the samples may be postponed when the importation concerned is not entered for consumption until the withdrawal of the merchandise from which the samples are taken, or until an application for the destruction or abandonment of such merchandise has been accepted pursuant to an appropriate provision of the law or regulations.

§ 151.67 Sampling by importer.

The importer may be permitted after entry to draw samples under Customs supervision in reasonable quantities from the packages of wool or hair designated for examination, provided the bales or bags are properly repacked and repaired by him. Any samples so withdrawn shall be weighed and a record showing the quantities thereof shall be made and filed with the related entry.

§ 151.68 Merchandise to be sampled and tested by Customs.

The following shall be weighed, sampled, and tested for clean yield, unless such sampling or testing is not feasible:

(a) All importation of wool or hair subject to duty at a rate per clean kilogram, except importations entered directly for manipulation under the provisions of section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562), or for manufacture under the provisions of section 311, Tariff Act of 1930, as amended (19 U.S.C. 1311);

(b) All imported wool or hair manipulated under the provisions of section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562) and dutiable after manipulation as wool or hair at a rate per clean kilogram; and

(c) Such other imported wool or hair as an authorized CBP official may designate.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 89–1, 53 FR 51269, Dec. 21, 1988]

§ 151.69 Transfer or exportation of part of sampling unit.

(a) *Transfer of right to withdraw*. When an original sampling unit has been weighed, sampled, and tested in accordance with this subpart and a part of such unit is covered by a transfer of the right to withdraw made pursuant to section 557, Tariff Act of 1930, as amended (19 U.S.C. 1557), the percentages clean yield of the part covered by the transfer and of the part not so covered shall be computed on the basis of the original Customs weights and test and the invoice data related to the respective parts.

(b) *Exportation*. When part of such an original sampling unit is exported from continuous Customs custody without having been manipulated as provided for in section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562), the percentage clean yield of the part not exported shall be determined, at the discretion of the Center director, either on the basis of a new determination by reweighing, resampling, and retesting, or by a computation as described in paragraph (a) of this section, for either the exported or the remaining part.

§ 151.70 Method of sampling by Customs.

A general sample shall be taken from each sampling unit, unless it is not feasible to obtain a representative general sample of the wool or hair in a sampling unit or to test such a sample in accordance with the provisions of §151.71. At the request of the importer, two general samples may be taken from a sampling unit if the taking and testing of a second general sample is feasible. If two general samples are taken, one general sample shall be held for use in making a second test for clean yield if such a test is requested in accordance with the provisions of §151.71(c), or if a second test is found

desirable by the Center director or the chief chemist.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 93–52, 58 FR 37854, July 14, 1993]

§ 151.71 Laboratory testing for clean yield.

(a) *Test and report by Customs laboratory.* The clean yield of all general samples taken in accordance with § 151.70 shall be determined by test in a Customs laboratory, unless it is found that it is not feasible to test such a sample and obtain a proper finding of percentage clean yield. A report of the percentage clean yield of each general sample as established by the test, or a statement of the reason for not testing a general sample, shall be forwarded to the Center director.

(b) *Notification to importer.* Where samples of wool or hair have been tested in a Customs laboratory and the Center director has received a copy of the Laboratory Report, Customs Form 6415, the Center director shall promptly provide notice of the test results by mailing a copy of that report to the importer.

(c) *Importer's request for retest.* If the importer is dissatisfied with the port director's or Center director's finding of clean yield, made before January 19, 2017, or the Center director's finding of clean yield made on or after January 19, 2017, he may file with CBP, either at the port of entry or electronically, a written request in duplicate for another laboratory test for percentage clean yield. Such request shall be filed within 14 calendar days after the date of mailing of the notice of the port director's or Center director's finding of clean yield. The request shall be granted if it appears to the Center director to be made in good faith and if a second general sample as provided for in § 151.70 is available for testing, or if all packages or, in the opinion of the Commissioner of Customs, an adequate number of the packages represented by the general sample are available and in their original imported condition.

(d) *Retest procedures.* The second test shall be made upon the second general sample, if such a sample is available. If the second general sample is not available, the packages shall be reweighed, resampled, and tested in accordance with the provisions of this section. All costs and expenses of such operations, exclusive of the compensation of Customs officers, shall be borne by the importer, who may be present during such resampling and testing.

(e) *Request for commercial test.* If the importer is dissatisfied with the results of the second laboratory test, or if a second laboratory test is not feasible, the wool or hair may be retested by a commercial laboratory in accordance with § 151.73.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 75–121, 40 FR 23458, May 30, 1975; T.D. 93–52, 58 FR 37854, July 14, 1993; CBP Dec. No. 16–26, 81 FR 93021, Dec. 20, 2016]

§ 151.73 Importer's request for commercial laboratory test.

(a) *Conditions for commercial test.* If the importer is dissatisfied with the results of a retest made in accordance with § 151.71(c), he may request that a commercial test be made to determine the percentage clean yield of the wool or hair.

(b) *Time for filing request.* The importer's request shall be filed in writing with the Center director within 14 calendar days after the date of mailing of the notice of the port director's or Center director's findings based on the retest mailed before January 19, 2017, or within 14 calendar days after the date of mailing of the notice of the Center director's findings based on the retest mailed on or after January 19, 2017.

(c) *Procedures for commercial test.* The Center director shall cause a representative quantity of the wool or hair in dispute to be selected and tested by a commercial method approved by the Commissioner of Customs. The yield, as determined by such commercial test, shall be suitably adjusted to coincide with the definition of clean yield in § 151.61(b). Such test shall be made under the supervision and direction of the Center director at an establishment approved by him, and the expense thereof, including the actual expense of

travel and subsistence of Customs officers but not their compensation, shall be paid by the importer.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 93–52, 58 FR 37854, July 14, 1993; CBP Dec. No. 16–26, 81 FR 93021, Dec. 20, 2016]

§ 151.74 Retest at Center director's request.

If the Center director is not satisfied with the results of any test provided for in § 151.71 or § 151.73, he may, within 14 calendar days after receiving the report of the results of such test, proceed to have another test made upon a suitable sample of the wool or hair at the expense of the Government. When the Center director is proceeding to have another test made, he shall, within the 14-day period specified in this paragraph, notify the importer by mail of that fact.

[CBP Dec. No. 16–26, 81 FR 93021, Dec. 20, 2016]

§ 151.75 Final determination of clean yield.

The Center director shall base his final determination of clean yield upon a consideration of all the tests made in connection with the wool or hair concerned.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 93–52, 58 FR 37854, July 14, 1993]

§ 151.76 Grading of wool.

(a) *Examination for grade.* The Center director shall cause wool dutiable at a rate per clean kilogram to be examined for grade. The standards for determining grades of wool shall be those which are established from time to time by the Secretary of Agriculture pursuant to law and which are in effect on the date of importation of the wool, as provided by Chapter 51, Additional U.S. Note 2, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(b) *Notification to importer.* If classification of the wool at the grade or grades determined on the basis of the examination will result in the assessment of duty at a rate higher than the rate provided for wool of the grade stated in the entry, the Center director shall promptly notify the importer by mail.

(c) *Importer's request for reexamination.* If the importer is dissatisfied with the port director's or Center director's findings as to the grade or grades of the wool, made before January 19, 2017, or the Center director's findings as to the grade or grades of wool made on or after January 19, 2017, he may, within 14 calendar days after the date of mailing of the notice of the port director's or Center director's findings, file in duplicate a written request with the Center director for another determination of grade or grades, stating the reason for the request. Notice of the Center director's findings on the basis of the reexamination of the wool shall be mailed to the importer.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 89–1, 53 FR 51269, Dec. 21, 1988; CBP Dec. No. 16–26, 81 FR 93021, Dec. 20, 2016]

Subpart F—Cotton

§ 151.81 Definition of staple length.

For the purposes of this subpart, ''staple length'' means the length of the fibers in a particular quantity of cotton designated in terms expressing the measurement by the millimeter or fraction thereof of a representative portion of the quantity in accordance with the Official Cotton Standards of the United States for length of staple, as established by the Secretary of Agriculture.

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 89–1, 53 FR 51269, Dec. 21, 1988]

§ 151.82 Information on invoices.

Invoices of cotton provided for in subheading 5201.00.10, 5201.00.20, 5201.00.50, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), shall show the following detailed information in addition to other required information:

(a) One of the following statements regarding each lot of cotton covered by the invoice:

(1) This is harsh or rough cotton under 19.05 millimeters in staple length;

(2) The staple length of this cotton is under 28.58 millimeters. (This statement is not to be used if paragraph (a)(1) of this section is applicable);

(3) The staple length of this cotton is 28.58 millimeters or more and under 34.93 millimeters;

(4) This cotton is harsh or rough cotton (other than cotton of perished staple, and cotton pickings), white in color, and has a staple length of 29.37 millimeters or more and under 44.45 millimeters;

(5) The staple length of this cotton is 34.93 millimeters or more and under 42.86 millimeters; or

(6) The staple length of this cotton is 42.86 millimeters or more.

(b) The name of the country of origin and, if practicable, the name of the province or other subdivision of the country of origin in which the cotton was grown.

(c) The variety of the cotton, such as Karnak, Gisha, Pima, Tanguis, etc.

[T.D. 89–1, 53 FR 51269, Dec. 21, 1988]

§ 151.83 Method of sampling.

For determining the staple length of any lot of cotton for any Customs purposes, samples of the lot shall be taken in accordance with commercial practice.

§ 151.84 Determination of staple length.

The Center director shall have one or more samples of each sampled bale of cotton stapled by a qualified Customs officer, or a qualified employee of the Department of Agriculture designated by the Commissioner of Customs for the purpose, and shall promptly mail the importer a notice of the results determined.

§ 151.85 Importer's request for redetermination.

If the importer is dissatisfied with the port director's or Center director's determination made before January 19, 2017, or the Center director's determination made on or after January 19, 2017, he may file with the Center director, within 14 calendar days after the mailing of the notice, a written request in duplicate for a redetermination of the staple length. Each such request shall include a statement of the claimed staple length for the cotton in question and a clear statement of the basis for the claim. The request shall be granted if it appears to the Center director to be made in good faith. In making the redetermination of staple length, the Center director may obtain an opinion of a board of cotton examiners from the U.S. Department of Agriculture, if he deems such action advisable. All expenses occasioned by any redetermination of staple length, exclusive of the compensation of CBP officers, shall be reimbursed to the Government by the importer.

[CBP Dec. No. 16–26, 81 FR 93021, Dec. 20, 2016]

Subpart G—Fruit Juices

§ 151.91 Brix values of unconcentrated natural fruit juices.

The following values have been determined to be the average Brix values of unconcentrated natural fruit juices in the trade and commerce of the United States, for the purposes of the provisions of the Additional U.S. Notes to Chapter 20, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), and will be used in determining the dutiable quantity of imports of concentrated fruit juices, using the procedure set forth in Additional U.S. Note 2, Chapter 20, HTSUS:

Kind of fruit juice	Average Brix value (degrees)
Apple	13.3
Apricot	14.3
Bilberry (Whortleberry, Vaccinium Myrtillium)	13.4
Black currant	15.0
Blackberry	10.0
Black raspberry	11.1
Blueberry	14.1
Boysenberry	10.0
Carob	40.0
Cherry	14.3
Crabapple	15.4
Cranberry	10.5
Date	18.5
Dewberry	10.0
Elderberry	11.0
Fig	18.2
Gooseberry	8.3
Grape (Vitis Vinifera)	21.5
Grape (Slipskin varieties)	16.0
Grapefruit	10.2
Guava	7.7
Lemon	8.9
Lime	10.0
Loganberry	10.5
Mango	17.0
Naranjilla	10.5
Orange	11.8

Kind of fruit juice	Average Brix value (degrees)
Papaya	10.2
Passion Fruit	15.3
Peach	11.8
Pear	15.4
Pineapple	14.3
Plum	14.3
Pomegranate	18.2
Prune	18.5
Quince	13.3
Raisin	18.5
Raspberry (Red raspberry)	10.5
Red currant	10.5
Soursop (Guanabana, Annono Muricata)	16.0
Strawberry	8.0
Tamarind	55.0
Tangerine	11.5
Youngberry	10.0

[T.D. 73–175, 38 FR 17470, July 2, 1973, as amended by T.D. 74–41, 39 FR 2470, Jan. 23, 1974; T.D. 84–173, 49 FR 31852, Aug. 9, 1984; T.D. 89–1, 53 FR 51269, Dec. 21, 1988]

Subpart H [Reserved]

Subpart I—Cigars, Cigarillos, and Tobacco

§ 151.111 Cigars, cigarillos, and tobacco of Cuban origin.

The tobacco National Import Specialist at the port of New York shall have general supervision of the examination of (a) all cigars or cigarillos which may be made or derived in whole or in part of Cuban articles, and (b) all tobacco which may be of Cuban origin.

[T.D. 81–189, 46 FR 37888, July 23, 1981]

PART 152—CLASSIFICATION AND APPRAISEMENT OF MERCHANDISE

Sec.

AUTHORITY: 19 U.S.C. 66, 1401a, 1500, 1502, 1624;

Subpart B also issued under 19 U.S.C. 1315;

Subpart C also issued under 19 U.S.C. 1503;

Section 152.3 also issued under 19 U.S.C. 1499;

Section 152.13 also issued under 19 U.S.C. 1202 (General Note 3(f), Harmonized Tariff Schedule of the United States (HTSUS)).

SOURCE: T.D. 73–175, 38 FR 17477, July 2, 1973, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 152 appear by CBP Dec. No. 16–26, 81 FR 93022, Dec. 20, 2016.

§ 152.0 Scope.

This part contains regulations pertaining to the tariff classification and appraisement of imported merchandise. Other applicable provisions are contained elsewhere in this chapter, such as in part 10 for articles conditionally free or subject to a reduced rate of duty, and in part 159 for relief from duties on articles lost, damaged, etc.

Subpart A—General Provisions

§ 152.1 Definitions.

The following are general definitions for the purposes of part 152:

(a)–(b) [Reserved]

(c) *Date of exportation.* ''Date of exportation,'' or the ''time of exportation'' referred to in section 402, Tariff Act of 1930, as amended (19 U.S.C. 1401a), means the actual date the merchandise finally leaves the country of exportation for the United States. If no positive evidence is at hand as to the actual date of exportation, the Center director shall ascertain or estimate the date of exportation by all reasonable ways and means in his power, and in so doing may consider dates on bills of lading, invoices, and other information available to him.

(d) *Fair retail value.* ''Fair retail value'' or ''fair market value'' as used in Section XXII, Harmonized Tariff Schedule of the United States, and part 148 of this chapter means the price actually paid or payable for all imported merchandise, or if not purchased, the value as otherwise ascertained under 19 CFR 152.100 *et seq.*

[T.D. 73–175, 38 FR 17477, July 2, 1973, as amended by T.D. 87–89, 52 FR 24446, July 1, 1987; T.D. 89–1, 53 FR 51269, Dec. 21, 1988]

§ 152.2 Notification to importer of increased duties.

If the Center director believes that the entered rate or value of any merchandise is too low, or if he finds that the quantity imported exceeds the entered quantity, and the estimated aggregate of the increase in duties on that entry exceeds $15, he shall promptly notify the importer on Customs Form 29, or its electronic equivalent specifying the nature of the difference on the notice. Liquidation shall be made promptly and shall not be withheld for a period of more than 20 days from the date of mailing of such notice unless in the judgment of the Center director there are compelling reasons that would warrant such action.

[T.D. 73–175, 38 FR 17477, July 2, 1973, as amended by T.D. 82–224, 47 FR 53728, Nov. 29, 1982; T.D. 93–66, 58 FR 44131, Aug. 19, 1993; CBP Dec. 15–14, 80 FR 61291, Oct. 13, 2015]

§ 152.3 Merchandise found not to correspond with invoice description.

When any merchandise not corresponding with the description given in the invoice is found by the examining officer, duties shall be assessed on the merchandise actually found. If the discrepancy appears conclusively to be the result of a mistake and not of any intent to defraud, no proceedings for forfeiture shall be taken. When the entire shipment does not agree with the invoice and there is no evidence of any intent to defraud, a new entry shall be required and the estimated duty paid on the original entry shall be refunded on liquidation as in the case of a nonimportation. (Sec. 499, 46 Stat. 728, as amended; 19 U.S.C. 1499)

Subpart B—Classification

§ 152.11 Harmonized Tariff Schedule of the United States.

Merchandise shall be classified in accordance with the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) as interpreted by administrative and judicial rulings.

[T.D. 73–175, 38 FR 17477, July 2, 1973, as amended by T.D. 89–1, 53 FR 51269, Dec. 21, 1988]

§ 152.12 Applicable rates of duty.

Rates of duty shall be based on the detailed instructions in § 141.69 of this chapter, which provides in general that the rates of duty applicable to merchandise shall be those in effect on the date of entry or withdrawal for consumption, except for certain merchandise covered by an entry for immediate transportation or overcarried and returned to the port of entry.

§ 152.13 Commingling of merchandise.

(a) *Notice to importer.* The Center director shall give written notice to the importer as promptly as possible after any commingling is discovered.

(b) *Highest rate applicable.* Commingled merchandise shall be assessed with duty at the highest rate or rates applicable to any one kind of merchandise included in the commingling, unless:

(1) The quantity and value of each of the kinds so included can be readily ascertained by the usual method of CBP examination or by one or more of the methods specified in General Note 3(f), Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), or

(2) The conditions specified in General Note 3(f), HTSUS, are satisfied.

(c) *Time limit.* To obtain the benefit of General Note 3(f), HTSUS, the importer shall, within 30 days after the date of mailing or personal delivery of the notice provided for in paragraph (a) of this section, take appropriate action as follows:

(1) File with the Center director evidence showing performance of the commercial settlement tests specified in General Note 3(f), HTSUS; or

(2) Perform the segregation under CBP supervision as specified in General Note 3(f), HTSUS; or

(3) File with the Center director documentary proof which will satisfy him that the merchandise is entitled to the lower rate of duty under General Note 3(f), HTSUS.

(d) *Extension of time limit.* The 30-day limit for filing the evidence specified in General Note 3(f) or for performing the segregation specified in General Note 3(f), Harmonized Tariff Schedule of the United States, may be extended by the Center director for additional periods of 30 days each, but not beyond 6 months from the date of mailing or personal delivery of the notice provided for in paragraph (a) of this section, if the importer makes written application to the Center director for each extension and gives satisfactory reasons for its allowance.

[T.D. 73–175, 38 FR 17477, July 2, 1973, as amended by T.D. 89–1, 53 FR 51270, Dec. 21, 1988; T.D. 95–29, 60 FR 18349, Apr. 11, 1995; T.D. 00–81, 65 FR 68887, Nov. 15, 2000; T.D. 02–14, 67 FR 15099, Mar. 29, 2002; CBP Dec. 05–31, 70 FR 53062, Sept. 7, 2005]

§ 152.16 Judicial changes in classification.

The following procedures apply to changes in classification made by decision of either the United States Court of International Trade or the United States Court of Appeals for the Federal Circuit, except to the extent otherwise provided in a ruling published in the Customs Bulletin pursuant to § 177.10(a) of this chapter:

(a) *Identical merchandise under decision favorable to Government.* The principles of any court decision favorable to the Government shall be applied to all merchandise identical with that passed on by the court which is covered by unliquidated entries, whether for consumption or warehouse.

(b) *Similar merchandise under decision favorable to Government.* The principles of any court decision favorable to the Government shall be applied to merchandise, though not identical with the merchandise the subject of the court's decision, if its classification is affected by such principles, provided that it has been entered or withdrawn for consumption after 30 days from the date of publication of the court's decision in the Customs Bulletin.

(c) *Higher rate.* If a court decision overruling a protest contains a definite statement that a higher rate than that assessed by the port director or Center director before January 19, 2017, or the Center director on or after January 19, 2017, was properly chargeable, such higher rate shall be applied to all merchandise, whether identical or similar to that passed on by the court, which is affected by the principles of the court's decision and which is entered or withdrawn for consumption after 30 days from the date of the publication of the court's decision in the Customs Bulletin.

(d) *American manufacturer's petition upheld.* If the court upholds a petition made by an American manufacturer, producer, or wholesaler under the provisions of section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), the principles of the court's decision shall be applicable to all merchandise of that character which is entered or withdrawn for consumption after the date of publication of the court's decision in the Customs Bulletin. The liquidation of entries covering merchandise of that character made after publication of the court's decision shall be suspended in accordance with § 159.57 of this chapter pending any rehearing or review, then liquidated, or, if necessary, reliquidated in accordance with the final judicial decision.

(e) *Other decisions adverse to Government.* Unless the Commissioner of Customs otherwise directs, the principles of any court decision adverse to the Government (except for a decision upholding an American manufacturer's petition as covered in paragraph (d) of this section) shall be applied to unliquidated entries and protested entries

which have not been denied in whole or in part and in which the same issue is involved as soon as the time within which an application for a rehearing or review may be filed has expired without such application having been made. See § 176.31 of this chapter for the treatment of entries which are the subject of a court decision.

[T.D. 73–175, 38 FR 17477, July 2, 1973, as amended by T.D. 75–186, 40 FR 31928, July 30, 1975; T.D. 85–90, 50 FR 21430, May 24, 1985; CBP Dec. No. 16–26, 81 FR 93022, Dec. 20, 2016]

§ 152.17 Changes in classification by Congress or by Presidential Proclamation.

When a rate of Customs duty or internal revenue tax imposed upon or by reason of importation is changed by an act of Congress or by a proclamation of the President, the new rate shall be applied in accordance with the detailed instructions in § 141.69 of this chapter, which provides in general that the rates of duty applicable to merchandise shall be those in effect on the date of entry or withdrawal for consumption, except for certain merchandise covered by an entry for immediate transportation or overcarried and returned to the port of entry.

Subpart C—Appraisement

§§ 152.20–152.22 [Reserved]

§ 152.23 Merchandise imported from intermediate countries.

Merchandise imported from one country, being the growth, production, or manufacture of another country, shall for value purposes (see sections 402, Tariff Act of 1930, as amended; 19 U.S.C. 1401a) be treated as an exportation of the country from which it is immediately imported. However, if it appears by the invoice, bill of lading, or other evidence that the merchandise was destined for the United States at the time of original shipment, it shall be treated as an exportation of the country from which it was originally exported. The term ''country'' is to be regarded for the purposes of this section as embracing all the possessions of a nation, however widely separated, which are subject to the same supreme executive and legislative authority and control.

[T.D. 73–175, 38 FR 17477, July 2, 1973, as amended by T.D. 87–89, 52 FR 24446, July 1, 1987]

§ 152.24 [Reserved]

§ 152.25 Conversion of foreign currency.

When foreign currency must be converted for purposes of appraisement, the instructions in subpart C of part 159 of this chapter shall be followed.

§ 152.26 Furnishing value information to importer.

The Center director will furnish to importers the latest information as to values in his possession, subject to the following conditions:

(a) *Before appraisement.* Value information will be given before appraisement only in response to a specific oral or written request by the importer, supported by an adequate reason for the request, or where required by CBP purposes, such as in determining proper estimated duties to be deposited or notification of increased duties in accordance with § 152.2.

(b) *Only for merchandise under Center director's jurisdiction.* The information will be given only in regard to merchandise to be appraised by, or under the jurisdiction of, the Center director who receives the request, and only with respect to merchandise for which there is presented evidence of a firm commitment or intent to import such merchandise into the United States.

(c) *Information by importer.* Each request must be accompanied by the latest information as to the values in question which the importer has or can reasonably obtain.

(d) *Information not binding.* Value information will be given by the Center director only with an understanding and agreement in each case that the information is in no sense an appraisement and is not binding upon the Center director's action when he appraises the merchandise.

(e) *No reply required after entry.* The Center director will not be required to reply to a written request for value information after a value for the merchandise has been declared on entry

unless he has information indicating a probable appraised value different from such entered value.

[CBP Dec. No. 16–26, 81 FR 93022, Dec. 20, 2016]

Subpart D [Reserved]

Subpart E—Valuation of Merchandise

SOURCE: T.D. 81–7, 46 FR 2600, Jan. 12, 1981, unless otherwise noted.

§ 152.100 Interpretative notes.

The interpretative notes set forth in this subpart have been derived from information contained in the Statement of Administrative Action relating to customs valuation, submitted to and approved by Congress along with the Trade Agreements Act of 1979 (Pub. L. 96–39), and will have the force and effect of regulations issued under this subpart.

§ 152.101 Basis of appraisement.

(a) *Effective date.* The value for appraisement of merchandise exported to the United States on or after July 1, 1980, or, for articles classified under subheading 6401.10.00 Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), on or after July 1, 1981, will be determined in accordance with section 402, Tariff Act of 1930 (19 U.S.C. 1401a), as amended by section 201, Trade Agreements Act of 1979.

(b) *Methods.* Imported merchandise will be appraised on the basis, and in the order, of the following:

(1) The transaction value provided for in §152.103;

(2) The transaction value of identical merchandise provided for in §152.104, if the transaction value cannot be determined, or can be determined but cannot be used because of the limitations provided for in §152.103(j);

(3) The transaction value of similar merchandise provided for in §152.104, if the transaction value of identical merchandise cannot be determined;

(4) The deductive value provided for in §152.105, if the transaction value of similar merchandise cannot be determined;

(5) The computed value provided for in §152.106, if the deductive value cannot be determined; or

(6) The value provided for in §152.107, if the computed value cannot be determined.

(c) *Importer's option.* The importer may request the application of the computed value method before the deductive value method. The request must be made at the time the entry summary for the merchandise is filed with CBP, either at the port of entry or electronically (see §141.0a(b) of this chapter). If the importer makes the request, but the value of the imported merchandise cannot be determined using the computed value method, the merchandise will be appraised using the deductive value method if it is possible to do so. If the deductive value cannot be determined, the appraised value will be determined as provided for in §152.107.

(d) *Explanation to importer.* Upon receipt of a written request from the importer within 90 days after liquidation, the Center director shall provide a reasonable and concise written explanation of how the value of the imported merchandise was determined. The explanation will apply only to the imported merchandise being appraised and will not serve as authority with respect to the valuation of importations of any other merchandise at the same or a different port of entry. This procedure is for informational purposes only, and will not affect or replace the protest or administrative ruling procedures contained in parts 174 and 177, respectively, of this chapter, or any other Customs procedures. Under this procedure, Customs will not be required to release any information not otherwise subject to disclosure under the Freedom of Information Act, as amended (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), or any other statute (see part 103 of this chapter).

[T.D. 81–7, 46 FR 2600, Jan. 12, 1981, as amended by T.D. 89–1, 53 FR 51270, Dec. 21, 1988]

§ 152.102 Definitions.

As used in this subpart, the following terms will have the meanings indicated:

(a) *Assist.* (1) ''Assist'' means any of the following if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or the sale for export to the United States of the merchandise:

(i) Materials, components, parts, and similar items incorporated in the imported merchandise.

(ii) Tools, dies, molds, and similar items used in the production of the imported merchandise.

(iii) Merchandise consumed in the production of the imported merchandise.

(iv) Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise.

(2) No service or work to which paragraph (a)(1)(iv) of this section applies will be treated as an assist if the service or work:

(i) Is performed by an individual domiciled within the United States;

(ii) Is performed by that individual while acting as an employee or agent of the buyer of the imported merchandise; and

(iii) Is incidental to other engineering, development, artwork, design work, or plans or sketches that are undertaken within the United States.

(3) The following apply in determining the value of assists described in paragraph (a)(1)(iv) of this section:

(i) The value of an assist that is available in the public domain is the cost of obtaining copies of the assist.

(ii) If the production of an assist occurred in the United States and one or more foreign countries, the value of the assist is the value added outside the United States.

(iii) If the assist was purchased or leased by the buyer from an unrelated person, the value of the assist is the cost of the purchase or of the lease.

(b) *Commission.* ''Selling commission'' means any commission paid to the seller's agent, who is related to or controlled by, or works for or on behalf of, the manufacturer or the seller.

(c) *Generally accepted accounting principles.* (1) ''Generally accepted accounting principles'' refers to any generally recognized consensus or substantial authoritative support regarding:

(i) Which economic resources and obligations should be recorded as assets and liabilities;

(ii) Which changes in assets and liabilities should be recorded;

(iii) How the assets and liabilities and changes in them should be measured;

(iv) What information should be disclosed and how it should be disclosed; and

(v) Which financial statements should be prepared.

(2) The applicability of a particular set of generally accepted accounting principles will depend upon the basis on which the value of the imported merchandise is sought to be established, and the relevant country for the point in contention.

(3) Information submitted by an importer, buyer, or producer in regard to the appraisement of merchandise may not be rejected by Customs because of the accounting method by which that information was prepared, if the preparation was in accordance with generally accepted accounting principles.

(d) *Identical merchandise.* ''Identical merchandise'' means merchandise identical in all respects to, and produced in the same country and by the same person as, the merchandise being appraised. If identical merchandise cannot be found (or for purposes of related buyer and seller transactions (see §152.103 (j)(2)(i)(A)) regardless of whether identical merchandise can be found), merchandise identical in all respects to, and produced in the same country as, but not produced by the same person as, the merchandise being appraised, may be treated as ''identical merchandise''. ''Identical merchandise'' does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or sale for export to the United States of the merchandise, and is not an assist because undertaken within the United States.

(e) *Packing costs.* ''Packing costs'' means the cost of all containers (exclusive of instruments of international

traffic) and coverings of whatever nature and of packing, whether for labor or materials, used in placing merchandise in condition, packed ready for shipment to the United States.

(f) *Price actually paid or payable.* ''Price actually paid or payable'' means the total payment (whether direct or indirect, and exclusive of any charges, costs, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise from the country of exportation to the place of importation in the United States) made, or to be made, for imported merchandise by the buyer to, or for the benefit of, the seller.

(g) *Related persons.* ''Related persons'' means: (1) Members of the same family, including brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants.

(2) Any officer or director of an organization, and that organization.

(3) An officer or director of an organization and an officer or director of another organization, if each individual also is an officer or director in the other organization.

(4) Partners.

(5) Employer and employee.

(6) Any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization, and that organization.

(7) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(h) *Same class or kind.* ''Merchandise of the same class or kind'' means merchandise (including, but not limited to, identical merchandise and similar merchandise) within a group or range of merchandise produced by a particular industry or industry sector.

(i) *Similar merchandise.* ''Similar merchandise'' means merchandise produced in the same country and by the same person as the merchandise being appraised, like the merchandise being appraised in characteristics and component material, and commercially interchangeable with the merchandise being appraised. If similar merchandise cannot be found (or for purposes of related buyer and seller transactions (see §152.103 (j)(2)(i)(A)) regardless of whether similar merchandise can be found), merchandise produced in the same country as, but not produced by the same person as, the merchandise being appraised, like the merchandise being appraised in characteristics and component material, and commercially interchangeable with the merchandise being appraised, may be treated as ''similar merchandise''. ''Similar merchandise'' does not include merchandise that incorporates or reflects any engineering, development, artwork, design work, or plan or sketch supplied free or at reduced cost by the buyer of the merchandise for use in connection with the production or the sale for export to the United States of the merchandise, and is not an assist because undertaken within the United States.

(j) *Sufficient information.* ''Sufficient information'' means information that establishes the accuracy of:

(1) Any amount:

(i) Added under §152.103(b) to the price actually paid or payable;

(ii) Deducted under §152.105(d) as profit or general expenses or value from further processing, or

(iii) Added under §152.106(b) as profit or general expenses; or

(2) Any difference taken into account under §152.103(j)(2)(ii); or

(3) Any adjustment made under §152.104(d).

(k) *Unit price in greatest aggregate quantity.* ''Unit price at which merchandise is sold in the greatest aggregate quantity'' means the unit price at which the ''merchandise concerned'' is sold to unrelated persons at the first commercial level after importation (in cases to which §152.105(c)(1) and (2) apply), or after further processing (in cases to which §152.105(c)(3) applies), at which the sales take place in a total volume greater than the total volume sold at any other unit price and sufficient to establish the unit price.

[T.D. 81–7, 46 FR 2600, Jan. 12, 1981, as amended by T.D. 97–82, 62 FR 51771, Oct. 3, 1997]

§152.103 Transaction value.

(a) *Price actually paid or payable*—(1) *General.* In determining transaction value, the price actually paid or payable will be considered without regard

to its method of derivation. It may be the result of discounts, increases, or negotiations, or may be arrived at by the application of a formula, such as the price in effect on the date of export in the London Commodity Market. The word ''payable'' refers to a situation in which the price has been agreed upon, but actual payment has not been made at the time of importation. Payment may be made by letters of credit or negotiable instruments and may be made directly or indirectly.

Example 1. In a transaction with foreign Company X, a U.S. firm pays Company X $10,000 for a shipment of meat products, packed ready for shipment to the United States. No selling commission, assist, royalty, or license fee is involved. Company X is not related to the U.S. purchaser and imposes no condition or limitation on the buyer.

The customs value of the imported meat products is $10,000—the transaction value of the imported merchandise.

Example 2. A foreign shipper sold merchandise at $100 per unit to a U.S. importer. Subsequently, the foreign shipper increased its price to $110 per unit. The merchandise was exported after the effective date of the price increase. The invoice price of $100 was the price originally agreed upon and the price the U.S. importer actually paid for the merchandise.

How should the merchandise be appraised?

Actual transaction value of $100 per unit based on the price actually paid or payable.

Example 3. A foreign shipper sells to U.S. wholesalers at one price and to U.S. retailers at a higher price. The shipment undergoing appraisement is a shipment to a U.S. retailer. There are continuing shipments of identical and similar merchandise to U.S. wholesalers.

How should the merchandise be appraised?

Actual transaction value based on the price actually paid or payable by the retailer.

Example 4. Company X in the United States pay $2,000 to Y Toy Factory abroad for a shipment of toys. The $2,000 consists of $1,850 for the toys and $150 for ocean freight and insurance. Y Toy Factory would have charged Company X $2,200 for the toys; however, because Y owed Company X $350, Y charged only $1,850 for the toys. What is the transaction value?

The transaction value of the imported merchandise is $2,200, that is, the sum of the $1,850 plus the $350 indirect payment. Because the transaction value excludes C.I.F. charges, the $150 ocean freight and insurance charge is excluded.

Example 5. A seller offers merchandise at $100, less a 2% discount for cash. A buyer remits $98 cash, taking advantage of the cash discount.

The transaction value is $98, the price actually paid or payable.

(2) *Indirect payment.* An indirect payment would include the settlement by the buyer, in whole or in part, of a debt owed by the seller, or where the buyer receives a price reduction on a current importation as a means of settling a debt owed him by the seller. Activities such as advertising, undertaken by the buyer on his own account, other than those for which an adjustment is provided in §152.103(b), will not be considered an indirect payment to the seller though they may benefit the seller. The costs of those activities will not be added to the price actually paid or payable in determining the customs value of the imported merchandise.

(3) *Assembled merchandise.* The price actually paid or payable may represent an amount for the assembly of imported merchandise in which the seller has no interest other than as the assembler. The price actually paid or payable in that case will be calculated by the addition of the value of the components and required adjustments to form the basis for the transaction value.

Example 1. The importer previously has supplied an unrelated foreign assembler with fabricated components ready for assembly having a value or cost at the assembler's plant of $1.00 per unit. The importer pays the assembler 50¢ per unit for the assembly. The transaction value for the assembled unit is $1.50.

Example 2. Same facts as Example 1 above except the U.S. importer furnishes to the foreign assembler a tooling assist consisting of a tool acquired by the importer at $1,000. The transportation expenses to the foreign assembler's plant for the tooling assist equal $100. The transaction value for the assembled unit would be $1.50 per unit plus a *pro rata* share of the tooling assist valued at $1,100.

(4) *Rebate.* Any rebate of, or other decrease in, the price actually paid or payable made or otherwise effected between the buyer and seller after the date of importation of the merchandise will be disregarded in determining the transaction value under §152.103(b).

(5) *Foreign inland freight and other inland charges incident to the international shipment of merchandise*—(i) *Ex-factory*

sales. If the price actually paid or payable by the buyer to the seller for the imported merchandise does not include a charge for foreign inland freight and other charges for services incident to the international shipment of merchandise (an ex-factory price), those charges will not be added to the price.

(ii) *Sales other than ex-factory*. As a general rule, in those situations where the price actually paid or payable for imported merchandise includes a charge for foreign inland freight, whether or not itemized separately on the invoices or other commercial documents, that charge will be part of the transaction value to the extent included in the price. However, charges for foreign inland freight and other services incident to the shipment of the merchandise to the United States may be considered incident to the international shipment of that merchandise within the meaning of §152.102(f) if they are identified separately and they occur after the merchandise has been sold for export to the United States and placed with a carrier for through shipment to the United States.

(iii) *Evidence of sale for export and placement for through shipment*. A sale for export and placement for through shipment to the United States under paragraph (a)(5)(ii) of this section shall be established by means of a through bill of lading to be presented to CBP, either at the port of entry or electronically. Only in those situations where it clearly would be impossible to ship merchandise on a through bill of lading (e.g., shipments via the seller's own conveyance) will other documentation satisfactory to the Center director showing a sale for export to the United States and placement for through shipment to the United States be accepted in lieu of a through bill of lading.

(iv) *Erroneous and false information*. This regulation shall not be construed as prohibiting Customs from making appropriate additions to the dutiable value of merchandise in instances where verification reveals that foreign inland freight charges or other charges for services incident to the international shipment of merchandise have been overstated.

(b) *Additions to price actually paid or payable*. (1) The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts equal to:

(i) The packing costs incurred by the buyer with respect to the imported merchandise;

(ii) Any selling commission incurred by the buyer with respect to the imported merchandise;

(iii) The value, apportioned as appropriate, of any assist;

(iv) Any royalty or license fee related to the imported merchandise that the buyer is required to pay, directly or indirectly, as a condition of the sale of the imported merchandise for exportation to the United States; and

(v) The proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller.

(2) The price actually paid or payable for imported merchandise will be increased by the amounts attributable to the items (and no others) described in paragraphs (b)(1) (i) through (v) of this section to the extent that each amount is not otherwise included within the price actually paid or payable, and is based on sufficient information. If sufficient information is not available, for any reason, with respect to any amount referred to in this section, the transaction value will be treated as one that cannot be determined.

(3) *Interpretative note.* A royalty is paid on the basis of the price in a sale in the United States of a gallon of a particular product imported by the pound and transformed into a solution after importation. If the royalty is based partially on the imported merchandise and partially on other factors which have nothing to do with the imported merchandise (such as if the imported merchandise is mixed with domestic ingredients and is no longer separately identifiable, or if the royalty cannot be distinguished from special financial arrangements between the buyer and the seller), it would be inappropriate to attempt to make an addition for the royalty. However, if the amount of this royalty is based only on the imported merchandise and can be readily quantified, an addition to the

price actually paid or payable will be made.

(c) *Sufficiency of information.* Additions to the price actually paid or payable will be made only if there is sufficient information to establish the accuracy of the additions and the extent to which they are not included in the price.

(d) *Assist.* If the value of an assist is to be added to the price actually paid or payable, or to be used as a component of computed value, the Center director shall determine the value of the assist and apportion that value to the price of the imported merchandise in the following manner:

(1) If the assist consist of materials, components, parts, or similar items incorporated in the imported merchandise, or items consumed in the production of the imported merchandise, acquired by the buyer from an unrelated seller, the value of the assist is the cost of its acquisition. If the assist were produced by the buyer or a person related to the buyer, its value would be the cost of its production. In either case, the value of the assist would include transportation costs to the place of production.

(2) If the assist consists of tools, dies, molds, or similar items used in the production of the imported merchandise, acquired by the buyer from an unrelated seller,the value of the assist is the cost of its acquisition. If the assist were produced by the buyer or a person related to the buyer, its value would be cost of its production. If the assist has been used previously by the buyer, regardless of whether it had been acquired or produced by him, the original cost of acquisition or production would be adjusted downward to reflect its use before its value could be determined. If the assist were leased by the buyer from an unrelated seller, the value of the assist would be the cost of the lease. In either case, the value of the assist would include transportation costs to the place of production. Repairs or modifications to an assist may increase its value.

Example 1. A U.S. importer supplied detailed designs to the foreign producer. These designs were necessary to manufacture the merchandise. The U.S. importer bought the designs from an engineering company in the U.S. for submission to his foreign supplier.

Should the appraised value of the merchandise include the value of the assist?

No, design work undertaken in the U.S. may not be added to the price actually paid or payable.

Example 2. A U.S. importer supplied molds free of charge to the foreign shipper. The molds were necessary to manufacture merchandise for the U.S. importer. The U.S. importer had some of the molds manufactured by a U.S. company and others manufactured in a third country.

Should the appraised value of the merchandise include the value of the molds?

Yes. It is an addition required to be made to transaction value.

(e) *Apportionment.* (1) The apportionment of the value of assists to imported merchandise will be made in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles. The method of apportionment actually accepted by Customs will depend upon the documentation submitted by the importer. If the entire anticipated production using the assist is for exportation to the United States, the total value may be apportioned over (i) the first shipment, if the importer wishes to pay duty on the entire value at once, (ii) the number of units produced up to the time of the first shipment, or (iii) the entire anticipated production. In addition to these three methods, the importer may request some other method of apportionment in accordance with generally accepted accounting principles. If the anticipated production is only partially for exportation to the United States, or if the assist is used in several countries, the method of apportionment will depend upon the documentation submitted by the importer.

(2) *Interpretative note.* An importer provides the producer with a mold to be used in the production of the imported merchandise and contracts to buy 10,000 units. By the time of arrival of the first shipment of 1,000 units, the producer has already produced 4,000 units. The importer may request Customs to apportion the value of the mold over 1,000, 4,000, 10,000 units, or any other figure which is in accordance with generally accepted accounting principles.

(f) *Royalties or license fees.* Royalties or license fees for patents covering processes to manufacture the imported merchandise generally will be dutiable. Royalties or license fees paid to third parties for use, in the United States, of copyrights and trademarks related to the imported merchandise generally will be considered selling expenses of the buyer and not dutiable. The dutiable status of royalties or license fees paid by the buyer will be determined in each case and will depend on (1) whether the buyer was required to pay them as a condition of sale of the merchandise for exportation to the United States, and (2) to whom and under what circumstances they were paid. Payments made by the buyer to a third party for the right to distribute or resell the imported merchandise will not be added to the price actually paid or payable for the imported merchandise if the payments are not a condition of the sale of the merchandise for exportation to the United States.

Example. A foreign producer sold merchandise to an unrelated U.S. importer. The U.S. importer pays a royalty to an unrelated third party for the right to manufacture and sell a product made in part from the imported merchandise. The royalty is based on the selling price of the further-manufactured product in the U.S.

Is the license fee part of the appraised value? No. The license fee is not a condition of the sale of the imported merchandise for export to the U.S.

(g) *Proceeds of subsequent resale.* Additions to the price actually paid or payable will be made for the value of any part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrues directly or indirectly to the seller. Dividends or other payments from the buyer to the seller which do not relate directly to the imported merchandise will not be added to the price actually paid or payable. Whether any addition would be made will depend on the facts of the particular case.

Example. A buyer contracts to import a new product. Not knowing whether the product ultimately will sell in the United States, the buyer agrees to pay the seller initially $1 per unit with an additional $1 per unit to be paid upon the sale of each unit in the United States. Assuming the resale price in the United States can be determined in a reasonable period of time, the transaction value of each unit would be $2. Otherwise, the transaction value could not be determined for want of sufficient information.

(h) *Right to reproduce.* Charges for the right to reproduce the imported merchandise in the United States will not be added to the price actually paid or payable. The right to reproduce denotes that an idea or an original work is incorporated in, or reflected by, the imported merchandise, and the right is reserved to reproduce that idea or work in other merchandise by using the imported merchandise. The concept of the right to reproduce relates only to the following classes of merchandise: originals or copies of artistic or scientific works; originals or copies of models and industrial drawings; model machines and prototypes; and plant and animal species.

Example. The importer purchases a painting. By purchasing the painting, the owner possesses the right to resell, lease, or otherwise place it on display. Absent an agreement to the contrary, he does not possess the right to reproduce copies of the painting. Fees paid for the right to reproduce the painting would not be dutiable.

(i) *Exclusions from transaction value.* The transaction value of imported merchandise does not include any of the following, if identified separately from the price actually paid or payable and from any cost or other item referred to in paragraph (b) of this section:

(1) Any reasonable cost or charge that is incurred for—

(i) The construction, erection, assembly, or maintenance of, or the technical assistance provided with respect to, the merchandise after its importation into the United States; or

(ii) The transportation of the merchandise after its importation.

(2) The customs duties and other Federal taxes currently payable on the imported merchandise by reason of its importation, and any Federal excise tax on, or measured by the value of, the merchandise for which vendors in the United States ordinarily are liable.

Example. A foreign shipper sells a piece of equipment to a U.S. buyer. The total contract price for the equipment includes technical assistance in the U.S. The equipment cannot be purchased without the technical

assistance, but the contract provides a breakdown of costs.

Should the appraised value include the technical assistance? No, transaction value does not include any reasonable costs for construction, erection, assembly, maintenance of, or technical assistance, for the imported merchandise after its importation into the U.S., the cost of which can be accurately identified as being separate from the price actually paid or payable for the merchandise to which they relate.

(j) *Limitations on use of transaction value*—(1) *In general.* The transaction value of imported merchandise will be the appraised value only if:

(i) There are no restrictions on the disposition or use of the imported merchandise by the buyer, other than restrictions which are imposed or required by law, limit the geographical area in which the merchandise may be resold, or do not affect substantially the value of the merchandise;

(ii) The sale of, or the price actually paid or payable for, the imported merchandise is not subject to any condition or consideration for which a value cannot be determined;

(iii) No part of the proceeds of any subsequent resale, disposal, or use of the imported merchandise by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made under paragraph (b)(1)(v) of this section; and

(iv) The buyer and seller are not related, or the buyer and seller are related but the transaction value is acceptable.

(2) *Related person transactions.* (i) The transaction value between a related buyer and seller is acceptable if an examination of the circumstances of sale indicates that their relationship did not influence the price actually paid or payable, or if the transaction value of the imported merchandise closely approximates:

(A) The transaction value of identical merchandise; or of similar merchandise, in sales to unrelated buyers in the United States; or

(B) The deductive value or computed value of identical merchandise, or of similar merchandise; and

(C) Each value referred to in paragraph (j)(2)(i) (A) and (B) of this section that is used for comparison relates to merchandise that was exported to the United States at or about the same time as the imported merchandise.

(ii) In applying the values used for comparison, differences with respect to the sales involved will be taken into account if based on sufficient information supplied by the buyer or otherwise available to Customs and if the differences relate to:

(A) Commercial levels;

(B) Quantity levels;

(C) The costs, commissions, values, fees, and proceeds described in paragraph (b) of this section; and

(D) The costs incurred by the seller in sales in which the seller and the buyer are not related that are not incurred by the seller in sales in which the seller and the buyer are related.

(k) *Restrictions and conditions on sale.* (1) A restriction placed on the buyer of imported merchandise that does not affect substantially its value will not prevent transaction value from being accepted as the appraised value.

(i) *Interpretative note.* A seller requires a buyer of automobiles not to sell or exhibit them before a fixed date that represents the beginning of a model year.

(2) The transaction value will not be accepted as the appraised value if the sale of, or the price actually paid or payable for, the merchandise is subject to a condition or consideration for which a value cannot be determined.

(i) *Interpretative note 1.* The seller establishes the price of the imported merchandise on condition that the buyer also will buy other merchandise in specified quantities.

(ii) *Interpretative note 2.* The price of the imported merchandise is dependent upon the price or prices at which the buyer of the merchandise sells other merchandise to the seller of the merchandise.

(iii) *Interpretative note 3.* The price of the imported merchandise is established on the basis of a form of payment extraneous to the merchandise, such as where the merchandise is to be further processed by the buyer, and has been provided by the seller on condition that he will receive a specified quantity of the finished merchandise.

(l) *Related buyer and seller*—(1) *Validation of transaction.* The Center director shall not disregard a transaction value

solely because the buyer and seller are related. There will be related person transactions in which validation of the transaction value, using the procedures contained in §152.103(j)(2), may not be necessary.

(i) *Interpretative note 1.* Customs may have previously examined the relationship or may already have sufficient detailed information concerning the buyer and seller to be satisfied that the relationship did not influence the price actually paid or payable. In such case, if Customs has no doubts about the acceptability of the price, the price will be accepted without requesting further information from the importer. If Customs does have doubts about the acceptability of the price and is unable to accept the transaction value without further inquiry, the importer will be given an opportunity to supply such further detailed information as may be necessary to enable Customs to examine the circumstances of the sale. In this context, Customs will examine relevant aspects of the transaction, including the way in which the buyer and seller organize their commercial relations and the way in which the price in question was arrived at in order to determine whether the relationship influenced the price.

(ii) *Interpretative note 2.* If it is shown that the buyer and seller, although related, buy from and sell to each other as if they were not related, this will demonstrate that the price has not been influenced by the relationship, and the transaction value will be accepted. If the price has been settled in a manner consistent with the normal pricing practices of the industry in question, or with the way the seller settles prices for sales to buyers who are not related to him, this will demonstrate that the price has not been influenced by the relationship.

(iii) *Interpretative note 3.* If it is shown that the price is adequate to ensure recovery of all costs plus a profit which is equivalent to the firm's overall profit realized over a representative period of time (e.g., on an annual basis), in sales of merchandise of the same class or kind, this would demonstrate that the price has not been influenced.

Example. A foreign seller sells merchandise to a related U.S. importer. The foreign seller does not sell identical merchandise or similar merchandise to any unrelated parties. The transaction between the foreign seller and the U.S. importer is determined by Customs to be unaffected by the relationship.

How should the merchandise be appraised?

Transaction value based on the price actually paid or payable. A transaction value between a related buyer and seller is acceptable if the relationship did not affect the price actually paid or payable. This is so even if similar merchandise is being sold at a higher price, which includes a higher percentage for profit and general expenses.

(2) *Test values.* (i) The importer or the buyer may demonstrate that the transaction value in a related person transaction is acceptable by showing that the value ''closely approximates'' any one of the test values provided in §152.103(j)(2)(i). The factors that will be examined to determine if the transaction value closely approximates a test value include:

(A) The nature of the imported merchandise and the industry,

(B) The season in which the merchandise is imported,

(C) Whether the difference in value is commercially significant, and

(D) Whether the difference in value is attributable to internal transport costs in the country of exportation.

(ii) Because these factors may vary, Customs will not be able to apply a uniform standard, such as a fixed percentage, in each case. A small difference in value in a case involving one type of imported merchandise may be unacceptable, although a large difference in a case involving another type may be acceptable, in determining if the transaction value closely approximates any of the test values. Customs will be consistent in determining if one value ''closely approximates'' another value. The same approach will be taken if Customs considers a transaction value that is higher than any of the enumerated test values as will be taken if the transaction value is lower than any of the test values.

Example. In applying any of the test values, if the transaction value in the sale under consideration is rejected because 95 does not closely approximate 100, then a transaction value for the sale of the same merchandise at 105 occurring at or about the same time likewise would have to be rejected. Similarly, if 103 were considered to closely approximate

100, a transaction value of 97 likewise would closely approximate 100.

(iii) If one of the test values provided in § 152.103(j)(2)(i) has been found to be appropriate, the Center director shall not seek to determine if the relationship between the buyer and seller influenced the price. If the Center director already has sufficient information to be satisfied, without further detailed inquiries, that one of the test values is appropriate, he shall not require the importer to demonstrate that the test value is appropriate.

(m) *Rejection of transaction value.* When CBP has grounds for rejecting the transaction value declared by an importer and that rejection increases the duty liability, the Center director shall inform the importer of the grounds for the rejection. The importer will be afforded 20 days to respond in writing to the Center director if in disagreement. This procedure will not affect or replace the administrative ruling procedures contained in part 177 of this chapter, or any other CBP procedures.

[T.D. 81–7, 46 FR 2600, Jan. 12, 1981, as amended by T.D. 84–235, 49 FR 46888, Nov. 29, 1984; CBP Dec. No. 168–26, 81 FR 93023, Dec. 20, 2016]

§ 152.104 Transaction value of identical merchandise and similar merchandise.

(a) *General.* The transaction value of identical merchandise, or of similar merchandise, is the transaction value (acceptable as the appraised value under § 152.103 but adjusted under paragraph (e) of this section) of imported merchandise that is—

(1) With respect to the merchandise being appraised, either identical merchandise, or similar merchandise; and

(2) Exported to the United States at or about the time that the merchandise being appraised is exported to the United States.

(b) *Identical merchandise.* Minor differences in appearance will not preclude otherwise conforming merchandise from being considered ''identical''. See § 152.102(d).

(c) *Similar merchandise.* The quality of the merchandise, its reputation, and the existence of a trademark will be factors considered to determine whether merchandise is ''similar''. See § 152.102(i).

(d) *Commercial level and quantity.* Transaction values determined under this section will be based on sales of identical merchandise, or similar merchandise, at the same commercial level and in substantially the same quantity as the sales of the merchandise being appraised. If no such sale is found, sales of identical merchandise, or similar merchandise, at either a different commercial level or in different quantities, or both, will be used, but adjusted to take account of that difference. Any adjustment made under this section will be based on ''sufficient information''. See § 152.102(j). If in applying this section to any merchandise, two or more transaction values for identical merchandise, or for similar merchandise, are determined, the merchandise will be appraised on the basis of the lower or lowest of those values.

(e) *Adjustments.* (1) Adjustments for identical merchandise, or similar merchandise, because of different commercial levels or quantities, or both, whether leading to an increase or decrease in the value, will be made only on the basis of sufficient information; e.g., valid price lists containing prices referring to different levels or quantities.

(2) *Interpretative note.* If the imported merchandise being valued consists of a shipment of 10 units and the only identical imported merchandise for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's price list and using that price applicable to a sale of 10 units. This does not require that a sale had to have been made in quantities of 10 as long as the price list has been established as being *bona fide* through sales at other quantities. In the absence of such an objective measure, however, the determination of a customs value under the provisions for transaction value of identical or similar merchandise is not appropriate.

§ 152.105 Deductive value.

(a) *Merchandise concerned.* For the purposes of deductive value, ''merchandise concerned'' means the merchandise being appraised, identical merchandise, or similar merchandise.

(b) *Merchandise of the same class or kind.* For the purposes of deductive value, ''merchandise of the same class or kind'' includes merchandise imported from the same country as well as other countries as the merchandise being appraised.

(c) *Prices.* The deductive value of the merchandise being appraised is whichever of the following prices (as adjusted under paragraph (d) of this section) is appropriate depending upon when and in what condition the merchandise concerned is sold in the United States:

(1) If the merchandise concerned is sold in the condition as imported at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity at or about such date.

(2) If the merchandise concerned is sold in the condition as imported but not sold at or about the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise concerned is sold in the greatest aggregate quantity after the date of importation of the merchandise being appraised but before the close of the 90th day after the date of such importation.

(3) If the merchandise concerned was not sold in the condition as imported and not sold before the close of the 90th day after the date of importation of the merchandise being appraised, the price is the unit price at which the merchandise being appraised, after further processing, is sold in the greatest aggregate quantity before the 180th day after the date of such importation. This provision will apply to appraisement of merchandise only if the importer so elects at the time of filing the entry summary.

(d) *Deductions from price.* The price determined under paragraph (c) of this section will be reduced by an amount equal to:

(1) Any commission usually paid or agreed to be paid, or the addition usually made for profit and general expenses, in connection with sales in the United States of imported merchandise that is of the same class or kind, regardless of the country of exportation, as the merchandise concerned;

(2) The actual costs and associated costs of transportation and insurance incurred with respect to international shipments of the merchandise concerned from the country of exportation to the United States;

(3) The usual costs and associated costs of transportation and insurance incurred with respect to shipments of the merchandise concerned from the place of importation to the place of delivery in the United States, if those costs are not included as a general expense under paragraph (d)(1) of this section;

(4) The customs duties and other Federal taxes currently payable on the merchandise concerned by reason of its importation, and any Federal excise tax on, or measured by the value of, the merchandise for which vendors in the United States ordinarily are liable; and

(5) But only in the case of price determined under paragraph (c)(3) of this section, the value added by the processing of the merchandise after importation to the extent that the value is based on sufficient information relating to the cost of that processing.

(e) *Profit and general expenses; special rules.* (1) The deduction made for profit and general expenses (taken as a whole) will be based upon the importer's profit and general expenses, unless the profit and general expenses are inconsistent with those reflected in sales in the United States of imported merchandise of the same class or kind from all countries, in which case the deduction will be based on the usual profit and general expenses reflected in those sales, as determined from sufficient information. Any State or local tax imposed on the importer with respect to the sale of imported merchandise will be treated as a general expense.

(2) In determining deductions for commissions and usual profit and general expenses, sales in the United States of the narrowest group or range

of imported merchandise of the same class or kind, including the merchandise being appraised, for which sufficient information can be provided, will be examined.

(f) *Packing costs.* The price determined under paragraph (c) of this section will be increased, but only to the extent that the costs are not otherwise included, by an amount equal to the packing costs incurred by the importer or the buyer with respect to the merchandise concerned.

(g) *Assists.* For purposes of determining deductive value, any sale to a person who supplies any assist for use in connection with the production or sale for export of the merchandise concerned will be disregarded.

(h) *Unit price in greatest aggregate quantity.* The unit price will be established after a sufficient number of units have been sold to an unrelated person. The unit price to be used when the units have been sold in different quantities will be that at which the total volume sold is greater than the total volume sold at any other unit price.

(1) *Interpretative note 1.* Merchandise is sold to an unrelated person from a price list which grants favorable unit prices for purchases made in larger quantities:

Sale quantity	Unit price	Number of sales	Total quantity sold at each price
1–10 units	$100	10 sales of 5 units 5 sales of 3 units.	65
11–25 units	95	5 sales of 11 units	55
Over 25 units.	90	1 sale of 30 units	80
		1 sale of 50 units	

The greatest number of units sold at a price is 80; therefore, the unit price in the greatest aggregate quantity is $90.

(2) *Interpretative note 2.* Two sales to unrelated persons occur: in the first sale, 500 units are sold at a price of $95 each; in the second sale, 400 units are sold at a price of $90 each. In this example, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is $95.

(3) *Interpretative note 3.* Various quantities are sold to unrelated persons at various prices:

(i) SALES

Sale quantity	Unit price
40 units	$100
30 units	90
15 units	100
50 units	95
25 units	105
35 units	90
5 units	100

(ii) TOTALS

Total quantity sold	Unit price
65	$90
50	95
60	100
25	105

In this example, the greatest number of units sold at a particular price is 65; therefore, the unit price in the greatest aggregate quantity is $90.

(i) *Further processing*—(1) *Quantified data.* If merchandise has undergone further processing after its importation into the United States and the importer elects the method specified in paragraph (c)(3) of this section, deductions made for the value added by that processing will be based on objective and quantifiable data relating to the cost of the work performed. Accepted industry formulas, recipes, methods of construction, and other industry practices would form the basis for the deduction. That deduction also will reflect amounts for spoilage, waste, or scrap derived from the further processing.

(2) *Loss of identity.* If the imported merchandise loses its identity as a result of further processing, the method specified in paragraph (c)(3) of this section will not be applicable unless the value added by the processing can be determined accurately without unreasonable difficulty for either importers or Customs. If the imported merchandise maintains its identity but forms a minor element of the merchandise sold in the United States, the use of paragraph (c)(3) of this section will be unjustified. The Center director shall review each case involving these issues on its merits.

Example. A foreign shipper sells merchandise to a related U.S. importer. The foreign shipper does not sell to any unrelated person. The transaction between the foreign shipper and the U.S. importer is determined to have been affected by the relationship. There is no identical or similar merchandise from the same country of production. The U.S. importer further processes the product and sells the finished product to an unrelated buyer in the U.S. within 180 days of the date of importation. No assists from the unrelated U.S. buyer are involved, and the type of processing involved can be accurately costed.

How should the merchandise be appraised?

The merchandise should be appraised under deductive value with allowances for profit and general expenses, freight and insurance, duties and taxes, and the cost of processing.

[T.D. 81–7, 46 FR 2600, Jan. 12, 1981, as amended by T.D. 85–123, 50 FR 29956, July 23, 1985]

§ 152.106 Computed value.

(a) *Elements.* The computed value of imported merchandise is the sum of:

(1) The cost or value of the materials and the fabrication and other processing of any kind employed in the production of the imported merchandise;

(2) An amount for profit and general expenses equal to that usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by the producers in the country of exportation for export to the United States;

(3) Any assist, if its value is not included under paragraph (a) (1) or (2) of this section; and

(4) The packing costs.

(b) *Special rules.* (1) The cost or value of materials under paragraph (a)(1) of this section will not include the amount of any internal tax imposed by the country of exportation that is directly applicable to the materials or their disposition if the tax is remitted or refunded upon the exportation of the merchandise in the production of which the materials were used.

(2) The amount for profit and general expenses under paragraph (a)(2) of this section will be based upon the producer's profit and general expenses, unless the producer's profit and general expenses are inconsistent with those usually reflected in sales of merchandise of the same class or kind as the imported merchandise that are made by producers in the country of exportation for export to the United States. In that case, the amount under paragraph (a)(2) of this section will be based on the usual profit and general expenses of such producers in those sales, as determined from ''sufficient information''. See § 152.102(j).

(c) *Profit and general expenses.* The amount for profit and general expenses will be taken as a whole. If the producer's profit figure is low and general expenses high, those figures taken together nevertheless may be consistent with those usually reflected in sales of imported merchandise of the same class or kind.

(1) *Interpretative note 1.* A product is introduced into the United States, and the producer accepts either no profit or a low profit to offset the high general expenses required to introduce the product into this market. If the producer can demonstrate that there is a low profit on sales of the imported merchandise because of peculiar commercial circumstances, the actual profit figures will be accepted provided the producer has valid commercial reasons to justify them and his pricing policy reflects the usual pricing policies in the industry.

(2) *Interpretative note 2.* Producers have been forced to lower prices temporarily because of an unforseeable drop in demand, or they sell merchandise to complement a range of merchandise being produced in the United States and accept a low profit to maintain competitiveness. If the producer's own figures for profit and general expenses are not consistent with those usually reflected in sales of merchandise of the same class or kind as the merchandise being valued which are made in the country of exportation for export to the United States, the amount for profit and general expenses will be based upon reliable and quantifiable information other than that supplied by or on behalf of the producer of the merchandise.

(d) *Assists and packing costs.* Computed value also will include an amount equal to the apportioned value of any assists used in the production of the imported merchandise and the packing costs for the imported merchandise. The value of any engineering, development, artwork, design work,

and plans and sketches undertaken in the United States will be included in computed value only to the extent that their value has been charged to the producer. Depending on the producer's method of accounting, the value of assists may be included (duplicated) in the producer's cost of materials, fabrication, and other processing, or in the general expenses. If duplication occurs, a separate amount for the value of the assists will not be added to the other elements as it is not intended that any component of computed value be included twice.

(e) *Merchandise of same class or kind.* Sales for export to the United States of the narrowest group or range of imported merchandise, including the merchandise being appraised, will be examined to determine usual profit and general expenses. For the purpose of computed value, merchandise of the same class or kind must be from the same country as the merchandise being appraised.

Example. A foreign shipper sells merchandise to a related U.S. importer. The foreign shipper does not sell to any unrelated persons. The transaction between the foreign shipper and the U.S. importer is determined to have been affected by the relationship. There is no identical or similar merchandise from the same country of production. The U.S. importer further processes the product and sells the finished product to an unrelated buyer in the U.S. within 180 days of the date of importation. No assists from the unrelated U.S. buyer are involved, and the type of processing involved can be accurately costed. The U.S. importer has requested that the shipment be appraised under computed value. The profit and general expenses figure for the same class or kind of merchandise in the country of exportation for export to the U.S. is known.

How should the merchandise be appraised?

The merchandise should be appraised under computed value, using the company's profit and general expenses if not inconsistent with those usually reflected in sales of merchandise of the same class or kind.

(f) *Availability of information.* (1) It will be presumed that the computed value of the imported merchandise cannot be determined if:

(i) The importer is unable to provide required computed value information within a reasonable time, and/or

(ii) The foreign producer refuses to provide, or is legally prevented from providing, that information.

(2) If information other than that supplied by or on behalf of the producer is used to determine computed value, the Center director shall inform the importer, upon written request, of:

(i) The source of the information,

(ii) The data used, and

(iii) The calculation based upon the specified data,

if not contrary to domestic law regarding disclosure of information. See also §152.101(d).

§ 152.107 Value if other values cannot be determined or used.

(a) *Reasonable adjustments.* If the value of imported merchandise cannot be determined or otherwise used for the purposes of this subpart, the imported merchandise will be appraised on the basis of a value derived from the methods set forth in §§152.103 through 152.106, reasonably adjusted to the extent necessary to arrive at a value. Only information available in the United States will be used.

(b) *Identical merchandise or similar merchandise.* The requirement that identical merchandise, or similar merchandise, should be exported at or about the same time of exportation as the merchandise being appraised may be interpreted flexibly. Identical merchandise, or similar merchandise, produced in any country other than the country of exportation or production of the merchandise being appraised may be the basis for customs valuation. Customs values of identical merchandise, or similar merchandise, already determined on the basis of deductive value or computed value may be used.

(c) *Deductive value.* The ''90 days'' requirement for the sale of merchandise referred to in §152.105(c) may be administered flexibly.

§ 152.108 Unacceptable bases of appraisement.

For the purposes of this subpart, imported merchandise may not be appraised on the basis of:

(a) The selling price in the United States of merchandise produced in the United States;

(b) A system that provides for the appraisement of imported merchandise at the higher of two alternative values;

(c) The price of merchandise in the domestic market of the country of exportation;

(d) A cost of production, other than a value determined under §152.106 for merchandise that is identical merchandise, or similar merchandise, to the merchandise being appraised;

(e) The price of merchandise for export to a country other than the United States;

(f) Minimum values for appraisement;

(g) Arbitrary or fictitious values.

[T.D. 81–7, 46 FR 2600, Jan. 12, 1981, as amended by T.D. 85–123, 50 FR 29956, July 23, 1985]

PART 158—RELIEF FROM DUTIES ON MERCHANDISE LOST, DAMAGED, ABANDONED, OR EXPORTED

Sec.

AUTHORITY: 19 U.S.C. 66, 1624, unless otherwise noted. Subpart C also issued under 19 U.S.C. 1563.

SOURCE: T.D. 72–258, 37 FR 20171, Sept. 27, 1972, unless otherwise noted.

§158.0 Scope.

This part sets forth general rules for granting relief from duties on merchandise which is lost, damaged, abandoned, or exported.

Subpart A—Lost or Missing Packages and Deficiencies in Contents of Packages

§158.1 Definition of "permitted" merchandise.

For the purpose of this subpart, merchandise is ''permitted'' when Customs authorizes the carrier bringing the shipment to the port to make delivery to the consignee or the next carrier and:

(a) These parties in interest, or their agents, make a joint determination of the quantities being delivered, or,

(b) The carrier bringing the shipment to the port, at its option, independently declares the quantities available for delivery by filing with the port director, no later than the close of business on the next working day after a determination of quantities is made, a signed statement that:

(1) An independent determination of quantities of merchandise available for

delivery has been made, with the date of the determination shown;

(2) At least 4 days have elapsed since the consignee or his agent was notified that Customs has authorized delivery; and,

(3) The merchandise was and is available for delivery.

§ 158.2 Shortages in packages released under immediate delivery or entry.

An importer may file an entry summary for consumption or an entry summary for warehouse for less than the invoiced and manifested number of packages in a shipment ''permitted'' and delivered to him or deposited in a bonded warehouse under the immediate delivery procedure in § 142.21 of this chapter, or under the entry documentation in § 142.3(a), if he files with the entry summary a Customs Form 5931 in triplicate. The Customs Form 5931 shall be completed by the importer with attached copies of the dock receipt or other documents evidencing nonreceipt of the lost or missing packages.

[T.D. 85–159, 50 FR 38520, Sept. 23, 1985]

§ 158.3 Allowance for lost or missing packages included in an entry summary.

Allowance shall be made in the assessment of duties for lost or missing packages of merchandise included in an entry summary whenever it is established to the satisfaction of the Center director before the liquidation of the entry summary becomes final that the merchandise claimed to be lost or missing was not ''permitted.'' A claim for such allowance shall be made on Customs Form 5931, in triplicate, executed by the importer and the importing carrier or bonded carrier, as appropriate. When the importing or bonded carrier refuses to execute the Customs Form 5931, a claim may be allowed if the importer properly executes the Customs Form 5931 and attaches copies of the dock receipt or other document evidencing nonreceipt of the lost or missing packages.

[T.D. 72–258, 37 FR 20171, Sept. 27, 1972, as amended by T.D. 79–221, 44 FR 46829, Aug. 9, 1979; CBP Dec. No. 16–26, 81 FR 93023, Dec. 20, 2016]

§ 158.4 Liability of carrier for lost or missing packages.

Upon a joint determination or independent determination of quantity as set forth in § 158.1 (a) or (b) resulting in the merchandise being ''permitted,'' the carrier shall be responsible only for any discrepancy between the manifested quantity and the ''permitted'' quantity. In the case of an importing carrier, when there is a difference between the quantity shown on the inward foreign manifest and the quantity ''permitted,'' liquidated damages or duties shall be assessed under the provisions of the carrier's bond or under the provisions of section 448, Tariff Act of 1930, as amended (19 U.S.C. 1448), unless the carrier corrects his manifest (see § 4.12 of this chapter). In the case of a bonded carrier, liquidated damages for lost or missing merchandise shall be assessed in accordance with § 18.8 of this chapter.

§ 158.5 Deficiencies in contents of packages—general.

An allowance shall be made in the assessment of duties for deficiencies in the contents of packages when, before the liquidation of the entry becomes final, the importer files:

(a) In the case of a concealed shortage, a Customs Form 5931, in triplicate, executed by the importer alone, and the Center director is satisfied as to the validity of the claim; or,

(b) In the case of an unconcealed shortage, a Customs Form 5931, in triplicate, executed by both the importer and the importing or bonded carrier, as appropriate.

[T.D. 72–258, 37 FR 20171, Sept. 27, 1972, as amended by CBP Dec. No. 16–26, 81 FR 93023, Dec. 20, 2016]

§ 158.6 Deficiencies in contents of examination packages.

Allowance for deficiency in the contents of any examination package reported to the port director by a Customs officer shall be made in the liquidation of the entry. No Customs officer except one making an examination contemplated by section 499, Tariff Act of 1930, as amended (19 U.S.C. 1499), shall report a supposed deficiency to

the port director unless it is established to the satisfaction of the reporting officer that the merchandise was not imported.

(Sec. 499, 46 Stat. 728, as amended; 19 U.S.C. 1499)

§ 158.7 Allowance for reduction or loss of merchandise by a natural force or by leakage.

Merchandise subject to ad valorem, specific, or compound rates of duty found at the time of importation to be reduced or diminished by a natural force, such as evaporation, or by leakage, shall be appraised in its condition as imported, with an allowance made in the value, weight, quantity, or measure to the extent of the reduction or loss, except when forbidden by law or regulation.

(R.S. 251, as amended, sec. 499, sec. 624, 46 Stat. 728, as amended, 759 (19 U.S.C. 66, 1499, 1624))

[T.D. 78–448, 43 FR 53713, Nov. 17, 1978]

Subpart B—Damaged or Defective Merchandise

§ 158.11 Merchandise completely worthless at time of importation.

(a) *Nonperishable merchandise.* When a shipment of nonperishable merchandise, or any portion thereof which shall have been segregated from the remainder of the shipment under Customs supervision at the expense of the importer, is found by the port director to be entirely without commercial value at the time of importation by reason of damage or deterioration, an allowance in duties on such merchandise on the ground of nonimportation shall be made in the liquidation of the entry.

(b) *Perishable merchandise.* In the case of perishable merchandise, an allowance in duties may be made under the following conditions:

(1) An application for such allowance shall be filed with the port director on Customs Form 4315, or its electronic equivalent, in duplicate, within 96 hours after the unlading of the merchandise and before any of the shipment involved has been removed from the pier (or other area permitted under §142.2(b)(2) of this chapter) pursuant to the entry permit.

(2) Should an application filed in accordance with paragraph (b)(1) of this section be withdrawn, the merchandise involved shall thereafter be released upon presentation of an appropriate permit.

(3) Allowance in duty shall be made in the liquidation of the entry on such of the merchandise covered by the application as is found by the port director to be entirely without commercial value by reason of damage or deterioration.

(Sec. 506, 46 Stat. 732, as amended; 19 U.S.C. 1506)

[T.D. 72–258, 37 FR 20171, Sept. 27, 1972, as amended by T.D. 76–220, 41 FR 33248, Aug. 9, 1976; CBP Dec. 15–14, 80 FR 61292, Oct. 13, 2015]

§ 158.12 Merchandise partially damaged at time of importation.

(a) *Allowance in value.* Merchandise which is subject to ad valorem or compound duties and found by the port director to be partially damaged at the time of importation shall be appraised in its condition as imported, with an allowance made in the value to the extent of the damage. However, no allowance shall be made when forbidden by law or regulation; for example, Chapter 72, Additional U.S. Note 3, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), provides that no allowance or reduction of duties for partial damage or loss in consequence of discoloration or rust occurring before importation shall be made upon iron or steel or upon any article of iron or steel.

(b) *No allowance in specific duties.* In the case of merchandise subject to specific or compound duties and found to be partially damaged at the time of importation, no allowance may be made in the specific duties or in the weight, quantity, or measure (except that an allowance for any excessive moisture or other impurities may be made in accordance with §158.13). However, any part of the shipment which is totally worthless and can be segregated from

the rest of the shipment may be treated as a nonimportation in accordance with § 158.11.

(Sec. 506, 46 Stat. 732, as amended; 19 U.S.C. 1506)

[T.D. 72–258, 37 FR 20171, Sept. 27, 1972, as amended by T.D. 89–1, 53 FR 51270, Dec. 21, 1988]

§ 158.13 Allowance for moisture and impurities.

(a) *Application by importer*—(1) *Petroleum and petroleum products.* An application for an allowance in duties under section 507, Tariff Act of 1930, as amended (19 U.S.C. 1507), for all detectable moisture and impurities present in or upon imported petroleum or petroleum products shall be made by the importer on Customs Form 4315, or its electronic equivalent. The application shall be filed with the port director within 10 days of the port director's receipt of the gauging report or within 10 days of Customs acceptance of the entry's invoice gauge.

(2) *Other products.* An application for an allowance in duties under 19 U.S.C. 1507 for products other than petroleum or petroleum products for excessive moisture or other impurities not usually found in or upon such or similar merchandise shall be made by the importer on Customs Form 4315, or its electronic equivalent. The application shall be filed with the port director within 10 days after the report of weight or gauge has been received by the port director or within 10 days after the date upon which the entry or a related document was endorsed to show that invoice weight or gauge has been accepted by the Customs inspector or other Customs officer.

(b) *Allowance by Center director.* If the port director is satisfied after any necessary investigation that the merchandise contains moisture or impurities as described in paragraph (a) of this section, the Center director will make allowance for the amount thereof in the liquidation of the entry.

[T.D. 90–78, 55 FR 40167, Oct. 2, 1990, as amended by CBP Dec. 15–14, 80 FR 61292, Oct. 13, 2015; CBP Dec. No. 16–26, 81 FR 93023, Dec. 20, 2016]

§ 158.14 Perishable merchandise condemned.

(a) *Application by importer.* When fruit or other perishable merchandise has been condemned by health officers or other legally constituted authorities within 10 days after landing, an importer who desires allowance in duties under section 506(2), Tariff Act of 1930, as amended (19 U.S.C. 1506(2)), shall within 5 days after such condemnation file with the port director written notice of the condemnation. The date of landing in the case of merchandise forwarded under an entry for immediate transportation is the date of arrival at the port of destination.

(b) *Allowance in duties.* If the port director is satisfied after any necessary investigation that the claim is valid, allowance in duties shall be made in the liquidation of the entry. Such allowance shall be limited to perishable goods condemned by the health officers or authorities in the original package, unless segregation of the merchandise was under constant Customs supervision at the importer's expense.

(Sec. 506(2), 46 Stat. 732, as amended; 19 U.S.C. 1506(2))

Subpart C—Casualty, Loss, or Theft While in Customs Custody

§ 158.21 Allowance in duties for casualty, loss, or theft while in Customs custody.

Section 563(a), Tariff Act of 1930, as amended (19 U.S.C. 1563(a)), provides for allowance in duties upon satisfactory proof of the loss or theft of any merchandise while in the public stores, or of the actual injury or destruction, in whole or in part, of any merchandise by accidental fire or other casualty, while in bonded warehouse, or in the public stores, or while in transportation under bond, or while in Customs custody although not in bond, or while within the limits of any port of entry and before having been landed under Customs supervision. Such allowance is subject to the conditions set forth in this subpart.

§ 158.21a Time period.

An abatement or refund of duties shall be made in the case of injury to,

or destruction of, merchandise in a bonded warehouse as a result of accidental fire or other casualty only if the fire or casualty occurs within 3 years from the date of importation.

[T.D. 79–221, 44 FR 46829, Aug. 9, 1979]

§ 158.22 Not applicable when allowances made under other provisions.

The procedures in this subpart do not apply in cases where allowances in duties are made under subpart A or subpart B of this part, or §18.6 of this chapter.

§ 158.23 Filing of application and evidence by importer.

Within 30 days from the date of his discovery of the loss, theft, injury, or destruction, the importer shall file an application in duplicate on Customs Form 4315, or its electronic equivalent and within 90 days from the date of discovery shall file any evidence required by §158.26 or §158.27.

[T.D. 72–258, 37 FR 20171, Sept. 27, 1972, as amended by CBP Dec. 15–14, 80 FR 61292, Oct. 13, 2015]

§ 158.24 Place of filing.

The application and evidence shall be filed with the director of the port where the loss, theft, injury, or destruction occurred. In the case of total loss of merchandise by fire or other casualty while in transportation under bond, the application and evidence shall be filed with the director of the port at which the transportation entry was made. In the case of partial destruction of or injury to such merchandise, the application and evidence shall be filed with the director of the port of destination, except that if the merchandise is returned to the port at which the transportation entry was made, the application shall be filed at that port.

§ 158.25 Partial destruction or injury.

In the case of partial destruction or injury, no application shall be entertained unless the port director shall have had an opportunity to examine the merchandise or the remainder thereof for the purpose of fixing the percentage of injury or destruction. Whether the duty involved is ad valorem, specific, or compound, the percentage of injury for the purpose of the allowance shall be determined by comparing the market value of comparable sound merchandise with the net salvage value of the injured merchandise computed on the basis of the market value of comparable injured merchandise, such comparison to be made as of the time and place of examination.

§ 158.26 Loss or theft in public stores.

In the case of alleged loss or theft while the merchandise is in the public stores, there shall be filed a declaration of the importer, owner, or ultimate consignee that he did not receive the merchandise and that to the best of his knowledge and belief it was lost or stolen as alleged in the application. If the alleged loss or theft consisted of only a part of an examination package and was discovered after the release of the package from Customs custody, the following evidence shall be submitted:

(a) A declaration of each cartman, lighterman, or other carrier handling the package between the public stores and the place of delivery, setting forth the condition of the package at the time of receipt and delivery by him and whether or not there was an abstraction of the merchandise while the package was in his possession.

(b) A declaration of the person who first received the package for the importer, owner, or ultimate consignee as to whether or not he examined the package at the time of receipt, and, if so, as to its condition at that time.

(c) A declaration of the person who opened the package after release from Customs custody that the alleged missing merchandise was not found by him in the package or elsewhere.

§ 158.27 Accidental fire or other casualty.

In the case of injury or destruction by accidental fire or other casualty, the following evidence shall be submitted:

(a) A declaration of the master of the vessel, the conductor or driver of the vehicle, the proprietor of the warehouse, or other person (except a Customs officer) having charge of the merchandise at the time of casualty, stating:

(1) The time, place, and nature of such casualty;

(2) That the merchandise was on board the vessel or vehicle, in the warehouse, or otherwise in his charge, as the case may be, at the time of the casualty; and

(3) That it was totally destroyed and there is no probability of recovering or saving any part thereof, or that it was injured as the result of the casualty.

(b) The bill of lading, the entry summary (where appropriate) and the invoice covering the merchandise, or certified copies of the foregoing, unless such documents are already in the possession of the director of the port where the claim is filed.

(c) A copy of the insurance appraiser's report, if any.

[T.D. 72–258, 37 FR 20171, Sept. 27, 1972, as amended by T.D. 79–221, 44 FR 46829, Aug. 9, 1979]

§ 158.28 Waiver of evidence.

The port director may waive the production of any of the evidence required by this subpart if the validity of the claim is otherwise established to his satisfaction.

§ 158.29 Decision by port director.

When the application and evidence have been received and examined by the port director, he shall determine whether the desired abatement or refund of duty shall be made and notify the importer of his decision.

§ 158.30 Review of port director's decision.

(a) *Filing of petition*. The importer may file with the port director a petition addressed to the Commissioner of Customs for a review of the port director's decision. Such petition shall be filed in duplicate within 30 days from the date of the notice of the port director's decision, shall completely identify the case, and shall set forth in detail the objections to the port director's decision.

(b) *Decision by Commissioner*. When the petition has been filed, the port director shall promptly transmit both copies thereof and the entire file to the Commissioner, together with a full statement of his views. When the Commissioner's decision is received, the port director shall proceed in conformity therewith.

Subpart D—Destroyed, Abandoned, or Exported Merchandise

§ 158.41 Destruction of prohibited merchandise.

Merchandise regularly entered or withdrawn for consumption in good faith and denied admission into the United States by any Government agency after its release from Customs custody, pursuant to a law or regulation in force on the date of entry or withdrawal for consumption, may be destroyed under Government supervision. In such case, the destroyed merchandise is exempt from duty and any duties collected thereon shall be refunded. In lieu of destruction, the merchandise may be exported under Customs supervision in accordance with §158.45(c).

(Sec. 558(a), 46 Stat. 744, as amended; 19 U.S.C. 1558(a))

§ 158.42 Abandonment by importer within 30 days after entry.

Allowance in duties for merchandise abandoned to the Government in accordance with section 506(1), Tariff Act of 1930, as amended (19 U.S.C. 1506(1)), shall be subject to the following conditions:

(a) *Minimum quantity to be abandoned*. The merchandise being abandoned shall represent 5 percent or more of the total value of all the merchandise of the same class or kind entered in the invoice in which the merchandise being abandoned appears.

(b) *Application within 30 days*. The importer shall file written notice of abandonment with the director of the port where the entry was filed within 30 days after the date of entry, or, in the case of examination packages, within 30 days after release, whether or not delivery is taken by the importer immediately after entry or release as the case may be.

(c) *Delivery of merchandise*. Within the 30-day period set forth in paragraph (b) of this section, the importer shall deliver the abandoned merchandise to

such place as the port director specifies, unless the port director is satisfied that the merchandise is so far destroyed as to be nondeliverable.

(d) *Identification of merchandise.* The importer shall identify the abandoned merchandise with that described in the invoice used in making entry to the satisfaction of the port director, who shall make such examination as may be necessary to verify such identification.

(e) *Segregation and repacking.* When repacking is necessary to segregate the abandoned merchandise from the remainder of the shipment, such repacking shall be done at the expense of the importer and under Customs supervision.

(Sec. 506, 46 Stat. 732, as amended; 19 U.S.C. 1506)

§ 158.43 Abandonment or destruction of merchandise in bond.

Allowance in duties for merchandise entered under bond destroyed under section 557(c), Tariff Act of 1930, as amended (19 U.S.C. 1557(c)), or for merchandise in bonded warehouse abandoned to the Government under section 563(b), Tariff Act of 1930, as amended (19 U.S.C. 1563(b)), shall be subject to the following conditions:

(a) *Application by importer.* The importer shall file an application for abandonment or destruction of merchandise in bond with the port director on Customs From 3499, with the title modified to read ''Application and Permit to Abandon (or Destroy) Goods in Bond.'' When an application is for permission to destroy, the proposed method of destruction shall be stated in the application and be subject to the approval of the port director.

(b) *Concurrence of warehouse proprietor.* An application to abandon or destroy warehoused merchandise shall not be approved unless concurred in by the warehouse proprietor.

(c) *Abandonment*—(1) *Costs.* When in the opinion of the port director the abandonment of merchandise under section 563(b), Tariff Act of 1930, as amended (19 U.S.C. 1563(b)), will involve any expense or cost to the Government, or if the merchandise is worthless or unsalable, or cannot be sold for a sum sufficient to pay the expenses of sale, such abandonment shall not be permitted unless the importer deposits a sum which in the opinion of the port director will be sufficient to save the Government harmless from any expense or cost resulting from such abandonment. The sum so advanced shall be placed in a special deposit account and expended to cover the cost of destruction or to meet any deficit should the merchandise be sold and the proceeds of sale be less than the expenses of such sale. After meeting such expenses or deficit, any balance remaining shall be refunded to the importer. However, the applicant may elect to destroy such merchandise under Customs supervision pursuant to the provisions of section 557(c), Tariff Act of 1930, as amended (19 U.S.C. 1557(c)).

(2) *Time period.* The importer may abandon his warehoused merchandise voluntarily to the Government within 3 years from the date of importation.

(d) *Destruction*—(1) *Costs.* Destruction of merchandise under section 557(c), Tariff Act of 1930, as amended (19 U.S.C. 1557(c)), shall be at the expense of the importer.

(2) *Time period.* The importer may request destruction of his warehoused merchandise within 5 years from the date of importation.

(e) *Action by port director.* When the conditions set forth in paragraphs (a) through (d) of this section are met, the port director may grant applications and make an allowance in duties for the merchandise abandoned or destroyed. In any case where doubt exists, the matter shall be referred to the Commissioner of Customs.

(Secs. 557, 563, 46 Stat. 744, as amended, 746, as amended; 19 U.S.C. 1557, 1563)

[T.D. 72–258, 37 FR 20171, Sept. 27, 1972, as amended by T.D. 79–221, 44 FR 46829, Aug. 9, 1979]

§ 158.44 Disposition of abandoned merchandise.

(a) *General conditions.* The disposition of merchandise abandoned to the Government pursuant to § 158.42 or § 158.43, and not retained for official use, shall be governed by the regulations of the General Services Administration applicable to the United States Customs Service.

(b) *Sale of merchandise.* If the merchandise is cleared for sale, it shall be sold in accordance with the applicable provisions of part 127 of this chapter, unless it is worthless or it appears probable that the expenses of sale will exceed the proceeds. If the merchandise is sold, no part of the proceeds shall be returned to the importer.

(c) *Disposition of worthless merchandise.* If the merchandise or any part thereof is worthless or it appears probable that the expenses of its sale will exceed the proceeds, it shall be destroyed or otherwise disposed of as the port director shall specify. The port director shall insure that such merchandise is destroyed or removed from the control of the importer to avoid the possibility of any part of the same merchandise being made the subject of another application.

(Secs. 506(1), 563(b), 46 Stat. 732, as amended, 746, as amended; 19 U.S.C. 1506(1), 1563(b) R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

[T.D. 72–258, 37 FR 20171, Sept. 27, 1972, as amended by T.D. 77–12, 41 FR 56629, Dec. 29, 1976]

§ 158.45 Exportation of merchandise.

(a) *From continuous Customs custody.* Merchandise in Customs custody for which entry has not been completed and merchandise which has remained in continuous Customs custody that is covered by a liquidated or unliquidated consumption entry may be exported under Customs supervision in accordance with §§ 18.25 through 18.27 of this chapter, with refund of any duties that have been paid.

(b) *After release from Customs custody.* Except as provided for in paragraphs (c) and (d) of this section, no refund or other allowance in duties shall be made because of the exportation of merchandise after its release from Customs custody unless a drawback of duties is expressly provided for by law (see part 191 of this chapter).

(c) *Prohibited merchandise.* If merchandise has been regularly entered or withdrawn for consumption in good faith and is thereafter found to be prohibited entry under any law of the United States, it may be exported under Customs supervision in accordance with §§ 18.25 through 18.27 of this chapter, with refund of any duties that have been paid. In lieu of exportation, the merchandise may be destroyed in accordance with § 158.41.

(d) *Not legally marked merchandise.* When merchandise found to be not legally marked is exported or destroyed under Customs supervision after once having been released from Customs custody, as provided for in section 304(f), Tariff Act of 1930, as amended (19 U.S.C. 1304(f)), such exportation or destruction shall not exempt such merchandise from the payment of duties other than the marking duties.

(Sec. 558, 46 Stat. 744, as amended; 19 U.S.C. 1558; R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

[T.D. 72–258, 37 FR 20171, Sept. 27, 1972, as amended by T.D. 83–212, 48 FR 46771, Oct. 14, 1983; T.D. 90–51, 55 FR 28191, July 10, 1990]

PART 159—LIQUIDATION OF DUTIES

Sec.

Subpart D—Special Duties

Subpart E—Suspension of Liquidation

Subpart F—Continued Dumping and Subsidy Offset

AUTHORITY: 19 U.S.C. 66, 1500, 1504, 1624.

Subpart C also issued under 31 U.S.C. 5151.

Subpart D also issued under 19 U.S.C. 1671 *et seq*.

Subpart F also issued under 19 U.S.C. 1675c.

Sections 159.4, 159.5, and 159.21 also issued under 19 U.S.C. 1315;

Section 159.6 also issued under 19 U.S.C. 1321, 1505;

Section 159.7 also issued under 19 U.S.C. 1557;

Section 159.22 also issued under 19 U.S.C. 1507;

Section 159.44 also issued under 15 U.S.C. 73, 74;

Section 159.46 also issued under 19 U.S.C. 1304;

Section 159.55 also issued under 19 U.S.C. 1558;

Section 159.57 also issued under 19 U.S.C. 1516.

SOURCE: T.D. 73–175, 38 FR 17482, July 2, 1973, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 159 appear by CBP Dec. No. 16–26, 81 FR 93023, Dec. 20, 2016.

§ 159.0 Scope.

This part sets forth general rules for the liquidation of entries. Certain specific procedures affecting liquidation appear in other parts of this chapter; e.g., part 158 of this chapter covers allowance for lost or damaged merchandise.

Subpart A—General Provisions

§ 159.1 Definition of liquidation.

Liquidation means the final computation or ascertainment of duties on entries for consumption or drawback entries.

[T.D. 01–24, 66 FR 16400, Mar. 26, 2001, as amended by CBP Dec. 11–02, 76 FR 2576, Jan. 14, 2011]

§ 159.2 Liquidation required.

All entries covering imported merchandise, except temporary importation bond entries and those for transportation in bond or for immediate exportation, shall be liquidated. Vessel repair entries are not subject to liquidation under this part (see § 4.14(i)(3) of this chapter).

[T.D. 73–175, 38 FR 17482, July 2, 1973, as amended by T.D. 01–24, 66 FR 16400, Mar. 26, 2001]

§ 159.3 Rounding of fractions.

(a) *Value.* In the computation of duty on entries, ad valorem rates shall be applied to the values in even dollars, fractional parts of a dollar less than 50 cents being disregarded and 50 cents or more being considered as $1, with all merchandise in the same invoice subject to the same rate of duty to be treated as a unit. However, the total dutiable value of the invoice shall not be increased or decreased by more than the rounding of the total dutiable value to an even dollar. When necessary, fractional parts of a dollar, whether more or less than 50 cents, shall be dropped or taken up as whole dollars in order to avoid such an increase or decrease. If in such cases it is necessary to drop fractional parts of a dollar amounting to 50 cents or more, the lower fractions shall be dropped, and if it is necessary to take up as whole dollars fractional parts less than 50 cents, the larger fractions shall be

taken. In the case of two equal fractions, the one subject to the lower rate of duty shall be dropped or taken up, as the case may be. In determining a rate of duty dependent upon value, fractional parts of a dollar shall be considered.

(b) *Quantities subject to specific duty.* Except in the case of alcoholic beverages treated under §159.4, if a rate of duty is specific and $1 or less per unit, fractional quantities, if less than one-half, shall be disregarded, and if one-half or more shall be treated as a whole unit. Subject to the same exception, if a specific rate is more than $1 per unit, duty shall be assessed upon the exact quantity with any fractional part expressed in the form of a decimal extended to two places.

§ 159.4 Alcoholic beverages.

(a) *Quantities subject to duties.* Customs duties and internal revenue taxes on alcoholic beverages provided for in headings 2207 and 2208, Harmonized Tariff Schedule of the United States (HTSUS), (19 U.S.C. 1202), and subject to internal revenue taxes shall be collected only on the number of proof gallons and fractional parts thereof, entered or withdrawn for consumption. No internal revenue tax shall be collected on distilled spirits in bulk which have been transferred to Internal Revenue bonded premises in accordance with §141.102(b) of this chapter. Customs duties and internal revenue taxes on alcoholic beverages other than subheadings 2206.00.30 and 2206.00.90, HTSUS, and distilled spirits provided for in headings 2207 and 2208, shall be collected only on the number of wine gallons and fractional parts thereof, entered or withdrawn for consumption.

(b) *Computation of duties.* In the computation of Customs duties on alcoholic beverages provided for in headings 2207 and 2208 (19 U.S.C. 1202), which are also subject to internal revenue taxes, the methods prescribed for the computation of internal revenue taxes on such beverages shall be followed. The following methods apply to the specific beverages shown:

(1) *Distilled spirits.* The quantity of distilled spirits imported in barrels, kegs, or similar containers shall be ascertained in accordance with the regulations of the Bureau of Alcohol, Tobacco and Firearms. Where distilled spirits are imported in bottles, jugs, or similar containers, Customs duties and taxes shall be collected on the exact quantity contained in each case or other outer container, fractional parts of a gallon being carried out to three decimal places utilizing the proof gallon method of computation.

(2) *Wine.* Customs duties and taxes on wines shall be on the basis of a wine gallon of liquid measure equivalent to 231 cubic inches and shall be paid proportionally on all fractional parts of a wine gallon. Fractions of less than one-tenth gallon shall be converted to the nearest one-tenth gallon, and five-hundredths gallon shall be converted to the next full one-tenth gallon.

(3) *Beer and similar fermented beverages.* Customs duties and taxes on beer, ale, porter, stout, and other similar fermented beverages, including sake, of any name or description containing one-half of 1 percent or more of alcohol by volume, brewed or produced from malt, wholly or in part, or from any substitute therefor, shall be collected in accordance with section 5051(a), Internal Revenue Code of 1954 (26 U.S.C. 5051(a)).

[T.D. 73–175, 38 FR 17482, July 2, 1973, as amended by T.D. 78–329, 43 FR 43455, Sept. 26, 1978; T.D. 80–271, 45 FR 75641, Nov. 17, 1980; T.D. 89–1, 53 FR 51270, Dec. 21, 1988]

§ 159.5 Cigars, cigarettes, and cigarette papers and tubes.

The internal revenue taxes imposed on cigars, cigarettes, and cigarette papers and tubes under section 5701 or 7652, Internal Revenue Code of 1954 (26 U.S.C. 5701 or 7652), are determined in accordance with section 5703 of that Code (26 U.S.C. 5703) at the time of removal; that is, on the quantity removed from Customs custody under the entry or withdrawal for consumption. The Customs duties, unlike those on alcoholic beverages, do not necessarily apply only to such quantities.

§ 159.6 Difference between liquidated duties and estimated duties.

(a) *Difference under $20 in original liquidation.* When there is a net difference of less than $20 between the total

amount of duties, fees, taxes, and interest assessed in the liquidation of any entry (other than an informal, mail, or baggage entry) and the total amount of estimated duties, fees, and taxes deposited, including any supplemental deposit, the difference will be disregarded and the entry endorsed ''as entered.'' In the case of an informal, mail, or baggage entry, the amount of duties, fees, and taxes computed by a CBP officer when the entry is prepared by, or filed with, him will be considered the liquidated assessment.

(b) *Difference under $20 in reliquidation.* When there is a net difference of less than $20 between the total amount of duties, fees, taxes, and interest found due in the reliquidation of any entry and the total amount of duties, fees, taxes, and interest assessed in the prior liquidation of the entry, the difference will be disregarded except in the following cases:

(1) *Reliquidation at importer's request.* When reliquidation of any entry is made at the importer's request, such as reliquidation following the allowance of a protest under section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), or, for entries made before December 18, 2004, a request for correction under section 520(c), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)), any refund determined to be due will be refunded even if less than $20.

(2) *Court decision.* Any refund or increase determined to be due as the result of the reliquidation of an entry in accordance with a court decision and judgment order will be refunded or collected as the case may be.

(c) *Difference of $20 or more collected or refunded.* If there is a difference of $20 or more between the duties, fees, taxes, and interest assessed in the liquidation of an entry and the total estimated duties, fees, and taxes deposited, or between the total duties, fees, taxes, and interest assessed in the reliquidation of an entry and those assessed in the prior liquidation, the entry will be endorsed to show the difference and bills or refund checks will be issued.

(d) *Customs duties and fees and internal revenue taxes and interest netted for $20 limit.* The assessments of customs duties and fees and internal revenue taxes and interest will be separately stated on the entry at the time of liquidation, but the amounts of any differences will be netted when applying the $20 minimum for issuance of a bill or refund check.

[T.D. 73–175, 38 FR 17482, July 2, 1973, as amended by T.D. 78–394, 43 FR 49791, Oct. 25, 1978; T.D. 94–51, 59 FR 30296, June 13, 1994; 64 FR 56440, Oct. 20, 1999; CBP Dec. 11–02, 76 FR 2576, Jan. 14, 2011]

§ 159.7 Rewarehouse entries.

The liquidation of the original warehouse entry shall be followed in determining the liability for duties on a rewarehouse entry, except in the following cases:

(a) *Merchandise excluded from liquidation of original warehouse entry.* When any of the following types of merchandise are withdrawn from warehouse for transportation to another port, they will be excluded from the liquidation of the original warehouse entry, and the liability for duties will be determined by a liquidation of the rewarehouse entry made at the port where the merchandise is withdrawn for consumption or for exportation:

(1) Alcoholic beverages provided for in headings 2203 through 2208, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202), and subject to internal revenue taxes;

(2) Cigars, cigarettes, and cigarette papers and tubes subject to internal revenue taxes;

(3) Tariff-rate quota merchandise; and

(4) Wool or hair subject to duty at a rate per clean kilogram under Chapter 51, HTSUS.

(b) *Reliquidation required by change in rate.* When a rate of customs duty or tax is changed by an act of Congress or a proclamation of the President, any necessary reliquidation of customs duty or tax on merchandise covered by a rewarehouse entry which may be required by reason of the change in rate will be made by the Center director on the effective date of the change.

(c) *Shortage, irregular delivery, nondelivery, and other cases.* In cases involving shortage, irregular delivery, or nondelivery under the original warehouse withdrawal for transportation,

or in other cases when the Center director is of the opinion that circumstances make it inadvisable to follow the liquidation of the original warehouse entry, he will make an appropriate adjustment in the amount of duties to be assessed under the rewarehouse entry.

[T.D. 73–175, 38 FR 17482, July 2, 1973, as amended by T.D. 89–1, 53 FR 51270, Dec. 21, 1988; T.D. 90–78, 55 FR 40168, Oct. 2, 1990; CBP Dec. 11–02, 76 FR 2576, Jan. 14, 2011]

§ 159.8 Allowance for loss, injury, etc.

Allowance in duties for any merchandise which is lost, stolen, destroyed, injured, abandoned, or short-shipped will be made in accordance with the provisions of part 158 of this chapter.

[T.D. 73–175, 38 FR 17482, July 2, 1973, as amended by CBP Dec. 11–02, 76 FR 2576, Jan. 14, 2011]

§ 159.9 Notice of liquidation and date of liquidation for formal entries.

(a) *Notice of liquidation.* Notice of liquidation of formal entries will be provided on CBP's public Web site, *www.cbp.gov*.

(b) *Posting of notice.* The notice of liquidation will be posted for the information of importers in a conspicuous place on *www.cbp.gov* in such a manner that it can readily be located and consulted by all interested persons.

(c) *Date of liquidation*—(1) *Generally.* The notice of liquidation will be dated with the date it is posted electronically on *www.cbp.gov* for the information of importers. This electronic posting will be deemed the legal evidence of liquidation. The notice of liquidation will be maintained on *www.cbp.gov* for a minimum of 15 months from the date of posting.

(2) *Exception: Entries liquidated by operation of law.* (i) Entries liquidated by operation of law at the expiration of the time limitations prescribed in section 504, Tariff Act of 1930, as amended (19 U.S.C. 1504), and set out in §§ 159.11 and 159.12, will be deemed liquidated as of the date of expiration of the appropriate statutory period and will be posted on *www.cbp.gov* when CBP determines that each entry has liquidated by operation of law and will be dated with the date of liquidation by operation of law.

(ii) For liquidation notices that were posted or lodged in the customhouse, pursuant to section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514) and part 174 of this chapter, a protest of a decision relating to an entry made before December 18, 2004, must be filed within 90 days from the date of liquidation of an entry by operation of law or within 90 days from the date the bulletin notice thereof was posted or lodged in the customhouse, or, in the case of a protest of a decision relating to an entry made on or after December 18, 2004, within 180 days from the date of liquidation of an entry by operation of law.

(iii) For liquidation notices posted on *www.cbp.gov*, pursuant to section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514) and part 174 of this chapter, a protest of a decision relating to an entry made before December 18, 2004, must be filed within 90 days from the date of liquidation of an entry by operation of law or within 90 days from the date notice thereof is posted on *www.cbp.gov*, or, in the case of a protest of a decision relating to an entry made on or after December 18, 2004, within 180 days from the date of liquidation of an entry by operation of law.

(d) *Courtesy notice of liquidation.* CBP will endeavor to provide the entry filer or its agent and the surety on an entry with a courtesy notice of liquidation for all electronically filed entries liquidated by CBP or deemed liquidated by operation of law. The courtesy notice of liquidation that CBP will endeavor to provide will be electronically transmitted pursuant to a CBP authorized electronic data interchange system if the entry was filed electronically in accordance with part 143 of this chapter. This notice will serve as an informal, courtesy notice and not as a direct, formal, and decisive notice of liquidation.

[CBP Dec. No. 16–25, 81 FR 89380, Dec. 12, 2016]

§ 159.10 Notice of liquidation and date of liquidation for informal, mail, and baggage entries.

(a) *Usual date of liquidation.* Except in the cases provided for in paragraph (b)

of this section, the effective date of liquidation for informal, mail, and baggage entries will be:

(1) The date of payment by the importer of duties due on the entry;

(2) The date of release by CBP or the postmaster when the merchandise is released under such an entry free of duty; and

(3) The date a free entry is accepted for articles released under a special permit for immediate delivery under part 142 of this chapter.

(b) *Date of liquidation when duty cannot be determined at time of entry*. When the proper rate or amount of duty cannot be determined at the time of entry because the merchandise is subject to a tariff-rate quota, because of a missing document which, if for free entry, is not produced prior to the release of the merchandise to the importer, or because of any other reason, the printed notice of liquidation appearing on the receipt issued for any money collected on the entry will be voided. When the tariff status of the merchandise either as dutiable or free is finally ascertained it will be noted on the entry. The effective date of liquidation will be the date of the notice of liquidation required by paragraph (c)(3) of this section.

(c) *Notice of liquidation*—(1) *Dutiable entries*. Where duties are paid on an entry in accordance with paragraph (a)(1) of this section, notice of liquidation is furnished by a suitable printed statement appearing on the receipt issued for duties collected. No other notice of liquidation will be given, but notice of reliquidation of any such entry will be given in the place and manner specified in §159.9(b).

(2) *Free entries*. Notice of liquidation is furnished by release of the merchandise under a free entry in accordance with paragraph (a)(2) of this section, or by acceptance of the free entry in accordance with paragraph (a)(3) of this section after release under a special permit for immediate delivery. No further notice of the liquidation of such entries will be given.

(3) *Entries where duty cannot be determined at time of entry*. When the proper rate or amount of duty cannot be determined at the time of entry as set forth in paragraph (b) of this section, notice of liquidation will be given in the manner specified in §159.9 for formal entries.

[T.D. 73–175, 38 FR 17482, July 2, 1973, as amended by T.D. 90–1, 54 FR 52933, Dec. 26, 1989; CBP Dec. 11–02, 76 FR 2576, Jan. 14, 2011; CBP Dec. No. 16–25, 81 FR 89381, Dec. 12, 2016]

§159.11 Entries liquidated by operation of law.

(a) *Time limit generally*. Except as provided in §159.12, an entry not liquidated within one year from the date of entry of the merchandise, or the date of final withdrawal of all merchandise covered by a warehouse entry, will be deemed liquidated by operation of law at the rate of duty, value, quantity, and amount of duties asserted by the importer of record. Notice of liquidation will be given electronically as provided in §§159.9 and 159.10(c)(3) of this part. CBP will endeavor to provide a courtesy notice of liquidation in accordance with §159.9(d).

(b) *Applicability*. The provisions of this section and §159.12 will apply to entries of merchandise for consumption or withdrawals of merchandise for consumption made on or after April 1, 1979.

[T.D. 79–221, 44 FR 46829, Aug. 9, 1979, as amended by T.D. 90–1, 54 FR 52933, Dec. 26, 1989; T.D. 01–24, 66 FR 16400, Mar. 26, 2001; CBP Dec. 10–29, 75 FR 52452, Aug. 26, 2010; CBP Dec. 11–02, 76 FR 2576, Jan. 14, 2011; CBP Dec. 11–17, 76 FR 50887, Aug. 17, 2011; CBP Dec. No. 16–25, 81 FR 89381, Dec. 12, 2016]

§159.12 Extension of time for liquidation.

(a) *Reasons*—(1) *Extension*. The Center director may extend the 1–year statutory period for liquidation for an additional period not to exceed 1 year if:

(i) *Information needed by CBP*. Information needed by CBP for the proper appraisement or classification of the merchandise is not available, or

(ii) *Importer's request*. The importer requests an extension in writing before the statutory period expires and shows good cause why the extension should be granted. ''Good cause'' is demonstrated when the importer satisfies the Center director that more time is needed to present to CBP information which will affect the pending action, or there is a similar question under review by CBP.

(2) *Suspension.* The 1-year liquidation period may be suspended as required by statute or court order.

(b) *Notice of extension.* If the Center director extends the time for liquidation, as provided in paragraph (a)(1) of this section, the official notice of extension and reasons therefor will be posted on *www.cbp.gov.* The notice of extension will be maintained on *www.cbp.gov* for a minimum of 15 months from the date of posting. The Center director will also endeavor to transmit a courtesy notice of extension to the entry filer or its agent and the surety on an entry through a CBP-authorized electronic data interchange system.

(c) *Notice of suspension.* If the liquidation of an entry is suspended as required by statute or court order, as provided in paragraph (a)(2) of this section, the official notice of suspension will be posted on *www.cbp.gov.* The notice of suspension will be maintained on *www.cbp.gov* for a minimum of 15 months from the date of posting. The Center director will also endeavor to transmit a courtesy notice of suspension to the entry filer or its agent and the surety on an entry through a CBP-authorized electronic data interchange system.

(d) *Additional extensions*—(1) *Information needed by CBP.* If an extension has been granted because CBP needs more information and the Center director thereafter determines that more time is needed, he may extend the time for liquidation for an additional period not to exceed 1 year provided he issues the notice required by paragraph (b) of this section before termination of the prior extension period.

(2) *At importer's request.* If the statutory period has been extended for one year at the importer's request, and the importer thereafter determines that additional time is necessary, it may request another extension in writing before the original extension expires, giving reasons for its request. If the Center director finds that good cause (as defined in paragraph (a)(1)(ii) of this section) exists, the official notice of extension extending the time for liquidation for an additional period not to exceed one year will be posted on *www.cbp.gov,* and CBP will provide courtesy notice of the extension to the entry filer or its agent and the surety on an entry through a CBP-authorized electronic data interchange system.

(e) *Limitation on extensions.* The total time for which extensions may be granted by the Center director may not exceed 3 years.

(f) *Time limitation.* An entry not liquidated within four years from either the date of entry, or the date of final withdrawal of all the merchandise covered by a warehouse entry, will be deemed liquidated by operation of law at the rate of duty, value, quantity, and amount of duty asserted by the importer of record, unless liquidation continues to be suspended by statute or court order. CBP will endeavor to provide a courtesy notice of liquidation, in accordance with §159.9(d), in addition to the notice specified in §159.9(c)(2)(i).

[T.D. 79–221, 44 FR 46829, Aug. 9, 1979, as amended by T.D. 90–1, 54 FR 52933, Dec. 26, 1989; CBP Dec. 11–02, 76 FR 2576, Jan. 14, 2011; CBP Dec. 11–17, 76 FR 50887, Aug. 17, 2011; CBP Dec. No. 16–25, 81 FR 89381, Dec. 12, 2016]

Subpart B—Weight, Gage, and Measure

§159.21 Quantity upon which duties based.

Insofar as duties are based upon the quantity of any merchandise, such duties shall be based upon the quantity of such merchandise at the time of its importation, except in the following cases:

(a) *Manipulation in warehouse.* If any merchandise covered by a warehouse entry has been cleaned, sorted, repacked, or otherwise changed in condition under section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562), withdrawals shall be passed and the entry liquidated on the basis of the weight, gauge, or measure of such merchandise in its manipulated condition with an appropriate notation in the duty statement that the duties are assessed on the basis of the manipulated condition of the merchandise.

(b) *Alcoholic beverages.* Duties on certain alcoholic beverages are assessed only on the quantities entered or withdrawn for consumption (see §159.4).

(c) *Cigars, cigarettes, and cigarette papers and tubes.* Although Customs duties on cigars, cigarettes, and cigarette papers and tubes are assessed on the quantities imported, the internal revenue taxes on such merchandise are assessed only on the quantities entered or withdrawn for consumption (see § 159.5).

[T.D. 73–175, 38 FR 17482, July 2, 1973, as amended by T.D. 80–142, 45 FR 36386, May 30, 1980]

§ 159.22 Net weights and tares.

(a) *Determination of net weight.* The net weight of merchandise dutiable by net weight, or upon a value dependent upon net weight, shall be determined insofar as possible by obtaining the actual weight, or by deducting the actual or schedule tare from the gross weight. Actual tare may be determined on the basis of tests when the tares of the packages in a shipment are reasonably uniform.

(b) *Invoice net weight or tare.* When the actual net weight or tare cannot reasonably be determined and no schedule tare is applicable, liquidation may be made on the basis of the invoice net weight or tare.

(c) *Schedule tare.* The following tares, which, from experience, have proved to be the average for certain classes of merchandise shall be known as schedule tares and shall be applied, except as provided in paragraph (d) of this section:

Apple boxes. 2.984 kilograms per box. This schedule tare includes the paper wrappers, if any, on the apples.

China clay in so-called half-ton casks: 26.856 kilograms per cask.

Figs in skeleton cases: Actual tare for outer containers plus 13 percent of the gross weight of the inside wooden boxes and figs.

Fresh tomatoes: 113 grams per 100 paper wrappings.

Lemons and oranges: 283 grams per box and 142 grams per half box for paper wrappings, and actual tare for outer containers.

Ocher, dry, in casks: Eight percent of the gross weight.

Ocher, in oil, in casks: Twelve percent of the gross weight.

Pimientos in tins imported from Spain: The following schedule drained weight shall be used as the Customs dutiable weight in the liquidation of entries, the difference between the weight of the new contents of pimientos in tins and such drained weight being the allowance made in liquidation for tare for water:

Size can	Drained weight
3 kilo	13.6 kilograms-case of 6 tins.
794 grams	16.7 kilograms-case of 24 tins.
425 grams	8.0 kilograms-case of 24 tins.
198 grams	3.9 kilograms-case of 24 tins.
113 grams	2.4 kilograms-case of 24 tins.

Tobacco, leaf not stemmed: 5.9 kilograms per bale: Sumatra: actual tare for outside coverings, plus 1.9 kilograms for the inside matting and, if a certificate is attached to the invoice certifying that the bales contain paper wrapping and specifying whether light or heavy paper has been used, either 113 grams or 227 grams for the paper wrapping according to the thickness of paper used.

(d) *Actual tare.* In the following circumstances, the actual tare shall be ascertained and in so doing the weigher shall empty and weigh as many casks, boxes, and other coverings as he may deem necessary:

(1) If the importer is not satisfied with the invoice tare or with the schedule tare;

(2) If the Center director is of the opinion that the invoice or schedule tare does not correctly represent the tare of the merchandise; or

(3) If the weigher has reason to believe that the invoice or schedule tare is greater than the real tare.

(e) *Estimated tare.* When it is impracticable to ascertain the actual tare, the weigher shall state in his report what, in his judgment, constitutes a fair tare allowance.

(f) *Weight for value purposes.* In determining the total dutiable value of merchandise which is subject to ad valorem duty and appraised on the basis of weight, liquidation shall be made on the same basis as appraisement. For example, if appraisement is made on the basis of gross weight, the unit value shall be multiplied by the total gross weight in computing the total value even though net weight may be used for other purposes in liquidation, such as in determining total specific duties.

[T.D. 73–175, 38 FR 17482, July 2, 1973, as amended by T.D. 89–1, 53 FR 51270, Dec. 21, 1988]

Subpart C—Conversion of Foreign Currency

§ 159.31 Rates to be used.

Except as otherwise specified in this subpart, no rate or rates of exchange shall be used to convert foreign currency for Customs purposes other than a proclaimed rate or certified rate or rates.

§ 159.32 Date of exportation.

The date of exportation for currency conversion shall be fixed in accordance with § 152.1(c) of this chapter.

§ 159.33 Proclaimed rate.

If a rate of exchange has been proclaimed by the Secretary of the Treasury in accordance with 31 U.S.C. 5151(b) for the currency involved, such proclaimed rate shall be used unless it varies by 5 percent or more from the certified daily rate for the date of exportation as set forth in § 159.35. In determining the percentage of variation between the proclaimed rate and the certified rate, the difference between the two rates shall be divided by the certified rate.

[T.D. 73–175, 38 FR 17482, July 2, 1973, as amended by T.D. 97–82, 62 FR 51771, Oct. 3, 1997]

§ 159.34 Certified quarterly rate.

(a) *Countries for which quarterly rate is certified.* For the currency of each of the following foreign countries, there will be published in the Customs Bulletin, for the quarter beginning January 1, and for each quarter thereafter, the rate or rates first certified by the Federal Reserve Bank of New York for such foreign currency for a day in that quarter:

Australia, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Hong Kong, India, Iran, Ireland, Italy, Japan, Malaysia, Mexico, Netherlands, New Zealand, Norway, People's Republic of China, Philippines, Portugal, Republic of South Africa, Singapore, Spain, Sri Lanka (Ceylon), Sweden, Switzerland, Thailand, United Kingdom, Venezuela.

(b) *When certified quarterly rate is used.* The certified quarterly rate established under paragraph (a) of this section shall be used for Customs purposes for any date of exportation within the quarter, except in the following cases:

(1) *Proclaimed rate.* If a rate has been proclaimed by the Secretary of the Treasury under § 159.33 which does not vary by 5 percent or more from the appropriate certified daily rate, notice of such variance shall be published in the Customs Bulletin and the proclaimed rate shall be used for Customs purposes in connection with merchandise exported on such date.

(2) *Certified daily rate.* If the certified daily rate for the date of exportation varies by 5 percent or more from the certified quarterly rate, notice of such variation and the rate or rates certified for such day shall be published in the Customs Bulletin, and such certified daily rate shall be used for Customs purposes in connection with merchandise exported on such day.

[T.D. 73–175, 38 FR 17482, July 2, 1973, as amended by T.D. 81–117, 46 FR 24944, May 4, 1981]

§ 159.35 Certified daily rate.

The daily buying rate of foreign currency which is determined by the Federal Reserve Bank of New York and certified to the Secretary of the Treasury in accordance with 31 U.S.C. 5151(e) shall be used for the conversion of foreign currency whenever a proclaimed rate or certified quarterly rate is not applicable under the provisions of §§ 159.33 and 159.34. If the date of exportation is one on which banks are generally closed in New York City, then the certified daily rate for the last preceding business day shall be considered the certified daily rate for the day of exportation.

[T.D. 73–175, 38 FR 17482, July 2, 1973, as amended by T.D. 97–82, 62 FR 51771, Oct. 3, 1997]

§ 159.36 Multiple certified rates.

The following procedures shall apply when the Federal Reserve Bank of New York certifies two or more rates of exchange (e.g., official and free) for a foreign currency:

(a) *Rates to be published.* When the Federal Reserve Bank of New York certifies two or more rates of exchange for the currency of any country, those

rates will be published in the Customs Bulletin.

(b) *Laws of country of exportation followed.* When multiple rates have been certified for a foreign currency, the rate to be used for Customs purposes shall be the type of certified rate which the Center director is satisfied, from information in his own files, information obtained and presented to him by the importer, or information obtained from other sources, is uniformly applicable under the laws and regulations of the country of exportation to the particular class of merchandise on the date of exportation. In cases where two or more types of certified rates are uniformly applicable on a percentage bases, each type of certified rate shall be used for the percentage of value to which it is applicable. The percentages used shall be those which reflect realistically the percentage for which each type of rate is uniformly applicable under the laws and regulations of the country of exportation on the date of exportation.

(c) *Procedure when multiple certified rates not uniformly applicable.* If the Center director has credible information that a type of rate or combination of types of rates which would otherwise be applicable under paragraph (b) of this section were not required or permitted, as the case may be, under the laws and regulations of the country of exportation to be used uniformly during any period in connection with the payment for all merchandise of the class involved, he shall immediately submit a detailed report to the Commissioner of Customs, and shall suspend appraisement and liquidation as to all merchandise of the class involved exported to the United States during the period involved, until instructions are received from the Commissioner of Customs.

(d) *Rate for merchandise different from rate for costs.* If the Center director has credible information that a type of rate or combination of types of rates not applicable to payment for the merchandise was required or permitted in payment of costs, charges, or expenses, the currency conversions for the exchange covering payment for the merchandise and for the exchange covering such costs, charges, or expenses shall be calculated separately. In deducting nondutiable costs, charges, or expenses, the foreign exchange shall be at the rate or rates actually used in payment of such costs, charges, or expenses, whether or not certified in accordance with §159.34 or §159.35. If the costs, charges or expenses are dutiable, they shall be calculated according to the rules set forth in this subpart. In the event that any type of rate uniformly applicable to payment of such dutiable costs, charges, or expenses for merchandise of the class involved was a type of rate not certified in accordance with §159.34 or §159.35, the Center director shall immediately submit a detailed report to the Commissioner of Customs, and shall suspend appraisement and liquidation as to all merchandise of the class involved exported to the United States during the period involved, until instructions are received from the Commissioner.

§159.37 Suspension of certification of rates.

Whenever the Federal Reserve Bank of New York advises that its certification of rates for a currency is being suspended pending determination of the question whether it will certify multiple rates for that currency, the following procedures shall apply:

(a) *Notification of suspension.* Customs field officers will be informed when certification of a currency is being suspended. Currency information received from the Federal Reserve Bank, or otherwise available, which might be helpful in calculating estimated duties during the period of suspension will be furnished to the Customs field officers.

(b) *Suspension of liquidation.* In any case where for the purposes of the assessment and collection of duties it is necessary to determine the proper rate or rates for a currency during the period when it has been suspended from certification, appraisement and liquidation shall be suspended until resumption of certification.

(c) *Resumption of certification.* When certification is resumed by the Federal Reserve Bank, the procedures in §159.36 shall apply.

§ 159.38 Rates for estimated duties.

For purposes of calculating estimated duties, the Center director shall use the rate or rates appearing to be applicable under the instructions in this subpart to the merchandise involved. When it is not yet known what certified rate or rates are applicable or no rate has been certified, the Center director shall take into account all the information in his possession and shall use the highest rate or combination of rates (*i.e.*, the rate or combination of rates showing the highest amount of United States money), certified or uncertified as the case may be, which could be applicable.

Subpart D—Special Duties

§ 159.41 Antidumping duties.

Antidumping duties will be assessed in accordance with part 351, chapter III of this title.

[T.D. 80–271, 45 FR 75641, Nov. 17, 1980, as amended by CBP Dec. 12–21, 77 FR 73309, Dec. 10, 2012]

§ 159.42 Discriminating duties.

The discriminating duties provided for in subsection 1 of paragraph J, section IV, Tariff Act of 1913, as amended by the Act of March 4, 1915 (19 U.S.C. 128, 131), and the discriminating duties and penalties provided for in section 338, Tariff Act of 1930 (19 U.S.C. 1338), shall be imposed only in pursuance of specific instructions from the Commissioner of Customs.

§ 159.43 Duties contingent upon foreign export duties, charges, or restrictions.

U.S. Note 1 to Section X, Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), provides for the imposition under certain conditions of additional duties on merchandise covered thereby. The assessment of these additional duties is dependent upon action by the President, and notice of such action, if taken, will be published in the Customs Bulletin.

[T.D. 73–175, 38 FR 17482, July 2, 1973, as amended by T.D. 89–1, 53 FR 51270, Dec. 21, 1988; T.D. 97–82, 62 FR 51771, Oct. 3, 1997]

§ 159.44 Special duties on merchandise imported under agreements in restraint of trade.

Whenever it appears that imported articles may be subject to the special duties provided for in section 802, Act of September 8, 1916 (15 U.S.C. 73), the Center director shall report the matter to the Commissioner of Customs and await instructions with respect to the imposition of such duties.

§ 159.45 Additional duty for unauthentic claims of antiquity.

When additional duty is imposed in accordance with § 10.53 of this chapter for an unauthentic claim of antiquity, such duty shall be assessed in addition to any other duty imposed on the merchandise by law.

§ 159.46 Marking duties.

(a) *Based on dutiable value.* The marking duty prescribed by section 304(f), Tariff Act of 1930, as amended (19 U.S.C. 1304(f)), shall be assessed upon the dutiable value as defined in section 503, Tariff Act of 1930, as amended (19 U.S.C. 1503).

(b) *Suspension of liquidation.* The liquidation of entries shall not be suspended merely because the merchandise covered thereby is not legally marked, but, upon special application by the importer, the liquidation may be deferred for a reasonable time to permit the marking, destruction, or exportation of the merchandise.

[T.D. 73–175, 38 FR 17482, July 2, 1973, as amended by T.D. 90–51, 55 FR 28191, July 10, 1990]

§ 159.47 Countervailing duties.

Countervailing duties will be assessed in accordance with part 351, chapter III, of this title.

[T.D. 80–271, 45 FR 75641, Nov. 17, 1980, as amended by CBP Dec. 12–21, 77 FR 73309, Dec. 10, 2012]

Subpart E—Suspension of Liquidation

§ 159.51 General.

Liquidation of entries shall be suspended only when provided by law or regulation, or when directed by the Commissioner of Customs. Liquidation

of entries shall not be suspended simply because issues involved therein may be before the Customs Court in pending litigation, since the importer may seek relief by protesting the entries after liquidation.

§ 159.52 Warehouse entry not liquidated until final withdrawal.

Liquidation of a warehouse or rewarehouse entry shall be suspended until all merchandise covered by the entry has been accounted for within the bonded period by withdrawal, abandonment, or destruction, or until the bonded period has expired if the merchandise has not been so accounted for before that time.

§ 159.53 Proof of duty-free or reduced-duty status.

Various provisions in part 10 of this chapter provide for suspending liquidation of entries covering certain merchandise entered at a conditionally free or conditionally reduced rate of duty, pending production of required proof. Upon production of the required proof, or upon failure to produce the proof within the required time, the entries shall be liquidated accordingly.

§ 159.54 Open bonds for production of documents.

The liquidation of entries on which bonds are open for the production of documents affecting the rate of duty shall be suspended pending the performance or nonperformance under the bond, unless production of the document is waived in accordance with § 141.92 of this chapter.

§ 159.55 Possible prohibited food, drugs, or other articles.

(a) *Suspension of liquidation.* The liquidation of each entry covering merchandise the subject of § 12.1 of this chapter (which pertains to certain foods, drugs, cosmetics, economic poisons, hazardous substances, dangerous caustic or corrosive substances, and related items) shall be suspended until it is determined whether admission of the merchandise into the United States is permitted under the law.

(b) *Allowance for exportation or destruction.* In any case where the admission of such merchandise into the United States is refused and the merchandise is exported under Customs supervision in accordance with § 158.45(b) of this chapter, or destroyed under Customs supervision in accordance with § 158.41 of this chapter, the merchandise is exempt from duty and any duties collected thereon shall be refunded.

§ 159.57 Merchandise affected by an American manufacturer's cause of action sustained by the court.

Liquidation of entries for merchandise of the character covered by a decision of the Secretary of the Treasury published in accordance with § 175.24 of this chapter, entered or withdrawn for consumption after the date of publication of a decision of the U.S. Court of International Trade sustaining in whole or in part the cause of action of an American manufacturer, producer, or wholesaler, shall be suspended until final disposition is made of the cause of action. Upon final disposition, such entries shall be liquidated, or, if necessary, reliquidated in accordance with the final judicial decision.

[T.D. 73–175, 38 FR 17482, July 2, 1973, as amended by T.D. 85–90, 50 FR 21430, May 24, 1985]

§ 159.58 Dumping and countervailing duties; action by Center director.

(a) *Antidumping matters.* Upon receipt of notification from the Commissioner, the Center director will suspend liquidation on merchandise entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the ''Notice of Preliminary Affirmative Antidumping Determination,'' ''Notice of Final Affirmative Antidumping Determination'' or ''Notice of Violation of Agreement'' as provided by part 351, chapter III, of this title. The Center director will immediately notify the importer, consignee, or agent of each entry of merchandise in question with respect to which liquidation is suspended. The notice will indicate the relevant ascertained and determined or estimated antidumping duty.

(b) *Countervailing matters.* Upon receipt of notification from the Commissioner, the Center director will suspend liquidation on merchandise entered, or

withdrawn from warehouse, for consumption, on or after the date of publication of the ''Notice of Preliminary Affirmative Countervailing Duty Determination,'' ''Notice of Final Affirmative Countervailing Duty Determination'' or ''Notice of Violation of Agreement,'' as provided by part 351, Chapter III, of this title. The Center director will immediately notify the importer, consignee, or agent of each entry of merchandise in question with respect to which liquidation is suspended. The notice will indicate the relevant ascertained and determined or estimated countervailing duty.

[CBP Dec. No. 16–26, 81 FR 93023, Dec. 20, 2016, as amended by CBP Dec. No. 17–08, 82 FR 35065, July 28, 2017]

Subpart F—Continued Dumping and Subsidy Offset

SOURCE: T.D. 01–68, 66 FR 48552, Sept. 21, 2001, unless otherwise noted.

§ 159.61 General.

(a) *Continued dumping and subsidy offset.* Under section 754 of the Tariff Act of 1930, as amended by Public Law 106–387, 114 Stat. 1549 (19 U.S.C. 1675c), known as the Continued Dumping and Subsidy Offset Act of 2000, assessed duties received on or after October 1, 2000 under a countervailing duty order, an antidumping duty order, or a finding under the Antidumping Act of 1921, will be distributed, as provided under this subpart, to affected domestic producers for certain qualifying expenditures that these affected domestic producers incur after the issuance of such an antidumping duty order or finding, or countervailing duty order. This distribution is called the continued dumping and subsidy offset.

(b) *Affected domestic producer*—(1) *General rule.* Except as provided in paragraph (b)(2) of this section, an ''affected domestic producer'' under paragraph (a) of this section means any manufacturer, producer, farmer, rancher or worker representative (including any association of such persons) that remains in operation continuing to produce the product covered by the antidumping duty order or finding or countervailing duty order, and that was a petitioner or an interested party that supported a petition concerning an antidumping duty order, a finding under the Antidumping Act of 1921, or a countervailing duty order that was entered. It is the responsibility of the U.S. International Trade Commission (USITC) to ascertain and timely forward to Customs a list of the domestic producers potentially considered ''affected domestic producers'' eligible to receive a distribution in connection with each order or finding. In addition to the potential ''affected domestic producers'' set forth on the USITC list, the following parties also are potential ''affected domestic producers'':

(i) *Successor company.* In the case of a company that has succeeded to the operations of a predecessor company that appeared on the USITC list, the successor company may file a certification to claim an offset as an affected domestic producer on behalf of the predecessor company. In its certification, the company must name the predecessor company to which it has succeeded and it must describe in detail the duly authorized succession by which it is entitled to file the certification.

(ii) *A member company of an association.* A member company of an association appearing on the USITC list for an order or finding may file a certification to claim an offset as an affected domestic producer, even though the member company does not itself appear on the USITC list, provided that the company also meets the other requirements of the statute. In its certification, the company must name the association of which it is a member and the company must specifically establish that it was a member of the association at the time the association filed the petition with the USITC.

(2) *Exceptions.* A party who is named on the USITC list is not an ''affected domestic producer'' under the following circumstances:

(i) *Product no longer produced.* A company, business or person that has ceased production of the product covered by the antidumping duty order or finding, or countervailing duty order, *i.e.,* did not manufacture that product at all during the fiscal year that is the subject of the disbursement, is not an

affected domestic producer under this section.

(ii) *Acquisition by related company*—(A) *Related company defined.* A company, business or person is not an affected domestic producer if that company, business, or person has been acquired by another company or business that is related to a company that opposed the antidumping or countervailing duty investigation that led to the order or finding. For purposes of this paragraph, a company, business or person is related to another company, business or person if:

(*1*) The company, business or person directly or indirectly controls or is controlled by the other company, business or person;

(*2*) A third party directly or indirectly controls both companies, businesses or persons; or

(*3*) Both companies, businesses or persons directly or indirectly control a third party and there is reason to believe that the relationship causes the first company, business or person to act differently than a nonrelated party.

(B) *Control of one party by another.* For purposes of paragraphs (b)(2)(ii)(A)(*1*) through (b)(2)(ii)(A)(*3*) of this section, one party would be considered to directly or indirectly control another party if the party was legally or operationally in a position to exercise restraint or direction over the other party.

(c) *Qualifying expenditures.* Qualifying expenditures which may be offset by a distribution of assessed antidumping and countervailing duties must fall within the categories described in paragraphs (c)(1) through (c)(10) of this section. These expenditures must be incurred after the issuance, and prior to the termination, of the antidumping duty order or finding or countervailing duty order under which the distribution is sought. Further, these expenditures must be related to the production of the same product that is the subject of the related order or finding, with the exception of expenses incurred by associations which must relate to a specific case.

(1) Manufacturing facilities;

(2) Equipment;

(3) Research and development;

(4) Personnel training;

(5) Acquisition of technology;

(6) Health care benefits for employees paid for by the employer;

(7) Pension benefits for employees paid for by the employer;

(8) Environmental equipment, training, or technology;

(9) Acquisition of raw materials and other inputs; and

(10) Working capital or other funds needed to maintain production.

§ 159.62 Notice of distribution.

(a) *Publication of notice.* At least 90 days before the end of a fiscal year, Customs will publish in the FEDERAL REGISTER a notice of intention to distribute assessed duties received as the continued dumping and subsidy offset for that fiscal year. The notice will include the list of domestic producers, based upon the list supplied by the USITC (see § 159.61(b)(1)), that would be potentially eligible to receive the distribution.

(b) *Content of notice.* The notice of intention to distribute the offset will also contain the following:

(1) The case name and number of the particular order or finding concerned, together with the dollar amount contained in the special account for that order or finding as of June 1 of the subject fiscal year (see § 159.64(a)(1)); and

(2) The instructions for filing the certification under § 159.63 in order to claim a distribution.

§ 159.63 Certifications.

(a) *Requirement and purpose for certification.* In order to obtain a distribution of the offset, each affected domestic producer must submit a certification, in triplicate, or electronically as authorized by CBP, to the Assistant Commissioner, Office of Administration, Headquarters, or designee, that must be received within 60 days after the date of publication of the notice in the FEDERAL REGISTER, indicating that the affected domestic producer desires to receive a distribution. The certification must enumerate the qualifying expenditures incurred by the domestic producer since the issuance of an order or finding for which a distribution has not previously been made, and it must

demonstrate that the domestic producer is eligible to receive a distribution as an affected domestic producer.

(b) *Content of certification.* While there is no established format for a certification, the certification must identify the date of the FEDERAL REGISTER notice under which it is submitted, and the case name and the number of the particular order or finding cited in the FEDERAL REGISTER notice. The certification must be executed and dated by a party legally authorized to bind the domestic producer. The certification must also state that the information contained in the certification is true and accurate to the best of the certifier's knowledge and belief under penalty of law, and that the domestic producer has records to support the qualifying expenditures being claimed.

(1) *Identifying information for domestic producer.* The certification must include the following identifying information related to the domestic producer:

(i) The name of the domestic producer and any name qualifier, if applicable (for example, any other name under which the domestic producer does business or is also known);

(ii) The address of the domestic producer (if a post office box, the secondary street address must also be included);

(iii) The Internal Revenue Service (IRS) number (with suffix) of the domestic producer, employer identification number, or social security number, as applicable;

(iv) The specific business organization of the domestic producer (corporation, partnership, sole proprietorship); and

(v) The name(s) of any individual(s) designated by the domestic producer as the contact person(s) concerning the certification, together with the phone number(s) and/or facsimile transmission number(s) and electronic mail (email) address(es) for the person(s).

(2) *Amount of claim.* In calculating the amount of the distribution being claimed as an offset, the certification must enumerate the following:

(i) The total amount of qualifying expenditures currently and previously certified by the domestic producer, and the amount certified by category (see §159.61(c)(1) through (c)(10));

(ii) The total amount of those expenditures which have been the subject of any prior distribution under section 754, Tariff Act of 1930, as amended (19 U.S.C. 1675c); and

(iii) The net amount for new and remaining qualifying expenditures being claimed in the current certification (the total amount currently and previously certified as noted in paragraph (b)(2)(i) of this section minus the total amount the subject of any prior distribution as noted in paragraph (b)(2)(ii) of this section).

(3) *Statement of eligibility to receive distribution.* The certification must contain a statement that the domestic producer desires to receive a distribution and is eligible to receive the distribution as an affected domestic producer (see §159.61(b)(1) and (b)(2)).

(i) *Amount certified for payment.* The affected domestic producer must affirm that the net amount certified for distribution does not encompass any qualifying expenditures for which distribution has previously been made (see paragraphs (b)(2)(ii) and (b)(2)(iii) of this section).

(ii) *Same qualifying expenditures included on more than one certification.* Where the domestic producer is listed as an affected domestic producer on more than one order or finding covering the same product and files a separate certification for each order or finding using the same qualifying expenditures as the basis for distribution in each case, each certification must list all the other orders or findings where the producer is claiming the same qualifying expenditures.

(iii) *Continued production of product covered by order or finding; acquisition by related company.* The statement must include information as to whether the domestic producer remains in operation and continues to produce the product covered by the particular order or finding under which the distribution is sought (see §159.61(b)(2)(i)). In addition, the domestic producer must state whether it has been acquired by a company or business that is related to a company, within the meaning of §159.61(b)(2)(ii)(A)(*1*) through (*3*), that

opposed the antidumping or countervailing duty investigation that resulted in the order or finding under which the distribution is sought.

(c) *Review and correction of certification.* A certification that is submitted in response to a notice of distribution and received within 60 days after the date of publication of the notice in the FEDERAL REGISTER may be reviewed before acceptance to ensure that all informational requirements are complied with and that any amounts set forth in the certification for current and prior qualifying expenditures, including the amount claimed for distribution, appear to be correct (see paragraph (b)(2) of this section). A certification that is found to be materially incorrect or incomplete will be returned to the domestic producer within 15 days after the close of the 60-day filing period. Within 10 days of the date that Customs returns a certification as being materially incorrect or incomplete, Customs must receive a corrected certification from the affected domestic producer. Customs will make every effort to assist companies to perfect their certifications and will not return claims for minor errors or omissions. However, it remains the sole responsibility of the domestic producer to ensure that the certification is correct, complete and satisfactory so as to demonstrate the entitlement of the domestic producer to the distribution requested. Failure to ensure that the certification is correct, complete and satisfactory as provided in this paragraph will result in the domestic producer not receiving a distribution.

(d) *Verification of certification; supporting records.* Certifications are subject to verification. Parties, therefore, are required to maintain the accounting records used in developing their claims, for a period of five years after the filing of the certification. The records supporting certifications must be those that are normally kept in the ordinary course of business (see §163.1(a)(1) and (a)(2)(vi) of this chapter). Parties must be able to demonstrate that their records specifically support each qualifying expenditure enumerated in a certification. In addition, the claimant must be able to support how qualifying expenditures are determined to be related to the production of the product covered by the order or finding.

(e) *Disclosure of information in certifications; acceptance by producer.* The name of the affected domestic producer, the total dollar amount claimed by that party on the certification, as well as the total dollar amount that Customs actually disburses to that company as an offset, will be available for disclosure to the public (see §159.64(g)(1)). The submission of the certification will be construed as an understanding and acceptance on the part of the domestic producer that this information will be disclosed to the public. Alternatively, a statement in a certification that this information is proprietary and exempt from disclosure will result in Customs rejection of the certification.

[T.D. 01–68, 66 FR 48552, Sept. 21, 2001, as amended by CBP Dec. 12–21, 77 FR 73309, Dec. 10, 2012]

§159.64 Distribution of offset.

(a) *The creation of Special Accounts and Clearing Accounts*—(1) *Special Accounts.* As directed in the legislation (19 U.S.C. 1675c(e)), Customs will establish Special Accounts for each antidumping duty order or finding or countervailing duty order, into which funds will be transferred as set out in paragraph (b) of this section. All distributions to affected domestic producers will be made from the Special Accounts.

(2) *Clearing Accounts.* In order to properly manage and account for dumping and subsidy offsets, as well as any requisite refunds to importers, Customs will also establish Clearing Accounts. All estimated antidumping and countervailing duties received pursuant to an antidumping or countervailing order or finding in effect on January 1, 1999, or thereafter, will be deposited into a Clearing Account.

(b) *Distribution of assessed duties received from the Special Accounts; refunds resulting from reliquidation or court action; and overpayments to affected domestic producers*—(1) *Distribution of assessed duties received from the Special Accounts.* (i) No later than 60 days after the end of a fiscal year, Customs will distribute the assessed duties transferred from

the Clearing Accounts and received into the Special Accounts. The amount distributed shall be referred to as the dumping and subsidy offset;

(ii) Transfers from the Clearing Accounts to the Special Accounts will be made by Customs throughout the fiscal year. Transfers will occur between a Clearing Account and a Special Fund Account when an entry upon which antidumping or countervailing duties are owed is properly liquidated pursuant to an order, finding or receipt of liquidation instructions;

(iii) The amount transferred at liquidation to the Special Account will be dependent upon the amount actually collected on the entry and in the Clearing Account. Following liquidation, additional transfers will be made on the liquidated entry to the corresponding Special Account, as additional antidumping or countervailing duties are collected.

(2) *Refunds resulting from reliquidation or court action.* If any of the underlying entries composing a prior distribution should reliquidate for a refund, such refund will be recovered from the corresponding Special Account. Similarly, refunds to importers resulting from any court action involving those entries will also be recovered from the corresponding Special Account. Refunds to importers will not be delayed pending the recovery of overpayments from domestic producers as set out in paragraph (b)(3) of this section.

(3) *Overpayments to affected domestic producers.* Overpayments to affected domestic producers resulting from subsequent reliquidations and/or court actions and determined by Customs to be not otherwise recoverable from the corresponding Special Account as set out in paragraph (b)(2) of this section will be collected from the affected domestic producers. The amount of each affected domestic producer's bill will be directly proportional to the total dumping and subsidy offset amounts that the affected domestic producer previously received under the related Special Account. All available collection methods will be used by Customs to collect outstanding bills, including but not limited to, administrative offset. Interest at the same rate set out at §24.3a(c) of this chapter will begin to accrue on unpaid bills 30 days from the bill date.

(c) *Payment of certified claims.* (1) If the total amount of the certified net claims filed by affected domestic producers does not exceed the amount of the offset available for distribution in the corresponding Special Account, the certified net claim for each affected domestic producer will be paid in full.

(2) If the certified net claims exceed the dumping and subsidy offset amount available in the corresponding Special Account, such offset will be made on a pro rata basis based on each affected domestic producer's total certified claim.

(3) In any case where the distribution is not for the entire certified qualifying expenditure submitted by an affected domestic producer, and if the affected domestic producer believes that the reduction was the result of clerical error or mistake by Customs, it must file a request for reconsideration within 30 calendar days to the address given in the notification. After considering the matter, the Customs Service will notify the party requesting reconsideration of its decision. However, any adjustments will be made only from funds remaining in the account for that case in the current or future fiscal years, and will be paid prior to any future distributions.

(d) *Final distribution and termination of the Special Account.* (1) A Special Account will be terminated and a final distribution will occur when:

(i) The order or finding with respect to which the account was established has terminated; and

(ii) All entries relating to the order or finding are liquidated, all outstanding amounts collected or properly accounted for by Customs, all related protests, petitions, and court actions fully concluded, and all refunds due to importers on the underlying entries are paid in full.

(2) Once the requirements set out in paragraph (d)(1) of this section have been met, notice of a final distribution will be issued pursuant to §159.62.

(3) Amounts not timely claimed under the notice of final distribution will be permanently deposited into the General Fund of the Treasury.

(e) *Interest on Special Accounts and Clearing Accounts.* In accordance with Federal appropriations law, and Treasury guidelines on Special Accounts, funds in such accounts are not interest-bearing unless specified by Congress. Likewise, funds being held in Clearing Accounts are not interest-bearing unless specified by Congress. Therefore, no interest will accrue in these accounts. However, statutory interest charged on antidumping and countervailing duties at liquidation will be transferred to the Special Account, when collected from the importer.

(f) *Distribution final and conclusive.* Except as provided in paragraphs (b)(3) and (c)(3) of this section, any distribution made to an affected domestic producer under this section shall be final and conclusive on the affected domestic producer.

(g) *Annual report; disclosure of information.* Although it is not mandated in the law (19 U.S.C. 1675c), Customs will issue an annual report on the disbursements. This report will be available to the public via the Customs website. The annual report will address any initiatives that have been implemented to improve the liquidation and disbursement process. In addition, the annual report will include the information described in paragraphs (g)(1) and (g)(2) of this section.

(1) *Company-specific information.* The annual report will include the following information concerning those parties that have submitted certifications for a distribution of the offset with respect to each order or finding as identified by its case number:

(i) The name of the claimant;

(ii) The total dollar amount claimed by that party on its certification; and

(iii) The total dollar amount disbursed to that company by Customs.

(2) *General information.* The annual report will include the following general information for each order or finding as identified by its case number:

(i) The number of entries and dollar amounts in the clearing account at the beginning of each fiscal year;

(ii) The number and amount of Customs re-liquidations during the fiscal year; and

(iii) The dollar amounts remaining uncollected from Customs bills issued during the fiscal year.

PART 161—GENERAL ENFORCEMENT PROVISIONS

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1600, 1619, 1624.

Section 161.2 also issued under 12 U.S.C. 95a; 18 U.S.C. 545; 19 U.S.C. 1595(a); 22 U.S.C. 401, 1934, 2349aa8–9; 42 U.S.C. 1804, 1807; 50 U.S.C. 1641 *et seq.*, 1701 *et seq.;* 50 U.S.C. App. 1–44, 2411.

Section 161.15 also issued under 5 U.S.C. 552.

SOURCE: T.D. 72–211, 37 FR 16487, Aug. 15, 1972, unless otherwise noted.

§ 161.0 Scope.

This part provides general information concerning Customs enforcement of certain import and export laws administered by other federal agencies, the filing of offers in compromise of government claims, the eligibility of individuals for informant compensation, and the filing of claims for informant compensation.

[T.D. 98–22, 63 FR 11826, Mar. 11, 1998]

Subpart A—General Provisions

§ 161.2 Enforcement for other agencies.

(a) *Laws enforced by Customs Service for administering agencies.* Some of the laws enforced in whole or in part by the Customs Service for administering agencies are:

(1) Importations and exportations of arms, ammunition, implements of war, helium gas, and other munitions of war are governed by laws administered by the Bureau of Alcohol, Tobacco and Firearms and Department of State;

(2) Importations and exportations of controlled substances are governed by laws administered by the Drug Enforcement Administration of the Department of Justice;

(3) Importations, exportations, and transactions involving identified goods, services, and technology with any of those countries designated as subject to economic sanctions under the laws and regulations administered by the Office of Foreign Assets Control of the Department of the Treasury.

(4) Importations and exportations of atomic energy source material, fissionable material, and equipment and devices for utilizing or producing fissionable material are subject to laws administered by the Nuclear Regulatory Commission; and

(5) The exportation of articles, other than those previously mentioned herein, are subject to requirements of laws administered by the Department of Commerce.

(b) *Seizure for violation of law.* When articles are imported or are intended to be, are being, or have been exported from the United States in violation of law, such articles and any vessel, vehicle, or aircraft knowingly used in their transportation shall be seized and proceeded against.

[T.D. 72–211, 37 FR 16487, Aug. 15, 1972, as amended by T.D. 76–21, 41 FR 2383, Jan. 16, 1976; T.D. 78–329, 43 FR 43456, Sept. 26, 1978; T.D. 91–77, 56 FR 46115, Sept. 10, 1991; T.D. 96–42, 61 FR 24889, May 17, 1996]

§ 161.5 Compromise of Government claims.

(a) *Offer.* An offer made pursuant to section 617, Tariff Act of 1930, as amended (19 U.S.C. 1617), in compromise of a Government claim arising under the Customs laws and the terms upon which it is made shall be stated in writing addressed to the Commissioner of Customs. The offer shall be limited to the civil liability of the proponent in the matter which is the subject of the Government's claim.

(b) *Deposit of specific sum tendered.* No offer in which a specific sum of money is tendered in compromise of a Government claim under the Customs laws will be considered by the Commissioner of Customs until due notice is received that such sum has been properly deposited in the name of the person submitting the offer with the Treasurer of the United States or a Federal Reserve bank. A proponent at a distance from a Federal Reserve bank may perfect his offer by tendering a bank draft for the amount of the offer payable to the Secretary of the Treasury for collection and deposit. If the offer is rejected, the money will be returned to the proponent.

(Sec. 617, 46 Stat. 757, as amended; 19 U.S.C. 1617)

Subpart B—Compensation of Informant

SOURCE: T.D. 91–14, 56 FR 5349, Feb. 11, 1991, unless otherwise noted.

§ 161.12 Eligibility for compensation.

In accordance with section 619, Tariff Act of 1930, as amended (19 U.S.C. 1619), any person not an employee or officer of the United States who either furnishes original information concerning any fraud upon the customs revenue or any violation, perpetrated or contemplated, of the customs or navigation laws or any other laws administered or enforced by Customs, or detects and seizes any item subject to seizure and forfeiture under the customs or navigationlaws or other laws enforced by Customs and reports the same to a Customs officer, may file a claim for compensation, provided there is a net amount recovered from such detection and seizure or such information, unless other laws specify different procedures. Any employee or officer of the United States who receives, accepts, or contracts for any portion of such compensation, either directly or indirectly, is subject to criminal prosecution and civil liability as provided by 19 U.S.C. 1620.

[T.D. 98–22, 63 FR 11826, Mar. 11, 1998]

§ 161.14 Advising informant of entitlement.

Any Customs officer who receives information shall advise the informant that, in the event of a recovery, he may be entitled to compensation. He shall also advise the informant that, if

the informant has executed a stipulation to that effect, any amount received by the informant in the form of purchase of evidence or purchase of information will be deducted from any compensation which may be awarded.

§ 161.15 Confidentiality for informant.

The name and address of the informant must be kept confidential. No files or information will be revealed which might aid in the unauthorized identification of an informant. Pursuant to 5 U.S.C. 552(b)(7)(D), specific informant records that are exempt from disclosure are those that could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source. Informant records maintained by CBP under an informant's name or personal identifier that are requested by a third party according to the informant's name or personal identifier are not subject to the disclosure requirements of 5 U.S.C. 552(a), unless the informant's status as an informant has been officially confirmed.

[CBP Dec. 15–16, 80 FR 71693, Nov. 17, 2015]

The name and address of the informant shall be kept confidential. No files or information shall be revealed which might aid in the unauthorized identification of an informant. Release of information is governed by §§ 103.12(g)(4) and 103.12(i) of this chapter.

§ 161.16 Filing a claim for informant compensation.

(a) *Limitations on claims.* Pursuant to 19 U.S.C. 1619, an informant may be paid up to 25 percent of the net recovery to the government from duties withheld; from any fine (civil or criminal), forfeited bail bond, penalty, or forfeiture incurred; or, if the forfeiture is remitted, from the monetary penalty recovered for remission of the forfeiture. The amount of the award paid to informants must not exceed $250,000 for any one case, regardless of the number of recoveries that result from the information furnished; however, no claim of less than $100 will be paid.

(b) *Filing of claim.* A claim must be filed, in duplicate, on DHS Form 4623 with the Special Agent in Charge, U.S. Immigration and Customs Enforcement, Homeland Security Investigations, who will make a recommendation on the form as to approval and the amount of the award. The Special Agent in Charge, U.S. Immigration and Customs Enforcement, Homeland Security Investigations will forward the form to the Center director, who will make a recommendation on the form as to approval and the amount of the award. The Center director shall forward the form to CBP Headquarters for action. If for any reason a claim has not been transmitted by the Center director, the claimant may apply directly to CBP Headquarters.

[T.D. 98–22, 63 FR 11826, Mar. 11, 1998, as amended by CBP Dec. 12–21, 77 FR 73309, Dec. 10, 2012; CBP Dec. No. 16–26, 81 FR 93024, Dec. 20, 2016]

PART 162—INSPECTION, SEARCH, AND SEIZURE

Sec.

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1592, 1593a, 1624, 6 U.S.C. 101, 8 U.S.C. 1324(b).

Section 162.3 also issued under 19 U.S.C. 1581;

Section 162.4 also issued under 39 U.S.C. 604, 605;

Section 162.5 also issued under 19 U.S.C. 1581, 49 U.S.C. 1509;

Section 162.6 also issued under 19 U.S.C. 1461, 1467, 1496;

Section 162.7 also issued under 19 U.S.C. 482;

Section 162.8 also issued under 9 U.S.C. 1629;

Section 162.21 also issued under 19 U.S.C. 482, 1581, 1582, 1602;

Section 162.22 also issued under 18 U.S.C. 546; 19 U.S.C. 1459, 1594, 1595a, 1701, 1703–1708;

Section 162.23 also issued under 19 U.S.C. 1595a(c).

Section 162.32 also issued under 19 U.S.C. 1603, 1610;

Section 162.32 also issued under 19 U.S.C. 1603, 1610;

Section 162.43 also issued under 19 U.S.C. 1606, 1608;

Section 162.44 also issued under 19 U.S.C. 1614;

Section 162.45 also issued under 19 U.S.C. 1607, 1608;

Section 162.45a also issued under 21 U.S.C. 881;

Section 162.46 also issued under 19 U.S.C. 1609, 1611;

Section 162.47 also issued under 19 U.S.C. 1608;

Section 162.48 also issued under 19 U.S.C. 1606, 1607, 1608, 1612, 1613b, 1618;

Section 162.49 also issued under 26 U.S.C. 5688;

Section 162.50 also issued under 19 U.S.C. 1611, 1705;

Section 162.61 also issued under 21 U.S.C. 952, 953, 957;

Section 162.62 also issued under 21 U.S.C. 952, 956;

Sections 162.63, 162.64 also issued under 21 U.S.C. 881, 966;

Section 162.65 also issued under 19 U.S.C. 1584, 21 U.S.C. 960, 961.

Sections 162.65 and 162.72 also issued under 19 U.S.C. 1431(b) and 19 U.S.C. 1644.

Sections 162.91 through 162.96 also issued under 18 U.S.C. 983.

SOURCE: T.D. 72–211, 37 FR 16488, Aug. 15, 1972, unless otherwise noted.

§ 162.0 Scope.

This part contains provisions for the inspection, examination, and search of persons, vessels, aircraft, vehicles, and merchandise involved in importation, for the seizure of property, and for the forfeiture and sale of seized property. It also contains provisions for Customs enforcement of the controlled substances laws. Additional provisions concerning records maintenance and examination applicable to U.S. importers, exporters and producers under the U.S.-Chile Free Trade Agreement, the U.S.-Singapore Free Trade Agreement, the Dominican Republic-Central America-U.S. Free Trade Agreement, the U.S.-Australia Free Trade Agreement, the U.S.-Morocco Free Trade Agreement, the U.S.-Peru Trade Promotion Agreement, the U.S.-Korea Free Trade Agreement, the U.S.-Panama Trade Promotion Agreement, and the U.S.-Colombia Trade Promotion Agreement are contained in Part 10, Subparts H, I, J, L, M, Q, R, S and T of this chapter, respectively.

[T.D. 98–56, 63 FR 32945, June 16, 1998, as amended by CBP Dec. 05–07, 70 FR 10884, Mar. 7, 2005; CBP Dec. 07–81, 72 FR 58522, Oct. 16, 2007; CBP Dec. 08–22, 73 FR 33691, June 13, 2008; CBP Dec. 11–01, 76 FR 708, Jan. 6, 2011; CBP Dec. 12–03, 77 FR 15959, Mar. 19, 2012; CBP Dec. 12–16, 77 FR 59081, Sept. 26, 2012; USCBP–2013–0040, 78 FR 63068, Oct. 23, 2013; CBP Dec. 15-03; 80 FR 7317, Feb. 10, 2015]

Subpart A—Inspection, Examination, and Search

SOURCE: T.D. 79–159, 44 FR 31970, June 4, 1979, unless otherwise noted.

§§ 162.1–162.2 [Reserved]

§ 162.3 Boarding and search of vessels.

(a) *General authority.* A Customs officer, for the purpose of examining the manifest and other documents and papers and examining, inspecting and searching the vessel, may at any time go on board:

(1) Any vessel at any place in the United States or within the Customs waters of the United States;

(2) Any American vessel on the high seas;

(3) Any vessel within a Customs-enforcement area designated such under the provisions of the Anti-Smuggling Act (Act of August 5, 1935, as amended, 49 Stat. 517; 19 U.S.C. 1701, 1703 through 1711), but Customs officers shall not board a foreign vessel upon the high seas in contravention of any treaty with a foreign government, or in the absence of a special arrangement with the foreign government concerned.

(b) *Search of army or navy vessel.* If the port director or special agent in charge believes that sufficient grounds exist to justify a search of any army or navy vessel, the facts shall be reported to the commanding officer or master of the vessel with a request that he cause a full search to be made, and advise the port director or special agent in charge of the result of such search. If, after the cargo has been discharged, passengers and their baggage landed, and the baggage of officers and crewmembers examined and passed, the port director or special agent in charge believes that sufficient grounds exist to justify the continuance of Customs supervision of the vessel, the commanding officer or master of the vessel shall be advised accordingly.

(c) *Assistance of other agencies.* Customs officers are authorized to assist any other agency in the enforcement of United States laws on any vessel.

[T.D. 84–18, 48 FR 52899, Nov. 23, 1983]

§ 162.4 Search for letters.

A Customs officer may search vessels for letters which may be on board or may have been conveyed contrary to law on board any vessel or on any post route, and shall seize such letters and deliver them to the nearest post office or detain them subject to the orders of the postal authorities.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972]

§ 162.5 Search of arriving vehicles and aircraft.

A customs officer may stop any vehicle and board any aircraft arriving in the United States from a foreign country for the purpose of examining the manifest and other documents and papers and examining, inspecting, and searching the vehicle or aircraft.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 90–34, 55 FR 17597, Apr. 26, 1990]

§ 162.6 Search of persons, baggage, and merchandise.

All persons, baggage, and merchandise arriving in the Customs territory of the United States from places outside thereof are liable to inspection and search by a Customs officer. Port directors and special agents in charge are authorized to cause inspection, examination, and search to be made under section 467, Tariff Act of 1930, as amended (19 U.S.C. 1467), of persons, baggage, or merchandise, even though such persons, baggage, or merchandise were inspected, examined, searched, or taken on board the vessel at another port or place in the United States or the Virgin Islands, if such action is deemed necessary or appropriate.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972]

§ 162.7 Search of vehicles, persons, or beasts.

A Customs officer may stop, search, and examine any vehicle, person, or beast, or search any trunk or envelope wherever found, in accordance with section 3061 of the Revised Statutes (19 U.S.C. 482).

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 90–34, 55 FR 17597, Apr. 26, 1990]

§ 162.8 Preclearance inspections and examinations.

In connection with inspections and examinations conducted in accordance with §148.22(a) of this chapter, United States Customs officers stationed in a foreign country may exercise such functions and perform such duties (including inspections, examinations, searches, seizures, and arrests), as may be permitted by treaty, agreement, or law of the country in which they are stationed.

[T.D. 89–22, 54 FR 5077, Feb. 1, 1989]

Subpart B—Search Warrants

§ 162.11 Authority to procure warrants.

Customs officers are authorized to procure search warrants under the provisions of section 595, Tariff Act of 1930, as amended (19 U.S.C. 1595). However, a Customs officer who is lawfully on any premises and is able to identify merchandise which has been imported contrary to law may seize such merchandise without a warrant. If merchandise is in a building on the boundary, see §123.71 of this chapter.

§ 162.12 Service of search warrant.

A search warrant shall be served in person by the officer to whom it is issued and addressed. In serving a search warrant, the officer shall leave a copy of the warrant with the person in charge or possession of the premises, or in the absence of any person, the copy shall be left in some conspicuous place on the premises searched.

§ 162.13 Search of rooms not described in warrant.

When a Customs officer is acting under a warrant to search the rooms in a building occupied by persons named or described in the warrant, no search shall be made of any rooms in such building which are not described in the warrant as occupied by such persons.

§ 162.15 Receipt for seized property.

A receipt for property seized under a search warrant shall be left with the person in charge or possession of the premises, or in the absence of any person, the receipt shall be left in some

conspicuous place on the premises searched.

Subpart C—Seizures

§ 162.21 Responsibility and authority for seizures.

(a) *Seizures by Customs officers.* Property may be seized, if available, by any Customs officer who has reasonable cause to believe that any law or regulation enforced by Customs and Border Protection or Immigration and Customs Enforcement has been violated, by reason of which the property has become subject to seizure or forfeiture. This paragraph does not authorize seizure when seizure or forfeiture is restricted by law or regulation (see, for example, § 162.75), nor does it authorize a remedy other than seizure when seizure or forfeiture is required by law or regulation. A receipt for seized property shall be given at the time of seizure to the person from whom the property is seized.

(b) *Seizure by persons other than Customs officers.* The port director may adopt a seizure made by a person other than a Customs officer if such port director has reasonable cause to believe that the property is subject to forfeiture under the Customs laws.

(c) *Seizure by State official.* If a duly constituted State official has seized any merchandise, vessel, aircraft, vehicle, or other conveyance under provisions of the statutes of such State, such property shall not be seized by a Customs officer unless the property is voluntarily turned over to him to be proceeded against under the Federal statutes.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 79–160, 44 FR 31956, June 4, 1979; USCBP–2006–0122, 73 FR 9011, Feb. 19, 2008]

§ 162.22 Seizure of conveyances.

(a) *General applicability.* If it shall appear to any officer authorized to board conveyances and make seizures that there has been a violation of any law of the United States whereby a vessel, vehicle, aircraft, or other conveyance, or any merchandise on board of or imported by such vessel, vehicle, aircraft, or other conveyance is liable to forfeiture, the officer shall seize such conveyance and arrest any person engaged in such violation. Common carriers are exempted from seizure except under certain specified conditions as provided for in section 594, Tariff Act of 1930 (19 U.S.C. 1594) and section 274(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1324(b)(1)).

(b) *Facilitating importation contrary to law.* Except as provided in § 171.52(b), every vessel, vehicle, animal, aircraft, or other thing, which is being or has been used in, or to aid or facilitate, the importation, bringing in, unlading, landing, removal, concealing, harboring or subsequent transportation of any article which is being, or has been introduced or attempted to be introduced into the United States contrary to law, shall be seized and held subject to forfeiture. Any person who directs, assists financially or otherwise, or is in any way concerned in any such unlawful activity shall be liable to a penalty equal to the value of the article or articles involved.

(c) *Common carrier clearance.* Unless specifically authorized by law, clearance of vessels within the common carrier exception of section 594, Tariff Act of 1930 (19 U.S.C. 1594), shall not be refused for the purpose of collecting a fine imposed upon the master or owner, unless either of them was a party to the illegal act. The Government's remedy in such cases is limited to an action against the master or owner.

(d) *Maritime Administration vessels; exemption from penalty.* (1) When a vessel owned or chartered under bareboat charter by the Maritime Administration and operated for its account becomes liable for the payment of a penalty incurred for violation of the Customs revenue or navigation laws, clearance of the vessel shall not be withheld nor shall any proceedings be taken against the vessel itself looking to the enforcement of such liability.

(2) This exemption shall not in any way be considered to relieve the master of any such vessel or other person incurring such penalties from personal liability for payment.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 89–86, 54 FR 37602, Sept. 11, 1989; USCBP–2006–0122, 73 FR 9012, Feb. 19, 2008]

§ 162.23 Seizure under section 596(c), Tariff Act of 1930, as amended (19 U.S.C. 1595a(c)).

(a) *Mandatory seizures.* The following, if introduced or attempted to be introduced into the United States contrary to law, shall be seized pursuant to section 596(c), Tariff Act of 1930, as amended (19 U.S.C. 1595a(c)):

(1) Merchandise that is stolen, smuggled, or clandestinely imported or introduced;

(2) A controlled substance, as defined in the Controlled Substance Act (21 U.S.C. 801 *et seq.*), not imported in accordance with law;

(3) A contraband article, as defined in section 1 of the Act of August 9, 1939 (49 U.S.C. 80302); or

(4) A plastic explosive, as defined in section 841(q) of title 18, United States Code, which does not contain a detection agent, as defined in section 841(p) of that title.

(b) *Permissive seizures.* The following, if introduced or attempted to be introduced into the United States contrary to law, may be seized pursuant to section 596(c), Tariff Act of 1930, as amended (19 U.S.C. 1595a(c)):

(1) Merchandise the importation or entry of which is subject to any restriction or prohibition imposed by law relating to health, safety, or conservation, and which is not in compliance with the applicable rule, regulation or statute;

(2) Merchandise the importation or entry of which requires a license, permit or other authorization of a United States Government agency, and which is not accompanied by such license, permit or authorization;

(3) Merchandise or packaging in which copyright, trademark or trade name protection violations are involved (including, but not limited to, a violation of sections 42, 43 or 45 of the Act of July 5, 1946 (15 U.S.C. 1124, 1125 or 1127), sections 506 or 509 of title 17, United States Code, or sections 2318 or 2320 of title 18, United States Code);

(4) Trade dress merchandise involved in the violation of a court order citing section 43 of the Act of July 5, 1946 (15 U.S.C. 1125);

(5) Merchandise marked intentionally in violation of 19 U.S.C. 1304;

(6) Merchandise for which the importer has received written notices that previous importations of identical merchandise from the same supplier were found to have been in violation of 19 U.S.C. 1304; or

(7) Merchandise subject to quantitative restrictions, found to bear a counterfeit visa, permit, license, or similar document, or stamp from the United States or from a foreign government or issuing authority pursuant to a multilateral or bilateral agreement (but see paragraph (e), of this section).

(c) *Resolution of seizure under § 1595a(c).* When merchandise is either required or authorized to be seized under this section, the forfeiture incurred may be remitted in accord with 19 U.S.C. 1618, to include as a possible option the exportation of the merchandise under such conditions as CBP shall impose, unless its release would adversely affect health, safety, or conservation, or be in contravention of a bilateral or multilateral agreement or treaty.

(d) *Seizure under 19 U.S.C. 1592.* If merchandise is imported, introduced or attempted to be introduced contrary to a provision of law governing its classification or value, and there is no issue of admissibility, such merchandise shall not be seized pursuant to 19 U.S.C. 1595a(c). Any seizure of such merchandise shall be in accordance with section 1592 (see § 162.75 of this chapter).

(e) *Detention only.* Merchandise subject to quantitative restrictions requiring a visa, permit, license, or other similar document, or stamp from the United States Government or from a foreign government or issuing authority pursuant to a bilateral or multilateral agreement, shall be subject to detention in accordance with 19 U.S.C. 1499, unless the appropriate visa, permit, license, or similar document, or stamp is presented to CBP (but see paragraph (b)(7), of this section for instances when seizure may occur).

(f) *Exportations contrary to law.* Merchandise exported or sent, or attempted to be exported or sent, from the United States contrary to law, or the proceeds or value thereof, and property used to facilitate the exporting or sending, or attempted exporting or

sending, of such merchandise, will be seized and subject to forfeiture. In addition, the receipt, purchase, transportation, concealment or sale of such merchandise prior to exportation will result in its seizure and forfeiture to the United States.

[T.D. 96–2, 60 FR 67058, Dec. 28, 1995, as amended by T.D. 99–4, 64 FR 1123, Jan. 8, 1999; CBP Dec. 10–29, 75 FR 52452, Aug. 26, 2010]

Subpart D—Procedure When Fine, Penalty, or Forfeiture Incurred

§ 162.31 Notice of fine, penalty, or forfeiture incurred.

(a) *Notice.* Written notice of any fine or penalty incurred as well as any liability to forfeiture shall be given to each party that the facts of record indicate has an interest in the claim or seized property. The notice shall also inform each interested party of his right to apply for relief under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), or any other applicable statute authorizing mitigation of penalties or remission of forfeitures, in accordance with part 171 of this chapter. The notice shall inform any interested party in a case involving forfeiture of seized property that unless the petitioner provides an express agreement to defer judicial or administrative forfeiture proceedings until completion of the administrative process, the case will be referred promptly to the U.S. attorney or the Department of Justice if the penalty was assessed under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), for institution of judicial proceedings, or summary forfeiture proceedings will be begun. For violations involving the possession of personal use quantities of a controlled substance, also see §171.55.

(b) *Contents of notice.* The notice shall contain the following:

(1) The provisions of law alleged to have been violated;

(2) A description of the specific acts or omissions forming the basis of the alleged violations;

(3) If the alleged violations involve the entry or attempted entry of merchandise,

(i) A description of the merchandise and the circumstances of its entry or attempted entry, and

(ii) The identity of each entry, if specific entries are involved; and

(4) If the alleged violations involve a loss of revenue,

(i) The total loss of revenue and how it was computed, and

(ii) The loss of revenue attributable to each entry, if readily susceptible to calculation.

(c) *Demand for deposit in case of smuggled articles of small value.* In the case of smuggled articles of small value, demand shall be made for immediate deposit of an amount equivalent to the domestic value of the articles on account of the liability to a penalty incurred as distinct from liability of the goods to forfeiture. Such sum shall be deposited whether or not a petition for relief is filed in accordance with part 171 of this chapter. A demand for deposit need not be made in connection with any liability incurred by the master of a vessel under the provisions of section 453, Tariff Act of 1930, as amended (19 U.S.C. 1453).

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 78–38, 43 FR 4255, Feb. 1, 1978; T.D. 79–160, 44 FR 31956, June 4, 1979; T.D. 85–90, 50 FR 21431, May 24, 1985; T.D. 89–86, 54 FR 37602, Sept. 11, 1989]

§ 162.32 Where petition for relief not filed.

(a) *Fines, penalties and forfeitures.* If any person who is liable for a fine, penalty, or claim for a monetary amount, or who has an interest in property subject to forfeiture, fails to petition for relief as set forth in part 171 of this chapter, or fails to pay the fine or penalty within 30 days from the mailing date of the violation/penalty notice provided in §162.31 (unless additional time is authorized for filing a petition, as set forth in part 171 of this chapter) the Fines, Penalties, and Forfeitures Officer, shall, after any required collection action is complete, refer any fine or penalty case promptly to the U.S. attorney, or the Department of Justice if the penalty was assessed under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592). In the case of property subject to forfeiture, the Fines, Penalties, and Forfeitures Officer, where appropriate, shall complete administrative forfeiture proceedings or shall refer the matter promptly to the U.S.

attorney, or the Department of Justice if the case arose under section 592, in accordance with the provisions of subparagraph (c) below, unless the Commissioner of Customs expressly authorizes other action.

(b) *Institution of forefeiture proceedings before completion of administrative procedures.* Nothing in these regulations is intended to prevent the institution of forfeiture proceedings before completion of the administrative remission or mitigation procedures pursuant to section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618).

(c) *Seized property not eligible for administrative forfeiture.* If the seized property is not eligible for administrative forfeiture, and neither a petition for relief in accordance with part 171 of this chapter, nor an offer to pay the domestic value as provided for in §162.44, is made within 30 days (unless additional time has been authorized under part 171 of this chapter), the Fines, Penalties, and Forfeitures Officer shall refer the case promptly to the U.S. attorney for the judicial district in which the seizure was made, or the Department of Justice if the penalty was assessed under section 592.

[T.D. 85–195, 50 FR 50289, Dec. 10, 1985, as amended by T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

Subpart E—Treatment of Seized Merchandise

§ 162.41 [Reserved]

§ 162.42 Proceedings by libel.

If seizure is made under a statute which provides that the property may be seized and proceeded against by libel, the summary forfeiture procedures set forth in §§162.45, 162.46, and 162.47 do not apply. Such cases shall be referred to the U.S. attorney. The Fines, Penalties, and Forfeitures Officer may request the U.S. attorney to seek a decree of forfeiture providing for delivery of the property to the Fines, Penalties, and Forfeitures Officer for sale or other appropriate disposition, if such property is not to be retained for official use.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1999, as amended by T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

§ 162.43 Appraisement.

(a) *Property under seizure and subject to forfeiture.* Seized property shall be appraised as required by section 606, Tariff Act of 1930, as amended (19 U.S.C. 1606). The term ''domestic value'' as used therein shall mean the price at which such or similar property is freely offered for sale at the time and place of appraisement, in the same quantity or quantities as seized, and in the ordinary course of trade. If there is no market for the seized property at the place of appraisement, such value in the principal market nearest to the place of appraisement shall be reported.

(b) *Property not under seizure.* The basis for a claim for forfeiture value or for an assessment of a penalty relating to the forfeiture value of property not under seizure is the domestic value as defined in paragraph (a) of this section, except that the value shall be fixed as of the date of the violation. In the case of entered merchandise, the date of the violation shall be the date of the entry, or the date of the filing of the document, or the commission of the act forming the basis of the claim, whichever is later.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 79–160, 44 FR 31957, June 4, 1979; T.D. 85–123, 50 FR 29956, July 23, 1985]

§ 162.44 Release on payment of appraised value.

(a) *Value exceeding $100,000.* Any offer to pay the appraised domestic value of seized property in order to obtain the immediate release of the property which was seized under the Customs laws or laws administered by Customs and exceeding $100,000 in appraised domestic value, or which was seized under the navigation laws, shall be in writing, addressed to the Commissioner of Customs, and signed by the claimant or his attorney. It shall be submitted in duplicate to the Fines, Penalties, and Forfeitures Officer having jurisdiction at the port where the property was seized. Proof of ownership shall be submitted with the application if the facts in the case make such action necessary.

(b) *Value not over $100,000*—(1) *Authority to accept offer.* The Fines, Penalties, and Forfeitures Officer is authorized to

accept a written offer pursuant to section 614, Tariff Act of 1930, as amended (19 U.S.C. 1614), to pay the appraised domestic value of property seized under the Customs laws and to release such property if:

(i) The appraised domestic value of the seized property does not exceed $100,000.

(ii) The Fines, Penalties, and Forfeitures Officer is satisfied that the claimant has, in fact, a substantial interest in the property; and

(iii) Entry of the seized property into the commerce of the United States is not prohibited by law.

(2) *Referral of offer.* The Fines, Penalties, and Forfeitures Officer shall refer to the Commissioner of Customs any offer where it appears that the claimant does not have a substantial interest in the seized property or where it appears it would not be in the best interest of the United States to accept.

(c) *Retention of property.* The Fines, Penalties, and Forfeitures Officer shall retain custody of the property pending payment of the amount of the offer when the application is approved.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 74–276, 39 FR 37633, Oct. 23, 1974; T.D. 85–195, 50 FR 50289, Dec. 10, 1985; T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

§ 162.45 Summary forfeiture: Property other than Schedule I and Schedule II controlled substances. Notice of seizure and sale.

(a) *Contents.* The notice required by section 607, Tariff Act of 1930, as amended (19 U.S.C. 1607), of seizure and intent to forfeit and sell or otherwise dispose of according to law property not exceeding $500,000 in value, or any seized merchandise the importation of which is prohibited, or any seized vessel, vehicle or aircraft that was used to import, export, transport, or store any controlled substance, or such seized merchandise is any monetary instrument within the meaning of 31 U.S.C. 5312(a)(3), shall:

(1) Describe the property seized and in the case of motor vehicles, specify the motor and serial numbers;

(2) State the time, cause, and place of seizure;

(3) State that any person desiring to claim property must appear at a designated place and file with the Fines, Penalties, and Forfeitures Officer within 20 days from the date of first publication of the notice a claim to such property and a bond in the sum of $5,000 or 10% of the value of the claimed property, whichever is lower, but not less than $250, in default of which the property will be disposed of in accordance with the law; and

(4) State the name and place of residence of the person to whom any vessel or merchandise seized for forfeiture under the navigation laws belongs or is consigned, if that information is known to the Fines, Penalties, and Forfeitures Officer.

(b) *Publication.* (1) If the appraised value of any property in one seizure from one person, other than Schedule I and Schedule II controlled substances (as defined in 21 U.S.C. 802(6) and 812), exceeds $5,000, the notice will be published by its posting on an official Government forfeiture Web site for at least 30 consecutive days. Information pertaining to the Government forfeiture Web site will be posted in a conspicuous place that is accessible to the public at all customhouses and all sector offices of the U.S. Border Patrol. In CBP's sole discretion, and as circumstances warrant, additional publication for at least three successive weeks in a print medium may be provided. All known parties-in-interest will be notified in writing of the Government Web site address and the date of Internet publication (and pertinent information regarding print publication, when appropriate).

(2) In all other cases, except for Schedule I and Schedule II controlled substances (see §162.45a), the notice will be published by its posting on an official Government forfeiture Web site for at least 30 consecutive days and by its posting for at least three successive weeks in a conspicuous place that is accessible to the public at the customhouse located nearest the place of seizure or the appropriate sector office of the U.S. Border Patrol. All known parties-in-interest will be notified in writing of the Government Web site address and the date of Internet publication (and pertinent information regarding print publication, when appropriate).

The posting at the customhouse or sector office will contain the date of onsite posting. Articles of small value of the same class or kind included in two or more seizures will be advertised as one unit.

(c) *Delay of publication.* Publication of the notice of seizure and intent to summarily forfeit and dispose of property eligible for such treatment may be delayed for a period not to exceed 30 days in those cases where the Fines, Penalties, and Forfeitures Officer has reason to believe that a petition for administrative relief in accord with part 171 of this chapter will be filed.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 83–72, 48 FR 11423, Mar. 18, 1983; T.D. 85–123, 50 FR 29956, July 23, 1985; T.D. 85–195, 50 FR 50290, Dec. 10, 1985; T.D. 91–52, 56 FR 25364, June 4, 1991; T.D. 99–27, 64 FR 13676, Mar. 22, 1999; T.D. 00–37, 65 FR 33254, May 23, 2000; CBP Dec. 05–02, 70 FR 8510, Feb. 22, 2005; CBP Dec. 13–04, 78 FR 6033, Jan. 29, 2013]

§ 162.45a Summary forfeiture of Schedule I and Schedule II controlled substances.

The Controlled Substances Act (84 Stat. 1242, 21 U.S.C. 801 *et seq.*) provides that all controlled substances in Schedule I and Schedule II (as defined in 21 U.S.C. 802(6) and 812) that are possessed, transferred, sold or offered for sale in violation of the Act will be deemed contraband, seized and summarily forfeited to the United States (21 U.S.C. 881(f)). The Controlled Substances Import and Export Act (21 U.S.C. 951 *et seq.*) incorporates by reference this contraband forfeiture provision of 21 U.S.C. 881. See 21 U.S.C. 965. Accordingly, in the case of a seizure of Schedule I or Schedule II controlled substances, the Fines, Penalties, and Forfeitures Officer or his designee will contact the appropriate Drug Enforcement Administration official responsible for issuing permits authorizing the importation of such substances (see 21 CFR part 1312). If upon inquiry the Fines, Penalties, and Forfeitures Officer or his designee is notified that no permit for lawful importation has been issued, he will declare the seized substances contraband and forfeited pursuant to 21 U.S.C. 881(f). Inasmuch as such substances are Schedule I and Schedule II controlled substances, the notice procedures set forth in § 162.45 are inapplicable. When seized controlled substances are required as evidence in a court proceeding, they will be preserved to the extent and in the quantities necessary for that purpose.

[T.D. 00–37, 65 FR 33254, May 23, 2000]

§ 162.46 Summary forfeiture: Disposition of goods.

(a) *General.* If no petition for relief from the forfeiture is filed in accordance with the provision of part 171 of this chapter, or if a petition was filed and has been denied, and the property is not retained for official use, it shall be disposed of in accordance with section 609, Tariff Act of 1930, as amended (19 U.S.C. 1609) or section 491(b), Tariff Act of 1930, as amended (19 U.S.C. 1491(b)).

(b) *Articles required to be inspected by other Government agencies.* Before seized drugs, insecticides, seeds, plants, nursery stock, and other articles required to be inspected by other Government agencies are sold, they shall be inspected by a representative of such agency to ascertain whether or not they meet the requirements of the laws and regulations of that agency, and if found not to meet such requirements, they shall be destroyed forthwith.

(c) *Sale*—(1) *General.* If the forfeited property is cleared for sale, it shall be sold in accordance with the applicable provisions of part 127 of this chapter. The Fines, Penalties, and Forfeitures Officer may postpone the sale of small seizures until he believes the proceeds of a consolidated sale will pay all expenses.

(2) *Transfer to another port for sale.* Property shall be moved to and sold at such other Customs port as the Commissioner of Customs may direct pursuant to the provisions of section 611, Tariff Act of 1930 (19 U.S.C. 1611), if:

(i) The laws of a State in which property is seized and forfeited prohibit the sale of such property; or

(ii) The Commissioner is of the opinion that the sale of forfeited property may be made more advantageously at another Customs port.

(d) *Destruction.* If, after summary forfeiture of property is completed, it appears that the net proceeds of sale will not be sufficient to pay the costs of

sale, the Fines, Penalties, and Forfeitures Officer may order destruction of the property. Any vessel or vehicle summarily forfeited for violation of any law respecting the Customs revenue may be destroyed in lieu of the sale thereof when such destruction is authorized by the Commissioner of Customs to protect the revenue.

(e) *Disposition of distilled spirits, wines, and malt liquor.* In addition to disposition by sale or destruction as provided for by this section, distilled spirits, wines, and malt liquor may be delivered:

(1) To any Government agency the Commissioner of Customs or his designee determines has a need for these articles for medical, scientific, or mechanical purposes, or for any other official purpose for which appropriated funds may be expended by a Government agency, or

(2) By gift to any charitable institution the Commissioner of Customs or his designee determines has a need for the articles for medical purposes.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 77–12, 41 FR 56629, Dec. 29, 1976; T.D. 79–159, 44 FR 31971, June 4, 1979; T.D. 85–195, 50 FR 50290, Dec. 10, 1985; T.D. 92–69, 57 FR 30640, July 10, 1992; T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

§ 162.47 Claim for property subject to summary forfeiture.

(a) *Filing of claim.* Any person desiring to claim under the provisions of section 608, Tariff Act of 1930, as amended (19 U.S.C. 1608), seized property not exceeding $500,000 in value (however there is no limit in value of merchandise, the importation of which is prohibited, or in the value of vessels, vehicles or aircraft used to import, export, transport, or store any controlled substance, or in the amount of any monetary instruments within the meaning of 31 U.S.C. 5312(a)(3), that may be seized and forfeited) and subject to summary forfeiture, shall file a claim to such property with the Fines, Penalties, and Forfeitures Officer within 20 days from the date of the first publication of the notice prescribed in § 162.45.

(b) *Bond for costs.* Except as provided in paragraph (e) of this section, the bond in the penal sum of $5,000 or 10% of the value of the claimed property, whichever is lower, but not less than $250, required by section 608, Tariff Act of 1930, as amended, to be filed with a claim for seized property shall be on Customs Form 301, containing the bond conditions set forth in § 113.72 of this chapter.

(c) *Claimant not entitled to possession.* The filing of a claim and the giving of a bond, if required, pursuant to section 608, Tariff Act of 1930, shall not be construed to entitle the claimant to possession of the property. Such action only stops the summary forfeiture proceeding.

(d) *Report to the U.S. attorney.* When the claim and bond, if required, are filed within the 20-day period, the Fines, Penalties, and Forfeitures Officer shall report the case to the U.S. attorney for the institution of condemnation proceedings.

(e) *Waiver of bond.* Upon satisfactory proof of financial inability to post the bond, the Fines, Penalties, and Forfeitures Officer shall waive the bond requirement for any person who claims an interest in the seized property.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 81–1, 45 FR 84994, Dec. 24, 1980; T.D. 84–213, 49 FR 41186, Oct. 19, 1984; T.D. 85–123, 50 FR 29956, July 23, 1985; T.D. 91–52, 56 FR 25364, June 4, 1991; T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

§ 162.48 Disposition of perishable and other seized property.

(a) *Disposition of perishable property.* Seized property which is perishable or otherwise enumerated in section 612, Tariff Act of 1930, as amended (19 U.S.C. 1612), and is covered by the provisions of section 607, Tariff Act of 1930, as amended (19 U.S.C. 1607), shall be advertised for sale and sold at public auction at the earliest possible date. The Fines, Penalties, and Forfeitures Officer shall proceed to give notice by advertisement of the summary sale for such time as he considers reasonable. This notice shall be of sale only and not notice of seizure and intent to forfeit. The proceeds of the sale shall be held subject to the claims of parties in interest in the same manner as the seized property would have been subject to such claims.

(b) *Disposition of other seized property.* (1) If the expense of keeping any vessel, vehicle, aircraft, merchandise or baggage is disproportionate to the value thereof, destruction or other disposition of such property may be ordered by the appropriate Customs officer. Storage expenses are presumed to be disproportionate to the value of the property where the expense has reached or is anticipated to reach 50 percent of the value of the property. The right of a claimant to seized property which has been destroyed or otherwise disposed of shall not be extinguished.

(2) Publication of a notice of the seizure, regardless of the disposition of the property, will be required pursuant to 19 U.S.C. 1607. Claimants to seized property will be permitted to file a petition for remission of the forfeiture pursuant to 19 U.S.C. 1618, and part 171 of this chapter. A claimant receiving full or partial relief from the forfeiture shall be reimbursed the difference between the value of the merchandise at the time of the seizure, pursuant to 19 U.S.C. 1606 and §162.43 of this part, and any remitted forfeiture amount that the claimant is required to pay.

(3) A claimant to destroyed or otherwise disposed of seized property requesting relief in the form of payment may file a claim and cost bond and seek judicial hearing on the forfeiture pursuant to 19 U.S.C. 1608.

(4) Successful claimants shall be compensated from Customs Forfeiture Fund pursuant to 19 U.S.C. 1613b.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 85–195, 50 FR 50290, Dec. 10, 1985; T.D. 92–69, 57 FR 30640, July 10, 1992; T.D. 99–27, 64 FR 13676, Mar. 22, 1999; T.D. 00–57, 65 FR 53575, Sept. 5, 2000]

§162.49 Forfeiture by court decree.

(a) *Report to the U.S. attorney or the Department of Justice if the penalty was assessed under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592).* When it is necessary to institute legal proceedings in order to forfeit seized property, or to forfeit the value of property subject to forfeiture, the Fines, Penalties, and Forfeitures Officer or the special agent in charge of the area involved shall furnish a report to the U.S. attorney or the Department of Justice if the penalty was assessed under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), in accordance with the provisions of section 603, Tariff Act of 1930, as amended (19 U.S.C. 1603).

(b) *Bonding of seized property.* When a claimant desires to file a bond for the release of seized property which is the subject of a court proceeding, he shall be referred to the U.S. attorney. The Government is entitled to recover the penal sum of the bond if forfeiture is then decreed.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 85–90, 50 FR 21431, May 24, 1985; T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

§162.50 Forfeiture by court decree: Disposition.

(a) *Sale.* Forfeited property decreed by the court for sale or disposition by the Fines, Penalties, and Forfeitures Officer shall be disposed of in the same manner as property summarily forfeited. (See §162.46.)

(b) *Transfer to other ports for sale.* If the laws of the State in which property is seized and forfeited prohibit the sale of such property, or if the Commissioner of Customs is of the opinion that the sale of forfeited property may be made more advantageously at another port, application may be made to the court to permit disposition in accordance with the provisions of section 611, Tariff Act of 1930 (19 U.S.C. 1611). If the court permits such disposition, the property shall be moved to and sold at such other port as the Commissioner may direct provided it has been cleared for sale.

(c) *Destruction*—(1) *Proceeds of sale not sufficient.* Property forfeited under a decree of any court may be destroyed if it is provided in the decree of forfeiture that the property shall be delivered to the Secretary of the Treasury or the Commissioner of Customs for disposition in accordance with section 611, Tariff Act of 1930 (19 U.S.C. 1611).

(2) *For protection of the revenue.* Any vessel or vehicle forfeited under a decree of any court for violation of any law respecting the Customs revenue may be destroyed in lieu of sale when such destruction is authorized by the Commissioner of Customs to protect

the revenue if it is provided in the decree of forfeiture that the property shall be delivered to the Secretary of the Treasury or Commissioner of Customs for disposition under the provisions of 19 U.S.C. 1705.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

§ 162.51 Disposition of proceeds of sale of property seized and forfeited other than under 19 U.S.C. 1592.

(a) *Order of payment of expenses incurred*—(1) *When application for remission and restoration is filed and approved.* Section 613 of the Tariff Act of 1930, as amended (19 U.S.C. 1613), and §171.41 of this chapter authorize the filing of an application for remission of the forfeiture and restoration of the proceeds from the sale of seized and forfeited property. If the application is filed within 3 months after the date of sale and is approved, the proceeds of the sale, or any part thereof, shall be restored to the applicant after deducting the following charges in the order named:

(i) Internal revenue taxes.

(ii) Marshal's fees and court costs.

(iii) Expenses of advertising and sale.

(iv) Expenses of cartage, storage, and labor. When the proceeds are insufficient to pay these expenses fully, they shall be paid pro rata.

(v) Duties.

(vi) Any sum due to satisfy a lien for freight, charges, or contributions in general average, provided notice of the lien has been given in the manner prescribed by law.

(2) *When no application for remission and restoration is filed or the application is denied.* If no application for remission and restoration is filed within 3 months after the date of sale of seized and forfeited property, or if the application is denied, the proceeds of the sale shall be disbursed in the following order:

(i) Internal revenue taxes.

(ii) Marshal's fees and court costs.

(iii) Expenses of advertising and sale.

(iv) Expenses of cartage, storage, and labor. When the proceeds are insufficient to pay these expenses fully, they shall be paid pro rata.

(v) Any sum due to satisfy a lien for freight, charges, or contributions in general average, provided notice of the lien has been given in the manner prescribed by law.

(vi) The residue, if any, shall be deposited with the Treasurer of the United States as a customs or navigation fine.

(b) *Transfer of seized and forfeited property to another Federal agency.* In the event that the seized and forfeited property has been authorized for transfer to another Federal agency for official use, the receiving agency shall reimburse Customs for the costs incurred in moving and storing the property from the date of seizure to the date of delivery.

[T.D. 79–160, 44 FR 31957, June 4, 1979; 44 FR 36376, June 22, 1979, as amended by T.D. 84–78, 49 FR 13492, Apr. 5, 1984]

§ 162.52 Disposition of proceeds of sale of property seized and forfeited under 19 U.S.C. 1592.

(a) *Order of disposition of proceeds.* Section 613 of the Tariff Act of 1930, as amended (19 U.S.C. 1613), provides for the disposition of the proceeds from the sale of property seized and forfeited under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), as provided for in §162.75 of this part. Distribution shall be made in the following order:

(1) Internal revenue taxes.

(2) Marshal's fees and court costs.

(3) Expenses of advertising and sale.

(4) Expenses of cartage, storage, and labor. When proceeds are insufficient to pay these expenses fully, they shall be paid pro rata.

(5) Duties.

(6) Any sum due to satisfy a lien for freight, charges, or contributions in general average, provided notice of the lien has been given in the manner prescribed by law.

(7) The monetary penalty assessed under 19 U.S.C. 1592.

(8) The remaining proceeds, if any, shall be paid to the appropriate party-in-interest as provided in paragraph (b).

(b) *Determination of appropriate party-in-interest.* (1) If the property is subject to a judicial forfeiture proceeding and if it appears at the time of this proceeding that 2 or more parties claim an

interest in the remaining proceeds referred to in paragraph (a)(8), each of the parties shall be joined in the proceeding so that the issue of proper distribution may be determined by the court.

(2) If the property is sold under the summary forfeiture procedure, or if the court has not specified the manner of distribution, the Fines, Penalties, and Forfeitures Officer shall hold the excess proceeds for 3 months from the date of the sale to allow any party-in-interest to claim the proceeds.

(3) If there is one alleged violator and no petition has been filed for the excess proceeds by another person, the excess proceeds shall be disbursed to the person against whom the penalty was assessed.

(4) If there are 2 or more persons with claims or possible claims to the excess proceeds, the Fines, Penalties, and Forfeitures Officer shall attempt to obtain a written agreement from the parties as to the distribution. If an agreement cannot be reached, the matter shall be referred to Customs Headquarters for determination.

(c) *Official use of seized and forfeited property*. If the seized and forfeited property has been authorized for official use, its retention or delivery shall be regarded as a ''sale'' for the purposes of section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613). The appropriation available to the receiving agency for the purchase, hire, operation, maintenance, and repair of the type of property involved shall be distributed as provided in paragraphs (a) and (b).

[T.D. 79–160, 44 FR 31958, June 4, 1979, as amended by T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

Subpart F—Controlled Substances, Narcotics, and Marihuana

§ 162.61 Importing and exporting controlled substances.

It shall be unlawful to import to or export from the United States any controlled substance or narcotic drug listed in schedules I through V of the Controlled Substances Act (Sec. 202, 84 Stat. 1247; 21 U.S.C. 812), unless there has been compliance with the provisions of said Act, the Controlled Substances Import and Export Act and the regulations of the Drug Enforcement Administration.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 78–99, 43 FR 13062, Mar. 29, 1978]

§ 162.62 Permissible controlled substances on vessels, aircraft, and individuals.

Upon compliance with the provisions of the Controlled Substances Act (84 Stat. 1242; 21 U.S.C. 801), the Controlled Substances Import and Export Act (84 Stat. 1285; 21 U.S.C. 951), and the regulations of the Drug Enforcement Administration (21 CFR 1301.28, 1311.27), controlled substances listed in schedules I through V of the Controlled Substances Act may be held:

(a) On vessels engaged in international trade in medicine chests and dispensaries.

(b) In aircraft operated by an air carrier under a certificate or permit issued by the Federal Aviation Administration for stocking in medicine chests and first aid packets.

(c) By an individual where lawfully obtained for personal medical use or for administration to an animal accompanying him to enter or depart the United States.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 78–99, 43 FR 13062, Mar. 29, 1978]

§ 162.63 Arrests and seizures.

Arrests and seizures under the Controlled Substances Act (84 Stat. 1242, 21 U.S.C. 801 *et seq.*), and the Controlled Substances Import and Export Act (84 Stat. 1285, 21 U.S.C. 951 *et seq.*), will be handled in the same manner as other Customs arrests and seizures. However, Schedule I and Schedule II controlled substances (as defined in 21 U.S.C. 802(6) and 812) imported contrary to law will be seized and forfeited in the manner provided in the Controlled Substances Act (21 U.S.C. 881(f)). See §162.45a.

[T.D. 00–37, 65 FR 33255, May 23, 2000]

§ 162.64 Custody of controlled substances.

All controlled substances seized by a Customs officer shall be delivered immediately into the custody of the Fines, Penalties, and Forfeitures Officer having jurisdiction where the seizure is made, together with a full report of the circumstances of the seizure.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

§ 162.65 Penalties for failure to manifest narcotic drugs or marihuana.

(a) *Cargo or baggage containing unmanifested narcotic drugs or marihuana.* When a package of regular cargo or a passenger's baggage otherwise properly manifested is found to contain any narcotic drug or marihuana imported for sale or other commercial purpose and not shown as such on the manifest, the penalties prescribed in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), shall be assessed with respect to such narcotic drug or marihuana.

(b) *Unmanifested narcotic drugs or marihuana.* When an unmanifested narcotic drug or marihuana is found on board of, or after having been unladen from, a vessel, vehicle, or aircraft, the penalties prescribed in section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), shall be assessed. The penalty shall be applied without exception and without regard to any question of negligence or responsibility.

(c) *Notice and demand for payment of penalty.* A written notice and demand for payment of the penalty for failure to manifest incurred under section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), shall be sent to the master of the vessel, or commander of the aircraft, or the person in charge of the vehicle, and to the owner of the vessel, aircraft, or vehicle or any person directly or indirectly responsible. In the case of a vessel, if bond has been given, the notice also shall be sent to each surety. When a petition for relief from such penalty has been filed in accordance with part 171 of this chapter, and a decision has been made thereon, the Fines, Penalties, and Forfeitures Officer shall send notice of such decision to the interested persons together with a demand for any payment required under the terms of such decision.

(d) *Referral to the U.S. attorney.* If the penalty incurred under section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), is not paid, or a petition is not filed as provided in part 171 of this chapter, or if payment is not made in accordance with the decision on a petition or a supplemental petition, the Fines, Penalties, and Forfeitures Officer, after required collection action, shall refer the case to the U.S. attorney.

(e) *Withholding clearance of vessel.* Where a penalty has been incurred under section 584, Tariff Act of 1930, as amended (19 U.S.C. 1584), for failure to manifest narcotic drugs or marihuana, clearance of the vessel involved shall be withheld until the penalty is paid or a bond satisfactory to the Fines, Penalties, and Forfeitures Officer is given for the payment thereof unless

(1) The narcotics or marihuana were discovered in a passenger's baggage and the Fines, Penalties, and Forfeitures Officer is satisfied that neither the master nor any of the officers nor the owner of the vessel knew or had any reason to know or suspect that the narcotics or marihuana had been on board the vessel, or

(2) Prior authority for the clearance without payment of the penalty or the furnishing of the bond is obtained from Customs.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 79–160, 44 FR 31958, June 4, 1979; T.D. 86–59, 51 FR 8489, Mar. 12, 1986; T.D. 99–27, 64 FR 13676, Mar. 22, 1999; T.D. 99–64, 64 FR 43267, Aug. 10, 1999]

§ 162.66 Penalties for unlading narcotic drugs or marihuana without a permit.

In every case where a narcotic drug or marihuana is unladen without a permit, the penalties prescribed in section 453, Tariff Act of 1930, as amended (19 U.S.C. 1453), shall be assessed. Penalties shall be assessed under this section when a package of regular cargo or a passenger's baggage otherwise covered by a permit to unlade is found to

contain any narcotic drug or marihuana imported for sale or other commercial purpose and not specifically covered by a permit to unlade.

Subpart G—Special Procedures for Certain Violations

SOURCE: T.D. 79–160, 44 FR 31958, June 4, 1979, unless otherwise noted.

§ 162.70 Applicability.

(a) The provisions of this subpart apply only to fines, penalties, or forfeitures incurred for the following violations of the customs laws:

(1) Violations of sections 466 and 584(a)(1), Tariff Act of 1930, as amended (19 U.S.C. 1466, 1584(a)(1)), that occur after October 3, 1978, and

(2) Except as provided in paragraph (b) of this section, violations of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), with respect to which proceedings have commenced after December 31, 1978. For purposes of this subparagraph, a proceeding commences with the issuance of a prepenalty notice or, if no prepenalty notice is issued, with the issuance of a notice of a claim for a monetary penalty.

(b) The provisions of this subpart do not apply to alleged intentional violations of 19 U.S.C. 1592 if the alleged violation:

(1) Involves television receivers that are the products of Japan and were or are the subject to antidumping proceedings,

(2) Occurred before October 3, 1978, and

(3) Was the subject of a Customs investigation begun before October 3, 1978.

(c) The provisions of subparts A through F of this part shall apply to the violations referred to in paragraph (a) of this section unless this subpart specifically provides otherwise.

[T.D. 79–160, 44 FR 31958, June 4, 1979; 44 FR 35208, June 19, 1979, as amended by T.D. 90–34, 55 FR 17597, Apr. 26, 1990]

§ 162.71 Definitions.

When used in this subpart, the following terms shall have the meanings indicated:

(a) *Loss of duties under section 592.* ''Loss of duties'' means the duties of which the Government is or may be deprived by reason of the violation and includes both actual and potential loss of duties.

(1) *Actual loss of duties.* ''Actual loss of duties'' means the duties of which the Government has been deprived by reason of the violation in respect of entries on which liquidation had become final.

(2) *Potential loss of duties.* ''Potential loss of duties'' means the duties of which the Government tentatively was deprived by reason of the violation in respect of entries on which liquidation had not become final.

(b) *Loss of revenue under section 593A.* When used in §162.73a, the term ''loss of revenue'' means the amount of drawback (see §191.2(i) of this chapter) that is claimed and to which the claimant is not entitled and includes both actual and potential loss of revenue.

(1) *Actual loss of revenue.* When used in §§162.73a, 162.74, 162.77a and 162.79b, the term ''actual loss of revenue'' means the amount of drawback (see §191.2(i) of this chapter) that is claimed and has been paid to the claimant and to which the claimant is not entitled.

(2) *Potential loss of revenue.* When used in §162.77a, the term ''potential loss of revenue'' means the amount of drawback (see §191.2(i) of this chapter) that is claimed and has not been paid to the claimant and to which the claimant is not entitled.

(c) *Repetitive violation.* When used in §162.73a to describe a violation, ''repetitive'' has reference to a violation by a person that involves the same issue as a prior violation by that person.

(d) *Noncommercial importation.* ''Noncommercial importation'' means merchandise imported by a traveler for an individual's personal or household use, or as a gift, but not imported for sale or other commercial purposes.

(e) *Clerical error.* ''Clerical error'' means an error in the preparation, assembly, or submission of a document which results when a person intends to do one thing but does something else. It includes, for example, errors in transcribing numbers, errors in arithmetic,

and the failure to assemble all the documents in a record.

(f) *Mistake of fact.* ''Mistake of fact'' means an action based upon a belief by a person that the material facts are other than they really are; it can be that a fact exists but is unknown to the person, or that he believes something is a fact when in reality it is not. An action is not a mistake of fact if the erroneous belief is caused by the neglect of a legal duty.

[T.D. 79–160, 44 FR 31958, June 4, 1979, as amended by T.D. 84–18, 49 FR 1678, Jan. 13, 1984; 49 FR 3986, Feb. 1, 1984; T.D. 98–49, 63 FR 29131, May 28, 1998; T.D. 00–5, 65 FR 3808, Jan. 25, 2000]

§ 162.72 Penalties and forfeitures under sections 466 and 584(a)(1), Tariff Act of 1930, as amended.

(a) *Foreign repairs and equipment purchases; election to proceed.* If the Fines, Penalties, and Forfeitures Officer has reasonable cause to believe that a violation of section 466, Tariff Act of 1930, as amended (19 U.S.C. 1466), has occurred, he may elect to proceed against the vessel or aircraft, or against the violator for forfeiture of a monetary amount up to the domestic value of the vessel or aircraft.

(b) *Lack of manifest or discrepancy in manifest.* The penalties for violation of section 584(a)(1), Tariff Act of 1930, as amended (19 U.S.C. 1584(a)(1)), are as follows:

(1) A penalty of $1,000 against the master of a vessel, the commander of an aircraft, or the person in charge of a vehicle bound to the United States who does not produce the manifest on demand.

(2) A penalty of $1,000 against the master of a vessel, the commander of an aircraft, the person in charge of a vehicle, or the owner of the vessel, aircraft, or vehicle, or any person directly or indirectly responsible for the discrepancy, if any merchandise described in the manifest is not found on board (a ''shortage'').

(3)(i) A penalty equal to the lesser of $10,000 or the domestic value of merchandise found on board of or after having been unladen from a vessel or vehicle, or

(ii) A penalty of $1,000 (see § 122.161 of this chapter) if merchandise (other than narcotics or marihuana—see § 162.65 of this chapter) is found on board of or after having been unladen from an aircraft—if the merchandise is not included or described in the manifest or does not agree with the manifest (an ''overage'').

(iii) Unmanifested merchandise belonging to or consigned to the master or crew of the vessel, the commander or crew of the aircraft, or to the owner or person in charge of the vehicle, also shall be subject to forfeiture.

The appropriate of these penalties may be assessed against the master or crew of the vessel, the commander or crew of the aircraft, the person in charge of the vehicle, the owner of the vessel, aircraft, or vehicle, or any person directly or indirectly responsible for the discrepancy.

(c) *Exception.* There is no violation, and consequently no penalty incurred under paragraph (b), in the circumstances described in §§ 4.12(a)(5) and 122.162 of this chapter.

[T.D. 79–160, 44 FR 31958, June 4, 1979, as amended by T.D. 86–59, 51 FR 8490, Mar. 12, 1986; T.D. 88–12, 53 FR 9315, Mar. 22, 1988; T.D. 99–27, 64 FR 13676, Mar. 22, 1999; T.D. 99–64, 64 FR 43267, Aug. 10, 1999]

§ 162.73 Penalties under section 592, Tariff Act of 1930, as amended.

(a) *Maximum penalty without prior disclosure.* If the person concerned has not made a prior disclosure as provided in § 162.74, the monetary penalty under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), shall not exceed:

(1) For fraudulent violations, the domestic value of the merchandise;

(2) For grossly negligent violations,

(i) The lesser of the domestic value of the merchandise or four times the loss of duties, taxes and fees or

(ii) If there is no loss of duties, taxes and fees 40 percent of the dutiable value of the merchandise; and

(3) For negligent violations,

(i) The lesser of the domestic value of the merchandise or two times the loss of duties, taxes and fees or

(ii) If there is no loss of duties, taxes and fees 20 percent of the dutiable value of the merchandise.

(b) *Maximum penalty with prior disclosure.* If the person concerned has made

a prior disclosure, the monetary penalty shall not exceed:

(1) For fraudulent violations,

(i) One times the loss of duties, taxes and fees or

(ii) If there is no loss of duties, taxes and fees 10 percent of the dutiable value of the merchandise; and

(2) For grossly negligent and negligent violations, the interest on any loss of duties, taxes and fees. The interest shall be computed from the date of liquidation at the prevailing rate of interest applied under section 6621, Internal Revenue Code of 1954, as amended (26 U.S.C. 6621).

(c) *Exception; clerical error or mistake of fact.* There is no violation and, consequently, no penalty incurred, if the falsity or omission is due solely to clerical error or mistake of fact, unless the error or mistake is part of the pattern of negligent conduct.

[T.D. 79–160, 44 FR 31958, June 4, 1979, as amended by T.D. 99–64, 64 FR 43267, Aug. 10, 1999]

§ 162.73a Penalties under section 593A, Tariff Act of 1930, as amended.

(a) *Maximum penalty without prior disclosure for a drawback compliance program nonparticipant.* If the person concerned has not made a prior disclosure as provided in § 162.74 and has not been certified as a participant in the drawback compliance program under part 191 of this chapter, the monetary penalty under section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a), cannot exceed:

(1) For fraudulent violations, three times the loss of revenue; and

(2) For negligent violations,

(i) 20 percent of the loss of revenue for the first violation,

(ii) 50 percent of the loss of revenue for the first repetitive violation, or

(iii) One times the loss of revenue for the second and each subsequent repetitive violation.

(b) *Maximum penalty without prior disclosure for a drawback compliance program participant*——(1) *General.* If the person concerned has not made a prior disclosure as provided in § 162.74 and has been certified as a participant in, and is generally in compliance with the procedures and requirements of, the drawback compliance program provided for in part 191 of this chapter, the monetary penalty or other sanction under section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a), cannot exceed:

(i) For fraudulent violations, three times the loss of revenue; and

(ii) For negligent violations,

(A) Issuance of a written notice of a violation (warning letter) for the first violation and for any other violation that is not repetitive or that is repetitive but does not occur within three years from the date of the violation of which it is repetitive,

(B) 20 percent of the loss of revenue for the first repetitive violation that occurs within three years from the date of the violation of which it is repetitive,

(C) 50 percent of the loss of revenue for the second repetitive violation that occurs within three years from the date of the first of two violations of which it is repetitive, or

(D) One times the loss of revenue for the third and each subsequent repetitive violation that occurs within three years from the date of the first of three or more violations of which it is repetitive.

(2) *Notice of violation and required response to notice.* (i) The notice issued by Customs under paragraph (b)(1)(ii)(A) of this section will:

(A) State that the person concerned has violated section 593A;

(B) Explain the nature of the violation; and

(C) Warn the person concerned that future violations of section 593A may result in the imposition of monetary penalties. The notice will also warn the person concerned that repetitive violations may result in removal of certification under the drawback compliance program provided for in part 191 of this chapter until the person takes corrective action that is satisfactory to Customs.

(ii) Within 30 days from the date of mailing of the notice issued under paragraph (b)(1)(ii)(A) of this section:

(A) The person concerned must notify Customs in writing of the steps that have been taken to prevent a recurrence of the violation; or

(B) If the person concerned believes that no violation took place, he may

advise Customs in writing of the basis for that position. If Customs agrees on further review that no violation in fact took place, Customs will in writing advise the person concerned and rescind the notice of violation. If on further review Customs remains of the opinion that the violation took place as alleged in the notice of violation, Customs will issue a written affirmation of the notice of violation advising the person concerned that the notice requirement of paragraph (b)(2)(ii)(A) of this section remains applicable and must be complied with either within the remainder of the prescribed 30-day period or within 15 days after issuance of the written affirmation, whichever period is longer.

(c) *Maximum penalty with prior disclosure.* If the person concerned has made a prior disclosure as provided in §162.74, whether or not such person has been certified as a participant in the drawback compliance program under part 191 of this chapter, the monetary penalty under section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a), cannot exceed:

(1) For fraudulent violations, one times the loss of revenue; and

(2) For negligent violations, an amount equal to the interest accruing on the actual loss of revenue during the period from the date of overpayment of the claim to the date on which the person concerned tenders the amount of the overpayment based on the prevailing rate of interest under 26 U.S.C. 6621.

[T.D. 00–5, 65 FR 3808, Jan. 25, 2000]

§ 162.74 Prior disclosure.

(a) *In general*—(1) A prior disclosure is made if the person concerned discloses the circumstances of a violation (as defined in paragraph (b) of this section) of 19 U.S.C. 1592 or 19 U.S.C. 1593a, either orally or in writing to a Customs officer before, or without knowledge of, the commencement of a formal investigation of that violation, and makes a tender of any actual loss of duties, taxes and fees or actual loss of revenue in accordance with paragraph (c) of this section. A Customs officer who receives such a tender in connection with a prior disclosure shall ensure that the tender is deposited with the concerned local Customs entry officer.

(2) A person shall be accorded the full benefits of prior disclosure treatment if that person provides information orally or in writing to Customs with respect to a violation of 19 U.S.C. 1592 or 19 U.S.C. 1593a if the concerned Fines, Penalties, and Forfeitures Officer is satisfied the information was provided before, or without knowledge of, the commencement of a formal investigation, and the information provided includes substantially the information specified in paragraph (b) of this section. In the case of an oral disclosure, the disclosing party shall confirm the oral disclosure by providing a written record of the information conveyed to Customs in the oral disclosure to the concerned Fines, Penalties, and Forfeitures Officer within 10 days of the date of the oral disclosure. The concerned Fines, Penalties and Forfeiture Officer may, upon request of the disclosing party which establishes a showing of good cause, waive the oral disclosure written confirmation requirement. Failure to provide the written confirmation of the oral disclosure or obtain a waiver of the requirement may result in denial of the oral prior disclosure.

(b) *Disclosure of the circumstances of a violation.* The term ''discloses the circumstances of a violation'' means the act of providing to Customs a statement orally or in writing that:

(1) Identifies the class or kind of merchandise involved in the violation;

(2) Identifies the importation or drawback claim included in the disclosure by entry number, drawback claim number, or by indicating each concerned Customs port of entry and the approximate dates of entry or dates of drawback claims;

(3) Specifies the material false statements, omissions or acts including an explanation as to how and when they occurred; and

(4) Sets forth, to the best of the disclosing party's knowledge, the true and accurate information or data that should have been provided in the entry or drawback claim documents, and states that the disclosing party will provide any information or data unknown at the time of disclosure within

30 days of the initial disclosure date. Extensions of the 30-day period may be requested by the disclosing party from the concerned Fines, Penalties, and Forfeitures Officer to enable the party to obtain the information or data.

(c) *Tender of actual loss of duties, taxes and fees or actual loss of revenue.* A person who discloses the circumstances of the violation shall tender any actual loss of duties, taxes and fees or actual loss of revenue. The disclosing party may choose to make the tender either at the time of the claimed prior disclosure, or within 30 days after CBP notifies the person in writing of CBP calculation of the actual loss of duties, taxes and fees or actual loss of revenue. The Fines, Penalties, and Forfeitures Officer may extend the 30-day period if there is good cause to do so. The disclosing party may request that the basis for determining CBP asserted actual loss of duties, taxes or fees be reviewed by Headquarters, provided that the actual loss of duties, taxes or fees determined by CBP exceeds $100,000 and is deposited with CBP, more than 1 year remains under the statute of limitations involving the shipments covered by the claimed disclosure, and the disclosing party has complied with all other prior disclosure regulatory provisions. A grant of review is within the discretion of CBP Headquarters in consultation with the appropriate field office, and such Headquarters review shall be limited to determining issues of correct tariff classification, correct rate of duty, elements of dutiable value, and correct application of any special rules (GSP, CBI, HTS 9802, etc.). The concerned Fines, Penalties, and Forfeitures Officer shall forward appropriate review requests to the Chief, Penalties Branch, Office of International Trade. After Headquarters renders its decision, the concerned Fines, Penalties, and Forfeitures Officer will be notified and the concerned Center director will recalculate the loss, if necessary, and notify the disclosing party of any actual loss of duties, taxes or fees increases. Any increases must be deposited within 30 days, unless the local CBP office authorizes a longer period. Any reductions of the CBP calculated actual loss of duties, or and fees shall be refunded to the disclosing party. Such Headquarters review decisions are final and not subject to appeal. Further, disclosing parties requesting and obtaining such a review waive their right to contest either administratively or judicially the actual loss of duties, taxes and fees or actual loss of revenue finally calculated by CBP under this procedure. Failure to tender the actual loss of duties, taxes and fees or actual loss of revenue finally calculated by CBP shall result in denial of the prior disclosure.

(d) *Effective time and date of prior disclosure*—(1) If the documents that provide the disclosing information are sent by registered or certified mail, return-receipt requested, and are received by Customs, the disclosure shall be deemed to have been made at the time of mailing.

(2) If the documents are sent by other methods, including in-person delivery, the disclosure shall be deemed to have been made at the time of receipt by Customs. If the documents are delivered in person, the person delivering the documents will, upon request, be furnished a receipt from Customs stating the time and date of receipt.

(3) The provision of information that is not in writing but that qualifies for prior disclosure treatment pursuant to paragraph (a)(2) of this section shall be deemed to have occurred at the time that Customs was provided with information that substantially complies with the requirements set forth in paragraph (b) of this section.

(e) *Addressing and filing prior disclosure*—(1) A written prior disclosure should be addressed to the Commissioner of Customs, have conspicuously printed on the face of the envelope the words ''prior disclosure,'' and be presented to a Customs officer at the Customs port of entry of the disclosed violation.

(2) In the case of a prior disclosure involving violations at multiple ports of entry, the disclosing party may orally disclose or provide copies of the disclosure to all concerned Fines, Penalties, and Forfeitures Officers. In accordance with internal Customs procedures, the officers will then seek consolidation of the disposition and handling of the disclosure. In the event

that the claimed ''multi-port'' disclosure is made to a Customs officer other than the concerned Fines, Penalties, and Forfeitures Officer, the disclosing party must identify all ports involved to enable the concerned Customs officer to refer the disclosure to the concerned Fines, Penalties, and Forfeitures Officer for consolidation of the proceedings.

(f) *Verification of disclosure*. Upon receipt of a prior disclosure, the Customs officer shall notify Customs Office of Investigations of the disclosure. In the event the claimed prior disclosure is made to a Customs officer other than the concerned Fines, Penalties, and Forfeitures Officer, it is incumbent upon the Customs officer to provide a copy of the disclosure to the concerned Fines, Penalties, and Forfeitures Officer. The disclosing party may request, in the oral or written prior disclosure, that the concerned Fines, Penalties, and Forfeitures Officer request that the Office of Investigations withhold the initiation of disclosure verification proceedings until after the party has provided the information or data within the time limits specified in paragraph (b)(4) of this section. It is within the discretion of the concerned Fines, Penalties and Forfeitures Officer to grant or deny such requests.

(g) *Commencement of a formal investigation*. A formal investigation of a violation is considered to be commenced with regard to the disclosing party on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received that caused the Customs Service to believe that a possibility of a violation existed. In the event that a party affirmatively asserts a prior disclosure (*i.e.*, identified or labeled as a prior disclosure) and is denied prior disclosure treatment on the basis that Customs had commenced a formal investigation of the disclosed violation, and Customs initiates a penalty action against the disclosing party involving the disclosed violation, a copy of a ''writing'' evidencing the commencement of a formal investigation of the disclosed violation shall be attached to any required prepenalty notice issued to the disclosing party pursuant to 19 U.S.C. 1592 or 19 U.S.C. 1593a.

(h) *Scope of the disclosure and expansion of a formal investigation*. A formal investigation is deemed to have commenced as to additional violations not included or specified by the disclosing party in the party's original prior disclosure on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received that caused the Customs Service to believe that a possibility of such additional violations existed. Additional violations not disclosed or covered within the scope of the party's prior disclosure that are discovered by Customs as a result of an investigation and/or verification of the prior disclosure shall not be entitled to treatment under the prior disclosure provisions.

(i) *Knowledge of the commencement of a formal investigation*—(1) A disclosing party who claims lack of knowledge of the commencement of a formal investigation has the burden to prove that lack of knowledge. A person shall be presumed to have had knowledge of the commencement of a formal investigation of a violation if before the claimed prior disclosure of the violation a formal investigation has been commenced and:

(i) Customs, having reasonable cause to believe that there has been a violation of 19 U.S.C. 1592 or 19 U.S.C. 1593a, so informed the person of the type of or circumstances of the disclosed violation; or

(ii) A Customs Special Agent, having properly identified himself or herself and the nature of his or her inquiry, had, either orally or in writing, made an inquiry of the person concerning the type of or circumstances of the disclosed violation; or

(iii) A Customs Special Agent, having properly identified himself or herself and the nature of his or her inquiry, requested specific books and/or records of the person relating to the disclosed violation; or

(iv) Customs issues a prepenalty or penalty notice to the disclosing party pursuant to 19 U.S.C. 1592 or 19 U.S.C. 1593a relating to the type of or circumstances of the disclosed violation; or

(v) The merchandise that is the subject of the disclosure was seized; or

(vi) In the case of violations involving merchandise accompanying persons entering the United States or commercial merchandise inspected in connection with entry, the person has received oral or written notification of Customs finding of a violation.

(2) The presumption of knowledge may be rebutted by evidence that, notwithstanding the foregoing notice, inquiry or request, the person did not have knowledge that an investigation had commenced with respect to the disclosed information.

(j) *Prior disclosure using sampling.* (1) A private party may use statistical sampling to ''disclose the circumstances of a violation'' and for calculation of lost duties, taxes, and fees or lost revenue for purposes of prior disclosure, provided that the statistical sampling satisfies the criteria in 19 CFR 163.11(c)(3). The prior disclosure must include an explanation of the sampling plan and methodology that meets with CBP's approval. The time period, scope, and any sampling plan employed by the private party, as well as the execution and results of the self-review, are subject to CBP review and approval. In accordance with 19 CFR 163.11(c)(1), in circumstances where the private party and CBP have discussed and accepted the sampling plan and its methodology, or adjustments to it, the private party submitting a prior disclosure employing sampling under this paragraph may not contest the validity of the sampling plan or its methodology, and challenges of the sampling itself will be limited to computational and clerical errors after CBP conducts its review and makes a determination. This is not a waiver of the private party's right to later contest substantive issues it may properly raise under applicable regulations, as provided in 19 CFR 163.11(c)(1).

(2) If a private party submits a prior disclosure claim employing sampling, CBP may review other transactions from the same time period and scope that are the subject of the prior disclosure.

[T.D. 98–49, 63 FR 29131, May 28, 1998; 63 FR 35798, July 1, 1998; T.D. 99–27, 64 FR 13676, Mar. 22, 1999; T.D. 99–64, 64 FR 43267, Aug. 10, 1999; T.D. 00–5, 65 FR 3809, Jan. 25, 2000; T.D. 00–57, 65 FR 53575, Sept. 5, 2000; CBP Dec. 11–20, 76 FR 65960, Oct. 25, 2011; CBP Dec. No. 16–26, 81 FR 93024, Dec. 20, 2016]

§ 162.75 Seizures limited under section 592, Tariff Act of 1930, as amended.

(a) *When authorized.* Merchandise may be seized for violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592) *only* if the port director has reasonable cause to believe that a person has violated the statute and that

(1) The person is insolvent,

(2) The person is beyond the jurisdiction of the United States,

(3) Seizure otherwise is essential to protect the revenue, or

(4) Seizure is essential to prevent the introduction of prohibited or restricted merchandise into the Customs territory of the United States.

(b) *No seizure if prior disclosure.* Under no circumstances shall merchandise be seized under the authority of 19 U.S.C. 1592 if there has been a prior disclosure of the violation. This paragraph does not limit seizures under the authority of any other applicable law or regulation.

(c) *Seizure notice.* If merchandise is seized, the Fines, Penalties, and Forfeitures Officer shall promptly issue a written notice of seizure to the person concerned and to any other person the facts of record indicate has an interest in the merchandise. The seizure notice shall contain the information required by § 162.31 and shall state why the seizure was necessary.

(d) *Release of seized merchandise*—(1) *To person from whom seized.* The Fines, Penalties, and Forfeitures Officer shall return seized mechandise to the person from whom seized upon the deposit of security, in a form acceptable to the Fines, Penalties, and Forfeitures Officer, equal to the maximum penalty which may be assessed, if the entry of the merchandise into the commerce of the United States is not prohibited or restricted.

(2) *To others.* The Fines, Penalties, and Forfeitures Officer may release

seized merchandise to any other person upon the deposit of adequate security, in a form acceptable to the Fines, Penalties, and Forfeitures Officer, if the entry of the merchandise into the commerce of the United States is not prohibited or restricted, and if:

(i) The Fines, Penalties, and Forfeitures Officer is satisfied that the person has a substantial interest in the merchandise, and

(ii) The person submits either an agreement to hold the United States and its officers and employees harmless, or a release from the owner and/or the person from whom the merchandise was seized.

(3) *Forfeiture.* If neither a petition for relief is filed in accordance with part 171 of this chapter, nor compliance made with the decision within the time provided by law, the Fines, Penalties, and Forfeitures Officer immediately shall report the facts and refer the case to the Department of Justice for the institution of court proceedings.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 84–18, 49 FR 1679, Jan. 13, 1984; T.D. 85–90, 50 FR 21431, May 24, 1985; T.D. 86–118, 51 FR 22516, June 20, 1986; T.D. 88–43, 53 FR 28195, July 27, 1988; T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

§ 162.76 Prepenalty notice for violations of sections 466 or 584(a)(1), Tariff Act of 1930, as amended.

(a) *When required.* If the Fines, Penalties, and Forfeitures Officer has reasonable cause to believe that a violation of section 466 or 584(a)(1), Tariff Act of 1930, as amended (19 U.S.C. 1466, 1584(a)(1)), has occurred and determines that further proceedings are warranted, he shall issue to the person concerned a written notice of his intent to issue a penalty claim or a claim of forfeiture, as appropriate.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall:

(i) Describe the merchandise, if applicable,

(ii) Set forth the details of the error in the manifest, if applicable,

(iii) Specify all laws and regulations allegedly violated,

(iv) Describe all material facts and circumstances which establish the alleged violation, and

(v) State the estimated loss of duties, if any, and, taking into account all circumstances, the amount of the proposed penalty claim or claim of forfeiture, as appropriate.

(2) *Right to make presentation.* The prepenalty notice also shall inform the person of his right to make a written and an oral presentation within 30 days of the mailing of the notice (or such shorter period as may be prescribed under §162.78) as to why a penalty claim or claim of forfeiture should not be issued or, if issued and it involves a monetary amount, why it should be in a lesser amount than proposed.

(c) *Exception.* No prepenalty notice shall be issued if the proposed penalty for an alleged violation of 19 U.S.C. 1584(a)(1) is $1,000 or less.

[T.D. 79–160, 44 FR 31958, June 4, 1979, as amended by T.D. 99–27, 64 FR 13676, Mar. 22, 1999; CBP Dec. 04–28, 69 FR 52600, Aug. 27, 2004]

§ 162.77 Prepenalty notice for violations of section 592, Tariff Act of 1930, as amended.

(a) *When required.* If the Fines, Penalties, and Forfeitures Officer has reasonable cause to believe that a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), has occurred, and determines that further proceedings are warranted, he shall issue to the person concerned a notice of his intent to issue a claim for a monetary penalty. The prepenalty notice shall be issued whether or not a seizure has been made.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall:

(i) Describe the merchandise,

(ii) Set forth the details of the entry or introduction, the attempted entry or introduction, or the aiding or abetting of the entry, introduction, or attempt,

(iii) Specify all laws and regulations allegedly violated,

(iv) Disclose all material facts which establish the alleged violation,

(v) State whether the alleged violation occured as the result of fraud, gross negligence, or negligence, and

(vi) State the estimated loss of duties, if any, and, taking into account all circumstances, the amount of the proposed monetary penalty.

(2) *Right to make presentations.* The prepenalty notice also shall inform the

person of his right to make an oral and a written presentation within 30 days of the mailing of the notice (or such shorter period as may be prescribed under §162.78) as to why a claim for a monetary penalty should not be issued or, if issued, why it should be in a lesser amount than proposed.

(c) *Exceptions.* A prepenalty notice shall not be issued if:

(1) The claim is for $1,000 or less, or

(2) The violation occurred with respect to a noncommercial importation.

[T.D. 79–160, 44 FR 31958, June 4, 1979, as amended by T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

§162.77a Prepenalty notice for violation of section 593A, Tariff Act of 1930, as amended.

(a) *When required.* If the appropriate Customs field officer has reasonable cause to believe that a violation of section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a) has occurred, and determines that further proceedings are warranted, the officer will issue to the person concerned a notice of intent to issue a claim for a monetary penalty.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice will:

(i) Identify the drawback claim;

(ii) Set forth the details relating to the seeking, inducing, or affecting, or the attempted seeking, inducing, or affecting, or the aiding or procuring of, the drawback claim;

(iii) Specify all laws and regulations allegedly violated;

(iv) Disclose all the material facts which establish the alleged violation;

(v) State whether the alleged violation occurred as a result of fraud or negligence; and

(vi) State the estimated actual or potential loss of revenue due to the drawback claim and, taking into account all circumstances, the amount of the proposed monetary penalty.

(2) *Right to make presentations.* The prepenalty notice also will inform the person of his right to make an oral and a written presentation within 30 days of mailing of the notice (or such shorter period as may be prescribed under §162.78) as to why a claim for a monetary penalty should not be issued or, if issued, why it should be in a lesser amount than proposed.

(c) *Exceptions.* A prepenalty notice will not be issued for a violation of 19 U.S.C. 1593a if the amount of the proposed monetary penalty is $1,000 or less.

(d) *Prior approval.* If an alleged violation of 19 U.S.C. 1593a occurred as a result of fraud, a prepenalty notice will not be issued without prior approval by Customs Headquarters.

[T.D. 00–5; 65 FR 3809, Jan. 25, 2000]

§162.78 Presentations responding to prepenalty notice.

(a) *Time within which to respond.* Unless a shorter period is specified in the prepenalty notice or an extension is given in accordance with paragraph (b) of this section, the named person shall have 30 days from the date of mailing of the prepenalty notice to make a written and an oral presentation. The Fines, Penalties, and Forfeitures Officer may specify a shorter reasonable period of time, but not less than 7 days, if less than 1 year remains before the statute of limitations may be asserted as a defense. If a period of fewer than 30 days is specified, the Fines, Penalties, and Forfeitures Officer, if possible, shall inform the named person of the prepenalty notice and its contents by telephone at or about the time of issuance.

(b) *Extensions.* If at least 1 year remains before the statute of limitations may be asserted as a defense, the Fines, Penalties, and Forfeitures Officer, upon written request, may extend the time for filing a written presentation, or making an oral presentation, or both, for any of the reasons given in part 171 of this chapter (except for the reason described in §171.15(a)(4)), relating to extensions of time for filing petitions for relief. In addition, an extension may be granted if, upon the request of the alleged violator, the Commissioner of Customs determines that the case involves an issue which is a proper matter for submission to Customs Headquarters under the internal advice procedures of §177.11(b)(2) of this chapter. Other extensions may be authorized only by Headquarters.

(c) *Form and contents of written presentation.* The written presentation need

not be in any particular form, but shall contain information sufficient to indicate that it is the written presentation in response to the prepenalty notice. It should contain answers to the allegations in the prepenalty notice and set forth the reasons why the person believes the claim should not be issued or, if issued, why it should be in a lesser amount than proposed.

(d) *Additional presentations.* In addition to one written and one oral presentation, the Fines, Penalties, and Forfeitures Officer, in his discretion, may allow further presentations.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 85–195, 50 FR 50290, Dec. 10, 1985; T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

§ 162.79 Determination as to violation.

(a) *No violation.* If, after considering any presentations made in response to the prepenalty notice, the Fines, Penalties, and Forfeitures Officer determines that there was no violation by the person named in the prepenalty notice, he promptly shall notify the person in writing of that determination and that no claim for a monetary penalty will be issued.

(b) *Violation*—(1) *Written notice of claim.* If, after considering any presentations made in response to the prepenalty notice, the Fines, Penalties, and Forfeitures Officer determines that there was a violation by the person named in the prepenalty notice, he promptly shall issue a written notice of a claim for a monetary penalty to that person.

(2) *Contents.* The notice of a claim for a monetary penalty shall contain any changes in the information provided in the prepenalty notice, and shall inform the person of his right to apply for relief under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), in accordance with part 171 of this chapter. If the person to whom the notice is issued is liable for any actual loss of duties recoverable under section 592(d), Tariff Act of 1930, as amended (19 U.S.C. 1592(d)), the notice shall identify the entries involved, state the amount of duties payable and how it was calculated, and require the person to deposit or arrange for payment of the duties within 30 days of the date of the notice.

[T.D. 72–211, 37 FR 16488, Aug. 15, 1972, as amended by T.D. 84–18, 49 FR 1680, Jan. 13, 1984; T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

§ 162.79a Other notice.

If no prepenalty notice is issued, a written notice of any monetary penalty incurred shall contain the information required under §162.76(b)(1), §162.77(b)(1) or §162.77a(b)(1) and (b)(2), except that the notice shall state the amount of the claim for a monetary penalty. The notice also shall inform the person of his right to apply for relief under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618), in accordance with part 171 of this chapter.

[T.D. 79–160, 44 FR 31958, June 4, 1979, as amended by T.D. 00–5, 65 FR 3809, Jan. 25, 2000]

§ 162.79b Recovery of actual loss of duties, taxes and fees or actual loss of revenue.

Whether or not a monetary penalty is assessed under this subpart, the appropriate Customs field officer will require the deposit of any actual loss of duties, taxes and fees resulting from a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592) or any actual loss of revenue resulting from a violation of section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a), notwithstanding that the liquidation of the entry to which the loss is attributable has become final. If a person is liable for the payment of actual loss of duties, taxes and fees or actual loss of revenue in any case in which a monetary penalty is not assessed or a written notification of claim of monetary penalty is not issued, the port director will issue a written notice to the person of the liability for the actual loss of duties, taxes and fees or actual loss of revenue. The notice will identify the merchandise and entries involved, state the loss of duties, taxes and fees or loss of revenue and how it was calculated, and require the person to deposit or arrange for payment of the duties, taxes and fees or revenue within 30 days from the date of the notice. Any determination of actual loss of duties, taxes and fees or actual loss of revenue under this section is subject to

review upon written application to the Commissioner of Customs.

[T.D. 00–5, 65 FR 3809, Jan. 25, 2000]

§ 162.80 Liability for duties; liquidation of entries.

(a)(1) When an entry is the subject of an investigation for possible violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), or of a penalty action established under that section, the Center director, subject to the provisions of paragraph (a)(2) of this section, may liquidate the entry and CBP, either at the port of entry or electronically, may collect duties before the conclusion of the investigation or final disposition of the penalty action if the Center director determines that liquidation would be in the interest of the Government.

(2)(i) An entry not liquidated within 1 year from the date of entry or final withdrawal of all merchandise covered by a warehouse entry shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer, his consignee, or agent unless the time for liquidation is extended by the Center director because—

(A) Information needed by Customs for the proper appraisement or classification of the merchandise is not available.

(B) The importer, his consignee, or agent requests an extension and demonstrates good cause why the extention should be granted, or

(C) The 1-year liquidation period is suspended as required by statute or court order.

(ii) An entry not liquidated within 4 years from the date of entry or final withdrawal of all merchandise covered by a warehouse entry shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer, his consignee, or agent unless liquidation continues to be suspended by statute or court order. In that event, the entry shall be liquidated within 90 days after removal of the suspension.

(iii) The Center director promptly shall notify the importer or consignee concerned and any authorized agent and surety of the importer or consignee in writing of any extension or suspension of the liquidation period.

(b) When merchandise not covered by an entry is subject to section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), a demand shall be made on the importer for payment of the duty estimated to be due on such merchandise.

(c) Any applicable internal revenue tax shall also be demanded unless the merchandise is to be, or has been, forfeited.

[T.D. 84–18, 49 FR 1680, Jan. 13, 1984, as amended by CBP Dec. No. 16–26, 81 FR 93024, Dec. 20, 2016]

Subpart H—Civil Asset Forfeiture Reform Act

SOURCE: T.D. 00–88, 65 FR 78091, Dec. 14, 2000, unless otherwise noted.

§ 162.91 Exemptions.

The provisions of this subpart will apply to all seizures of property for civil forfeiture made by Customs and Border Protection or Immigration and Customs Enforcement officers except for those seizures of property to be forfeited under the following statutes: The Tariff Act of 1930 or any other provision of law codified in title19, United States Code; the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*); the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*); the Trading with the Enemy Act (50 U.S.C. App. 1 *et seq.*); the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1701 *et seq.*); and section 1 of title VI of the Act of June 15, 1917 (40 Stat. 233; 22 U.S.C. 401).

[T.D. 02–08, 67 FR 9191, Feb. 28, 2002, as amended by USCBP–2006–0122, 73 FR 9012, Feb. 19, 2007]

§ 162.92 Notice of seizure.

(a) *Generally.* Customs will send written notice of seizure as provided in this section to all known interested parties as soon as practicable. Except as provided in paragraphs (b), (c) and (d) of this section, in no case may notice be sent more than 60 calendar days after the date of seizure. Any notice issued under this section will include all information that is required by § 162.31(a) and (b) of this part.

(b) *Seizure by state or local authorities.* In a case in which property is seized by a state or local law enforcement agency and turned over to Customs for the purpose of forfeiture under Federal law, notice will be sent not more than 90 calendar days after the date of seizure by the State or local law enforcement agency.

(c) *Identity or interest of party not determined.* If the identity or interest of a party is not determined until after the seizure or turnover, but it is determined before a declaration of forfeiture, notice will be sent to such interested party not later than 60 calendar days after the determination by Customs of the identity of the party or the party's interest.

(d) *Extensions.* (1) The Assistant Secretary, Immigration and Customs Enforcement or the Commissioner of Customs and Border Protection for cases within their respective agencies, or their successors or designees, may extend the period for sending notice under this section for a period not to exceed 30 calendar days, if it is determined that issuance of the notice within 60 calendar days of seizure may have an adverse result, including:

(i) Endangering the life or physical safety of an individual;

(ii) Flight from prosecution;

(iii) Destruction of or tampering with evidence;

(iv) Intimidation of potential witnesses; or

(v) Otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(2) The period for sending notice of seizure as provided in paragraph (d)(1) of this section may not be further extended except by order of a court of competent jurisdiction as prescribed in paragraph (e) of this section.

(e) *Extensions by a court.* Upon motion by the Government, a court of competent jurisdiction may extend the period for sending notice for a period not to exceed 60 calendar days. This period may be further extended by the court for additional 60 calendar-day periods, as necessary, if the court determines, based on a written certification of the Assistant Commissioner, Investigations, or designee, that the conditions set forth in paragraph (d) of this section are present.

[T.D. 00–88, 65 FR 78091, Dec. 14, 2000, as amended by USCBP–2006–0122, 73 FR 9012, Feb. 19, 2007]

§ 162.93 Failure to issue notice of seizure.

If Customs does not send notice of a seizure of property in accordance with § 162.92 to the person from whom the property was seized, and no extension of time is granted, Customs will return the property to that person without prejudice to the right of the Government to commence a forfeiture proceeding at a later time. Customs is not, however, required to return contraband or other property that the person may not legally possess.

§ 162.94 Filing of a claim for seized property.

(a) *Generally.* In lieu of filing a petition for relief in accordance with part 171 of this chapter, any person claiming property seized by Customs in a non-judicial civil forfeiture proceeding may file a claim with the appropriate Fines, Penalties, and Forfeitures Officer.

(b) *When filed.* Unless the Fines, Penalties, and Forfeitures Officer provides additional time to the person filing a claim for seized property pursuant to paragraph (a) of this section, the claim must be filed within 35 calendar days after the date the notice of seizure is mailed. If the notice of seizure is not received, a claim may be filed not later than 30 calendar days after the date of final publication of notice of seizure and intent to forfeit the property.

(c) *Form of claim.* The claim must be in writing but need not be made in any particular form. Claim forms will be made generally available upon request.

(d) *Content of claim.* The claim must:

(1) Identify the specific property being claimed;

(2) State the claimant's interest in the property; and

(3) Be made under oath, subject to penalty of perjury.

(e) *No bond required.* Any person may make a claim under this section without posting a bond.

(f) *Effect of claim.* Not later than 90 calendar days after a claim has been

filed, the Government will file an appropriate complaint for forfeiture, except that a court in the district in which the complaint will be filed may extend the period for filing a complaint for good cause shown or upon agreement of the parties.

[T.D. 00–88, 65 FR 78091, Dec. 14, 2000, as amended by T.D. 02–08, 67 FR 9191, Feb. 28, 2002]

§ 162.95 Release of seized property.

(a) *Generally.* Except as provided in paragraph (b) of this section, a claimant to seized property under 18 U.S.C. 983(a) is entitled to immediate release of the property if:

(1) The claimant has a possessory interest in the property;

(2) The claimant has sufficient ties to the community to provide assurance that the property will be available at the time of trial;

(3) The continued possession of the property by Customs pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing an individual from working, or leaving an individual homeless; and

(4) The claimant's likely hardship from the continued possession by Customs of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceedings.

(b) *Exceptions.* Immediate release of seized property under paragraph (a) of this section will not apply if the seized property:

(1) Is contraband, currency or other monetary instrument, or electronic funds, unless, in the case of currency, other monetary instrument or electronic funds, such property comprises the assets of a legitimate business which has been seized;

(2) Is to be used as evidence of a violation of the law;

(3) By reason of design or other characteristic, is particularly suited for use in illegal activities; or

(4) Is likely to be used to commit additional criminal acts if returned to the claimant.

(c) *Request for release.* A claimant seeking release of property under this section must request possession of the property from the Fines, Penalties, and Forfeitures Officer who issued the notice of seizure. The request need not be made in any particular form, but must be in writing and set forth the basis on which the requirements of paragraph (a) of this section have been met. The request may be filed at any time during which the property remains under seizure.

(d) *Granting request for release.* The Fines, Penalties, and Forfeitures Officer may release the property if it is determined to be appropriate under paragraphs (a) through (c) of this section.

(e) *Denial of or failure to act on request for release.* If the Fines, Penalties, and Forfeitures Officer denies the request for release or fails to make a decision on the request by the 15th calendar day after the date the request is received by Customs, the claimant may file a petition in the district court in which the complaint has been filed, or, if no complaint has been filed, in the U.S. district court in which the seizure warrant was issued or in the U.S. district court for the district in which the property was seized.

[T.D. 00–88, 65 FR 78091, Dec. 14, 2000, as amended by T.D. 02–08, 67 FR 9191, Feb. 28, 2002]

§ 162.96 Remission of forfeitures and payment of fees, costs or interest.

When a person elects to petition for relief before, or in lieu of, filing a claim under § 162.94, any seizure subject to forfeiture under this subpart may be remitted or mitigated pursuant to the provisions of 19 U.S.C. 1618 or 31 U.S.C. 5321(c), as applicable. Any person who accepts a remission or mitigation decision will not be considered to have substantially prevailed in a civil forfeiture proceeding for purposes of collection of any fees, costs or interest from the Government.

PART 163—RECORDKEEPING

Sec.

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

Section 163.2 also issued under 19 U.S.C. 3904, 3907.

SOURCE: T.D. 98–56, 63 FR 32946, June 16, 1998, unless otherwise noted.

§ 163.0 Scope.

This part sets forth the recordkeeping requirements and procedures governing the maintenance, production, inspection, and examination of records. It also sets forth the procedures governing the examination of persons in connection with any investigation, audit or other inquiry conducted for the purposes of ascertaining the correctness of any entry, for determining the liability of any person for duties, fees and taxes due or that may be due, for determining liability for fines, penalties and forfeitures, or for ensuring compliance with the laws and regulations administered or enforced by Customs. Additional provisions concerning records maintenance and examination applicable to U.S. importers, exporters, and producers under the United States-Canada Free Trade Agreement and the North American Free Trade Agreement and the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA) are contained in parts 10 and 181 and 182 of this chapter, respectively.

[T.D. 98–56, 63 FR 32946, June 16, 1998, as amended by CBP Dec. 11–20, 76 FR 65960, Oct. 25, 2011; CBP Dec. 21–10, 86 FR 35582, July 6, 2021]

§ 163.1 Definitions.

When used in this part, the following terms shall have the meaning indicated:

(a) *Records*—(1) *In general.* The term ''records'' means any information made or normally kept in the ordinary course of business that pertains to any activity listed in paragraph (a)(2) of this section. The term includes any information required for the entry of merchandise (the (a)(1)(A) list) and other information pertaining to, or from which is derived, any information element set forth in a collection of information required by the Tariff Act of 1930, as amended, in connection with any activity listed in paragraph (a)(2) of this section. The term includes, but is not limited to, the following: Statements; declarations; documents; electronically generated or machine readable data; electronically stored or transmitted information or data; books; papers; correspondence; accounts; financial accounting data; technical data; computer programs necessary to retrieve information in a usable form; and entry records (contained in the (a)(1)(A) list).

(2) *Activities.* The following are activities for purposes of paragraph (a)(1) of this section:

(i) Any importation, declaration or entry;

(ii) The transportation or storage of merchandise carried or held under bond into or from the customs territory of the United States;

(iii) The filing of a drawback claim;

(iv) The completion and signature of a NAFTA Certificate of Origin pursuant to §181.11(b) of this chapter;

(v) The collection, or payment to Customs, of duties, fees and taxes; or

(vi) The completion and signature of a Chile FTA certification of origin and any other supporting documentation pursuant to the United States-Chile Free Trade Agreement.

(vii) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Singapore Free Trade Agreement (SFTA), including a SFTA importer's supporting statement if previously required by the port director or Center director before January 19, 2017, or the Center director on or after January 19, 2017.

(viii) The maintenance of any documentation that the importer may have

in support of a claim for preferential tariff treatment under the United States-Jordan Free Trade Agreement (US–JFTA), including a US–JFTA declaration.

(ix) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Australia Free Trade Agreement (AFTA), including an AFTA importer's supporting statement.

(x) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Morocco Free Trade Agreement (MFTA), including a MFTA importer's declaration.

(xi) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR), including a CAFTA–DR importer's certification.

(xii) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Bahrain Free Trade Agreement (BFTA), including a BFTA importer's declaration.

(xiii) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Oman Free Trade Agreement (OFTA), including an OFTA importer's declaration.

(xiv) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Peru Trade Promotion Agreement (PTPA), including a PTPA importer's certification.

(xv) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Korea Free Trade Agreement (UKFTA), including a UKFTA importer's certification.

(xvi) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Colombia Trade Promotion Agreement (CTPA), including a CTPA importer's certification.

(xvii) The maintenance of any documentation that the importer may have in support of a claim for preferential tariff treatment under the United States-Panama Trade Promotion Agreement (PANTPA), including a PANTPA importer's certification.

(xviii) Any other activity required to be undertaken pursuant to the laws or regulations administered by Customs.

(b) *(a)(1)(A) list.* See the definition of ''entry records''.

(c) *Audit.* ''Audit'' means an evaluation by CBP under 19 U.S.C. 1509 of records required to be maintained and/or produced by persons listed in §163.2, or pursuant to other applicable laws or regulations administered by CBP, for the purpose of furthering any investigation or review conducted to: ascertain the correctness of any entry; determine the liability of any person for duties, taxes, and fees due, or revenue due, or which may be due the United States; determine liability for fines, penalties, and forfeitures; ensure compliance with the laws of the United States administered by CBP; or determine that information submitted or required is accurate, complete, and in accordance with any laws and regulations administered or enforced by CBP. An audit does not include a quantity verification for a customs bonded warehouse or general purpose foreign trade zone. An audit may be as extensive or simple as CBP determines is warranted to achieve the audit's purpose under applicable laws and regulations.

(d) *Certified recordkeeper.* A ''certified recordkeeper'' is a person who is required to keep records under this chapter and who is a participant in the Recordkeeping Compliance Program provided for in §163.12.

(e) *Entry records/(a)(1)(A) list.* The terms ''entry records'' and ''(a)(1)(A) list'' refer to records required by law or regulation for the entry of merchandise (whether or not Customs required their presentation at the time of entry). The (a)(1)(A) list is contained in the Appendix to this part.

(f) *Inquiry.* An ''inquiry'' is any formal or informal procedure, other than

an investigation, through which a request for information is made by a Customs officer.

(g) *Original.* The term ''original'', when used in the context of maintenance of records, has reference to records that are in the condition in which they were made or received by the person responsible for maintaining the records pursuant to 19 U.S.C. 1508 and the provisions of this chapter, including records consisting of the following:

(1) Electronic information which was used to develop other electronic records or paper documents;

(2) Electronic information which is in a readable format such as a facsimile paper format or an electronic or hardcopy spreadsheet;

(3) In the case of a paper record that is part of a multi-part form where all parts of the form are made by the same impression, one of the carbon-copy parts or a facsimile copy or photocopy of one of the parts; and

(4) A copy of a record that was provided to another government agency which retained it, provided that, if required by Customs, a signed statement accompanies the copy certifying it to be a true copy of the record provided to the other government agency.

(h) *Party/person.* The terms ''party'' and ''person'' refer to a natural person, corporation, partnership, association, or other entity or group.

(i) *Summons.* ''Summons'' means any summons issued under this part that requires the production of records or the giving of testimony, or both.

(j) *Technical data.* ''Technical data'' are records which include diagrams and other data with regard to a business or an engineering or exploration operation, whether conducted inside or outside the United States, and whether on paper, cards, photographs, blueprints, tapes, microfiche, film, or other media or in electronic or magnetic storage.

(k) *Third-party recordkeeper.* ''Third-party recordkeeper'' means any attorney, any accountant or any customs broker other than a customs broker who is the importer of record on an entry.

[T.D. 98–56, 63 FR 32946, June 16, 1998]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §163.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov.*

§ 163.2 Persons required to maintain records.

(a) *General.* Except as otherwise provided in paragraph (b) or (e) of this section, the following persons shall maintain records and shall render such records for examination and inspection by Customs:

(1) An owner, importer, consignee, importer of record, entry filer, or other person who:

(i) Imports merchandise into the customs territory of the United States, files a drawback claim, or transports or stores merchandise carried or held under bond, or

(ii) Knowingly causes the importation or transportation or storage of merchandise carried or held under bond into or from the customs territory of the United States;

(2) An agent of any person described in paragraph (a)(1) of this section; or

(3) A person whose activities require the filing of a declaration or entry, or both.

(b) *Domestic transactions.* For purposes of paragraph (a)(1)(ii) of this section, a person who orders merchandise from an importer in a domestic transaction knowingly causes merchandise to be imported only if:

(1) The terms and conditions of the importation are controlled by the person placing the order with the importer (for example, the importer is not an independent contractor but rather is the agent of the person placing the order: Whereas a consumer who purchases an imported automobile from a domestic dealer would not be required to maintain records, a transit authority that prepared detailed specifications from which imported subway cars or busses were manufactured would be required to maintain records); or

(2) Technical data, molds, equipment, other production assistance, material, components, or parts are furnished by the person placing the order with the importer with knowledge that they will be used in the manufacture or production of the imported merchandise.

(c) *Recordkeeping required for certain exporters and producers*—(1) *NAFTA.*

Any person who exports goods to Canada or Mexico for which a Certificate of Origin was completed and signed pursuant to the North American Free Trade Agreement must also maintain records in accordance with part 181 of this chapter.

(2) *USMCA.* Any exporter or producer who completes a certification of origin or a producer who provides a written representation for a good exported from the United States to Canada or Mexico pursuant to the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA) must maintain records in accordance with part 182 of this chapter.

(3) *Kimberley Process Certification Scheme.* Any U.S. person (see definition in §12.152(b)(5)) who exports from the United States any rough diamonds must retain a copy of the Kimberley Process Certificate accompanying each shipment for a period of at least five years from the date of exportation. *See* 19 CFR 12.152(f)(3). Any U.S. person who exports from the United States any rough diamonds and does not keep records in this time frame may be subject to penalties under 19 U.S.C. 3907.

(d) *Recordkeeping required for customs brokers.* Each customs broker must also make and maintain records and make such records available in accordance with part 111 of this chapter.

(e) *Recordkeeping not required for certain travelers.* After having physically cleared the Customs facility, a traveler who made a baggage or oral declaration upon arrival in the United States will not be required to maintain supporting records regarding non-commercial merchandise acquired abroad which falls within the traveler's personal exemptions or which is covered by a flat rate of duty.

[T.D. 98–56, 63 FR 32946, June 16, 1998, as amended by USCBP–2012–0022, 78 FR 40630, July 8, 2013; CBP Dec. 21–10, 86 FR 35582, July 6, 2021]

§ 163.3 Entry records.

Any person described in §163.2(a) with reference to an import transaction shall be prepared to produce or transmit to Customs, in accordance with §163.6(a), any entry records which may be demanded by Customs. If entry records submitted to Customs not pursuant to a demand are returned by Customs, or if production of entry records at the time of entry is waived by Customs, such person shall continue to maintain those entry records in accordance with this part. Entry records which are normally kept in the ordinary course of business must be maintained by such person in accordance with this part whether or not copies thereof are retained by Customs.

§ 163.4 Record retention period.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, any record required to be made, kept, and rendered for examination and inspection by Customs under §163.2 or any other provision of this chapter shall be kept for 5 years from the date of entry, if the record relates to an entry, or 5 years from the date of the activity which required creation of the record.

(b) *Exceptions.* (1) Any record relating to a drawback claim shall be kept until the third anniversary of the date of payment of the claim.

(2) Packing lists shall be retained for a period of 60 calendar days from the end of the release or conditional release period, whichever is later, or, if a demand for return to Customs custody has been issued, for a period of 60 calendar days either from the date the goods are redelivered or from the date specified in the demand as the latest redelivery date if redelivery has not taken place.

(3) A consignee who is not the owner or purchaser and who appoints a customs broker shall keep a record pertaining to merchandise covered by an informal entry for 2 years from the date of the informal entry.

(4) Records pertaining to articles that are admitted free of duty and tax pursuant to 19 U.S.C. 1321(a)(2) and §§10.151 through 10.153 of this chapter, and carriers' records pertaining to manifested cargo that is exempt from entry under the provisions of this chapter, shall be kept for 2 years from the date of the entry or other activity which required creation of the record.

(5) If another provision of this chapter sets forth a retention period for a specific type of record that differs from

the period that would apply under this section, that other provision controls.

§ 163.5 Methods for storage of records.

(a) *Original records.* All persons listed in § 163.2 must maintain all records required by law and regulation for the required retention periods and as original records, whether paper or electronic, unless alternative storage methods have been adopted in accordance with paragraph (b) of this section. The records, whether in their original format or under an alternative storage method, must be capable of being retrieved upon lawful request or demand by CBP.

(b) *Alternative method of storage*—(1) *General.* Any of the persons listed in § 163.2 may maintain any records, other than records required to be maintained as original records under laws and regulations administered by other Federal government agencies, in an alternative format, provided that the person gives advance written notification of such alternative storage method to the Regulatory Audit, U.S. Customs and Border Protection, 2001 Cross Beam Dr., Charlotte, North Carolina 28217, and provided further that the Director of Regulatory Audit, Charlotte office does not instruct the person in writing as provided herein that certain described records may not be maintained in an alternative format. The written notice to the Director of Regulatory Audit, Charlotte office must be provided at least 30 calendar days before implementation of the alternative storage method, must identify the type of alternative storage method to be used, and must state that the alternative storage method complies with the standards set forth in paragraph (b)(2) of this section. If an alternative storage method covers records that pertain to goods under CBP seizure or detention or that relate to a matter that is currently the subject of an inquiry or investigation or administrative or court proceeding, the appropriate CBP office may instruct the person in writing that those records must be maintained as original records and therefore may not be converted to an alternative format until specific written authorization is received from that CBP office. A written instruction to a person under this paragraph may be issued during the 30-day advance notice period prescribed in this section or at any time thereafter, must describe the records in question with reasonable specificity but need not identify the underlying basis for the instruction, and shall not preclude application of the planned alternative storage method to other records not described therein.

(2) *Standards for alternative storage methods.* Methods commonly used in standard business practice for storage of records include, but are not limited to, machine readable data, CD ROM, and microfiche. Methods that are in compliance with generally accepted business standards will generally satisfy CBP requirements, provided that the method used allows for retrieval of records requested within a reasonable time after the request and provided that adequate provisions exist to prevent alteration, destruction, or deterioration of the records. The following standards must be applied by recordkeepers when using alternative storage methods:

(i) Operational and written procedures are in place to ensure that the imaging and/or other media storage process preserves the integrity, readability, and security of the information contained in the original records. The procedures must include a standardized retrieval process for such records. Vendor specifications/documentation and benchmark data must be available for CBP review;

(ii) There is an effective labeling, naming, filing, and indexing system;

(iii) Except in the case of packing lists (*see* § 163.4(b)(2)), entry records must be maintained by the importer in their original formats for a period of 120 calendar days from the end of the release or conditional release period, whichever is later, or, if a demand for return to CBP custody has been issued, for a period of 120 calendar days either from the date the goods are redelivered or from the date specified in the demand as the latest redelivery date if redelivery has not taken place. Customs brokers who are not serving as

the importer of record and who maintain separate electronic records are exempted from this requirement. This exemption does not apply to any document that is required by law to be maintained as a paper record.

(iv) An internal testing of the system must be performed on a yearly basis;

(v) The recordkeeper must have the capability to make, and must bear the cost of, hard-copy reproductions of alternatively stored records that are required by CBP for audit, inquiry, investigation, or inspection of such records; and

(vi) The recordkeeper must retain and keep available one working copy and one back-up copy of the records stored in a secure location for the required periods as provided in §163.4.

(3) *Changes to alternative storage procedures.* No changes to alternative recordkeeping procedures may be made without first notifying the Director of Regulatory Audit, Office of International Trade, Customs and Border Protection, 2001 Cross Beam Drive, Charlotte, North Carolina 28217. The notification must be in writing and must be provided to the director at least 30 calendar days before implementation of the change.

(4) *Penalties.* All persons listed in §163.2 who use alternative storage methods for records and who fail to maintain or produce the records in accordance with this part are subject to penalties pursuant to §163.6 for entry records or sanctions pursuant to §§163.9 and 163.10 for other records.

(5) *Failure to comply with alternative storage requirements.* If a person listed in §163.2 uses an alternative storage method for records that is not in compliance with the conditions and requirements of this section, CBP may issue a written notice informing the person of the facts giving rise to the notice and directing that the alternative storage method must be discontinued in 30 calendar days unless the person provides written notice to the issuing CBP office within that time period that explains, to CBP's satisfaction, how compliance has been achieved. Failure to timely respond to CBP will result in CBP requiring discontinuance of the alternative storage method until a written statement explaining how compliance has been achieved has been received and accepted by CBP.

[T.D. 98–56, 63 FR 32946, June 16, 1998, as amended by CBP Dec. 12–12, 77 FR 33966, June 8, 2012]

§163.6 Production and examination of entry and other records and witnesses; penalties.

(a) *Production of entry records.* Pursuant to written, oral, or electronic notice, any Customs officer may require the production of entry records by any person listed in §163.2(a) who is required under this part to maintain such records, even if the entry records were required at the time of entry. Any oral demand for entry records shall be followed by a written or electronic demand. The entry records shall be produced within 30 calendar days of receipt of the demand or within any shorter period as Customs may prescribe when the entry records are required in connection with a determination regarding the admissibility or release of merchandise. Should any person from whom Customs has demanded entry records encounter a problem in timely complying with the demand, such person may submit a written or electronic request to Customs for approval of a specific additional period of time in which to produce the records; the request must be received by Customs before the applicable due date for production of the records and must include an explanation of the circumstances giving rise to the request. Customs will promptly advise the requesting person electronically or in writing either that the request is denied or that the requested additional time period, or such shorter period as Customs may deem appropriate, is approved. The mere fact that a request for additional time to produce demanded entry records was submitted under this section shall not by itself preclude the imposition of a monetary penalty or other sanction under this part for failure to timely produce the records, but no such penalty or other sanction will be imposed if the request is approved and the records are produced before expiration of that additional period of time.

(b) *Failure to produce entry records*—(1) *Monetary penalties applicable.* The following penalties may be imposed if a person fails to comply with a lawful demand for the production of an entry record and is not excused from a penalty pursuant to paragraph (b)(3) of this section:

(i) If the failure to comply is a result of the willful failure of the person to maintain, store, or retrieve the demanded record, such person shall be subject to a penalty, for each release of merchandise, not to exceed $100,000, or an amount equal to 75 percent of the appraised value of the merchandise, whichever amount is less; or

(ii) If the failure to comply is a result of negligence of the person in maintaining, storing, or retrieving the demanded record, such person shall be subject to a penalty, for each release of merchandise, not to exceed $10,000, or an amount equal to 40 percent of the appraised value of the merchandise, whichever amount is less.

(2) *Additional actions*—(i) *General.* In addition to any penalty imposed under paragraph (b)(1) of this section, and except as otherwise provided in paragraph (b)(2)(ii) of this section, if the demanded entry record relates to the eligibility of merchandise for a column 1 special rate of duty in the Harmonized Tariff Schedule of the United States (HTSUS), the entry of such merchandise:

(A) If unliquidated, shall be liquidated at the applicable HTSUS column 1 general rate of duty; or

(B) If liquidated within the 2-year period preceding the date of the demand, shall be reliquidated, notwithstanding the time limitation in 19 U.S.C. 1514 or 1520, at the applicable HTSUS column 1 general rate of duty.

(ii) *Exception.* Any liquidation or reliquidation under paragraph (b)(2)(i)(A) or (b)(2)(i)(B) of this section shall be at the applicable HTSUS column 2 rate of duty if Customs demonstrates that the merchandise should be dutiable at such rate.

(3) *Avoidance of penalties.* No penalty may be assessed under paragraph (b)(1) of this section if the person who fails to comply with a lawful demand for entry records can show:

(i) That the loss of the demanded record was the result of an act of God or other natural casualty or disaster beyond the fault of such person or an agent of the person;

(ii) On the basis of other evidence satisfactory to Customs, that the demand was substantially complied with;

(iii) That the record demanded was presented to and retained by Customs at the time of entry or submitted in response to an earlier demand; or

(iv) That he has been certified as a participant in the Recordkeeping Compliance Program (see §163.12), that he is generally in compliance with the appropriate procedures and requirements of that program, and that the violation in question is his first violation and was a non-willful violation.

(4) *Penalties not exclusive.* Any penalty imposed under paragraph (b)(1) of this section shall be in addition to any other penalty provided by law except for:

(i) A penalty imposed under 19 U.S.C. 1592 for a material omission of any information contained in the demanded record; or

(ii) Disciplinary action taken under 19 U.S.C. 1641.

(5) *Remission or mitigation of penalties.* A penalty imposed under this section may be remitted or mitigated under 19 U.S.C. 1618.

(6) *Customs summons.* The assessment of a penalty under this section shall not limit or preclude the issuance or enforcement of a summons under this part.

(c) *Examination of entry and other records*—(1) *Reasons for examination.* Customs may initiate an investigation, audit or other inquiry for the purpose of:

(i) Ascertaining the correctness of any entry, determining the liability of any person for duties, taxes and fees due or duties, taxes and fees which may be due, or determining the liability of any person for fines, penalties and forfeitures; or

(ii) Ensuring compliance with the laws and regulations administered or enforced by Customs.

(2) *Availability of records.* During the course of any investigation, audit or other inquiry, any Customs officer, during normal business hours, and to

the extent possible at a time mutually convenient to the parties, may examine, or cause to be examined, any relevant entry or other records by providing the person responsible for such records with reasonable written, oral or electronic notice that describes the records with reasonable specificity. The examination of entry records shall be subject to the notice and production procedures set forth in paragraph (a) of this section, and a failure to produce entry records may result in the imposition of penalties or the taking of other action as provided in paragraph (b) of this section.

(3) *Examination notice not exclusive.* In addition to, or in lieu of, issuance of an examination notice under paragraph (c)(2) of this section, Customs may issue a summons pursuant to §163.7, and seek its enforcement pursuant to §§163.9 and 163.10, to compel the production of any records required to be maintained and produced under this chapter.

[T.D. 98–56, 63 FR 32946, June 16, 1998; 63 FR 34808, June 26, 1998, as amended by CBP Dec. 11–20, 76 FR 65961, Oct. 25, 2011]

§ 163.7 Summons.

(a) *Who may be served.* During the course of any investigation, audit or other inquiry initiated for the reasons set forth in §163.6(c), the Commissioner of Customs or his designee, but no designee of the Commissioner below the rank of port director, Center director, field director of regulatory audit or special agent in charge, may issue a summons requiring a person within a reasonable period of time to appear before the appropriate Customs officer and to produce records or give relevant testimony under oath or both. Such a summons may be issued to any person who:

(1) Imported, or knowingly caused to be imported, merchandise into the customs territory of the United States;

(2) Exported merchandise, or knowingly caused merchandise to be exported, to a NAFTA country as defined in 19 U.S.C. 3301(4) (see also part 181 of this chapter) or to Canada during such time as the United States-Canada Free Trade Agreement is in force with respect to, and the United States applies that Agreement to, Canada;

(3) Transported or stored merchandise that was or is carried or held under customs bond, or knowingly caused such transportation or storage;

(4) Filed a declaration, entry, or drawback claim with Customs;

(5) Is an officer, employee, or agent of any person described in paragraph (a)(1) through (a)(4) of this section;

(6) Has possession, custody or care of records relating to an importation or other activity described in paragraph (a)(1) through (a)(4) of this section; or

(7) Customs may deem proper.

(b) *Contents of summons*—(1) *Appearance of person.* Any summons issued under this section to compel the appearance of a person shall state:

(i) The name, title, and telephone number of the Customs officer before whom the appearance shall take place;

(ii) The address within the customs territory of the United States where the person shall appear, not to exceed 100 miles from the place where the summons was served;

(iii) The time of appearance; and

(iv) The name, address, and telephone number of the Customs officer issuing the summons.

(2) *Production of records.* If a summons issued under this section requires the production of records, the summons shall set forth the information specified in paragraph (b)(1) of this section and shall also describe the records in question with reasonable specificity.

(c) *Service of summons*—(1) *Who may serve.* Any Customs officer is authorized to serve a summons issued under this section if designated in the summons to serve it.

(2) *Method of service*—(i) *Natural person.* Service upon a natural person shall be made by personal delivery.

(ii) *Corporation, partnership, association.* Service shall be made upon a domestic or foreign corporation, or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivery to an officer, managing or general agent, or any other agent authorized by appointment or law to receive service of process.

(3) *Certificate of service.* On the hearing of an application for the enforcement of a summons, the certificate of service signed by the person serving

the summons is prima facie evidence of the facts it states.

(d) *Transcript of testimony under oath.* Testimony of any person taken pursuant to a summons may be taken under oath and when so taken shall be transcribed or otherwise recorded. When testimony is transcribed or otherwise recorded, a copy shall be made available on request to the witness unless for good cause shown the issuing officer determines under 5 U.S.C. 555 that a copy should not be provided. In that event, the witness shall be limited to inspection of the official transcript of the testimony. The testimony or transcript may be in the form of a written statement under oath provided by the person examined at the request of the Customs officer.

[T.D. 98–56, 63 FR 32946, June 16, 1998, as amended by CBP Dec. 11–20, 76 FR 65961, Oct. 25, 2011; CBP Dec. No. 16–26, 81 FR 93024, Dec. 20, 2016]

§ 163.8 Third-party recordkeeper summons.

(a) *Notice required.* Except as otherwise provided in paragraph (f) of this section, if a summons issued under §163.7 to a third-party recordkeeper requires the production of, or the giving of testimony relating to, records pertaining to transactions of any person, other than the person summoned, who is identified in the description of the records contained in the summons, then notice of the summons shall be provided to the person so identified in the summons.

(b) *Time of notice.* The notice of service of summons required by paragraph (a) of this section should be provided by the issuing officer immediately after service of summons is obtained under §163.7(c), but in no event shall notice be given less than 10 business days before the date set in the summons for the production of records or the giving of testimony.

(c) *Contents of notice.* The issuing officer shall ensure that any notice issued under this section includes a copy of the summons and provides the following information:

(1) That compliance with the summons may be stayed if written direction not to comply with the summons is given by the person receiving notice to the person summoned;

(2) That a copy of any such direction to not comply and a copy of the summons shall be sent by registered or certified mail to the person summoned and to the Customs officer who issued the summons; and

(3) That the actions under paragraphs (c)(1) and (c)(2) of this section shall be accomplished not later than the day before the day fixed in the summons as the day upon which the records are to be examined or the testimony is to be given.

(d) *Service of notice.* The Customs officer who issues the summons shall serve the notice required by paragraph (a) of this section in the same manner as is prescribed in §163.7(c)(2) for the service of a summons, or by certified or registered mail to the last known address of the person entitled to notice.

(e) *Examination of records precluded.* If notice is required by this section, no record may be examined before the date fixed in the summons as the date to produce the records. If the person entitled to notice under paragraph (a) of this section issues a stay of compliance with the summons in accordance with paragraph (c) of this section, no examination of records shall take place except with the consent of the person staying compliance or pursuant to an order issued by a U.S. district court.

(f) *Exceptions to notice and stay of summons provisions*—(1) *Personal liability for duties, fees, or taxes.* The notice provisions of paragraph (a) of this section shall not apply to any summons served on the person, or on any officer or employee of the person, with respect to whose liability for duties, fees, or taxes the summons is issued.

(2) *Verification of existence of records.* The notice provisions of paragraph (a) of this section shall not apply to any summons issued to determine whether or not records of transactions of an identified person have been made or kept.

(3) *Judicial determination.* The notice provisions of paragraph (a) of this section and the stay of compliance provisions of paragraph (c) of this section shall not apply with respect to a summons described in paragraph (a) of this

section if a U.S. district court determines, upon petition by the issuing Customs officer, that reasonable cause exists to believe that the giving of notice may lead to an attempt:

(i) To conceal, destroy, or alter relevant records;

(ii) To prevent the communication of information from other persons through intimidation, bribery, or collusion; or

(iii) To flee to avoid prosecution, testifying, or production of records.

§ 163.9 Enforcement of summons.

Whenever a person does not comply with a Customs summons, the issuing officer may request the appropriate U.S. attorney to seek an order requiring compliance from the U.S. district court for the district in which the person is found or resides or is doing business. A person who is entitled to notice under §163.8(a) shall have a right to intervene in any such enforcement proceeding.

§ 163.10 Failure to comply with court order; penalties.

(a) *Monetary penalties.* The U.S. district court for any judicial district in which a person served with a Customs summons is found or resides or is doing business may order such person to comply with the summons. Upon the failure of a person to obey a court order to comply with a Customs summons, the court may find such person in contempt and may assess a monetary penalty.

(b) *Importations prohibited.* If a person fails to comply with a court order to comply with a Customs summons and is adjudged guilty of contempt, the Commissioner of Customs, with the approval of the Secretary of the Treasury, for so long as that person remains in contempt:

(1) May prohibit importation of merchandise by that person, directly or indirectly, or for that person's account; and

(2) May withhold delivery of merchandise imported by that person, directly or indirectly, or for that person's account.

(c) *Sale of merchandise.* If any person remains in contempt for more than 1 year after the Commissioner issues instructions to withhold delivery under paragraph (b)(2) of this section, the merchandise shall be considered abandoned and shall be sold at public auction or otherwise disposed of in accordance with subpart E of part 162 of this chapter.

§ 163.11 Audit procedures.

(a) *General requirements.* In conducting an audit under 19 U.S.C. 1509(b), the CBP auditors, except as otherwise provided in paragraph (f) of this section, will:

(1) Provide notice, telephonically and in writing, to the person to be audited of CBP's intention to conduct an audit and a reasonable estimate of the time to be required for the audit;

(2) Inform the person who is to be the subject of the audit, in writing and before commencement of the audit, of that person's right to an entrance conference, at which time the objectives and records requirements of the audit, and any sampling plan to be employed or offsetting that may apply, will be explained and the estimated termination date of the audit will be set. Where a decision on a sampling plan and methodology is not made at the time of the entrance conference, CBP will discuss these matters with the person being audited as soon as possible after the discovery of facts and circumstances that warrant the possible need to employ sampling;

(3) Provide a further estimate of any additional time for the audit if, during the course of the audit, it becomes apparent that additional time will be required;

(4) Schedule a closing conference upon completion of the audit on-site work to explain the preliminary results of the audit;

(5) Complete a formal written audit report within 90 calendar days following the closing conference referred to in paragraph (a)(4) of this section, unless the Executive Director, Regulatory Audit, Office of International Trade, CBP Headquarters, provides written notice to the person audited of the reason for any delay and the anticipated completion date; and

(6) After application of any disclosure exemptions contained in 5 U.S.C. 552, send a copy of the formal written audit

report to the person audited within 30 calendar days following completion of the report.

(b) *Petition procedures for failure to conduct closing conference.* Except as otherwise provided in paragraph (f) of this section, if the estimated or actual termination date of the audit passes without a CBP auditor providing a closing conference to explain the results of the audit, the person audited may petition in writing for a closing conference to the Executive Director, Regulatory Audit, Office of International Trade, Customs and Border Protection, Washington, DC 20229. Upon receipt of the request, the director will provide for the closing conference to be held within 15 calendar days after the date of receipt.

(c) *Use of statistical sampling in calculation of loss of duties or revenue*—(1) *General.* In conducting an audit under this section, regardless of the finality of liquidation under 19 U.S.C. 1514, CBP auditors have the sole discretion to determine the time period and scope of the audit and will examine a sufficient number of transactions, as determined solely by CBP. In addition to examining all transactions to identify loss of duties, taxes, and fees under 19 U.S.C. 1592 or loss of revenue under 19 U.S.C. 1593a, or to determine compliance with any other applicable customs laws or other laws enforced by CBP, CBP auditors, at their sole discretion, may use statistical sampling methods. During the audit, CBP auditors will explain the sampling plan and how the results of the sampling will be projected over the universe of transactions for purposes of calculating lost duties, taxes, and fees or lost revenue and, where appropriate, overpayments and over-declarations eligible for offsetting under paragraph (d) of this section. The person being audited and CBP will discuss the specifics of the sampling plan before audit work under the plan is commenced. Once the sampling plan is accepted, the audited person waives the ability to contest the validity of the sampling plan or its methodology at a later date and challenges of the sampling will be limited to challenging computational and clerical errors. CBP's authority to conduct the audit or employ statistical sampling is not dependent on the audited person's acceptance of the specifics of the sampling plan. An audited person's acceptance of the sampling plan and methodology must be in writing and signed by a management official with authority to bind the company in matters of trade, imports, and/or other affairs under the customs laws, CBP regulations, or other applicable laws. The audited person may submit the signed waiver to the CBP auditor. The appropriate field director, Regulatory Audit, will sign the waiver for CBP. Where the sampling plan or methodology is subsequently adjusted or modified, at CBP's discretion, acceptance of the adjustments or modifications also must be in writing and signed. This is not a waiver of the audited person's right to later contest substantive issues, such as misclassification, undervaluation, etc., that may properly be raised under applicable regulations, including in a request for CBP Headquarters advice under 19 CFR 171.14, a request for CBP Headquarters review under 19 CFR 162.74(c), a response to a prepenalty notice issued by CBP under 19 U.S.C. 1592(b)(1) or 19 U.S.C. 1593a(b)(1), a petition submitted in response to a penalty notice issued by CBP under 19 U.S.C. 1592(b)(2) or 19 U.S.C. 1593a(b)(2) (19 CFR part 171) and 19 U.S.C. 1618, a supplemental petition submitted under 19 CFR 171.61 and 171.62, or any action commenced in a court of proper jurisdiction.

(2) *Projection.* For purposes of this section, ''projection'' of sampling results over the universe of transactions is the process by which the results obtained from the sample entries actually examined are applied to the universe of entries set within the time period and scope of the sampling plan to yield a reliable assessment of that which is sought to be ascertained or measured in the audit, including, but not limited to, lost duties or revenue, or overpayments or over-declarations, as described in paragraph (d)(1) of this section.

(3) *When CBP uses statistical sampling.* CBP auditors have the sole discretion to use statistical sampling techniques when:

(i) Review of 100 percent of the transactions is impossible or impractical;

(ii) The sampling plan is prepared in accordance with generally recognized sampling procedures; and

(iii) The sampling procedure is executed in accordance with that plan.

(4) *Statistical sampling by audited persons under CBP supervision.* CBP may authorize a person being audited to conduct, under CBP supervision, self-testing of its own transactions within the time period and scope of the audit as originally set or later modified by CBP at its discretion. Audited persons permitted in advance by CBP to conduct self-testing of certain transactions under CBP supervision within the time period and scope of a CBP audit may use statistical sampling methods, provided that the criteria contained in paragraph (c)(3) of this section are satisfied. CBP will determine the time period and scope of the CBP-approved and supervised self-testing and will explain any sampling plan to be employed in accordance with paragraph (c)(1) of this section. The execution and results of the self-testing and the sampling plan are subject to CBP approval, and the audited person is subject to the waiver of paragraph (c)(1) of this section.

(5) *Statistical sampling by a private party submitting a prior disclosure.* A private party conducting an independent review of certain transactions and a calculation of lost duties, taxes, and fees or lost revenue for purposes of prior disclosure, in accordance with 19 CFR 162.74(j), may use statistical sampling, provided that the private party submits an explanation of the sampling plan and methodology employed and that the criteria in paragraph (c)(3) of this section are satisfied. Where the private party submits a prior disclosure employing statistical sampling, the time period, scope, and any sampling plan employed by the private party, as well as the execution and results of the self-review, are subject to CBP review and approval. Where CBP and the private party discuss and accept the sampling plan and methodology, or an adjustment to it, the waiver of paragraph (c)(1) of this section applies.

(d) *Offset of overpayments and over-declarations in 19 U.S.C. 1592 penalty cases*—(1) *General.* In conducting any audit authorized under 19 U.S.C. 1509 and this section for the purpose of calculating the loss of duties, taxes, and fees or monetary penalty under any provision of 19 U.S.C. 1592, CBP auditors identifying overpayments of duties or fees or over-declarations of quantities or values that are within the time period and scope of the audit, as established solely by CBP, will treat the overpayments or over-declarations on finally liquidated entries as an offset to any underpayments or under-declarations also identified on finally liquidated entries, provided that:

(i) The identified overpayments or over-declarations were not made by the person being audited for the purpose of violating any provision of law, including laws other than customs laws,

(ii) The identified underpayments or under-declarations were not made knowingly and intentionally, and

(iii) All other requirements of this paragraph (d) are met.

(2) *When audited person conducts self-testing under CBP supervision.* Offsetting will apply to self-testing conducted by an audited person under CBP supervision (*i.e.*, during a CBP audit), provided that all requirements of this paragraph (d) are met, CBP approves the self-testing in advance and, upon review of the self-testing, CBP approves its execution and results.

(3) *When a private party submits a prior disclosure.* Offsetting will apply when a private party submits a prior disclosure, provided that the prior disclosure is in accordance with 19 CFR 162.74 and CBP approves the private party's self-review, including its execution and results. CBP's Office of International Trade, Regulatory Audit will review and evaluate all such prior disclosures and approve offsetting where it is satisfied that the requirements of 19 U.S.C. 1509(b)(6) and this paragraph (d) are met.

(4) *Time period and scope determined by CBP; projection when sampling employed.* In conducting an audit under paragraph (d)(1) of this section or authorizing an audited person's self-testing as described in paragraph (d)(2) of this section, CBP will have the sole authority to determine the time period and

scope of the audit. In conducting a review of a private party's prior disclosure as described in paragraph (d)(3) of this section, the time period and scope employed will be subject to CBP approval. In each of these circumstances, where statistical sampling is involved, CBP auditors will examine only the selected sample transactions. The results of the sample examination, with respect to properly identified overpayments and over-declarations and properly identified underpayments and under-declarations, will be projected over the universe of transactions to determine the total overpayments and over-declarations that are eligible for offsetting and to determine the total loss of duties, taxes, and fees.

(5) *Same acts, statements, omissions, or entries not required.* Offsetting may be permitted where the overpayments or over-declarations were not made by the same acts, statements, or omissions that caused the underpayments or under-declarations, and is not limited to the same entries that evidence the underpayments or under-declarations, provided that they are within the time period and scope of the audit as established by CBP and as described in paragraph (d)(4) of this section.

(6) *Limitations.* Offsetting will not be allowed with respect to specific overpayments or over-declarations made for the purpose of violating any provision of law, including laws other than customs laws. Offsetting will not be allowed with respect to overpayments or over-declarations resulting from a failure to timely claim or establish a duty allowance or preference. Offsetting will be disallowed entirely where CBP determines that any underpayments or under-declarations identified for offsetting purposes were made knowingly and intentionally.

(7) *Audit report.* Where overpayments or over-declarations have been identified in accordance with paragraph (d)(1) of this section, the audit report will state whether they have been made within the time period and scope of the audit.

(8) *Disallowance determinations referred to Fines, Penalties, and Forfeitures office.* Any determination that offsets will be disallowed where overpayments/over-declarations were made for the purpose of violating any law, or where underpayments or under-declarations were made knowingly and intentionally, will be made by the appropriate Fines, Penalties, and Forfeitures (FP&F) office to which the issue was referred. CBP will notify the audited person of a determination whether to allow offsetting in whole or in part. The FP&F office will issue a notice of penalty under 19 U.S.C. 1592(b) and/or notice of liability for lost duties, taxes, and fees under 19 U.S.C. 1592(d) where it determines that such action is warranted. If the FP&F office issues a notice of penalty, the audited person may file a petition under 19 U.S.C. 1592(b)(2), 19 U.S.C. 1618, and 19 CFR part 171 to challenge the action.

(9) *Refunds limited.* An overpayment of duties and fees will only be credited toward a refund if the circumstances of the overpayment meet the requirements of 19 U.S.C. 1520 or the requirements of 19 U.S.C. 1514(a) pertaining to clerical error, mistake of fact, or other inadvertence in any entry, liquidation, or reliquidation.

(e) *Sampling not evidence of reasonable care.* The fact that entries were previously within the time period and scope of an audit conducted by CBP in which sampling was employed, in any circumstances described in this section, is not evidence of reasonable care by a violator in any subsequent action involving such entries.

(f) *Exception to procedures.* The provisions of paragraph (a) of this section may not apply when a private party submits a prior disclosure under paragraph (d)(3) of this section. Paragraphs (a)(5), (a)(6), (b), (d)(8), and (d)(9) of this section do not apply once CBP and/or ICE commences an investigation with respect to the issue(s) involved.

[CBP Dec. 11–20, 76 FR 65961, Oct. 25, 2011]

§ 163.12 Recordkeeping Compliance Program.

(a) *General.* The Recordkeeping Compliance Program is a voluntary CBP program under which certified recordkeepers may be eligible for alternatives to penalties (see paragraph (d) of this section) that might be assessed under § 163.6 for failure to produce a demanded entry record. However, even

where a certified recordkeeper is eligible for an alternative to a penalty, participation in the Recordkeeping Compliance Program has no limiting effect on the authority of CBP to use a summons, court order or other legal process to compel the production of records by that certified recordkeeper.

(b) *Certification procedures*—(1) *Who may apply*. Any person described in §163.2(a) who is required to maintain and produce entry records under this part may apply to participate in the Recordkeeping Compliance Program.

(2) *Where to apply*. An application for certification to participate in the Recordkeeping Compliance Program must be submitted to the Regulatory Audit, U.S. Customs and Border Protection, 2001 Cross Beam Dr., Charlotte, North Carolina 28217. The application must be submitted in accordance with the guidelines contained in the CBP Recordkeeping Compliance Handbook which may be obtained by downloading it from CBP's Regulatory Audit Web site located at *http://www.cbp.gov/xp/cgov/import/regulatory_audit_program/archive/compliance_assessment/* or by writing to the Recordkeeping Compliance Program, Executive Director, Regulatory Audit, Office of International Trade, U.S. Customs and Border Protection, 1300 Pennsylvania Ave., NW., Washington, DC 20229.

(3) *Certification requirements*. A recordkeeper may be certified as a participant in the Recordkeeping Compliance Program after meeting the general recordkeeping requirements established under this section or after negotiating an alternative program suited to the needs of the recordkeeper and CBP. To be certified, a recordkeeper must be in compliance with all applicable laws and regulations. CBP will take into account the size and nature of the importing business and the volume of imports and CBP workload constraints prior to granting certification. In order to be certified, a recordkeeper must meet the applicable requirements set forth in the CBP Recordkeeping Compliance Handbook and must be able to demonstrate that it:

(i) Understands the legal requirements for recordkeeping, including the nature of the records required to be maintained and produced and the time periods relating thereto;

(ii) Has in place procedures to explain the recordkeeping requirements to those employees who are involved in the preparation, maintenance and production of required records;

(iii) Has in place procedures regarding the preparation and maintenance of required records, and the production of such records to CBP;

(iv) Has designated a dependable individual or individuals to be responsible for recordkeeping compliance under the program and whose duties include maintaining familiarity with the recordkeeping requirements of CBP;

(v) Has a record maintenance procedure acceptable to CBP for original records or has an alternative records maintenance procedure adopted in accordance with §163.5(b); and

(vi) Has procedures for notifying CBP of any occurrence of a variance from, or violation of, the requirements of the Recordkeeping Compliance Program or negotiated alternative program, as well as procedures for taking corrective action when notified by CBP of violations or problems regarding such program. For purposes of this paragraph, the term ''variance'' means a deviation from the Recordkeeping Compliance Program that does not involve a failure to maintain or produce records or a failure to meet the requirements set forth in this section. For purposes of this paragraph, the term ''violation'' means a deviation from the Recordkeeping Compliance Program that involves a failure to maintain or produce records or a failure to meet the requirements set forth in this section.

(c) *Application review and approval and certification process*—(1) *Review of applications*. The Charlotte regulatory audit field office will process the application and will coordinate and consult, as may be necessary, with the appropriate CBP Headquarters and field officials. The Charlotte regulatory audit field office will review and verify the information contained in the application and may initiate an on-site verification prior to approval and certification. If an on-site visit is warranted, the Charlotte regulatory audit field office will inform the applicant. If

additional information is necessary to process the application, the applicant will be notified. CBP requests for information not submitted with the application or for additional explanation of details will cause a delay in the application approval and certification of applicants and may result in the suspension of the application approval and certification process until the requested information is received by CBP.

(2) *Approval and certification.* If, upon review, CBP determines that the application should be approved and that certification should be granted, the Director of the Charlotte regulatory audit field office will issue the certification with all the applicable conditions stated therein.

(d) *Alternatives to penalties*—(1) *General.* If a certified participant in the Recordkeeping Compliance Program does not produce a demanded entry record for a specific release or provide the information contained in the demanded entry record by acceptable alternate means, CBP will, in lieu of a monetary penalty provided for in §163.6(b), issue a written notice of violation to the person as described in paragraph (d)(2) of this section, provided that the certified participant is generally in compliance with the procedures and requirements of the program and provided that the violation was not a willful violation and was not a repeat violation. A willful failure to produce demanded entry records or repeated failures to produce demanded entry records may result in the issuance of penalties under §163.6(b) and removal of certification under the program (see §163.13) until corrective action satisfactory to CBP is taken.

(2) *Contents of notice.* A notice of violation issued to a participant in the Recordkeeping Compliance Program for failure to produce a demanded entry record or information contained therein must:

(i) State that the recordkeeper has violated the recordkeeping requirements;

(ii) Identify the record or information which was demanded and not produced;

(iii) Warn the recordkeeper that future failures to produce demanded entry records or information contained therein may result in the imposition of monetary penalties and could result in the removal of the recordkeeper from the Recordkeeping Compliance Program.

(3) *Response to notice.* Within a reasonable time after receiving written notice under paragraph (d)(1) of this section, the recordkeeper must notify CBP of the steps it has taken to prevent a recurrence of the violation.

[T.D. 98–56, 63 FR 32946, June 16, 1998, as amended by CBP Dec. 12–12, 77 FR 33966, June 8, 2012]

§163.13 Denial and removal of program certification; appeal procedures.

(a) *General.* Customs may take, and applicants and participants may appeal and obtain administrative review of, the following decisions regarding the Recordkeeping Compliance Program provided for in §163.12:

(1) Denial of certification for program participation in accordance with paragraph (b) of this section; and

(2) Removal of certification for program participation in accordance with paragraph (c) of this section.

(b) *Denial of certification for program participation*—(1) *Grounds for denial.* Customs may deny an application for certification for participation in the Recordkeeping Compliance Program for any of the following reasons:

(i) The applicant fails to meet the requirements set forth in §163.12(b)(3);

(ii) A circumstance involving the applicant arises that would justify initiation of a certification removal action under paragraph (c) of this section; or

(iii) In the judgment of Customs, the applicant appears not to be in compliance with Customs laws and regulations.

(2) *Denial procedure.* If the Director of the Miami regulatory audit field office determines that an application submitted under §163.12 should not be approved and that certification for participation in the Recordkeeping Compliance Program should not be granted, the Director shall issue a written notice of denial to the applicant. The notice of denial shall set forth the reasons for the denial and shall advise the applicant of its right to file an appeal

of the denial in accordance with paragraph (d) of this section.

(c) *Certification removal*—(1) *Grounds for removal.* The certification for participation in the Recordkeeping Compliance Program by a certified recordkeeper may be removed when any of the following conditions are discovered:

(i) The certification privilege was obtained through fraud or mistake of fact;

(ii) The program participant no longer has a valid bond;

(iii) The program participant fails on a recurring basis to provide entry records when demanded by Customs;

(iv) The program participant willfully refuses to produce a demanded or requested record;

(v) The program participant is no longer in compliance with the Customs laws and regulations, including the requirements set forth in §163.12(b)(3); or

(vi) The program participant is convicted of any felony or has committed acts which would constitute a misdemeanor or felony involving theft, smuggling, or any theft-connected crime.

(2) *Removal procedure.* If Customs determines that the certification of a program participant should be removed, the Director of the Miami regulatory audit field office shall serve the program participant with written notice of the removal. Such notice shall inform the program participant of the grounds for the removal and shall advise the program participant of its right to file an appeal of the removal in accordance with paragraph (d) of this section.

(3) *Effect of removal.* The removal of certification shall be effective immediately in cases of willfulness on the part of the program participant or when required by public health, interest, or safety. In all other cases, the removal of certification shall be effective when the program participant has received notice under paragraph (c)(2) of this section and either no appeal has been filed within the time limit prescribed in paragraph (d)(2) of this section or all appeal procedures thereunder have been concluded by a decision that upholds the removal action. Removal of certification may subject the affected person to penalties.

(d) *Appeal of certification denial or removal*—(1) *Appeal of certification denial.* A person may challenge a denial of an application for certification for participation in the Recordkeeping Compliance Program by filing a written appeal with the Executive Director, Regulatory Audit, Office of International Trade, U.S. Customs and Border Protection, Washington, DC 20229. The appeal must be received by the Executive Director, Regulatory Audit, within 30 calendar days after issuance of the notice of denial. The Executive Director, Regulatory Audit, will review the appeal and will respond with a written decision within 30 calendar days after receipt of the appeal unless circumstances require a delay in issuance of the decision. If the decision cannot be issued within the 30-day period, the Executive Director, Regulatory Audit, will advise the appellant of the reasons for the delay and of any further actions which will be carried out to complete the appeal review and of the anticipated date for issuance of the appeal decision.

(2) *Appeal of certification removal.* A certified recordkeeper who has received a CBP notice of removal of certification for participation in the Recordkeeping Compliance Program may challenge the removal by filing a written appeal with the Executive Director, Regulatory Audit, U.S. Customs and Border Protection, Office of International Trade, Washington, DC 20229. The appeal must be received by the Executive Director, Regulatory Audit, within 30 calendar days after issuance of the notice of removal. The Executive Director, Regulatory Audit, shall consider the allegations upon which the removal was based and the responses made thereto by the appellant and shall render a written decision on the appeal within 30 calendar days after receipt of the appeal.

APPENDIX TO PART 163—INTERIM (a)(1)(A) LIST

List of Records Required for the Entry of Merchandise

General Information

(1) Section 508 of the Tariff Act of 1930, as amended (19 U.S.C. 1508), sets forth the general recordkeeping requirements for Customs-related activities. Section 509 of the Tariff Act of 1930, as amended (19 U.S.C. 1509) sets forth the procedures for the production and examination of those records (which includes, but is not limited to, any statement, declaration, document, or electronically generated or machine readable data).

(2) Section 509(a)(1)(A) of the Tariff Act of 1930, as amended by title VI of Public Law 103–182, commonly referred to as the Customs Modernization Act (19 U.S.C. 1509(a)(1)(A)), requires the production, within a reasonable time after demand by the Customs Service is made (taking into consideration the number, type and age of the item demanded) if ''such record is required by law or regulation for the entry of the merchandise (whether or not the Customs Service required its presentation at the time of entry).'' Section 509(e) of the Tariff Act of 1930, as amended by Public Law 103–182 (19 U.S.C. 1509(e)) requires the Customs Service to identify and publish a list of the records and entry information that is required to be maintained and produced under subsection (a)(1)(A) of section 509 (19 U.S.C. 1509(a)(1)(A)). This list is commonly referred to as ''the (a)(1)(A) list.''

(3) The Customs Service has tried to identify all the presently required entry information or records on the following list. However, as automated programs and new procedures are introduced, these may change. In addition, errors and omissions to the list may be discovered upon further review by Customs officials or the trade. Pursuant to section 509(g), the failure to produce listed records or information upon reasonable demand may result in penalty action or liquidation or reliquidation at a higher rate than entered. A recordkeeping penalty may not be assessed if the listed information or records are transmitted to and retained by Customs.

(4) *Other recordkeeping requirements:* The importing community and Customs officials are reminded that the (a)(1)(A) list only pertains to records or information required for the entry of merchandise. An owner, importer, consignee, importer of record, entry filer, or other party who imports merchandise, files a drawback claim or transports or stores bonded merchandise, any agent of the foregoing, or any person whose activities require them to file a declaration or entry, is also required to make, keep and render for examination and inspection records (including, but not limited to, statements, declarations, documents and electronically generated or machine readable data) which pertain to any such activity or the information contained in the records required by the Tariff Act in connection with any such activity, and are normally kept in the ordinary course of business. While these records are not subject to administrative penalties, they are subject to examination and/or summons by Customs officers. Failure to comply could result in the imposition of significant judicially imposed penalties and denial of import privileges.

(5) The following list does not replace entry requirements, but is merely provided for information and reference. In the case of the list conflicting with regulatory or statutory requirements, the latter will govern.

List of Records and Information Required for the Entry of Merchandise

The following records (which include, but are not limited to, any statement, declaration, document, or electronically generated or machine readable data) are required by law or regulation for the entry of merchandise and are required to be maintained and produced to Customs upon reasonable demand (whether or not Customs required their presentation at the time of entry). Information may be submitted to Customs at the time of entry in a Customs authorized electronic or paper format. Not every entry of merchandise requires all of the following information. Only those records or information applicable to the entry requirements for the merchandise in question will be required/mandatory. The list may be amended as Customs reviews its requirements and continues to implement the Customs Modernization Act. When a record or information is filed with and retained by Customs, the record is not subject to recordkeeping penalties, although the underlying backup or supporting information from which it is obtained may also be subject to the general record retention regulations and examination or summons pursuant to 19 U.S.C. 1508 and 1509. (All references, unless otherwise indicated, are to the current edition of title 19, Code of Federal Regulations, as amended by subsequent FEDERAL REGISTER documents.)

I. General list of records required for most entries. Information shown with an asterisk (*) is usually on the appropriate form and filed with and retained by Customs:

§§ 141.11 through 141.15 Evidence of right to make entry (airway bill/bill of lading or *carrier certificate, etc.) when goods are imported on a common carrier

§ 141.19 *Declaration of entry (usually contained on the entry summary or warehouse entry)

§ 141.32 Power of attorney (when required by regulations)
§ 141.54 Consolidated shipments authority to make entry (if this procedure is utilized)
§ 142.3 Packing list (where appropriate)
§ 142.4 Bond information (except if 10.101 or 142.4(c) applies)
Parts 4, 18, 122, 123 *Vessel, Vehicle or Air Manifest (filed by the carrier)

II. The following records or information are required by §141.61 on Customs Form (CF) 3461, or its electronic equivalent, or CF 7533 or the regulations cited. Information shown with an asterisk (*) is contained on the appropriate form and/or otherwise filed with and retained by Customs:

§§ 142.3, 142.3a *Entry Number
*Entry Type Code
*Elected Entry Date
*Port Code
§ 142.4 *Bond information
§§ 141.61, 142.3a *Broker/Importer Filer Number
§§ 141.61, 142.3 *Ultimate Consignee Name and Number/street address of premises to be delivered
§ 141.61 *Importer of Record Number
*Country of Origin
§ 141.11 *IT/BL/AWB Number and Code
*Arrival Date
§ 141.61 *Carrier Code
*Voyage/Flight/Trip
*Vessel Code/Name
*Manufacturer ID Number (for AD/CVD must be actual mfr.)
*Location of Goods-Code(s)/Name(s)
*U.S. Port of Unlading
*General Order Number (only when required by the regulations)
§ 142.6 *Description of Merchandise
§ 142.6 *HTSUSA Number
§ 142.6 *Manifest Quantity
*Total Value
*Signature of Applicant

III. In addition to the information listed above, the following records or items of information are required by law and regulation for the entry of merchandise and are presently required to be produced by the importer of record at the time the Customs Form 7501, or its electronic equivalent, is filed:

§ 141.61 *Entry Summary Date
§ 141.61 *Entry Date
§ 142.3 *Bond Number, Bond Type Code and Surety code
§ 142.3 *Ultimate Consignee Address
§ 141.61 *Importer of Record Name and Address
§ 141.61 *Exporting Country and Date Exported
*I.T. (In-bond) Entry Date (for IT Entries only)
*Mode of Transportation (MOT Code)
§ 141.61 *Importing Carrier Name
§ 141.82 Conveyance Name/Number
*Foreign Port of Lading
*Import Date and Line Numbers
*Reference Number
*HTSUS Number
§ 141.61 *Identification number for merchandise subject to Anti-dumping or Countervailing duty order (ADA/CVD Case Number)
§ 141.61 *Gross Weight
*Manifest Quantity
§ 141.61 *Net Quantity in HTSUSA Units
§ 141.61 *Entered Value, Charges, and Relationship
§ 141.61 *Applicable HTSUSA Rate, ADA/CVD Rate, I.R.C. Rate, and/or Visa Number, Duty, I.R. Tax, and Fees (e.g. HMF, MPF, Cotton)
§ 141.61 Non-Dutiable Charges
§ 141.61 *Signature of Declarant, Title, and Date
*Textile Category Number
§ 141.83, 141.86 Invoice information which includes, e.g., date, number, merchandise (commercial product) description, quantities, values, unit price, trade terms, part, model, style, marks and numbers, name and address of foreign party responsible for invoicing, kind of currency
Terms of Sale
Shipping Quantities
Shipping Units of Measurements
Manifest Description of Goods
Foreign Trade Zone Designation and Status
Designation (if applicable)
Indication of Eligibility for Special Access Program (9802/GSP/CBI)
§ 141.89 CF 5523
Part 141 Corrected Commercial Invoice
141.86 (e) Packing List
177.8 *Binding Ruling Identification Number (or a copy of the ruling)
§ 10.102 Duty Free Entry Certificate (9808.00.30009 HTS)
§ 10.108 Lease Statement

IV. Documents/records or information required for entry of special categories of merchandise (the listed documents or information is only required for merchandise entered [or required to be entered] in accordance with the provisions of the sections of 19 CFR [the Customs Regulations] listed). These are in addition to any documents/records or information required by other agencies in their regulations for the entry of merchandise:

§ 4.14 CF 226 Information for vessel repairs, parts and equipment
§ 7.3(f) CBP Form 3229, or its electronic equivalent, Origin certificate for insular possessions Shipper's and importer's declaration for insular possessions

Part 10 Documents required for entry of articles exported and returned:
§§ 10.1 through 10.6 Foreign shipper's declaration or master's certificate, declaration for free entry by owner, importer or consignee
§ 10.7 Certificate from foreign shipper for reusable containers
§ 10.8 Declaration of person performing alterations or repairs
Declaration for non-conforming merchandise
§ 10.9 Declaration of processing
§ 10.24 Declaration by assembler Endorsement by importer
§§ 10.31, 10.35 Documents required for Temporary Importations Under Bond:
Information required, Bond or Carnet
§ 10.36 Lists for samples, professional equipment, theatrical effects
Documents required for Instruments of International Traffic:
§ 10.41 Application, Bond or TIR carnet
NOTE: additional 19 U.S.C. 1508 records: see §10.41b(e)
§ 10.43 Documents required for exempt organizations
§ 10.46 Request from head of agency for 9808.00.10 or 9808.00.20 HTSUS treatment
Documents required for works of art
§ 10.48 Declaration of artist, seller or shipper, curator, etc.
§§ 10.49, 10.52 Declaration by institution
§ 10.53 Declaration by importer
USFWS Form 3–177, if appropriate
§§ 10.59, 10.63 Documents/CF 5125 for withdrawal of ship supplies
§§ 10.66, 10.67 Declarations for articles exported and returned
§§ 10.68, 10.69 Documents for commercial samples, tools, theatrical effects
§§ 10.70, 10.71 Purebred breeding certificate
§ 10.84 Automotive Products certificate
§ 10.90 Master records and metal matrices: detailed statement of cost of production
§ 10.98 Declarations for copper fluxing material
§ 10.99 Declaration of non-beverage ethyl alcohol, ATF permit
§§ 10.101 through 10.102 Stipulation for government shipments and/or certification for government duty-free entries, etc.
§ 10.107 Report for rescue and relief equipment
§ 10.905 PTPA records that the importer may have in support of a PTPA claim for preferential tariff treatment, including an importer's certification
15 CFR part 301 Requirements for entry of scientific and educational apparatus
§ 10.121 Certificate from the U.S. Department of State for visual/auditory materials
§ 10.134 Declaration of actual use (When classification involves actual use)
§ 10.138 End Use Certificate
§§ 10.171 through 10.178 Documents, etc. required for entries of GSP merchandise, GSP Declaration (plus supporting documentation)
§ 10.174 Evidence of direct shipment
§ 10.179 Certificate of importer of crude petroleum
§ 10.180 Certificate of fresh, chilled or frozen beef
§ 10.183 Civil aircraft parts/simulator documentation and certifications
§§ 10.191 through 10.198 Documents, etc. required for entries of CBI merchandise, CBI declaration of origin (plus supporting information)
§ 10.194 Evidence of direct shipment
§ 10.199 Documents, etc. required for duty-free entry of spirituous beverages produced in Canada from CBI rum, declaration of Canadian processor (plus supporting information)
§ 10.216 AGOA Textile Certificate of Origin
§ 10.226 CBTPA Textile Certificate of Origin and supporting records
§ 10.228 CBTPA Declaration of Compliance for brassieres
§ 10.236 CBTPA Non-textile Certificate of Origin and supporting records
§ 10.246 ATPDEA Textile Certificate of Origin
§ 10.248 ATPDEA Declaration of Compliance for Brassieres
§ 10.256 ATPDEA Non-textile Certificate of Origin
†[§ 10.306 Evidence of direct shipment for CFTA]
†[§ 10.307 Documents, etc. required for entries under CFTA Certificate of origin of CF 353]
[†CFTA provisions are suspended while NAFTA remains in effect. See part 181]
§ 10.410 US-CFTA Certification of origin and supporting records.
§ 10.512 SFTA records that the importer may have in support of a SFTA claim for preferential tariff treatment, including an importer's supporting statement if previously required by the port director or Center director before January 19, 2017 or the Center director on or after January 19, 2017.
§ 10.522 SFTA TPL Certificate of eligibility.
§ 10.585 CAFTA–DR records that the importer may have in support of a CAFTA–DR claim for preferential tariff treatment, including an importer's certification.
§ 10.704 US–JFTA records that the importer may have in support of a US–JFTA claim for preferential tariff treatment, including an importer's declaration.
§ 10.723–10.727 AFTA records that the importer may have in support of an AFTA claim for preferential tariff treatment, including an importer's supporting statement.
§ 10.765 MFTA records that the importer may have in support of a MFTA claim for

preferential tariff treatment, including an importer's declaration.
§ 10.805 BFTA records that the importer may have in support of a BFTA claim for preferential tariff treatment, including an importer's declaration.
§ 10.820 BFTA TPL certificate of eligibility.
§ 10.821 BFTA TPL declaration.
§ 10.848 HOPE Act Declaration of Compliance.
§ 10.865 OFTA records that the importer may have in support of an OFTA claim for preferential tariff treatment, including an importer's declaration.
§ 10.883 OFTA TPL certificate of eligibility.
§ 10.884 OFTA TPL declaration.
§ 10.1005 UKFTA records that the importer may have in support of a UKFTA claim for preferential tariff treatment, including an importer's certification.
§ 10.2003–10.2007 PANTPA records that the importer may have in support of a PANTPA claim for preferential tariff treatment, including an importer's certification.
§ 10.3005 CTPA records that the importer may have in support of a CTPA claim for preferential tariff treatment, including an importer's certification.
§ 12.6 European Community cheese affidavit
§ 12.7 HHS permit for milk or cream importation
§ 12.11 Notice of arrival for plant and plant products
§ 12.17 APHIS Permit animal viruses, serums and toxins
§ 12.21 HHS license for viruses, toxins, antitoxins, etc. for treatment of man
§ 12.23 Notice of claimed investigational exemption for a new drug
§§ 12.26 through 12.31 Necessary permits from APHIS, FWS & foreign government certificates when required by the applicable regulation
§ 12.33 Chop list, proforma invoice and release permit from HHS
§ 12.34 Certificate of match inspection and importer's declaration
§ 12.43 Certificate of origin/declarations for goods made by forced labor, etc.
§ 12.61 Shipper's declaration, official certificate for seal and otter skins
§§ 12.73, 12.80 Motor vehicle declarations
§ 12.85 Boat declarations (CG–5096, or its electronic equivalent) and USCG exemption
§ 12.91 FDA form 2877 and required declarations for electronics products
§ 12.99 Declarations for switchblade knives
§§ 12.104 through 12.104i Cultural property declarations, statements and certificates of origin
§§ 12.105 through 12.109 Pre-Columbian monumental and architectural sculpture and murals
Certificate of legal exportation
Evidence of exemption
§ 12.110 Pesticides, etc. notice of arrival
§§ 12.118 through 12.127 Toxic substances: TSCA statements
§ 12.140(b) and (c) Canadian-issued Export Permit, Certificate of Origin issued by Canada's Maritime Lumber Bureau.
§ 12.142 Softwood Lumber Importer Declaration Supporting Documentation, Softwood Lumber Home Packages and Kits Documentation.
§ 12.152 Kimberley Process Certificate for rough diamonds.
§ 54.5 Declaration by importer of use of certain metal articles
§ 54.6(a) Re-Melting Certificate
§ 102.25 NAFTA textile requirements
Part 113, Appendix B—Bond to Indemnify Complainant Under Section 337, Tariff Act of 1930, as Amended
Part 114 Carnets (serves as entry and bond document where applicable)
Part 115 Container certificate of approval
Part 128 Express consignments
§ 128.21 *Manifests with required information (filed by carrier)
§§ 132.15, 132.17 Export certificates, respectively, for beef or sugar-containing products subject to tariff-rate quota.
§ 132.18 License, or written authorization, as applicable, for worsted wool fabric subject to tariff-rate quota
§ 132.23 Acknowledgment of delivery for mailed items subject to quota
§§ 133.21(e), 133.22(c)(3) and 133.23(e) Consent from trademark or trade name holder to import otherwise restricted goods
§§ 134.25, 134.36 Certificate of marking; notice to repacker
§ 141.88 Computed value information
§ 141.89 Additional invoice information required for certain classes of merchandise including, but not limited to:
Textile Entries: Quota charge Statement, if applicable including Style Number, Article Number and Product
Steel Entries: Ordering specifications, including but not limited to, all applicable industry standards and mill certificates, including but not limited to, chemical composition.
§ 143.13 Documents required for appraisement entries Bills, statements of costs of production Value declaration
§ 143.23 Informal entry: commercial invoice plus declaration
§ 144.12 Warehouse entry information
§ 145.11 Customs Declaration for Mail, Invoice
§ 145.12 Mail entry information (CF 3419 is completed by Customs but formal entry may be required.)
Part 148 Supporting documents for personal importations
Part 151, subpart B Scale Weight
Part 151, subpart B Sugar imports sampling/lab information (Chemical Analysis)

Part 151, subpart C Petroleum imports sampling/lab information Out turn Report 24. to 25—Reserved
Part 151, subpart E Wool and Hair invoice information, additional documents
Part 151, subpart F Cotton invoice information, additional documents
§ 181.22 NAFTA Certificate of origin and supporting records
19 U.S.C. 1356k Coffee Form O (currently suspended)

Other Federal and State Agency Documents

State and Local Government Records

Other Federal Agency Records (See 19 CFR part 12, 19 U.S.C. 1484, 1499)

Licenses, Authorizations, Permits

Foreign Trade Zones

§ 146.32 Supporting documents to CF 214

[T.D. 98–56, 63 FR 32946, June 16, 1998]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting the appendix, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

PART 165—INVESTIGATION OF CLAIMS OF EVASION OF ANTIDUMPING AND COUNTERVAILING DUTIES

Sec.

AUTHORITY: 19 U.S.C. 66, 1481, 1484, 1508, 1517 (as added by Pub. L. 114–125, 130 Stat. 122, 155 (19 U.S.C. 4301 note)), 1623, 1624, 1671, 1673.

SOURCE: 81 FR 56482, Aug. 22, 2016, unless otherwise noted.

§ 165.0 Scope.

This part relates to allegations by the public and requests from Federal agencies for an investigation regarding the evasion of antidumping (AD) and countervailing duty (CVD) orders and the procedures by which CBP investigates such claims consistent with the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), which contains Title IV-Prevention of Evasion of Antidumping and Countervailing Duty Orders (short title ''Enforce and Protect Act of 2015'' or ''EAPA'') (Pub. L. 114–125, 130 Stat. 122, 155, Feb. 24, 2016) (19 U.S.C. 4301 note). This part includes the requirements for the filing of allegations and requests for investigations, the investigation procedures, and administrative review of determinations as to evasion of AD/CVD orders under the EAPA. The procedures under this part are not the exclusive manner by which CBP may receive allegations or requests for an investigation from Federal agencies or investigate such allegations or requests with respect to the evasion of AD/CVD orders. An investigation as described in this part, if initiated by CBP, does not preclude CBP or any other government entity from initiating any other investigation or proceeding pursuant to any other provision of law, including proceedings initiated under 19 U.S.C. 1592.

Subpart A—General Provisions

§ 165.1 Definitions.

As used in this part, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this part:

Allegation. The term ''allegation'' refers to a filing with CBP under § 165.11 by an interested party that alleges an act of evasion by an importer of AD/CVD orders.

AD. The term ''AD'' refers to antidumping duty, consistent with section 736, Tariff Act of 1930, as amended (19 U.S.C. 1673e).

AD/CVD. The term ''AD/CVD'' refers to antidumping/countervailing duty, as these terms are defined in this section.

Covered merchandise. The term ''covered merchandise'' means merchandise that is subject to a CVD order issued under section 706, Tariff Act of 1930, as amended (19 U.S.C. 1671e), and/or an AD order issued under section 736, Tariff Act of 1930, as amended (19 U.S.C. 1673e).

CVD. The term ''CVD'' refers to countervailing duty, consistent with section 706, Tariff Act of 1930, as amended (19 U.S.C. 1671e).

Enter or *entry*. The terms ''enter'' and ''entry'' refer to the entry for consumption, or withdrawal from warehouse for consumption, of merchandise in the customs territory of the United States, *see* § 101.1 of this chapter, or to the filing with CBP of the necessary documentation to withdraw merchandise from a duty-deferral program in the United States for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico, *see* §§ 141.0a(f) and 181.53 of this chapter.

Evade or *evasion*. The terms ''evade'' and ''evasion'' refer to the entry of covered merchandise into the customs territory of the United States for consumption by means of any document or electronically transmitted data or information, written or oral statement, or act that is material and false, or any omission that is material, and that results in any cash deposit or other security or any amount of applicable antidumping or countervailing duties being reduced or not being applied with respect to the covered merchandise.

Interested party. The term ''interested party'' in this part refers only to the following:

(1) A foreign manufacturer, producer, or exporter, or any importer (not limited to importers of record and including the party against whom the allegation is brought), of covered merchandise or a trade or business association a majority of the members of which are producers, exporters, or importers of such merchandise;

(2) A manufacturer, producer, or wholesaler in the United States of a domestic like product;

(3) A certified union or recognized union or group of workers that is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a domestic like product;

(4) A trade or business association a majority of the members of which manufacture, produce, or wholesale a domestic like product in the United States;

(5) An association a majority of the members of which is composed of interested parties described in paragraphs (2), (3), and (4) of this definition with respect to a domestic like product; or,

(6) If the covered merchandise is a processed agricultural product, as defined in 19 U.S.C. 1677(4)(E), a coalition or trade association that is representative of any of the following: processors; processors and producers; or processors and growers.

Investigation. The term ''investigation'' refers to the CBP administrative process described in subpart C of this part, and is a formal investigation within the meaning of section 592(c)(4), Tariff Act of 1930, as amended (19 U.S.C. 1592(c)(4)).

Parties to the investigation. The phrase ''parties to the investigation'' means the interested party (or interested parties, in the case of consolidation pursuant to § 165.13) who filed the allegation of evasion and the importer (or importers, in the case of consolidation pursuant to § 165.13) who allegedly engaged in evasion. In the case of investigations initiated based upon a request from a Federal agency, parties to the investigation only refers to the importer or

importers who allegedly engaged in evasion, and not the Federal agency.

Regulations and Rulings. The term ''Regulations and Rulings'' means the Executive Director, Regulations and Rulings, Office of Trade, or his or her designee.

TRLED. The term ''TRLED'' refers to the Trade Remedy Law Enforcement Directorate, Office of Trade, that conducts the investigation of alleged evasion under this part, and that was established as required by section 411 of the EAPA.

[81 FR 56482, Aug. 22, 2016, as amended at 81 FR 62004, Sept. 8, 2016]

§ 165.2 Entries subject to this part.

Entries that may be the subject of an allegation made under § 165.11 or a request for an investigation under § 165.14 are those entries of allegedly covered merchandise made within one year before the receipt of an allegation under § 165.11 or of a request for an investigation under § 165.14. In addition, at its discretion, CBP may investigate other entries of such covered merchandise.

§ 165.3 Power of attorney.

(a) *When required*. Any submission made under this part other than by a principal or its employees may be filed by a person acting as agent or attorney in fact for the principal; a power of attorney must specifically authorize such person to make, sign, and file the submission or grant unlimited authority to such person.

(b) *Exception*. No power of attorney is required for an attorney at law to act as agent or attorney for the principal. The signing of a submission as agent or attorney for the principal by the attorney at law will be considered a declaration by the attorney that the attorney is currently an active member in good standing of the highest court of a state, possession, territory, commonwealth, or the District of Columbia, and has been authorized to sign and file the submission for the principal.

(c) *Execution*—(1) *Corporation*. A corporate power of attorney to file the submissions described in paragraph (a) of this section must be signed by a duly authorized officer or employee of the corporation.

(2) *Partnership*. A partnership power of attorney to file the submissions described in paragraph (a) of this section must be signed by at least one member in the name of the partnership or by at least one duly authorized employee of the partnership, provided the power recites the name(s) of all of the members.

(3) *Other persons*. A power of attorney filed by a person other than a corporation or partnership must be signed by that person or an employee of that person who has the legal authority to act on that person's behalf when filing the submissions described in paragraph (a) of this section.

(d) *Revocation*. Any power of attorney will be subject to revocation at any time by written notice given to and received by CBP, Office of Trade.

(e) *Proof*. CBP will require proof of execution of a power of attorney, where applicable, the first time that an agent makes a submission on behalf of any interested party during an investigation or administrative review of a determination as to evasion. CBP may require proof of authority to execute a power of attorney pursuant to paragraph (c) of this section, at any point during the proceedings described in this part.

§ 165.4 Release of information provided by interested parties.

(a) *Claim for business confidential treatment*. Any interested party that makes a submission to CBP in connection with an investigation under this part, including for its initiation and administrative review, may request that CBP treat any part of the submission as business confidential information except for the information specified in paragraph (c) of this section. Business confidential treatment will be granted if the requirements of this section are satisfied and the information for which protection is sought consists of trade secrets and commercial or financial information obtained from any person, which is privileged or confidential in accordance with 5 U.S.C. 552(b)(4).

(1) *Identification of business confidential information*. An interested party submitting information must identify the information for which business confidential treatment is claimed by

enclosing the claimed confidential information within single brackets. The first page of any submission containing business confidential information must clearly state that the submission contains business confidential information. The submitting interested party must also provide with the claimed business confidential information an explanation of why each item of bracketed information is entitled to business confidential treatment.

(2) *Public version*. An interested party filing a submission containing claimed business confidential information must also file a public version of the submission. The public version must be filed on the same date as the business confidential version and contain a summary of the bracketed information in sufficient detail to permit a reasonable understanding of the substance of the information. If the submitting interested party claims that summarization is not possible, the claim must be accompanied by a full explanation of the reasons supporting that claim. The public version must be clearly marked as a public version on the first page.

(b) *Nonconforming submissions*. CBP will reject a submission that includes a request for business confidential treatment but does not meet the requirements of paragraph (a) of this section.

(1) *Notice of rejection*. If CBP determines that the claim of confidentiality is nonconforming, it will treat the relevant portion of the submission as business confidential information until the appropriate corrective action is taken or the submission is rejected.

(2) *Corrective action*. The submitting interested party may take any of the following actions within two business days after receiving CBP's notice of rejection:

(i) Correct the problems and resubmit the information by an email message or through any other method approved or designated by CBP;

(ii) If CBP denies a request for business confidential treatment, agree to have the information in question treated as public information;

(iii) Submit other material concerning the subject matter in lieu of the rejected information.

(3) *Effects of rejection*. If the submitting interested party does not take any of the actions in paragraph (b)(2) of this section, CBP will not consider the rejected submission and, if applicable, adverse inferences may be drawn pursuant to §165.6.

(c) *Information that will not be protected as confidential*. The following information provided by a party to the investigation in an allegation of evasion will not be protected as business confidential information and will be treated as public pursuant to the certification of informed consent referenced in §165.11(c):

(1) Name of the party to the investigation providing the information and identification of the agent filing on its behalf, if any, and email address for communication and service purposes;

(2) Specification as to the basis upon which the party making the allegation qualifies as an interested party as defined in §165.1;

(3) Name and address of importer against whom the allegation is brought;

(4) Description of covered merchandise; and

(5) Applicable AD/CVD orders.

(d) *Certification*. In accordance with paragraph (a)(2) of this section, when providing a public version of their submissions, interested parties must certify that the information they are providing is either their own information (*i.e.*, information from their own business records and not business confidential information of another entity) or information that was publicly obtained or in the public domain.

(e) *Information placed on the record by CBP*. Any information that CBP places on the administrative record, when obtained other than from an interested party subject to the requirements of this section, will include a public summary of the business confidential information as described in paragraph (a)(2) of this section, when applicable.

§165.5 Obtaining and submitting information.

(a) *Obtaining of information by CBP*. In obtaining information necessary to carry out its functions and duties under this part, CBP may employ any means authorized by law. In general, CBP will obtain information from its own files, from other agencies of the

United States Government, through questionnaires and correspondence, and through field work by its officials.

(b) *Submissions to CBP*. The following requirements pertain to all parties who knowingly make submissions covered in this part:

(1) *Form*. All submissions to CBP must be in writing in the English language or accompanied by an adequate English language translation as they will be part of the record for proceedings and determinations covered in this part. Oral discussions or communications with CBP will not be considered part of the record, unless they are memorialized in a written document that is placed on the record. All submissions must be made electronically to the designated email address specified by CBP for purposes of the investigation or through any other method approved or designated by CBP.

(2) *Certifications*. Every written submission made to CBP by an interested party under this part must be accompanied by the following certifications from the person making the submission:

(i) ''On behalf of the party making this submission, I certify that all statements in this submission (and any attachments) are accurate and true to the best of my knowledge and belief.''

(ii) ''On behalf of the party making this submission, I certify that any information for which I have not requested business confidential treatment pursuant to 19 CFR 165.4(a), may be released for public consumption.''

(iii) ''On behalf of the party making this submission, I certify that I will advise CBP promptly of any knowledge of or reason to suspect that the covered merchandise poses any health or safety risk to U.S. consumers pursuant to 19 CFR 165.7(a).''

(3) *False statement*. Any interested party that provides a material false statement or makes a material omission or otherwise attempts to conceal material facts at any point in the proceedings may be subject to adverse inferences (*see* §165.6) and prosecution pursuant to 18 U.S.C. 1001.

(c) *Compliance with CBP time limits*—(1) *Requests for extensions*. CBP may, for good cause, extend any regulatory time limit if a party requests an extension in a separate, stand-alone submission and states the reasons for the request. Such requests must be submitted no less than three business days before the time limit expires unless there are extraordinary circumstances. An extraordinary circumstance is an unexpected event that could not have been prevented even if reasonable measures had been taken. It is within CBP's reasonable discretion to determine what constitutes extraordinary circumstances, what constitutes good cause, and to grant or deny a request for an extension.

(2) *Rejection of untimely submissions*. If a submission is untimely filed, then CBP will not consider or retain it in the administrative record and adverse inferences may be applied, if applicable.

§165.6 Adverse inferences.

(a) *In general*. If the party to the investigation that filed an allegation, the importer, or the foreign producer or exporter of the covered merchandise fails to cooperate and comply to the best of its ability with a request for information made by CBP, CBP may apply an inference adverse to the interests of that party in selecting from among the facts otherwise available to make the determination as to evasion pursuant to §165.27 and subpart D of this part.

(b) *Other adverse inferences*. CBP may also apply an inference adverse to the interests of a party based on a prior determination in another CBP investigation, proceeding, or action that involves evasion with respect to AD/CVD orders, or any other available information.

(c) *Application*. An adverse inference described in this section may be used with respect to the importer of the covered merchandise, or the foreign producer or exporter of the covered merchandise without regard to whether another party involved in the same transaction or transactions under examination has provided the information sought by CBP, such as import or export documentation.

§165.7 Protection of public health and safety.

(a) *Notification to CBP*. Any interested party, including an importer, must

promptly notify CBP if it has knowledge or reason to suspect that the covered merchandise may pose a health or safety risk to U.S. consumers at any point during the proceedings described in this part.

(b) *Transmission by CBP.* During the course of an investigation or administrative review of a determination as to evasion under this part, CBP will consider whether the covered merchandise may pose a health or safety risk to U.S. consumers and will take into account any notification received under paragraph (a) of this section. CBP will promptly transmit information to the appropriate Federal agencies for purposes of mitigating the risk and will exercise its administrative powers, as appropriate.

Subpart B—Initiation of Investigations

§ 165.11 Allegations by interested parties.

(a) *Filing of allegation.* Any interested party, as defined in § 165.1, may file an allegation that an importer of covered merchandise has evaded AD/CVD orders. An allegation must be filed electronically through the appropriate portal on CBP's online e-Allegations system or through any other method approved or designated by CBP. Each allegation must be limited to one importer, but an interested party may file multiple allegations. An allegation must satisfy the requirements in paragraphs (b) through (d) of this section.

(b) *Contents.* An allegation of evasion must include, but is not limited to, the following information:

(1) Name of the interested party making the allegation and identification of the agent filing on its behalf, if any, and the email address for communication and service purposes;

(2) An explanation as to how the interested party qualifies as an interested party pursuant to § 165.1;

(3) Name and address of importer against whom the allegation is brought;

(4) Description of the covered merchandise;

(5) Applicable AD/CVD orders; and

(6) Information reasonably available to the interested party to support its allegation that the importer with respect to whom the allegation is filed is engaged in evasion.

(c) *Certifications.* An allegation must also be accompanied by the certifications required under § 165.5(b) and the following statement of informed consent from the person making the submission: ''I certify my understanding and consent that the information provided for in § 165.11(b)(1) through (5) may be released for public consumption.''

(d) *Signature.* The person signing the allegation on behalf of the interested party must include his or her name, position in the company or other affiliation, and provide contact information. Electronic submission of this information will be considered ''signed'' for purpose of filing the allegation.

(e) *Technical assistance and guidance—*(1) *Availability.* CBP will provide technical assistance and guidance for the preparation of an allegation of evasion and its submission to CBP, as described in this section.

(i) *Small businesses.* Small businesses are entitled to technical assistance upon request. In general, small businesses are eligible to make such requests if they have neither adequate internal resources nor financial ability to obtain qualified outside assistance in preparing and submitting for CBP's consideration allegations of evasion. Small businesses must satisfy the applicable standards set forth in 15 U.S.C. 632 and implemented in 13 CFR part 121.

(ii) *Other parties.* Other parties may request technical assistance, which CBP may provide if resources are reasonably available.

(2) *Requests.* Requests for technical assistance may be made at any time via the email address designated on CBP's online e-Allegations system or through any other method approved or designated by CBP.

(3) *Limitations.* The act of providing technical assistance is not part of the record for the investigation, nor does it compel a decision by CBP to initiate an investigation pursuant to § 165.15.

§ 165.12 Receipt of allegations.

(a) *Date of receipt.* The ''date of receipt'' of a properly filed allegation is

the date on which CBP provides an acknowledgment of receipt of an allegation containing all the information and certifications required in §165.11, together with a CBP-assigned control number, to the party that filed the allegation. CBP has 15 business days from the date of receipt to determine whether to initiate an investigation under the EAPA.

(b) *Withdrawal.* An allegation may be withdrawn by the party that filed it if that party submits a request to withdraw the allegation to the designated email address specified by CBP.

§ 165.13 Consolidation of allegations.

(a) *In general.* Multiple allegations against one or more importers may be consolidated into a single investigation at CBP's discretion. Consolidations may be made at any point prior to the issuance of a determination as to evasion with respect to a particular importer. If multiple allegations are received and consolidated prior to the initiation of an investigation, then the date of receipt of the first properly filed allegation will start the time period for the deadline to initiate the investigation described in §165.15 with respect to that allegation.

(b) *Criteria.* CBP may consolidate multiple allegations if warranted based on the consideration of certain factors. The factors that CBP may consider include, but are not limited to, whether the multiple allegations involve:

(1) Relationships between the importers;

(2) Similarity of covered merchandise;

(3) Similarity of AD/CVD orders; and

(4) Overlap in time periods for entries of covered merchandise.

(c) *Notice.* Notice of consolidation will be promptly transmitted to all parties to the investigation if consolidation occurs at a point in the investigation after which they have already been notified of the ongoing investigation. Otherwise, parties will be notified no later than 95 calendar days after the date of initiation of the investigation.

(d) *Service requirements for other parties to the investigation.* Upon notification of consolidation, parties to the consolidated investigation must serve via an email message or through any other method approved or designated by CBP upon the newly added parties to the investigation the public versions of any documents that were previously served upon parties to the unconsolidated investigation. Service must take place within five business days of the notice of consolidation.

§ 165.14 Other Federal agency requests for investigations.

(a) *Requests for investigations.* Any other Federal agency, including the Department of Commerce or the United States International Trade Commission, may request an investigation under this part. CBP will initiate an investigation if the Federal agency has provided information that reasonably suggests that an importer has entered covered merchandise into the customs territory of the United States through evasion, unless the agency submits a request to withdraw to the designated email address specified by CBP.

(b) *Contents of requests.* The following information must be included in the request for an investigation:

(1) Name of importer against whom the allegation is brought;

(2) Description of the covered merchandise;

(3) Applicable AD/CVD orders;

(4) Information that reasonably suggests that an importer has entered covered merchandise into the customs territory of the United States through evasion;

(5) Identification of a point of contact at the agency; and

(6) Notification of any knowledge of or reason to suspect that the covered merchandise poses any health or safety risk to U.S. consumers.

(c) *Receipt of requests.* Requests for an investigation must be filed electronically via CBP's online e-Allegations system or through any other method approved or designated by CBP. The date of receipt is the date that CBP transmits notice of the assigned control number to the Federal agency that filed the request.

(d) *Notice of release of information*—(1) *Public information.* CBP will treat the information required by paragraphs (b)(1) through (3) of this section as public information.

(2) *Business confidential treatment.* CBP will create a public summary of the information required by paragraphs (b)(4) and (6) of this section.

(e) *Access to investigation.* The Federal agency is not a party to the investigation. Therefore, it will neither receive official notice of developments after CBP's receipt of the request for an investigation nor will it receive service of any documents filed by interested parties. Only the parties to the investigation will be entitled to notice and service, as well as the related rights to administrative review and judicial review.

§ 165.15 Initiation of investigations.

(a) *Time for determination.* CBP will make a determination as to whether to initiate an investigation on or before the 15th business day after the date on which a properly filed allegation is received under § 165.12(a) or a request for an investigation is received from a Federal agency under § 165.14.

(b) *Criteria for initiation.* CBP will initiate an investigation under subpart C of this part if the following criteria are satisfied:

(1) *Nature of merchandise.* The covered merchandise described in the allegation or Federal agency request for an investigation is properly within the scope of an AD/CVD order. If CBP lacks sufficient information to make such determination as to the scope of the order, then it will refer the matter to the Department of Commerce pursuant to § 165.16.

(2) *Likelihood of evasion.* The information provided in the allegation or Federal agency request for an investigation reasonably suggests that the covered merchandise has been entered for consumption into the customs territory of the United States through evasion as it is defined in § 165.1.

(c) *Exceptions.* Even if the criteria in paragraph (b) of this section are satisfied, CBP will not initiate an investigation under the following circumstances:

(1) *Clerical error.* A clerical error, as defined in 19 U.S.C. 1517(a)(5)(B), is not evasion, although CBP will take appropriate actions to ensure that AD/CVD duties are assessed and collected.

(2) *Withdrawal.* An allegation or a request for an investigation from another Federal agency may be withdrawn pursuant to the requirements of § 165.12(b) or § 165.14(a), as applicable.

(d) *Notification of the investigation.* If CBP determines that it will not initiate an investigation, it will notify the interested party who filed the allegation within five business days of that determination. Otherwise, the parties to the investigation will be notified consistent with the following time limits:

(1) *In general.* CBP will issue notification of its decision to initiate an investigation to all parties to the investigation no later than 95 calendar days after the decision has been made, and the actual date of initiation will be specified therein. However, notification to all parties to the investigation will occur no later than five business days after interim measures are taken pursuant to § 165.24.

(2) *Consolidated allegations.* If multiple allegations are consolidated, any interested party who filed an allegation after initiation of an investigation will be notified by CBP of the date of the decision to initiate an investigation when that party receives notice of consolidation under § 165.13(c).

(e) *Record of the investigation.* If an investigation is initiated pursuant to subpart B of this part, then the information considered by CBP prior to initiation will be part of the administrative record pursuant to § 165.21.

§ 165.16 Referrals to Department of Commerce.

(a) *When required.* A referral is required if at any point after receipt of an allegation, CBP cannot determine whether the merchandise described in an allegation is properly within the scope of an antidumping or countervailing duty order.

(b) *Referral.* The referral may contain any necessary information available to CBP regarding whether the merchandise described in an allegation is subject to the relevant AD/CVD orders.

(c) *Notice of referral.* TRLED will promptly notify the parties to the investigation of the date of the referral.

(d) *Effect on investigation.* The time period required for any referral and determination by the Department of Commerce will not be counted toward the deadlines for CBP to decide on whether to initiate an investigation under §165.15 or the deadline to issue a determination as to evasion under §165.27.

(e) *Notice of decision.* CBP will place the determination by the Department of Commerce on the administrative record of CBP's proceeding and will electronically notify the parties to the investigation.

Subpart C—Investigation Procedures

§165.21 Administrative record.

(a) *Administrative record.* CBP will maintain a record for purposes of making a determination as to evasion under §165.27 and conducting an administrative review under §165.46. The administrative record will contain all of the following, if applicable, but is not limited to:

(1) Materials obtained and considered by CBP during the course of an investigation under this part;

(2) Factual information submitted pursuant to §165.23;

(3) Information obtained during and the results of any verification conducted pursuant to §165.25;

(4) Materials from other agencies provided to CBP pursuant to the investigation;

(5) Written arguments submitted pursuant to §165.26 and subpart D of this part; and

(6) Summaries of oral discussions with interested parties relevant to the investigation pursuant to §165.23.

(b) *Maintenance of the record.* CBP will maintain the administrative record of each investigation or review conducted by CBP pursuant to this part. All information properly filed with CBP pursuant to §§165.4 and 165.5 will be placed on the administrative record. CBP will not consider in its determinations or include on the administrative record any information that is not properly filed with CBP.

§165.22 Time for investigations.

(a) *Time for determination.* Unless CBP has extended the deadline in accordance with paragraph (c) of this section or due to a referral to the Department of Commerce pursuant to §165.16, CBP will make a determination under §165.27 not later than 300 calendar days after the date on which CBP initiates an investigation under §165.15 with respect to whether covered merchandise was entered through evasion.

(b) *Time for determination with consolidated allegations.* If CBP consolidates multiple allegations under §165.13 into a single investigation under §165.15, the date on which CBP receives the first of such allegations will be used for the purposes of the requirement under paragraph (a) of this section with respect to the timing of the initiation of the investigation.

(c) *Extension of time for determination.* CBP may extend the time to make a determination under paragraph (a) of this section by not more than 60 calendar days if CBP determines that—

(1) The investigation is extraordinarily complicated because of—

(i) The number and complexity of the transactions to be investigated;

(ii) The novelty of the issues presented; or

(iii) The number of entities to be investigated; and

(2) Additional time is necessary to make the determination under paragraph (a) of this section.

(d) *Notification of extension of time for determination.* CBP will notify all parties to the investigation of an extension not later than 300 calendar days after the date on which CBP initiates an investigation under §165.15.

§165.23 Submission of factual information.

All submissions of factual information to CBP must comply with the requirements specified in §§165.4 and 165.5 and this section. The submissions will be placed on the administrative record.

(a) *Request for information by CBP.* In making a determination under §165.27, CBP may require additional information as is necessary, from, among others:

(1) An interested party that filed an allegation under §165.11;

(2) An importer who allegedly engaged in evasion;

(3) A person that is a foreign producer or exporter of covered merchandise; and/or

(4) The government of a country from which covered merchandise may have been exported.

(b) *Voluntary submission of factual information.* Any party to the investigation may submit additional information in order to support the allegation of evasion or to negate or clarify the allegation of evasion.

(c) *Time limits and service requirements*—(1) *Responses to CBP requests for factual information.* Factual information requested by CBP pursuant to paragraph (a) of this section must be submitted to CBP within the timeframe set forth by CBP in the request. The public version must also be served via an email message or through any other method approved or designated by CBP on the parties to the investigation. If CBP places new factual information on the administrative record on or after the 200th calendar day after the initiation of the investigation (or if such information is placed on the record at CBP's request), the parties to the investigation will have ten calendar days to provide rebuttal information to the new factual information.

(2) *Voluntary submission of factual information.* Factual information voluntarily submitted to CBP pursuant to paragraph (b) of this section must be submitted no later than 200 calendar days after CBP initiated the investigation under §165.15. The public version must also be served via an email message or through any other method approved or designated by CBP on the parties to the investigation. Voluntary submissions made after the 200th calendar day after initiation of the investigation will not be considered or placed on the administrative record, except rebuttal information as permitted pursuant to the next sentence herein. Parties to the investigation will have ten calendar days from the date of service of any factual information or from the date of placement of any factual information on the record to provide rebuttal information to that factual information, if the information being rebutted was placed on the administrative record no later than 200 calendar days after CBP initiated the investigation under §165.15.

(d) *Oral discussions.* Notwithstanding the time limits in paragraph (c) of this section, CBP may request oral discussions either in-person or by teleconference. CBP will memorialize such discussions with a written summary that identifies who participated and the topic of discussion. In the event that confidential business information is included in the written summary, CBP will also place a public version on the administrative record.

§165.24 Interim measures.

(a) *Reasonable suspicion.* No later than 90 calendar days after initiating an investigation under §165.15, CBP will take interim measures if there is a reasonable suspicion that the importer entered covered merchandise into the customs territory of the United States through evasion.

(b) *Measures.* If CBP decides that there is reasonable suspicion under paragraph (a) of this section, then:

(1) For entries that remain unliquidated, CBP will:

(i) Suspend the liquidation of each unliquidated entry of such covered merchandise that entered on or after the date of the initiation of the investigation under §165.15;

(ii) Extend the period for liquidating each unliquidated entry of such covered merchandise that entered before the date of the initiation of the investigation under §165.15 pursuant to section 504(b), Tariff Act of 1930, as amended (19 U.S.C. 1504(b)); and

(iii) Take such additional measures as CBP determines necessary to protect the revenue of the United States, including requiring a single transaction bond or additional security or the posting of a cash deposit with respect to such covered merchandise pursuant to section 623, Tariff Act of 1930, as amended (19 U.S.C. 1623).

(2) For entries that are liquidated, CBP may initiate or continue any appropriate measures separate from this proceeding.

(c) *Notice.* If CBP decides that there is reasonable suspicion under paragraph (a) of this section, CBP will issue notification of this decision to the parties

to the investigation within five business days after taking interim measures. CBP will also provide parties to the investigation with a public version of the administrative record as of that date.

§ 165.25 Verifications of information.

(a) Prior to making a determination under § 165.27, CBP may in its discretion verify information in the United States or foreign countries collected under § 165.23 as is necessary to make its determination.

(b) CBP will place any relevant information on the administrative record and provide a public summary.

§ 165.26 Written arguments.

All written arguments submitted to CBP pursuant to a proceeding under this part must comply with the requirements specified in §§ 165.4 and 165.5 and this section. The submissions will be placed on the administrative record.

(a) *Written arguments.* Parties to the investigation:

(1) May submit to CBP written arguments that contain all arguments that are relevant to the determination as to evasion and based solely upon facts already on the administrative record in that proceeding. All written arguments must be submitted to the designated email address specified by CBP or through any other method approved or designated by CBP no later than 230 calendar days after the investigation was initiated pursuant to § 165.15; and

(2) Must serve a public version of the written arguments prepared in accordance with § 165.4 on the other parties to the investigation by an email message or through any other method approved or designated by CBP the same day it is filed with CBP.

(b) *Responses to the written arguments.* Parties to the investigation:

(1) May submit to CBP a response to a written argument filed by another party to the investigation. The response must be in writing and submitted to the designated email address specified by CBP or through any other method approved or designated by CBP no later than 15 calendar days after the written argument was filed with CBP. The response must be limited to the issues raised in the written argument; any portion of a response that is outside the scope of the issues raised in the written argument will not be considered; and

(2) Must serve a public version of the response prepared in accordance with § 165.4 on the other parties to the investigation by an email message or through any other method approved or designated by CBP the same day it is filed with CBP.

(c) *Written arguments submitted upon request.* Notwithstanding paragraphs (a) and (b) of this section, CBP may request written arguments on any issue from any party to the investigation at any time during an investigation.

(d) *Form of written argument and response to the written arguments.* The written argument and response to the written argument must be double-spaced, with headings and footnotes single-spaced, margins one inch on all four sides, and font Times New Roman, 12-point font size. The written argument must be no more than 50 pages in length, including exhibits, and the response to the written argument must be no more than 50 pages in length, including exhibits, excluding any pages containing the table of contents and the table of cited authorities. Each written argument and response to the written argument must contain:

(1) The name, address, and email address of the party and of his or her duly authorized agent or attorney at law (if represented by a duly authorized agent or attorney at law);

(2) A summary of the argument or response to the argument, which is a concise summary;

(3) The argument or response to the argument that clearly and accurately presents points of fact and law with applicable citations;

(4) A table of contents and a table of cited authorities; and

(5) A conclusion that states a proposal for CBP's determination as to evasion.

§ 165.27 Determination as to evasion.

(a) *Determination.* Upon conclusion of the investigation, CBP will make a determination based on substantial evidence as to whether covered merchandise was entered into the customs territory of the United States through evasion.

(b) *Notification.* No later than five business days after making a determination under paragraph (a) of this section, CBP will send via an email message or through any other method approved or designated by CBP a summary of the determination limited to publicly available information under paragraph (a) to the parties to the investigation.

(c) *Negative determination.* If CBP makes a determination under paragraph (a) of this section that covered merchandise was not entered into the customs territory of the United States through evasion, then CBP will cease applying any interim measures taken under §165.24 and liquidate the entries in the normal course.

§ 165.28 Assessments of duties owed; other actions.

(a) *Effect on liquidation.* For entries of covered merchandise that are already liquidated when an affirmative determination is made as to evasion under §165.27, CBP will initiate or continue any appropriate actions separate from this proceeding. For entries of covered merchandise that are unliquidated:

(1) *Suspension of liquidation.* (i) CBP will suspend the liquidation of unliquidated entries of covered merchandise that is subject to the determination and that entered on or after the date of the initiation of the investigation under §165.15 with respect to such covered merchandise; or

(ii) If CBP has already suspended the liquidation of such entries pursuant to §165.24, then CBP will continue to suspend their liquidation.

(2) *Extension of liquidation.* (i) If liquidation is not suspended, then CBP will extend the period for liquidating the unliquidated entries of covered merchandise that is subject to the determination, pursuant to CBP's authority under section 504(b), Tariff Act of 1930, as amended (19 U.S.C. 1504(b)); or

(ii) If CBP has already extended the period for liquidating such entries pursuant to §165.24, then CBP will continue to extend the period for liquidating such entries.

(b) *Notification to the Department of Commerce.* If CBP makes a determination under §165.27 that covered merchandise was entered into the customs territory of the United States through evasion, CBP will notify the Department of Commerce of the determination and request, if necessary, that the Department of Commerce:

(1) Identify the applicable antidumping or countervailing duty assessment rates for merchandise covered by the determination; and/or

(2) If no assessment rate is available at the time, identify the applicable cash deposit rate to be applied, with the applicable antidumping or countervailing duty assessment rate to be provided as soon as that rate becomes available.

(c) *Cash deposits and duty assessment.* CBP will require the posting of cash deposits and assess duties on entries of covered merchandise subject to its affirmative determination of evasion.

Subpart D—Administrative Review of Determinations

§ 165.41 Filing a request for review of the initial determination.

(a) *How to file a request for administrative review.* Requests for administrative review of the initial determination as to evasion pursuant to §165.27 must be submitted electronically to Regulations and Rulings, in a manner as prescribed by CBP. Requests for review may be filed by any party to the investigation or its attorney at law, or duly authorized agent, and must comply with the requirements specified in §165.3. Electronic signatures are acceptable.

(b) *Release of information and service.* Requests for review must comply with the requirements for release of information specified in §165.4.

(c) *Notice to parties to the investigation.* Each party who files a request for review must provide the other parties to the investigation with a public version in accordance with §165.4.

(d) *When filed.* Requests for review must be filed no later than 30 business days after the issuance of the initial determination as to evasion. Untimely or incomplete requests for review will not be accepted.

(e) *True and accurate information.* All requests must be accompanied by the certifications required pursuant to §165.5. Any false statements contained in a request for review may subject the party to prosecution under 18 U.S.C. 1001 or other applicable laws.

(f) *Content.* Each request for review must be based solely on the facts already upon the administrative record in the proceeding, in writing, and may not exceed 30 pages. It must be double-spaced with headings and footnotes single spaced, margins one inch on all four sides, and 12-point font Times New Roman. If it exceeds 10 pages, it must include a table of contents and a table of cited authorities. Each request for review must set forth the following:

(1) The allegation control number assigned by CBP with respect to the investigation under consideration;

(2) The name, address and email address of the party seeking review and the name, address and email address of his or her duly authorized agent or attorney at law (if represented by a duly authorized agent or an attorney at law);

(3) A statement of the procedural history and facts as set forth in the administrative record and identified by specific page number or exhibit number and relied upon by the party to prove or establish whether evasion occurred or not;

(4) A concise summary of the argument;

(5) The argument expressing clearly and accurately the points of fact and of law presented and citing the authorities and statutes relied on; and

(6) A conclusion specifying whether the initial determination should be affirmed or reversed.

(7) Each party seeking business confidential treatment must comply with the requirements in §165.4.

(g) *Assigned case number.* Upon receipt of a timely request for review, the submission will be reviewed to ensure it has been properly filed. If the submission has been properly filed, a case number will be assigned for tracking purposes.

(h) *Consolidation of requests for administrative review.* Multiple requests for review under the same allegation control number assigned by CBP involving the same importer and merchandise may be consolidated into a single administrative review matter.

(i) *Commencement of administrative review.* The 60 business-day review period will commence on the date when CBP accepts the last properly filed request for administrative review and transmits electronically the assigned administrative review case number to all parties to the investigation. All properly filed requests for administrative review must be submitted to CBP no later than 30 business days after the issuance of the initial determination.

§165.42 Responses to requests for administrative review.

Any party to the investigation, regardless of whether it submitted a request for administrative review, may submit a written response to the filed request(s) for review. Each written response may not exceed 30 pages in total (including exhibits but not table of contents or table of authorities) and must follow the requirements in §165.41(f). The written responses to the request(s) for review must be limited to the issues raised in the request(s) for review and must be based solely on the facts already upon the administrative record in that proceeding. The responses must be filed in a manner prescribed by CBP no later than 10 business days from the commencement of the administrative review. All responses must be accompanied by the certifications provided for in §165.5. Each party seeking business confidential treatment must comply with the requirements in §165.4. The public version of the response(s) to the request(s) for review must be provided to the other parties to the investigation via an email message or through any other method approved or designated by CBP.

§165.43 Withdrawal.

Requests for review and responses to requests for review will remain part of

the administrative record and cannot be withdrawn.

§ 165.44 Additional information.

CBP may request additional written information from the parties to the investigation at any time during the review process. The parties who provide the requested additional information must provide a public version to the other parties to the investigation via an email message or through any other method approved or designated by CBP. The submission of additional information requested by CBP must comply with requirements for release of information in § 165.4. CBP may apply an adverse inference as stated in § 165.6 if the additional information requested under this section is not provided.

§ 165.45 Standard for administrative review.

CBP will apply a de novo standard of review and will render a determination appropriate under law according to the specific facts and circumstances on the record. For that purpose, CBP will review the entire administrative record upon which the initial determination was made, the timely and properly filed request(s) for review and responses, and any additional information that was received pursuant to § 165.44. The administrative review will be completed within 60 business days of the commencement of the review.

§ 165.46 Final administrative determination.

(a) *Finality*. The final administrative determination issued by Regulations and Rulings will be in writing and will set forth the conclusion reached on the matter. The conclusion will be transmitted electronically to all parties to the investigation. The final administrative determination is subject to judicial review pursuant to section 421 of the EAPA.

(b) *Effect of the final administrative determination*. If the final administrative determination affirms the initial determination as to evasion, then no further CBP action is needed. If the final administrative determination reverses the initial determination, then CBP will take appropriate actions consistent with the final administrative determination.

§ 165.47 Potential penalties and other actions.

CBP and other government agencies reserve the right to undertake additional investigations or enforcement actions in cases covered by these provisions. Nothing within this part prevents CBP from assessing penalties of any sort related to such cases or taking action under any other relevant laws.

PART 171—FINES, PENALTIES, AND FORFEITURES

Sec.

AUTHORITY: 18 U.S.C. 983; 19 U.S.C. 66, 1592, 1593a, 1618, 1624; 22 U.S.C. 401; 31 U.S.C. 5321. Subpart F also issued under 19 U.S.C. 1595a, 1605, 1614.

SOURCE: T.D. 70–249, 35 FR 18265, Dec. 1, 1970, unless otherwise noted.

§ 171.0 Scope.

This part contains provisions relating to petitions for relief from fines, forfeitures, and certain penalties incurred, and petitions for the restoration of proceeds from sale of seized and forfeited property. This part does not relate to petitions on claims for liquidated damages or penalties which are guaranteed by the conditions of the International Carrier Bond (*see* § 113.64 of this Chapter).

[T.D. 00–57, 65 FR 53576, Sept. 5, 2000]

Subpart A—Application for Relief

SOURCE: T.D. 00–57, 65 FR 53576, Sept. 5, 2000, unless otherwise noted.

§ 171.1 Petition for relief.

(a) *To whom addressed.* Petitions for the remission or mitigation of a fine, penalty, or forfeiture incurred under any law administered by Customs must be addressed to the Fines, Penalties, and Forfeitures Officer designated in the notice of claim.

(b) *Signature.* For commercial violations, the petition for remission or mitigation must be signed by the petitioner, his attorney-at-law or a Customs broker. If the petitioner is a corporation, the petition may be signed by an officer or responsible supervisory official of the corporation, or a responsible employee representative of the corporation. Electronic signatures are acceptable. In non-commercial violations, a non-English speaking petitioner or petitioner who has a disability which may impede his ability to file a petition may enlist a family member or other representative to file a petition on his behalf. The deciding Customs officer may, in his or her discretion, require proof of representation before consideration of any petition.

(c) *Form.* The petition for remission or mitigation need not be in any particular form. Customs can require that the petition and any documents submitted in support of the petition be in English or be accompanied by an English translation. The petition must set forth the following:

(1) A description of the property involved (if a seizure);

(2) The date and place of the violation or seizure;

(3) The facts and circumstances relied upon by the petitioner to justify remission or mitigation; and

(4) If a seizure case, proof of a petitionable interest in the seized property.

(d) *False statement in petition.* A false statement contained in a petition may subject the petitioner to prosecution under the provisions of 18 U.S.C. 1001.

§ 171.2 Filing a petition.

(a) *Where filed.* A petition for relief must be filed with the Fines, Penalties, and Forfeitures office whose address is given in the notice.

(b) *When filed*—(1) Seizures. Petitions for relief from seizures must be filed within 30 days from the date of mailing of the notice of seizure.

(2) *Penalties.* Petitions for relief from penalties must be filed within 60 days of the mailing of the notice of penalty incurred.

(c) *Extensions.* The Fines, Penalties, and Forfeitures Officer is empowered to grant extensions of time to file petitions when the circumstances so warrant.

(d) *Number of copies.* The petition must be filed in duplicate unless filed electronically.

(e) *Exception for certain cases.* If a penalty is assessed or a seizure is made and less than 180 days remain before the statute of limitations may be asserted as a defense, the Fines, Penalties, and Forfeitures Officer may specify in the seizure or penalty notice a reasonable period of time, but not less than 7 working days, for the filing of a petition for relief. If a petition is not filed within the time specified, the matter will be transmitted promptly to the appropriate Office of the Chief Counsel for referral to the Department of Justice.

§ 171.3 Oral presentations seeking relief.

(a) *For violation of section 592 or section 593A.* If the penalty incurred is for a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), or section 593A, Tariff Act of 1930, as added (19 U.S.C. 1593a), the person named in the notice, in addition to filing a petition, may make an oral presentation seeking relief in accordance with this paragraph.

(b) *Other oral presentations.* Oral presentations other than those provided in paragraph (a) of this section may be allowed in the discretion of any official of the Customs Service or Department of the Treasury authorized to act on a petition or supplemental petition.

Subpart B—Action on Petitions

SOURCE: T.D. 00–57, 65 FR 53576, Sept. 5, 2000, unless otherwise noted.

§ 171.11 Petitions acted on by Fines, Penalties, and Forfeitures Officer.

(a) *Remission or mitigation authority.* Upon receipt of a petition for relief submitted pursuant to the provisions of section 618 of the Tariff Act of 1930, as amended (19 U.S.C. 1618), or section 5321(c) of title 31, United States Code (31 U.S.C. 5321(c)), the Fines, Penalties, and Forfeitures Officer is empowered to remit or mitigate on such terms and conditions as, under law and in view of the circumstances, he or she deems appropriate in accordance with appropriate delegations of authority.

(b) *When violation did not occur.* Notwithstanding any other delegation of authority, the Fines, Penalties, and Forfeitures Officer is always empowered to cancel any claim when he or she definitely determines that the act or omission forming the basis of any claim of penalty or forfeiture did not occur.

(c) *When violation is result of vessel in distress.* The Fines, Penalties, and Forfeitures Officer may remit without payment any penalty which arises for violation of the coastwise laws if he or she is satisfied that the violation occurred as a direct result of an arrival of the transporting vessel in distress.

[T.D. 00–57, 65 FR 53576, Sept. 5, 2000, as amended by CBP Dec. 12–07, 77 FR 19534, Apr. 2, 2012]

§ 171.12 Petitions acted on at CBP Headquarters.

Upon receipt of a petition for relief filed pursuant to the provisions of section 618 of the Tariff Act of 1930, as amended (19 U.S.C. 1618), or section 5321(c) of title 31, United States Code (31 U.S.C. 5321(c)), involving fines, penalties, and forfeitures which are outside of his or her delegated authority, the Fines, Penalties, and Forfeitures Officer will refer that petition to the Chief, Penalties Branch, Regulations and Rulings, Office of International Trade, CBP Headquarters, who is empowered to remit or mitigate on such terms and conditions as, under law and in view of the circumstances, he or she deems appropriate.

[T.D. 00–57, 65 FR 53576, Sept. 5, 2000, as amended by CBP Dec. 12–07, 77 FR 19534, Apr. 2, 2012]

§ 171.13 Limitations on consideration of petitions.

(a) *Cases referred for institution of legal proceedings.* No action will be taken on any petition after the case has been referred to the Department of Justice for institution of legal proceedings. The petition will be forwarded to the Department of Justice.

(b) *Conveyance awarded for official use.* No petition for remission of forfeiture of a seized conveyance which has been forfeited and retained for official use will be considered unless it is filed before final disposition of the property is made. This does not affect petitions for restoration of proceeds of sale filed pursuant to the provisions of section 613 of the Tariff Act of 1930, as amended (19 U.S.C. 1613).

§ 171.14 Headquarters advice.

The advice of the Director, Border Security and Trade Compliance Division, Regulations and Rulings, Office of International Trade, CBP Headquarters, or his designee, may be sought in any case (except as provided in this section), without regard to delegated authority to act on a petition or offer, when a novel or complex issue concerning a ruling, policy, or procedure is presented concerning a CBP action(s) or potential CBP action(s) relating to seizures and forfeitures, penalties, or mitigating or remitting any claim. This section does not apply to actual duty loss tenders determined by CBP pursuant to §162.74(c) of this Chapter relating to prior disclosure and to actual duty loss demands made under §162.79b of this Chapter. The request for advice may be initiated by the alleged violator or any CBP officer, but must be submitted to the Fines, Penalties, and Forfeitures Officer. The Fines, Penalties, and Forfeitures Officer retains the authority to refuse to forward any request that fails to raise a qualifying issue and to seek legal advice from the appropriate Associate or Assistant Chief Counsel in any case.

Subpart C—Disposition of Petitions

SOURCE: T.D. 00–57, 65 FR 53577, Sept. 5, 2000, unless otherwise noted.

§ 171.21 Written decisions.

If a petition for relief relates to a violation of sections 592, 593A or 641, Tariff Act of 1930, as amended (19 U.S.C. 1592, 19 U.S.C. 1593a, or 19 U.S.C. 1641), the petitioner will be provided with a written statement setting forth the decision on the matter and the findings of fact and conclusions of law upon which the decision is based.

§ 171.22 Decisions effective for limited time.

A decision to mitigate a penalty or to remit a forfeiture upon condition that a stated amount is paid will be effective for not more than 60 days from the date of notice to the petitioner of such decision unless the decision itself prescribes a different effective period. If payment of the stated amount or arrangements for such payment are not made, or a supplemental petition is not filed in accordance with regulation, the full penalty or claim for forfeiture will be deemed applicable and will be enforced by promptly referring the matter, after required collection action, if appropriate, to the appropriate Office of the Chief Counsel for preparation for referral to the Department of Justice unless other action has been directed by the Commissioner of Customs.

§ 171.23 Decisions not protestable.

(a) *Mitigation decision not subject to protest.* Any decision to remit a forfeiture or mitigate a penalty is not a protestable decision as defined under the provisions of 19 U.S.C. 1514. Any payment made in compliance with any decision to remit a forfeiture or mitigate a penalty is not a charge or exaction and therefore is not a protestable action as defined under the provisions of 19 U.S.C. 1514.

(b) *Payment of mitigated amount as accord and satisfaction.* Payment of a mitigated amount in compliance with an administrative decision on a petition or supplemental petition for relief will be considered an election of administrative proceedings and full disposition of the case. Payment of a mitigated amount will act as an accord and satisfaction of the Government claim. Payment of a mitigated amount will never serve as a bar to filing a supplemental petition for relief.

§ 171.24 Remission of forfeitures and payment of fees, costs or interest.

Any seizure subject to forfeiture may be remitted or mitigated pursuant to the provisions of 19 U.S.C. 1618 or 31 U.S.C. 5321, as applicable. Any person who accepts a remission or mitigation decision will not be considered to have

substantially prevailed in a civil forfeiture proceeding for purposes of collection of any fees, costs or interest from the Government.

[T.D. 00–88, 65 FR 78093, Dec. 14, 2000]

Subpart D—Offers in Compromise

SOURCE: T.D. 00–57, 65 FR 53577, Sept. 5, 2000, unless otherwise noted.

§ 171.31 Form of offers.

Offers in compromise submitted pursuant to the provisions of section 617 of the Tariff Act of 1930, as amended (19 U.S.C. 1617) must expressly state that they are being submitted in accordance with the provisions of that section. The amount of the offer must be deposited with Customs in accordance with the provisions of § 161.5 of this chapter.

§ 171.32 Acceptance of offers in compromise.

An offer in compromise will be considered accepted only when the offeror is so notified in writing. As a condition to accepting an offer in compromise, the offeror may be required to enter into any collateral agreement or to post any security which is deemed necessary for the protection of the interest of the United States.

Subpart E—Restoration of Proceeds of Sale

SOURCE: T.D. 00–57, 65 FR 53577, Sept. 5, 2000, unless otherwise noted.

§ 171.41 Application of provisions for petitions for relief.

The general provisions of subpart A of this part on filing and content of petitions for relief apply to petitions for restoration of proceeds of sale except insofar as modified by this subpart.

§ 171.42 Time limit for filing petition for restoration.

A petition for the restoration of proceeds of sale under section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613) must be filed within 3 months after the date of the sale.

§ 171.43 Evidence required.

In addition to such other evidence as may be required under the provisions of subpart A of this part, the petition for restoration of proceeds of sale under section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613), must show the interest of the petitioner in the property. The petition must be supported by satisfactory proof that the petitioner did not know of the seizure prior to the declaration or decree of forfeiture and was in such circumstances as prevented him from knowing of it.

§ 171.44 Forfeited property authorized for official use.

If forfeited property which is the subject of a claim under section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613) has been authorized for official use, retention or delivery will be regarded as the sale thereof for the purposes of section 613. The appropriation available to the receiving agency for the purchase, hire, operation, maintenance and repair of property of the kind so received is available for the granting of relief to the claimant and for the satisfaction of liens for freight, charges and contributions in general average that may have been filed.

Subpart F—Expedited Petitioning Procedures

§ 171.51 Application and definitions.

(a) *Application.* The following definitions, regulations, and criteria are designed to establish and implement procedures required by section 6079 of the Anti-Drug Abuse Act of 1988, Pub. L. 100–690, title VI (102 Stat. 4181). They are intended to supplement existing law and procedures relative to the forfeiture of property under the identified statutory authority. The provisions of these regulations do not affect the existing legal and equitable rights and remedies of those with an interest in property seized for forfeiture, nor do these provisions relieve interested parties from their existing obligations and responsibilities in pursuing their interests through such courses of action.

These regulations are intended to reflect the intent of Congress to minimize the adverse impact occasioned by the prolonged detention of property subject to forfeiture due to violations of law involving possession of personal use quantities of controlled substances. The definition of personal use quantities of controlled substance as contained herein is intended to distinguish between those quantities small in amount which are generally considered to be possessed for personal consumption and not for distribution, and those larger quantities generally considered to be subject to distribution.

(b) *Definitions.* As used in this subpart, the following terms shall have the meanings specified:

(1) *Appraised value.* ''Appraised value'' has the meaning given in §162.43(a) of this chapter.

(2) *Commercial fishing industry vessel.* ''Commercial fishing industry vessel'' means a vessel that:

(i) Commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish;

(ii) Commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling; or

(iii) Commercially supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish to or from a fishing, fish processing, or fish tender vessel or fish processing facility.

(3) *Controlled substance.* ''Controlled substance'' has the meaning given in 21 U.S.C. 802.

(4) *Normal and customary manner.* ''Normal and customary manner'' means that inquiry suggested by particular facts and circumstances which would customarily be undertaken by a reasonably prudent individual in a like or similar situation. Actual knowledge of such facts and circumstances is unnecessary, and implied, imputed, or constructive knowledge is sufficient. An established norm, standard, or custom is persuasive but not conclusive or controlling in determining whether a petitioner acted in a normal and customary manner to ascertain how property would be used by another legally in possession of the property.

(5) *Owner or interested party.* ''Owner or interested party'' means one having a legal and possessory interest in the property seized for foreiture or one who was in legal possession of the property at the time of seizure and is entitled to legal possession at the time of granting the petition for expedited procedure. This includes a lienholder, to the extent of his interest in the property, whose claim is in writing (except for a maritime lien which need not be in writing), unless the collateral is in the possession of the secured party. The agreement securing such a lien must create or provide for a security interest in the collateral, describe the collateral and be signed by the debtor.

(6) *Personal use quantities.* ''Personal use quantities'' means possession of controlled substances in circumstances where there is no evidence of intent to distribute, or to facilitate the manufacturing, compounding, processing, delivering, importing or exporting of any controlled substance. A quantity of a controlled substance is presumed to be for personal use if the amounts possessed do not exceed the quantities set forth in paragraph (b)(6)(i) of this section if there is no evidence of illicit drug trafficking or distribution such as, but not limited to the factors set forth in paragraph (b)(6)(ii) of this section. The possession of a narcotic, a depressant, a stimulant, a hallucinogin or a cannabis-controlled substance will be considered in excess of personal use quantities if the dosage unit amount possessed provides the same or greater equivalent efficacy as described in paragraph (b)(6)(i) of this section.

(i) *Quantities presumed to be for personal use unless evidence of illicit drug trafficking or distribution exists.* (A) One gram of a mixture of substance containing a detectable amount of heroin;

(B) One gram of a mixture of substance containing a detectable amount of—

(*1*) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivations of ecgonine or their salts have been removed;

(*2*) Cocaine, its salts, optional and geometric isomers, and salts of isomers;

(*3*) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(*4*) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (b)(6)(i)(B) (*1*) through (*3*) of this section;

(C) 1/10th gram of a mixture of substances described in paragraph (b)(6)(i)(B) of this section which contains cocaine base;

(D) 1/10th gram of mixture of substance containing a detectable amount of phencyclidine (PCP);

(E) 500 micrograms of a mixture of substance containing a detectable amount of lysergic acid diethylamide (LSD);

(F) One ounce of a mixture of substance containing a detectable amount of marihuana; or

(G) One gram of methamphetamine, its salts, isomers, and salts of its isomers, or one gram of a mixture of substances containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers.

(ii) *Evidence of possession for other than personal use.* Quantities shall not be considered to be for personal use if sweepings are present or there is other evidence of possession for other than personal use such as:

(A) Evidence such as drug scales, drug distribution paraphernalia, drug records, drug packaging material, method of drug packaging, drug ''cutting'' agents and other equipment, that indicates an intent to process, package or distribute a controlled substance;

(B) Information from reliable sources indicating possession of a controlled substance with intent to distribute;

(C) The arrest and/or conviction record of the person or persons in actual or constructive possession of the controlled substance for offenses under Federal, State or local law that indicates an intent to distribute a controlled substance;

(D) The controlled substance is related to large amounts of cash or any amount of prerecorded government funds;

(E) The controlled substance is possessed under circumstances that indicate such a controlled substance is a sample intended for distribution in anticipation of a transaction involving large quantities, or is part of a larger delivery; or

(F) Statements by the possessor, or otherwise attributable to the possessor, including statements of conspirators, that indicate possession with intent to distribute.

(7) *Property.* ''Property'' means property subject to forfeiture under 19 U.S.C. 1595a.

(8) *Seizing agency.* ''Seizing agency'' means the Federal agency which has seized the property or adopted the seizure of another agency, and has the responsibility for administratively forfeiting the property.

(9) *Sworn to.* ''Sworn to'' refers to the oath as provided by 28 U.S.C. 1746 or as notarized in accordance with state law.

[T.D. 89–86, 54 FR 37602, Sept. 11, 1989; 54 FR 41364, Oct. 6, 1989, as amended by T.D. 00–88, 65 FR 78093, Dec. 14, 2000; CBP Dec. 04–28, 69 FR 52600, Aug. 27, 2004]

§ 171.52 Petition for expedited procedures in an administrative forfeiture proceeding.

(a) *Procedures for violations involving possession of controlled substance in personal use quantities.* The usual procedures for petitions for relief when property is seized are set forth in subpart B of this part. However, where property is seized for administrative forfeiture pursuant to 19 U.S.C. 1595a due to violations involving controlled substances in personal use quantities, a petition may be filed pursuant to paragraphs (c) and (d) of this section to seek expedited procedures for release of the property. A petition filed pursuant to this subpart shall also serve as a petition for relief filed under subpart B of this part. The petition may be filed by an owner or interested party.

(b) *Commercial fishing industry vessels.* Where a commercial fishing industry vessel proceeding to or from a fishing area or intermediate port of call or actually engaged in fishing operations is subject to seizure for administrative forfeiture for a violation of law involving controlled substances in personal use quantities, a summons to appear shall be issued in lieu of a physical seizure. The vessel shall report to the port

designated in the summons no later than the date specified in the summons. When a commercial fishing industry vessel reports, the appropriate Customs officer shall, depending on the facts and circumstances, either issue another summons to appear at a time deemed appropriate, execute a constructive seizure agreement pursuant to 19 U.S.C. 1605, or take physical custody of the vessel. When a summons to appear has been issued, the seizing agency may be authorized to institute administrative forfeiture as if the vessel had been physically seized. When a summons to appear has been issued, the owner or interested party may file a petition for expedited procedures pursuant to subsection (a); the provisions of subsection (a) and other provisions in this subpart relating to a petition for expedited release shall apply as if the vessel had been physically seized.

(c) *Elements to be established in petition.* (1) The petition for expedited procedures shall establish that:

(i) The petitioner has a valid, good faith interest in the seized property as owner or otherwise;

(ii) The petitioner reasonably attempted to ascertain the use of the property in a normal and customary manner; and

(iii) The petitioner did not know or consent to the illegal use of the property or, in the event that the petitioner knew or should have known of the illegal use, the petitioner did what reasonably could be expected to prevent the violation.

(2) In addition, the petitioner may submit evidence to establish that he has statutory rights or defenses such that he would prevail in a judicial proceeding on the issue of forfeiture.

(d) *Manner of filing.* A petition for expedited procedures must be filed in a timely manner to be considered by Customs. To be filed in a timely manner, the petition must be received by Customs within 20 days from the date the notice of seizure was mailed, or in the case of a commercial fishing industry vessel for which a summons to appear is issued, 20 days from the original date when the vessel is required to report. The petition must be sworn to by the petitioner and signed by the petitioner or his attorney at law. If the petitioner is a corporation, the petition may be sworn to by an officer or responsible supervisory employee thereof and signed by that individual or an attorney at law representing the corporation. Both the envelope and the request must be clearly marked ''PETITION FOR EXPEDITED PROCEDURES.'' The petition shall be addressed to the U.S. Customs Service and filed in triplicate with the Fines, Penalties, and Forfeitures Officer for the port where the property was seized, or for commercial fishing industry vessels, with the Fines, Penalties, and Forfeitures Officer for the port to which the vessel was required to report.

(e) *Contents of petition.* The petition shall include the following:

(1) A complete description of the property, including identification numbers, if any, and the date and place of the violation and seizure;

(2) A description of the petitioner's interest in the property, supported by the documentation, bills of sale, contracts, mortgages, or other satisfactory documentary evidence; and

(3) A statement of the facts and circumstances relied upon by the petitioner to justify expedited return of the seized property, supported by satisfactory evidence.

[T.D. 89–86, 54 FR 37602, Sept. 11, 1989; 54 FR 41364, Oct. 6, 1989, as amended by T.D. 99–27, 64 FR 13676, Mar. 22, 1999; T.D. 00–88, 65 FR 78093, Dec. 14, 2000; CBP Dec. 04–28, 69 FR 52600, Aug. 27, 2004]

§ 171.53 Ruling on petition for expedited procedures.

(a) *Final administrative determination.* Upon receipt of a petition filed pursuant to § 171.52, Customs shall determine first whether a final administrative determination of the case can be made within 21 days of the seizure. If such a final administrative determination is made within 21 days, no further action need be taken under this subpart.

(b) *Determination within 20 days.* If no such final administrative determination is made within 21 days of the seizure, Customs shall within 20 days after the receipt of the petition make a determination as follows:

(1) If Customs determines that the factors listed in §171.52(c) have been established, it shall terminate the administrative proceedings and release the property from seizure, or in the case of a commercial fishing industry vessel for which a summons has been issued, but not yet answered, dismiss the summons. The property shall not be returned if it is evidence of a violation of law.

(2) If Customs determines that the factors listed in §171.52(c) have not been established, it shall proceed with the administrative forfeiture.

[T.D. 89–86, 54 FR 37602, Sept. 11, 1989]

§171.54 Substitute res in an administrative forfeiture action.

(a) *Substitute res.* Where property is seized for administrative forfeiture for a violation involving controlled substances in personal use quantities, the owner or interested party may offer to post an amount equal to the appraised value of the property (the res) to obtain release of the property. The offer, which may be tendered at any time subsequent to seizure and up until the completion of administrative forfeiture proceedings, must be in the form of cash, irrevocable letter of credit, certified funds such as a certified check, traveler's check(s), or money order made payable to U.S. Customs. Unless the property is evidence of a violation of law or has other characteristics that particularly suit it for use in illegal activities, it will be released to the owner or interested party subsequent to tender of the substitute res.

(b) *Forfeiture of res.* If a substitute res is posted and it is determined that the property should be administratively forfeited, the res will be forfeited in lieu of the property.

[T.D. 89–86, 54 FR 37602, Sept. 11, 1989]

§171.55 Notice provisions.

(a) *Special notice provision.* At the time of seizure of property defined in §171.51, written notice must be provided to the possessor of the property regarding applicable statutes and Federal regulations including the procedures established for the filing of a petition for expedited procedures as set forth in section 6079 of the Anti-Drug Abuse Act of 1988 and implementing regulations.

(b) *Notice provision.* The notice as required by section 1607 of Title 19, United States Code and applicable regulations shall be made at the earliest practicable opportunity after determining ownership of, or interest in, the seized property and shall include a statement of the applicable law under which the property is seized and a statement of the circumstances of the seizure sufficiently precise to enable an owner or interested party to identify the date, place and use or acquisition which makes the property subject to forfeiture.

[T.D. 89–86, 54 FR 37602, Sept. 11, 1989; 54 FR 43424, Oct. 25, 1989]

Subpart G—Supplemental Petitions for Relief

SOURCE: T.D. 00–57, 65 FR 53578, Sept. 5, 2000, unless otherwise noted.

§171.61 Time and place of filing.

If the petitioner is not satisfied with a decision of the deciding official on an original petition for relief, a supplemental petition may be filed with the Fines, Penalties, and Forfeitures Officer having jurisdiction in the port where the violation occurred. Such supplemental petition must be filed within 60 days from the date of notice to the petitioner of the decision from which further relief is requested or within 60 days following an administrative or judicial decision with respect to the entries involved in a penalty case which reduces the loss of duties upon which the mitigated penalty amount was based (whichever is later) unless another time to file such a supplemental petition is prescribed in the decision. The filing of a supplemental petition may be subject to the conditions prescribed in §171.64 of this part. A supplemental petition may be filed whether or not the mitigated penalty or forfeiture remission amount designated in the decision on the original petition is paid.

§ 171.62 Supplemental petition decision authority.

(a) *Decisions of Fines, Penalties, and Forfeitures Officers.* Supplemental petitions filed on cases where the original decision was made by the Fines, Penalties, and Forfeitures Officer, will be initially reviewed by that official. The Fines, Penalties, and Forfeitures Officer may choose to grant more relief and issue a decision indicating that additional relief to the petitioner. If the petitioner is dissatisfied with the further relief granted or if the Fines, Penalties, and Forfeitures Officer decides to grant no further relief, the supplemental petition will be forwarded to a designated Headquarters official assigned to a field location for review and decision, except that supplemental petitions filed in cases involving violations of 19 U.S.C. 1641 where the amount of the penalty assessed exceeds $10,000 will be forwarded to the Chief, Penalties Branch, Border Security and Trade Compliance Division, Regulations and Rulings, Office of International Trade.

(b) *Decisions of CBP Headquarters.* Supplemental petitions filed on cases where the original decision was made by the Chief, Penalties Branch, Regulations and Rulings, Office of International Trade, CBP Headquarters, will be forwarded to the Director, Border Security and Trade Compliance Division, CBP Headquarters, for review and decision.

[T.D. 00–57, 65 FR 53578, Sept. 5, 2000, as amended by CBP Dec. 07–82, 72 FR 59175, Oct. 19, 2007]

§ 171.63 [Reserved]

§ 171.64 Waiver of statute of limitations.

The deciding Customs official always reserves the right to require a waiver of the statute of limitations executed by the claimants to the property or charged party or parties as a condition precedent before accepting a supplemental petition in any case in which less than one year remains before the statute will be available as a defense to all or part of that case.

APPENDIX A TO PART 171—GUIDELINES FOR DISPOSITION OF VIOLATIONS OF 19 U.S.C. 1497

Liabilities incurred under section 497, Tariff Act of 1930 (19 U.S.C. 1497), shall be mitigated or remitted in accordance with the following guidelines (see also part 148, Customs Regulations):

I. *Violations Involving Dutiable Articles.* For violations involving articles subject to duty and for which there is no applicable exemption from duty, the following rules apply:

1. *Mitigated Penalty for First Offense.* For violations which are the first offense, where there is knowledge of the declaration requirements, and where the undeclared articles are discovered by the Customs officers, the liabilities shall be remitted upon payment of Three Times the Duty (but not less than $50), or the domestic value, whichever is lower.

2. *Mitigating Factors.* When one or more of the following mitigating factors are present, the deciding officer may, within his discretion, remit the liabilities upon payment of Between One and One-Half and Three Times the Duty or the domestic value, whichever is lower:

a. Communications with the violator are impaired because of language barrier, mental condition, or physical ailment;

b. Violator cooperates with Customs officers after discovery of the violation by providing additional information which facilitates conclusion of the case;

c. Violator is an inexperienced traveler;

d. There is contributory Customs error (for example, violator demonstrates he was given incorrect advice by a Customs officer).

3. *Aggravating Factors.* When one or more of the following aggravating factors are present, the deciding officer may, within his discretion, remit the liabilities upon payment of Between Three and Six Times the Duty (but not less than $100), or the domestic value, whichever is lower:

a. Documentary or other evidence discovered establishes violator's intent;

b. Informant provides information which tends to establish violator's intent and leads to discovery of the violation after the violator has been given an opportunity to properly declare;

c. Violator is an experienced traveler;

d. Undeclared articles are concealed to evade U.S. law;

e. There is behavior, including extreme lack of cooperation, verbal or physical abuse, or attempted escape, which tends to demonstrate a lack of respect for law and authority.

4. *Commercial Articles.* When the undeclared articles are brought in for commercial purposes, the liabilities shall be remitted upon the payment of Six Times the Duty (but not

less than $100), or the domestic value, whichever is lower. Mitigating factors may be used to lower this amount to as little as Three Times the Duty; aggravating factors may be used to increase this amount up to Eight Times the Duty.

5. *Extraordinary Mitigating Factor.*

a. When an individual who has been cleared through Customs without discovery of any undeclared article returns to the examination area and declares that article, the deciding officer may, within his discretion, remit the liabilities upon payment of One Times the Duty.

b. An individual who declares articles some time later (hours, days, weeks, etc.) may be treated similarly.

6. *Extraordinary Aggravating Factors.*

a. When the offense is a second or subsequent violation, the deciding officer may, within his discretion, remit the liabilities upon payment of Between Six and Eight Times the Duty (but not less than $250), or the domestic value, whichever is lower.

b. When the offense is a second or subsequent violation, and there are aggravating factors present, generally there shall either be a denial of relief or mitigation to No Less Than Eight Times the Duty or the domestic value, whichever is lower.

c. When there is evidence of an ongoing scheme to defraud the revenue involving multiple entries without declaration of articles subject to declaration, the deciding officer shall act in accordance with the preceding paragraph.

II. *Violations Involving Absolutely or Conditionally Free Articles.* For violations involving articles either entitled to entry free of duty absolutely (classifiable under a duty-free provision in Chapters 1–97, Harmonized Tariff Schedule of the United States (HTSUS); (19 U.S.C. 1202)), or entry free of duty conditionally (entitled to treatment under the Generalized System of Preferences (see §§10.171–10.178, Customs Regulations) or Chapter 98, HTSUS), the following rules apply:

1. *Mitigated Penalty for First Offense.*

a. For violations which are first offense, and involve articles entitled to the benefit of GSP or Chapter 98, HTSUS, the liabilities shall be remitted upon payment of One Times the Duty which would have been due if the articles had not been entitled to the benefit.

b. For violations which are first offense, and involve absolutely duty-free articles, the liabilities shall be remitted upon payment of Between One and Five Percent of the Domestic Value, but not less than $50 (or the domestic value, whichever is less) nor more than $1,000.

2. *Mitigating Factors.* When mitigating factors such as those outlined above are present, the deciding officer may, in his discretion, reduce the mitigated amount to a lower figure.

3. *Aggravating Factors.*

a. When aggravating factors such as those outlined above are present, the deciding officer may, in his discretion, remit the liabilities for conditionally free articles upon the payment of Between One and Two Times the Duty (but not less than $100), or the domestic value, whichever is lower.

b. For absolutely free articles, the deciding officer may remit the liabilities upon payment of Between Five and Ten Percent of the Domestic Value, but not less than $100.

4. *Commercial Merchandise.*

The fact that undeclared duty-free articles are imported for commercial purposes may be considered an aggravating factor under section II.3. of these guidelines.

III. *Other Applicable Rules.*

1. These guidelines provide a framework and procedure by which violations of 19 U.S.C. 1497 are to be analyzed. They are not mandatory in the sense that they must be absolutely applied. Customs officers varying from these guidelines must provide reasons for doing so in the case record.

2. Customs officers shall document mitigating and aggravating factors found in each case in the case file. There must be a basis shown for mitigated amounts.

3. It is intended that mitigating and aggravating factors shall be considered together and used to offset each other where appropriate.

4. The rate of duty to be used in calculating the mitigated penalty shall be the appropriate rate from Chapters 1–97, HTSUS, and not the flat rate from Chapter 98, HTSUS.

5. ''Duty'' means Customs duties and any internal revenue taxes which would have attached upon importation (see section 101.1(i), Customs Regulations). Therefore, multiples will also be applied to internal revenue taxes which would have been due.

6. Customs officers may, within their discretion, consider other factors not here delineated as aggravating or mitigating and apply the guidelines accordingly. These additional factors must also be documented in the case file.

7. These guidelines are not authority for admitting into the commerce of the United States articles which are conditionally or absolutely prohibited from entry.

8. The presence of one or more extraordinary aggravating factors, including but not limited to those set forth in section I.6. of these guidelines, may within the discretion of the deciding officer be a basis for denial of relief.

9. If the violator is being prosecuted criminally, the civil (19 U.S.C. 1497) liability generally is administratively settled only after

completion of the prosecution or with the express approval of the appropriate U.S. attorney. Criminal prosecution of the violator, however, is insufficient grounds to delay indefinitely determination of the civil liability. The Fines, Penalties, and Forfeitures Officer should contact the Chief Counsel representative in the field to determine the best course of action to follow with respect to the civil liability. Chief Counsel representative will consult with the U.S. attorney and the Penalties Branch at Customs Headquarters. Because of time delay problems, all *seizures* involving criminal prosecutions must be promptly coordinated in this manner, and consideration should be given to immediate referral of the forfeiture action to the U.S. attorney for the institution of a judicial proceeding.

[T.D. 83–145, 48 FR 30100, June 30, 1983, as amended by T.D. 89–1, 53 FR 51271, Dec. 21, 1988; T.D. 99–27, 64 FR 13676, Mar. 22, 1999]

APPENDIX B TO PART 171—CUSTOMS REGULATIONS, GUIDELINES FOR THE IMPOSITION AND MITIGATION OF PENALTIES FOR VIOLATIONS OF 19 U.S.C. 1592

A monetary penalty incurred under section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592; hereinafter referred to as section 592) may be remitted or mitigated under section 618 of the Tariff Act of 1930, as amended (19 U.S.C. 1618), if it is determined that there are mitigating circumstances to justify remission or mitigation. The guidelines below will be used by the Customs Service in arriving at a just and reasonable assessment and disposition of liabilities arising under section 592 within the stated limitations. It is intended that these guidelines shall be applied by Customs officers in pre-penalty proceedings and in determining the monetary penalty assessed in any penalty notice. The assessed penalty or penalty amount set forth in Customs administrative disposition determined in accordance with these guidelines does not limit the penalty amount which the Government may seek in bringing a civil enforcement action pursuant to section 592(e). It should be understood that any mitigated penalty is conditioned upon payment of any actual loss of duty as well as a release by the party that indicates that the mitigation decision constitutes full accord and satisfaction. Further, mitigation decisions are not rulings within the meaning of part 177 of the Customs Regulations (19 CFR part 177). Lastly, these guidelines may supplement, and are not intended to preclude application of, any other special guidelines promulgated by Customs.

(A) Violations of Section 592

Without regard to whether the United States is or may be deprived of all or a portion of any lawful duty, tax or fee thereby, a violation of section 592 occurs when a person, through fraud, gross negligence, or negligence, enters, introduces, or attempts to enter or introduce any merchandise into the commerce of the United States by means of any document, electronic transmission of data or information, written or oral statement, or act that is material and false, or any omission that is material; or when a person aids or abets any other person in the entry, introduction, or attempted entry or introduction of merchandise by such means. It should be noted that the language ''entry, introduction, or attempted entry or introduction'' encompasses placing merchandise in-bond (e.g., filing an immediate transportation application). There is no violation if the falsity or omission is due solely to clerical error or mistake of fact, unless the error or mistake is part of a pattern of negligent conduct. Also, the unintentional repetition by an electronic system of an initial clerical error generally will not constitute a pattern of negligent conduct. Nevertheless, if Customs has drawn the party's attention to the unintentional repetition by an electronic system of an initial clerical error, subsequent failure to correct the error could constitute a violation of section 592. Also, the unintentional repetition of a clerical mistake over a significant period of time or involving many entries could indicate a pattern of negligent conduct and a failure to exercise reasonable care.

(B) Definition of Materiality Under Section 592

A document, statement, act, or omission is material if it has the natural tendency to influence or is capable of influencing agency action including, but not limited to a Customs action regarding: (1) Determination of the classification, appraisement, or admissibility of merchandise (e.g., whether merchandise is prohibited or restricted); (2) determination of an importer's liability for duty (including marking, antidumping, and/or countervailing duty); (3) collection and reporting of accurate trade statistics; (4) determination as to the source, origin, or quality of merchandise; (5) determination of whether an unfair trade practice has been committed under the anti-dumping or countervailing duty laws or a similar statute; (6) determination of whether an unfair act has been committed involving patent, trademark, or copyright infringement; or (7) the determination of whether any other unfair trade practice has been committed in violation of federal law. The ''but for'' test of materiality is inapplicable under section 592.

(C) Degrees of Culpability Under Section 592

The three degrees of culpability under section 592 for the purposes of administrative proceedings are:

(1) *Negligence.* A violation is determined to be negligent if it results from an act or acts (of commission or omission) done through either the failure to exercise the degree of reasonable care and competence expected from a person in the same circumstances either: (a) in ascertaining the facts or in drawing inferences therefrom, in ascertaining the offender's obligations under the statute; or (b) in communicating information in a manner so that it may be understood by the recipient. As a general rule, a violation is negligent if it results from failure to exercise reasonable care and competence: (a) to ensure that statements made and information provided in connection with the importation of merchandise are complete and accurate; or (b) to perform any material act required by statute or regulation.

(2) *Gross Negligence.* A violation is deemed to be grossly negligent if it results from an act or acts (of commission or omission) done with actual knowledge of or wanton disregard for the relevant facts and with indifference to or disregard for the offender's obligations under the statute.

(3) *Fraud.* A violation is determined to be fraudulent if a material false statement, omission, or act in connection with the transaction was committed (or omitted) knowingly, *i.e.,* was done voluntarily and intentionally, as established by clear and convincing evidence.

(D) Discussion of Additional Terms

(1) *Duty Loss Violations.* A section 592 duty loss violation involves those cases where there has been a loss of duty including any marking, anti-dumping, or countervailing duties, or any tax and fee (e.g., merchandise processing and/or harbor maintenance fees) attributable to an alleged violation.

(2) *Non-duty Loss Violations.* A section 592 non-duty loss violation involves cases where the record indicates that an alleged violation is principally attributable to, for example, evasion of a prohibition, restriction, or other non-duty related consideration involving the importation of the merchandise.

(3) *Actual Loss of Duties.* An actual loss of duty occurs where there is a loss of duty including any marking, anti-dumping, or countervailing duties, or any tax and fee (e.g., merchandise processing and/or harbor maintenance fees) attributable to a liquidated Customs entry, and the merchandise covered by the entry has been entered or introduced (or attempted to be entered or introduced) in violation of section 592.

(4) *Potential Loss of Duties.* A potential loss of duty occurs where an entry remains unliquidated and there is a loss of duty, including any marking, anti-dumping or countervailing duties or any tax and fee (e.g., merchandise processing and/or harbor maintenance fees) attributable to a violation of section 592, but the violation was discovered prior to liquidation. In addition, a potential loss of duty exists where Customs discovers the violation and corrects the entry to reflect liquidation at the proper classification and value. In other words, the potential loss in such cases equals the amount of duty, tax and fee that would have occurred had Customs not discovered the violation prior to liquidation and taken steps to correct the entry.

(5) *Total Loss of Duty.* The total loss of duty is the sum of any actual and potential loss of duty attributable to alleged violations of section 592 in a particular case. Payment of any actual and/or potential loss of duty shall not affect or reduce the total loss of duty used for assessing penalties as set forth in these guidelines. The ''multiples'' set forth below in paragraph (F)(2) involving assessment and disposition of cases shall utilize the ''total loss of duty'' amount in arriving at the appropriate assessment or disposition.

(6) *Reasonable Care.* General Standard: All parties, including importers of record or their agents, are required to exercise reasonable care in fulfilling their responsibilities involving entry of merchandise. These responsibilities include, but are not limited to: providing a classification and value for the merchandise; furnishing information sufficient to permit Customs to determine the final classification and valuation of merchandise; taking measures that will lead to and assure the preparation of accurate documentation, and determining whether any applicable requirements of law with respect to these issues are met. In addition, all parties, including the importer, must use reasonable care to provide accurate information or documentation to enable Customs to determine if the merchandise may be released. Customs may consider an importer's failure to follow a binding Customs ruling a lack of reasonable care. In addition, unreasonable classification will be considered a lack of reasonable care (e.g., imported snow skis are classified as water skis). Failure to exercise reasonable care in connection with the importation of merchandise may result in imposition of a section 592 penalty for fraud, gross negligence or negligence.

(7) *Clerical Error.* A clerical error is an error in the preparation, assembly or submission of import documentation or information provided to Customs that results from a mistake in arithmetic or transcription that is not part of a pattern of negligence. The mere non-intentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligence. Nevertheless, as stated earlier, if Customs has drawn a party's attention to

the non-intentional repetition by an electronic system of an initial clerical error, subsequent failure to correct the error could constitute a violation of section 592. Also, the unintentional repetition of a clerical mistake over a significant period of time or involving many entries could indicate a pattern of negligent conduct and a failure to exercise reasonable care.

(8) *Mistake of Fact.* A mistake of fact is a false statement or omission that is based on a bona fide erroneous belief as to the facts, so long as the belief itself did not result from negligence in ascertaining the accuracy of the facts.

(E) Penalty Assessment

(1) *Case Initiation—Pre-penalty Notice.*

(a) *Generally.* As provided in §162.77, Customs Regulations (19 CFR 162.77), if the appropriate Customs field officer has reasonable cause to believe that a violation of section 592 has occurred and determines that further proceedings are warranted, the Customs field officer will issue to each person concerned a notice of intent to issue a claim for a monetary penalty (*i.e.*, the ''pre-penalty notice''). In issuing such a pre-penalty notice, the Customs field officer will make a tentative determination of the degree of culpability and the amount of the proposed claim. Payment of any actual and/or potential loss of duty will not affect or reduce the total loss of duty used for assessing penalties as set forth in these guidelines. The ''multiples'' set forth in paragraphs (F)(2)(a)(i), (b)(i) and (c)(i) involving assessment and disposition of duty loss violation cases will use the amount of total loss of duty in arriving at the appropriate assessment or disposition. Further, where separate duty loss and non-duty loss violations occur on the same entry, it is within the Customs field officer's discretion to assess both duty loss and non-duty loss penalties, or only one of them. Where only one of the penalties is assessed, the Customs field officer has the discretion to select which penalty (duty loss or non-duty loss) shall be assessed. Also, where there is a violation accompanied by an incidental or nominal loss of duties, the Customs field officer may assess a non-duty loss penalty where the incidental or nominal duty loss resulted from a separate non-duty loss violation. The Customs field officer will propose a level of culpability in the pre-penalty notice that conforms to the level of culpability suggested by the evidence at the time of issuance. Moreover, the pre-penalty notice will include a statement that it is Customs practice to base its actions on the earliest point in time that the statute of limitations may be asserted (*i.e.*, the date of occurrence of the alleged violation) inasmuch as the final resolution of a case in court may be less than a finding of fraud. A pre-penalty notice that is issued to a party in a case where Customs determines a claimed prior disclosure is not valid—owing to the disclosing party's knowledge of the commencement of a formal investigation of a disclosed violation—will include a copy of a written document that evidences the commencement of a formal investigation. In addition, a pre-penalty notice is not required if a violation involves a non-commercial importation or if the proposed claim does not exceed $1,000. Special guidelines relating to penalty assessment and dispositions involving ''Arriving Travelers,'' are set forth in section (L) below.

(b) *Pre-penalty Notice—Proposed Claim Amount*

(i) *Fraud.* In general, if a violation is determined to be the result of fraud, the proposed claim ordinarily will be assessed in an amount equal to the domestic value of the merchandise. Exceptions to assessing the penalty at the domestic value may be warranted in unusual circumstances such as a case where the domestic value of the merchandise is disproportionately high in comparison to the loss of duty attributable to an alleged violation (e.g., a total loss of duty of $10,000 involving 10 entries with a total domestic value of $2,000,000). Also, it is incumbent upon the appropriate Customs field officer to consider whether mitigating factors are present warranting a reduction in the customary domestic value assessment. In all section 592 cases of this nature regardless of the dollar amount of the proposed claim, the Customs field officer will obtain the approval of the Penalties Branch at Headquarters prior to issuance of a pre-penalty notice at an amount less than domestic value.

(ii) *Gross Negligence and Negligence.* In determining the amount of the proposed claim in cases involving gross negligence and negligence, the appropriate Customs field officer will take into account the gravity of the offense, the amount of loss of duty, the extent of wrongdoing, mitigating or aggravating factors, and other factors bearing upon the seriousness of a violation, but in no case will the assessed penalty exceed the statutory ceilings prescribed in section 592. In cases involving gross negligence and negligence, penalties equivalent to the ceilings stated in paragraphs (F)(2)(b) and (c) regarding disposition of cases may be appropriate in cases involving serious violations, e.g., violations involving a high loss of duty or significant evasion of import prohibitions or restrictions. A ''serious'' violation need not result in a loss of duty. The violation may be serious because it affects the admissibility of merchandise or the enforcement of other laws, as in the case of quota evasions, false statements made to conceal the dumping of merchandise, or violations of exclusionary

orders of the International Trade Commission.

(c) *Technical Violations.* Violations where the loss of duty is nonexistent or minimal and/or that have an insignificant impact on enforcement of the laws of the United States may justify a proposed penalty in a fixed amount not related to the value of merchandise, but an amount believed sufficient to have a deterrent effect: e.g., violations involving the subsequent sale of merchandise or vehicles entered for personal use; violations involving failure to comply with declaration or entry requirements that do not change the admissibility or entry status of merchandise or its appraised value or classification; violations involving the illegal diversion to domestic use of instruments of international traffic; and local point-to-point traffic violations. Generally, a penalty in a fixed amount ranging from $1,000 to $2,000 is appropriate in cases where there are no prior violations of the same kind. However, fixed sums ranging from $2,000 to $10,000 may be appropriate in the case of multiple or repeated violations. Fixed sum penalty amounts are not subject to further mitigation and may not exceed the maximum amounts stated in section 592 and in these guidelines.

(d) *Statute of Limitations Considerations—Waivers.* Prior to issuance of any section 592 pre-penalty notice, the appropriate Customs field officer will calculate the statute of limitations attributable to an alleged violation. Inasmuch as section 592 cases are reviewed de novo by the Court of International Trade, the statute of limitations calculation in cases alleging fraud should assume a level of culpability of gross negligence or negligence, *i.e.,* ordinarily applying a shorter period of time for statute of limitations purposes. In accordance with section 162.78 of the Customs Regulations (19 CFR 162.78), if less than 1 year remains before the statute of limitations may be raised as a defense, a shortened response time may be specified in the notice—but in no case, less than 7 business days from the date of mailing. In cases of shortened response times, the Customs field officer should notify alleged violators by telephone and use all reasonable means (e.g., facsimile transmission of a copy of the notice) to expedite receipt of the notice by the alleged violators. Also in such cases, the appropriate Customs field officer should advise the alleged violator that additional time to respond to the pre-penalty notice will be granted only if an acceptable waiver of the statute of limitations is submitted to Customs. With regard to waivers of the statute of limitations, it is Customs practice to request waivers concurrently both from all potential alleged violators and their sureties.

(2) *Closure of Case or Issuance of Penalty Notice.*

(a) *Case Closure.* The appropriate Customs field officer may find, after consideration of the record in the case, including any pre-penalty response/oral presentation, that issuance of a penalty notice is not warranted. In such cases, the Customs field officer will provide written notification to the alleged violator who received the subject pre-penalty notice that the case is closed.

(b) *Issuance of Penalty Notice.* In the event that circumstances warrant issuance of a notice of penalty pursuant to §162.79 of the Customs Regulations (19 CFR 162.79), the appropriate Customs field officer will give consideration to all available evidence with respect to the existence of material false statements or omissions (including evidence presented by an alleged violator), the degree of culpability, the existence of a prior disclosure, the seriousness of the violation, and the existence of mitigating or aggravating factors. In cases involving fraud, the penalty notice will be in the amount of the domestic value of the merchandise unless a lesser amount is warranted as described in paragraph (E)(1)(b)(i). In general, the degree of culpability or proposed penalty amount stated in a pre-penalty notice will not be increased in the penalty notice. If, subsequent to the issuance of a pre-penalty notice and upon further review of the record, the appropriate Customs field officer determines that a higher degree of culpability exists, the original pre-penalty notice should be rescinded and a new pre-penalty notice issued that indicates the higher degree of culpability and increased proposed penalty amount. However, if less than 9 months remain before expiration of the statute of limitations or any waiver thereof by the party named in the pre-penalty notice, the higher degree of culpability and higher penalty amount may be indicated in the notice of penalty without rescinding the earlier pre-penalty notice. In such cases, the Customs field officer will consider whether a lower degree of culpability is appropriate or whether to change the information contained in the pre-penalty notice.

(c) *Statute of Limitations Considerations.* Prior to issuance of any section 592 penalty notice, the appropriate Customs field officer again shall calculate the statute of limitations attributable to the alleged violation and request a waiver(s) of the statute, if necessary. In accordance with part 171 of the Customs Regulations (19 CFR part 171), if less than 180 days remain before the statute of limitations may be raised as a defense, a shortened response time may be specified in the notice—but in no case less than 7 business days from the date of mailing. In such cases, the Customs field officer should notify an alleged violator by telephone and use all reasonable means (e.g., facsimile transmission of a copy) to expedite receipt of the penalty notice by the alleged violator. Also,

in such cases, the Customs field officer should advise an alleged violator that, if an acceptable waiver of the statute of limitations is provided, additional time to respond to the penalty notice may be granted.

(F) Administrative Penalty Disposition

(1) *Generally.* It is the policy of the Department of the Treasury and the Customs Service to grant mitigation in appropriate circumstances. In certain cases, based upon criteria to be developed by Customs, mitigation may take an alternative form, whereby a violator may eliminate or reduce his or her section 592 penalty liability by taking action(s) to correct problems that caused the violation. In any case, in determining the administrative section 592 penalty disposition, the appropriate Customs field officer will consider the entire case record—taking into account the presence of any mitigating or aggravating factors. All such factors should be set forth in the written administrative section 592 penalty decision. Once again, Customs emphasizes that any penalty liability which is mitigated is conditioned upon payment of any actual loss of duty in addition to that penalty as well as a release by the party that indicates that the mitigation decision constitutes full accord and satisfaction. Finally, section 592 penalty dispositions in duty-loss and non-duty-loss cases will proceed in the manner set forth below.

(2) *Dispositions.*

(a) *Fraudulent Violation.* Penalty dispositions for a fraudulent violation will be calculated as follows:

(i) *Duty Loss Violation.* An amount ranging from a minimum of 5 times the total loss of duty to a maximum of 8 times the total loss of duty—but in any such case the amount may not exceed the domestic value of the merchandise. A penalty disposition greater than 8 times the total loss of duty may be imposed in a case involving an egregious violation, or a public health and safety violation, or due to the presence of aggravating factors, but again, the amount may not exceed the domestic value of the merchandise.

(ii) *Non-Duty Loss Violation.* An amount ranging from a minimum of 50 percent of the dutiable value to a maximum of 80 percent of the dutiable value of the merchandise. A penalty disposition greater than 80 percent of the dutiable value may be imposed in a case involving an egregious violation, or a public health and safety violation, or due to the presence of aggravating factors, but the amount may not exceed the domestic value of the merchandise.

(b) *Grossly Negligent Violation.* Penalty dispositions for a grossly negligent violation shall be calculated as follows:

(i) *Duty Loss Violation.* An amount ranging from a minimum of 2.5 times the total loss of duty to a maximum of 4 times the total loss of duty—but in any such case, the amount may not exceed the domestic value of the merchandise.

(ii) *Non-Duty Loss Violation.* An amount ranging from a minimum of 25 percent of the dutiable value to a maximum of 40 percent of the dutiable value of the merchandise—but in any such case, the amount may not exceed the domestic value of the merchandise.

(c) *Negligent Violation.* Penalty dispositions for a negligent violation shall be calculated as follows:

(i) *Duty Loss Violation.* An amount ranging from a minimum of 0.5 times the total loss of duty to a maximum of 2 times the total loss of duty but, in any such case, the amount may not exceed the domestic value of the merchandise.

(ii) *Non-Duty Loss Violation.* An amount ranging from a minimum of 5 percent of the dutiable value to a maximum of 20 percent of the dutiable value of the merchandise, but, in any such case, the amount may not exceed the domestic value of the merchandise.

(d) *Authority to Cancel Claim.* Upon issuance of a penalty notice, Customs has set forth its formal monetary penalty claim. Except as provided in 19 CFR part 171, in those section 592 cases within the administrative jurisdiction of the concerned Customs field office, the appropriate Customs field officer will cancel any such formal claim whenever it is determined that an essential element of the alleged violation is not established by the agency record, including pre-penalty and penalty responses provided by the alleged violator. Except as provided in 19 CFR part 171, in those section 592 cases within Customs Headquarters jurisdiction, the appropriate Customs field officer will cancel any such formal claim whenever it is determined that an essential element of the alleged violation is not established by the agency record, and such cancellation action precedes the date of the Customs field officer's receipt of the alleged violator's petition responding to the penalty notice. On and after the date of Customs receipt of the petition responding to the penalty notice, jurisdiction over the action rests with Customs Headquarters including the authority to cancel the claim.

(e) *Remission of Claim.* If the Customs field officer believes that a claim for monetary penalty should be remitted for a reason not set forth in these guidelines, the Customs field officer should first seek approval from the Chief, Penalties Branch, Customs Service Headquarters.

(f) *Prior Disclosure Dispositions.* It is the policy of the Department of the Treasury and the Customs Service to encourage the submission of valid prior disclosures that comport with the laws, regulations, and policies governing this provision of section 592. Customs will determine the validity of the prior disclosure including whether or not the prior disclosure sets forth all the required elements of a violation of section 592. A valid

prior disclosure warrants the imposition of the reduced Customs civil penalties set forth below:

(1) *Fraudulent Violation.*

(a) *Duty Loss Violation.* The claim for monetary penalty shall be equal to 100 percent of the total loss of duty (*i.e.*, actual + potential) resulting from the violation. No mitigation will be afforded.

(b) *Non-Duty Loss Violation.* The claim for monetary penalty shall be equal to 10 percent of the dutiable value of the merchandise in question. No mitigation will be afforded.

(2) *Gross Negligence and Negligence Violation.*

(a) *Duty Loss Violation.* The claim for monetary penalty shall be equal to the interest on the actual loss of duty computed from the date of liquidation to the date of the party's tender of the actual loss of duty resulting from the violation. Customs notes that there is no monetary penalty in these cases if the duty loss is potential in nature. Absent extraordinary circumstances, no mitigation will be afforded.

(b) *Non-Duty Loss Violation.* There is no monetary penalty in such cases and any claim for monetary penalty which had been issued prior to the decision granting prior disclosure will be remitted in full.

(G) Mitigating Factors

The following factors will be considered in mitigation of the proposed or assessed penalty claim or the amount of the administrative penalty decision, provided that the case record sufficiently establishes their existence. The list is not all-inclusive.

(1) *Contributory Customs Error.* This factor includes misleading or erroneous advice given by a Customs official *in writing* to the alleged violator, or established by a contemporaneously created written Customs record, only if it appears that the alleged violator reasonably relied upon the information and the alleged violator fully and accurately informed Customs of all relevant facts. The concept of comparative negligence may be utilized in determining the weight to be assigned to this factor. If it is determined that the Customs error was the sole cause of the violation, the proposed or assessed penalty claim shall be canceled. If the Customs error contributed to the violation, but the violator also is culpable, the Customs error will be considered as a mitigating factor.

(2) *Cooperation with the Investigation.* To obtain the benefits of this factor, the violator must exhibit extraordinary cooperation beyond that expected from a person under investigation for a Customs violation. Some examples of the cooperation contemplated include assisting Customs officers to an unusual degree in auditing the books and records of the violator (e.g., incurring extraordinary expenses in providing computer runs solely for submission to Customs to assist the agency in cases involving an unusually large number of entries and/or complex issues). Another example consists of assisting Customs in obtaining additional information relating to the subject violation or other violations. Merely providing the books and records of the violator should not be considered cooperation justifying mitigation inasmuch as Customs has the right to examine an importer's books and records pursuant to 19 U.S.C. 1508–1509.

(3) *Immediate Remedial Action.* This factor includes the payment of the actual loss of duty prior to the issuance of a penalty notice and within 30 days after Customs notifies the alleged violator of the actual loss of duties attributable to the alleged violation. In appropriate cases, where the violator provides evidence that immediately after learning of the violation, substantial remedial action was taken to correct organizational or procedural defects, immediate remedial action may be granted as a mitigating factor. Customs encourages immediate remedial action to ensure against future incidents of noncompliance.

(4) *Inexperience in Importing.* Inexperience is a factor only if it contributes to the violation and the violation is not due to fraud or gross negligence.

(5) *Prior Good Record.* Prior good record is a factor only if the alleged violator is able to demonstrate a consistent pattern of importations without violation of section 592, or any other statute prohibiting false or fraudulent importation practices. This factor will not be considered in alleged fraudulent violations of section 592.

(6) *Inability to Pay the Customs Penalty.* The party claiming the existence of this factor must present documentary evidence in support thereof, including copies of income tax returns for the previous 3 years, and an audited financial statement for the most recent fiscal quarter. In certain cases, Customs may waive the production of an audited financial statement or may request alternative or additional financial data in order to facilitate an analysis of a claim of inability to pay (e.g., examination of the financial records of a foreign entity related to the U.S. company claiming inability to pay).

(7) *Customs Knowledge.* Additional relief in non-fraud cases (which also are not the subject of a criminal investigation) will be granted if it is determined that Customs had actual knowledge of a violation and, without justification, failed to inform the violator so that it could have taken earlier corrective action. In such cases, if a penalty is to be assessed involving repeated violations of the same kind, the maximum penalty amount for violations occurring after the date on which actual knowledge was obtained by Customs will be limited to two times the loss of duty in duty-loss cases or twenty percent of the dutiable value in non-duty-loss cases if the continuing violations were the result

of gross negligence, or the lesser of one time the loss of duty in duty-loss cases or ten percent of dutiable value in non-duty-loss cases if the violations were the result of negligence. This factor will not be applicable when a substantial delay in the investigation is attributable to the alleged violator.

(H) Aggravating Factors

Certain factors may be determined to be aggravating factors in calculating the amount of the proposed or assessed penalty claim or the amount of the administrative penalty decision. The presence of one or more aggravating factors may not be used to raise the level of culpability attributable to the alleged violations, but may be utilized to offset the presence of mitigating factors. The following factors will be considered ''aggravating factors,'' provided that the case record sufficiently establishes their existence. The list is not exclusive.

(1) Obstructing an investigation or audit,

(2) Withholding evidence,

(3) Providing misleading information concerning the violation,

(4) Prior substantive violations of section 592 for which a final administrative finding of culpability has been made,

(5) Textile imports that have been the subject of illegal transshipment (*i.e.*, false country of origin declaration), whether or not the merchandise bears false country of origin markings,

(6) Evidence of a motive to evade a prohibition or restriction on the admissibility of the merchandise (e.g., evading a quota restriction),

(7) Failure to comply with a lawful demand for records or a Customs summons.

(I) Offers in Compromise (''Settlement Offers'')

Parties who wish to submit a civil offer in compromise pursuant to 19 U.S.C. 1617 (also known as a ''settlement offer'') in connection with any section 592 claim or potential section 592 claim should follow the procedures outlined in §161.5 of the Customs Regulations (19 CFR 161.5). Settlement offers do not involve ''mitigation'' of a claim or potential claim, but rather ''compromise'' an action or potential action where Customs evaluation of potential litigation risks, or the alleged violator's financial position, justifies such a disposition. In any case where a portion of the offered amount represents a tender of unpaid duties, taxes and fees, Customs letter of acceptance may identify the portion representing any such duty, tax and fee. The offered amount should be deposited at the Customs field office responsible for handling the section 592 claim or potential section 592 claim. The offered amount will be held in a suspense account pending acceptance or rejection of the offer in compromise. In the event the offer is rejected, the concerned Customs field office will promptly initiate a refund of the money deposited in the suspense account to the offeror.

(J) Section 592(d) Demands

Section 592(d) demands for actual losses of duty ordinarily are issued in connection with a penalty action, or as a separate demand without an associated penalty action. In either case, information must be present establishing a violation of section 592(a). In those cases where the appropriate Customs field officer determines that issuance of a penalty under section 592 is not warranted (notwithstanding the presence of information establishing a violation of section 592(a)), but that circumstances do warrant issuance of a demand for payment of an actual loss of duty pursuant to section 592(d), the Customs field officer shall follow the procedures set forth in section 162.79b of the Customs Regulations (19 CFR 162.79b). Except in cases where less than one year remains before the statute of limitations may be raised as a defense, information copies of all section 592(d) demands should be sent to all concerned sureties and the importer of record if such party is not an alleged violator. Also, except in cases where less than one year remains before the statute of limitations may be raised as a defense, Customs will endeavor to issue all section 592(d) demands to concerned sureties and non-violator importers of record only after default by principals.

(K) Customs Brokers

If a customs broker commits a section 592 violation and the violation involves fraud, or the broker commits a grossly negligent or negligent violation and shares in the benefits of the violation to an extent over and above customary brokerage fees, the customs broker will be subject to these guidelines. However, if the customs broker commits either a grossly negligent or negligent violation of section 592 (without sharing in the benefits of the violation as described above), the concerned Customs field officer may proceed against the customs broker pursuant to the remedies provided under 19 U.S.C. 1641.

(L) Arriving Travelers

(1) *Liability.* Except as set forth below, proposed and assessed penalties for violations by an arriving traveler must be determined in accordance with these guidelines.

(2) *Limitations on Liability on Non-commercial Violations.* In the absence of a referral for criminal prosecution, monetary penalties assessed in the case of an alleged first-offense, non-commercial, fraudulent violation by an arriving traveler will generally be limited as follows:

(a) *Fraud—Duty Loss Violation.* An amount ranging from a minimum of three times the

loss of duty to a maximum of five times the loss of duty, provided the loss of duty is also paid;

(b) *Fraud—Non-duty Loss Violation.* An amount ranging from a minimum of 30 percent of the dutiable value of the merchandise to a maximum of 50 percent of its dutiable value;

(c) *Gross Negligence—Duty Loss Violation.* An amount ranging from a minimum of 1.5 times the loss of duty to a maximum of 2.5 times the loss of duty provided the loss of duty is also paid;

(d) *Gross Negligence—Non-duty Loss Violation.* An amount ranging from a minimum of 15 percent of the dutiable value of the merchandise to a maximum of 25 percent of its dutiable value;

(e) *Negligence—Duty Loss Violation.* An amount ranging from a minimum of .25 times the loss of duty to a maximum of 1.25 times the loss of duty provided that the loss of duty is also paid;

(f) *Negligence—Non-duty Loss Violation.* An amount ranging from a minimum of 2.5 percent of the dutiable value of the merchandise to a maximum of 12.5 percent of its dutiable value;

(g) *Special Assessments/Dispositions.* No penalty action under section 592 will be initiated against an arriving traveler if the violation is not fraudulent or commercial, the loss of duty is $100.00 or less, and there are no other concurrent or prior violations of section 592 or other statutes prohibiting false or fraudulent importation practices. However, all lawful duties, taxes and fees will be collected. Also, no penalty under section 592 will be initiated against an arriving traveler if the violation is not fraudulent or commercial, there are no other concurrent or prior violations of section 592, and a penalty is not believed necessary to deter future violations or to serve a law enforcement purpose.

(M) Violations of Laws Administered by Other Federal Agencies.

Violations of laws administered by other federal agencies (such as the Food and Drug Administration, Consumer Product Safety Commission, Office of Foreign Assets Control, Department of Agriculture, Fish and Wildlife Service) should be referred to the appropriate agency for its recommendation. Such recommendation, if promptly tendered, will be given due consideration, and may be followed provided the recommendation would not result in a disposition inconsistent with these guidelines.

(N) Section 592 Violations by Small Entities

In compliance with the mandate of the Small Business Regulatory Enforcement Fairness Act of 1996, under appropriate circumstances, the issuance of a penalty under section 592 may be waived for businesses qualifying as small business entities.

Procedures established for small business entities regarding violations of 19 U.S.C. 1592 were published as Treasury Decision 97–46 in the FEDERAL REGISTER (62 FR 30378) on June 3, 1997.

[T.D. 00–41, 65 FR 39093, June 23, 2000]

APPENDIX C TO PART 171—CUSTOMS REGULATIONS GUIDELINES FOR THE IMPOSITION AND MITIGATION OF PENALTIES FOR VIOLATIONS OF 19 U.S.C. 1641

The Trade and Tariff Act of 1984 promulgated numerous changes to the current statute relating to Customs brokers. The following document attempts to define that conduct which is to be proscribed and to suggest penalty amounts to be assessed for such violations. It also chronicles procedures to be followed in assessment and mitigation of penalties.

NOTE: Assessment of a monetary penalty is an alternative sanction to revocation or suspension of the broker's license or permit.

I. PENALTY ASSESSMENT PROCEDURES—19 CFR PART 111, SUBPART E

A. When a penalty against a broker is contemplated, the ''appropriate Customs officer'', (*i.e.*, the Fines, Penalties, and Forfeitures Officer) shall issue a written notice which advises the violator of the allegations which would warrant imposition of a penalty. The written notice shall be in a format similar to a prepenalty notice that would be issued in contemplation of assessment of a penalty under section 1592 or 1584.

B. The written notice shall inform the violator that he has 30 days to respond as to why a penalty should not be issued. See 19 CFR 111.92.

C. If no response is received from the violator, or, if after receipt of the response, it is determined that the penalty should be issued as stated in the prepenalty notice, a notice of penalty CF–5955A shall be issued formally assessing a monetary penalty against the broker.

D. The Fines, Penalties, and Forfeitures Officer may reduce the amount of the contemplated penalty or cancel its issuance altogether if, after review of the violator's submission in response to the prepenalty notice, he is satisfied that the acts which are the basis for the penalty did not occur as charged or occurred in a manner that would permit a reduction in the contemplated penalty.

E. After issuance of a penalty notice, the petitioning provisions of part 171 of the Customs Regulations are in effect.

F. If the broker does not comply with a final mitigation decision within 60 days, the

matter shall be referred to the Department of Justice for commencement of judicial action.

II. PENALTY ASSESSMENT—CONDUCTING CUSTOMS BUSINESS WITHOUT A LICENSE (19 U.S.C. 1641(b)(6))

A. No person may conduct Customs business, other than solely on behalf of that person, without a broker's license.

B. Penalty amount:

1. The maximum penalty for any one incident of conducting Customs business without a license is $10,000.

2. Total aggregate penalties for violation of this or any other section of the broker penalty statute is $30,000. As a general rule, $10,000 will be the maximum assessment for a violation solely involving conducting Customs business without a license, without regard to the frequency of violations. In particularly aggravated circumstances, this rule shall be suspended.

C. Customs business includes:

1. Classification and valuation.

2. Payment of duties, taxes or other charges.

3. Drawback or refund of duties.

4. Filing of entries or other documents relating to issues covered by 1–3.

D. Customs business does not include:

1. Marine transactions.

2. In-bond movement or transportation of merchandise.

3. Foreign Trade Zone admissions. See C.S.D. 84–23.

E. Penalty amounts to be imposed for transacting Customs business without a license are as follows:

1. No penalty action when importation is conducted on behalf of a family member. For purposes of this subsection, ''family member'' is defined as a parent, child, spouse, sibling, grandparent or grandchild.

2. No penalty action against an individual who has a power of attorney to act as an unpaid agent on a non-commercial shipment. See 19 CFR 141.33.

3. A $250 penalty for:

a. First violation when transaction is non-commercial but is conducted on behalf of any business entity, or

b. First violation where the importation is commercial in nature (*i.e.*, imported merchandise is for resale) *or* where the violator is compensated for his action, e.g., an importation of raw material or parts of merchandise that is to be manufactured, refined or assembled here before resale would be a commercial entry because the merchandise eventually would be resold, albeit in another form than that which it was entered.

4. A $1,000 penalty for repeat violation involving:

a. Commercial importation.

b. Non-commercial importation made on behalf of a business entity.

c. Non-commercial importation for which compensation is received by the violator.

5. A $10,000 penalty when:

a. Violator falsely holds himself out as being a licensed Customs broker.

b. A continuing course of conduct can be shown (determined by frequency of violations or number of entries involved) which would indicate that the violator is entering merchandise for others on a regular commercial basis, e.g., if the violator has incurred numerous penalties under subsections (3) and (4) above, but the smaller penalties have had no deterrent effect, the $10,000 penalty under this subsection should be assessed in an action separate from those smaller penalties.

F. Mitigation—No mitigation will be afforded for any violation involving conducting Customs business without a license unless the violator can show an inability to pay such penalty.

G. IMPORTANT: As a general rule, a separate penalty should not be imposed for each unlawful Customs business transaction if numerous transactions occur contemporaneously. For example:

1. If an unlicensed individual files six commercial entries at one time, that should be treated as one violation. It should not be treated as six violations because the entries were presented contemporaneously.

2. If Customs discovers that an individual has conducted Customs business without a license on numerous occasions, but such individual acted without knowledge of the prohibition on such conduct, those numerous transactions should be treated as one violation for purposes of imposition of any penalty.

H. NOTE: Conducting Customs business without a license is not the same violation as conducting Customs business without a permit. The latter violation is discussed later in this appendix in the section involving Violation of Other Laws or Regulations Enforced by Customs.

I. Intent to violate the law is not an element of this violation. Reference to ''intentionally transacts Customs business'' in subsection 1641(b)(6) relates to the intentional transaction of the business itself, not to any intentional attempt to violate the terms of the statute.

III. SECTION 1641(d)(1)(A)—MAKING A FALSE OR MISLEADING STATEMENT OR AN OMISSION AS TO MATERIAL FACT WHICH WAS REQUIRED TO BE STATED IN ANY APPLICATION FOR A LICENSE OR PERMIT

A. If the license would not have been issued but for the false statement, the proper sanction would be suspension or revocation of the license. If the false or misleading statement would not have absolutely resulted in the denial, revocation or suspension of a license, then penalty sanctions are proper.

B. Material facts include but are not limited to:

1. Facts as to identity.

2. Facts as to citizenship status of an individual.

3. Facts as to moral character of an individual which relate to his fitness to conduct Customs business.

4. The organization of any corporation, association or partnership.

5. The status of the license of a license holder who is a corporate officer or partner.

C. Penalty Amount—$5,000 for each false statement, to a maximum of $30,000.

D. Examples of situations where revocation of the license is appropriate.

1. An applicant states that he is 21 years old (as required by 19 CFR 111.11) and he is not. But for the false statement, the applicant could not meet the age requirement for a license.

2. An applicant provides an alias in the application which is a material false statement as to identity.

E. Mitigation guidelines.

1. Violation due to clerical error (clerical error as defined by 19 U.S.C. 1520(c)(1)), mitigated without payment.

2. Violation due to negligence.

a. This is defined as more than clerical error, but not an intentional violation. Examples include:

i. Failing to list a new corporate office because corporate records have not been kept current.

ii. Listing an incorrect address for a reference because applicant has failed to update his records.

b. Mitigate to $500 for each $5,000 penalty assessed.

c. This category excludes cases of harmless error, *i.e.*, a mistake which could not possibly harm the government's interests. Cases falling in this category should be mitigated in full.

3. Intentional violations—Revocation of a license which has been granted is the preferred sanction. If no license has been granted, no mitigation.

IV. SECTION 1641(d)(1)(B)—BROKER CONVICTED OF CERTAIN FELONIES OR MISDEMEANORS SUBSEQUENT TO FILING LICENSE APPLICATION

A. As a general rule, license revocation is the standard sanction for these violations. If the conviction occurs subsequent to the filing of an application, monetary penalties may be assessed according to the following criteria.

B. Unlawful conduct must relate to:

1. Importation or exportation of merchandise.

2. Conduct of Customs business (this shall include violations relating to taxes and duties and documents required to be filed with regard to such taxes and duties).

3. Relevant convictions would include:

a. 18 U.S.C. 1001—making a false statement to Customs or any other agency with regard to any relevant transaction.

b. 18 U.S.C. 545—unlawful importation of merchandise.

c. 18 U.S.C. 542—unlawful importation by means of a fraudulent act or omission.

d. 22 U.S.C. 2778—illegal exportation of munitions.

C. Monetary penalties may not be imposed in connection with convictions relating to conduct described in subsection 1641(d)(1)(B)(iii) including larceny, theft, robbery, extortion, counterfeiting, fraudulent concealment or conversion, embezzlement or misappropriation of funds. Either suspension or revocation is the appropriate penalty for these infractions.

D. Penalty amounts.

1. $15,000 for a misdemeanor conviction.

2. $30,000 for a felony conviction.

E. Mitigation.

1. For a misdemeanor conviction, mitigation to a lesser amount is permitted if the conviction related to Customs business and the domestic value of the merchandise involved is less than $15,000. In such case, mitigation to an amount equal to the domestic value of the merchandise is appropriate.

2. For other misdemeanor convictions, no relief.

3. Felony convictions, no relief.

V. SECTION 1641(d)(1)(C)—VIOLATION OF ANY LAW ENFORCED BY THE CUSTOMS SERVICE OR THE RULES OR REGULATIONS ISSUED UNDER ANY SUCH PROVISION

A. Penalties under this section may be imposed in addition to any penalty provided for under the law enforced by Customs. *Exception:* Penalties imposed against a broker under 19 U.S.C. 1592 at a culpability level of less than fraud or under 19 U.S.C. 1595a(b) shall not be imposed in addition to a broker's penalty.

B. Additional penalties under this section shall also be imposed against any broker where the other statute violated only moves against property, or the violator has demonstrated a continuing course of illegal conduct or evidence exists which indicates repeated violations of other statutes or regulations.

C. Conducting Customs business without a permit penalties should be assessed under this section.

1. The penalty notice should also cite 19 CFR 111.19 as the regulation violated. A party operating without a permit is required to apply for one under the above-noted regulation.

2. Assessment amount—$1,000 per transaction conducted without a permit.

3. Mitigation.

a. Negligence, mitigate to $250–$500 per transaction depending on the presence of

mitigating factors (lack of knowledge of permit requirement).

b. Intentional, grant no relief.

c. No mitigation if permit revoked by operation of law.

4. Generally, a separate penalty should not be assessed for each non-permitted transaction if numerous transactions occurred contemporaneously. For example, if a broker files 30 entries the day after a permit expires, the 30 filings should be treated as one violation, not 30 separate violations.

D. Penalties for failure to exercise due diligence in payment, refund or deposit of monies received from clients in connection with clients' Customs business also should be assessed under this section. This includes failure to pay over to a client, or file a written statement to a client accounting for, funds received.

1. The penalty notice should also cite 19 CFR 111.29 as the regulation violated.

2. Assessment amount—an amount equal to the value of any monies up to a maximum of $30,000, to be deposited with Customs or refunded or accounted for to a client.

3. No mitigation shall be afforded until the monies are properly paid to Customs or refunded or accounted for to the clients.

4. If any claims for liquidated damages result against the client's bond from the failure to pay monies to Customs, no mitigation from the penalty shall be granted until the claim for liquidated damages is settled *by the violating broker* either through payment of the full claim or a mitigated amount.

5. After monies are paid or accounted for and/or liquidated damages claims are settled as stated in 3. and 4. above, mitigation may be afforded. If the violator is found to be negligent, the penalty may be mitigated to an amount between 25 and 50 percent of the assessed amount, but no lower than $250. No mitigation from an intentional violation.

E. Penalties for failure to retain powers of attorney from clients to act in their names.

1. The penalty notice should also cite 19 CFR 141.46 as the regulation violated.

2. Assessment amount—$1,000 for each power of attorney not on file.

3. Mitigation—for a first offense, mitigate to an amount between $250 and $500 unless extraordinary mitigating factors are present, in which case full mitigation should be afforded. An extraordinary mitigating factor would be a fire, theft or other destruction of records beyond broker control. Subsequent offenses—no mitigation unless extraordinary mitigating factors are present.

4. Penalty should be mitigated in full if it can be established that a valid power of attorney had been issued to the broker, but it was misplaced or destroyed through clerical error or mistake.

F. If the other statute violated moves only against property, the violator shall incur a monetary penalty equal to the domestic value of such property or $30,000, whichever is less.

e.g., Violation of 22 U.S.C. 401 for unlawful exportation of merchandise results in seizure and forfeiture of the violative merchandise. There are no penalty provisions which Customs enforces against parties responsible for the seizable offense. If brokers are recalcitrant and are constantly responsible for offenses which result in seizure of merchandise, a penalty equal to the domestic value of such merchandise (in no case to exceed $30,000) should be imposed.

G. Use of a broker's importation bond to aid an importer who has had his immediate delivery privileges revoked.

1. The broker has aided his client in avoiding the immediate delivery sanctions. The penalty notice should cite 19 CFR 142.25(c) as the regulation violated. Before assessment of this penalty, the broker should be shown to have known or been negligent in not knowing of the client's sanction.

2. A penalty equal to the value of the merchandise, not to exceed $30,000, should be assessed.

3. Mitigation—The penalty shall be mitigated to an amount between 25 and 50 percent of that assessed for a first violation where negligence is shown. Any knowing violation or a subsequent negligent violation (not necessarily involving the same client) will result in no mitigation.

H. If the other statute violated provides for a personal penalty, the violator shall incur an additional monetary penalty under this section equal to such personal penalty or $30,000, whichever is less.

I. Penalties assessed under this provision are not limited to violations just involving Customs business as defined in the statute.

J. Mitigation guidelines.

1. If the other law violated moves only against property, mitigate the penalty using guidelines in effect for the other statute violated. For example, if the broker is responsible for a 401 seizure of merchandise valued at $45,000, he incurs a penalty of $30,000. The guidelines for remission of the 401 forfeiture are applicable to mitigation of the broker penalty. Thus, if the forfeiture is remitted upon payment of 5 percent of the merchandise's value, the penalty will be mitigated upon payment of a like amount.

2. If the other law violated provides for a personal penalty, mitigate the broker penalty using guidelines in effect for the other statute violated.

For example, a broker incurs a $40,000 penalty under 1592. The penalty amount represents eight times the loss of revenue because a preliminary finding of fraud is made (see section V.A. of this appendix). A penalty of $30,000, in addition to the $40,000 penalty issued under 1592, may be assessed. The 1592 penalty is later mitigated to $25,000, an

amount equal to five times the loss of revenue, as the finding of fraud is upheld and it is also determined that the broker shared in the financial benefits of the violation. The broker penalty also should be mitigated to that $25,000 figure, for a total collection of $50,000.

VI. SECTION 1641(d)(1)(D)—COUNSELING, COMMANDING, INDUCING, PROCURING OR KNOWINGLY AIDING AND ABETTING VIOLATIONS BY ANY OTHER PERSON OF ANY LAW ENFORCED BY THE CUSTOMS SERVICE

A. If the law violated by another moves only against property, a monetary penalty equal to the domestic value of such property or $30,000 whichever is less, may be imposed against the broker who counsels, commands or knowingly aids and abets such violation.

B. If the law violated provides for only a personal penalty against the actual violator, a penalty may be imposed against the broker in an amount equal to that assessed against the violator, but in no case can the penalty exceed $30,000.

C. If the broker is assessed a penalty under the statute violated by the other person, he may be assessed a penalty under this section in addition to any other penalties.

D. Examples of violations of this subsection:

1. A broker counsels a client that certain gemstones are absolutely free of duty and need not be declared upon entry into the United States. The client arrives in the United States and fails to declare a quantity of gemstones worth $45,000. A penalty of $30,000 may be imposed against the broker for such counseling. The client would incur a personal penalty of $45,000 under the provisions of title 19, United States Code, section 1497, but the penalty against the broker cannot exceed $30,000.

2. A client imports $15,000 worth of merchandise by vessel. The merchandise is unladen at the wharf but Customs has not appraised or released it. Customs informs the broker that the shipment must be held for an intensive examination. The broker informs the client that the merchandise can be moved and delivered to the consignee. The broker assures his client that he will handle all the necessary paperwork. The merchandise is moved from the wharf. The broker is subject to a $15,000 penalty for counseling and inducing his client to violate the provisions of title 19, United States Code, section 1448 and title 19, United States Code, section 1595a(b).

E. Mitigation—Follow guidelines applicable to the other penalty or forfeiture statute involved.

VII. SECTION 1641(d)(1)(E)—KNOWINGLY EMPLOYING OR CONTINUING TO EMPLOY ANY PERSON WHO HAS BEEN CONVICTED OF A FELONY, WITHOUT WRITTEN APPROVAL OF SUCH EMPLOYMENT FROM THE SECRETARY OF THE TREASURY

A. A broker has 30 days to seek approval of the Secretary for such employment. If he seeks the approval within such time, no penalty will be assessed.

B. A $5,000 penalty for knowingly employing any convicted felon and failing to make application with the Secretary approving such employment within 30 days of the date of discovery of the felony conviction.

C. A $25,000 penalty for knowingly employing any convicted felon without seeking approval for employment.

D. A $30,000 penalty for knowingly employing any convicted felon and continuing to employ same after approval has been denied (generally revocation or suspension of the license would be appropriate under this circumstance).

E. *Example:* If a broker unknowingly employs a convicted felon and 1 year after employment discovers the existence of such a conviction, the following actions would dictate imposition of a penalty:

1. If he seeks approval of the Secretary within 30 days after discovery of the existence of the conviction, no penalty will be assessed.

2. If he seeks approval at some time after 30 days from the date of discovery, a $5,000 penalty would lie.

3. If he does not seek approval until after Customs becomes aware of the violation, a $25,000 penalty would lie.

4. If he seeks approval, but is denied, and continues to employ the convicted felon, a $30,000 penalty would lie.

F. Customs discovery of a felony conviction. If Customs discovers the felony conviction and there is no indication that the employer is aware of same, Customs may inform the employer of such conviction. Discretion should be used in divulging this information.

G. Mitigation will only be permitted from the $5,000 penalty as follows:

1. If the application for approval is submitted within 60 days, but after 30 days, mitigate to $2,000.

2. If there is no application beyond the 60-day period, no mitigation shall be granted. Continued employment will result in further penalties as described above in sections E.3 and E.4.

VIII. SECTION 1641(d)(1)(F)—IN THE COURSE OF CUSTOMS BUSINESS, WITH INTENT TO DEFRAUD, KNOWINGLY DECEIVING, MISLEADING OR THREATENING ANY CLIENT OR PROSPECTIVE CLIENT

A. An unsubstantiated accusation by a client is inadequate basis to assess any penalty under this section of law.

B. A $30,000 penalty should be imposed for any violation of this section.

C. Mitigation—Inasmuch as evidence of intent must be shown before a penalty can be imposed, no mitigation should be permitted if a violation is found to lie. A petition for mitigation could be entertained only on the issue of whether such violation did, in fact, occur.

IX. SECTION 1641(b)(5)—THE FAILURE OF A CUSTOMS BROKER THAT IS LICENSED AS A CORPORATION, ASSOCIATION OR PARTNERSHIP TO HAVE, FOR ANY CONTINUOUS PERIOD OF 120 DAYS, AT LEAST ONE OFFICER OF THE CORPORATION OR ASSOCIATION OR ONE MEMBER OF THE PARTNERSHIP VALIDLY LICENSED

A. *Important:* Violation of this section results in the revocation of the broker's license by operation of law.

B. A $10,000 penalty may be imposed pursuant to section 1641(b)(6) because the revocation by operation of law results in the broker conducting Customs business without a license. No penalty liability would be incurred specifically under section 1641(b)(5).

C. Mitigation—Grant no mitigation from any penalty incurred by a broker for conducting Customs business without a license as a result of revocation of that license by operation of law.

X. SECTION 1641(c)(3)—FAILURE OF A CUSTOMS BROKER GRANTED A PERMIT TO CONDUCT BUSINESS IN A CERTAIN DISTRICT TO EMPLOY, FOR A CONTINUOUS PERIOD OF 180 DAYS, AT LEAST ONE INDIVIDUAL WHO IS LICENSED WITHIN THE DISTRICT OR REGION

A. *Important:* Violation of this section results in the revocation of a permit by operation of law.

B. Penalties may be imposed for violation of the provisions of 1641(d)(1)(C), violation of other laws enforced by Customs. Guidelines for imposition of penalties for conducting Customs business without a permit should be followed.

C. Mitigation—No mitigation should be permitted from any penalty imposed for failure to have a permit when the permit lapses by operation of law.

XI. SECTION 1641(b)(4)—FAILURE OF A LICENSED BROKER TO EXERCISE RESPONSIBLE SUPERVISION AND CONTROL OVER THE CUSTOMS BUSINESS THAT IT CONDUCTS

A. Standards of responsible supervision and control shall be issued by the Commissioner of Customs. Statutory authority to set such standards is provided by section 1641(f).

NOTE: All penalties assessed for violation of 1641(b)(4) shall also cite section 1641(d)(1)(C) as the statute violated in all notices issued to the alleged violator.

B. The following penalty amounts shall be assessed against brokers who fail to exercise responsible supervision and control over business conducted at district level.

1. A penalty of $1,000 against any broker who:

a. Continuously makes the same errors on a particular type of entry;

b. Fails to properly instruct employees about Customs business, thereby resulting in the filing of incorrect entries or the mishandling of transactions relating to Customs business;

c. Knowingly allows his entry bond to be used to effect release of merchandise in districts where he does not have a license or permit (this is imposed in addition to any penalty for conducting Customs business without a license);

d. Fails to comply with regulations or procedures but does not commit violations that would warrant any higher penalty amount as described below.

2. A penalty of $5,000 against any broker who, when requested, is unable to produce documents relating to specific Customs business which are material to that business (e.g., if the business regards an entry he should have the invoice, packing list, etc.). This requirement excludes documents not required to be kept by a broker.

3. A penalty of $5,000 against any broker who is unable to satisfy the deciding Customs official that he has a working knowledge of any operation material to his ability to render valuable service to others in the conduct of Customs business.

Examples include:

a. A working knowledge of all automated systems in use in the district;

b. A knowledge of the cash flow procedures in each district of operation;

c. Retention of copies of all surety bonds in proper form and in sufficient dollar amount;

d. Knowledge of filing systems and document record storage in each district;

e. Continuous monitoring to ensure timely payment of all obligations including duties, taxes and refunds.

4. A penalty of $5,000 against any broker who fails to exercise responsible supervision and control over the Customs business that

it conducts as defined in section XI.C. of this appendix.

5. A penalty of $10,000 against any broker who is found to have failed to maintain satisfactory accounting records or records of documents filed with Customs on any matter.

C. The following factors shall be indicative of a lack of supervision or lack of working knowledge of Customs procedures (the list is not conclusive):

1. A high rate of entry rejections when compared with other brokers in the permitted district.

2. A high rate of late filing liquidated damages cases when compared with other brokers in the permitted district.

3. In the case of entry summaries filed in the broker's name, a high number of missing document cases when compared with other brokers in the permitted district.

4. An inordinate number of entries for which free entry is claimed, but no documentation supporting such claim is submitted, resulting in liquidation of the entries as dutiable.

5. Inability to assist or failure to cooperate with an audit, including failure to provide all records and any other necessary information pertaining to a broker's Customs business to assist auditors.

6. Failure to settle (including petitioning) liquidated damages claims in a timely manner.

7. Evidence to indicate that timely duty refunds to clients are not made or accounted for and adequate records of same are not kept (usually will result in penalty assessed in accordance with section B.5. above).

8. Employing a licensed individual for a minimal number of days each 120- or 180-day period (see sections 1641(b)(5) and 1641(c)(3) so as to avoid violation of the statute.

a. For purposes of imposition of penalties under this subsection, a minimal number of days shall be 10 working days for each 120-day period or 15 working days for each 180-day period.

b. It shall be presumed that temporary employment of such a licensed individual is undertaken solely to avoid revocation of a license or permit. Such minimal employment shall be *prima facie* evidence of lack of supervision.

D. Mitigation.

1. $1,000 penalties shall not be mitigated unless the broker can show that extraordinary mitigating factors are present.

2. $5,000 penalties for failure to produce documents may be mitigated to an amount between $2,000 and $3,500 if the documents are produced but not in a timely fashion. No mitigation shall be afforded if the documents are not produced, unless the broker can satisfactorily demonstrate that such failure to produce was caused by circumstances beyond the control of the broker or his client (e.g., a rupture of relations with the party responsible for generating the documents). Full mitigation shall be afforded in the case of destruction of records by events beyond a broker's control, such as theft, flood, fire or other acts of God.

3. $5,000 penalty for failure to have a working knowledge of any operation for which a broker is licensed to do business may be mitigated to a lesser amount upon a showing by the broker that steps have been taken to improve instruction and supervision of employees and an improvement in the knowledge of his operation occurs.

4. $5,000 penalty for failure to exercise responsible supervision and control may be mitigated to a lesser amount if the broker immediately corrects the problem which was the basis for the assessment and sufficiently monitors the situation to avoid recurrence.

5. $10,000 penalty for failure to maintain satisfactory accounting records will only be subject to mitigation in full if the broker can prove that satisfactory accounting records and documents records are being kept. Mitigation in a lesser degree may be afforded upon a showing by the broker that a *bona fide* attempt was made to establish a satisfactory accounting and/or record-keeping system, or upgrade a deficient system, but such efforts proved unsuccessful or only partially effective.

6. Penalty equal to the value of monies not properly paid or accounted for.

a. If the broker shows that the monies were paid or accounted for and requisite notifications were made, albeit in an untimely fashion not to exceed 30 days after any due date, the penalty may be mitigated upon payment of 25 percent of the assessed amount, but no less than $250.

b. If the monies were paid and notifications made more than 30 days after any due date, the penalty may be mitigated upon payment of 50 percent of the assessed amount, but not less than $1,000.

c. If there is no proof of proper payment of duties, refunds, etc., no mitigation shall be granted.

XII. Limits of Penalty Assessments

A. A broker shall be penalized a maximum of $30,000 for any violation or violations of the statute in any one penalty notice.

B. If a broker is penalized to the maximum the statute will allow and continues to commit the same violation or violations, revocation or suspension of his license would be the appropriate sanction. Barring such revocation or suspension action, he may again be penalized to the maximum the statute will allow.

C. From any one audit, the maximum aggregate penalty for all violations discovered is $30,000.

XIII. CONSOLIDATION OF CASES

Whenever multiple penalties arising from a particular fact situation or pattern are contemplated against brokers or individuals operating in different districts, the cases may be consolidated in one district. Approval for consolidation must be sought from the Trade Policy and Programs, Office of International Trade.

[T.D. 90–20, 55 FR 10056, Mar. 19, 1990, as amended by T.D. 97–82, 62 FR 51771, Oct. 3, 1997; T.D. 99–27, 64 FR 13676, Mar. 22, 1999; T.D. 00–57, 65 FR 53578, Sept. 5, 2000; 65 FR 65770, Nov. 2, 2000]

APPENDIX D TO PART 171—GUIDELINES FOR THE IMPOSITION AND MITIGATION OF PENALTIES FOR VIOLATIONS OF 19 U.S.C. 1593A

A monetary penalty incurred under section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a; hereinafter referred to as section 593A), may be remitted or mitigated under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618; hereinafter referred to as section 618), if it is determined that there exist such mitigating circumstances as to justify remission or mitigation. The guidelines below will be used by Customs in arriving at a just and reasonable assessment and disposition of liabilities arising under section 593A within the stated limitations. It is intended that these guidelines will be applied by Customs officers in prepenalty proceedings, in determining the monetary penalty assessed in the penalty notice, and in arriving at a final penalty disposition. The assessed or mitigated penalty amount set forth in Customs administrative disposition determined in accordance with these guidelines does not limit the penalty amount which the Government may seek in bringing a civil enforcement action pursuant to 19 U.S.C. 1593a(i).

(A) Violations of Section 593A

A violation of section 593A occurs when a person, through fraud or negligence, seeks, induces, or affects, or attempts to seek, induce, or affect, the payment or credit to that person or others of any drawback claim by means of any document, written or oral statement, or electronically transmitted data or information, or act which is material and false, or any omission which is material, or aids or abets any other person in the foregoing violation. There is no violation if the falsity is due solely to clerical error or mistake of fact unless the error or mistake is part of a pattern of negligent conduct. Also, the mere nonintentional repetition by an electronic system of an initial clerical error will not constitute a pattern of negligent conduct. Nevertheless, if Customs has drawn the person's attention to the nonintentional repetition by an electronic system of an initial clerical error, subsequent failure to correct the error could constitute a violation of section 593A.

(B) Degrees of Culpability

There are two degrees of culpability under section 593A: negligence and fraud.

(1) *Negligence.* A violation is determined to be negligent if it results from an act or acts (of commission or omission) done with actual knowledge of, or wanton disregard for, the relevant facts and with indifference to, or disregard for, the offender's obligations under the statute or done through the failure to exercise the degree of reasonable care and competence expected from a person in the same circumstances in ascertaining the facts or in drawing inferences from those facts, in ascertaining the offender's obligations under the statute, or in communicating information so that it may be understood by the recipient. As a general rule, a violation is determined to be negligent if it results from the offender's failure to exercise reasonable care and competence to ensure that a statement made is correct.

(2) *Fraud.* A violation is determined to be fraudulent if the material false statement, omission or act in connection with the transaction was committed (or omitted) knowingly, *i.e.*, was done voluntarily and intentionally, as established by clear and convincing evidence.

(C) Assessment of Penalties

(1) *Issuance of Prepenalty Notice.* As provided in §162.77a of the Customs Regulations (19 CFR 162.77a), if Customs has reasonable cause to believe that a violation of section 593A has occurred and determines that further proceedings are warranted, a notice of intent to issue a claim for a monetary penalty will be issued to the person concerned. In issuing such prepenalty notice, the appropriate Customs field officer will make a tentative determination of the degree of culpability and the amount of the proposed claim. A prepenalty notice will not be issued if the claim does not exceed $1,000.

(2) *Issuance of Penalty Notice.* After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (C)(1), the appropriate Customs field officer will determine whether any violation described in section (A) has occurred. If a notice was issued under paragraph (C)(1) and the appropriate Customs field officer determines that there was no violation, Customs will promptly issue a written statement of the determination to the person to whom the notice was sent. If the appropriate Customs field officer determines that there was a violation, Customs

will issue a written penalty claim to the person concerned. The written penalty claim will specify all changes in the information provided in the prepenalty notice issued under paragraph (C)(1). The person to whom the penalty notice is issued will have a reasonable opportunity under section 618 to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under section 618, Customs will provide to the person concerned a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based.

(D) Maximum Penalties

(1) *Fraud.* In the case of a fraudulent violation of section 593A, the monetary penalty will be in an amount not to exceed 3 times the actual or potential loss of revenue.

(2) *Negligence.*

(a) *In General.* In the case of a negligent violation of section 593A, the monetary penalty will be in an amount not to exceed 20 percent of the actual or potential loss of revenue for the first violation.

(b) *Repetitive Violations.* For the first negligent violation that is repetitive (*i.e.*, involves the same issue and the same violator), the penalty will be in an amount not to exceed 50 percent of the actual or potential loss of revenue. The penalty for a second and each subsequent repetitive negligent violation will be in an amount not to exceed the actual or potential loss of revenue.

(3) *Prior Disclosure.*

(a) *In General.* Subject to paragraph (D)(3)(b), if the person concerned discloses the circumstances of a violation of section 593A before, or without knowledge of the commencement of, a formal investigation of such violation, the monetary penalty assessed under this Appendix will not exceed:

(i) In the case of fraud, an amount equal to the actual or potential revenue of which the United States is or may be deprived as a result of overpayment of the claim; or

(ii) If the violation resulted from negligence, an amount equal to the interest computed on the basis of the prevailing rate of interest applied under 26 U.S.C. 6621 on the amount of actual revenue of which the United States is or may be deprived during the period that begins on the date of overpayment of the claim and ends on the date on which the person concerned tenders the amount of the overpayment.

(b) *Condition Affecting Penalty Limitations.* The limitations in paragraph (D)(3)(a) on the amount of the monetary penalty to be assessed apply only if the person concerned tenders the amount of the overpayment made on the claim either at the time of the disclosure or within 30 days (or such longer period as Customs may provide) from the date of notice by Customs of its calculation of the amount of overpayment.

(c) *Burden of Proof.* The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge.

(d) *Commencement of Investigation.* For purposes of this Appendix, a formal investigation of a violation is considered to be commenced with regard to the disclosing party, and with regard to the disclosed information, on the date recorded in writing by Customs as the date on which facts and circumstances were discovered which caused Customs to believe that a possibility of a violation of section 593A existed.

(e) *Exclusivity.* Penalty claims under section D will be the exclusive civil remedy for any drawback-related violation of section 593A.

(E) Deprivation of Lawful Revenue

Notwithstanding section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), if the United States has been deprived of lawful duties and taxes resulting from a violation of section 593A, Customs will require that such duties and taxes be restored whether or not a monetary penalty is assessed.

(F) Final Disposition of Penalty Cases When the Drawback Claimant Is Not a Certified Participant in the Drawback Compliance Program

(1) *In General.* Customs will consider all information in the petition and all available evidence, taking into account any mitigating, aggravating, and extraordinary factors, in determining the final assessed penalty. All factors considered should be stated in the decision.

(2) *Penalty Disposition When There Has Been No Prior Disclosure.*

(a) *Nonrepetitive Negligent Violation.* The final penalty disposition will be in an amount ranging from a minimum of 10 percent of the actual or potential loss of revenue to a maximum of 20 percent of the actual or potential loss of revenue.

(b) *Repetitive Negligent Violation.*

(i) *First Repetitive Negligent Violation.* The final penalty disposition will be in an amount ranging from a minimum of 25 percent of the actual or potential loss of revenue to a maximum of 50 percent of the actual or potential loss of revenue.

(ii) *Second and Each Subsequent Repetitive Negligent Violation.* The final penalty disposition will be in an amount ranging from a minimum of 50 percent of the actual or potential loss of revenue to a maximum of 100 percent of the actual or potential loss of revenue.

(c) *Fraudulent Violation.* The final penalty disposition will be in an amount ranging from a minimum of 1.5 times the actual or

potential loss of revenue to a maximum of 3 times the actual or potential loss of revenue.

(3) *Penalty Disposition When There Has Been a Prior Disclosure.*

(a) *Negligent Violation.* The final penalty disposition will be in an amount equal to the interest determined in accordance with paragraph (D)(3)(a)(ii).

(b) *Fraudulent Violation.* The final penalty disposition will be in an amount equal to 100 percent of the actual or potential loss of revenue.

(4) *Mitigating Factors.* The following factors will be considered in mitigation of the proposed or assessed penalty claim or final penalty amount, provided that the case record sufficiently establishes their existence. The list is not exclusive.

(a) *Contributory Customs Error.* This factor includes misleading or erroneous advice given by a Customs official in writing to the alleged violator, but this factor may be applied in such a case only if it appears that the alleged violator reasonably relied upon the written information and the alleged violator fully and accurately informed Customs of all relevant facts. The concept of comparative negligence may be utilized in determining the weight to be assigned to this factor. If the Customs error contributed to the violation, but the alleged violator is also culpable, the Customs error is to be considered as a mitigating factor. If it is determined that the Customs error was the sole cause of the violation, the proposed or assessed penalty is to be cancelled.

(b) *Cooperation With the Investigation.* To obtain the benefits of this factor, the alleged violator must exhibit cooperation beyond that expected from a person under investigation for a Customs violation. An example of the cooperation contemplated includes assisting Customs officers to an unusual degree in auditing the books and records of the alleged violator (e.g., incurring extraordinary expenses in providing computer runs solely for submission to Customs to assist the agency in cases involving an unusually large number of entries and/or complex issues). Another example consists of assisting Customs in obtaining additional information relating to the subject violation or other violations. Merely providing the books and records of the alleged violator may not be considered cooperation justifying mitigation inasmuch as Customs has the right to examine an importer's books and records pursuant to 19 U.S.C. 1508–1509.

(c) *Immediate Remedial Action.* This factor includes the payment of the actual loss of revenue prior to the issuance of a penalty notice and within 30 days after Customs notifies the alleged violator of the actual loss of revenue attributable to the violation. In appropriate cases, where the alleged violator provides evidence that, immediately after learning of the violation, substantial remedial action was taken to correct organizational or procedural defects, immediate remedial action may be granted as a mitigating factor. Customs encourages immediate remedial action to ensure against future incidents of non-compliance.

(d) *Prior Good Record.* Prior good record is a factor only if the alleged violator is able to demonstrate a consistent pattern of filing drawback claims without violation of section 593A, or any other statute prohibiting the making or filing of a false statement or document in connection with a drawback claim. This factor will not be considered in alleged fraudulent violations of section 593A.

(e) *Inability to Pay the Customs Penalty.* The party claiming the existence of this factor must present documentary evidence in support thereof, including copies of income tax returns for the previous 3 years and an audited financial statement for the most recent fiscal quarter. In certain cases, Customs may waive the production of an audited financial statement or may request alternative or additional financial data in order to facilitate an analysis of a claim of inability to pay (e.g., examination of the financial records of a foreign entity related to the U.S. company claiming inability to pay). In addition, the alleged violator must present information reflecting ownership and related domestic and foreign parties and must provide information reflecting its current financial condition, including books and records of account, bank statements, other tax records (for example, sales tax returns) and a list of assets with current values; if the alleged violator is a closely held corporation, similar current financial information must be provided on the shareholders, wherever they are located.

(f) *Customs Knowledge.* This factor may be used in non-fraud cases (which also are not the subject of a criminal investigation) if it is determined that Customs had actual knowledge of a violation and failed, without justification, to inform the violator so that it could have taken earlier remedial action. This factor is not applicable when a substantial delay in the investigation is attributable to the alleged violator.

(5) *Aggravating Factors.* Certain factors may be determined to be aggravating factors in calculating the amount of the proposed or assessed penalty claim or the amount of the final administrative penalty. The presence of one or more aggravating factors may not be used to raise the level of culpability attributable to the alleged violations, but may be used to offset the presence of mitigating factors. The following factors will be considered ''aggravating factors'', provided that the case record sufficiently establishes their existence. The list is not exclusive.

(a) Obstructing an investigation or audit.

(b) Withholding evidence.

(c) Providing misleading information concerning the violation.

(d) Prior substantive violations of section 593A for which a final administrative finding of culpability has been made.

(e) Failure to comply with a Customs summons or lawful demand for records.

(G) Drawback Compliance Program Participants

(1) *In General.* Special alternative procedures and penalty assessment standards apply in the case of negligent violations of section 593A committed by persons who are certified as participants in the Customs drawback compliance program and who are generally in compliance with the procedures and requirements of that program. Provisions regarding the operation of the drawback compliance program are set forth in part 191 of the Customs Regulations (19 CFR part 191).

(2) *Alternatives to Penalties.* When a participant described in paragraph (G)(1) commits a violation of section 593A, in the absence of fraud or repeated violations and in lieu of a monetary penalty, Customs will issue a written notice of the violation (warning letter).

(a) *Contents of Notice.* The notice will:

(i) State that the person has violated section 593A;

(ii) Explain the nature of the violation; and

(iii) Warn the person that future violations of section 593A may result in the imposition of monetary penalties and that repetitive violations may result in removal of certification under the drawback compliance program until the person takes corrective action that is satisfactory to Customs.

(b) *Response to Notice.* Within 30 days from the date of mailing of the written notice, the person must notify Customs in writing of the steps that have been taken to prevent a recurrence of the violation unless the person establishes to the satisfaction of Customs that no violation took place (see §162.73a(b)(2)(ii) of the Customs Regulations, 19 CFR 162.73a(b)(2)(ii)). If the person fails to provide the required notification in a timely manner, any penalty assessed for a repetitive violation under paragraph (G)(3) will not be subject to mitigation under this Appendix.

(3) *Repetitive Violations.*

(a) *In General.* A person who has been issued a written notice under paragraph (G)(2) and who subsequently commits a negligent violation that is repetitive (*i.e.*, involves the same issue), and any other person who is a participant described in paragraph (G)(1) and who commits a repetitive negligent violation, is subject to one of the following monetary penalties:

(i) An amount not to exceed 20 percent of the loss of revenue for the first repetitive violation that occurs within three years from the date of the violation of which it is repetitive;

(ii) An amount not to exceed 50 percent of the loss of revenue for the second repetitive violation that occurs within three years from the date of the first of two violations of which it is repetitive ; and

(iii) An amount not to exceed 100 percent of the loss of revenue for the third and each subsequent repetitive violation that occurs within three years from the date of the first of three or more violations of which it is repetitive.

(b) *Repetitive Violations Outside 3-Year Period.* If a participant described in paragraph (G)(1) commits a negligent violation that is repetitive but that did not occur within 3 years of the violation of which it is repetitive, the new violation will be treated as a first violation for which a written notice will be issued in accordance with paragraph (G)(2), and each repetitive violation subsequent to that violation that occurs within any 3-year period described in paragraph (G)(3)(a) will result in the assessment of the applicable monetary penalty prescribed in that paragraph.

(4) *Final Penalty Disposition When There Has Been No Prior Disclosure.*

(a) *In General.* Customs will consider all information in the petition and all available evidence, taking into account any mitigating factors (see paragraph (F)(4)), aggravating factors (see paragraph (F)(5)), and extraordinary factors in determining the final assessed penalty. All factors considered should be stated in the decision.

(b) *First Repetitive Negligent Violation Within 3 Years of Violation Handled Under Paragraph (G)(2).* The final penalty disposition will be in an amount ranging from a minimum of 10 percent of the loss of revenue to a maximum of 20 percent of the loss of revenue.

(c) *Second Repetitive Negligent Violation Within 3 Years of Violation Handled Under Paragraph (G)(2) or (G)(3).* The final penalty disposition will be in an amount ranging from a minimum of 25 percent of the loss of revenue to a maximum of 50 percent of the loss of revenue.

(d) *Third and Each Subsequent Repetitive Negligent Violation Within 3 Years of Violation Handled Under Paragraph (G)(2) or (G)(3).* The final penalty disposition will be in an amount ranging from a minimum of 50 percent of the loss of revenue to a maximum of 100 percent of the loss of revenue.

(e) *Fraudulent Violations.* The final penalty disposition will be determined in the same manner as in the case of fraudulent violations committed by persons who are not participants in the drawback compliance program (see paragraph (F)(2)(c)).

(5) *Final Penalty Disposition When There Has Been A Prior Disclosure.* The final penalty disposition will be determined in the same manner as in the case of persons who are not participants in the drawback compliance program (see paragraph (F)(3)).

(H) Violations by Small Entities

In compliance with the mandate of the Small Business Regulatory Enforcement Fairness Act of 1996, under appropriate circumstances, the issuance of a penalty under section 593A may be waived for businesses qualifying as small business entities. Procedures that were established for small business entities regarding violations of 19 U.S.C. 1592 in Treasury Decision 97–46 published in the FEDERAL REGISTER (62 FR 30378) are also applicable for small entities regarding violations of section 593A.

[T.D. 00–5, 65 FR 3809, Jan. 25, 2000]

PART 172—CLAIMS FOR LIQUIDATED DAMAGES; PENALTIES SECURED BY BONDS

Sec.

AUTHORITY: 19 U.S.C. 66, 1618, 1623, 1624.

SOURCE: T.D. 00–57, 65 FR 53578, Sept. 5, 2000, unless otherwise noted.

§ 172.0 Scope.

This part contains provisions relating to petitions for relief from claims for liquidated damages arising under any Customs bond and penalties incurred which are secured by the conditions of the International Carrier Bond (see § 113.64 of this Chapter). This part does not relate to petitions on unsecured fines or penalties or seizures and forfeitures, nor does it relate to petitions for the restoration of proceeds of sale pursuant to 19 U.S.C. 1613.

Subpart A—Notice of Claim and Application for Relief

§ 172.1 Notice of liquidated damages or penalty incurred and right to petition for relief.

(a) *Notice of liquidated damages or penalty incurred.* When there is a failure to meet the conditions of any bond posted with Customs or when a violation occurs which results in assessment of a penalty which is secured by a Customs bond, the principal will be notified in writing of any liability for liquidated damages or penalty incurred and a demand will be made for payment. The sureties on such bond will also be notified in writing of any such liability at the same time.

(b) *Notice of right to petition for relief.* The notice will inform the principal that application may be made for relief from payment of liquidated damages or penalty.

§ 172.2 Petition for relief.

(a) *To whom addressed.* Petitions for the cancellation of any claim for liquidated damages or remission or mitigation of a fine or penalty secured by a Customs bond incurred under any law or regulation administered by Customs must be addressed to the Fines, Penalties, and Forfeitures Officer designated in the notice of claim.

(b) *Signature.* The petition for remission or mitigation must be signed by the petitioner, his attorney-at-law or a Customs broker. If the petitioner is a corporation, the petition may be signed by an officer or responsible supervisory official of the corporation, or responsible employee representative of the corporation. Electronic signatures are

acceptable. The deciding Customs officer may, in his or her discretion and with articulable cause, require proof of representation before consideration of any petition.

(c) *Form.* The petition for cancellation, remission or mitigation need not be in any particular form. Customs can require that the petition and any documents submitted in support of the petition be in English or be accompanied by an English translation. The petition must set forth the following:

(1) The date and place of the violation; and

(2) The facts and circumstances relied upon by the petitioner to justify cancellation, remission or mitigation.

(d) *False statement in petition.* A false statement contained in a petition may subject the petitioner to prosecution under the provisions of 18 U.S.C. 1001.

§ 172.3 Filing a petition.

(a) *Where filed.* A petition for relief must be filed by the bond principal with the Fines, Penalties, and Forfeitures office whose address is given in the notice.

(b) *When filed.* Petitions for relief must be filed within 60 days from the date of mailing to the bond principal the notice of claim for liquidated damages or penalty secured by a bond.

(c) *Extensions.* The Fines, Penalties, and Forfeitures Officer is empowered to grant extensions of time to file petitions when the circumstances so warrant.

(d) *Number of copies.* The petition must be filed in duplicate unless filed electronically.

(e) *Exception for certain cases.* If a penalty or claim for liquidated damages is assessed and fewer than 180 days remain from the date of penalty or liquidated damages notice before the statute of limitations may be asserted as a defense, the Fines, Penalties, and Forfeitures Officer may specify in the notice a reasonable period of time, but not less than 7 working days, for the filing of a petition for relief. If a petition is not filed within the time specified, the matter will be transmitted promptly to the appropriate Office of the Chief Counsel for referral to the Department of Justice.

§ 172.4 Demand on surety.

If the principal fails to file a petition for relief or fails to comply in the prescribed time with a decision to mitigate a penalty or cancel a claim for liquidated damages issued with regard to a petition for relief, Customs will make a demand for payment on surety. The surety will then have 60 days from the date of the demand to file a petition for relief.

Subpart B—Action on Petitions

§ 172.11 Petitions acted on by Fines, Penalties, and Forfeitures Officer.

(a) *Mitigation or cancellation authority.* Upon receipt of a petition for relief submitted pursuant to the provisions of section 618 or 623 of the Tariff Act of 1930, as amended (19 U.S.C. 1618 or 19 U.S.C. 1623), the Fines, Penalties, and Forfeitures Officer, notwithstanding any other law or regulation, is empowered to mitigate any penalty or cancel any claim for liquidated damages on such terms and conditions as, under law and in view of the circumstances, he or she will deem appropriate in accordance with appropriate delegations of authority.

(b) *When violation did not occur.* Notwithstanding any other delegation of authority, the Fines, Penalties, and Forfeitures Officer is always empowered to cancel any case without payment of a mitigated or cancellation amount when he or she definitely determines that the act or omission forming the basis of any claim of penalty or claim for liquidated damages did not occur.

[T.D. 00–57, 65 FR 53578, Sept. 5, 2000, as amended by CBP Dec. 12–07, 77 FR 19534, Apr. 2, 2012]

§ 172.12 Petitions acted on at Customs Headquarters.

Upon receipt of a petition for relief filed pursuant to the provisions of section 618 or 623 of the Tariff Act of 1930, as amended (19 U.S.C. 1618 or 19 U.S.C. 1623), involving fines, penalties, and claims for liquidated damages which are outside of his or her delegated authority the Fines, Penalties, and Forfeitures Officer will refer that petition to the Chief, Penalties Branch, Office

of International Trade Regulations and Rulings, CBP Headquarters, who is empowered, notwithstanding any other law or regulation, to mitigate penalties or cancel bond claims on such terms and conditions as, under law and in view of the circumstances, he or she deems appropriate.

[T.D. 00–57, 65 FR 53578, Sept. 5, 2000, as amended by CBP Dec. 12–07, 77 FR 19534, Apr. 2, 2012]

§ 172.13 Limitations on consideration of petitions.

(a) *Cases referred for institution of legal proceedings.* No action will be taken on any petition if the civil liability has been referred to the Department of Justice for institution of legal proceedings. The petition will be forwarded to the Department of Justice.

(b) *Delinquent sureties.* No action will be taken on any petition from a principal or surety if received after the issuance to surety of a notice to show cause pursuant to the provisions of § 113.38(c)(3) of this chapter.

§ 172.14 Headquarters advice.

The advice of the Director, Border Security and Trade Compliance Division, Regulations and Rulings, Office of International Trade, CBP Headquarters, may be sought in any case (except as provided in this section), without regard to delegated authority to act on a petition or offer, when a novel or complex issue concerning a ruling, policy, or procedure is presented concerning a CBP action(s) or potential CBP action(s) relating to penalties secured by bonds (including penalty-based determinations of duty except as provided in this section), claims for liquidated damages or mitigating any claim. This section does not apply to actual duty loss tenders determined by CBP pursuant to § 162.74(c) of this chapter relating to prior disclosure. The request for advice may be initiated by the bond principal, surety or any CBP officer, but must be submitted to the Fines, Penalties, and Forfeitures Officer. The Fines, Penalties, and Forfeitures Officer retains the authority to refuse to forward any request that fails to raise a qualifying issue and to seek legal advice from the appropriate Associate or Assistant Chief Counsel in any case.

Subpart C—Disposition of Petitions

§ 172.21 Decisions effective for limited time.

A decision to mitigate a penalty or to cancel a claim for liquidated damages upon condition that a stated amount is paid will be effective for not more than 60 days from the date of notice to the petitioner of such decision unless the decision itself prescribes a different effective period. If payment of the stated amount is not made or a petition or a supplemental petition is not filed in accordance with regulation, the full penalty or claim for liquidated damages will be deemed applicable and will be enforced by promptly transmitting the matter, after required collection action, if appropriate, to the appropriate office of the Chief Counsel for preparation for referral to the Department of Justice unless other action has been directed by the Commissioner of Customs. Any such case may also be the basis for a sanction action commenced in accordance with regulations in this chapter.

§ 172.22 Decisions not protestable.

(a) *Mitigation decision not subject to protest.* Any decision to remit or mitigate a penalty or cancel a claim for liquidated damages upon payment of a lesser amount is not a protestable decision as defined under the provisions of 19 U.S.C. 1514. Any payment made in compliance with any decision to remit or mitigate a penalty or cancel a claim for liquidated damages upon payment of a lesser amount is not a charge or exaction and therefore is not a protestable action as defined under the provisions of 19 U.S.C. 1514.

(b) *Payment of mitigated or cancellation amount as accord and satisfaction.* Payment of a mitigated or cancellation amount in compliance with an administrative decision on a petition or supplemental petition for relief will be considered an election of administrative proceedings and full disposition of the case. Payment of a mitigated or cancellation amount will act as an accord and satisfaction of the Government claim. Payment of a mitigated or

cancellation amount will never serve as a bar to filing a supplemental petition for relief.

Subpart D—Offers in Compromise

§ 172.31 Form of offers.

Offers in compromise submitted pursuant to the provisions of section 617 of the Tariff Act of 1930, as amended (19 U.S.C. 1617), must expressly state that they are being submitted in accordance with the provisions of that section. The amount of the offer must be deposited with Customs in accordance with the provisions of § 161.5 of this chapter.

§ 172.32 Authority to accept offers.

The authority to accept offers in compromise, subject to the recommendation of the General Counsel of the Treasury or his delegee, resides with the official having authority to decide a petition for relief, except that authority to accept offers in compromise submitted with regard to penalties secured by a bond or claims for liquidated damages which are the subject of a letter to show cause issued to a surety in anticipation of possible action involving nonacceptance of bonds authorized under the provisions of part 113 of this chapter will reside with the designated Headquarters official who issued the show cause letter.

§ 172.33 Acceptance of offers in compromise.

An offer in compromise will be considered accepted only when the offeror is so notified in writing. As a condition to accepting an offer in compromise, the offeror may be required to enter into any collateral agreement or to post any security which is deemed necessary for the protection of the interest of the United States.

Subpart E—Supplemental Petitions for Relief

§ 172.41 Time and place of filing.

If the petitioner is not satisfied with a decision of the deciding official on an original petition for relief, a supplemental petition may be filed with the Fines, Penalties, and Forfeitures Officer having jurisdiction in the port where the violation occurred. The petitioner must file such a supplemental petition within 60 days from the date of notice to the petitioner of the decision from which further relief is requested or within 60 days following an administrative or judicial decision with respect to issues serving as the basis for the claim for liquidated damages (whichever is later) unless another time to file such a supplemental petition is prescribed in the decision. A supplemental petition may be filed whether or not the mitigated amount designated in the decision on the original petition is paid.

§ 172.42 Supplemental petition decision authority.

(a) *Decisions of Fines, Penalties, and Forfeitures Officers.* Supplemental petitions filed on cases where the original decision was made by the Fines, Penalties, and Forfeitures Officer, will be initially reviewed by that official. The Fines, Penalties, and Forfeitures Officer may choose to grant more relief and issue a decision indicating additional relief to the petitioner. If the petitioner is dissatisfied with the further relief granted or if the Fines, Penalties, and Forfeitures Officer decides to grant no further relief, the supplemental petition will be forwarded to a designated Headquarters official assigned to a field location for review and decision.

(b) *Decisions of CBP Headquarters.* Supplemental petitions filed on cases where the original decision was made by the Chief, Penalties Branch, Regulations and Rulings, Office of International Trade, CBP Headquarters, will be forwarded to the Director, Border Security and Trade Compliance Division, Regulations and Rulings, for review and decision.

(c) *Authority of Executive Director.* Any authority given to any Headquarters official by this part may also be exercised by the Executive Director, Regulations and Rulings, Office of International Trade, or his designee.

§ 172.43 Waiver of statute of limitations.

The deciding Customs official always reserves the right to require a waiver of the statute of limitations executed

by the charged party or parties as a condition precedent before accepting a supplemental petition in any case in which less than one year remains before the statute will be available as a defense to all or part of that case.

PART 173—ADMINISTRATIVE REVIEW IN GENERAL

Sec.

AUTHORITY: 19 U.S.C. 66, 1501, 1520, 1624.

SOURCE: T.D. 70–181, 35 FR 13429, Aug. 22, 1970, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 173 appear by CBP Dec. No. 16–26, 81 FR 93024, Dec. 20, 2016.

§ 173.0 Scope.

This part deals with the general authority of review, the authority to reliquidate voluntarily, the authority to correct for clerical error, mistake of fact, or other inadvertence under section 520(c)(1), Tariff Act of 1930, as amended, for entries made before December 18, 2004, and the authority to review an entry of household or personal effects.

[T.D. 70–181, 35 FR 13429, Aug. 22, 1970, as amended by CBP Dec. 11–02, 76 FR 2577, Jan. 14, 2011]

§ 173.1 Authority to review for error.

Center directors have broad responsibility and authority to review transactions to ensure that the rate and amount of duty assessed on imported merchandise is correct and that the transaction is otherwise in accordance with the law. This authority extends to errors in the construction of a law and to errors adverse to the Government as well as the importer.

[T.D. 70–181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 79–221, 44 FR 46830, Aug. 9, 1979]

§ 173.2 Transactions which may be reviewed and corrected.

The Center director may review transactions for correctness, and take appropriate action under his general authority to correct errors, including those in appraisement where appropriate, at the time of:

(a) Liquidation of an entry;

(b) Voluntary reliquidation completed within 90 days after liquidation;

(c) Voluntary correction of an exaction within 90 days after the exaction was made;

(d) Reliquidation made pursuant to a valid protest covering the particular merchandise as to which a change is in order; or

(e) Modification, pursuant to a valid protest, of a transaction or decision which is neither a liquidation or reliquidation.

§ 173.3 Voluntary reliquidation.

(a) *Authority to reliquidate.* Within 90 days from the date notice of deemed liquidation or notice of the original liquidation is given to the importer, consignee, or agent, the Center director may reliquidate on his own initiative a liquidation or a reliquidation to correct errors in appraisement, classification, or any other element entering into the liquidation or reliquidation, including errors based on misconstruction of applicable law. A voluntary reliquidation may be made even though a protest has been filed, and whether the error is discovered by the Center director or is brought to his attention by an interested party.

(b) *Notice of reliquidation.* Notice of a voluntary reliquidation will be given in accordance with the requirements for giving notice of the original liquidation.

[T.D. 70–181, 35 FR 13429, Aug. 22, 1970, as amended by CBP Dec. 07–62, 72 FR 40737, July 25, 2007; CBP Dec. 11–02, 76 FR 2577, Jan. 14, 2011]

§ 173.4 Correction of clerical error, mistake of fact, or inadvertence.

(a) *Authority to review and correct entries of merchandise made, or withdrawn from warehouse for consumption, before December 18, 2004.* Even though a valid protest was not filed, the Center director, upon timely application and for

entries of merchandise made, or withdrawn from warehouse for consumption, before December 18, 2004, may correct pursuant to section 520(c)(1), Tariff Act of 1930, as amended, a clerical error, mistake of fact, or other inadvertence meeting the requirements of paragraph (a)(1) of this section, by reliquidation or other appropriate action.

(1) *Transactions that may be corrected.* Correction may be made to any entry, liquidation, or other customs transaction made before December 18, 2004, if the clerical error, mistake of fact, or other inadvertence:

(i) Does not amount to an error in the construction of a law;

(ii) Is adverse to the importer; and

(iii) Is manifest from the record or established by documentary evidence.

(2) *Limitation on time for application.* A clerical error, mistake of fact, or other inadvertence meeting the requirements of paragraph (a)(1) of this section must be brought to the attention of the Center director or other appropriate CBP officer within 1 year after the date of liquidation or exaction. The party requesting reliquidation under this section must state, to the best of his or her knowledge, whether the entry for which correction is requested is the subject of a drawback claim, or whether the entry has been referenced on a certificate of delivery or certificate of manufacture and delivery so as to enable a party to make such entry the subject of drawback (*see* §§ 181.50(b) and 191.81(b) of this chapter).

(b) *Entries of merchandise made, or withdrawn from warehouse for consumption, on or after December 18, 2004.* For merchandise entered, or withdrawn from warehouse for consumption, on or after December 18, 2004, CBP does not have the authority, in situations where a valid protest has not been filed, to reliquidate an entry to correct a clerical error, mistake of fact, or other inadvertence. For merchandise entered or withdrawn from warehouse for consumption on or after December 18, 2004, and except as provided for in sections 501 (relating to voluntary reliquidations), 516 (relating to petitions by domestic interested parties), and 520 (related to refunds) of the Tariff Act of 1930, as amended, a CBP decision involving any clerical error, mistake of fact, or other inadvertence, whether or not resulting from or contained in an electronic submission, that is adverse to the importer in any entry, liquidation or reliquidation, may be corrected by protest only. *See* 19 CFR 174.11.

(c) *''Liquidation'' includes reliquidation.* ''Liquidation,'' as used in this section, includes reliquidation of an entry.

[CBP Dec. 11–02, 76 FR 2577, Jan. 14, 2011]

§ 173.4a Refund of excess duties, fees, charges, or exaction paid prior to liquidation.

Pursuant to section 520(a)(4), Tariff Act of 1930, as amended (19 U.S.C. 1520(a)(4)), whenever an importer of record declares or it is ascertained that excess duties, fees, charges, or exactions have been deposited or paid, the Center director may, prior to liquidation of an entry or reconciliation, take appropriate action to refund the deposit or payment of excess duties, fees, charges, or exactions.

[CBP Dec. No. 16–25, 81 FR 89381, Dec. 12, 2016]

§ 173.5 Review of entry covering household or personal effects.

An error in the liquidation of an entry covering household or personal effects may be corrected by the port director even though a timely protest was not filed if entry was made before December 18, 2004 and an application for refund is filed with the port director within 1 year after the date of the entry and no waiver of compliance with applicable regulations is involved other than a waiver which the port director has authority to grant. Where the port director has no authority to grant the waiver, the application will be referred to the Commissioner of CBP.

[T.D. 70–181, 35 FR 13429, Aug. 22, 1970, as amended by CBP Dec. 11–02, 76 FR 2577, Jan. 14, 2011]

PART 174—PROTESTS

Sec.

Subpart B—Protests

Subpart C—Review and Disposition of Protests

AUTHORITY: 19 U.S.C. 66, 1514, 1515, 1624.
Section 174.21 also issued under 19 U.S.C. 1499.

SOURCE: T.D. 70–181, 35 FR 13429, Aug. 22, 1970, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 174 appear by CBP Dec. No. 16–26, 81 FR 93025, Dec. 20, 2016.

§ 174.0 Scope.

This part deals with the administrative review of decisions of the port director and Center director, including the requirements for the filing of protests against such decisions, amendment of protests, review and accelerated disposition, and provisions dealing with further administrative review. Provisions applicable to Canadian and Mexican exporters and producers regarding administrative review and appeal of adverse marking decisions under the North American Free Trade Agreement are contained in part 181 of this chapter.

[T.D. 70–181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 94–1, 58 FR 69472, Dec. 30, 1993]

Subpart A—General Provisions

§ 174.1 Definitions.

When used in this part, the following term shall have the meaning indicated:

Further review. ''Further review'' means review of the decision which is the subject of the protest by Customs officers on a level higher than the district, and in Region II by Customs officers who did not participate directly in the decision which is the subject of the protest.

[T.D. 70–181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 95–77, 60 FR 50020, Sept. 27, 1995]

§ 174.2 Applicability of provisions.

(a) *In general.* The provisions of this part shall be applicable to protests against decisions involving:

(1) Articles excluded from entry or entered or withdrawn from warehouse for consumption on or after October 1, 1970;

(2) Articles entered or withdrawn from warehouse for consumption prior to October 1, 1970, for which appraisement has not become final by October 1, 1970;

(3) Articles entered or withdrawn from warehouse for consumption prior to October 1, 1970, for which the appraisement has become final but with respect to which the entry has not been liquidated prior to October 1, 1970;

(4) Articles entered or withdrawn from warehouse for consumption with respect to which the entry has been liquidated prior to October 1, 1970, if

(i) The time for filing a protest has not expired and a protest has not been filed prior to October 1, 1970; or

(ii) A protest has been filed and has not been disallowed in whole or in part before October 1, 1970; or

(5) Articles excluded from entry before October 1, 1970, with respect to which

(i) The time for filing a protest has not expired and a protest has not been filed prior to October 1, 1970; or

(ii) A protest has been filed and has not been disallowed in whole or in part before October 1, 1970.

(b) *Limitation*—(1) *Appraisement not final.* When the appraisement of articles entered or withdrawn from warehouse for consumption prior to October 1, 1970, is not final by October 1, 1970, because an appeal for reappraisement was timely filed prior to such date, the provisions of this part relating to protests shall be applicable to a protest

filed after the court's decision on the appeal to reappraisement has become final. Such protest shall not include issues which were raised or could have been raised on the appeal for reappraisement.

(2) *Appraisement final.* When the appraisement of articles entered or withdrawn from warehouse for consumption prior to October 1, 1970, has become final prior to October 1, 1970, but the entry has not been liquidated by such date, a protest filed in accordance with the provisions of this part after such liquidation shall not include issues which were raised or could have been raised on an appeal to reappraisement before the appraisement became final.

(3) *Protest not disallowed.* When a protest filed prior to October 1, 1970, has not been disallowed in whole or in part before such date, the provisions of this part shall be applicable to such protests. The time within which any action must be taken under the provisions of this part with respect to such a protest shall commence on the date the protest was in fact filed.

[T.D. 70–181, 35 FR, 13429, Aug. 22, 1970, as amended by T.D. 71–60, 36 FR 3116, Feb. 18, 1971]

§ 174.3 Power of attorney to file protest.

(a) *When required.* When a protest is filed by a person acting as agent or attorney in fact for the principal, other than an attorney at law or a customhouse broker or his authorized employee acting in his behalf, there shall have been filed or shall be filed with the protest a power of attorney which either specifically authorizes such agent to make, sign, and file the protest or grants unlimited authority to such agent. No power of attorney to file a protest shall be required in the following cases:

(1) *Attorney at law.* When the protest is filed by an attorney at law as agent or attorney for the principal, the signing of the protest as agent or attorney for the principal by the attorney at law shall be considered a declaration by him that he is currently a member in good standing of the highest court of a State, possession, territory, commonwealth, or the District of Columbia, and has been authorized to sign and file the protest for the principal.

(2) *Customhouse broker or his employee.* When a protest is filed by a customhouse broker, or an authorized employee acting in his behalf, as agent or attorney in fact for the principal, the signing of the protest by the customhouse broker or an authorized employee in his behalf shall be considered a declaration by the broker that he or the employee signing in his behalf, is authorized to sign and file the protest for the principal. The customhouse broker shall have, however, a general power of attorney to transact Customs business for the principal on Customs Form 5291.

(b) *Execution of power of attorney*—(1) *Corporation.* A corporate power of attorney to file protests shall be signed by a duly authorized officer or employee of the corporation. If the Center director is otherwise satisfied as to the authority of such corporate officer or employee to grant such power of attorney, compliance with the requirements of § 141.37 of this chapter may be waived with respect to such power.

(2) *Partnership.* A partnership power of attorney to file protests may be signed by one member in the name of the partnership, provided the power recites the name of all the members.

(c) *Duration.* Powers of attorney issued by a partnership shall be limited to a period not to exceed 2 years from the date of receipt thereof by the Center director. All other powers of attorney may be granted for an unlimited period.

(d) *Revocation.* Any power of attorney shall be subject to revocation at any time by written notice given to and received by CBP, either at the port of entry or electronically.

(Secs. 514, 515, 46 Stat. 734, as amended; 19 U.S.C. 1514, 1515)

[T.D. 70–181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 70–224, 35 FR 16243, Oct. 16, 1970; T.D. 73–175, 38 FR 17487, July 2, 1973; CBP Dec. No. 16–26, 81 FR 93025, Dec. 20, 2016]

Subpart B—Protests

§ 174.11 Matters subject to protest.

The following decisions of CBP, including the legality of all orders and findings entering into those decisions,

may be protested under the provisions of section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514):

(a) *Clerical errors, mistakes of fact, and other inadvertences.* Except as provided for in sections 501 (relating to voluntary reliquidations), 516 (relating to petitions by domestic interested parties), and 520 (related to refunds) of the Tariff Act of 1930, as amended), any clerical error, mistake of fact, or other inadvertence, whether or not resulting from or contained in an electronic submission, that is adverse to the importer in any entry, liquidation or reliquidation is subject to protest. In addition, any entry, liquidation, or other CBP transaction that occurred prior to December 18, 2004, also may be the subject of a reliquidation request made pursuant to the terms set forth in §173.4 (19 CFR 173.4).

(b) *Administrative decisions.* CBP administrative decisions involving the following subject matters are subject to protest:

(1) The appraised value of merchandise;

(2) The classification and rate and amount of duties chargeable;

(3) All charges or exactions of whatever character, including the accrual of interest, within the jurisdiction of the Secretary of Homeland Security or the Secretary of the Treasury;

(4) The exclusion of merchandise from entry, delivery, or a demand for redelivery to CBP custody under any provision of the customs laws except a determination that may be appealed under 19 U.S.C. 1337;

(5) The liquidation or reliquidation of an entry, or any modification of an entry;

(6) The refusal to pay a claim for drawback;

(7) The refusal to reliquidate an entry made before December 18, 2004, under section 520(c), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)); or

(8) The refusal to reliquidate an entry under section 520(d), Tariff Act of 1930, as amended (19 U.S.C. 1520(d)).

[CBP Dec. 11–02, 76 FR 2577, Jan. 14, 2011]

§174.12 Filing of protests.

(a) *By whom filed.* Protests may be filed by:

(1) The importer or consignee shown on the entry papers, or their sureties;

(2) Any person paying or receiving a refund of any charge or exaction;

(3) Any person seeking entry or delivery;

(4) Any person filing a claim for drawback;

(5) With respect to a determination of origin under subpart G of part 181 of this chapter, any exporter or producer of the merchandise subject to that determination, if the exporter or producer completed and signed a Certificate of Origin covering the merchandise as provided for in §181.11(a) of this chapter; or

(6) Any authorized agent of any of the persons described in paragraphs (a)(1) through (5) of this section, subject to the provisions of §174.3.

(b) *Form and number of copies.* A written protest against a decision of CBP must be filed in quadruplicate on CBP Form 19 or a form of the same size clearly labeled ''Protest'' and setting forth the same content in its entirety, in the same order, addressed to CBP. All schedules or other attachments to a protest (other than samples or similar exhibits) must also be filed in quadruplicate. A protest against a decision of CBP may also be transmitted electronically pursuant to any electronic data interchange system authorized by CBP for that purpose. Electronic submissions are not required to be filed in quadruplicate.

(c) *Identity of filer.* The identity of the person filing the protest or his agent, or attorney shall be noted on the protest. This may be accomplished through a signature which is handwritten in ink, stamped, typed, facsimile, telefax, or by electronic certification in CBP Automated Commercial Environment (ACE) or any other CBP-authorized electronic data interchange system. If the person filing the protest is not the importer of record or consignee, the filer shall include his address and importer number, if any.

(d) *Place of filing.* Protests shall be filed with CBP, either at the port of entry or electronically.

(e) *Time of filing.* Protests must be filed, in accordance with section 514, Tariff Act of 1930, as amended (19

U.S.C. 1514), within 90 days of a decision relating to an entry made before December 18, 2004, or within 180 days of a decision relating to an entry made on or after December 18, 2004, after any of the following:

(1) The date of notice of liquidation or reliquidation, or the date of liquidation or reliquidation, as determined under §§ 159.9 or 159.10 of this chapter;

(2) The date of the decision, involving neither a liquidation nor reliquidation, as to which the protest is made (for example: The date of an exaction; the date of written notice excluding merchandise from entry, delivery or demanding redelivery to CBP custody under any provision of the customs laws; the date of written notice of a denial of a claim filed under section 520(d), Tariff Act of 1930, as amended (19 U.S.C. 1520(d)), or; within 90 days of the date of denial of a petition filed pursuant to section 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)), relating to an entry made before December 18, 2004); or

(3) The date of mailing of notice of demand for payment against a bond in the case of a surety which has an unsatisfied legal claim under a bond written by the surety.

(f) *Date of filing.* The date on which a protest is received by the Customs officer with whom it is required to be filed shall be deemed the date on which it is filed.

(g) *Return of fifth copy.* If a fifth copy of the protest is presented for the purpose of having recorded thereon the date of its receipt and the protest number assigned thereto, such information shall be recorded thereon and the fifth copy shall be returned to the person filing the protest.

[T.D. 70–181, 35 FR 13429, Aug. 22, 1970]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 174.12, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 174.13 Contents of protest.

(a) *Contents, in general.* A protest shall contain the following information:

(1) The name and address of the protestant, *i.e.*, the importer of record or consignee, and the name and address of his agent or attorney if signed by one of these;

(2) The importer number of the protestant. If the protestant is represented by an agent having power of attorney, the importer number of the agent shall also be shown;

(3) The number and date of the entry;

(4) The date of liquidation of the entry, or the date of a decision not involving a liquidation or reliquidation;

(5) A specific description of the merchandise affected by the decision as to which protest is made;

(6) The nature of, and justification for the objection set forth distinctly and specifically with respect to each category, payment, claim, decision, or refusal;

(7) The date of receipt and protest number of any protest previously filed that is the subject of a pending application for further review pursuant to subpart C of this part and that is alleged to involve the same merchandise and the same issues, if the protesting party requests disposition in accordance with the action taken on such previously filed protest;

(8) If another party has not filed a timely protest, the surety's protest shall certify that the protest is not being filed collusively to extend another authorized person's time to protest; and

(9) A declaration, to the best of the protestant's knowledge, as to whether the entry is the subject of drawback, or whether the entry has been referenced on a certificate of delivery or certificate of manufacture and delivery so as to enable a party to make such entry the subject of drawback (see §§ 181.50(b) and 191.81(b) of this chapter).

(b) *Multiple entries.* A single protest may be filed with respect to more than one entry with CBP, either at any port or electronically if all such entries involve the same protesting party, and if the same category of merchandise and a decision or decisions common to all entries are the subject of the protest. In such circumstances, the entry numbers, dates of entry, and dates of liquidation of all such entries should be set forth as an attachment to the protest.

(c) *Optional designation for refunds.* If desired by the importer/consignee the

statement ''any refunds with respect to the entry under protest shall be mailed to the importer/consignee in care of _____''

(Name and Address of Agent)

may be appended to the protest. This designation supersedes any existing designation previously authorized on Customs Form 4811.

[T.D. 70–181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 80–271, 45 FR 75642, Nov. 17, 1980; T.D. 98–16, 63 FR 11005, Mar. 5, 1998; T.D. 99–64, 64 FR 43267, Aug. 10, 1999]

§ 174.14 Amendment of protests.

(a) *Time for filing.* A protest may be amended at any time prior to the expiration of the period within which the protest may be filed under § 174.12(e). The amendment may assert additional claims pertaining to the administrative decision that is the subject of the protest, or may challenge an additional administrative decision relating to the same category of merchandise that is the subject of the protest. For the presentation of additional grounds or arguments in support of a valid protest after the applicable protest period set forth in § 174.12(e) has expired, see § 174.28.

(b) *Form and number of copies of amendment.* If the protest was not filed electronically, an amendment to the protest must be filed in quadruplicate on CBP Form 19 or on a form of the same size, clearly labeled ''Amendment to Protest'' at the top of the form. Schedules or other attachments (other than samples or similar exhibits) must also be filed in quadruplicate. A protest that was transmitted to CBP electronically may be amended only through an electronic data interchange system authorized by CBP for that purpose. Electronic submissions are not required to be filed in quadruplicate.

(c) *Contents.* An amendment to a protest shall contain the following information:

(1) The name, address, and importer number of the protesting party, *i.e.*, the importer of record or consignee, and the name and address of his agent or attorney if filed by one of these;

(2) The number and date of filing of the original protest;

(3) A specific description of the merchandise affected by the decision as to which the amendment to the protest is filed;

(4) The nature of and justification for the objection raised by the amendment set forth distinctly and specifically with respect to each category, payment, claim, decision, or refusal; and

(5) The date of receipt and protest number of any protest previously filed that is the subject of a pending application for further review and that is alleged to involve the same merchandise and the same issues involved in the amendment.

(d) *Identification of filer.* An amendment to a protest may be filed only by the person who originally filed such protest or his agent or attorney subject to the provisions of § 174.3. The identity of the filer shall be noted on the amendment to a protest. Any acceptable method used to identify the filer described in § 174.12(c) as being acceptable on a protest will be acceptable on an amendment to a protest.

(e) *Place and date of filing.* An amendment to a protest shall be filed with CBP, either at the port of entry or electronically . The amendment shall be deemed filed on the date it is received by the Customs officer.

(f) *Return of fifth copy.* If a fifth copy of the amendment is presented for the purpose of having recorded thereon the date of its receipt, such information shall be recorded thereon and the fifth copy shall be returned to the person filing the amendment.

[T.D. 70–181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 94–55, 59 FR 34971, July 8, 1994; CBP Dec. 11–02, 76 FR 2578, Jan. 14, 2011; CBP Dec. No. 16–26, 81 FR 93025, Dec. 20, 2016]

§ 174.15 Consolidation of protests filed by different parties.

(a) *General.* Subject to paragraph (b) of this section, separate protests relating to one category of merchandise covered by an entry shall be considered as a single protest whether filed as a single protest or filed as separate protests relating to the same category by one or more parties in interest or an authorized agent.

(b) *NAFTA transactions.* The following rules shall apply to a consolidation of

multiple protests concerning a determination of origin under subpart G of part 181 of this chapter if one of the protests is filed by or on behalf of an exporter or producer described in §174.12(a)(5) of this part:

(1) If consolidation under paragraph (a) of this section is pursuant to specific written requests for consolidation received from all interested parties who filed protests under this part, those interested parties shall be deemed to have waived their rights to confidentiality as regards business information within the meaning of §181.121 of this chapter. In such cases, a separate notice of the decision will be issued to each interested party under this part but without regard to whether the notice reflects confidential business information obtained from one but not all of those interested parties.

(2) If consolidation under paragraph (a) of this section is done by the port director or Center director, before January 19, 2017, or the Center director on or after January 19, 2017, in the absence of specific written requests for consolidation from all interested parties who filed protests under this part, no waiver of confidentiality by those interested parties shall be deemed to have taken place. In such cases, a separate notice of the decision will be issued to each interested party and each such notice shall adhere to the principle of confidentiality set forth in §181.121 of this chapter.

[T.D. 94–1, 58 FR 69472, Dec. 30, 1993; CBP Dec. No. 16–26, 81 FR 93025, Dec. 20, 2016]

§174.16 Limitation on protests after reliquidation.

A protest shall not be filed against the reliquidation decision of the port director or Center director made before January 19, 2017, or the reliquidation decision of the Center director made on or after January 19, 2017, upon any question not involved in the reliquidation.

[CBP Dec. No. 16–26, 81 FR 93025, Dec. 20, 2016]

Subpart C—Review and Disposition of Protests

§174.21 Time for review of protests.

(a) *In general.* Except as provided in paragraph (b) of this section, the Center director shall review and act on a protest filed in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), within 2 years from the date the protest was filed. If several timely filed protests are treated as part of a single protest pursuant to §174.15, the 2-year period shall be deemed to run from the date the last such protest was filed in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514).

(b) *Protests relating to exclusion of merchandise.* If the protest relates to an administrative action involving exclusion of merchandise from entry or delivery under any provision of the Customs laws, the Center director shall review and act on a protest filed in accordance with section 514(a)(4), Tariff Act of 1930, as amended (19 U.S.C. 1514(a)(4)), within 30 days from the date the protest was filed. Any protest filed pursuant to this paragraph shall clearly so state on its face. Any protest filed pursuant to this paragraph which is not allowed or denied in whole or in part before the 30th day after the day on which the protest was filed shall be treated as having been denied on such 30th day for purposes of 28 U.S.C. 1581.

[T.D. 74–37, 39 FR 2470, Jan. 22, 1974, as amended by T.D. 99–65, 64 FR 43612, Aug. 11, 1999]

§174.22 Accelerated disposition of protest.

(a) *Request for accelerated disposition.* Accelerated disposition of a protest filed in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514) may be obtained at any time after 90 days from the filing of such protest for entries made before December 18, 2004, or at any time concurrent with or following the filing of the protest for entries made on or after December 18, 2004, by filing by registered or certified mail a written request for accelerated disposition with the port director, Center director, or other CBP officer with whom the protest was filed.

(b) *Contents of request.* A request for accelerated disposition of protest shall contain the following information:

(1) The name, address, and importer number of the protestant, *i.e.*, the importer of record or consignee, and the name and address of his agent or attorney if filed by one of these; and

(2) The date of filing and number of the protest for which accelerated disposition is requested.

(c) *Review following request.* The Center director shall review the protest which is the subject of the request within 30 days from the date of mailing of a request for accelerated disposition filed in accordance with the provisions of this section, and may allow or deny the protest in whole or in part.

(d) *Failure to allow or deny protest within 30-day period.* If the Center director fails to allow or deny a protest which is the subject of a request for accelerated disposition within 30 days from the date of mailing of such request, the protest shall be deemed to have been denied at the close of the 30th day following such date of mailing.

(e) *Multiple protests.* If several protests by different persons are timely filed and treated as part of a single protest pursuant to §174.15, a request for accelerated disposition filed by any one of the protesting parties shall be treated as a request for accelerated disposition by all the parties.

[T.D. 70–181, 35 FR 13429, Aug. 22, 1970, as amended by CBP Dec. 11–02, 76 FR 2578, Jan. 14, 2011]

§174.23 Further review of protests.

A protesting party may seek further review of a protest in lieu of review by the Center director by filing, on the form prescribed in §174.25, an application for such review within the time allowed and in the manner prescribed by §174.12 for the filing of a protest. The filing of an application for further review shall not preclude a preliminary examination by the Center director for the purpose of determining whether the protest may be allowed in full. If such preliminary examination indicates that the protest would be denied in whole or in part by the Center director in the absence of an application for further review; however, he shall forward the protest and application for consideration in accordance with §174.26.

[CBP Dec. No. 16–26, 81 FR 93025, Dec. 20, 2016]

§174.24 Criteria for further review.

Further review of a protest which would otherwise be denied by the Center director shall be accorded a party filing an application for further review which meets the requirements of §174.25 when the decision against which the protest was filed:

(a) Is alleged to be inconsistent with a ruling of the Commissioner of CBP or his designee, or with a decision made by CBP with respect to the same or substantially similar merchandise;

(b) Is alleged to involve questions of law or fact which have not been ruled upon by the Commissioner of CBP or his designee or by the Customs courts;

(c) Involves matters previously ruled upon by the Commissioner of CBP or his designee or by the Customs courts but facts are alleged or legal arguments presented which were not considered at the time of the original ruling; or

(d) Is alleged to involve questions which the Headquarters Office, U.S. Customs and Border Protection, refused to consider in the form of a request for internal advice pursuant to §177.11(b)(5) of this chapter.

[T.D. 70–181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 71–133, 36 FR 8732, May 12, 1971; T.D. 75–186, 40 FR 31928, July 30, 1975]

§174.25 Application for further review.

(a) *Form and number of copies.* An application for further review may be filed on the same Customs Form 19 used for filing the protest for which further review is requested, or on a separate Customs Form 19. In either case, the Customs Form 19 shall be filed in quadruplicate. If a fifth copy of the application is presented for the purpose of having recorded thereon the date of its receipt, such information shall be recorded thereon and the fifth copy shall be returned to the person filing the application.

(b) *Contents.* An application for further review shall contain the following information:

(1) Information identifying the protest to which it applies and the protesting party and his importer number;

(2) Allegations that the protesting party:

(i) Has not previously received an adverse administrative decision from the Commissioner of Customs or his designee nor has presently pending an application for an administrative decision on the same claim with respect to the same category of merchandise; and

(ii) Has not received a final adverse decision from the Customs courts on the same claim with respect to the same category of merchandise and does not have an action involving such a claim pending before the Customs courts.

(3) A statement of any facts or additional legal arguments, not part of the record, upon which the protesting party relies, including the criterion set forth in §174.24 which justifies further review. A showing of facts that support the allegation of a criterion set forth in §174.24(c) will constitute a ground for the granting of further review in circumstances where the applicant's inability to affirmatively make the allegations described in paragraph (b)(2) of this section would otherwise result in its denial.

[T.D. 70–81, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 78–99, 43 FR 13062, Mar. 29, 1978]

§174.26 Review of protest after application for further review.

(a) *Protest allowed.* If upon examination of a protest for which an application for further review was filed the Center director is satisfied that the claim is valid, he shall allow the protest.

(b) *Other protests.* If upon examination of a protest for which an application for further review was filed the Center director decides that the protest in his judgment should be denied in whole or in part, the Center director will forward the application together with the protest and appropriate documents to be reviewed as follows:

(1) A protest shall be reviewed by the Commissioner of Customs or his designee under Customs Delegation Order No. 1 (Revision 1), T.D. 69–126 (34 FR 8208), as amended from time to time, if the protest and application for review raise an issue involving either:

(i) Lack of uniformity of treatment;

(ii) The existence of an established and uniform practice;

(iii) The interpretation of a court decision or ruling of the Commissioner of Customs or his designee; or

(iv) Questions which have not been the subject of a Headquarters, U.S. Customs Service ruling or court decision.

(2) All other protests shall be reviewed by a designee of the Center director who did not participate directly in the decision which is the subject of the protest.

§174.27 Disposition after further review.

Upon completion of further review, the protest and appropriate documents forwarded for review shall be returned to the Center director together with directions for the disposition of the protest.

§174.28 Consideration of additional arguments.

In determining whether to allow or deny a protest filed within the time allowed, a reviewing officer may consider alternative claims and additional grounds or arguments submitted in writing by the protesting party with respect to any decision which is the subject of a valid protest at any time prior to disposition of the protest. In any case in which alternative claims or additional grounds or arguments are submitted orally, they shall be considered in the allowance or denial of the protest only if submitted in writing in conjunction with, or no later than 60 days after, such oral submission.

(R.S. 251, as amended, secs. 514, 624, 46 Stat. 734, as amended, 759; 19 U.S.C. 66, 1514, 1624)

[T.D. 71–15, 36 FR 778, Jan. 16, 1971]

§174.29 Allowance or denial of protests.

The Center director shall allow or deny in whole or in part a protest filed in accordance with section 514, Tariff Act of 1930, as amended, (19 U.S.C. 1514) within 2 years from the date the protest was filed. If the protest is allowed in whole or in part the Center director shall remit or refund any duties,

charge, or exaction found to have been collected in excess, or pay any drawback found due. If a protest of an exporter or producer under §174.12(a)(5) of this part is allowed in whole or in part, any monies found to have been collected in excess shall be refunded to the party who paid the monies even if such party did not file an appropriate and timely protest under this part. If the protest is denied in whole or in part the Center director shall give notice of the denial in the form and manner prescribed in §174.30.

[T.D. 70–181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 94–1, 58 FR 69472, Dec. 30, 1993]

§174.30 Notice of denial of protest.

(a) *Issuance of notice.* Notice of denial of a protest shall be mailed to any person filing a protest or his agent in all cases other than those in which accelerated disposition was requested and in which no action has been taken within 30 days after the date of mailing of the request. The notice shall include a statement of the reasons for the denial, as well as a statement informing the protesting party of the right to file a civil action contesting the denial of the protest under section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514). For purposes of section 515(a), Tariff Act of 1930, as amended (19 U.S.C. 1515(a)), the date appearing on such notice shall be deemed the date on which such notice was mailed.

(b) *Substitution of persons designated to receive notice.* The importer of record or consignee may give notice to CBP, either at the port of entry or electronically, instructing that notice of denial of any protest involving merchandise imported in his name or on his behalf shall be mailed to a person other than the person filing such protest or the designee of such person. Such notice of substitution shall be filed in quadruplicate and shall identify the protest by number and date of receipt. Notice of denial of a protest shall be mailed to the substituted person so designated only if the notice of substitution is received by the CBP prior to a denial by him of such protest.

(c) *Notification of payment of increased duties.* The Center director shall note on the notice of denial of a protest the payment of all liquidated duties, charges, or exactions, if he has actual knowledge of such payment at the time that the protest is denied.

[T.D. 70–181, 35 FR 13429, Aug. 22, 1970, as amended by T.D. 80–271, 45 FR 75642, Nov. 17, 1980; CBP Dec. No. 16–26, 81 FR 93025, Dec. 20, 2016]

§174.31 Judicial review of denial of protest.

Any person whose protest has been denied, in whole or in part, may contest the denial by filing a civil action in the United States Court of International Trade in accordance with 28 U.S.C. 2632 within 180 days after—

(a) The date of mailing of notice of denial, in whole or in part, of a protest,

(b) The date a protest, for which accelerated disposition was requested, is deemed to have been denied in accordance with §174.22(d), or

(c) The date that a protest is deemed denied in accordance with §174.21(b), or §151.16(g) of this chapter.

[T.D. 78–17, 43 FR 1938, Jan. 13, 1978, as amended by T.D. 85–90, 50 FR 21430, May 24, 1985; T.D. 99–65, 64 FR 43612, Aug. 11, 1999]

§174.32 Publication.

Within 90 calendar days after issuing a protest review decision, CBP will publish the decision in the Customs Bulletin or otherwise make it available for public inspection. Disclosure is governed by 6 CFR part 5 and 19 CFR part 103.

[CBP Dec. 11–02, 76 FR 2578, Jan. 14, 2011]

PART 175—PETITIONS BY DOMESTIC INTERESTED PARTIES

Sec.

AUTHORITY: R.S. 251, as amended, secs. 516, 624, 46 Stat. 735, as amended, 759; 19 U.S.C. 66, 1516, 1624, unless otherwise noted.

Section 175.21 also issued under 5 U.S.C. 552.

SOURCE: T.D. 70–181, 35 FR 13432, Aug. 22, 1970, unless otherwise noted.

§ 175.0 Scope.

This part sets forth the procedures applicable to requests by domestic interested parties for the classification and rate of duty applicable to designated imported merchandise, and to petitions alleging that the appraised value is too low, that the classification is not correct, or that the proper rate of duty is not being assessed upon designated imported merchandise which is claimed to be similar to the class or kind of merchandise manufactured, produced, or wholesaled by the petitioner.

[T.D. 70–181, 35 FR 13432, Aug. 22, 1970, as amended by T.D. 80–271, 45 FR 75642, Nov. 17, 1980]

Subpart A—Request for Classification, Appraised Value and Rate of Duty

§ 175.1 Submission of request.

Written requests pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), for information as to the classification, appraised value and rate of duty imposed upon designated imported merchandise shall be submitted in triplicate to the Commissioner of Customs.

[T.D. 70–181, 35 FR 13432, Aug. 22, 1970, as amended by T.D. 80–271, 45 FR 75642, Nov. 17, 1980]

§ 175.2 Contents of request.

The request for information shall contain the following information:

(a) The name of the person making the request, his principal place of business, and the fact that he is a domestic interested party;

(b) A designation of the imported merchandise for which the classification, appraised value and rate is requested; and

(c) A showing of the class or kind of merchandise manufactured, produced, or sold by him which is claimed to be similar to the imported merchandise in such detail as will permit the Commissioner to establish the similarity between the domestic and foreign merchandise.

[T.D. 70–181, 35 FR 13432, Aug. 22, 1970, as amended by T.D. 80–271, 45 FR 75642, Nov. 17, 1980]

§ 175.3 Domestic interested party.

''Domestic interested party'', when used in this part, means:

(a) A manufacturer, producer, or wholesaler in the United States of a like product,

(b) A certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a like product, or

(c) A trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States.

[T.D. 80–271, 45 FR 75642, Nov. 17, 1980]

Subpart B—Petitions

§ 175.11 Filing of petitions.

(a) *Number of copies and where filed.* All petitions pursuant to section 516 Tariff Act of 1930, as amended (19 U.S.C. 1516), shall be submitted to the Commissioner of Customs in triplicate.

(b) *By whom filed.* Petitions may be filed by the domestic interested parties

themselves, or by duly authorized attorneys or agents on their behalf. A petition filed by a corporation shall be signed by an officer thereof, and petition filed by a partnership shall be signed by a member thereof.

[T.D. 70–181, 35 FR 13432, Aug. 22, 1970, as amended by T.D. 80–271, 45 FR 75642, Nov. 17, 1980]

§ 175.12 Contents of petition.

The petition shall be itemized as to each class or kind of merchandise involved, and shall contain the following:

(a) The name of the petitioner, his principal place of business, and the fact that he is a domestic interested party;

(b) A statement showing the class or kind of merchandise manufactured, produced, or sold by him which is claimed to be similar to the imported merchandise in such detail as will permit the Commissioner of Customs to establish the similarity between the domestic and foreign merchandise; and

(c) A presentation, in detail, of the information required by section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516).

[T.D. 70–181, 35 FR 13432, Aug. 22, 1970, as amended by T.D. 80–271, 45 FR 75642, Nov. 17, 1980]

Subpart C—Procedure Following Petition

§ 175.21 Notice of filing of petition, inspection of petition, and inspection of documents and papers.

(a) *Notice of filing of petition.* Upon the filing of a petition, a notice shall be published in the FEDERAL REGISTER setting forth that a petition has been filed by a domestic interested party, identifying the merchandise which is the subject of the petition, and its present and claimed appraised value or classification or rate of duty. The notice shall invite interested persons to make such written submissions as they desire within such time as is specified in the notice.

(b) *Inspection of petition; inspection of documents and papers.* The petition filed by a domestic interested party will be made available for inspection by interested parties in accordance with the provisions of 5 U.S.C. 552(a). However, neither a petitioner nor other interested parties will in any case be permitted to inspect documents or papers of the importer of record which are exempted from disclosure by 5 U.S.C. 552(b)(4). Identifying data is not to be deleted from petitions filed by American manufacturers, producers, and wholesalers pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516).

(R.S. 251, as amended, secs. 516, 624, 46 Stat. 735, as amended, 759; 5 U.S.C. 552, 19 U.S.C. 66, 1516, 1624)

[T.D. 74–236, 39 FR 33207, Sept. 16, 1974, as amended by T.D. 80–271, 45 FR 75642, Nov. 17, 1980; T.D. 81–168, 46 FR 32574, June 24, 1981; CBP Dec. 15–16, 80 FR 71693, Nov. 17, 2015]

§ 175.22 Publication of decisions following petition.

(a) *Incorrect appraised value, classification, or rate of duty.* If the appraised value of, classification of, or rate of duty upon imported merchandise of the character which is the subject of a petition is found to be incorrect, the Commissioner of Customs shall so inform the petitioner, and shall cause the proper value, classification, or rate of duty to be published in the FEDERAL REGISTER and the weekly Customs Bulletin. Such merchandise entered for consumption or withdrawn from warehouse for consumption after 30 days after the date of publication of such notice to the petitioner in the Customs Bulletin shall be appraised, classified, or assessed as to rate of duty in accordance with the published decision.

(b) *Correct appraised value, classification, or rate of duty.* If the appraised value of, classification of, or rate of duty upon the imported merchandise which is the subject of the petition is found to be correct, the Commissioner of Customs shall so notify the petitioner, but the decision shall not be published.

§ 175.23 Notice of desire to contest decision.

If the petitioner is dissatisfied with the decision of the Commissioner that the appraised value, classification, or rate of duty is correct for the merchandise which was the subject of the petition, in accordance with section 516, Tariff Act of 1930, as amended (19

U.S.C. 1516) he may file with the Commissioner of Customs not later than 30 days after the date of the decision a notice that he desires to contest the appraised value of, classification of, or rate of duty assessed upon the imported merchandise. Such notice shall designate the port or ports at which such merchandise is being imported into the United States, and at which the petitioner desires to protest.

§ 175.24 Publication following notice of desire to contest.

Upon receipt of a properly filed petitioner's notice that he desires to contest the decision as to the appraised value of, classification of, or rate of duty assessed upon the imported merchandise, the Commissioner of Customs shall cause to be published in the FEDERAL REGISTER and the weekly Customs Bulletin a notice of his decision as to the proper appraised value of, classification of, or rate of duty assessed upon the imported merchandise, and of petitioner's desire to contest the decision.

§ 175.25 Procedure at port of entry designated by petitioner.

(a) *Information as to character and description of merchandise.* All information secured by the director of the port designated by the petitioner in his notice of desire to contest as to the character and description of merchandise of the kind covered by the petition and entered after publication by the Commissioner of Customs of his decision as to the proper appraised value, classification and rate of duty, and samples of such merchandise, shall be made available to the petitioner upon application by him to the port director.

(b) *Notice of liquidation.* Notice of liquidation of the first of the entries to be liquidated which would enable the petitioner to present the issue desired shall be given to the petitioner by the director of the designated port as required by section 516. Tariff Act of 1930, as amended (19 U.S.C. 1516).

(c) *Further notice when issue not presented.* If, upon examination of the information and inspection of any sample supplied by the port director, the petitioner believes and the port director agrees that the merchandise or the facts surrounding this importation are not sufficient to raise the issue involved in the petition, the port director shall then give the petitioner notice of the first liquidation thereafter which will permit the framing of the issue covered by the petition. The port director shall, under the same conditions, continue to give notice for so long as he is of the opinion that the petitioner affirmatively intends to contest. When the port director concludes that the petitioner does not intend to contest the decision of the Commissioner of Customs, he shall refer the matter to the Commissioner of Customs for his decision before issuing any further notice of liquidation.

[T.D. 70–181, 35 FR 13432, Aug. 22, 1970, as amended by T.D. 99–27, 64 FR 13677, Mar. 22, 1999]

Subpart D—Procedure Following Court Decision

§ 175.31 Publication of notice of court decision.

Notice of a decision of the Court of International Trade or of the Court of Appeals for the Federal Circuit which sustains, in whole or in part, a cause of action before the court under the provisions of section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), shall be published by the Commissioner of Customs in the FEDERAL REGISTER within 10 days from the date of issuance of the court decision.

[T.D. 80–271, 45 FR 75642, Nov. 17, 1980, as amended by T.D. 85–90, 50 FR 21430, May 24, 1985]

PART 176—PROCEEDINGS IN THE COURT OF INTERNATIONAL TRADE

Sec.

AUTHORITY: R.S. 251, as amended, sec. 624, 46 Stat. 759; 19 U.S.C. 66, 1624, unless otherwise noted.

§ 176.0 Scope.

This part deals with service of summons and notice of appeal in actions before the Court of International Trade, the transmission of records to the court, statements of agreed facts, and Customs procedures following a decision by the court.

[T.D. 70–181, 35 FR 13433, Aug. 22, 1970, as amended by T.D. 85–90, 50 FR 21430, May 24, 1985]

Subpart A—Service

§ 176.1 Service of summons.

When an action is initiated in the Court of International Trade a copy of the summons will be served in the manner prescribed by the Court of International Trade upon the CBP official(s) who denied the protest(s), and an additional copy will be served upon the Assistant Chief Counsel for Court of International Trade Litigation, United States Customs and Border Protection, 26 Federal Plaza, New York, N.Y. 10007.

[CBP Dec. No. 16–26, 81 FR 93025, Dec. 20, 2016]

§ 176.2 Service of notice of appeal.

When the United States is an appellee in an appeal taken to the Court of Appeals for the Federal Circuit, a copy of the notice of appeal shall be served upon the Assistant Chief Counsel for Court of International Trade Litigation.

(28 U.S.C. 2601, as amended)

[T.D. 70–181, 35 FR 13433, Aug. 22, 1970, as amended by T.D. 85–90, 50 FR 21430, May 24, 1985]

Subpart B—Transmission of Records

§ 176.11 Transmission of records to Court of International Trade.

Upon receipt of service of a summons in an action initiated in the Court of International Trade the following items shall be immediately transmitted to the Court of International Trade as part of the official record by the Customs officer concerned:

(a) Consumption or other entry;
(b) Commercial invoice;
(c) Special Customs invoice;
(d) Copy of protest and any amendments thereto;
(e) Copy of denial or protest in whole or in part;
(f) Importer's exhibits;
(g) Official samples;
(h) Any official laboratory reports;
(i) The summary sheet;
(j) In any case in which one or more of the items listed in paragraphs (a) through (i) of this section do not exist, the Customs officer shall include a statement to that effect, identifying the items which do not exist.

(28 U.S.C. 2632, as amended)

[T.D. 70–181, 35 FR 13433, Aug. 22, 1970, as amended by T.D. 85–90, 50 FR 21430, May 24, 1985]

Subpart C—Statement of Agreed Facts

§ 176.21 Referral of statement of agreed facts for certification.

Statements of agreed facts (also referred to as stipulations) to be used by the Department of Justice in submitting cases to the Court of International Trade may be referred for certification to Customs officials by the office of the Assistant Attorney General, International Trade Field Office, Civil Division, Department of Justice, 26 Federal Plaza, New York, N.Y. 10278.

[T.D. 70–181, 35 FR 13433, Aug. 22, 1970, as amended by T.D. 85–90, 50 FR 21430, May 24, 1985; T.D. 88–47, 53 FR 30984, Aug. 17, 1988]

§ 176.22 Deletion of protest or entry number.

If any protest number or entry number is to be deleted from a schedule of

protest numbers or entry numbers attached to or embodied in a statement of agreed facts, a line shall be drawn through the number and the change shall be initialed by the authorized official making and approving the deletion.

[T.D. 70–181, 35 FR 13433, Aug. 22, 1970]

Subpart D—Procedure Following Court Decision

§ 176.31 Reliquidation following decision of court.

(a) *Decision of U.S. Court of International Trade.* Except as provided in paragraph (c) of this section, an entry which is the subject of a decision of the U.S. Court of International Trade shall be reliquidated in accordance with the judgment order thereon at the expiration of 60 days from the date of the decision, unless an appeal or motion for a rehearing is filed. However, entries which are the subject of decisions of the court following a decision of the Court of Appeals for the Federal Circuit which involve the same issue, or which are based on submission of an agreed statement of fact, may be reliquidated immediately upon receipt of the judgment orders from the U.S. Court of International Trade.

(b) *Decision of the Court of Appeals for the Federal Circuit.* Except as provided in paragraph (c) of this section, an entry covering merchandise which is the subject of a decision of the Court of Appeals for the Federal Circuit shall be reliquidated at the expiration of 90 days from the date of entry of decision by that court and only upon receipt of the judgment order from the U.S. Court of International Trade. However, no such entry shall be reliquidated pursuant to such order if a petition for certiorari is taken to the Supreme Court.

(c) *Waiver of right of appeal.* Upon receipt of a letter from the Assistant Attorney General, Civil Division, Department of Justice, signed by the Chief, Customs Section, advising that no appeal will be taken from a decision of the U.S. Court of International Trade or that it has been determined that no petition for certiorari shall be filed in the Supreme Court to review a decision of the Court of Appeals for the Federal Circuit, any entry or entries covered by such decision may be reliquidated pursuant to the judgment of the U.S. Court of International Trade prior to the expiration of the times specified in paragraphs (a) and (b) of this section.

(Sec. 514, 46 Stat. 734, as amended; 19 U.S.C. 1514)

[T.D. 70–181, 35 FR 13433, Aug. 22, 1970, as amended by T.D. 85–90, 50 FR 21430, May 24, 1985]

PART 177—ADMINISTRATIVE RULINGS

Sec.

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1502, 1624, 1625.

§ 177.0 Scope.

This part relates to the issuance of rulings to importers and other interested persons by the CBP, other than advance rulings under Article 509 of the North American Free Trade Agreement (see subpart I of part 181 of this chapter). It describes the situations in which a ruling may be requested, the procedures to be followed in requesting a ruling, the conditions under which a ruling will be issued, the effect of a ruling when it is issued, and the publication of rulings in the Customs Bulletin. The rulings issued under the provisions of this part will usually be prospective in application and, consequently, will usually not relate to specific matters or situations presently or previously under consideration by any CBP field office. Accordingly, the rulings requested under the provisions of this part should be distinguished from the administrative rulings, determinations, or decisions which may be requested under procedures set forth elsewhere in this chapter, including, but not limited to, those set forth in part 12 (relating to submissions of proof of admissibility of articles detained under section 307 of the Tariff Act of 1930 (19 U.S.C. 1307)), part 103 (relating to disclosure of information in Customs files), part 133 (relating to disputed claims of piratical copying of copyrighted matter), subpart C of part 152 (relating to determinations concerning the dutiable value of merchandise by Customs field officers), part 153 (relating to enforcement of the Antidumping Act, 1921, as amended), part 159 (insofar as it relates to countervailing duties), part 171 (relating to fines, penalties, and forfeitures), part 172 (relating to liquidated damages), part 174 (relating to protests), and part 175 (relating to petitions filed by American manufacturers, producers, or wholesalers pursuant to section 516 of the Tariff Act of 1930, as amended). Nor do the provisions of part 177 apply to requests for decisions of an operational, administrative, or investigative nature which are properly within the cognizance of a CBP Headquarters Office other than Regulations and Rulings, Office of International Trade.

[T.D. 80–285, 45 FR 80103, Dec. 3, 1980, as amended by T.D. 84–149, 49 FR 28699, July 16, 1984; T.D. 89–74, 54 FR 31515, July 31, 1989; T.D. 94–1, 58 FR 69473, Dec. 30, 1993]

Subpart A—General Ruling Procedure

§ 177.1 General ruling practice and definitions.

(a) *The issuance of rulings generally*—(1) *Prospective transactions.* It is in the interest of the sound administration of the Customs and related laws that persons engaging in any transaction affected by those laws fully understand the consequences of that transaction prior to its consummation. For this reason, the Customs Service will give full and careful consideration to written requests from importers and other interested parties for rulings or information setting forth, with respect to a specifically described transaction, a definitive interpretation of applicable law, or other appropriate information. Generally, a ruling may be requested under the provisions of this part only with respect to prospective transactions—that is, transactions which are not already pending before a Customs Service office by reason of arrival, entry, or otherwise.

(2) *Current or completed transactions*—(i) *Current transactions.* A question arising in connection with a Customs transaction already before a Customs Service office will normally be resolved by that office in accordance with the principles and precedents previously announced by the Headquarters Office. If such a question cannot be resolved on the basis of clearly established rules set forth in the Customs and related laws, or in the regulations thereunder, or in applicable Treasury Decisions, rulings, opinions, or court decisions published in the Customs Bulletin, that office may be requested to forward the question to the Headquarters Office for consideration, as more fully described in § 177.11.

(ii) *Completed transactions.* A question arising in connection with an entry of merchandise which has been liquidated,

or in connection with any other completed Customs transaction, may not be the subject of a ruling request.

(b) *Oral advice.* The Customs Service will not issue rulings in response to oral requests. Oral opinions or advice of Customs Service personnel are not binding on the Customs Service. However, oral inquiries may be made to Customs Service offices regarding existing rulings, the scope of such rulings, the types of transactions with respect to which the Customs Service will issue rulings, the scope of the rulings which may be issued, or the procedures to be followed in submitting ruling requests, as described in this part.

(c) *Who may request a ruling.* Except as otherwise provided in subpart I of part 181 of this chapter, a ruling may be requested under this part by any person who, as an importer or exporter of merchandise, or otherwise, has a direct and demonstrable interest in the question or questions presented in the ruling request, or by the authorized agent of such person. A ''person'' in this context includes an individual, corporation, partnership, association, or other entity or group.

(d) *Definitions.* (1) A ''ruling'' is a written statement issued by the Headquarters Office or the appropriate office of Customs as provided in this part that interprets and applies the provisions of the Customs and related laws to a specific set of facts. A ''ruling letter'' is a ruling issued in response to a written request therefor and set forth in a letter addressed to the person making the request or his designee. A ''published ruling'' is a ruling which has been published in the Customs Bulletin.

(2) An ''information letter'' is a written statement issued by the Customs Service that does no more than call attention to a well-established interpretation or principle of Customs law, without applying it to a specific set of facts. An information letter may be issued in response to a request for a ruling when: (i) The request suggests that general information, rather than a ruling, is actually being sought, (ii) the request is incomplete or otherwise fails to meet the requirements set forth in this part, or (iii) the ruling requested cannot be issued for any other reason, and (iv) it is believed that general information may be of some benefit to the party making the request.

(3) A ''Customs transaction'' is an act or activity to which the Customs and related laws apply. A ''prospective'' Customs transaction is one that is contemplated or is currently being undertaken and has not resulted in any arrival or the filing of any entry or other document, or in any other act to bring the transaction, or any part of it, under the jurisdiction of any Customs Service office. A ''current'' Customs transaction is one which is presently under consideration by a port office of the Customs Service. A ''completed'' Customs transaction is one which has been acted upon by a Customs Service field office and with respect to which that office has issued a determination which is final in nature, but is (or was) subject to appeal, petition, protest, or other review, as provided in the applicable Customs laws and regulations. In a series of identical, recurring transactions, each transaction shall be considered an individual transaction for purposes of this part.

(4) An ''authorized agent'' is a person expressly authorized by a principal to act on his behalf. A ruling requested by an attorney or other person acting as an agent must include a statement describing the authority under which the request is made. With the exception of attorneys whose authority to represent is known, any person appearing before the Customs Service as an agent in connection with a ruling request may be required to present evidence of his authority to represent the principal. The foregoing requirements will not apply to an individual representing his full-time employer, or to a bona-fide officer, director, or other qualified representative of a corporation, association, or organized group.

(5) The term ''Customs and related laws,'' as generally used in this part, includes any provision of the Tariff Act of 1930, as amended (including the Harmonized Tariff Schedule of the United States), or the Customs Regulations, or any provision contained in other legislation (including the navigation laws), regulations, treaties, orders, proclamations, or other agreements administered by the Customs Service.

(6) The term ''Headquarters Office,'' as used herein, means the Regulations and Rulings, Office of international Trade at Headquarters, U.S. Customs and Border Protection, Washington, DC.

[T.D. 75–186, 40 FR 31929, July 30, 1975, as amended by T.D. 80–285, 45 FR 80104, Dec. 3, 1980; T.D. 84–149, 49 FR 28699, July 16, 1984; T.D. 89–1, 53 FR 51271, Dec. 21, 1988; T.D. 89–74, 54 FR 31515, July 31, 1989; T.D. 94–1, 58 FR 69473, Dec. 30, 1993]

§ 177.2 Submission of ruling requests.

(a) *Form.* A request for a ruling should be in the form of a letter. Requests for Valuation and Carrier rulings should be addressed to the Commissioner of Customs and Border Protection, Attention: Regulations and Rulings, Office of International Trade, Washington, DC 20229. The Division and Branch in the Regulations and Rulings, Office of International Trade, to which the request should be directed may also be indicated, if known. Requests for tariff classification rulings should be addressed to the Director, National Commodity Specialist Division, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 201 Varick Street, Suite 501, New York, New York 10014.

(b) *Content*—(1) *Generally.* Each request for a ruling must contain a complete statement of all relevant facts relating to the transaction. Such facts include the names, addresses, and other identifying information of all interested parties (if known); the name of the port or place at which any article involved in the transaction will arrive or be entered, or which will otherwise have jurisdiction with respect to the act or activity described in the transaction; and a description of the transaction itself, appropriate in detail to the type of ruling requested.

(2) *Description of transaction*—(i) *Generally.* The Customs transaction to which the ruling request relates must be described in sufficient detail to permit the proper application of relevant customs and related laws.

(ii) *Tariff classification rulings.* (A) If the transaction involves the importation of an article for which a ruling as to its proper classification under the provisions of the Harmonized Tariff Schedule of the United States is requested, the request for a ruling should include a full and complete description of the article and whenever germane to the proper classification of the article, information as to the article's chief use in the United States, its commercial, common, or technical designation, and, where the article is composed of two or more materials, the relative quantity (by weight and by volume) and value of each. The ruling request should also note, whenever germane, the purchase price of the article, and its approximate selling price in the United States. Individual requests for rulings submitted to service port offices will be limited to five (5) merchandise items, all of which must be of the same class or kind.

(B) Rulings issued by the Director, National Commodity Specialist Division, or any service port office are limited to prospective transactions. Only the Headquarters Office will prepare final decisions under § 177.11 (Requests for Advice by Field Officers), or § 174.23 (Further Review of Protests), § 177.10 (Change of Practice), decisions under part 175 of this chapter (petitions under section 516, Tariff Act of 1930, as amended), decisions under § 177.13 (Inconsistent Customs decisions), and decisions under Policies and Procedures Manual Supplement 2126–01.

(C) The requesting party may send the request directly to the Director, Commercial and Trade Facilitation Division, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, Washington, DC 20229. The Headquarters Office retains authority to independently review all tariff classification ruling letters issued by the Director, National Commodity Specialist Division, and any service port office. If the importer or other person to whom a ruling letter is issued disagrees with the tariff classification set forth in a ruling issued by the Director, National Commodity Specialist Division, or any service port office, he may petition the Director, Commercial Rulings Division, U.S. Customs Service, Washington, DC 20229, for review of the ruling.

(iii) *Valuation rulings.* If the transaction involves the valuation of an article for Customs purposes, the request

for a ruling should include all of the applicable information described in subpart C of part 152 of this chapter, and, insofar as is relevant, the information which would be required on an invoice as described in subpart F of part 141 of this chapter. The request should also describe the nature of the transaction (whether f.o.b./c.i.f., ex-factory, or some other arrangement), the relationship (if any) of the parties, whether the transaction was at arm's-length, whether there have been other sales of the same or similar merchandise in the country of exportation, whether an agency relationship exists, or any other information relevant to a determination under section 402 or 402a of the Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402).

(iv) *Carrier rulings.* If the transaction involves a vessel, the request for a ruling should include information relating to place of build and nationality of registration and, if to be used in waters under the jurisdiction of the United States, the exact place or places of intended use, if known. If the request for a ruling involves a determination as to whether or not the primary object of a contemplated voyage would be considered to be coastwise transportation in violation of 46 U.S.C. 289 (see §4.80a of this chapter), the request should completely identify the voyage, including the proposed time of arrival at and departure from every port on the itinerary and any coordination of the voyage with special events at coastwise ports, and should be accompanied by samples, if available, of brochures, advertising, and other information that may be relevant to a determination of the primary object of the proposed voyage.

(3) *Samples.* Each request for a ruling regarding the status of an article under any Customs or related law affecting the importation or arrival of that article should be accompanied by photographs, drawings, or other pictorial representations of the article and, whenever possible, by a sample article, unless a precise description of the article is not essential to the ruling requested. Any article consisting of materials in chemical or physical combination for which a laboratory analysis has been prepared by or for the manufacturer should include a copy of that analysis. A sample submitted in connection with a request for a ruling becomes a part of the Customs Service file in the matter and will be retained until the ruling is issued or the ruling request is otherwise disposed of. If the return of the sample is desired, the ruling request should so state and should specify the desired means of return. A sample should only be submitted with the understanding that all or a part of it may be damaged or consumed in the course of examination, testing, analysis, or other actions undertaken in connection with the ruling request.

(4) *Related documents.* If the question or questions presented in the ruling request directly relate to matters set forth in any invoice, contract, agreement, or other document, a copy of the document must be submitted with the request. (Original documents should not be submitted inasmuch as any documents or exhibits furnished with the ruling request become a part of the Customs Service file in the matter and cannot be returned.) The relevant facts reflected in any documents submitted, and an explanation of their bearing on the question or questions presented, must be expressly set forth in the ruling request.

(5) *Prior or current transactions.* Each request for a ruling must state whether, to the knowledge of the person submitting the request, the same transaction, or one identical to it, has ever been considered, or is currently being considered by any Customs Service office or whether, to the knowledge of the person submitting the request, the issues involved have ever been considered, or are currently being considered, by the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom. Where the transaction described in the ruling request is but one of a series of similar and related transactions, that fact must also be stated.

(6) *Statement of position.* If the request for a ruling asks that a particular determination or conclusion be reached in the ruling letter, a statement must be included in the request setting forth the basis for that determination or

conclusion, together with a citation of all relevant supporting authority.

(7) *Privileged or confidential information.* Information which is claimed to constitute trade secrets or privileged or confidential commercial or financial information regarding the business transactions of private parties the disclosure of which would cause substantial harm to the competitive position of the person making the request (or of another interested party), must be identified clearly and the reasons such information should not be disclosed, including, where applicable, the reasons the disclosure of the information would prejudice the competitive position of the person making the request (or of another interested party) must be set forth.

(c) *Signing; instructions as to reply.* The request for a ruling must be signed by a person authorized to make the request, as described in §177.1(c). A ruling requested by a principal or authorized agent may direct that the ruling letter be addressed to the other.

(d) *Requests for immediate consideration.* The Customs Service will normally process requests for rulings in the order they are received and as expeditiously as possible. However, a request that a particular matter be given consideration ahead of its regular order, if made in writing at the time the request is submitted, or subsequent thereto, and showing a clear need for such treatment, will be given consideration as the particular circumstances warrant and permit. Requests for special consideration made by telegram will be treated in the same manner as requests made by letter, but rulings will not ordinarily be issued by telegram. In no event can any assurance be given that a particular request for a ruling will be acted upon by the time requested. However, upon request and where a clear need is shown for such action, a collect telephone call will be made to advise that the ruling letter has been issued and is being mailed.

(R.S. 251, as amended, secs. 481, 484, 624, 46 Stat. 719, 46 Stat. 719, 722, as amended, 759 (19 U.S.C. 66, 1481, 1484, 1624))

[T.D. 75–186, 40 FR 31929, July 30, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §177.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§177.3 Nonconforming requests for rulings.

A person submitting a request for a ruling that does not comply with all of the provisions of this part will be so notified in writing, and the requirements that have not been met will be pointed out. Except in the case of ruling requests submitted to Area or District offices, such person will be given a period of thirty (30) days from the date of the notice (or such longer period as the notice may provide) to supply any additional information that is requested or otherwise conform the ruling request to the requirements referred to in the notice. The Customs Service file with respect to ruling requests which are not brought into compliance with the provisions of this part within the period of time allowed will be administratively closed and the request removed from active consideration until such time as the deficiencies cited in the notice are corrected. A request for a ruling that is removed from active consideration by reason of failing to comply with the provisions of this part may be treated as withdrawn. In the case of ruling requests made to Area or District offices, a failure to comply with the provisions of this part will result in the return of the ruling request with the notice specifying the deficiencies and such requests will not be considered as having been filed until such deficiencies are corrected.

[T.D. 89–74, 54 FR 31515, July 31, 1989]

§177.4 Oral discussion of issues.

(a) *Generally.* A person submitting a request for a ruling and desiring an opportunity to orally discuss the issue or issues involved should indicate that desire in writing at the time the ruling request is filed. Such a discussion will only be scheduled when, in the opinion of the Customs personnel by whom the ruling request is under consideration, a conference will be helpful in deciding the issue or issues involved or when a determination or conclusion contrary to that advocated in the ruling request is contemplated. Conferences are scheduled for the purpose of affording

the parties an opportunity to freely and openly discuss the matters set forth in the ruling request. Accordingly, the parties will not be bound by any argument or position advocated or agreed to, expressly or by implication, during the conference unless either party subsequently agrees to be so bound in writing. The conference will not conclude with the issuance of a ruling letter.

(b) *Time, place, and number of conferences.* If a request for a conference is granted, the person making the request will be notified of the time and place of the conference. No more than one conference with respect to the matters set forth in a ruling request will be scheduled, unless, in the opinion of the Customs personnel by whom the ruling request is under consideration, additional conferences are necessary.

(c) *Representation.* A person whose request for a conference has been granted may be accompanied at that conference by counsel or other representatives, or may designate such persons to attend the conference in his place.

(d) *Additional information presented at conferences.* It will be the responsibility of the person submitting the request for a ruling to provide for inclusion in the Customs Service file in the matter a written record setting forth any and all additional information, documents, and exhibits introduced during the conference to the extent that person considers such material relevant to the consideration of the ruling request.

[T.D. 75–186, 40 FR 31929, July 30, 1975, as amended by T.D. 80–285, 45 FR 80105, Dec. 3, 1980; T.D. 84–149, 49 FR 28699, July 16, 1984; T.D. 89–74, 54 FR 31515, July 31, 1989]

§ 177.5 Change in status of transaction.

Each person submitting a request for a ruling in connection with a Customs transaction shall immediately advise Customs in writing of any change in the status of that transaction, as defined in § 177.1(d)(3). In particular, the Customs Service office to which the request was made must be advised when any transaction described in the ruling request as prospective becomes current and under the jurisdiction of a Customs Service field office. In addition, any person engaged in a Customs transaction coming under the jurisdiction of a Customs Service field office and having previously requested a ruling with respect to that transaction shall advise the field office of that fact. The field office will normally withhold action with respect to any transaction for which a ruling has previously been requested pending the disposition of the ruling request.

[T.D. 80–285, 45 FR 80105, Dec. 3, 1980, as amended by T.D. 84–149, 49 FR 28699, July 16, 1984; T.D. 89–74, 54 FR 31516, July 31, 1989]

§ 177.6 Withdrawal of ruling requests.

Any request for a ruling may be withdrawn by the person submitting it at any time before the issuance of a ruling letter or any other final disposition of the request. All correspondence, documents, and exhibits submitted in connection with the request will be retained in the Customs Service file and will not be returned. In addition, the Headquarters Office may forward to Customs Service field offices which have or may have jurisdiction over the transaction to which the ruling request relates, its views in regard to the transaction or the issues involved therein, as well as appropriate information derived from materials in the Customs Service file.

[T.D. 80–285, 45 FR 80105, Dec. 3, 1980]

§ 177.7 Situations in which no ruling will be issued.

(a) *Generally.* No ruling letter will be issued in response to a request for a ruling which fails to comply with the provisions of this part. Moreover, no ruling letter will be issued with regard to transactions or questions which are essentially hypothetical in nature or in any instance in which it appears contrary to the sound administration of the Customs and related laws to do so. No ruling letter will be issued in regard to a completed transaction.

(b) *Pending litigation in the United States Court of International Trade.* No ruling letter will be issued with respect to any issue which is pending before the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom. Litigation before any other court will not preclude the issuance of a ruling

letter, provided neither the Customs Service nor any of its officers or agents is named as a defendant.

[T.D. 75–186, 40 FR 31929, July 30, 1975, as amended by T.D. 85–90, 50 FR 21430, May 24, 1985]

§ 177.8 Issuance of rulings.

(a) *Ruling letters*—(1) *Generally*. The Customs Service will endeavor to issue a ruling letter setting forth a determination with respect to a specifically described Customs transaction whenever a request for such a ruling is submitted in accordance with the provisions of this part and it is in the sound administration of the Customs and related laws to do so. Otherwise, a request for a ruling will be answered by an information letter or, in those situations in which general information is likely to be of little or no value, by a letter stating that no ruling can be issued.

(2) *Submission of ruling letters to field offices*. Any person engaging in a Customs transaction with respect to which a binding tariff classification ruling letter (including pre-entry classification decisions) has been issued under this part shall ascertain that a copy of the ruling letter is attached to the documents filed with the appropriate Customs Service office in connection with that transaction, or shall otherwise indicate with the information filed for that transaction that a ruling has been received. Any person receiving a ruling setting forth the tariff classification of merchandise shall set forth such classification in the documents or information filed in connection with any subsequent entry of that merchandise; the failure to do so may result in a rejection of the entry and the imposition of such penalties as may be appropriate. A ruling received after the filing of such documents or information shall immediately be brought to the attention of the appropriate Customs Service field office.

(3) *Disclosure of ruling letters*. The ruling letter shall be based on the information set forth in the ruling request. No part of the ruling letter, including names, addresses, or information relating to the business transactions of private parties, shall be deemed to constitute privileged or confidential commercial or financial information or trade secrets exempt from disclosure pursuant to the Freedom of Information Act, as amended (5 U.S.C. 552), unless, as provided in §177.2(b)(7), the information claimed to be exempt from disclosure is clearly identified and the reasons for the exemption are set forth. Before the issuance of the ruling letter, the person submitting the ruling request, will be notified of any decision adverse to his claim for exemption from disclosure and will, upon written request to Customs within 10 working days of the date of notification, be permitted to withdraw the ruling request. All ruling letters issued by the Customs Service will be available, upon written request, for inspection and copying by any person (with any portions determined to be exempt from disclosure deleted).

(b) *Other rulings*. The Headquarters Office may from time to time issue other rulings with respect to issues or transactions described or suggested by requests for rulings submitted under the provisions of this part, or with respect to issues or transactions otherwise brought to its attention. These rulings, which are statements of the official position of the Customs Service which are likely to be of widespread interest and application, are published in the Customs Bulletin, as described in §177.10.

[T.D. 75–186, 40 FR 31929, July 30, 1975, as amended by T.D. 80–285, 45 FR 80105, Dec. 3, 1980; T.D. 84–149, 49 FR 28699, July 16, 1984; T.D. 89–74, 54 FR 31516, July 31, 1989]

§ 177.9 Effect of ruling letters.

(a) *Effect of ruling letters generally*. A ruling letter issued by the Customs Service under the provisions of this part represents the official position of the Customs Service with respect to the particular transaction or issue described therein and is binding on all Customs Service personnel in accordance with the provisions of this section until modified or revoked. In the absence of a change of practice or other modification or revocation which affects the principle of the ruling set forth in the ruling letter, that principle may be cited as authority in the disposition of transactions involving the same circumstances. Generally, a

ruling letter is effective on the date it is issued and may be applied to all entries which are unliquidated, or other transactions with respect to which the Customs Service has not taken final action on that date. See, however, §177.10(e) (changes of practice published in the FEDERAL REGISTER) and §177.12 (rulings which modify or revoke previous rulings, decisions, or treatments).

(b) *Application of rulings to transactions*—(1) *Generally*. Each ruling letter is issued on the assumption that all of the information furnished in connection with the ruling request and incorporated in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect. The application of a ruling letter by a Customs Service field office to the transaction to which it is purported to relate is subject to the verification of the facts incorporated in the ruling letter, a comparison of the transaction described therein to the actual transaction, and the satisfaction of any conditions on which the ruling was based. If, in the opinion of any Customs Service field office by whom the transaction is under consideration or review, the ruling letter should be modified or revoked, the findings and recommendations of that office will be forwarded to the Headquarters Office for consideration, as provided in §177.11(b)(1)(i), prior to any final disposition with respect to the transaction by that office. Otherwise, if the transaction described in the ruling letter and the actual transaction are the same, and any and all conditions set forth in the ruling letter have been satisfied, the ruling will be applied to the transaction.

(2) *Tariff classification rulings.* Each ruling letter setting forth the proper classification of an article under the provisions of the Harmonized Tariff Schedule of the United States will be applied only with respect to transactions involving articles identical to the sample submitted with the ruling request or to articles whose description is identical to the description set forth in the ruling letter.

(3) *Valuation rulings.* Each ruling letter setting forth the proper valuation of an article under the provisions of section 402 of the Tariff Act of 1930, as amended (19 U.S.C. 1401a), will be applied only with respect to transactions involving the same merchandise and like facts.

(4) *Carrier rulings.* Each ruling letter setting forth the applicability of the navigation laws to a vessel will be applied only with respect to transactions involving operations identical to those set forth in the ruling letter. Each ruling letter setting forth a determination as to whether or not the primary object of a contemplated voyage is coastwise transportation in violation of 46 U.S.C. 289 will be binding on the United States Customs Service with respect to any transaction identical to the facts and circumstances described in the ruling request and undertaken in reliance on the ruling letter.

(c) *Reliance on ruling letters by others.* Except when public notice and comment procedures apply under §177.12, a ruling letter is subject to modification or revocation by CBP without notice to any person other than the person to whom the ruling letter was addressed. Accordingly, no other person should rely on the ruling letter or assume that the principles of that ruling will be applied in connection with any transaction other than the one described in the letter. However, any person eligible to request a ruling under §177.1(c) may request information as to whether a previously-issued ruling letter has been modified or revoked by writing the Commissioner of Customs and Border Protection, Attention: Regulations and Rulings, Office of International Trade, Washington, DC 20229, and either enclosing a copy of the ruling letter or furnishing other information sufficient to permit the ruling letter in question to be identified.

(d)–(e) [Reserved]

[T.D. 75–186, 40 FR 31929, July 30, 1975, as amended by T.D. 80–285, 45 FR 80105, Dec. 3, 1980; T.D. 84–149, 49 FR 28699, July 16, 1984; T.D. 87–89, 52 FR 24446, July 1, 1987; T.D. 89–1, 53 FR 51271, Dec. 21, 1988; T.D. 89–74, 54 FR 31516, July 31, 1989; T.D. 02–49, 67 FR 53496, Aug. 16, 2002]

§177.10 Publication of decisions.

(a) *Generally.* Within 90 days after issuing any interpretive decision under

the Tariff Act of 1930, as amended, relating to any Customs transaction (prospective, current, or completed), the Customs Service shall publish the decision in the Customs Bulletin or otherwise make it available for public inspection. For purposes of this paragraph an interpretive decision includes any ruling letter, internal advice memorandum, or protest review decision. Disclosure is governed by 31 CFR part 1, 19 CFR part 103, and 19 CFR 177.8(a)(3).

(b) [Reserved]

(c) *Changes of practice.* Before the publication of a ruling which has the effect of changing an established and uniform practice and which results in the assessment of a higher rate of duty within the meaning of 19 U.S.C. 1315(d), notice that the practice (or prior ruling on which that practice was based) is under review will be published in the FEDERAL REGISTER and interested parties will be given an opportunity to make written submissions with respect to the correctness of the contemplated change.

(d) *Limiting rulings.* A published ruling may limit the application of a court decision to the specific article under litigation, or to an article of a specific class or kind of such merchandise, or to the particular circumstances or entries which were the subject of the litigation.

(e) *Effective dates.* Except as otherwise provided in §177.12(e) or in the ruling itself, all rulings published under the provisions of this part will be applied immediately. If the ruling involves merchandise, it will be applicable to all unliquidated entries, except that a change of practice resulting in the assessment of a higher rate of duty or increased duties shall be effective only as to merchandise entered for consumption or withdrawn from warehouse for consumption on or after the 90th day after publication of the change in the FEDERAL REGISTER.

[T.D. 75–186, 40 FR 31929, July 30, 1975, as amended by T.D. 78–394, 43 FR 49792, Oct. 25, 1978; T.D. 89–74, 54 FR 31517, July 31, 1989; T.D. 02–49, 67 FR 53496, Aug. 16, 2002]

§177.11 Requests for advice by field offices.

(a) *Generally.* Advice or guidance as to the interpretation or proper application of the Customs and related laws with respect to a specific Customs transaction may be requested by Customs Service field offices from the Headquarters Office at any time, whether the transaction is prospective, current, or completed. Advice as to the proper application of the Customs and related laws to a current transaction will be sought by a Customs Service field office whenever that office is requested to do so, pursuant to paragraph (b) of this section, by an importer or other person having an interest in the transaction. Advice or guidance will be furnished by the Headquarters Office as a means of assisting Customs personnel in the orderly processing of Customs transactions under consideration by them and to insure the consistent application of the Customs and related laws in the several Customs districts. Requests for advice received by the Headquarters Office will be processed as expeditiously as possible.

(b) *Certain current transactions*—(1) *When a ruling has been issued*—(i) *Requests by field offices.* If any Customs Service office has issued a ruling letter with respect to a particular Customs transaction and the Customs Service field office having jurisdiction over that transaction believes that the ruling should be modified or revoked, the field office will forward to the Headquarters Office, pursuant to §177.9(b)(1), a request that the ruling be reconsidered. The field office will notify the importer or other person to whom the ruling letter was issued, in writing, that it has requested the Headquarters Office to reconsider the ruling.

(ii) *Requests by importers and others.* If the importer or other person to whom a ruling letter is issued disagrees with the Customs Service field office having jurisdiction over the transaction to which the ruling relates as to the proper application of the ruling to the transaction, the field office will, upon receipt of a written request submitted in accordance with the procedure set forth in paragraph (b)(3) of this section, request advice from the Headquarters

Office as to the proper application of the ruling to the transaction. Such advice may not be requested for the purpose of seeking reconsideration of a ruling with which the importer or other person to whom the ruling letter was issued disagrees.

(2) *When no ruling has been issued.* Internal advice will be sought by a Customs Service field office with respect to a current transaction for which no ruling was requested or issued under the provisions of this part whenever a difference of opinion exists as to the interpretation or proper application of the Customs and related laws to the transaction, and the field office is requested to seek such advice by an importer or other person who would have been entitled, under §177.1(c), to request a ruling with respect to the transaction, while prospective. The request must be submitted to the field office in writing and in accordance with the provisions of paragraph (b)(3) of this section.

(3) *Form of request by importers and others.* An importer or other person requesting that a Customs Service field office seek advice from the Headquarters Office must make such a request, in writing, to the field office having jurisdiction over the transaction in question. The request shall contain a complete statement setting forth a description of the transaction, the specific questions presented, the applicable law, and an argument for the conclusions advocated. The statement must also specify whether, to the knowledge of the person submitting the statement, the same transaction, or one identical to it, has ever been considered, or is currently being considered, by any Customs Service office. In addition, the statement should indicate at which port or ports of entry identical or substantially identical merchandise has been entered.

(4) *Review of requests by importers and others.* All requests submitted by importers and other persons under paragraph (b)(3) of this section, will be reviewed by the field office to which they are submitted. In the event a difference of opinion exists as to the description of the transaction or as to the point or points at issue, the person submitting the request will be so advised in writing. If agreement cannot be reached, both the statements of the person submitting the request and the field office will be forwarded to the Headquarters Office for consideration.

(5) *Refusal by Headquarters Office to furnish advice.* The Headquarters Office may refuse to consider the questions presented to it in the form of a request for internal advice whenever (i) the Headquarters Office determines that the period of time necessary to give adequate consideration to the questions presented would result in a withholding of action with respect to the transaction, or in any other situation, that is inconsistent with the sound administration of the Customs and related laws, and (ii) the questions presented can subsequently be raised by the importer or other interested party in the form of a protest filed in accordance with the provisions of part 174 of this chapter.

(6) *Effect of advice received from the Headquarters Office.* Advice furnished by the Headquarters Office in response to a request therefor represents the official position of the Customs Service as to the application of the Customs laws to the facts of a specific transaction. If the field office believes that the advice furnished by the Headquarters Office should be reconsidered, it shall promptly request such reconsideration. Otherwise, the advice furnished by the Headquarters Office will be applied by the field office in its disposition of the Customs transaction in question.

(7) *Publication.* Within 90 days after issuing an internal advice memorandum, the Customs Service shall publish the decision in the Customs Bulletin or otherwise make it available for public inspection. Disclosure is governed by 31 CFR part 1 and 19 CFR part 103.

(8) *Judicial review of importers' requests.* A refusal by the Headquarters Office to consider the questions raised by an importer in the form of a request for internal advice may be appealed to the Court of International Trade if the importer demonstrates to the Court that he would be irreparably harmed unless given an opportunity to obtain

judicial review prior to the importation of the merchandise.

[T.D. 75–186, 40 FR 31929, July 30, 1975, as amended by T.D. 78–394, 43 FR 49792, Oct. 25, 1978; T.D. 80–285, 45 FR 80106, Dec. 3, 1980; T.D. 84–149, 49 FR 28699, July 16, 1984; T.D. 85–90, 50 FR 21431, May 24, 1985; T.D. 89–74, 54 FR 31517, July 31, 1989; T.D. 02–49, 67 FR 53496, Aug. 16, 2002]

§ 177.12 Modification or revocation of interpretive rulings, protest review decisions, and previous treatment of substantially identical transactions.

(a) *General.* An interpretive ruling, which includes an internal advice decision, issued under this part, or a holding or principle covered by a protest review decision issued under part 174 of this chapter, if found to be in error or not in accord with the current views of Customs, may be modified or revoked by an interpretive ruling issued under this section. In addition, an interpretive ruling issued under this section may have the effect of modifying or revoking the treatment previously accorded by Customs to substantially identical transactions. A modification or revocation under this section must be carried out in accordance with the notice procedures set forth in paragraph (b) or paragraph (c) of this section except as otherwise provided in paragraph (d) of this section, and the modification or revocation will take effect as provided in paragraph (e) of this section.

(b) *Interpretive rulings or protest review decisions.* Customs may modify or revoke an interpretive ruling or holding or principle covered by a protest review decision that has been in effect for less than 60 calendar days by simply giving written notice of the modification or revocation to the person to whom the original ruling was issued or whose current transaction was the subject of the internal advice decision or, in the case of a protest review decision, to the person identified on the Customs Form 19 as the protestant or to any other person designated to receive notice of denial of a protest under §174.30(b) of this chapter. However, when Customs contemplates the issuance of an interpretive ruling that would modify or revoke an interpretive ruling or holding or principle covered by a protest review decision which has been in effect for 60 or more calendar days, the following procedures will apply:

(1) *Publication of proposed action.* A notice proposing the modification or revocation and inviting public comment on the proposal will be published in the *Customs Bulletin*. The notice will refer to all previously issued interpretive rulings or protest review decisions that Customs has identified as being the subject of the proposed action and will invite any member of the public who has received another interpretive ruling or protest review decision involving the issue that is the subject of the proposed action to advise Customs of that fact. Interested parties will have 30 calendar days from the date of publication of the notice to submit written comments on the proposed modification or revocation and to advise Customs in writing that they are recipients of an affected interpretive ruling or protest review decision that was not identified in the notice.

(2) *Notice of final action.* In the absence of extraordinary circumstances, within 30 calendar days after the close of the public comment period, any submitted comments will be considered and a final modifying or revoking notice or notice of other appropriate final action on the proposed modification or revocation will be published in the *Customs Bulletin*. In addition, a written decision will be issued to the person to whom, or on whose transaction, the original interpretive ruling was issued or, in the case of a protest review decision, to the person identified on the Customs Form 19 as the protestant or to any other person designated to receive notice of denial of a protest under §174.30(b) of this chapter. Publication of a final modifying or revoking notice in the *Customs Bulletin* will have the effect of modifying or revoking any interpretive ruling or holding or principle covered by a protest review decision that involves merchandise or an issue that is substantially identical in all material respects to the merchandise or issue that is the subject of the modification or revocation, including an interpretive ruling or holding or principle covered by a protest review

decision that is not specifically identified in the final modifying or revoking notice.

(c) *Treatment previously accorded to substantially identical transactions*—(1) *General*. The issuance of an interpretive ruling that has the effect of modifying or revoking the treatment previously accorded by Customs to substantially identical transactions must be in accordance with the procedures set forth in paragraph (c)(2) of this section. The following rules will apply for purposes of determining under this section whether a treatment was previously accorded by Customs to substantially identical transactions of a person:

(i) There must be evidence to establish that:

(A) There was an actual determination by a Customs officer regarding the facts and issues involved in the claimed treatment;

(B) The Customs officer making the actual determination was responsible for the subject matter on which the determination was made; and

(C) Over a 2-year period immediately preceding the claim of treatment, Customs consistently applied that determination on a national basis as reflected in liquidations of entries or reconciliations or other Customs actions with respect to all or substantially all of that person's Customs transactions involving materially identical facts and issues;

(ii) The determination of whether the requisite treatment occurred will be made by Customs on a case-by-case basis and will involve an assessment of all relevant factors. In particular, Customs will focus on the past transactions to determine whether there was an examination of the merchandise (where applicable) by Customs or the extent to which those transactions were otherwise reviewed by Customs to determine the proper application of the Customs laws and regulations. For purposes of establishing whether the requisite treatment occurred, Customs will give diminished weight to transactions involving small quantities or values, and Customs will give no weight whatsoever to informal entries and to other entries or transactions which Customs, in the interest of commercial facilitation and accommodation, processes expeditiously and without examination or Customs officer review;

(iii) Customs will not find that a treatment was accorded to a person's transactions if:

(A) The person's own transactions were not accorded the treatment in question over the 2-year period immediately preceding the claim of treatment;

(B) The issue in question involves the admissibility of merchandise;

(C) The person made a material false statement or material omission in connection with a Customs transaction or in connection with the review of a Customs transaction and that statement or omission affected the determination on which the treatment claim is based; or

(D) Customs advised the person regarding the manner in which the transactions should be presented to Customs and the person failed to follow that advice; and

(iv) The evidentiary burden as regards the existence of the previous treatment is on the person claiming that treatment. The evidence of previous treatment by Customs must include a list of all materially identical transactions by entry number (or other Customs assigned number), the quantity and value of merchandise covered by each transaction (where applicable), the ports of entry, the dates of final action by Customs, and, if known, the name and location of the Customs officer who made the determination on which the claimed treatment is based. In addition, in cases in which an entry is liquidated without any Customs review (for example, the entry is liquidated automatically as entered), the person claiming a previous treatment must be prepared to submit to Customs written or other appropriate evidence of the earlier actual determination of a Customs officer that the person relied on in preparing the entry and that is consistent with the liquidation of the entry.

(2) *Notice procedures*—(i) When Customs has reason to believe that a contemplated interpretive ruling would have the effect of modifying or revoking the treatment previously accorded by Customs to substantially identical

transactions, notice of the intent to modify or revoke that treatment will be published in the *Customs Bulletin* either as a separate action or in connection with a proposed modification or revocation of an interpretive ruling or holding or principle covered by a protest review decision under paragraph (b)(1) of this section. The notice will give interested parties 30 calendar days from the date of publication of the notice to submit written comments on the proposed modification or revocation and will invite any member of the public whose substantially identical transactions have been accorded the same treatment to advise Customs in writing of that fact, supported by appropriate details regarding those transactions, within that 30-day period. Within 30 calendar days after the close of the public comment period, any submitted comments will be considered, notice of the final interpretive ruling or other final action on the proposed modification or revocation will be published in the *Customs Bulletin*. Written confirmation of the applicability of a final modification or revocation will be sent to each person identified as having had substantially identical transactions that were accorded the same treatment.

(ii) If Customs is not aware prior to issuance that a contemplated interpretive ruling would have the effect of modifying or revoking the treatment previously accorded by Customs to substantially identical transactions, the interpretive ruling will be issued and generally will be effective as provided in §177.9. However, Customs will, upon written application by a person claiming that the interpretive ruling has the effect of modifying or revoking the treatment previously accorded by Customs to his substantially identical transactions, consider delaying the effective date of the interpretive ruling with respect to that person, and continue the treatment previously accorded the substantially identical transactions, pending completion of the procedures set forth in paragraph (c)(2)(i) of this section.

(d) *Exceptions to notice requirements*—(1) *Publication and issuance not required.* The publication and issuance requirements set forth in paragraphs (b) and (c) of this section are inapplicable in circumstances in which a Customs position is modified, revoked or otherwise materially affected by operation of law or by publication pursuant to other legal authority or by other appropriate action taken by Customs in furtherance of an order, instruction or other policy decision of another governmental agency or entity pursuant to statutory or delegated authority. Such circumstances include, but are not limited to, the following:

(i) Adoption or amendment of a statutory provision, including any change to the Harmonized Tariff Schedule of the United States;

(ii) Promulgation of a treaty or other international agreement under the foreign affairs function of the United States;

(iii) Issuance of a Presidential Proclamation or Executive Order, or issuance of a decision or policy determination pursuant to authority delegated by the President;

(iv) Subject to the provisions of §152.16 of this chapter, the rendering of a judicial decision which has the effect of overturning the Customs position;

(v) Publication of a decision in the FEDERAL REGISTER as a result of a petition by a domestic interested party pursuant to 19 U.S.C. 1516 (see part 175 of this chapter);

(vi) Publication of an interim or final rule in the FEDERAL REGISTER in accordance with 5 U.S.C. 553;

(vii) Publication of a final interpretative rule in the FEDERAL REGISTER in accordance with 5 U.S.C. 553 following public notice and comment procedures; and

(viii) Publication of a final ruling in the FEDERAL REGISTER in accordance with 19 U.S.C. 1315(d) and §177.10(c) relating to change of established and uniform practice.

(2) *Publication not required.* In the following circumstances a final modifying or revoking ruling will be issued to the person entitled to it under paragraph (b) or (c) of this section but *Customs Bulletin* publication under paragraph (b) or (c) of this section is not required:

(i) The modifying ruling corrects a clerical error; or

(ii) The modifying or revoking ruling is directed to a ruling issued under subpart I of part 181 of this chapter relating to advance rulings under the North American Free Trade Agreement.

(e) *Effective date and application to transactions*—(1) *Rulings or decisions in effect for less than 60 days.* If an interpretive ruling or holding or principle covered by a protest review decision that is modified or revoked under this section had been in effect for less than 60 calendar days, the modifying or revoking interpretive ruling:

(i) Will be effective on its date of issuance with respect to the specific transaction covered by the modifying or revoking interpretive ruling: and

(ii) Will be applicable to merchandise entered, or withdrawn from warehouse for consumption, on and after its date of issuance.

(2) *Rulings or decisions in effect for 60 or more days.* If an interpretive ruling or holding or principle covered by a protest review decision that is modified or revoked under this section had been in effect for 60 or more calendar days, the modifying or revoking notice will, provided that liquidation of the entry in question has not become final, apply to merchandise entered, or withdrawn from warehouse for consumption:

(i) Sixty calendar days after the date of publication of the final modifying or revoking notice in the *Customs Bulletin* under paragraph (b)(2) of this section; or

(ii) At the option of any person with regard to that person's transaction, on and after the date of publication of the final modifying or revoking notice in the *Customs Bulletin* under paragraph (b)(2) of this section.

(3) *Previous treatment accorded to substantially identical transactions.* A final notice that modifies or revokes the treatment previously accorded by Customs to substantially identical transactions:

(i) Will be effective with respect to transactions that are substantially identical to the transaction described in the modifying or revoking notice 60 calendar days after the date of publication of the final modifying or revoking notice in the *Customs Bulletin* under paragraph (b)(2) or paragraph (c)(2)(i) of this section; and

(ii) Provided that liquidation of the entry in question has not become final, will apply to merchandise entered, or withdrawn from warehouse for consumption:

(A) Sixty calendar days after the date of publication of the final modifying or revoking notice in the *Customs Bulletin* under paragraph (b)(2) or paragraph (c)(2)(i) of this section; or

(B) At the option of a person who makes a valid claim regarding previous treatment, on and after the date of publication of the final modifying or revoking notice in the *Customs Bulletin* under paragraph (b)(2) or paragraph (c)(2)(i) of this section.

[T.D. 02–49, 67 FR 53497, Aug. 16, 2002; 67 FR 54733, Aug. 26, 2002]

§ 177.13 Inconsistent CBP decisions.

(a) *Generally.* Certain decisions made by CBP officials at one field location which are inconsistent with decisions being made by CBP officials at another location may be brought to the attention of CBP Headquarters for resolution by a petition filed by an interested party. The types of decisions which may be the subject of such a petition, a description of the parties who qualify as interested parties, and the period of time in which the petition may be filed are set forth below.

(1) *Inconsistent decisions subject to petition.* The decisions which may be the subject of a petition include:

(i) Decisions described in section 514(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1514(a)), made with respect to the same, or substantially similar, merchandise; and

(ii) Repeated decisions to conduct intensified inspections or examinations of merchandise at ports of entry.

(2) *Interested Parties.* The following parties will be considered interested parties entitled to file a petition under this section:

(i) Parties described in section 514(c)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1514(c)(2)), as eligible to file a protest under section 514;

(ii) A port authority; and

(iii) An ''interested party,'' as described in section 516(a)(2) of the Tariff

Act of 1930, as amended (19 U.S.C. 1516(a)(2)).

(3) *Time for filing.* In the case of decisions described in section 514(a) of the Tariff Act, the petition must be filed within the time prescribed by section 514(c)(2), for filing a protest with respect to the later (or latest) of the decisions which are the subject of the petition. In the case of repeated decisions to conduct intensified inspections or examinations of merchandise at ports of entry, the petition must be filed within ninety (90) days of the later (or latest) such decision.

(b) *Petition*—(1) *Form.* The petition must be in the form of a letter addressed to the Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, Washington, DC 20229–0001. Three copies of the petition should be submitted, if possible.

(2) *Content.* The petition should contain a complete description of the inconsistent decisions complained of, including the ports of entry (or other CBP office) where the decisions were made, entry numbers, and the dates (or approximate dates) such decisions were made. The information set forth in the petition must be sufficient to demonstrate the inconsistency of the decisions described and that the merchandise, or circumstances in which the allegedly inconsistent decisions were made, were substantially similar. In the case of repeated decisions regarding the inspection or examination of merchandise, the decisions must be sufficient in number to demonstrate a pattern of inconsistency not attributable to random selection. Any information which the petitioner considers to be confidential business information should be so noted pursuant to §177.2(b)(7) of this subpart and a sanitized version of his petition should be submitted as well as the three copies requested in paragraph (b)(1) of this section. Petitions which do not contain information sufficient to permit the CBP to verify that the decisions described have occurred will not be considered properly filed and will be returned to the petitioner for additional information. Only one petition will be accepted by the CBP with respect to the decisions alleged to be inconsistent.

(i) *Tariff classification decision.* In the case of decisions involving the tariff classification of merchandise, the petition should also include, with respect to each of the decisions described, the information requested in §177.2 (b)(1) and (b)(2)(ii) of this subpart, including a sample (see §177.2(b)(3)).

(ii) *Other subjects addressable by administrative rulings.* In the case of other decisions involving subjects which could be addressed under the administrative rulings procedure provided for in §§177.1 through 177.10 of this subpart, the information contained in §177.2 (b)(1), (b)(2)(iii) and/or (b)(2)(iv), as applicable, should be also furnished for each of the decisions addressed by the petition.

(c) *Publication and public comment.* Upon receipt of a properly filed petition, notice will be published in the FEDERAL REGISTER announcing the receipt of the petition and describing the decisions alleged to be inconsistent. Public comment on the petition will be permitted for a period of fifteen (15) days after publication. Public comment regarding the proper disposition of the petition will be limited to that submitted in writing, either with the petition or in response to the FEDERAL REGISTER solicitation of public comment.

(d) *Determination of petition; distribution and publication.* Within fifteen (15) days after the close of the period for public comment referred to in paragraph (c) of this section, CBP will issue a decision to the petitioner addressing the inconsistency complained of. That decision will either conform the inconsistent decisions to the current views of CBP as to the proper tariff classification or other disposition of the subject of those decisions or explain why no inconsistency exists. Copies of the decisions to the petitioner will be transmitted directly to all ports (or other CBP offices) identified in the petition and will be distributed through the Customs Information Exchange or by other means to such other ports or offices as may be necessary to correct

any inconsistency identified. A summary of the decision will also be published in the FEDERAL REGISTER and the weekly Customs Bulletin.

(e) *Effective date.* Unless otherwise specified in the decision, a decision issued in response to a petition filed under this section will be effective immediately and, where applicable, applied to all entries for which liquidation is not final.

(f) *Effect on other procedures.* The filing of a petition under this procedure will not preclude the petitioner or any other person entitled to do so from filing a protest or a domestic interested party petition regarding the same matter under the procedures set forth in sections 514, 515 and 516 of the Tariff Act of 1930, as amended and parts 174 and 175 of this chapter, provided the applicable requirements set forth therein are complied with. However, the decision issued in response to the petition may serve as the basis for the disposition of any protest so filed, or as an information letter setting forth the position of the CBP pursuant to subpart A of part 175 of this chapter. The decision issued in response to a petition filed under this section is not itself a decision subject to protest under sections 514–515 of the Tariff Act and part 174 of this chapter.

[T.D. 89–74, 54 FR 31517, July 31, 1989. Redesignated by T.D. 02–49, 67 FR 53497, Aug. 16, 2002; CBP Dec. 12–21, 77 FR 73309, Dec. 10, 2012]

Subpart B—Government Procurement; Country-of-Origin Determinations

AUTHORITY: R.S. 251, as amended (19 U.S.C. 66), sec. 624, 46 Stat. 759 (19 U.S.C. 1624); Pub. L. 96–39, 93 Stat. 144.

SOURCE: T.D. 83–13, 48 FR 1189, Jan. 11, 1983, unless otherwise noted.

§ 177.21 Applicability.

This subpart applies to the issuance of country-of-origin advisory rulings and final determinations relating to Government procurement under Title III, ''Trade Agreements Act of 1979,'' Pub. L. 96–39, 93 Stat. 144, for the purpose of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products for eligible countries. This subpart is intended to be applied consistent with the Federal Acquisition Regulations (48 CFR chapter 1) and the Defense Acquisition Regulation (48 CFR chapter 2).

[T.D. 83–13, 48 FR 1189, Jan. 11, 1983, as amended by CBP Dec. 08–25, 73 FR 40727, July 16, 2008]

§ 177.22 Definitions.

(a) *Country of origin.* For the purpose of this subpart, an article is a product of a country or instrumentality only if (1) it is wholly the growth, product, or manufacture of that country or instrumentality, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term ''instrumentality'' shall not be construed to include any agency or division of the government of a country, but may be construed to include such arrangements as the European Economic Community.

(b) *Advisory ruling.* An advisory ruling is a non-binding, non-reviewable written statement issued by the Director, Commercial and Trade Facilitation Division, Regulations and Rulings, Headquarters, U.S. Customs and Border protection, which does no more than call attention to a well established interpretation or principal of law relating to the country of origin, without applying it to a particular set of facts. CBP will issue an advisory ruling in response to a request for a final determination if:

(1) The request suggests that general information, rather than a final determination, is actually being sought,

(2) The request is incomplete or otherwise fails to meet the requirements set forth in § 177.25(a), or

(3) The ruling requested cannot be issued for any other reason, and CBP believes that the general information supplied by an advisory ruling may be of some benefit to the party making the request. An advisory ruling is not a ruling issued prior to importation under 28 U.S.C. 1581(h).

(c) *Final determination.* A final determination is a binding judicially reviewable statement issued by the Executive Director, Regulations and Rulings, Office of International Trade, Headquarters, U.S. Customs and Border Protection, in response to a written request submitted under the provisions of this subpart that interprets and applies the provisions of law and regulation relating to the country of origin to a specific set of facts. A final determination may be issued to a party-at-interest prior to actual entry of the merchandise.

(d) *Party-at-interest.* For purposes of this subpart the term party-at-interest means:

(1) A foreign manufacturer, producer, or exporter, or a United States importer of merchandise which is the subject of a final determination under this subpart,

(2) A manufacturer, producer, or wholesaler in the United States of a like product,

(3) United States members of a labor organization or other association of workers whose members are employed in the manufacture, production, or wholesale in the United States of a like product, and

(4) A trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States.

[T.D. 83–13, 48 FR 1189, Jan. 11, 1983, as amended by T.D. 91–77, 56 FR 46115, Sept. 10, 1991]

§ 177.23 Who may request a country-of-origin advisory ruling or final determination.

A country-of-origin advisory ruling or final determination may be requested by:

(a) A foreign manufacturer, producer, or exporter, or a United States importer of merchandise,

(b) A manufacturer, producer, or wholesaler in the United States of a like product,

(c) United States members of a labor organization or other association of workers whose members are employed in the manufacture, production, or wholesale in the United States of a like product, or

(d) A trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States.

§ 177.24 By whom request is filed.

A request may be filed by an individual or organization listed in § 177.23 or by a duly authorized attorney or agent on behalf of the individual or organization. A request filed by a corporation shall be signed by a corporate officer, and a request filed by a partnership shall be signed by a partner.

§ 177.25 Form and content of request.

(a) A request for an advisory ruling shall be in writing and shall contain such information as will enable Customs to provide the requester with the applicable principle of law or well established interpretation relating to the particular country of origin.

(b) A request for a final determination shall be in writing and shall contain the following information:

(1) The name of the requester, the requester's principal place of business, and a statement that the requester is authorized to file the request under the provisions of § 177.24;

(2) A description of the existing article for which a country-of-origin determination is requested;

(3) The country or instrumentality an article is claimed to be the product of;

(4) Such further information as will enable Customs to determine if an article is a product of a specific country or instrumentality, and;

(5) If applicable, the specific procurement for which the final determination is requested.

§ 177.26 Where request filed.

The request shall be filed with the Executive Director, Regulations and Rulings, Office of International Trade, Headquarters, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

[T.D. 83–13, 48 FR 1189, Jan. 11, 1983, as amended by T.D. 99–27, 64 FR 13677, Mar. 22, 1999]

§ 177.27 Oral discussion of issues.

Any party authorized to request a ruling under the provisions of § 177.23

may request an opportunity for oral discussion of the issues presented in the request. The oral discussion of issues will be governed by the provisions of §177.4.

§177.28 Issuance of advisory rulings and final determinations.

(a) Pursuant to a request for an advisory ruling which meets the requirements of this subpart, Customs will promptly issue an advisory ruling.

(b) Pursuant to a request for a final determination which meets the requirements of this subpart, Customs will promptly issue a final determination. If the request does not meet the requirements of this subpart Customs may decline to issue a final determination or may issue instead an advisory ruling.

(c) Requests for final determinations which include the information set forth in §177.25(b)(5) (relating to a specific procurement) will be considered by Customs before all other requests (advisory rulings and final determinations).

§177.29 Publication of notice of final determinations.

Notice of all final determinations shall be published in the FEDERAL REGISTER within 60 days of the date the final determination is issued.

§177.30 Review of final determinations.

Any party-at-interest listed in §177.22(d) may seek judicial review of a final determination within 30 days after publication of such determination in the FEDERAL REGISTER, and may seek judicial review of a refusal to issue a final determination within 30 days after such refusal. The Court of International Trade shall have exclusive jurisdiction to review a final determination or a refusal to issue a final determination made under this subpart.

§177.31 Reexamination of final determinations.

A party-at-interest, other than the party-at-interest which requested and received the initial final determination, may ask Customs to consider the matter anew and issue, on an expedited basis, a new final determination. Such a request shall specifically identify the previous final determination. Upon receipt of such a request, Customs will issue a new final determination within five working days of receipt of the request unless (a) the previous final determination was the subject of a contested lawsuit timely filed in the Court of International Trade under 28 U.S.C. 1581(e) or, (b) the merchandise at issue in the initial final determination was tendered and deemed responsive to the request for proposals or an invitation for bids in a competitive procurement subject to the Buy American Act (41 U.S.C. 10a *et seq.*) and a contract under such procurement was let. Any new final determination issued under this section shall be published in accordance with §177.29 and is reviewable under §177.30.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

Sec.
178.1 Purpose.
178.2 Listing of OMB control numbers.

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

§178.1 Purpose.

This part sets forth the control numbers assigned to information collections of the Customs Service by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. This part complies with the requirements of the Paperwork Reduction Act of 1980, and implements regulations promulgated by the Office of Management and Budget, (5 CFR 1320.7(f)(2), 1320.12(d) and 1320.13(j)) which require that agencies display a current control number assigned by the Director of the Office of Management and Budget for each agency information collection.

[T.D. 85–53, 50 FR 11849, Mar. 26, 1985]

§178.2 Listing of OMB control numbers.

19 CFR Section	Description	OMB control No.
§4.7a	Unique bill of lading identifier for inward manifests.	1515–0142

19 CFR Section	Description	OMB control No.
§ 4.7a(c)(4)	Transportation manifest (cargo declaration).	1651–0001
§§ 4.7b, 4.64, 122.49a, 122.49b, 122.49c, 122.75a, 122.75b.	Electronic manifest requirements for carriers transporting passengers and crew onboard vessels and aircraft.	1651–0088
§ 4.7c	Vessel stow plan.	
§ 4.7d	Container status messages.	
§§ 4.10, 4.16, 4.30, 4.37, 4.39, 4.91, 10.60, 24.16, 122.29, 122.38, 123.8, 146.32, 146.34.	Application-Permit-Special License, Unlading-Lading, Overtime Services (Customs Form 3171).	1515–0013
§ 4.14	Vessel repair declaration and entry.	1515–0082
§§ 4.20, 4.23, and 4.24.	Certification of payment of tonnage tax.	1515–0113
§ 4.37	Notification regarding imported merchandise or baggage for which entry has not been made.	1515–0220
§ 4.37(c)	Preparation of delivery ticket for transfer of merchandise to general order.	1515–0224
§ 4.76	Booking information for the Sea Carrier's Module of the AES.	1515–0221
§ 4.94a	Deferral of duty on large yachts imported for sale.	1515–0223
§ 4.97	Application for foreign vessel to engage in salvage operation/report of salvage operation.	515–0132
§ 7.3	Claim for duty-free entry of goods imported from U.S. insular possessions..	1651–0116
§ 10.1	Declarations covering U.S. articles exported and returned without having been advanced in value or improved in condition.	1515–0194
§ 10.8	Declarations covering articles exported for repairs or alterations and returned.	1515–0194
§ 10.8a(b)(1)	Declaration by person abroad who received and is returning articles to the U.S. that do not conform to samples or specifications.	1515–0108
§ 10.8a(b)(2)	Declaration by owner, importer, consignee or agent that articles being reimported into U.S. were previously imported, with payment of duty, and exported, without benefit of drawback.	1515–0108
§ 10.9	Declarations covering metal articles exported for processing and returned for further processing.	1515–0194
§§ 10.24, 162.1c.	Declaration by foreign assembler and endorsement by importer that articles were assembled in whole or in part from fabricated components that were products of the U.S.	1515–0088
§ 10.25	Declaration by foreign assembler and endorsement by importer that articles were assembled in whole or in part from textile components cut to shape in the U.S.	1515–0207
§ 10.41b	Requirement to clearly and conspicuously mark serially numbered substantially holders or containers.	1515–0116
§ 10.41b(e)	Requirement to keep adequate records on current status of serially numbered substantial holders or containers.	1515–0101
§ 10.48	Declaration by originating artist, or seller or shipper, that work of art being imported into the U.S. is an original work of art.	1515–0118
§ 10.62b	Certificate of compliance for turbine fuel withdrawals.	1515–0209
§ 10.67(a)(2)	Declaration by foreign shipper describing the specific use to which articles exported from U.S. for scientific or educational purposes, and now being returned, were put while abroad.	1515–0105
§ 10.67(a)(3)	Declaration of ultimate consignee of articles previously exported from U.S. for scientific or educational purposes, and now being returned, that such articles have not been changed in condition while abroad.	1515–0104
§ 10.84	Origin certificate for automotive products from Canada.	1515–0164
§ 10.91	Importers of merchandise subject to actual use provisions; proof of use for duty rates dependent on actual use.	1651–0032 and 1651–0038
§ 10.99	Importation of ethyl alcohol for nonbeverage purposes.	1515–0160
§ 10.107	Report of person who sent article from foreign country, or of person in U.S. for whose account an article was received, to justify duty-free entry of articles imported under conditions of emergency.	1515–0130
§ 10.137	Requirement of importer to maintain accurate, detailed records on use or other disposition of imported merchandise for "actual use" duty assessment requirements.	1515–0091

19 CFR Section	Description	OMB control No.
§ 10.138	Certificate of importer to verify actual use of articles imported duty-free or at a reduced rate of duty under actual use provisions.	1515–0109
§ 10.173	Claim for duty-free entry of eligible articles under the Generalized System of Preferences.	1515–0194
§ 10.184	Refund of duties on certain wool imports.	1515–0227
§ 10.198	Claim for duty-free entry of eligible articles under the Caribbean Basin Initiative.	1515–0194
§ 10.199	Claim for duty-free entry of rum beverages from Canada under the Caribbean Basin Initiative.	1515–0194
§ 10.207	Claim for duty-free entry of eligible articles under the Andean Trade Preference Act.	1515–0219
§§ 10.214–10.216.	Claim for preferential treatment on textile and apparel articles under the African Growth and Opportunity Act.	1651–0082
§§ 10.244, 10.245, 10.246, 10.248, 10.254, 10.255, and 10.256.	Claim for duty-free entry entry of eligible articles under the Andean Trade Promotion and Drug Eradication Act.	1651–0091
§§ 10.307, 10.310, and 10.311.	Claim for duty-free entry and election to average for automotive products under the U.S.-Canada Free Trade Agreement.	1515–0164
§§ 10.410 and 10.411.	Claim for preferential tariff treatment under the US-Chile Free Trade Agreement.	1651–0117
§§ 10.510 and 10.511.	Claim for preferential tariff treatment under the US-Singapore Free Trade Agreement.	1651–0117
§§ 10.583 and 10.584..	Claim for preferential tariff treatment under the Dominican Republic-Central America-US Free Trade Agreement.	1651–0125
§§ 10.703 and 10.704.	Claim for preferential tariff treatment under the U.S.-Jordan Free Trade Agreement.	1651–0128
§§ 10.723 and 10.724.	Claim for preferential tariff treatment under the US-Australia Free Trade Agreement.	1651–0117
§§ 10.763 and 10.764.	Claim for preferential tariff treatment under the U.S.-Morocco Free Trade Agreement.	1651–0117
§§ 10.803, 10.804, 10.818, and 10.821.	Claim for preferential tariff treatment under the U.S.-Bahrain Free Trade Agreement.	1651–0130
§§ 10.847 and 10.848.	Claim for duty-free treatment under the HOPE Act.	1651
§§ 10.863, 10.864, 10.881, and 10.884.	Claim for preferential tariff treatment under the U.S.-Oman Free Trade Agreement.	1651–0117
§§ 10.903 and 10.904.	Claim for preferential tariff treatment under the U.S.-Peru Trade Promotion Agreement.	1651–0117
§§ 10.1003 and 10.1004.	Claim for preferential tariff treatment under the US-Korea Free Trade Agreement.	1651–0117
§§ 10.2003 and 10.2004.	Claim for preferential tariff treatment under the US-Panama Trade Promotion Agreement.	1651–0117
§§ 10.3003 and 10.3004..	Claim for preferential tariff treatment under the US-Colombia Trade Promotion Agreement..	1651–0117
§§ 12.104c and 12.104e.	Certificates and other documentation relating to the importation of items of cultural property.	1515–0147
§ 12.121	Approval of blanket certification under the Toxic Substances Control Act.	1515–0173
§ 12.152	Certificate and recordkeeping requirements for the entry of rough diamonds.	1505–0198 and 1651–0076.
§ 19.2	Information to be supplied by owner or lessee in support of application to estabilsh a bonded warehouse facility.	1515–0121
§ 19.3	Application to alter, relocate, or discontinue a bonded warehouse/list of employees engaged in the carriage, receiving, storage or delivery of bonded merchandise.	1515–0134
§ 19.9(a)	Preparation of delivery ticket for transfer of merchandise to general order.	1515–0224
§ 19.13(b)	Application for establishment of a manufacturing warehouse.	1515–0136
§ 19.14(c)	Application by proprietor of bonded manufacturing warehouse to receive therein domestic merchandise to be used in connection with the manufacture of articles.	1515–0133
§ 19.17	Application by manufacturer to bond (or discontinue a previously bonded) establishment engaged in the smelting or refining of metal-bearing materials.	1515–0127
§ 19.19	Record of smelting and refining operation showing receipt and disposition of each shipment of material.	1515–0135
§ 19.40	Application for establishment of a container station.	1515–0117
§ 19.42	Application by container station operator to transfer a container, intact, to a station.	1515–0142
§ 19.46	List of persons employed by container station operator in moving, receiving, storing or delivering imported merchandise.	1515–0138
§ 24.5	Importer Identification Information.	1515–0199

19 CFR Section	Description	OMB control No.
§ 24.22	Users fees for Customs services.	1515–0154
§ 24.24	Harbor maintenance fee	1515–0158
§ 24.25	Statement processing and Automated Clearinghouse.	1515–0167
§ 24.26	Automated Clearinghouse Credit.	1515–0218
§ 103.31	Disclosure by Customs of information on cargo declarations of inward vessel manifests.	1515–0124
Part 111	Issuance of customs broker licenses and permits, monitoring performance of brokers in conducting customs business, and institution of disciplinary action against brokers.	1515–0076 and 1515–0100.
§ 111.96	Users fees for Customs services.	1515–0154
§ 112.29(b)	Requirement to furnish a current list of officers, members or employees, of a customs cartage or lighterage establishment, upon request.	1515–0126
§ 112.49	Request by cartman or lighterman for temporary identification card pending issuance of permanent identification.	1515–0128
Part 113	Customs Bond Structure (Customs Form 301 and Customs Form 5297).	1515–0144
Part 113—Appendix B.	Bond to Indemnify Complainant Under Section 337, Tariff Act of 1930, as Amended.	1515–0222
Part 115	Information to obtaiin certification that containers/road vehicles meet construction requirements.	1515–0145
§ 118.11	Application to establish a centralized examination station.	1515–0183
§ 122	Air commerce regulations	1515–0153
§ 122.14	Customs security areas in international airports.	1515–0153
§ 122.27	Documents required aboard private aircraft.	1515–0175
§§ 122.48a, 122.48b.	Transportation manifest (cargo declaration).	1651–0001
§ 122.50	Notification regarding imported merchandise or baggage for which entry has not been made.	1515–0220
§ 122.50(c)	Preparation of delivery ticket for transfer of merchandise to general order.	1515–0224
§ 122.173	Application for entry into the Air Carrier Smuggling Prevention Program.	1515–0171
§ 123.10	Notification regarding imported merchandise or baggage for which entry has not been made.	1515–0220
§ 123.10(c)	Preparation of delivery ticket for transfer of merchandise to general order.	1515–0224
§ 123.91	Transportation manifest (cargo declaration).	1651–0001
§ 123.92	Transportation manifest (cargo declaration).	1651–0001
§§ 125.22, 125.33, 125.34, 125.35.	Authorization of bonded carriers to transport cargo within port limits without obtaining cartman's license.	1515–0193
§ 128.11	Express consignment carrier application and approval process.	1515–0144
§ 128.21	Specific description of merchandise.	1515–0069
§ 128.23	Requirement of submission of Customs-approved barcoded entry numbers for ACS processing.	1515–0069
§ 128.24	Requirement for Invoice, Advance Manifest, or Immediate Delivery application form.	1515–0069
§ 133.2	Application to record a trademark.	1515–0114
§§ 133.12, 133.13.	Application to record a tradename.	1515–0119
§§ 133.32, 133.33.	Application to record a copyright.	1515–0097
§ 141.4	Requirement to make entry unless specifically exempt.	1515–0065
§§ 141.81–141.83, 141.86.	Requirement as to the existence and contents of special customs invoices, special summary invoices or commercial invoices.	1515–0120
§ 141.89(a)	Additional information on invoices for imported footwear.	1515–0047
§ 142.6	Name and address of manufacturer or seller.	1515–0170
§ 142.42	Line release application	1515–0181
§ 143.23	Requirement to file entry summary form.	1515–0065
§ 147.11(c)	Requirement to use a special form of entry for articles entered into U.S. for exhibition purposes under the Trade Fair Act of 1959.	1515–0106
§§ 146.6, 146.7	Procedures for activation of a foreign trade zone; procedures for zone changes, including alteration, deactivation and suspension.	1515–0151
§ 149.2	Importer Security Filing.	
§ 151.12(f)	Application and other documents pertaining to accreditation of commercial laboratories.	1515–0155
§ 151.13(d)	Application and other documents pertaining to approval of commercial gaugers.	1515–0155
§ 151.16(d)	Detention of merchandise	1515–0210
§ 158.2	Filing of entry summary and payment of duty for less than invoiced number of packages in shipment.	1515–0037
§ 159.63	Distribution of continued dumping and subsidy offset to affected domestic producers.	1515–0229
§ 162.74	Prior disclosure	1515–0212
§§ 162.94, 162.95(c).	Petition for remission or mitigation of forefeitures and penalties incurred.	1515–0052
Part 163	General recordkeeping and record production requirements.	1515–0214

19 CFR Section	Description	OMB control No.
§ 171.11	Petition for remission or mitigation of forfeitures and penalties incurred.	1515–0052
Part 177	Issuance of administrative rulings on prospective and current customs transactions.	1515–0228
§ 181.11	Certificate of Origin for purposes of the North American Free Trade Agreement.	1515–0205
§§ 181.22 and 181.32.	Claim for preferential tariff treatment under the North American Free Trade Agreement.	1515–0205
§§ 181.47 and 181.53.	Claim for refund, waiver or reduction of duty under the drawback and duty deferral provisions of the North American Free Trade Agreement.	1515–0205
§ 181.64	Claim for duty-free or reduced-duty treatment on repaired or altered goods under the North American Free Trade Agreement.	1515–0205
§ 181.72	Submission of information in connection with origin verifications under the North American Free Trade Agreement.	1515–0205
§ 181.82	Statement accompanying corrected declaration or notification of incorrect certification under the North American Free Trade Agreement.	1515–0205
§§ 181.93–181.96 and 181.102.	Submission of information in connection with requests for issuance or review of advance rulings under the North American Free Trade Agreement.	1515–0205
§§ 181.113, 181.115 and 181.116.	Submission of information in connection with the review and appeal of adverse marking decisions under the North American Free Trade Agreement.	1515–0205
§ 181.131	Claim for preferential tariff treatment under the North American Free Trade Agreement.	1515–0205
§§ 191.0–191.195.	Recordkeeping and reporting requirements relating to drawbacks.	1515–0213
§ 192.2	Documentation requirements for esxporting used, self-propelled vehicles, vessels and aircraft.	1515–0157
§ 192.14	Transportation manifest (cargo declaration).	1651–0001

[T.D. 85–53, 50 FR 11849, Mar. 26, 1985]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 178.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

Sec.

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3314;

Subpart D of part 181 also issued under 19 U.S.C. 1520(d).

Source: T.D. 95–68, 60 FR 46364, Sept. 6, 1995, unless otherwise noted.

Editorial Note: Nomenclature changes to part 181 appear by CBP Dec. No. 16–26, 81 FR 93026, Dec. 20, 2016.

§ 181.0 Scope.

This part implements the duty preference and related Customs provisions applicable to imported goods under the North American Free Trade Agreement (the NAFTA) entered into on December 17, 1992, and under the North American Free Trade Agreement Implementation Act (107 Stat. 2057) (the Act). This part is not applicable to goods entered for consumption, or withdrawn from warehouse for consumption, on or after July 1, 2020. Except as otherwise specified in this part, the procedures and other requirements set forth in this part are in addition to the Customs procedures and requirements of general application contained elsewhere in this chapter. Additional provisions implementing certain aspects of the NAFTA and the Act are contained in parts 10, 12, 24, 134 and 174 of this chapter.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as amended at 85 FR 39693, July 1, 2020]

Subpart A—General Provisions

§ 181.1 Definitions.

As used in this part, the following terms shall have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular subpart, section or other portion of this part:

(a) *Canada. Canada,* when used in a geographical rather than governmental context, means the territory of Canada as defined in Annex 201.1 of the NAFTA.

(b) *Commercial importation. Commercial importation* means the importation of a good into the United States, Canada or Mexico for the purpose of sale, or any

commercial, industrial or other like use.

(c) *Customs administration*. *Customs administration* means the competent authority that is responsible under the law of the United States, Canada or Mexico for the administration of its customs laws and regulations.

(d) *Customs duty*. *Customs duty* means any customs or import duty and a charge of any kind imposed in connection with the importation of a good, including any form of surtax or surcharge in connection with such importation, other than any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of the General Agreement on Tariffs and Trade, or any equivalent provision of a successor agreement to which the United States, Canada and Mexico are party, in respect of like, directly competitive or substitutable goods of the United States, Canada or Mexico, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;

(2) Antidumping or countervailing duty that is applied pursuant to the domestic law of the United States, Canada or Mexico and that is not applied inconsistently with Chapter Nineteen of the NAFTA;

(3) Fee or other charge in connection with importation commensurate with the cost of services rendered;

(4) Premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff rate quotas or tariff preference levels; and

(5) Fee applied pursuant to section 22 of the U.S. Agricultural Adjustment Act, subject to the provisions of Chapter Seven of the NAFTA.

(e) *Determination of origin*. *Determination of origin* means a determination as to whether a good qualifies as a good originating in the United States, Canada and/or Mexico under the rules set forth in General Note 12, HTSUS, and in the appendix to this part.

(f) *Exporter*. *Exporter* means an exporter located, and required under this part to maintain records regarding exportations of a good, in the United States, Canada or Mexico.

(g) *Generally Accepted Accounting Principles*. *Generally Accepted Accounting Principles* means the recognized consensus or substantial authoritative support in the United States, Canada or Mexico with respect to the recording of revenues, expenses, costs, assets and liabilities, the disclosure of information and the preparation of financial statements. Generally Accepted Accounting Principles under this definition may encompass broad guidelines of general application as well as detailed standards, practices and procedures.

(h) *HTSUS*. *HTSUS* means the Harmonized Tariff Schedule of the United States.

(i) *Importer*. *Importer* means an importer located, and required under this part to maintain records regarding importations of a good, in the United States, Canada or Mexico.

(j) *Intermediate material*. *Intermediate material* means an ''intermediate material'' as defined in the appendix to this part.

(k) *Marking Rules*. *Marking Rules* means the ''NAFTA Marking Rules'' as defined in § 134.1(j) of this chapter.

(l) *Measure*. *Measure* means any law, regulation, procedure, requirement or practice.

(m) *Mexico*. *Mexico*, when used in a geographical rather than governmental context, means the territory of Mexico as defined in Annex 201.1 of the NAFTA.

(n) *NAFTA*. *NAFTA* means the North American Free Trade Agreement approved by the Congress under section 101(a) of the North American Free Trade Agreement Implementation Act (107 Stat. 2057).

(o) *NAFTA drawback*. *NAFTA drawback* means any drawback, waiver or reduction of U.S. customs duty provided for in subpart E of this part.

(p) *Net cost of a good*. *Net cost of a good* means the ''net cost of a good'' as defined in the appendix to this part.

(q) *Originating*. *Originating*, when used with regard to a good or a material, means a good or material which qualifies as originating in the United States, Canada and/or Mexico under the rules set forth in General Note 12, HTSUS, and in the appendix to this part.

(r) *Person*. *Person* means a natural person or an enterprise.

(s) *Preferential tariff treatment*. *Preferential tariff treatment* means the duty rate applicable to an originating good or to a good to which appendix 6.B. to Annex 300–B of the NAFTA applies.

(t) *Producer*. *Producer* means a *producer* as defined in the appendix to this part.

(u) *Production*. *Production* means *production* as defined in the appendix to this part.

(v) *Transaction value*. *Transaction value* means transaction value as defined in the appendix to this part.

(w) *United States*. *United States*, when used in a geographical rather than governmental context, means the territory of the United States as defined in Annex 201.1 of the NAFTA.

(x) *Used*. *Used* means *used* as defined in the appendix to this part.

(y) *Value*. *Value* means the value of a good or material for purposes of calculating customs duties or for purposes of applying the provisions of the appendix to this part.

Subpart B—Export Requirements

§ 181.11 Certificate of Origin.

(a) *General*. A Certificate of Origin shall be employed to certify that a good being exported either from the United States into Canada or Mexico or from Canada or Mexico into the United States qualifies as an originating good for purposes of preferential tariff treatment under the NAFTA.

(b) *Preparation of Certificate in the United States*. An exporter in the United States who completes and signs a Certificate of Origin for the purpose set forth in paragraph (a) of this section shall use Customs Form 434, or its electronic equivalent or such other medium or format as approved by the Canadian or Mexican customs administration for that purpose. Where the U.S. exporter is not the producer of the good, that exporter may complete and sign a Certificate on the basis of:

(1) Its knowledge of whether the good qualifies as an originating good;

(2) Its reasonable reliance on the producer's written representation that the good qualifies as an originating good; or

(3) A completed and signed Certificate for the good voluntarily provided to the exporter by the producer.

(c) *Submission of Certificate to Customs*. An exporter in the United States, and a producer in the United States who has voluntarily provided a copy of a Certificate of Origin to that exporter pursuant to paragraph (b)(3) of this section, shall provide a copy of the Certificate to Customs upon request.

(d) *Notification of errors in Certificate*. An exporter or producer in the United States who has completed and signed a Certificate of Origin, and who has reason to believe that the Certificate contains information that is not correct, shall within 30 calendar days after the date of discovery of the error notify in writing all persons to whom the Certificate was given by the exporter or producer of any change that could affect the accuracy or validity of the Certificate.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as amended by CBP Dec. 15–14, 80 FR 61292, Oct. 13, 2015]

§ 181.12 Maintenance and availability of records.

(a) *Maintenance of records*—(1) *General*. An exporter or producer in the United States who completes and signs a Certificate of Origin shall maintain in the United States, for five years after the date on which the Certificate was signed, the Certificate (or copy thereof) and all other records relating to the origin of a good for which preferential tariff treatment may be claimed in Canada or Mexico, including records associated with:

(i) The purchase of, cost of, value of, and payment for, the good that is exported from the United States;

(ii) The purchase of, cost of, value of, and payment for, all materials, including indirect materials, used in the production of the good that is exported from the United States; and

(iii) The production of the good in the form in which the good is exported from the United States.

(2) *Method of maintenance*. The records referred to in paragraph (a) of this section shall be maintained in accordance with the Generally Accepted Accounting Principles applied in the United States and may be maintained

in hard-copy form, on microfilm or microfiche or in automated record storage devices (for example, magnetic discs and tapes) if associated computer programs are available to facilitate retrieval of the data in a usable form.

(b) *Availability of records*—(1) *To Customs.* For purposes of determining compliance with the provisions of this part, the records required to be maintained under this section shall be made available for examination and inspection by the Center director or other appropriate Customs officer in the same manner as provided in part 163 of this chapter in the case of U.S. importer records.

(2) *To the Canadian or Mexican customs administration.* If a U.S. exporter or producer receives notification of, and consents to, an origin verification visit by the Canadian or Mexican customs administration under Article 506 of the NAFTA (see §181.74(e) of this part), such consent shall constitute agreement by the U.S. exporter or producer to make available to an officer of that customs administration all records required to be maintained under this section and to provide facilities for the inspection thereof. If, during the course of an origin verification of a U.S. producer, the Canadian or Mexican customs administration finds that the U.S. producer has failed to maintain its records in accordance with the Generally Accepted Accounting Principles applied in the United States, that customs administration will so inform the U.S. producer in writing and will give the U.S. producer 60 calendar days to conform the records to those Principles. If a U.S. exporter or producer fails to maintain records or make records available to the Canadian or Mexican customs administration in accordance with the provisions of this section, or if a U.S. producer fails to conform its records to Generally Accepted Accounting Principles as provided in this paragraph, the Canadian or Mexican customs administration may deny preferential tariff treatment to the good that is the subject of the verification visit.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as amended by T.D. 98–56, 63 FR 32955, June 16, 1998]

§181.13 Failure to comply with requirements.

The port director may apply such measures as the circumstances may warrant where an exporter or a producer in the United States fails to comply with any requirement of this part. Such measures may include the imposition of penalties pursuant to 19 U.S.C. 1508(e) for failure to retain records required to be maintained under §181.12.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as amended by T.D. 98–56, 63 FR 32955, June 16, 1998]

Subpart C—Import Requirements

§181.21 Filing of claim for preferential tariff treatment upon importation.

(a) *Declaration.* In connection with a claim for preferential tariff treatment, or for the exemption from the merchandise processing fee, for a good under the NAFTA, the U.S. importer must make a formal declaration that the good qualifies for such treatment. The declaration may be made by including on the entry summary, or equivalent documentation, including electronic submissions, the symbol ''CA'' for a good of Canada, or the symbol ''MX'' for a good of Mexico, as a prefix to the subheading of the HTSUS under which each qualifying good is classified. Except as otherwise provided in 19 CFR 181.22 and except in the case of a good to which Appendix 6.B to Annex 300-B of the NAFTA applies (see also 19 CFR 102.25), the declaration must be based on a complete and properly executed original Certificate of Origin, or copy thereof, which is in the possession of the importer and which covers the good being imported.

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section or under §181.32(b)(2) of this part, the U.S. importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer shall within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration shall be effected by submission of

a letter or other written statement to the CBP office where the original declaration was filed.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as amended by CBP Dec. 07–76, 72 FR 52782, Sept. 17, 2007]

§ 181.22 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records.* Each importer claiming preferential tariff treatment for a good imported into the United States shall maintain in the United States, for five years after the date of entry of the good, all documentation relating to the importation of the good. Such documentation shall include a copy of the Certificate of Origin and any other relevant records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential tariff treatment on a good under § 181.21 of this part shall provide, at the request of the Center director, a copy of each Certificate of Origin pertaining to the good which is in the possession of the importer. A Certificate of Origin submitted to CBP under this paragraph or under § 181.32(b)(3) of this part:

(1) Shall be on CBP Form 434, or its electronic equivalent including privately-printed copies thereof, or on such other form as approved by the Canadian or Mexican customs administration, or, as an alternative to CBP Form 434 or such other approved form, in an approved computerized format or such other medium or format as is approved by the Office of International Trade, U.S. Customs and Border Protection, Washington, DC 20229. An alternative format must contain the same information and certification set forth on CBP Form 434;

(2) Shall be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Shall be completed either in the English language or in the language of the country from which the good is exported. If the Certificate is completed in a language other than English, the importer shall also provide to the Center director, upon request, a written English translation thereof;

(4) Shall be accepted by CBP for four years after the date on which the Certificate was signed by the exporter or producer; and

(5) May be applicable to:

(i) A single importation of a good into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical goods into the United States that occur within a specified period, not exceeding 12 months, set out therein by the exporter or producer.

(c) *Acceptance of Certificate.* A Certificate of Origin shall be accepted by the Center director as valid for the purpose set forth in § 181.11(a) of this part, provided that the Certificate is completed, signed and dated in accordance with the requirements of paragraph (b) of this section. If the Center director determines that a Certificate is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer shall be given a period of not less than five working days to submit a corrected Certificate. Acceptance of a Certificate will result in the granting of preferential tariff treatment to the imported good unless, in connection with an origin verification initiated under subpart G of this part or based on a pattern of conduct within the meaning of § 181.76(c) of this part, the Center director determines that the imported good does not qualify as an originating good or should not be accorded such treatment for any other reason as specifically provided for elsewhere in this part. A Certificate shall not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(5)(ii) of this section if, based on an origin verification under subpart G of this part, the Center director determined that a previously imported identical good covered by the Certificate did not qualify as an originating good.

(d) *Certificate not required*—(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer shall not be required to have a Certificate of Origin in his possession for:

(i) An importation of a good for which the port director or Center director before January 19, 2017, or the Center director on or after January 19, 2017, has in writing waived the requirement for a Certificate of Origin because the port director or Center director is otherwise satisfied that the good qualifies for preferential tariff treatment under the NAFTA;

(ii) A non-commercial importation of a good; or

(iii) A commercial importation for which the total value of originating goods does not exceed US$2,500, provided that, unless waived by the Center director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the good covered by this shipment qualifies as an originating good for purposes of preferential tariff treatment under the NAFTA.

Check One:
( ) Producer
( ) Exporter
( ) Importer
( ) Agent

Name

Title

Address

Signature and Date

(2) *Exception*. If the Center director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a certification requirement set forth in this part, the Center director shall notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential tariff treatment. The importer shall have 30 calendar days from the date of the written notice to obtain a valid Certificate, and a failure to timely obtain the Certificate will result in denial of the claim for preferential tariff treatment. For purposes of paragraph (d)(2) of this section, a ''series of importations'' means two or more entries covering goods arriving on the same day from the same exporter and consigned to the same person.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as amended by T.D. 98–56, 63 FR 32955, June 16, 1998; CBP Dec. 07–76, 72 FR 52782, Sept. 17, 2007; CBP Dec. 15–14, 80 FR 61292, Oct. 13, 2015; CBP Dec. No. 16–26, 81 FR 93026, Dec. 20, 2016]

§ 181.23 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *Effect of noncompliance*. If the importer fails to comply with any requirement under this part, including submission of a Certificate of Origin under § 181.22(b) or submission of a corrected Certificate under § 181.22(c), the Center director may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment*. Where the requirements for preferential tariff treatment set forth elsewhere in this part are met, the Center director nevertheless may deny preferential tariff treatment to an originating good if the good is shipped through or transshipped in a country other than the United States, Canada or Mexico and the importer of the good does not provide, at the request of the Center director, copies of the customs control documents that indicate to the satisfaction of the Center director that the good remained under customs control while in such other country.

Subpart D—Post-Importation Duty Refund Claims

§ 181.31 Right to make post-importation claim and refund duties.

Notwithstanding any other available remedy, including the right to amend an entry so long as liquidation of the entry has not become final, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment on that originating good was made at that time under § 181.21(a) of this part, the importer of that good may file a claim for a refund of any excess duties at any time within one year after the date of importation of the good in accordance

with the procedures set forth in § 181.32 of this part. Subject to the provisions of § 181.23 of this part, Customs may refund any excess duties by liquidation or reliquidation of the entry covering the good in accordance with § 181.33(c) of this part.

§ 181.32 Filing procedures.

(a) *Place of filing.* A post-importation claim for a refund under § 181.31 of this part shall be filed with CBP, either at the port of entry or electronically.

(b) *Contents of claim.* A post-importation claim for a refund shall be filed by presentation of the following:

(1) A written declaration stating that the good qualified as an originating good at the time of importation and setting forth the number and date of the entry covering the good;

(2) Subject to § 181.22(d) of this part, a copy of each Certificate of Origin (see § 181.11 of this part) pertaining to the good;

(3) A written statement indicating whether or not the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was so provided, the statement shall identify each recipient by name, Customs identification number and address and shall specify the date on which the documentation was provided;

(4) A written statement indicating whether or not the importer of the good is aware of any claim for refund, waiver or reduction of duties relating to the good within the meaning of Article 303 of the NAFTA (see subpart E of this part). If the importer is aware of any such claim, the statement shall identify each claim by number and date and shall identify the person who made the claim by name, Customs identification number and address; and

(5) A written statement indicating whether or not any person has filed a protest or a petition or request for reliquidation relating to the good under any provision of law, and if any such protest or petition or request for reliquidation has been filed, the statement shall identify the protest, petition or request by number and date.

§ 181.33 Customs processing procedures.

(a) *Status determination.* After receipt of a post-importation claim under § 181.32 of this part, the Center director shall determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest, petition or request for reliquidation or judicial review.* If the Center director determines that any protest or any petition or request for reliquidation relating to the good has not been finally decided, the Center director shall suspend action on the claim filed under this subpart until the decision on the protest, petition or request becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, the Center director shall suspend action on the claim filed under this subpart until judicial review has been completed.

(c) *Allowance of claim*—(1) *Unliquidated entry.* If the Center director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has not been liquidated, the Center director shall take into account the claim for refund under this subpart in connection with the liquidation of the entry.

(2) *Liquidated entry.* If the Center director determines that a claim for a refund filed under this subpart should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of duties pursuant to this subpart. If the entry is otherwise to be reliquidated based on administrative review of a protest or petition for reliquidation or as a result of judicial review, the Center director shall reliquidate the entry taking into account the claim for refund under this subpart.

(3) *Information to be provided to Canada or Mexico.* If any information is provided to Customs pursuant to § 181.32(b) (4) or (5) of this part, that information, together with notice of the allowance of the claim and the amount of duty refunded pursuant to this subpart, shall be provided by the Center

director to the customs administration of the country from which the good was exported.

(d) *Denial of claim*—(1) *General.* The Center director may deny a claim for a refund filed under this subpart if the claim was not filed timely, if the importer has not complied with the requirements of this subpart, if the Certificate of Origin submitted under §181.32(b)(2) of this part cannot be accepted as valid (see §181.22(c) of this part), or if, following initiation of an origin verification under §181.72(a) of this part, the Center director determines either that the imported good did not qualify as an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied under §181.72(d), §181.74(c) or §181.76(c) of this part.

(2) *Unliquidated entry.* If the Center director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has not been liquidated, the Center director shall deny the claim in connection with the liquidation of the entry, and written notice of the denial and the reason therefor shall be given to the importer and, in the case of a denial on the merits, to any person who completed and signed a Certificate of Origin relating to the good. Each notice of denial given to a person who completed and signed a Certificate of Origin shall also include a statement regarding the right to file a protest against the denial under part 174 of this chapter.

(3) *Liquidated entry.* If the Center director determines that a claim for a refund filed under this subpart should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest or petition for reliquidation or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, the Center director shall give written notice of the denial and the reason therefor to the importer and, in the case of a denial on the merits, to any person who completed and signed a Certificate of Origin relating to the good. Each notice of denial given to a person who completed and signed a Certificate of Origin shall also include a statement regarding the right to file a protest against the denial under part 174 of this chapter.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as amended by CBP Dec. No. 17–08, 82 FR 35065, July 28, 2017]

Subpart E—Restrictions on Drawback and Duty-Deferral Programs

§181.41 Applicability.

This subpart sets forth the provisions regarding drawback claims and duty-deferral programs under Article 303 of the NAFTA and applies to any good that is a ''good subject to NAFTA drawback'' within the meaning of 19 U.S.C. 3333. Except in the case of §181.42(d), the provisions of this subpart apply to goods which are imported into the United States and then subsequently exported from the United States to Canada on or after January 1, 1996, or to Mexico on or after January 1, 2001. The requirements and procedures set forth in this subpart for NAFTA drawback are in addition to the general definitions, requirements and procedures for all drawback claims set forth in part 191 of this chapter, unless otherwise specifically provided in this subpart. Also, the requirements and procedures set forth in this subpart for NAFTA duty-deferral programs are in addition to the requirements and procedures for manipulation, manufacturing and smelting and refining warehouses contained in part 19 and part 144 of this chapter, for foreign trade zones under part 146 of this chapter, and for temporary importations under bond contained in part 10 of this chapter.

§181.42 Duties and fees not subject to drawback.

The following duties or fees which may be applicable to a good entered for consumption in the Customs territory of the United States are not subject to drawback under this subpart:

(a) Antidumping and countervailing duties;

(b) A premium offered or collected on a good with respect to quantitative import restrictions, tariff rate quotas or tariff preference levels;

(c) Fees applied under section 22 of the U.S. Agricultural Adjustment Act; and

(d) Customs duties paid or owed under unused merchandise substitution drawback. There shall be no payment of such drawback under 19 U.S.C. 1313(j)(2) on goods exported to Canada or Mexico on or after January 1, 1994.

§ 181.43 Eligible goods subject to drawback.

Except as otherwise provided in this subpart, drawback is authorized for an imported good that is entered for consumption and is:

(a) Subsequently exported to Canada or Mexico (see 19 U.S.C. 1313(j)(1));

(b) Used as a material in the production of another good that is subsequently exported to Canada or Mexico (see 19 U.S.C. 1313(a)); or

(c) Substituted by a good of the same kind and quality as defined in §181.44(c) of this subpart and used as a material in the production of another good that is subsequently exported to Canada or Mexico (see 19 U.S.C. 1313(b)).

§ 181.44 Calculation of drawback.

(a) *General.* Except in the case of goods specified in §181.45 of this part, drawback of the duties previously paid upon importation of a good into the United States may be granted by the United States, upon presentation of a NAFTA drawback claim under this subpart, on the lower amount of:

(1) The total duties paid or owed on the good in the United States; or

(2) The total amount of duties paid on the exported good upon subsequent importation into Canada or Mexico.

(b) *Individual relative value and duty comparison principle.* For purposes of this section, relative value shall be determined, and the comparison between the duties referred to in paragraph (a)(1) of this section and the duties referred to in paragraph (a)(2) of this section shall be made, separately with reference to each individual exported good, including where two components or materials are used to produce one exported good or one component or material is divided among multiple exported goods.

Example. Upon importation of Chemical X into the United States, Company A entered Chemical X and paid $2.00 in duties. Company A processed Chemical X into Products Y and Z, each having the same relative value; that is, $1.00 in duty is attributable to Product Y and $1.00 in duty is attributable to Product Z. Company A exported Product Y to Canada and Canada assessed a free rate of duty. Company A exported Product Z to Mexico and Mexico assessed the equivalent of US$2.00 in duty. There is no entitlement to drawback on the export of Product Y to Canada because zero is the lesser amount when compared to the $1.00 in duty attributable to Product Y as a result of the separation of Chemical X into Products Y and Z. There would be entitlement to drawback on the export to Mexico, consisting of the $1.00 duty attributable to Product Z, because that amount is the lesser amount when comparing the duty paid to the United States and the US$ equivalent duty paid to Mexico.

(c) *Direct identification manufacturing drawback under 19 U.S.C. 1313(a).* Upon presentation of the NAFTA drawback claim under 19 U.S.C. 1313(a), in which the amount of drawback payable is based on the lesser amount of the customs duties paid on the good either to the United States or to Canada or Mexico, the amount of drawback refunded shall not exceed 99 percent of the duty paid on such imported merchandise into the United States.

Example 1. Upon the importation of Product X to the United States from Japan, Company A paid $2.00 in duties. Company A manufactured the imported Product X into Product Y, and subsequently exported it to Mexico. Mexico assessed the equivalent of US$11.00 in duties upon importation of Product Y. Upon presenting a drawback claim in the United States, in accordance with 19 U.S.C. 1313(a), Company A would be entitled to a refund of 99 percent of the $2.00, or $1.98. The $2.00 paid by Company A (less 1 percent) on the importation of Product X into the United States is a lesser amount of duties than the total amount of customs duties paid to Mexico (the equivalent of US$11.00) on Product Y.

Example 2. Upon the importation of Product X into the United States from Hong Kong, Company A entered Product X and paid $5.00 in duties. Company A manufactured Product X into Product Y, sold it to Company B in Mexico and subsequently exported it to Mexico. Company A reserved its right to drawback. Upon Product Y's importation, Company B was assessed a free rate

of duty. Company A's claim for drawback will be denied because Company A is entitled to zero drawback for the reason that, as between the duty paid in the United States and the duty paid in Mexico, the duty in Mexico was zero.

(d) *Substitution manufacturing drawback under 19 U.S.C. 1313(b).* Upon presentation of a NAFTA drawback claim under 19 U.S.C. 1313(b), on which the amount of drawback payable is based on the lesser amount of the customs duties paid on the good either to the United States or to Canada or Mexico, the amount of drawback is the same as that which would have been allowed had the substituted merchandise used in manufacture been itself imported. For purposes of drawback under this subpart, the term ''same kind and quality'' used in §1313(b) (see §191.2(x)(1) of this chapter) shall have the same meaning as the term ''identical or similar good'' used in Article 303 of the NAFTA except that there shall be no requirement that the good be manufactured in the same country.

Example 1. Upon importation of Product X from Japan to the United States, Company A paid $5.00 in duties. Company A substituted a same kind and quality domestic Product X for the Japanese Product X in its production of Product Y under its 19 U.S.C. 1313(b) drawback contract. Company A sold Product Y to Company B which subsequently exported it to Canada. On the importation of Product Y by Company B, Company B paid the equivalent of US$2.00 in duties assessed by Revenue Canada and waived its right to drawback to Company A. Company A is entitled to obtain drawback under 19 U.S.C. 1313(b) in the United States in the amount of $1.98 (or 99 percent of the US$2.00 equivalent Company B paid in duty to Canada) since that $2.00 was the lesser of the total amount of customs duties paid on the product to either Canada or the United States.

Example 2. Same facts as above example, but Company B paid the equivalent of US$5.00 to Revenue Canada. Company A is entitled to obtain $4.95 in drawback (a refund of 99 percent of $5.00 paid to the United States). Since the same amount of duty was assessed by each country, drawback is allowable because the drawback paid does not exceed the lesser amount paid.

(e) *Meats cured with imported salt.* Meats, whether packed or smoked, which have been cured with imported salt may be eligible for drawback in aggregate amounts of not less than $100 in duties paid on the imported salt upon exportation of the meats to Canada or Mexico (see 19 U.S.C. 1313(f)).

Example. Company Z produced Virginia smoked ham on its Smithfield, Virginia farm, using 4,000 pounds of imported salt in curing the meat. The salt was imported from an HTSUS Column 2 country, with a duty of $200. Upon exportation of the hams to Mexico, Company Z pays the equivalent of US$250.00 in duties to Mexico. Company Z is entitled to drawback of the full 100 percent of the $200.00 in duties it paid on the importation of the salt into the United States because that $200.00 is a lesser amount than the total amount of customs duties paid to Mexico on the exported meat.

(f) *Jet aircraft engines.* A foreign-built jet aircraft engine that has been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts, may be eligible for drawback of duties paid on the imported merchandise in aggregate amounts of not less than $100 upon exportation of the engine to Canada or Mexico (19 U.S.C. 1313(h)).

Example. A Swedish-made jet aircraft engine is repaired in the United States using imported parts from Korea on which $160.00 in duties have been paid by Company W. The engine is subsequently exported to Canada by Company W and Company W pays the equivalent of US$260.00 in duties to Canada. Upon showing the country in which the engine was manufactured and a description of the processing performed thereon in the United States on Customs Form 7551, appropriately modified, Company W is entitled to the full refund of the duties paid to the United States since that $160.00 was a lesser amount than the duties paid on the engine to Canada.

(g) *Unused goods under 19 U.S.C. 1313(j)(1) that have changed in condition.* An imported good that is unused in the United States under 19 U.S.C. 1313(j)(1) and that is shipped to Canada or Mexico not in the same condition within the meaning of §181.45(b)(1) may be eligible for drawback under this section, except when the shipment to Canada or Mexico does not constitute an exportation under 19 U.S.C. 1313(j)(4).

Example. Upon importation of Product X from Spain to the United States, the U.S. importer pays $10.00 in duties. While in the original package in the importer's warehouse, Product X becomes damaged. A Canadian purchaser buys Product X and imports it into Canada and pays the equivalent of

US$5.00 in duties assessed by Revenue Canada. The Canadian purchaser who exported Product X from the United States to Canada and who otherwise qualifies for drawback is entitled to drawback under 19 U.S.C. 1313(j)(1) in the amount of $4.95 (99 percent of the US$5.00 equivalent in duties paid to Canada). Eligibility for full drawback of the $10.00 in U.S. duties under §181.45(b) would be precluded because Product X, although unused, was not exported to Canada in the same condition as when imported into the United States within the meaning of §181.45(b)(1).

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as amended by T.D. 98–16, 63 FR 11005, Mar. 5, 1998]

§ 181.45 Goods eligible for full drawback.

(a) *Goods originating in Canada or Mexico.* A Canadian or Mexican originating good that is dutiable and is imported into the United States is eligible for drawback without regard to the limitation on drawback set forth in §181.44 of this part if that originating good is:

(1) Subsequently exported to Canada or Mexico;

(2) Used as a material in the production of another good that is subsequently exported to Canada or Mexico; or

(3) Substituted by a good of the same kind and quality and used as a material in the production of another good that is subsequently exported to Canada or Mexico.

Example. Company A imports a dutiable (3 percent rate) Canadian originating good. During Company A's manufacturing process, Company A substitutes a German good of the same kind and quality (on which duty was paid at a 2.5 percent rate) in the production of another good that is subsequently exported to Canada. Company A may designate the dutiable Canadian entry and claim full drawback (99 percent) on the 3 percent duty paid under 19 U.S.C. 1313(b). (Note: NAFTA originating goods will continue to receive full drawback as they cross NAFTA borders for successive stages of production until NAFTA tariffs are fully phased out.)

(b) *Claims under 19 U.S.C 1313(j)(1) for goods in same condition.* A good imported into the United States and subsequently exported to Canada or Mexico in the same condition is eligible for drawback under 19 U.S.C. 1313(j)(1) without regard to the limitation on drawback set forth in §181.44 of this part.

Example. X imports a desk into the United States from England and pays $25.00 in duty. X immediately exports the desk to Z in Mexico and Z pays the equivalent of US$10.00 in Mexican duties. X can obtain a refund of 99 percent of the $25.00 paid upon importation of the desk into the United States.

(1) *Same condition defined.* For purposes of this subpart, a reference to a good in the ''same condition'' includes a good that has been subjected to any of the following operations provided that no such operation materially alters the characteristics of the good:

(i) Mere dilution with water or another substance;

(ii) Cleaning, including removal of rust, grease, paint or other coatings;

(iii) Application of preservative, including lubricants, protective encapsulation, or preservation paint;

(iv) Trimming, filing, slitting or cutting;

(v) Putting up in measured doses, or packing, repacking, packaging or repackaging; or

(vi) Testing, marking, labelling, sorting or grading.

(2) *Commingling of fungible goods*—(i) *General*—(A) *Inventory of other than all non-originating goods.* Commingling of fungible originating and non-originating goods in inventory is permissable provided that the origin of the goods and the identification of entries for designation for same condition drawback are on the basis of an approved inventory method set forth in the appendix to this part.

(B) *Inventory of the non-originating goods.* If all goods in a particular inventory are non-originating goods, identification of entries for designation for same condition drawback shall be on the basis of one of the accounting methods in §190.14 or §191.14 of this chapter, as appropriate.

(ii) *Exception.* Agricultural goods imported from Mexico may not be commingled with fungible agricultural goods in the United States for purposes of same condition drawback under this subpart.

(c) *Goods not conforming to sample or specifications or shipped without consent of consignee under 19 U.S.C. 1313(c).* An imported good exported to Canada or

Mexico by reason of failure of the good to conform to sample or specification or by reason of shipment of the good without the consent of the consignee is eligible for drawback under 19 U.S.C. 1313(c) without regard to the limitation on drawback set forth in §181.44 of this part. Such a good must be exported or destroyed within the statutory 5-year time period and in compliance with the requirements set forth in subpart D of part 190 of this chapter or within the 3-year time period and in compliance with the requirements set forth in subpart D of part 191 of this chapter, as applicable.

Example. X orders, after seeing a sample in the ABC Company's catalog, a certain quantity of 2-by-4 lumber from ABC Company located in Honduras. ABC Company, having run out of the specific lumber, ships instead a different kind of lumber. X rejects the lumber because it did not conform to the sample and is asked to send it to a customer of ABC in Canada. X exports it within 90 days of its release from Customs custody. X may recover 99 percent of the $500 duties it paid to U.S. Customs upon the exportation of the lumber, or $495.00.

(d) *Certain goods exported to Canada.* Goods identified in Annex 303.6 of the NAFTA and in sections 203(a) (7) and (8) of the North American Free Trade Agreement Implementation Act, if exported to Canada, are eligible for drawback without regard to the limitation on drawback set forth in §181.44 of this part.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as amended by T.D. 98–16, 63 FR 11005, Mar. 5, 1998; USCBP–2018–0029, 83 FR 64996, Dec. 18, 2018]

§181.46 Time and place for filing drawback claim.

(a) *Time of filing.* A drawback claim under this subpart shall be filed or applied for, as applicable, within 3 years after the date of exportation of the goods on which drawback is claimed. No extension will be granted unless it is established that a Customs officer was responsible for the untimely filing. Drawback shall be allowed only if the completed good is exported within 5 years after importation of the merchandise identified or designated to support the claim. A good subject to a claim for same condition drawback must be exported before the close of the 3-year period beginning on the date of importation of the good into the United States.

(b) *Place of filing.* A drawback claim must be filed at the drawback office(s) where the manufacturing drawback contract is on file, whether a general rate or specific rate, but exportation need not occur from that port. To facilitate expedited processing of claims, claimants should file same condition drawback claims in the port where the examination would take place (see §190.35 or §191.35 of this chapter, as appropriate). Customs must be notified at least 2 working days in advance of the intended date of exportation in order to have the opportunity to examine the goods.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as amended by T.D. 98–16, 63 FR 11005, Mar. 5, 1998; USCBP–2018–0029, 83 FR 64996, Dec. 18, 2018]

§181.47 Completion of claim for drawback.

(a) *General.* A claim for drawback will be granted, upon the submission of appropriate documentation to substantiate compliance with the drawback laws and regulations of the United States, evidence of exportation to Canada or Mexico, and satisfactory evidence of the payment of duties to Canada or Mexico. Unless otherwise provided in this subpart, the documentation, filing procedures, time and place requirements and other applicable procedures required to determine whether a good qualifies for drawback must be in accordance with the provisions of part 190 or 191 of this chapter, as appropriate; however, a drawback claim subject to the provisions of this subpart must be filed separately from any part 191 drawback claim (that is, a claim that involves goods exported to countries other than Canada or Mexico). Claims inappropriately filed or otherwise not completed within the 3-year period specified in §181.46 of this part will be considered abandoned.

(b) *Complete drawback claim*—(1) *General.* A complete drawback claim under this subpart must consist of the filing of the appropriate completed drawback entry form, evidence of exportation (a copy of the Canadian or Mexican customs entry showing the amount of

duty paid to Canada or Mexico) and its supporting documents, certificate(s) of delivery, when necessary, or certificate(s) of manufacture and delivery, and a certification from the Canadian or Mexican importer as to the amount of duties paid. Each drawback entry form filed under this subpart must be conspicuously marked at the top with the word ''NAFTA''.

(2) *Specific claims.* The following documentation, for the drawback claims specified below, must be submitted to CBP in order for a drawback claim to be processed under this subpart. Missing documentation or incorrect or incomplete information on required customs forms or supporting documentation will result in an incomplete drawback claim.

(i) *Manufacturing drawback claim.* The following must be submitted in connection with a claim for direct identification manufacturing drawback or substitution manufacturing drawback:

(A) A completed CBP Form 331, to establish the manufacture of goods made with imported merchandise and, if applicable, the identity of substituted domestic, duty-paid or duty-free merchandise, and including the tariff classification number of the imported merchandise;

(B) CBP Form 7501, or its electronic equivalent, or the import entry number;

(C) Exporter summary procedure, if applicable. For purposes of this subpart, the exporter summary procedure must include the Canadian or Mexican customs entry number and the amount of duty paid to Canada or Mexico;

(D) Evidence of exportation and satisfactory evidence of the payment of duties in Canada or Mexico, as provided in paragraph (c) of this section;

(E) Waiver of right to drawback. If the person exporting to Canada or Mexico was not the importer or the manufacturer, written waivers executed by the importer or manufacturer and by any intervening person to whom the good was transferred must be submitted in order for the claim to be considered complete; and

(F) An affidavit of the party claiming drawback stating that no other drawback claim has been made on the designated goods, that such party has not provided an exporter's Certificate of Origin pertaining to the exported goods to another party except as stated on the drawback claim, and that the party agrees to notify CBP if he subsequently provides such an exporter's Certificate of Origin to any person.

(ii) *Same condition drawback claim under 19 U.S.C. 1313(j)(1).* The following must be submitted in connection with a drawback claim covering a good in the same condition:

(A) A completed CBP Form 7551. In addition, the tariff classification number of the imported goods must be recorded on the form;

(B) CBP Form 7501, or its electronic equivalent. The form must show the entry number, date of entry, port of importation, date of importation, importing carrier, and importer of record or ultimate consignee name and the CBP-assigned or taxpayer identification number. Explicit line item information must be clearly noted on the CBP Form 7501 so that the subject goods are easily discernible;

(C) CBP Form 7505, if applicable, to trace the movement of the imported goods after importation;

(D) A certificate of delivery on CBP Form 7552, or its electronic equivalent, if applicable, for purposes of tracing the transfer of ownership of the imported goods from the importer to the claimant. This is required if the drawback claimant is not the original importer of the merchandise which is the subject of a same condition claim;

(E) In-bond application submitted pursuant to part 18 of this chapter, if applicable. This is required for merchandise which is examined at one port but exported through border points outside of that port. Such goods must travel in bond from the location where they were examined to the point of the border crossing (exportation). If examination is waived, in-bond transportation is not required;

(F) Notification of intent to export or waiver of prior notice;

(G) *Evidence of exportation.* Acceptable documentary evidence of exportation of goods to Canada or Mexico may include originals or copies of any of the following documents that are issued by the exporting carrier: bill of

lading, air waybill, freight waybill, export ocean bill of lading, Canadian customs manifest, and cargo manifest. Supporting documentary evidence must establish fully the time and fact of exportation, the identity of the exporter, and the identity and location of the ultimate consignee of the exported goods;

(H) Waiver of right to drawback. If the party exporting to Canada or Mexico was not the importer, a written waiver from the importer and from each intermediate person to whom the goods were transferred is required in order for the claim to be considered complete; and

(I) An affidavit of the party claiming drawback stating that no other drawback claim has been made on the designated goods.

(iii) *Nonconforming or improperly shipped goods drawback claim.* The following must be submitted in the case of goods not conforming to sample or specifications or shipped without the consent of the consignee and subject to a drawback claim under 19 U.S.C. 1313(c):

(A) CBP Form 7551, completed and submitted at the time the goods are returned to CBP custody;

(B) CBP Form 7501, or its electronic equivalent to establish the fact of importation, the receipt of the imported goods and the identity of the party to whom drawback is payable (see §181.48(c) of this part);

(C) Documentary evidence to support the claim that the goods did not conform to sample or specifications or were shipped without the consent of the consignee. In the case of nonconforming goods, such documentation may include a copy of a purchase order and any related documents such as a specification sheet, catalogue or advertising brochure from the supplier, the basis for which the order was placed, and copy of a letter or telex or credit memo from the supplier indicating acceptance of the returned merchandise. This documentation is necessary to establish that the goods are, in fact, being returned to the party from which they were procured or that they are being sent to the supplier's other customer directly;

(D) CBP Form 7512, if applicable; and

(E) Evidence of exportation, as provided in paragraph (b)(2)(ii)(G) of this section.

(iv) *Meats cured with imported salt.* The provisions of paragraph (b)(2)(i) of this section relating to direct identification manufacturing drawback will apply to claims for drawback on meats cured with imported salt filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart, and the forms referred to in that paragraph must be modified to show that the claim is being made for refund of duties paid on salt used in curing meats.

(v) *Jet aircraft engines.* The provisions of paragraph (b)(2)(i) of this section relating to direct identification manufacturing drawback will apply to claims for drawback on foreign-built jet aircraft engines repaired or reconditioned in the United States filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart and the provisions of subpart N of part 191 of this chapter.

(c) *Evidence of exportation and of duties paid in Canada or Mexico.* For purposes of this subpart, evidence of exportation and satisfactory evidence of payment of duties in Canada or Mexico must consist of one of the following types of documentation, provided that, for purposes of evidence of duties paid, such documentation includes the import entry number, the date of importation, the tariff classification number, the rate of duty and the amount of duties paid:

(1) In the case of Canada, the Canadian entry document, referred to as the Canada Customs Invoice or B–3, presented with either the K–84 Statement or the Detailed Coding Statement. A Canadian customs document that is not accompanied by a valid receipt is not adequate evidence of exportation and payment of duty in Canada;

(2) In the case of Mexico, the Mexican entry document (the ''pedimento'');

(3) The final customs duty determination of Canada or Mexico, or a copy thereof, respecting the relevant entry; or

(4) An affidavit, from the person claiming drawback, which is based on

information received from the importer of the good in Canada or Mexico.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as amended by T.D. 98–16, 63 FR 11005, Mar. 5, 1998; CBP Dec. 15–11, 80 FR 47407, Aug. 7, 2015; CBP Dec. 15–14, 80 FR 61292, Oct. 13, 2015; CBP Dec. 17–13, 82 FR 45407, Sept. 28, 2017; USCBP–2018–0029, 83 FR 64996, Dec. 18, 2018]

§ 181.48 Person entitled to receive drawback.

(a) *Manufacturing drawback.* The person named as exporter on the notice of exportation or on the bill of lading, air waybill, freight waybill, Canadian or Mexican customs manifest, cargo manifest, or certified copies of these documents, shall be considered the exporter and entitled to manufacturing drawback, unless the manufacturer or producer shall reserve the right to claim drawback. The manufacturer or producer who reserves this right may claim drawback, and he shall receive payment upon production of satisfactory evidence that the reservation was made with the knowledge and consent of the exporter. Drawback also may be granted to the agent of the manufacturer, producer, or exporter, or to the person the manufacturer, producer, exporter, or agent directs in writing to receive the drawback of duties.

(b) *Nonconforming or improperly shipped goods drawback.* Only the importer of record or the actual owner of the merchandise or its agent may claim drawback under 19 U.S.C. 1313(c).

(c) *Same condition drawback.* The importer of record on the consumption entry is entitled to claim same condition drawback under 19 U.S.C. 1313(j)(1) unless he has in writing waived his right to claim drawback.

§ 181.49 Retention of records.

All records required to be kept by the exporter, importer, manufacturer or producer under this subpart with respect to manufacturing drawback claims, and all records kept by others which complement the records of the importer, exporter, manufacturer or producer (see § 190.15 (see also §§ 190.26(f), 190.38, 190.175(c)) or § 191.15 (see also §§ 190.26(f), 191.38, 191.175(c)) of this chapter, as appropriate) shall be retained for at least three years after payment of such claims. However, any person who issues a drawback certificate that enables another person to make or perfect a drawback claim shall keep records in support of that certificate commencing on the date that the certificate is issued and shall retain those records for three years following the date of payment of the claim.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as amended by T.D. 98–16, 63 FR 11006, Mar. 5, 1998; USCBP–2018–0029, 83 FR 64996, Dec. 18, 2018]

§ 181.50 Liquidation and payment of drawback claims.

(a) *General.* When the drawback claim has been fully completed by the filing of all required documents, and exportation of the articles has been established and the amount of duties paid to Canada or Mexico has been established, the entry will be liquidated to determine the proper amount of drawback due either in accordance with the limitation on drawback set forth in § 181.44 of this part or in accordance with the regular drawback calculation. The liquidation procedures of subpart H of part 190 or subpart H of part 191 of this chapter, as appropriate shall control for purposes of this subpart.

(b) *Time for liquidation.* A drawback claim shall not be liquidated until either a written waiver of the right to protest under 19 U.S.C. 1514 is filed with Customs or the liquidation of the import entry has become final under U.S. law. In addition, except in the case of goods covered by § 181.45 of this part, a drawback claim shall not be liquidated for a period of 3 years after the date of entry of the goods in Canada or Mexico. A drawback claim may be adjusted pursuant to 19 U.S.C. 1508(b)(2)(B)(iii) even after liquidation of the U.S. import entry has become final.

(c) *Accelerated payment.* Accelerated drawback payment procedures shall apply as set forth in § 190.92 or § 191.92 of this chapter, as appropriate. However, a person who receives drawback of duties under this procedure shall repay the duties paid if a NAFTA drawback

claim is adversely affected thereafter by administrative or court action.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as amended by T.D. 98–16, 63 FR 11006, Mar. 5, 1998; USCBP–2018–0029, 83 FR 64996, Dec. 18, 2018]

§ 181.51 Prevention of improper payment of claims.

(a) *Double payment of claim.* The drawback claimant shall certify to Customs that he has not earlier received payment on the same import entry for the same designation of goods. If, notwithstanding such a certification, such an earlier payment was in fact made to the claimant, the claimant shall repay any amount paid on the second claim.

(b) *Preparation of Certificate of Origin.* The drawback claimant shall, within 30 calendar days after the filing of the drawback claim under this subpart, submit to Customs a written statement as to whether he has prepared, or has knowledge that another person has prepared, a Certificate of Origin provided for under §181.11(a) of this part and pertaining to the goods which are covered by the claim. If, following such 30-day period, the claimant prepares, or otherwise learns of the existence of, any such Certificate of Origin, the claimant shall, within 30 calendar days thereafter, disclose that fact to Customs.

§ 181.52 Subsequent claims for preferential tariff treatment.

If a claim for a refund of duties is allowed by the Canadian or Mexican customs administration under Article 502(3) of the NAFTA (post-importation claim) or under any other circumstance after drawback has been granted under this subpart, the appropriate Customs officer shall reliquidate the drawback claim and obtain a refund of the amount paid in drawback in excess of the amount permitted to be paid under §181.44 of this part.

§ 181.53 Collection and waiver or reduction of duty under duty-deferral programs.

(a) *General*—(1) *Definitions.* The following definitions shall apply for purposes of this section:

(i) *Date of exportation.* ''Date of exportation'' means the date of importation into Canada or Mexico as reflected on the applicable Canadian or Mexican entry document (see §181.47(c) (1) and (2)).

(ii) *Duty-deferral program.* A ''duty-deferral program'' means any measure which postpones duty payment upon arrival of a good in the United States until withdrawn or removed for exportation to Canada or Mexico or for entry into a Canadian or Mexican duty-deferral program. Such measures govern manipulation warehouses, manufacturing warehouses, smelting and refining warehouses, foreign trade zones, and those temporary importations under bond that are specified in paragraph (b)(5) of this section.

(2) *Treatment as entered or withdrawn for consumption*—(i) *General.* (A) Where a good is imported into the United States pursuant to a duty-deferral program and is subsequently withdrawn from the duty-deferral program for exportation to Canada or Mexico or is used as a material in the production of another good that is subsequently withdrawn from the duty-deferral program for exportation to Canada or Mexico, and provided that the good is a ''good subject to NAFTA drawback'' within the meaning of 19 U.S.C. 3333 and is not described in §181.45 of this part, the documentation required to be filed under this section in connection with the exportation of the good shall, for purposes of this chapter, constitute an entry or withdrawal for consumption and the exported good shall be subject to duty which shall be assessed in accordance with paragraph (b) of this section.

(B) Where a good is imported into the United States pursuant to a duty-deferral program and is subsequently withdrawn from the duty-deferral program and entered into a duty-deferral program in Canada or Mexico or is used as a material in the production of another good that is subsequently withdrawn from the duty-deferral program and entered into a duty-deferral program in Canada or Mexico, and provided that the good is a ''good subject to NAFTA drawback'' within the meaning of 19 U.S.C. 3333 and is not described in §181.45, the documentation required to be filed under this section in connection with the withdrawal of the good from the U.S. duty-deferral program

shall, for purposes of this chapter, constitute an entry or withdrawal for consumption and the withdrawn good shall be subject to duty which shall be assessed in accordance with paragraph (b) of this section.

(C) Any assessment of duty under this section shall include the duties and fees referred to in §181.42 (a) through (c) and the fees provided for in §24.23 of this chapter; these inclusions shall not be subject to refund, waiver, reduction or drawback.

(ii) *Bond requirements.* The provisions of §142.4 of this chapter shall apply to each withdrawal and exportation transaction described in paragraph (a)(2)(i) of this section. However, in applying the provisions of §142.4 of this chapter in the context of this section, any reference to release from Customs custody in §142.4 of this chapter shall be taken to mean exportation to Canada or Mexico.

(iii) *Documentation filing and duty payment procedures*—(A) *Persons required to file.* In the circumstances described in paragraph (a)(2)(i) of this section, the documentation described in paragraph (a)(2)(iii)(B) of this section must be filed by one of the following persons:

(*1*) In the case of a withdrawal of the goods from a warehouse, the person who has the right to withdraw the goods;

(*2*) In the case of a temporary importation under bond (TIB) specified in paragraph (b)(5) of this section, the TIB importer whether or not he sells the goods for export to Canada or Mexico unless §10.31(h) of this chapter applies; or

(*3*) In the case of a withdrawal from a foreign trade zone, the person who has the right to make entry. However, if a zone operator is not the person with the right to make entry of the good, the zone operator shall be responsible for the payment of any duty due in the event the zone operator permits such other person to remove the goods from the zone and such other person fails to comply with §§146.67 and 146.68 of this chapter.

(B) *Documentation required to be filed and required filing date.* The person required to file shall file Customs Form 7501, or its electronic equivalent, no later than 10 working days after the date of exportation to Canada or Mexico or 10 working days after being entered into a duty-deferral program in Canada or Mexico. Except where the context otherwise requires and except as otherwise specifically provided in this paragraph, the procedures for completing and filing Customs Form 7501 in connection with the entry of merchandise under this chapter shall apply for purposes of this paragraph. For purposes of completing Customs Form 7501 under this paragraph, any reference on the form to the entry date shall be taken to refer to the date of exportation of the good or the date the goods are entered into a duty-deferral program in Canada or Mexico. The Customs Form 7501 required under this paragraph may be transmitted electronically.

(C) *Duty payment.* The duty estimated to be due under paragraph (b) of this section shall be deposited with Customs 60 calendar days after the date of exportation of the good. If a good is entered into a duty-deferral program in Canada or Mexico, the duty estimated to be due under paragraph (b) of this section, but without any waiver or reduction provided for in that paragraph, shall be deposited with Customs 60 calendar days after the date the good is entered into such duty-deferral program. Nothing shall preclude the deposit of such estimated duty at the time of filing the Customs Form 7501, or its electronic equivalent, under paragraph (a)(2)(iii)(B) of this section or at any other time within the 60-day period prescribed in this paragraph. However, any interest calculation shall run from the date the duties are required to be deposited.

(3) *Waiver or reduction of duties*—(i) *General.* Except in the case of duties and fees referred to in §§181.42(a) through (c) and fees provided for in §24.23 of this chapter, Customs shall waive or reduce the duties paid or owed under paragraph (a)(2) of this section by the person who is required to file the Customs Form 7501, or its electronic equivalent, (see paragraph (a)(2)(iii)(A) of this section) in accordance with paragraph (b) of this section,

provided that a claim for waiver or reduction of the duties is filed with Customs within the appropriate 60-day time frame. The claim shall be based on evidence of exportation or entry into a Canadian or Mexican duty-deferral program and satisfactory evidence of duties paid in Canada or Mexico (see § 181.47(c)).

(ii) *Filing of claim and payment of reduced duties.* A claim for a waiver or reduction of duties under paragraph (a)(3)(i) of this section shall be made on Customs Form 7501, or its electronic equivalent, which shall set forth, in addition to the information required under paragraph (a)(2)(iii)(B) of this section, a description of the good exported to Canada or Mexico and the Canadian or Mexican import entry number, date of importation, tariff classification number, rate of duty and amount of duty paid. If a claim for reduction of duties is filed under this paragraph, the reduced duties shall be deposited with Customs when the claim is filed.

(iii) *Drawback on goods entered into a duty-deferral program in Canada or Mexico.* After goods in a duty-deferral program in the United States which have been sent from the United States and entered into a duty-deferral program in Canada or Mexico are then withdrawn from that Canadian or Mexican duty-deferral program either for entry into Canada or Mexico or for export to a non-NAFTA country, the person who filed the Customs Form 7501, or its electronic equivalent, (see paragraph (a)(2)(iii)(A) of this section) may file a claim for drawback if the goods are withdrawn within 5 years from the date of the original importation of the good into the United States. If the goods are entered for consumption in Canada or Mexico, drawback will be calculated in accordance with § 181.44 of this part.

(4) *Liquidation of entry*—(i) *If no claim is filed.* If no claim for a waiver or reduction of duties is filed in accordance with paragraph (a)(3) of this section, Customs shall determine the final duties due under paragraph (a)(2)(i) of this section and shall post a bulletin notice of liquidation of the entry filed under this section in accordance with § 159.9 of this chapter. Where no claim was filed in accordance with this section and Customs fails to liquidate, or extend liquidation of, the entry filed under this section within 1 year from the date of the entry, upon the date of expiration of that 1-year period the entry shall be deemed liquidated by operation of law in the amount asserted by the exporter on the Customs Form 7501, or its electronic equivalent, filed under paragraph (a)(2)(iii)(A) of this section. A protest under section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and part 174 of this chapter shall be filed within 90 days from the date of posting of the notice of liquidation under this section.

(ii) *If a claim is filed.* If a claim for a waiver or reduction of duties is filed in accordance with paragraph (a)(3) of this section, an extension of liquidation of the entry filed under this section shall take effect for a period not to exceed 3 years from the date the entry was filed. Before the close of the extension period, Customs shall liquidate the entry filed under this section and shall post a bulletin notice of liquidation in accordance with § 159.9 of this chapter. If Customs fails to liquidate the entry filed under this section within 4 years from the date of the entry, upon the date of expiration of that 4-year period the entry shall be deemed liquidated by operation of law in the amount asserted by the exporter on the Customs Form 7501, or its electronic equivalent, filed under paragraph (a)(3)(ii) of this section. A protest under section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and part 174 of this chapter shall be filed within 90 days from the date of posting of the notice of liquidation under this section.

(b) *Assessment and waiver or reduction of duty*—(1) *Manipulation in warehouse.* Where a good subject to NAFTA drawback under this subpart is withdrawn from a bonded warehouse (19 U.S.C. 1562) after manipulation for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico, duty shall be assessed on the good in its condition and quantity, and at its weight, at the time of such withdrawal from the warehouse and with such additions to, or deductions from, the final appraised value as may be necessary by reason of its change in

condition. Such duty shall be paid no later than 60 calendar days after the date of exportation or of entry into the duty-deferral program of Canada or Mexico, except that, upon filing of a proper claim under paragraph (a)(3) of this section, the duty shall be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the good under this section or the total amount of customs duties paid to Canada or Mexico.

(2) *Bonded manufacturing warehouse.* Where a good is manufactured in a bonded warehouse (19 U.S.C. 1311) with imported materials and is then withdrawn for exportation to Canada or Mexico or for entry into a duty-deferral program in Canada or Mexico, duty shall be assessed on the materials in their condition and quantity, and at their weight, at the time of their importation into the United States. Such duty shall be paid no later than 60 calendar days after either the date of exportation or of entry into a duty-deferral program of Canada or Mexico, except that, upon filing of a proper claim under paragraph (a)(3) of this section, the duty shall be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the materials under this section or the total amount of customs duties paid to Canada or Mexico.

Example. Company N imports tea into the United States and makes a Class 6 warehouse entry. Company N manufactures sweetened ice tea mix by combining the imported tea with refined cane sugar and other flavorings and packaging it in retail size canisters. Upon withdrawal of the ice tea mix from the warehouse for exportation to Canada, a Customs Form 7501, or its electronic equivalent, is filed showing $900 in estimated U.S. duties on the basis of the unmanufactured tea. Upon entry into Canada, the equivalent of US$800 is assessed on the exported ice tea mix. Company N submits to Customs a proper claim under paragraph (a)(3) of this section showing payment of the US$800 equivalent in duties to Canada. Company N will only be required to pay $100 in U.S. duties out of the $900 amount reflected on the Customs Form 7501.

(3) *Bonded smelting or refining warehouse.* For any qualifying imported metal-bearing materials (19 U.S.C. 1312), duty shall be assessed on the imported materials and the charges against the bond canceled no later than 60 calendar days after either the date of exportation of the treated materials to Canada or Mexico or the date of entry of the treated materials into a duty-deferral program of Canada or Mexico, either from the bonded smelting or refining warehouse or from such other customs bonded warehouse after the transfer of the same quantity of material from a bonded smelting or refining warehouse. However, upon filing of a proper claim under paragraph (a)(3) of this section, the duty on the imported materials shall be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the imported materials under this section or the total amount of customs duties paid to Canada or Mexico.

Example. Company Z imports 47 million pounds of electrolytic zinc which is entered into a bonded smelting and refining warehouse (Class 7) for processing. Thereafter, Company Z withdraws the merchandise for exportation to Canada and files a Customs Form 7501, or its electronic equivalent, showing $90,000 in estimated U.S. duty on the dutiable quantity of metal contained in the imported metal-bearing materials. Upon entry of the processed zinc into Canada, the equivalent of US$50,000 in duties are assessed. Within 60 days of exportation Company Z files a proper claim under paragraph (a)(3) of this section and Customs liquidates the entry with duty due in the amount of $40,000.

(4) *Foreign trade zone.* For a good that is manufactured or otherwise changed in condition in a foreign trade zone (19 U.S.C. 81c(a)) and then withdrawn from the zone for exportation to Canada or Mexico or for entry into a Canadian or Mexican duty-deferral program, the duty assessed, as calculated under paragraph (b)(4)(i) or (b)(4)(ii) of this section, shall be paid no later than 60 calendar days after either the date of exportation of the good to Canada or Mexico or the date of entry of the good into a duty-deferral program of Canada or Mexico, except that, upon filing of a proper claim under paragraph (a)(3) of this section, the duty shall be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the good under this section or the total amount of customs duties paid to Canada or Mexico.

(i) *Nonprivileged foreign status.* In the case of a nonprivileged foreign status good, duty is assessed on the good in its condition and quantity, and at its weight, at the time of its exportation from the zone to Canada or Mexico or its entry into a duty-deferral program of Canada or Mexico.

Example. CMG imports $1,000,000 worth of auto parts from Korea and admits them into Foreign-Trade Subzone number 00, claiming nonprivileged foreign status. (If the auto parts had been regularly entered they would have been dutiable at 4 percent, or $40,000.) CMG manufactures subcompact automobiles. Automobiles are dutiable at 2.5 percent ($25,000) if entered for consumption in the United States. CMG withdraws the automobiles from the zone and exports them to Mexico. Upon entry of the automobiles in Mexico, CMG pays the equivalent of US$20,000 in duty. Before the expiration of 60 calendar days from the date of exportation, CMG files a proper claim under paragraph (a)(3) of this section and pays $5,000 in duty to Customs representing the difference between the $25,000 which would have been paid if the automobiles had been entered for consumption from the zone and the US$20,000 equivalent paid to Mexico.

(ii) *Privileged foreign status.* In the case of a privileged foreign status good, duty is assessed on the good in its condition and quantity, and at its weight, at the time privileged status is granted in the zone.

Example. O&G, Inc. admits Kuwaiti crude petroleum into its zone and requests, one month later, privileged foreign status on the crude before refining the crude into motor gasoline and kerosene. Upon withdrawal of the refined goods from the zone by O&G, Inc. for exportation to Canada, a Customs Form 7501, or its electronic equivalent, is filed showing $700 in estimated duties on the imported crude petroleum (rather than on the refined goods which would have been assessed $1,200). D&O is the consignee in Canada and pays the Canadian customs duty assessment of the equivalent of US$1,500 on the goods. O&G, Inc. is entitled to a waiver of the full $700 in duties upon filing of a proper claim under paragraph (a)(3) of this section.

(5) *Temporary importation under bond.* Except in the case of a good imported from Canada or Mexico for repair or alteration, where a good, regardless of its origin, was imported temporarily free of duty for repair, alteration or processing (subheading 9813.00.05, Harmonized Tariff Schedule of the United States) and is subsequently exported to Canada or Mexico, duty shall be assessed on the good on the basis of its condition at the time of its importation into the United States. Such duty shall be paid no later than 60 calendar days after either the date of exportation or the date of entry into a duty-deferral program of Canada or Mexico, except that, upon filing of a proper claim under paragraph (a)(3) of this section, the duty shall be waived or reduced in an amount that does not exceed the lesser of the total amount of duty payable on the good under this section or the total amount of customs duties paid to Canada or Mexico.

Example. Company A imports glassware under subheading 9813.00.05, HTSUS. The glassware is from France and would be dutiable under a regular consumption entry at $6,000. Company A alters the glassware by etching hotel logos on the glassware. Two weeks later, Company A sells the glassware to Company B, a Mexican company, and ships the glassware to Mexico. Company B enters the glassware and is assessed duties in an amount equivalent to US$6,200 and claims NAFTA preferential tariff treatment. Company B provides a copy of the Mexican landing certificate to Company A showing that the US$6,200 equivalent in duties was assessed but not yet paid to Mexico. If Mexico ultimately denies Company B's NAFTA claim and the Mexican duty payment becomes final, Company A, upon submission to Customs of a proper claim under paragraph (a)(3) of this section, is entitled to a waiver of the full $6,000 in U.S. duty.

(c) *Recordkeeping requirements.* If a person intends to claim a waiver or reduction of duty on goods under this section, that person shall maintain records concerning the value of all involved goods or materials at the time of their importation into the United States and concerning the value of the goods at the time of their exportation to Canada or Mexico or entry into a duty-deferral program of Canada or Mexico, and if a person files a claim under this section for a waiver or reduction of duty on goods exported to Canada or Mexico or entered into a Canadian or Mexican duty-deferral program, that person shall maintain evidence of exportation or entry into a Canadian or Mexican duty-deferral program and satisfactory evidence of the amount of any customs duties paid to Canada or Mexico on the good (see

§ 181.47(c)). Failure to maintain adequate records will result in denial of the claim for waiver or reduction of duty.

(d) *Failure to file proper claim.* If the person identified in paragraph (a)(2)(iii)(A) of this section fails to file a proper claim within the 60-day period specified in this section, that person, or the FTZ operator pursuant to paragraph (a)(2)(iii)(A)(*3*) of this section, will be liable for payment of the full duties assessed under this section and without any waiver or reduction thereof.

(e) *Subsequent claims for preferential tariff treatment.* If a claim for a refund of duties is allowed by the Canadian or Mexican customs administration under Article 502(3) of the NAFTA or under any other circumstance after duties have been waived or reduced under this section, Customs may reliquidate the entry filed under this section pursuant to 19 U.S.C. 1508(b)(2)(B)(iii) even after liquidation of the entry has become final.

[T.D. 96–14, 61 FR 2911, Jan. 30, 1996; 61 FR 6111, Feb. 16, 1996, as amended by CBP Dec. 15–14, 80 FR 61292, Oct. 13, 2015]

§ 181.54 Verification of claim for drawback, waiver or reduction of duties.

The allowance of a claim for drawback, waiver or reduction of duties submitted under this subpart shall be subject to such verification, including verification with the Canadian or Mexican customs administration of any documentation obtained in Canada or Mexico and submitted in connection with the claim, as Customs may deem necessary.

Subpart F—Commercial Samples and Goods Returned After Repair or Alteration

§ 181.61 Applicability.

This subpart sets forth the rules which apply for purposes of duty-free entry of commercial samples of negligible value as provided for in Article 306 of the NAFTA and for purposes of the re-entry of goods after repair or alteration in Canada or Mexico as provided for in Article 307 of the NAFTA.

§ 181.62 Commercial samples of negligible value.

(a) *General.* Commercial samples of negligible value imported from Canada or Mexico may qualify for duty-free entry under subheading 9811.00.60, HTSUS. For purposes of this section, ''commercial samples of negligible value'' means commercial samples which have a value, individually or in the aggregate as shipped, of not more than US$1, or the equivalent amount in the currency of Canada or Mexico, or which are so marked, torn, perforated, or otherwise treated that they are unsuitable for sale or for use except as commercial samples.

(b) *Qualification for duty-free entry.* Commercial samples of negligible value imported from Canada or Mexico will qualify for duty-free entry under subheading 9811.00.60, HTSUS, only if:

(1) The samples are imported solely for the purpose of soliciting orders for foreign goods; and

(2) If valued over US$1, the samples are properly marked, torn, perforated or otherwise treated prior to arrival in the United States so that they are unsuitable for sale or for use except as commercial samples.

§ 181.63 [Reserved]

§ 181.64 Goods re-entered after repair or alteration in Canada or Mexico.

(a) *General.* This section sets forth the rules which apply for purposes of obtaining duty-free or reduced-duty treatment on goods returned after repair or alteration in Canada or Mexico as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Mexico, whether or not pursuant to a warranty, and goods returned after having been repaired or altered in Canada pursuant to a warranty, are eligible for duty-free treatment, provided that the requirements of this section are met. Goods returned after having been repaired or altered in Canada other than pursuant to a warranty are subject to duty upon the value of the repairs or alterations using the applicable duty rate under the United States-Canada Free-Trade Agreement (see § 10.301 of this chapter), provided that the requirements of this section

are met. For purposes of this section, ''repairs or alterations'' means restoration, addition, renovation, redyeing, cleaning, resterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

Example. Glass mugs produced in the United States are exported to Canada for etching and tempering operations, after which they are returned to the United States for sale. The foreign operations exceed the scope of an alteration because they are manufacturing processes which create commercially different products with distinct new characteristics.

(b) *Goods not eligible for duty-free or reduced-duty treatment after repair or alteration.* The duty-free or reduced-duty treatment referred to in paragraph (a) of this section shall not apply to goods which, in their condition as exported from the United States to Canada or Mexico, are incomplete for their intended use and for which the processing operation performed in Canada or Mexico constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods.

Example. Unflanged metal wheel rims are exported to Canada for a flanging operation to strengthen them so as to conform to U.S. Army specifications for wheel rims; although the goods when exported from the United States are dedicated for use in the making of wheel rims, they cannot be used for that purpose until flanged. The flanging operation does not constitute a repair or alteration because that operation is necessary for the completion of the wheel rims.

(c) *Documentation*—(1) *Declarations required.* Except as otherwise provided in this section, the following declarations shall be filed in connection with the entry of goods which are returned from Canada or Mexico after having been exported for repairs or alterations and which are claimed to be duty free or subject to duty only on the value of the repairs or alterations performed abroad:

(i) A declaration from the person who performed such repairs or alterations, in substantially the following form:

I/We, _____, declare that the goods herein specified are the goods which, in the condition in which they were exported from the United States, were received by me (us) on _____, 19___, from _____ (name and address of owner or exporter in the United States); that they were received by me (us) for the sole purpose of being repaired or altered; that only the repairs or alterations described below were performed by me (us); that such repairs or alterations were (were not) performed pursuant to a warranty; that the full cost or (when no charge is made) value of such repairs or alterations is correctly stated below; and that no substitution whatever has been made to replace any of the goods originally received by me (us) from the owner or exporter thereof mentioned above.

Marks and numbers	Description of goods and of repairs or alterations	Full cost or (when no charge is made) value of repairs or alterations (see Subchapter II, Chapter 98, HTSUS)	Total value of goods after repairs or alterations

_____
Date
Signature

_____
Address

_____

_____
Capacity

(ii) A declaration by the owner, importer, consignee, or agent having knowledge of the pertinent facts in substantially the following form:

I, _____, declare that the (above) (attached) declaration by the person who performed the repairs or alterations abroad is true and correct to the best of my knowledge and belief; that the goods _____ were _____ were not (check one) subject to NAFTA drawback; that such goods were exported from the United States for repairs or alterations from _____ (port) on _____, 19___; and that the goods entered in their repaired or altered condition

are the same goods that were exported on the above date and that are identified in the (above) (attached) declaration.

Date

Signature

Address

Capacity

(2) *Additional documentation.* The Center director may require such additional documentation as is deemed necessary to prove actual exportation of the goods from the United States for repairs or alterations, such as a foreign customs entry, a foreign customs invoice, a foreign landing certificate, bill of lading, or airway bill.

(3) *Waiver of declarations.* If the Center director concerned is satisfied, because of the nature of the goods or production of other evidence, that the goods are imported under circumstances meeting the requirements of this section, he may waive submission of the declarations provided for in paragraph (c)(1) of this section.

(4) *Deposit of estimated duties to CBP, either at the port of entry or electronically.* For goods returned after having been repaired or altered in Canada other than pursuant to a warranty, the Center director shall require a deposit of estimated duties based upon the full cost or value of the repairs or alterations. The cost or value of the repairs or alterations performed in Canada other than pursuant to a warranty, which is to be set forth in the invoice and entry papers as the basis for the assessment of duty for such goods, shall be limited to the cost or value of the repairs or alterations actually performed in Canada, which shall include all domestic and foreign articles furnished for the repairs or alterations but shall not include any of the expenses incurred in the United States whether by way of engineering costs, preparation of plans or specifications, furnishing of tools or equipment for doing the repairs or alterations in Canada, or otherwise.

Subpart G—Origin Verifications and Determinations

§ 181.71 Denial of preferential tariff treatment dependent on origin verification and determination.

Except where a Certificate of Origin either is not submitted when requested under § 181.22(b) of this part or is not acceptable and a corrected Certificate is not submitted or accepted as provided in § 181.22(c) of this part and except as otherwise provided in § 181.23 of this part and except in the case of a pattern of conduct provided for in § 181.76(c) of this part, Customs shall deny preferential tariff treatment on an imported good, or shall deny a post-importation claim for a refund filed under subpart D of this part, only after initiation of an origin verification under § 181.72(a) of this part which results in a determination that the imported good does not qualify as an originating good or should not be accorded such treatment for any other reason as specifically provided for elsewhere in this part.

§ 181.72 Verification scope and method.

(a) *General.* Subject to paragraph (e) of this section, Customs may initiate a verification in order to determine whether a good imported into the United States qualifies as an originating good for purposes of preferential tariff treatment under the NAFTA as stated on the Certificate of Origin pertaining to the good. Such a verification:

(1) May also involve a verification of the origin of a material that is used in the production of a good that is the subject of a verification under this section;

(2) May include verification of the applicable rate of duty applied to an originating good in accordance with Annex 302.2 of the NAFTA and may include a determination of whether a good is a qualifying good for purposes of Annex 703.2 of the NAFTA; and

(3) Shall be conducted only by means of one or more of the following:

(i) A verification letter which requests information from a Canadian or Mexican exporter or producer, including a Canadian or Mexican producer of

a material, and which identifies the good or material that is the subject of the verification. The verification letter may be on Customs Form 28, or its electronic equivalent, or other appropriate format and may be sent:

(A) By certified or registered mail, or by any other method that produces a confirmation of receipt by the exporter or producer; or

(B) By any other method, regardless of whether it produces proof of receipt by the exporter or producer;

(ii) A written questionnaire sent to an exporter or a producer, including a producer of a material, in Canada or Mexico. The questionnaire:

(A) May be sent by certified or registered mail, or by any other method that produces a confirmation of receipt by the exporter or producer; or

(B) May be sent by any other method, regardless of whether it produces proof of receipt by the exporter or producer; and

(C) May be completed by the Canadian or Mexican exporter or producer either in the English language or in the language of the country in which that exporter or producer is located;

(iii) Visits to the premises of an exporter or a producer, including a producer of a material, in Canada or Mexico to review the types of records referred to in §181.12 of this part and observe the facilities used in the production of the good or material; and

(iv) Any other method which results in information from a Canadian or Mexican exporter or producer, including a Canadian or Mexican producer of a material, that is relevant to the origin determination. The information so obtained may form a basis for a negative determination regarding a good (see §181.75(b) of this part) only if the information is in writing and is signed by the exporter or producer.

(b) *Applicable accounting principles.* When conducting a verification of origin to which Generally Accepted Accounting Principles may be relevant, Customs will apply and accept the Generally Accepted Accounting Principles applicable in the country in which the good is produced or in which the exporter is located.

(c) *Inquiries to importer not precluded.* Nothing in paragraph (a) of this section shall preclude Customs from directing inquiries or requests to a U.S. importer for documents or other information regarding the imported good. If such an inquiry or request involves requesting the importer to obtain and provide written information from the exporter or producer of the good or from the producer of a material that is used in the production of the good, such information shall be requested by the importer and provided to the importer by the exporter or producer only on a voluntary basis, and a failure or refusal on the part of the importer to obtain and provide such information shall not be considered a failure of the exporter or producer to provide the information and shall not constitute a ground for denying preferential tariff treatment on the good.

(d) *Failure to respond to letter or questionnaire*—(1) *Nonresponse to initial letter or questionnaire.* If the exporter or producer, including a producer of a material, fails to respond to a verification letter or questionnaire sent under paragraph (a)(2)(i) or (a)(2)(ii) of this section within 30 calendar days from the date on which the letter or questionnaire was sent, or such longer period as may be specified in the letter or questionnaire, Customs shall send a follow-up verification letter or questionnaire to that exporter or producer. The follow-up letter or questionnaire:

(i) Except where the verification letter or questionnaire only involved the origin of a material used in the production of a good and was sent to the producer of the material, may include the written determination referred to in §181.75 of this part, provided that the information specified in paragraph (b) of that section is also included; and

(ii) Shall be sent:

(A) By certified or registered mail, or by any other method that produces a confirmation of receipt by the exporter or producer, if so requested by the customs administration of Canada or Mexico from which the good was exported; or

(B) By any method, if no request under paragraph (d)(1)(ii)(A) of this section has been made by the Canadian or Mexican customs administration.

(2) *Nonresponse to follow-up letter or questionnaire*—(i) *Producer of a material.*

If a producer of a material fails to respond to a follow-up verification letter or questionnaire sent under paragraph (d)(1) of this section, Customs may consider the material to be non-originating for purposes of determining whether the good to which that material relates is an originating good.

(ii) *Exporter or producer of a good.* If the exporter or producer of a good fails to respond to a follow-up verification letter or questionnaire sent under paragraph (d)(1) of this section, Customs may consider the good to be non-originating and consequently may deny preferential tariff treatment on the good as follows:

(A) If the follow-up letter or questionnaire included a written determination as provided for in paragraph (d)(1)(i) of this section and the exporter or producer fails to respond to the follow-up letter or questionnaire within 30 calendar days or such longer period as specified therein:

(*1*) From the date on which the follow-up letter or questionnaire and written determination were received by the exporter or producer, if sent pursuant to paragraph (d)(1)(ii)(A) of this section; or

(*2*) From the date on which the follow-up letter or questionnaire and written determination were either received by the exporter or producer or sent by Customs, if sent in accordance with paragraph (d)(1)(ii)(B) of this section; or

(B) Provided that the procedures set forth in §§ 181.75 and 181.76 of this part are followed, if the follow-up letter or questionnaire does not include a written determination as provided for in paragraph (d)(1)(i) of this section and the exporter or producer fails to respond to the follow-up letter or questionnaire within 30 calendar days or such longer period as specified in the letter or questionnaire:

(*1*) From the date on which the follow-up letter or questionnaire was received by the exporter or producer, if sent pursuant to paragraph (d)(1)(ii)(A) of this section; or

(*2*) From the date on which the follow-up letter or questionnaire was either received by the exporter or producer or sent by Customs, if sent in accordance with paragraph (d)(1)(ii)(B) of this section.

(e) *Calculation of regional value content under net cost method*—(1) *General.* Where a Canadian or Mexican producer of a good elects to calculate the regional value content of a good under the net cost method as set forth in General Note 12, HTSUS, and in the appendix to this part, Customs may not, during the time period over which that net cost is calculated, conduct a verification under § 181.72(a) of this part with respect to the regional value content of that good.

(2) *Cost submission for motor vehicles.* Where, pursuant to General Note 12, HTSUS, and the appendix to this part, a Canadian or Mexican producer of a light duty vehicle or heavy duty vehicle, as defined in the appendix to this part, elects to average its regional value content calculation over its fiscal year, Customs may request, in writing, that the producer provide a cost submission reflecting the actual costs incurred in the production of the category of motor vehicles for which the election was made. Such a written request shall constitute a verification letter under paragraph (a)(2)(i) of this section, and the requested cost submission shall be submitted to Customs within 180 calendar days after the close of the producer's fiscal year or within 60 days from the date on which the request was made, whichever is later.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as amended by T.D. 02–15, 67 FR 15482, Apr. 2, 2002; CBP Dec. 15–14, 80 FR 61292, Oct. 13, 2015]

§ 181.73 Notification of verification visit.

(a) *Written notification required.* Prior to conducting a verification visit in Canada or Mexico pursuant to § 181.72(a)(2)(iii) of this part, Customs shall give written notification of the intention to conduct the visit. Such notification shall be delivered:

(1) By certified or registered mail, or by any other method that produces a confirmation of receipt, to the address of the Canadian or Mexican exporter or producer whose premises are to be visited;

(2) To the customs administration of the country in which the visit is to occur; and

(3) If requested by the country in which the visit is to occur, to the embassy of that country located in the United States.

(b) *Contents of notification.* The notification referred to in paragraph (a) of this section shall include:

(1) The identity of the Customs office and officer issuing the notification;

(2) The name of the Canadian or Mexican exporter or producer of the good, or producer of the material, whose premises are to be visited;

(3) The date and place of the proposed verification visit;

(4) The object and scope of the proposed verification visit, including specific reference to the good or material that is the subject of the verification;

(5) The names and titles of the Customs officers performing the proposed verification visit;

(6) The legal authority for the proposed verification visit; and

(7) A request that the Canadian or Mexican exporter or producer of the good, or producer of the material, provide its written consent for the proposed verification visit.

§ 181.74 Verification visit procedures.

(a) *Written consent required.* Prior to conducting a verification visit in Canada or Mexico pursuant to § 181.72(a)(3)(iii) of this part, CBP shall obtain the written consent of the Canadian or Mexican exporter or producer of the good or producer of the material whose premises are to be visited.

(b) *Written consent procedures.* The written consent provided for in paragraph (a) of this section shall be delivered by certified or registered mail, or by any other method that generates a reliable receipt, to the CBP officer who gave the notification provided for in § 181.73 of this part.

(c) *Failure to provide written consent or to cooperate or to maintain records.* Except as otherwise provided in paragraph (d) of this section, where a Canadian or Mexican exporter or producer of a good, or a Canadian or Mexican producer of a material, has not given its written consent to a proposed verification visit within 30 calendar days of receipt of notification pursuant to § 181.73 of this part, CBP may deny preferential tariff treatment to that good, or for purposes of determining whether a good is an originating good may consider as non-originating that material, that would have been the subject of the visit, provided that, as regards the good, notice of intent to deny such treatment is given to that exporter or producer of the good and to the U.S. importer thereof prior to taking such action. A failure on the part of the Canadian or Mexican exporter or producer of a good, or on the part of the Canadian or Mexican producer of a material, to maintain records or provide access to such records or otherwise cooperate during the verification visit shall mean that the verification visit never took place and may be treated by CBP in the same manner as a failure to give written consent to a verification visit. However, in the case of a Canadian or Mexican producer of a good who is found during a verification visit to have not maintained records in accordance with the Generally Accepted Accounting Principles applied in the producer's country, CBP may deny preferential tariff treatment on the good based solely on a failure to so maintain those records only if the producer does not conform the records to those Principles within 60 calendar days after CBP informs the producer in writing of that failure.

(d) *Postponement of visit in Canada or Mexico.* Following receipt of the notification provided for in § 181.73 of this part, the Canadian or Mexican customs administration may, within 15 calendar days of receipt of the notification, postpone the proposed verification visit for a period not exceeding 60 calendar days from the date of such receipt by providing written notice of the postponement to the CBP officer who issued the notification of the verification visit, unless a longer period is requested and agreed to by CBP. Such a postponement shall not constitute a failure to provide written consent within the meaning of paragraph (c) of this section and shall not otherwise by itself constitute a valid basis upon which CBP may:

(1) Consider a material that is used in the production of a good to be a non-originating material; or

(2) Deny preferential tariff treatment to a good.

(e) *Verification visits within the United States*—(1) *Notification and consent procedure*. When the Canadian or Mexican customs administration intends to conduct a verification visit in the United States, notification of such intent will be given, and consent will be required, as provided for under Article 506 of the NAFTA. For purposes of the required notification to CBP, such notification shall be sent to U.S. Customs and Border Protection, Office of International Trade, Commercial Targeting and Enforcement, 1300 Pennsylvania Ave., NW., Washington, DC 20229.

(2) *Postponement of visit*. Following receipt of notification from the Canadian or Mexican customs administration of its intention to conduct a verification visit in the United States, CBP may, within 15 calendar days of receipt of the notification, postpone the proposed verification visit for a period not exceeding 60 calendar days from the date of such receipt by providing written notice of the postponement to the Canadian or Mexican customs administration.

(3) *Designation of observers*. A U.S. exporter or producer, including a producer of a material, whose good or material is the subject of a verification visit by the Canadian or Mexican customs administration shall be allowed to designate two observers to be present during the visit, subject to the following conditions:

(i) The U.S. exporter or producer shall not be required to designate observers;

(ii) There shall be no restriction on the class of persons that may be designated as observers by the U.S. exporter or producer;

(iii) The observers to be present are designated in the written consent to the proposed visit or subsequent thereto;

(iv) The observers do not participate in the verification visit in a manner other than as passive observers;

(v) The presence of observers shall in no way affect the right to have legal counsel or other advisors present during the visit;

(vi) There shall be no obligation on the part of the United States government or on the part of the Canadian or Mexican government to designate observers from its staff, even when the U.S. exporter or producer fails to, or specifically declines to, designate observers; and

(vii) The failure of the U.S. exporter or producer to designate observers shall not result in the postponement of the visit.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as amended by CBP Dec. 07–76, 72 FR 52783, Sept. 17, 2007]

§ 181.75 Issuance of origin determination.

(a) *General*. Except in the case of a pattern of conduct within the meaning of § 181.76(c) of this part, following receipt and analysis of the results of an origin verification initiated under § 181.72(a) of this part in regard to a good imported into the United States and prior to denying preferential tariff treatment on the import transaction which gave rise to the origin verification, Customs shall provide the exporter or producer whose good is the subject of the verification with a written determination of whether the good qualifies as an originating good. Subject to paragraph (b) of this section, the written origin determination shall be sent within 60 calendar days after conclusion of the origin verification process, unless circumstances require additional time, and shall set forth:

(1) A description of the good that was the subject of the verification together with the identifying numbers and dates of the export and import documents pertaining to the good;

(2) Subject to the provisions of § 181.131 of this part and except in the case of a negative origin determination where specific findings of fact cannot be made because of a failure to respond to a follow-up verification letter or questionnaire sent under § 181.72 of this part, a statement setting forth the findings of fact made in connection with the verification and upon which the determination is based; and

(3) With specific reference to the rules applicable to originating goods as

set forth in General Note 12, HTSUS, and in the appendix to this part, the legal basis for the determination.

(b) *Negative origin determinations.* If Customs determines, as a result of an origin verification initiated under §181.72(a) of this part, that the good which is the subject of the verification does not qualify as an originating good, the written determination required under paragraph (a) of this section:

(1) Shall be sent by certified or registered mail, or by any other method that produces a confirmation of receipt by the exporter or producer, if so requested by the customs administration of Canada or Mexico from which the good was exported; and

(2) Shall, in addition to the information specified in paragraph (a) of this section, set forth the following:

(i) A notice of intent to deny preferential tariff treatment on the good which is the subject of the determination;

(ii) The specific date after which preferential tariff treatment will be denied, as established in accordance with §181.76(a)(1) of this part;

(iii) The period, established in accordance with §181.76(a)(1) of this part, during which the exporter or producer of the good may provide written comments or additional information regarding the determination; and

(iv) A statement advising the exporter or producer of the right to file a protest under 19 U.S.C. 1514 and part 174 of this chapter:

(A) Within 90 days after notice of liquidation is provided pursuant to part 159 of this chapter; or

(B) In cases where the negative origin determination does not result in a liquidation, within 90 days after the date of issuance of the written determination.

§181.76 Application of origin determinations.

(a) *General.* Except as otherwise provided in this section, an origin determination may be applied upon issuance of the determination under §181.75 of this part.

(b) *Negative origin determinations.* In the case of a negative origin determination issued under §181.75(b) of this part:

(1) The date on which preferential tariff treatment may be denied shall be no earlier than 30 calendar days from the date on which:

(i) Receipt of the written determination by the exporter or producer is confirmed, if a request under §181.75(b)(1) of this part has been made; or

(ii) The written determination is sent by Customs, if no request under §181.75(b)(1) of this part has been made; and

(2) Before denying preferential tariff treatment, Customs shall take into account any comments or additional information provided by the exporter or producer during the period established in accordance with paragraph (b)(1) of this section.

(c) *Cases involving a pattern of conduct.* Where multiple origin verifications initiated under §181.72(a) of this part indicate a pattern of conduct by an exporter or producer involving false or unsupported representations on Certificates of Origin that a good imported into the United States qualifies as an originating good, Customs may deny subsequent claims for preferential tariff treatment on identical goods exported or produced by such person until that person establishes compliance with the rules applicable to originating goods as set forth in General Note 12, HTSUS, and in this part, provided that advance written notice of the intent to deny such claims is given to the importer. For purposes of this paragraph, a ''pattern of conduct'' means repeated instances of false or unsupported representations by an exporter or producer as established by Customs on the basis of not fewer than two origin verifications of two or more importations of the good that result in the issuance of not fewer than two written determinations issued to that exporter or producer pursuant to §181.75 of this part which conclude, as a finding of fact, that Certificates of Origin completed and signed by that exporter or producer with respect to identical goods contain false or unsupported representations.

(d) *Differing determinations.* Where Customs determines, either as a result of an origin verification initiated under §181.72(a) of this part or under any other circumstance, that a certain

good imported into the United States does not qualify as an originating good based on a tariff classification or a value applied in the United States to one or more materials used in the production of the good, including a material used in the production of another material that is used in the production of the good, which differs from the tariff classification or value applied to the materials by the country from which the good was exported, the Customs determination shall not become effective until Customs provides written notification thereof both to the U.S. importer of the good and to the person who completed and signed the Certificate of Origin upon which the claim for preferential tariff treatment for the good was based.

(e) *Applicability of a determination to prior importations.* Customs shall not apply a determination made under paragraph (d) of this section to an importation made before the effective date of the determination if, prior to notification of the determination, the customs administration of the country from which the good was exported either issued an advance ruling under Article 509 of the NAFTA or any other ruling on the tariff classification or on the value of such materials, or gave consistent treatment to the entry of the materials under the tariff classification or value at issue, on which a person is entitled to rely and on which that person did in fact rely. For purposes of this paragraph, the person who received notification of the determination shall demonstrate to the satisfaction of Customs, in writing within 30 calendar days of receipt of the notification, that the conditions set forth herein have been met. For purposes of this paragraph:

(1) A ''ruling'' on which a person is entitled to rely in the case of Canada must be issued pursuant to section 43.1(1) of the Customs Act (Advance Rulings) or in accordance with Departmental Memorandum 11–11–1 (National Customs Rulings) and in the case of Mexico must be issued pursuant to Article 34 of the Codigo Fiscal de la Federacion and pursuant to Article 30 of the Ley Aduanera or the applicable provision of Mexican law related to advance rulings under Article 509 of the NAFTA; and

(2) ''Consistent treatment'' means the established application by the Canadian or Mexican customs administration that can be substantiated by the continued acceptance by the customs administration of the tariff classification or value of identical materials on importations of the materials into Canada or Mexico by the same importer over a period of not less than two years immediately prior to the date of signature of the Certificate of Origin for the good that is the subject of the determination referred to in paragraph (d) of this section, provided that with regard to those importations:

(i) The tariff classification or value of the materials was not the subject of a verification, review or appeal by that customs administration on the date of the determination under paragraph (d) of this section; and

(ii) The materials had not been accorded a different tariff classification or value by one or more district, regional or local offices of that customs administration on the date of the determination under paragraph (d) of this section.

(f) *Detrimental reliance.* If Customs proposes to deny preferential tariff treatment to a good pursuant to a determination made under paragraph (d) of this section, Customs shall postpone the application of the determination for a period not exceeding 90 calendar days from the date of issuance of the determination where the U.S. importer of the good, or the person who completed and signed the Certificate of Origin upon which the claim for preferential tariff treatment for the good was based, demonstrates to the satisfaction of Customs that it has relied in good faith to its detriment on the tariff classification or value applied to such materials by the customs administration of the country from which the good was exported.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995; 61 FR 1829, Jan. 24, 1996]

Subpart H—Penalties

§ 181.81 Applicability to NAFTA transactions.

Except as otherwise provided in § 181.82 of this part, all criminal, civil or administrative penalties which may be imposed on U.S. importers, exporters and producers for violations of the Customs and related laws and regulations shall also apply to U.S. importers, exporters and producers for violations of the laws and regulations relating to the NAFTA.

§ 181.82 Exceptions to application of penalties.

(a) *General.* A U.S. importer who makes a corrected declaration under § 181.21(b) of this part shall not be subject to civil or administrative penalties for having made an incorrect declaration, provided that the corrected declaration was voluntarily made. In addition, civil or administrative penalties provided for under the U.S. Customs laws and regulations shall not be imposed on an exporter or producer in the United States who voluntarily provides written notification pursuant to § 181.11(d) of this part with respect to the making of an incorrect certification.

(b) *''Voluntarily'' defined*—(1) *General.* For purposes of paragraph (a) of this section, the making of a corrected declaration or the providing of written notification of an incorrect certification will be deemed to have been done voluntarily if:

(i) Done before the commencement of a formal investigation;

(ii) Done before any of the events specified in § 162.74(i) of this chapter have occurred;

(iii) Done within 30 calendar days after either the U.S. importer with respect to a declaration that an imported good qualified as an originating good, or the U.S. exporter or producer with respect to a certification pertaining to a good exported to Canada or Mexico, had reason to believe that the declaration or certification was not correct;

(iv) Accompanied by a written statement setting forth the information specified in paragraph (b)(3) of this section; and

(v) In the case of a corrected declaration, accompanied or followed by a tender of any actual loss of duties in accordance with paragraph (b)(5) of this section.

(2) *Cases involving fraud.* Notwithstanding paragraph (b)(1) of this section, a person who acted by means of fraud in making an incorrect declaration or certification may not make a voluntary correction thereof. For purposes of this paragraph (b)(2), the term ''fraud'' shall have the meaning set forth in paragraph (B)(3) of appendix B to part 171 of this chapter.

(3) *Written statement.* For purposes of paragraph (a) of this section, each corrected declaration or notification of an incorrect certification shall be accompanied by a written statement which:

(i) Identifies the class or kind of good to which the incorrect declaration or certification relates;

(ii) Identifies each import or export transaction affected by the incorrect declaration or certification with reference to each port of importation or exportation and the approximate date of each importation or exportation. A U.S. producer who provides written notification that certain information in a Certificate of Origin is incorrect and who is unable to identify the specific export transactions under this paragraph shall provide as much information concerning those transactions as the producer, by the exercise of good faith and due diligence, is able to obtain;

(iii) Specifies the nature of the incorrect statements or omissions regarding the declaration or certification; and

(iv) Sets forth, to the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the declaration or certification, and states that the person will provide any additional information or data which is unknown at the time of making the corrected declaration or certification within 30 calendar days or within any extension of that 30-day period as Customs may permit in order for the person to obtain the information or data.

(4) *Substantial compliance.* For purposes of this section, a person shall be deemed to have voluntarily corrected a declaration or certification even

though that person provides corrected information in a manner which does not conform to the requirements of the written statement specified in paragraph (b)(3) of this section, provided that:

(i) Customs is satisfied that the information was provided before the commencement of a formal investigation; and

(ii) The information provided includes, orally or in writing, substantially the same information as that specified in paragraph (b)(3) of this section.

(5) *Tender of actual loss of duties.* A U.S. importer who makes a corrected declaration shall tender any actual loss of duties at the time of making the corrected declaration, or within 30 calendar days thereafter, or within any extension of that 30-day period as Customs may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

(6) *Applicability of prior disclosure provisions.* Where a person fails to meet the requirements of this section because the correction of the declaration or the written notification of an incorrect certification is not considered to be done voluntarily as provided in this section, that person may nevertheless qualify for prior disclosure treatment under 19 U.S.C. 1592(c)(4) and the regulations issued thereunder.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as amended by T.D. 99–64, 64 FR 43267, Aug. 10, 1999]

Subpart I—Advance Ruling Procedures

§ 181.91 Applicability.

This subpart sets forth the rules which govern the issuance and application of advance rulings under Article 509 of the NAFTA and the procedures which apply for purposes of review of advance rulings under Article 510 of the NAFTA. Importers in the United States and exporters and producers located in Canada or Mexico may request and obtain an advance ruling on a NAFTA transaction only in accordance with the provisions of this subpart whenever the requested ruling involves a subject matter specified in §181.92(b)(6) of this part. Accordingly, the provisions of this subpart shall apply in lieu of the administrative ruling provisions contained in subpart A of part 177 of this chapter except where the request for a ruling involves a subject matter not specified in §181.92(b)(6).

§ 181.92 Definitions and general NAFTA advance ruling practice.

(a) *Definitions.* For purposes of this subpart:

(1) An *advance ruling* is a written statement issued by the Headquarters Office or the National Commodity Specialist Division or by such other office as designated by the Commissioner of Customs that interprets and applies the provisions of NAFTA to a specific set of facts involving any subject matter specified in §181.92(b)(6) of this part. An ''advance ruling letter'' is an advance ruling issued in response to a written request and set forth in a letter addressed to the person making the request or his designee. A ''published advance ruling'' is an advance ruling which has been published in full text in the Customs Bulletin.

(2) An *authorized agent* is a person expressly authorized by a principal to act on his or her behalf. An advance ruling requested by an attorney or other person acting as an agent must include a statement describing the authority under which the request is made. With the exception of attorneys whose authority to represent is known, any person appearing before Customs as an agent in connection with an advance ruling request may be required to present evidence of his or her authority to represent the principal. The foregoing requirements will not apply to an individual representing his or her full-time employer or to a bona-fide officer, director or other qualified representative of a corporation, association, or organized group.

(3) The term *Headquarters Office,* means the Regulations and Rulings, Office of International Trade at Headquarters, U. S. Customs and Border Protection, Washington, DC.

(4) An *information letter* is a written statement issued by the Headquarters Office or the National Commodity Specialist Division or by such other office

as designated by the Commissioner of Customs that does no more than call attention to a well-established interpretation of principles under the NAFTA, without applying it to a specific set of facts. If Customs believes that general information may be of some benefit to the person making the request, an information letter may be issued in response to a request for an advance ruling when:

(i) The request suggests that general information, rather than an advance ruling, is actually being sought;

(ii) The request is incomplete or otherwise fails to meet the requirements set forth in this subpart; or

(iii) The requested advance ruling cannot be issued for any other reason.

(5) A *NAFTA transaction* is an act or activity to which the NAFTA provisions apply. A ''prospective'' NAFTA transaction is one that is merely contemplated or is currently being undertaken but has not resulted in any arrival or in the filing of any entry or entry summary or other document or in any other act so as to bring the transaction, or any part of it, under the jurisdiction of any Customs office. A ''current'' NAFTA transaction is one which is presently under consideration by a field office of Customs. A ''completed'' NAFTA transaction is one which has been acted upon by a Customs field office and with respect to which that office has issued a determination which is final in nature, but is (or was) subject to appeal, petition, protest or other review as provided in the applicable Customs laws and regulations. An ''ongoing'' NAFTA transaction is a series of identical, recurring transactions, consisting of current and completed transactions where future transactions are contemplated.

(6) The term *National Commodity Specialist Division* means the National Commodity Specialist Division, U.S. Customs and Border Protection, New York, New York.

(b) *General advance ruling practice.* An advance ruling may be requested under the provisions of this subpart with respect to prospective NAFTA transactions. An advance ruling will be based on the facts and circumstances presented by the requester.

(1) *Prospective NAFTA transactions.* It is in the interest of the sound administration of the NAFTA that persons engaging in any transaction affected by NAFTA fully understand the consequences of that transaction prior to its consummation. For this reason, Customs will give full and careful consideration to written requests from importers in the United States and exporters or producers in Canada or Mexico for advance rulings or information setting forth, with respect to a specifically described transaction, a definitive interpretation of applicable law or other appropriate information.

(2) *Current or ongoing NAFTA transactions.* A question arising in connection with a NAFTA transaction already before a Customs field office by reason of arrival, entry or otherwise will be resolved by that office in accordance with the principles and precedents previously announced by the Headquarters Office. If such a question cannot be resolved on the basis of clearly established rules set forth in the NAFTA or the regulations thereunder, or in applicable Treasury Decisions, rulings, opinions, or court decisions published in the Customs Bulletin, that field office may, if it believes it appropriate, forward the question to the Headquarters Office for consideration.

(3) *Completed NAFTA transactions.* A question arising in connection with an entry of merchandise which has been liquidated, or in connection with any other completed NAFTA transaction, may not be the subject of an advance ruling request under this subpart.

(4) *Oral advice.* Customs will not issue an advance ruling in response to an oral request. Oral opinions or advice of Customs personnel are not binding on Customs. However, oral inquiries may be made to Customs offices regarding existing advance rulings, the scope of such advance rulings, the types of transactions with respect to which Customs will issue advance rulings, the scope of the advance rulings which may be issued, or the procedures to be followed in submitting advance ruling requests, as prescribed in this subpart.

(5) *Who may request an advance ruling.* An advance ruling may be requested by

any of the following persons (individuals, corporations, partnerships, associations, or other entities or groups) having a direct and demonstrable interest in the question or questions presented in the advance ruling request, or by the authorized agent of any such person:

(i) An importer in the United States;

(ii) An exporter or a producer of a good in Canada or Mexico; or

(iii) A Canadian or Mexican producer of a material that is used in the production of a good imported into the United States, but only with regard to that material and only in regard to a matter described in paragraphs (b)(6)(i) through (v) and (vii) of this section.

(6) *Subject matter of advance rulings.* Customs shall issue advance rulings under this subpart concerning the following:

(i) Whether materials imported from a country other than the United States, Canada or Mexico and used in the production of a good undergo an applicable change in tariff classification set forth in General Note 12, HTSUS, as a result of production occurring entirely in the United States, Canada and/or Mexico;

(ii) Whether a good satisfies a regional value-content requirement under the transaction value method or under the net cost method as provided for in General Note 12, HTSUS, and in this part;

(iii) For purposes of determining whether a good satisfies a regional value-content requirement under General Note 12, HTSUS, and under this part, the appropriate basis or method for value to be applied by an exporter or a producer in Canada or Mexico, in accordance with the principles set forth in the appendix to this part, for calculating the transaction value of the good or of the materials used in the production of the good;

(iv) For purposes of determining whether a good satisfies a regional value-content requirement under General Note 12, HTSUS, and under this part, the appropriate basis or method for reasonably allocating costs, in accordance with the allocation methods set forth in the appendix to this part, for calculating the net cost of the good or the value of an intermediate material;

(v) Whether a good qualifies as an originating good under General Note 12, HTSUS, and under the appendix to this part;

(vi) Whether a good that re-enters the United States after having been exported from the United States to Canada or Mexico for repair or alteration qualifies for duty-free treatment in accordance with §181.64 of this part;

(vii) Whether the proposed or actual marking of a good satisfies country of origin marking requirements under part 134 of this chapter and under the Marking Rules set forth in part 102 of this chapter;

(viii) Whether an originating good qualifies as a good of Canada or Mexico under Annex 300–B, Annex 302.2 and Chapter Seven of the NAFTA; and

(ix) Whether a good is a qualifying good under Chapter Seven of the NAFTA.

§181.93 Submission of advance ruling requests.

(a) *Form.* A request for an advance ruling should be written in the English language and in the form of a letter. For any subject matter specified in §181.92(b)(6)(i), (v), (vi), (vii), (viii), or (ix) of this part, the request may be directed either to the Commissioner of Customs and Border Protection, Attention: Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229, or to the National Commodity Specialist Division, U.S. Customs and Border Protection, One Penn Plaza, 10th Floor, New York, NY 10119. For any subject matter specified in §181.92(b)(6)(ii), (iii), or (iv) of this part, the request must be directed to the Commissioner of Customs and Border Protection, Attention: Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

(b) *Content*—(1) *General.* Each request for an advance ruling must identify the specific subject matter under §181.92(b)(6) of this part to which the

request relates, must contain a complete statement of all relevant facts relating to the NAFTA transaction and must state that the information presented is accurate and complete. The following facts must be included: the names, addresses, and other identifying information of all interested parties (if known); the name of the port or place at which any good involved in the transaction will be imported or which will otherwise have jurisdiction with respect to the act or activity described in the transaction; and a description of the transaction itself, appropriate in detail to the subject matter of the requested advance ruling. Where the request for an advance ruling is submitted by or on behalf of the importer of the good involved in the transaction, the request must include the name and address of the exporter and, if known, producer of the good. Where the request for an advance ruling is submitted by or on behalf of the exporter of the good involved in the transaction, the request must include the name and address of the producer and importer of the good, if known. Where the request for an advance ruling is submitted by or on behalf of the producer of the good involved in the transaction, the request must include the name and address of the exporter and importer of the good, if known. In addition, where relevant to the issue that is the subject of the request for an advance ruling, and regardless of the specific nature of the advance ruling requested, the request must include:

(i) A copy of any advance ruling or other ruling with respect to the tariff classification of the good that has been issued by CBP to the person submitting the request; or

(ii) Sufficient information to enable CBP to classify the good where no advance ruling or other ruling with respect to the tariff classification of the good has been issued by CBP to the person submitting the request. Such information includes a full description of the good, including, where relevant, the composition of the good, a description of the process by which the good is manufactured, a description of the packaging in which the good is contained, the anticipated use of the good and its commercial, common or technical designation, and product literature, drawings, photographs or schematics.

(2) *Description of transaction*—(i) *General.* The prospective Customs transaction to which the advance ruling request relates must be described in sufficient detail to permit proper application of the relevant NAFTA provisions.

(ii) *Tariff change rulings*—(A) *General.* If the transaction involves the importation of a good or material for which a ruling is requested as to whether a change in tariff classification has occurred, the request should set forth: The principal or chief use of the good or material in the United States and the commercial, common, or technical designation of the good or material; if the good or material is composed of two or more substances, the relative quantity (by both weight and by volume) and value of each substance; any applicable special invoicing requirements set forth in part 141 of this chapter (if known); and any other information which may assist in determining the appropriate tariff classification of the good or material. The advance ruling request should also note, whenever germane, the purchase price of the good or material, and its approximate selling price in the United States. Each individual request for an advance ruling must be limited to five merchandise items, all of which must be of the same class or kind. Only NAFTA tariff change rulings will be issued under this subpart. Tariff classification rulings which do not involve the application of the NAFTA shall be issued under part 177 of this chapter.

(B) *Issues involving a change in tariff classification of a material.* Where the request for the advance ruling involves the application of a rule of origin that requires an assessment of whether materials used in the production of an imported good undergo an applicable change in tariff classification, the request must list each material used in the production of the good and must:

(*1*) Identify each material which is claimed to be an originating material and provide a complete description of each such material, including the basis for the claim as to originating status;

(*2*) Identify each material which is a non-originating material, or for which

the origin is unknown, and provide a complete description of each such material, including its tariff classification if known; and

(*3*) Describe all processing operations employed in the production of the good, the location of each operation and the sequence in which the operations occur.

(iii) *NAFTA rulings on regional value content.* NAFTA advance ruling requests, if involving the issue of whether a good satisfies a regional value content requirement under the transaction value method or under the net cost method, or under both methods, as provided for in General Note 12, HTSUS, and in the appendix to this part, must specify each method under which eligibility is sought. Where the transaction value method is specified, the advance ruling request must include: information sufficient to calculate the transaction value of the good in accordance with schedule II of the appendix to this part with respect to the transaction of the producer of the good, adjusted to an F.O.B. basis; information sufficient to calculate the value of each non-originating material, or material the origin of which is unknown, that is used by the producer in the production of the good in accordance with the provisions of section 7 and, where applicable, section 6(10) of the appendix to this part; a complete description of each material that is claimed to be an originating material and that is used in the production of the good, including the basis for the claim as to originating status; information sufficient to permit an examination of the factors enumerated in schedule III or VIII of the appendix to this part where the advance ruling request involves an issue of whether, with respect to the good or material under the applicable schedule, the transaction value is acceptable; and information sufficient for any other circumstance to make any determination relevant to the application of the regional value content requirement to the good. Where the net cost method is specified, the advance ruling request must include: a list of all product, period and other costs relevant to determining the total cost of the good as defined in the appendix to this part; a list of all excluded costs to be subtracted from the total cost of the good as provided in the appendix to this part; information sufficient to calculate the value of each non-originating material, or material the origin of which is unknown, that is used in the production of the good, in accordance with section 7 of the appendix to this part; the basis for any allocation of costs in accordance with schedule VII of the appendix to this part; the period over which the net cost calculation is to be made; and any other information relevant to determining the appropriate value of any cost under this part. Where the advance ruling request concerns only the calculation of an element of a regional value content formula, and with regard to the information specified in paragraphs (b)(1) through (b)(5) of this section, the request need only contain the following: the information in paragraph (b)(1), other than the information specified in paragraph (b)(1)(i) or (b)(1)(ii); the information in paragraph (b)(5); and any information in this paragraph (b)(2)(iii) which is relevant to the issue that is the subject of the request.

(iv) *NAFTA rulings on producer materials. W* here the advance ruling request involves an issue with respect to an intermediate material under Article 402(10) of the NAFTA (see section 7(4) of the appendix to this part), the request must contain sufficient information to determine the origin and value of the material in accordance with Article 402(11) of the NAFTA (see section 7(6) of the appendix to this part). Where the advance ruling request is submitted by a Canadian or Mexican producer of a material under §181.92(b)(5)(iii) of this part and concerns only the origin of such material, and with regard to the information specified in paragraphs (b)(1) through (b)(5) of this section, the request need only include the following: the information in paragraph (b)(1), including any information specified in paragraph (b)(1)(i) or (b)(1)(ii) which is relevant to the issue that is the subject of the request; any information in paragraph (b)(2)(ii)(B) which is relevant to the issue that is the subject of the request; a sample as provided for in paragraph (b)(3) if relevant to the issue that is the

subject of the request; and the information in paragraph (b)(5).

(3) *Samples.* Each request for an advance ruling should be accompanied by photographs, drawings, or other pictorial representations of the good and, whenever possible, by a sample of the good unless a precise description of the good is not essential to the advance ruling requested. Any good consisting of materials in chemical or physical combination for which a laboratory analysis has been prepared by or for the manufacturer should include a copy of that analysis, flow charts, CAS number, and related information. A sample submitted in connection with a request for an advance ruling becomes a part of the CBP file in the matter and will be retained until the advance ruling is issued or the advance ruling request is otherwise disposed of. A sample should only be submitted with the understanding that all or a part of it may be damaged or consumed in the course of examination, testing, analysis, or other actions undertaken in connection with the advance ruling request.

(4) *Related documents.* If the question or questions presented in the advance ruling request directly relate to matters set forth in any invoice, contract, agreement, or other document, a copy of the document must be submitted with the request. (Original documents should not be submitted inasmuch as any documents or exhibits furnished with the advance ruling request become a part of the CBP file in the matter and cannot be returned.) The relevant facts reflected in any documents submitted, and an explanation of their bearing on the question or questions presented, must be expressly set forth in the advance ruling request.

(5) *Prior or current transactions—(i) General.* Each request for an advance ruling must state:

(A) Whether, to the knowledge of the person submitting the request, the same transaction or issue, or one identical to it, has ever been considered, or is currently being considered by any CBP office;

(B) Whether, to the knowledge of the person submitting the request, the issue involved has ever been, or is currently, the subject of:

(*1*) Review by the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom, or review by a judicial or quasi-judicial body in Canada or Mexico;

(*2*) A verification of origin performed in the United States, Canada or Mexico;

(*3*) An administrative appeal in the United States, Canada or Mexico; or

(*4*) A request for an advance ruling under this subpart, or a request for an advance ruling in Canada or Mexico under an appropriate authority referred to in §181.76(e)(1) of this part;

(C) The status or disposition of any matter on which an affirmative statement is made under paragraph (b)(5)(i)(B) of this section; and

(D) Whether the transaction described in the advance ruling request is but one of a series of similar and related transactions.

(ii) *Change in status of transaction.* If a prospective transaction which is the subject of an advance ruling request becomes a current transaction, the person who submitted the request shall so notify the office processing the request.

(6) *Statement of position.* If the request for an advance ruling asks that a particular determination or conclusion be reached in the advance ruling letter, a statement must be included in the request setting forth the basis for that determination or conclusion, together with a citation of all relevant supporting authority.

(7) *Privileged or confidential information.* Information which is claimed to constitute trade secrets or privileged or confidential commercial or financial information regarding the business transactions of private parties the disclosure of which would cause substantial harm to the competitive position of the person making the request (or of another interested party) must be identified clearly, and the reasons such information should not be disclosed, including, where applicable, the reasons the disclosure of the information would prejudice the competitive position of the person making the request (or of another interested party), must be set forth. An advance ruling will not be

issued until all trade secret, privilege or confidentiality issues are resolved (see §181.99(a)(3) of this part).

(c) *Signing; instruction as to reply.* The request for an advance ruling must be signed by a person authorized to make the request, as described in §181.92(b)(5) of this part. An advance ruling requested by a principal or authorized agent may direct that the advance ruling letter be addressed to the other.

(d) *Requests for immediate consideration.* CBP will normally process requests for advance rulings in the order they are received and as expeditiously as possible, as specified in §181.99 of this part. However, a request that a particular matter be given consideration ahead of its regular order, if made in writing at the time the request is submitted, or subsequent thereto, and showing a clear need for such treatment, will be given consideration as the particular circumstances warrant and permit. Requests for special consideration made by telegram or electronic transmission will be treated in the same manner as requests made by letter, but advance rulings will not be issued by telegram or electronic transmission. A telegram or electronic transmission must be followed up with a signed original within 14 calendar days of the submission of the telegram or electronic transmission. In no event can any assurance be given that a particular request for an advance ruling will be acted upon by the time requested.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as amended by T.D. 99–64, 64 FR 43267, Aug. 10, 1999; CBP Dec. 07–76, 72 FR 52783, Sept. 17, 2007; CBP Dec. 08–25, 73 FR 40727, July 16, 2008]

§181.94 Nonconforming requests for advance rulings.

A person submitting a request for an advance ruling that does not comply with all of the provisions of this subpart will be so notified in writing, and the requirements that have not been met will be pointed out. Such person will be given a period of 30 calendar days from the date of the notice (or such longer period as the notice may provide) to supply any additional information that is requested or otherwise conform the advance ruling request to the requirements referred to in the notice. The Customs file with respect to advance ruling requests which are not brought into compliance with the provisions of this subpart within the period of time allowed will be administratively closed and the request removed from active consideration. A request for an advance ruling that is removed from active consideration by reason of failure to comply with the provisions of this subpart may be treated as withdrawn. A failure to comply with the provisions of this subpart will result in the rejection of the advance ruling request with the notice specifying the deficiencies.

§181.95 Oral discussion of issues.

(a) *General.* A person submitting a request for an advance ruling and desiring an opportunity to orally discuss the issue or issues involved should indicate that desire in writing at the time the advance ruling request is filed. Such a discussion will only be scheduled when, in the opinion of the Customs personnel by whom the advance ruling request is under consideration, a conference will be helpful in deciding the issue or issues involved or when a determination or conclusion contrary to that advocated in the advance ruling request is contemplated. Conferences are scheduled for the purpose of affording the parties an opportunity to freely and openly discuss the matters set forth in the advance ruling request. Accordingly, the parties will not be bound by any argument or position advocated or agreed to, expressly or by implication, during the conference unless either party subsequently agrees to be so bound in writing. The conference will not conclude with the issuance of an advance ruling letter.

(b) *Time, place and number of conferences.* If a request for a conference is granted, the person making the request will be notified of the time and place of the conference. No more than one conference with respect to the matters set forth in an advance ruling request will be scheduled, unless, in the opinion of the Customs personnel by whom the advance ruling request is under consideration, additional conferences are necessary.

(c) *Representation.* A person whose request for a conference has been granted may be accompanied at that conference by counsel or other representatives, or may designate such persons to attend the conference in his or her place.

(d) *Additional information presented at conferences.* It will be the responsibility of the person submitting the request for an advance ruling to provide for inclusion in the Customs file in the matter a written record setting forth any and all additional information, documents, and exhibits introduced during the conference to the extent that person considers such material relevant to the consideration of the advance ruling request. Such information, documents and exhibits shall be given consideration only if received by Customs within 30 calendar days following the conference.

§ 181.96 Change in status of transaction.

Each person submitting a request for an advance ruling in connection with a NAFTA transaction must immediately advise Customs in writing of any change in the status of that transaction upon becoming aware of the change. In particular, Customs must be advised when any transaction described in the advance ruling request as prospective becomes current and under the jurisdiction of a Customs field office. In addition, any person engaged in a NAFTA transaction coming under the jurisdiction of a Customs field office who has previously requested a NAFTA advance ruling with respect to that transaction must advise the field office of that fact.

§ 181.97 Withdrawal of NAFTA advance ruling requests.

Any request for an advance ruling may be withdrawn by the person submitting it at any time before the issuance of an advance ruling letter or any other final disposition of the request. All correspondence, documents, and exhibits submitted in connection with the request will be retained in the Customs file and will not be returned. In addition, the Headquarters Office may forward, to Customs field offices which have or may have jurisdiction over the transaction to which the advance ruling request relates, its views in regard to the transaction or the issues involved therein, as well as appropriate information derived from materials in the Customs file.

§ 181.98 Situations in which no NAFTA advance ruling may be issued.

(a) *General.* No advance ruling letter will be issued in response to a request therefor which fails to comply with the provisions of this subpart. No advance ruling letter will be issued in regard to a completed transaction.

(b) *Pending matters.* Where a request for an advance ruling involves an issue that is under review in connection with an origin verification under subpart G of this part or that is the subject of an administrative review procedure provided for in subpart J of this part or in part 174 of this chapter, Customs may decline to issue the requested advance ruling. In addition, no NAFTA advance ruling letter will be issued with respect to any issue which is pending before the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom. Litigation before any other court will not preclude the issuance of an advance ruling letter, provided neither Customs nor any of its officers or agents is named as a party to the action.

§ 181.99 Issuance of NAFTA advance rulings or other advice.

(a) *NAFTA advance ruling letters*—(1) *General.* Except as otherwise provided in paragraph (a)(2) of this section, Customs will, within 120 calendar days of receipt of a request, including any required information supplemental thereto, issue an advance ruling letter in the English language setting forth the position of Customs and the reasons therefor with respect to a specifically described Customs transaction whenever a request for such an advance ruling is submitted in accordance with the provisions of this subpart and it is in the sound administration of the NAFTA provisions to do so. Otherwise, a request for an advance ruling will be answered by an information letter or, in those situations in which general information is likely to be of little or no

value, by a letter stating that no advance ruling can be issued. In the course of evaluating the advance ruling request Customs may solicit supplemental information from the person requesting the advance ruling. The submission of supplemental information will extend the time for response. The time for response will also be extended if it is necessary to obtain information from other government agencies or in the form of a laboratory analysis.

(2) *Submission of NAFTA advance ruling letters to field offices.* Any importer engaging in a NAFTA transaction with respect to which an advance ruling letter has been issued under this subpart either must ensure that a copy of the advance ruling letter is attached to the documents filed with the appropriate Customs office in connection with that transaction or must otherwise indicate with the information filed for that transaction that an advance ruling has been received. Any person receiving an advance ruling stating Customs determination must set forth such determination in the documents or information filed in connection with any subsequent entry of that merchandise; failure to do so may result in a rejection of the entry and the imposition of such penalties as may be appropriate. An advance ruling received after the filing of such documents or information must immediately be brought to the attention of the appropriate Customs field office.

(3) *Disclosure of NAFTA advance ruling letters.* No part of the advance ruling letter, including names, addresses, or information relating to the business transactions of private parties, shall be deemed to constitute privileged or confidential commercial or financial information or trade secrets exempt from disclosure pursuant to the Freedom of Information Act, as amended (5 U.S.C. 552), and part 103 of this chapter, or shall be deemed to be subject to the confidentiality principle set forth in §181.121 of this part, unless, as provided in §181.93(b)(7) of this part, the information claimed to be exempt from disclosure is clearly identified and a valid basis for nondisclosure is set forth. Before the issuance of the advance ruling letter, the person submitting the advance ruling request will be notified of any decision adverse to his request for nondisclosure and will, upon written request to Customs within 10 working days of the date of notification, be permitted to withdraw the advance ruling request. If in the opinion of Customs an impasse exists on the issue of confidentiality and the person who submitted the advance ruling request does not withdraw the request, Customs will decline to issue the advance ruling. All advance ruling letters issued by Customs will be available, upon written request, for inspection and copying by any person (with any portions determined to be exempt from disclosure deleted).

(4) *Penalties for misrepresented or omitted material facts or for noncompliance.* If Customs determines that an issued advance ruling was based on incorrect information, the person to whom the advance ruling was issued may be subject to appropriate penalties unless that person demonstrates that he used reasonable care and acted in good faith in presenting the facts and circumstances on which the advance ruling was based. In addition, Customs may apply such measures as the circumstances may warrant in a case where a person to whom an advance ruling was issued has failed to act in accordance with the terms and conditions of the advance ruling.

(b) *Other NAFTA advice and guidance.* The Headquarters Office may on its own initiative from time to time issue other external advice and guidance with respect to issues or transactions arising under the NAFTA which come to its attention. Such NAFTA advice and guidance, which represent the official position of Customs and which are likely to be of widespread interest and application, are published in the Customs Bulletin, as described in §181.101 of this part. Nothing in this subpart shall preclude Customs from issuing advice and guidance to its field offices concerning the application of the NAFTA.

§ 181.100 Effect of NAFTA advance ruling letters; modification and revocation.

(a) *Effect of NAFTA advance ruling letters*—(1) *General.* An advance ruling letter issued by Customs under the provisions of this subpart represents the official position of Customs with respect to the particular transaction or issue described therein and is binding on all Customs personnel in accordance with the provisions of this subpart until modified or revoked. In the absence of a change of practice or other modification or revocation which affects the principle of the advance ruling set forth in the advance ruling letter, that principle may be cited as authority in the disposition of transactions involving the same circumstances. An advance ruling letter is generally effective on the date it is issued or such later date as may be specified in the advance ruling and, commencing on its effective date, may be applied to entries for consumption and warehouse withdrawals for consumption which are unliquidated, or to other transactions with respect to which Customs has not taken final action on that date. See, however, paragraph (b) of this section (ruling letters which modify previous advance ruling letters) and § 181.101 of this part (advance ruling letters published in the Customs Bulletin).

(2) *Application of NAFTA rulings to transactions*—(i) *General.* Each NAFTA ruling letter is issued on the assumption that all of the information furnished in connection with the ruling request and incorporated in the ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect. The application of an advance ruling letter by a Customs field office to the transaction to which it is purported to relate is subject to the verification of the facts incorporated in the advance ruling letter, a comparison of the transaction described therein to the actual transaction, and the satisfaction of any conditions on which the advance ruling was based, and if the facts are materially different or a condition has not been satisfied, the treatment specified in the advance ruling will not be applied to the actual transaction. If, in the opinion of any Customs field office by whom the transaction is under consideration or review, the advance ruling letter should be modified or revoked, the findings and recommendations of that office will be forwarded to the Headquarters Office for consideration, prior to any final disposition with respect to the transaction by that office. If the transaction described in the NAFTA advance ruling letter and the actual transaction are the same, and any and all conditions set forth in the advance ruling letter have been satisfied, the advance ruling will be applied to the transaction.

(ii) *Tariff change rulings.* Each advance ruling letter concerning whether a change in tariff classification has occurred will be applied only with respect to transactions involving either articles which are identical to the sample submitted with the advance ruling request and reflect the same processing or articles which conform to the description set forth in the advance ruling letter.

(iii) *Regional value content rulings.* Each advance ruling letter concerning the application of a regional value content requirement will be applied only with respect to transactions involving the same merchandise and identical facts.

(3) *Reliance on NAFTA advance rulings by others.* An advance ruling letter is subject to modification or revocation without notice to any person other than the person to whom the letter was addressed. Accordingly, no other person may rely on the advance ruling letter or assume that the principles of that advance ruling will be applied in connection with any transaction other than the one described in the letter. However, any person eligible to request an advance ruling under § 181.92(b)(5) of this part may request information as to whether a previously-issued advance ruling letter has been modified or revoked by writing the Commissioner of Customs and Border Protection, Attention: Regulations and Rulings, Office of International Trade, Washington, DC 20229, and either enclosing a copy of the advance ruling letter or furnishing other information sufficient to permit the advance ruling letter in question to be identified.

(b) *Modification or revocation of NAFTA advance ruling letters*—(1) *General.* Any NAFTA advance ruling letter may be modified or revoked by Customs Headquarters in any of the following circumstances or for any of the following purposes, provided that written notice of the modification or revocation is given to the person to whom the advance ruling letter was addressed:

(i) If the ruling letter reflects or is based on an error:

(A) Of fact;

(B) In the tariff classification of a good or material that is the subject of the ruling;

(C) In the application of a regional value-content requirement under General Note 12, HTSUS, and under this part;

(D) In the application of the rules for determining whether a good qualifies as a good of Canada or Mexico under Annex 300–B, Annex 302.2 or Chapter Seven of the NAFTA;

(E) In the application of the rules for determining whether a good is a qualifying good under Chapter Seven of the NAFTA; or

(F) In the application of the rules for determining whether a good qualifies for duty-free treatment under § 181.64 of this part when the good re-enters the United States after having been exported to Canada or Mexico for repair or alteration;

(ii) If the ruling letter is not in accordance with an interpretation agreed on by the United States, Canada and Mexico regarding Chapter Three or Chapter Four of the NAFTA;

(iii) If there is a change in the material facts or circumstances on which the ruling is based;

(iv) To conform to a modification of Chapter Three, Four, Five or Seven of the NAFTA, or of the Marking Rules, or of the regulations set forth in this part; or

(v) To conform to a judicial decision or change in domestic law.

(2) *Application of modification or revocation of NAFTA advance ruling letters.* The modification or revocation of a NAFTA advance ruling letter will not be applied to entries or warehouse withdrawals for consumption which were made prior to the effective date of such modification or revocation, except where the person to whom the advance ruling was issued has not acted in accordance with its terms and conditions.

(3) *Effective dates.* Generally, a NAFTA letter modifying or revoking an earlier advance ruling will be effective on the date it is issued. However, Customs may, upon request or on its own initiative, delay the effective date of such a modification or revocation for a period of up to 90 calendar days from the date of issuance. Such a delay may be granted at the request of the party to whom the ruling letter was issued, provided such party can demonstrate to the satisfaction of Customs that it relied on the earlier advance ruling in good faith and to its detriment. The evidence of such reliance must cover the period from the date of the letter modifying or revoking the advance ruling back to the date of that advance ruling and must list all transactions claimed to be covered by the modified or revoked advance ruling by entry number (or other Customs assigned number), the quantity and value of merchandise covered by each such transaction (where applicable), the ports of entry, and the dates of final action by Customs. Such evidence must also include contracts, purchase orders, or other materials tending to establish that future transactions were arranged based on the earlier advance ruling. The request for delay must specifically identify the prior ruling on which reliance is claimed. All persons requesting a delay will be issued a separate letter setting forth the period, if any, of the delay to be provided. In appropriate circumstances, Customs may decide to make its decision, with respect to a delay, applicable to all persons, irrespective of demonstrated reliance; in this event, a notice announcing the delay will be published in the CUSTOMS BULLETIN and individual ruling letters will not be issued.

§ 181.101 Publication of decisions.

Within 90 days after issuing any precedential decision relating to any NAFTA transaction, Customs shall publish the decision in the CUSTOMS BULLETIN or otherwise make it available for public inspection. Disclosure is

governed by 31 CFR part 1, part 103 of this chapter, and §181.99(a)(3) of this part.

§181.102 Administrative and judicial review of advance rulings.

(a) *Administrative review*—(1) *Submission of request for review.* Any person who received an advance ruling issued under this subpart, or an authorized agent of such person, may request administrative review, at CBP Headquarters, of that advance ruling, including any modification or revocation thereof, by letter addressed to the Executive Director, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, Washington, DC 20229. Such request shall be filed within 30 calendar days after issuance of the advance ruling and shall set forth the following information:

(i) The name and address of the person seeking review and the name and address of his authorized agent if the request is signed by such an agent;

(ii) The Customs identification number or employer identification number in the case of a U.S. importer and authorized agent thereof, the employer number or importer/exporter number assigned by Revenue Canada in the case of a Canadian exporter or producer and authorized agent thereof, and the federal taxpayer registry number (RFC) in the case of a Mexican exporter or producer and authorized agent thereof;

(iii) The number and date of the advance ruling at issue;

(iv) The numbers and dates of any involved entries for consumption or warehouse withdrawals for consumption;

(v) The nature of, and justification for, the objection to the advance ruling set forth distinctly and specifically with respect to each aspect of the advance ruling for which administrative review is sought; and

(vi) Whether an oral discussion of the issues, as provided in §181.95 of this part, is desired.

(2) *Issuance of review decision.* Customs will normally issue a written decision within 120 days of receipt of the request for administrative review submitted under this section. However, Customs will, upon a reasonable showing of business necessity, issue a written decision within 60 days of receipt of the request for administrative review. For purposes of this paragraph, the date of receipt of the request for administrative review shall be the date on which all information necessary to process the request, including any information provided after submission of the request in connection with a conference, is filed with Customs.

(b) *Judicial review.* Any person whose claims with regard to a request for administrative review of an advance ruling have been denied in whole or in part under this section may seek judicial review by filing a civil action in the United States Court of International Trade in accordance with 28 U.S.C. 2632 within 180 days after the date of mailing of notice of the denial.

Subpart J—Review and Appeal of Adverse Marking Decisions

§181.111 Applicability.

This subpart sets forth the circumstances and procedures under which exporters and producers of merchandise imported into the United States may obtain information about, and administrative and judicial review of, an adverse marking decision, as provided for in Article 510 of the NAFTA. This subpart does not apply to the review of advance rulings issued under Article 509 of the NAFTA (see subpart I of this part) or to the review of determinations that a good is not an originating good under General Note 12, HTSUS, and the appendix to this part (see part 174 of this chapter).

§181.112 Definitions.

For purposes of this subpart, the following words and phrases have the meanings indicated:

(a) *Adverse marking decision* means a decision made by the port director or Center director before January 19, 2017, or the Center director on or after January 19, 2017, which an exporter or producer of merchandise believes to be contrary to the provisions of Annex 311 of the NAFTA and which may be protested by the importer pursuant to §514, Tariff Act of 1930, as amended (19

U.S.C. 1514), and part 174 of this chapter. Notification of an adverse marking decision is given to an importer in the form of a CBP Form 4647, or its electronic equivalent, (Notice to Mark and/or Notice to Redeliver) and/or by assessing marking duties on improperly marked merchandise. Examples of adverse marking decisions include determinations by the port director or Center director before December 20, 2016, or the Center director on or after January 19, 2017: That an imported article is not a good of a NAFTA country, as determined under the Marking Rules, and that it therefore cannot be marked ''Canada'' or ''Mexico''; that a good of a NAFTA country is not marked in a manner which is sufficiently permanent; and that a good of a NAFTA country does not qualify for an exception from marking specified in Annex 311 of the NAFTA. Adverse marking decisions do not include: Decisions issued in response to requests for advance rulings under subpart I of this part or for internal advice under part 177 of this chapter; decisions on protests under part 174 of this chapter; and determinations that an article does not qualify as an originating good under General Note 12, HTSUS, and the appendix to this part.

(b) An *exporter* of merchandise is an exporter located in Canada or Mexico who must maintain records in that country relating to the transaction to which the adverse marking decision relates. The records must be sufficient to enable Customs to evaluate the merits of the exporter's claim(s) regarding the adverse marking decision.

(c) A *producer* of merchandise is a person who grows, mines, harvests, fishes, traps, hunts, manufactures, processes or assembles such merchandise in Canada or Mexico.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as amended by CBP Dec. 15–14, 80 FR 61292, Oct. 13, 2015; CBP Dec. No. 16–26, 81 FR 93026, Dec. 20, 2016]

§ 181.113 Request for basis of adverse marking decision.

(a) *Request; form and filing.* The exporter or producer of the merchandise which is the subject of an adverse marking decision may request a statement concerning the basis for the decision by filing a typewritten request, in English, with CBP, either at the port of entry or electronically. The request should be on letterhead paper in the form of a letter and clearly designated as a ''Request for Basis of Adverse Marking Decision'' and shall be signed by the exporter, producer or his authorized agent. The provisions of § 174.3 of this chapter shall apply for purposes of signature by a person other than the principal.

(b) *Content.* The Request for Basis of Adverse Marking Decision letter shall set forth the following information:

(1) The name and address of the exporter or producer of the merchandise and the name and address of any authorized agent filing the request on behalf of such principal;

(2) A statement that the inquirer is the exporter or producer of the merchandise that was the subject of the adverse marking decision;

(3) In the case of a Canadian exporter or producer, the employer number assigned by Revenue Canada, Customs and Excise; in the case of a Mexican exporter or producer, the Federal taxpayer registry number (RFC); and the Customs identification number of an authorized agent filing the request on behalf of such principal;

(4) The number and date of each entry involved in the request;

(5) A specific description of the merchandise which is the subject of the adverse marking decision; and

(6) A complete statement of all relevant facts relating to the adverse marking decision and the transaction to which it relates, including the date of the decision.

§ 181.114 Customs response to request.

(a) *Time for response.* The Center director will issue a written response to the requestor within 30 days of receipt of a request containing the information specified in § 181.113 of this part. If the request is incomplete, such that the transaction in question cannot be identified, the Center director will notify the requestor in writing within 30 days of receipt of the request regarding what information is needed.

(b) *Content.* The response by the Center director shall include the following:

(1) A statement concerning the basis for the adverse marking decision;

(2) A copy of the relevant Customs Form 4647 (Notice to Mark and/or Notice to Redeliver), if one was issued to the importer and is available. If the basis for the adverse marking decision is indicated on the Customs Form 4647, or its electronic equivalent, no statement under paragraph (b)(1) of this section is required;

(3) A statement as to whether the importer has filed a protest regarding the adverse marking decision and, if so, where the protest was filed and the protest number; and

(4) A statement concerning the exporter's or producer's right to either intervene in the importer's protest as provided in §181.115 of this part or file a petition as provided in §181.116 of this part.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as amended by CBP Dec. 15–14, 80 FR 61292, Oct. 13, 2015]

§181.115 Intervention in importer's protest.

(a) *Conditional right to intervene.* An exporter or producer of merchandise does not have an independent right to protest an adverse marking decision. However, if an importer protests the adverse marking decision in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and part 174 of this chapter, the exporter or producer of the merchandise which is the subject of the adverse marking decision may intervene in the importer's protest. Such intervention shall not affect any time limits applicable to the protest or delay action on the protest.

(b) *Form and filing of intervention.* In order to intervene in an importer's protest, as provided for in paragraph (a) of this section, the exporter or producer of the merchandise shall file, in triplicate, a typewritten statement of intervention, in English, with the Center director. The statement should be on letterhead paper in the form of a letter and should be clearly designated ''NAFTA Exporter or Producer Intervention in Protest''. The statement shall be signed by the exporter, producer or his authorized agent. The provisions of §174.3 of this chapter shall apply for purposes of signature by a person other than the principal.

(c) *Content.* The NAFTA Exporter or Producer Intervention in Protest letter shall include the following:

(1) The name and address of the exporter or producer of the merchandise and the name and address of any authorized agent filing the request on behalf of such principal;

(2) In the case of a Canadian exporter or producer, the employer number assigned by Revenue Canada, Customs and Excise; in the case of a Mexican exporter or producer, the Federal taxpayer registry number (RFC); and the Customs identification number of an authorized agent filing the request on behalf of such principal;

(3) The number and date of each entry involved in the adverse marking decision;

(4) A specific description of the merchandise which is the subject of the adverse marking decision;

(5) A complete statement of all relevant facts relating to the adverse marking decision and the transaction to which it relates, including the date of the decision;

(6) A detailed statement of position regarding why the exporter or producer believes the adverse marking decision is contrary to the provision of Annex 311 of the NAFTA;

(7) A statement as to whether a Request for Basis of Adverse Marking Decision was filed under §181.113 of this part, and if so, the date of such Request and of any Customs response thereto issued under §181.114 of this part. Copies of the Request and the Customs response shall be submitted, if available;

(8) The number assigned to the importer's protest;

(9) A statement that the intervenor is the exporter or producer of the merchandise that was the subject of the adverse marking decision being protested by the importer and, if the intervenor is the exporter, a statement that it maintains sufficient records to enable Customs to evaluate the merits of its claim(s) regarding the adverse marking decision; and

(10) If the intervenor prefers that the principle of confidentiality set forth in §181.121 of this part be applied to the

information submitted under this section, a statement to that effect. If no such statement is included in the letter, the intervention and information submitted in connection therewith shall be subject to the same treatment as that provided in the case of requests by all interested parties for consolidation of protests as set forth in §174.15(b)(1) of this chapter.

(d) *Effect of Intervention.* The rights of the intervenor under this section are subordinate to the importer's protest rights. Accordingly, intervention by an exporter or producer of merchandise will not affect the procedures under part 174 of this chapter, and the importer's elections concerning accelerated disposition and application for further review of the protest will govern how the protest is handled and how the intervention is considered. If the importer withdraws or settles the protest, the exporter or producer has no right to continue the intervention action.

(e) *Action by Center director.* If final administrative action has already been taken with respect to the importer's protest at the time the intervention is filed, the Center director shall so advise the exporter or producer and, if the importer has filed a civil action in the Court of International Trade as a result of a denial of the protest, the Center director shall advise the exporter or producer of that filing and of the exporter's or producer's right to seek to intervene in such judicial proceeding. If final administrative action has not been taken on the protest, the Center director shall forward the intervention letter to the Customs office which has the importer's protest under review for consideration in connection with the protest.

(f) *Final disposition.* The intervenor shall be notified in writing of the final disposition of the protest. If the protest is denied in whole or in part, the intervenor shall be furnished a copy of the notice given to the importer under §174.29.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as amended by CBP Dec. No. 16–26, 81 FR 93027, Dec. 20, 2016]

§181.116 Petition regarding adverse marking decision.

(a) *Right to petition.* If the importer does not protest an adverse marking decision in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), and part 174 of this chapter, the exporter or producer of the merchandise which was the subject of the adverse marking decision may file a petition with Customs requesting reconsideration of the decision. The petition may not be filed until after the importer's time to protest the adverse marking decision has expired (see §174.12(e) of this chapter for the time limits for filing protests). If the importer filed a protest upon which final administrative action has been taken, the exporter or producer may file a petition under this section, provided that the exporter or producer was not given notice of the pending protest pursuant to §181.114 of this part. If the importer filed a protest on which final administrative action has not been taken and notice of the pending protest was not provided to the exporter or producer under §181.114 of this part, a petition filed under this section shall be treated by the Center director as an intervention under §181.115 of this part.

(b) *Form and filing of petition.* A petition under this section shall be typewritten, in English, and shall be filed, in triplicate, with the port of entry or filed electronically with CBP. The petition under this subpart should be on letterhead paper in the form of a letter, clearly designated as a ''Petition for NAFTA Review of Adverse Marking Decision'' and shall be signed by the exporter, producer or his authorized agent. The provisions of §174.3 of this chapter shall apply for purposes of signature by a person other than the principal.

(c) *Content.* The Petition for NAFTA Review of Adverse Marking Decision letter shall contain all the information specified §181.115 of this part, except for the protest number. It shall also include a statement that petitioner was not notified by Customs in writing of a pending protest.

(d) *Review of petition*—(1) *Review by Center director.* Within 60 days of the

date of receipt of the petition, the Center director shall determine if the petition is to be granted or denied, in whole or in part. If, after reviewing the petition, the Center director agrees with all of the petitioner's claims and determines that the initial adverse marking decision was not correct, a written notice granting the petition shall be issued to the petitioner. A description of the merchandise, a brief summary of the issue(s) and the Center director's findings shall be forwarded to the Director, Tariff Classification Appeals Division, Customs Headquarters, for publication in the Customs Bulletin. If, after reviewing the petition, the Center director determines that the initial adverse marking decision was correct in its entirety, a written notice shall be issued to the petitioner advising that the matter has been forwarded to the Director, Tariff Classification Appeals Division, Customs Headquarters, for further review and decision. All relevant background information, including available samples, a description of the adverse marking decision and the reasons for the decision, and the Center director's recommendation shall be furnished to Headquarters.

(2) *Review by Headquarters.* Within 120 days of the date the petition and background information are received at Customs Headquarters, the Director, Tariff Classification Appeals Division, shall determine if the petition is to be granted or denied, in whole or in part, and the petitioner shall be notified in writing of the determination. If the petition is granted in whole or in part, a description of the merchandise, a brief summary of the issue(s) and the director's findings will be published in the Customs Bulletin.

(3) *Effect of granting the petition.* The decision on the petition, if contrary to the initial adverse marking decision, will be implemented with respect to merchandise entered or withdrawn from warehouse for consumption after 30 days from the date on which the notice of determination is published in the Customs Bulletin.

(e) *Pending litigation.* No decision on a petition will be issued under this section with respect to any issue which is pending before the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom. Litigation before any other court will not preclude the issuance of a decision on a petition under this section, provided neither Customs nor any of its officers or agents is named as a party to the action.

(f) *Judicial review of denial of petition.* Any person whose petition under this section has been denied, in whole or in part, may contest the denial by filing a civil action in the United States Court of International Trade within 30 days after the date of mailing of the notice of denial.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as amended by CBP Dec. No. 16–26, 81 FR 93027, Dec. 20, 2016]

Subpart K—Confidentiality of Business Information

§ 181.121 Maintenance of confidentiality.

The port director, Center director, or other CBP officer who has possession of confidential business information collected pursuant to this part shall, in accordance with part 103 of this chapter, maintain its confidentiality and protect it from any disclosure that could prejudice the competitive position of the persons providing the information.

§ 181.122 Disclosure to government authorities.

Nothing in § 181.121 of this part shall preclude the disclosure of confidential business information to governmental authorities in the United States responsible for the administration and enforcement of determinations of origin and of customs and revenue matters.

Subpart L—Rules of Origin

§ 181.131 Rules of origin.

(a) The regulations effective October 1, 1995, implementing the rules of origin provisions of General Note 12, HTSUS, and Chapter Four of the NAFTA are contained in the appendix to this part.

(b) If the fiscal year of a producer of goods begins before October 1, 1995, the producer may choose to have the regulations implementing the rules of origin provisions of General Note 12, HTSUS, and Chapter Four of the NAFTA that were in effect prior to October 1, 1995 (see 19 CFR chapter I, 1994 edition, appendix to part 181) continue to apply in regard to all goods produced by that producer for the remainder of that fiscal year.

(c) If a motor vehicle producer's fiscal year that has been chosen by a producer of goods pursuant to section 12(5) of the regulations referred to in paragraph (b) of this section begins before October 1, 1995, the producer of the goods may choose to have those regulations continue to apply in regard to the goods produced by that producer for the remainder of that fiscal year, provided that:

(1) The producer of the goods has made an election under section 12(1) of those regulations or has provided a statement referred to in section 9(6) or 10(8) of those regulations that states the value of non-originating materials determined in accordance with section 12(3) of those regulations; and

(2) The period chosen under section 12(5) of those regulations is the fiscal year of the motor vehicle producer to whom those goods are sold.

§ 181.132 Disassembly.

(a) *Treated as production.* For purposes of implementing the rules of origin provisions of General Note 12, HTSUS, and Chapter Four of the NAFTA, except as provided in paragraph (b) of this section, disassembly is considered to be production, and a component recovered from a good disassembled in the territory of a Party will be considered to be originating as the result of such disassembly provided that the recovered component satisfies all applicable requirements of Annex 401 and this part.

(b) *Exception; new goods.* Disassembly, as provided in paragraph (a) of this section, will not be considered production in the case of components that are recovered from new goods. For purposes of this paragraph, a ''new good'' means a good which is in the same condition as it was when it was manufactured and which meets the commercial standards for new goods in the relevant industry.

[70 FR 37674, June 30, 2005]

APPENDIX TO PART 181—RULES OF ORIGIN REGULATIONS

SECTION 1. CITATION

This appendix may be cited as the *NAFTA Rules of Origin Regulations*.

PART I

SECTION 2. DEFINITIONS AND INTERPRETATION

DEFINITIONS

(1) For purposes of this appendix,

''accessories, spare parts or tools that are delivered with a good and form part of the good's standard accessories, spare parts or tools'' means goods that are delivered with a good, whether or not they are physically affixed to that good, and that are used for the transport, protection, maintenance or cleaning of the good, for instruction in the assembly, repair or use of that good, or as replacements for consumable or interchangeable parts of that good;

''adjusted to an F.O.B. basis'' means, with respect to a good, adjusted by

(a) deducting

(i) the costs of transporting the good after it is shipped from the point of direct shipment,

(ii) the costs of unloading, loading, handling and insurance that are associated with that transportation, and

(iii) the cost of packing materials and containers,

where those costs are included in the transaction value of the good, and

(b) adding

(i) the costs of transporting the good from the place of production to the point of direct shipment,

(ii) the costs of loading, unloading, handling and insurance that are associated with that transportation, and

(iii) the costs of loading the good for shipment at the point of direct shipment,

where those costs are not included in the transaction value of the good;

''Agreement'' means the *North American Free Trade Agreement;*

''applicable change in tariff classification'' means, with respect to a non-originating material used in the production of a good, a change in tariff classification specified in a rule set out in Schedule I for the tariff provision under which the good is classified;

''automotive component'' means a good that is referred to in column I of an item of Schedule V;

''automotive component assembly'' means a good, other than a heavy-duty vehicle, that incorporates an automotive component;

''costs incurred in packing'' means, with respect to a good or material, the value of the packing materials and containers in which the good or material is packed for shipment and the labor costs incurred in packing it for shipment, but does not include the costs of preparing and packaging it for retail sale;

''customs value'' means

(a) in the case of Canada, value for duty as defined in the *Customs Act*, except that for purposes of determining that value the reference in section 55 of that Act to ''in accordance with the regulations made under the *Currency Act*'' shall be read as a reference to ''in accordance with subsection 3(1) of these Regulations'',

(b) in the case of Mexico, the *valor en aduana* as determined in accordance with the *Ley Aduanera*, converted, in the event such value is not expressed in Mexican currency, to Mexican currency at the rate of exchange determined in accordance with subsection 3(1) of these Regulations, and

(c) in the case of the United States, the value of imported merchandise as determined by the Customs Service in accordance with section 402 of the *Tariff Act of 1930*, as amended, converted, in the event such value is not expressed in United States currency, to United States currency at the rate of exchange determined in accordance with subsection 3(1) of these Regulations.

''days'' means calendar days, and includes weekends and holidays;

''direct labor costs'' means costs, including fringe benefits, that are associated with employees who are directly involved in the production of a good;

''direct material costs'' means the value of materials, other than indirect materials and packing materials and containers, that are used in the production of a good;

''direct overhead'' means costs, other than direct material costs and direct labor costs, that are directly associated with the production of a good;

''enterprise'' means any entity constituted or organized under applicable laws, whether or not for profit and whether privately owned or governmentally owned, including any corporation, trust, partnership, sole proprietorship, joint venture or other association;

''excluded costs'' means sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs and non-allowable interest costs;

''fungible goods'' means goods that are interchangeable for commercial purposes and the properties of which are essentially identical;

''fungible materials'' means materials that are interchangeable for commercial purposes and the properties of which are essentially identical;

''Harmonized System'' means the Harmonized Commodity Description and Coding System, including its General Rules of Interpretation, Section Notes and Chapter Notes, as set out in

(a) in the case of Canada, the *Customs Tariff*,

(b) in the case of Mexico, the *Tarifa de la Ley del Impuesto General de Importación*, and

(c) in the case of the United States, the *Harmonized Tariff Schedule of the United States;*

''heavy-duty vehicle'' means a motor vehicle provided for in any of heading 8701, tariff items 8702.10.30 and 8702.90.30 (vehicles for the transport of 16 or more persons), subheadings 8704.10, 8704.22, 8704.23, 8704.32 and 8704.90 and heading 8705 and 8706;

''identical goods'' means, with respect to a good, goods that

(a) are the same in all respects as that good, including physical characteristics, quality and reputation but excluding minor differences in appearance,

(b) were produced in the same country as that good, and

(c) were produced

(i) by the producer of that good, or

(ii) by another producer, where no goods that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that good;

''identical materials'' means, with respect to a material, materials that

(a) are the same as that material in all respects, including physical characteristics, quality and reputation but excluding minor differences in appearance,

(b) were produced in the same country as that material, and

(c) were produced

(i) by the producer of that material, or

(ii) by another producer, where no materials that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that material;

''incorporated'' means, with respect to the production of a good, a material that is physically incorporated into that good, and includes a material that is physically incorporated into another material before that material or any subsequently produced material is used in the production of the good;

''indirect material'' means a good used in the production, testing or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, and includes

(a) fuel and energy,

(b) tools, dies and molds,

(c) spare parts and materials used in the maintenance of equipment and buildings,

(d) lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings,

(e) gloves, glasses, footwear, clothing, safety equipment and supplies,

(f) equipment, devices and supplies used for testing or inspecting the other goods,

(g) catalysts and solvents, and

(h) any other goods that are not incorporated into the good but the use of which in the production of the good can reasonably be demonstrated to be part of that production;

''interest costs'' means all costs paid or payable by a person to whom credit is, or is to be advanced, for the advancement of credit or the obligation to advance credit;

''intermediate material'' means a self-produced material that is used in the production of a good and is designated as an intermediate material under section 7(4);

''light-duty automotive good'' means a light-duty vehicle or a good of a tariff provision listed in Schedule IV that is subject to a regional value-content requirement and is for use as original equipment in the production of a light-duty vehicle;

''light-duty vehicle'' means a motor vehicle provided for in any of tariff items 8702.10.60 and 8702.90.60 (vehicles for the transport of 15 or fewer persons) and subheadings 8703.21 through 8703.90, 8704.21 and 8704.31;

''listed material'' means a good that is referred to in column II of an item of Schedule V;

''location of the producer'' means,

(a) where the warehouse or other receiving station at which a producer receives materials for use by the producer in the production of a good is located within a radius of 75 km (46.60 miles) from the place at which the producer produces the good, the location of that warehouse or other receiving station, and

(b) in any other case, the place at which the producer produces the good in which a material is to be used;

''material'' means a good that is used in the production of another good, and includes a part or ingredient;

''motor vehicle assembler'' means a producer of motor vehicles and any related person with whom, or joint venture in which, the producer participates with respect to the production of motor vehicles;

''month'' means a calendar month;

''NAFTA country'' means a Party to the Agreement;

''national'' means a natural person who is a citizen or permanent resident of a NAFTA country, and includes

(a) with respect to Mexico, a national or citizen according to Articles 30 and 34, respectively, of the Mexican Constitution, and

(b) with respect to the United States, a ''national of the United States'' as defined in the *Immigration and Nationality Act* on the date of entry into force of the Agreement;

''net cost method'' means the method of calculating the regional value content of a good that is set out in section 6(3);

''non-allowable interest costs'' means interest costs incurred by a producer on the producer's debt obligations that are more than 700 basis points above the yield on debt obligations of comparable maturities issued by the federal government of the country in which the producer is located;

''non-originating good'' means a good that does not qualify as originating under this appendix;

''non-originating material'' means a material that does not qualify as originating under this appendix;

''original equipment'' means a material that is incorporated into a motor vehicle before the first transfer of title or consignment of the motor vehicle to a person who is not a motor vehicle assembler, and that is

(a) a good of a tariff provision listed in Schedule IV, or

(b) an automotive component assembly, automotive component, sub-component or listed material;

''originating good'' means a good that qualifies as originating under this appendix;

''originating material'' means a material that qualifies as originating under this appendix;

''other costs,'' with respect to total cost, means all costs that are not product costs or period costs;

''packaging materials and containers'' means materials and containers in which a good is packaged for retail sale;

''packing materials and containers'' means materials and containers that are used to protect a good during transportation, but does not include packaging materials and containers;

''payments'' means, with respect to royalties and sales promotion, marketing and after-sales service costs, the costs expensed on the books of a producer, whether or not an actual payment is made;

''period costs'' means costs, other than product costs, that are expensed in the period in which they are incurred;

''person'' means a natural person or an enterprise;

''person of a NAFTA country'' means a national, or an enterprise constituted or organized under the laws of a NAFTA country;

''point of direct shipment'' means the location from which a producer of a good normally ships that good to the buyer of the good;

''producer'' means a person who grows, mines, harvests, fishes, traps, hunts, manufactures, processes or assembles a good;

''product costs'' means costs that are associated with the production of a good, and includes the value of materials, direct labor costs and direct overhead;

''production'' means growing, mining, harvesting, fishing, trapping, hunting, manufacturing, processing or assembling a good;

''related person'' means a person related to another person on the basis that

(a) they are officers or directors of one another's businesses,

(b) they are legally recognized partners in business,

(c) they are employer and employee,

(d) any person directly or indirectly owns, controls or holds 25 percent or more of the outstanding voting stock or shares of each of them,

(e) one of them directly or indirectly controls the other,

(f) both of them are directly or indirectly controlled by a third person, or

(g) they are members of the same family (members of the same family are natural or adopted children, brothers, sisters, parents, grandparents, or spouses);

''reusable scrap or by-product'' means waste and spoilage that is generated by the producer of a good and that is used in the production of a good or sold by that producer;

''right to use,'' for purposes of the definition of royalties, includes the right to sell or distribute a good;

''royalties'' means payments of any kind, including payments under technical assistance agreements or similar agreements, made as consideration for the use of, or right to use, any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance agreements or similar agreements that can be related to specific services such as

(a) personnel training, without regard to where performed, and

(b) if performed in the territory of one or more of the NAFTA countries, engineering, tooling, die-setting, software design and similar computer services, or other services;

''sales promotion, marketing and after-sales service costs'' means the following costs related to sales promotion, marketing and after-sales service:

(a) sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing and after-sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;

(b) sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;

(c) salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, pension), traveling and living expenses, membership and professional fees, for sales promotion, marketing and after-sales service personnel;

(d) recruiting and training of sales promotion, marketing and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(e) product liability insurance;

(f) office supplies for sales promotion, marketing and after-sales service of goods, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(g) telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(h) rent and depreciation of sales promotion, marketing and after-sales service offices and distribution centers;

(i) property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing and after-sales service offices and distribution centers, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer; and

(j) payments by the producer to other persons for warranty repairs;

''self-produced material'' means a material that is produced by the producer of a good and used in the production of that good;

''shipping and packing costs'' means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, excluding the costs of preparing and packaging the good for retail sale;

''similar goods'' means, with respect to a good, goods that

(a) although not alike in all respects to that good, have similar characteristics and component materials that enable the goods to perform the same functions and to be commercially interchangeable with that good,

(b) were produced in the same country as that good, and

(c) were produced

(i) by the producer of that good, or

(ii) by another producer, where no goods that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that good;

''similar materials'' means, with respect to a material, materials that

(a) although not alike in all respects to that material, have similar characteristics and component materials that enable the materials to perform the same functions and to be commercially interchangeable with that material,

(b) were produced in the same country as that material, and (c) were produced

(i) by the producer of that material, or

(ii) by another producer, where no materials that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that material;

''subject to a regional value-content requirement'' means, with respect to a good, that the provisions of this appendix that are applied to determine whether the good is an originating good include a regional value-content requirement;

''sub-component'' means a good that comprises a listed material and one or more other materials or listed materials;

''tariff provision'' means a heading, subheading or tariff item;

''territory'' means, with respect to

(a) Canada, the territory to which its customs laws apply, including any areas beyond the territorial seas of Canada within which, in accordance with international law and its domestic law, Canada may exercise rights with respect to the seabed and subsoil and their natural resources,

(b) Mexico,

(i) the states of the Federation and the Federal District,

(ii) the islands, including the reefs and keys, in adjacent seas,

(iii) the islands of Guadalupe and Revillagigedo situated in the Pacific Ocean,

(iv) the continental shelf and the submarine shelf of such islands, keys and reefs,

(v) the waters of the territorial seas, in accordance with international law, and its interior maritime waters,

(vi) the space located above the national territory, in accordance with international law, and

(vii) any areas beyond the territorial seas of Mexico within which, in accordance with international law, including the United Nations Convention on the Law of the Sea, and its domestic law, Mexico may exercise rights with respect to the seabed and subsoil and their natural resources, and

(c) the United States,

(i) the customs territory of the United States, which includes the 50 states, the District of Columbia and Puerto Rico,

(ii) the foreign trade zones located in the United States and Puerto Rico, and

(iii) any areas beyond the territorial seas of the United States within which, in accordance with international law and its domestic law, the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

''total cost'' means the total of all product costs, period costs and other costs incurred in the territory of one or more of the NAFTA countries;

''transaction value method'' means the method of calculating the regional value content of a good that is set out in subsection 6(2);

''used'' means used or consumed in the production of a good;

''verification of origin'' means a verification of origin of goods under

(a) in the case of Canada, paragraph 42.1(1)(a) or subsection 42.2(2) of the *Customs Act*,

(b) in the case of Mexico, Article 506 of the Agreement, and

(c) in the case of the United States, section 509 of the *Tariff Act* of 1930, as amended.

INTERPRETATION: ''SIMILAR''

(2) For purposes of the definitions of ''similar goods'' and ''similar materials,'' the quality of the goods or materials, their reputation and the existence of a trademark are among the factors to be considered for purposes of determining whether goods or materials are similar.

INTERPRETATION: TERMS USED TO REFER TO HTSUS; USE OF TERM ''BOOKS''

(3) For purposes of this appendix,

(a) ''chapter,'' unless otherwise indicated, refers to a chapter of the Harmonized System;

(b) ''heading'' refers to any four-digit number, or the first four digits of any number, set out in the column ''Heading/Subheading'' in the Harmonized System;

(c) ''subheading'' refers to any six-digit number, or the first six digits of any number, set out in the column ''Heading/Subheading'' in the Harmonized System;

(d) ''tariff item'' refers to any eight-digit number set out in the column ''Heading/Subheading'' in the Harmonized System;

(e) any reference to a tariff item in Chapter Four of the Agreement or this appendix that includes letters shall be reflected as the appropriate eight-digit number in the Harmonized System as implemented in each NAFTA country; and

(f) ''books'' refers to,

(i) with respect to the books of a person who is located in a NAFTA country,

(A) books and other documents that support the recording of revenues, expenses, costs, assets and liabilities and

that are maintained in accordance with Generally Accepted Accounting Principles set out in the publications listed in Schedule XII with respect to the territory of the NAFTA country in which the person is located, and

(B) financial statements, including note disclosures, that are prepared in accordance with Generally Accepted Accounting Principles set out in the publications listed in Schedule XII with respect to the territory of the NAFTA country in which the person is located, and

(ii) with respect to the books of a person who is located outside the territories of the NAFTA countries,

(A) books and other documents that support the recording of revenues, expenses, costs, assets and liabilities and that are maintained in accordance with generally accepted accounting principles applied in that location or, where there are no such principles, in accordance with the International Accounting Standards, and

(B) financial statements, including note disclosures, that are prepared in accordance with generally accepted accounting principles applied in that location or, where there are no such principles, in accordance with the International Accounting Standards.

USE OF EXAMPLES TO ILLUSTRATE THE APPLICATION OF A PROVISION

(4) Where an example, referred to as an ''Example,'' is set out in this appendix, the example is for purposes of illustrating the application of a provision, and where there is any inconsistency between the example and the provision, the provision prevails to the extent of the inconsistency.

REFERENCES TO DOMESTIC LAWS

(5) Except as otherwise provided, references in this appendix to domestic laws of the NAFTA countries apply to those laws as they may be amended or superseded.

CALCULATION OF TOTAL COST

(6) For purposes of sections 5(9), 6(11) and 7(6) and sections 10(1)(a) (i) and (ii),

(a) total cost consists of all product costs, period costs and other costs that are recorded, except as otherwise provided in paragraphs (b) (i) and (ii), on the books of the producer without regard to the location of the persons to whom payments with respect to those costs are made;

(b) in calculating total cost,

(i) the value of materials, other than intermediate materials, indirect materials and packing materials and containers, shall be the value determined in accordance with section 7(1),

(ii) the value of intermediate materials used in the production of the good or material with respect to which total cost is being calculated shall be calculated in accordance with section 7(6),

(iii) the value of indirect materials and the value of packing materials and containers shall be the costs that are recorded on the books of the producer for those materials, and

(iv) product costs, period costs and other costs, other than costs referred to in subparagraphs (i) and (ii), shall be the costs thereof that are recorded on the books of the producer for those costs;

(c) total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

(d) gains related to currency conversion that are related to the production of the good shall be deducted from total cost, and losses related to currency conversion that are related to the production of the good shall be included in total cost;

(e) the value of materials with respect to which production is accumulated under section 14 shall be determined in accordance with that section; and

(f) total cost includes the impact of inflation as recorded on the books of the producer, if recorded in accordance with the Generally Accepted Accounting Principles of the producer's country.

(7) For purposes of calculating total cost under sections 5(9) and 7(6) and sections 10(1)(a) (i) and (ii),

(a) where the regional value content of the good is calculated on the basis of the net cost method and the producer has chosen under section 6(15), 11 (1), (3) or (6), 12(5) or 13(4) to calculate the regional value content over a period, the total cost shall be calculated over that period; and

(b) in any other case, the producer may choose that the total cost be calculated over

(i) a month,

(ii) any consecutive three month or six month period that falls within and is evenly divisible into the number of months of the producer's fiscal year remaining at the beginning of that period, or

(iii) the producer's fiscal year.

(8) A choice made under subsection (7) may not be rescinded or modified with respect to the good or material, or the period, with respect to which the choice is made.

(9) Where a producer chooses a one, three or six month period under subsection (7) with respect to a good or material, the producer shall be considered to have chosen under that subsection a period or periods of the

same duration for the remainder of the producer's fiscal year with respect to that good or material.

(10) With respect to a good exported to a NAFTA country, a choice to average is considered to have been made

(a) in the case of a choice referred to in section 11 (1), (3) or (6) or 13(4), if the choice is received by the customs administration of that NAFTA country; and

(b) in the case of a choice referred to in section 2(7), 6(15) or 12(1), if the customs administration of that NAFTA country is informed in writing during the course of a verification of the origin of the good that the choice has been made.

SECTION 3. CURRENCY CONVERSION

(1) Where the value of a good or a material is expressed in a currency other than the currency of the country in which the producer of the good is located, that value shall be converted to the currency of the country in which that producer is located on the basis of

(a) in the case of the sale of that good or the purchase of that material, the rate of exchange used by the producer for purposes of recording that sale or purchase, as the case may be; and

(b) in the case of a material that is acquired by the producer other than by a purchase,

(i) where the producer used a rate of exchange for purposes of recording another transaction in that other currency that occurred within 30 days of the date on which the producer acquired the material, that rate, and

(ii) in any other case,

(A) with respect to a producer located in Canada, the rate of exchange referred to in section 5 of the *Currency Exchange for Customs Valuation Regulations* for the date on which the material was shipped directly to the producer,

(B) with respect to a producer located in Mexico, the rate of exchange published by the *Banco de Mexico* in the *Diario Oficial de la Federacion,* under the title ''*TIPO de cambio para solventar obligaciones denominadas en moneda extranjera pagaderas en la Republica Mexicana*'', for the date on which the material was shipped directly to the producer, and

(C) with respect to a producer located in the United States, the rate of exchange referred to in 31 U.S.C. 5151 for the date on which the material was shipped directly to the producer.

(2) Where a producer of a good has a statement referred to in section 9, 10 or 14 that includes information in a currency other than the currency of the country in which that producer is located, the currency shall be converted to the currency of the country in which the producer is located on the basis of

(a) if the material was purchased by the producer in the same currency as the currency in which the information in the statement is provided, the rate of exchange used by the producer for purposes of recording the purchase;

(b) if the material was purchased by the producer in a currency other than the currency in which the information in the statement is provided,

(i) where the producer used a rate of exchange for purposes of recording a transaction in that other currency that occurred within 30 days of the date on which the producer acquired the material, that rate, and

(ii) in any other case,

(A) with respect to a producer located in Canada, the rate of exchange referred to in section 5 of the *Currency Exchange for Customs Valuation Regulations* for the date on which the material was shipped directly to the producer,

(B) with respect to a producer located in Mexico, the rate of exchange published by the *Banco de Mexico* in the *Diario Oficial de la Federacion,* under the title ''*TIPO de cambio para solventar obligaciones denominadas en moneda extranjera pagaderas en la Republica Mexicana*'', for the date on which the material was shipped directly to the producer, and

(C) with respect to a producer located in the United States, the rate of exchange referred to in 31 U.S.C. 5151 for the date on which the material was shipped directly to the producer; and

(c) if the material was acquired by the producer other than by a purchase,

(i) where the producer used a rate of exchange for purposes of recording a transaction in that other currency that occurred within 30 days of the date on which the producer acquired the material, that rate, and

(ii) in any other case,

(A) with respect to a producer located in Canada, the rate of exchange referred to in section 5 of the *Currency Exchange for Customs Valuation Regulations* for the date on which the material was shipped directly to the producer,

(B) with respect to a producer located in Mexico, the rate of exchange published by the *Banco de Mexico* in the *Diario Oficial de la Federacion,* under the title ''*TIPO de cambio para solventar obligaciones denominadas en moneda extranjera pagaderas en la Republica Mexicana*'', for the date on which the material was shipped directly to the producer, and

(C) with respect to a producer located in the United States, the rate of exchange referred to in 31 U.S.C. 5151 for the date on which the material was shipped directly to the producer.

PART II

SECTION 4. ORIGINATING GOODS

IDENTIFICATION OF GOODS WHICH ARE ''WHOLLY OBTAINED OR PRODUCED''

(1) A good originates in the territory of a NAFTA country where the good is

(a) a mineral good extracted in the territory of one or more of the NAFTA countries;

(b) a vegetable or other good harvested in the territory of one or more of the NAFTA countries;

(c) a live animal born and raised in the territory of one or more of the NAFTA countries;

(d) a good obtained from hunting, trapping or fishing in the territory of one or more of the NAFTA countries;

(e) fish, shellfish or other marine life taken from the sea by a vessel registered or recorded with a NAFTA country and flying its flag;

(f) a good produced on board a factory ship from a good referred to in paragraph (e), where the factory ship is registered or recorded with the same NAFTA country as the vessel that took that good and flies that country's flag;

(g) a good taken by a NAFTA country or a person of a NAFTA country from or beneath the seabed outside the territorial waters of that country, where a NAFTA country has the right to exploit that seabed;

(h) a good taken from outer space, where the good is obtained by a NAFTA country or a person of a NAFTA country and is not processed outside the territories of the NAFTA countries;

(i) waste and scrap derived from

(i) production in the territory of one or more of the NAFTA countries, or

(ii) used goods collected in the territory of one or more of the NAFTA countries, where those goods are fit only for the recovery of raw materials; or

(j) a good produced in the territory of one or more of the NAFTA countries exclusively from a good referred to in any of paragraphs (a) through (i), or from the derivatives of such a good, at any stage of production.

GOODS MADE FROM NON-ORIGINATING MATERIALS: CHANGE IN TARIFF CLASSIFICATION REQUIREMENT; REGIONAL VALUE-CONTENT REQUIREMENT

(2) A good originates in the territory of a NAFTA country where

(a) each of the non-originating materials used in the production of the good undergoes the applicable change in tariff classification as a result of production that occurs entirely in the territory of one or more of the NAFTA countries, where the applicable rule in Schedule I for the tariff provision under which the good is classified specifies only a change in tariff classification, and the good satisfies all other applicable requirements of this appendix;

(b) each of the non-originating materials used in the production of the good undergoes the applicable change in tariff classification as a result of production that occurs entirely in the territory of one or more of the NAFTA countries and the good satisfies the applicable regional value-content requirement, where the applicable rule in Schedule I for the tariff provision under which the good is classified specifies both a change in tariff classification and a regional value-content requirement, and the good satisfies all other applicable requirements of this appendix; or

(c) the good satisfies the applicable regional value-content requirement, where the applicable rule in Schedule I for the tariff provision under which the good is classified specifies only a regional value-content requirement, and the good satisfies all other applicable requirements of this appendix.

GOODS MADE EXCLUSIVELY FROM ORIGINATING MATERIALS

(3) A good originates in the territory of a NAFTA country where the good is produced entirely in the territory of one or more of the NAFTA countries exclusively from originating materials.

EXCEPTIONS TO THE CHANGE IN TARIFF CLASSIFICATION REQUIREMENT

(4) A good originates in the territory of a NAFTA country where

(a) except in the case of a good provided for in any of Chapters 61 through 63,

(i) the good is produced entirely in the territory of one or more of the NAFTA countries,

(ii) one or more of the non-originating materials used in the production of the good do not undergo an applicable change in tariff classification because the materials were imported together, whether or not with originating materials, into the territory of a NAFTA country as an unassembled or disassembled good, and were classified as an assembled good pursuant to Rule 2(a) of the General Rules for the Interpretation of the Harmonized System,

(iii) the regional value content of the good, calculated in accordance with section 6, is not less than 60 percent where

the transaction value method is used, or is not less than 50 percent where the net cost method is used, and

(iv) the good satisfies all other applicable requirements of this appendix, including any applicable, higher regional value-content requirement provided for in section 13 or Schedule I; or

(b) except in the case of a good provided for in any of Chapters 61 through 63,

(i) the good is produced entirely in the territory of one or more of the NAFTA countries,

(ii) one or more of the non-originating materials used in the production of the good do not undergo an applicable change in tariff classification because

(A) those materials are provided for under the Harmonized System as parts of the good, and

(B) the heading for the good provides for both the good and its parts and is not further subdivided into subheadings, or the subheading for the good provides for both the good and its parts,

(iii) the non-originating materials that do not undergo a change in tariff classification in the circumstances described in subparagraph (ii) and the good are not both classified as parts of goods under the heading or subheading referred to in subparagraph (ii)(B),

(iv) each of the non-originating materials that is used in the production of the good and is not referred to in subparagraph (iii) undergoes an applicable change in tariff classification or satisfies any other applicable requirement set out in Schedule I,

(v) the regional value content of the good, calculated in accordance with section 6, is not less than 60 percent where the transaction value method is used, or is not less than 50 percent where the net cost method is used, and

(vi) the good satisfies all other applicable requirements of this appendix, including any applicable, higher regional value-content requirement provided for in section 13 or Schedule I.

INTERPRETATION: HEADING OR SUBHEADING WHICH PROVIDES FOR BOTH A GOOD AND PARTS OF THE GOOD

(5) For purposes of subsection (4)(b),

(a) the determination of whether a heading or subheading provides for a good and its parts shall be made on the basis of the nomenclature of the heading or subheading and the relevant Section or Chapter Notes, in accordance with the General Rules for the Interpretation of the Harmonized System; and

(b) where, in accordance with the Harmonized System, a heading includes parts of goods by application of a Section Note or Chapter Note of the Harmonized System and the subheadings under that heading do not include a subheading designated ''Parts'', a subheading designated ''Other'' under that heading shall be considered to cover only the goods and parts of the goods that are themselves classified under that subheading.

(6) For purposes of subsection (2), where Schedule I sets out two or more alternative rules for the tariff provision under which a good is classified, if the good satisfies the requirements of one of those rules, it need not satisfy the requirements of another of the rules in order to qualify as an originating good.

SPECIAL RULE FOR CERTAIN GOODS

(7) A good originates in the territory of a NAFTA country if the good is referred to in Table 308.1.1 of Section B of Annex 308.1 to Chapter Three of the Agreement and is imported from the territory of a NAFTA country at a time when the NAFTA countries' most-favored-nation rate of duty for that good is in accordance with paragraph 1 of Section A of that Annex.

SELF-PRODUCED MATERIAL MAY BE A MATERIAL FOR DETERMINING APPLICABILITY OF RULES OF ORIGIN

(8) For purposes of determining whether non-originating materials undergo an applicable change in tariff classification, a self-produced material may, at the choice of the producer of a good into which the self-produced material is incorporated, be considered as an originating material or non-originating material, as the case may be, used in the production of that good.

(9) The following example is an ''Example'' as referred to in section 2(4).

Example: section 4(8), Self-produced Materials as Materials for Purposes of Determining Whether Non-originating Materials Undergo an Applicable Change in Tariff Classification

Producer A, located in a NAFTA country, produces Good A. In the production process, Producer A uses originating Material X and non-originating Material Y to produce Material Z. Material Z is a self-produced material that will be used to produce Good A.

The rule set out in Schedule I for the heading under which Good A is classified specifies a change in tariff classification from any other heading. In this case, both Good A and the non-originating Material Y are of the same heading. However, the self-produced Material Z is of a heading different than that of Good A.

For purposes of determining whether the non-originating materials that are used in the production of Good A undergo the applicable change in tariff classification, Producer A has the option to consider the self-

produced Material Z as the material that must undergo a change in tariff classification. As Material Z is of a heading different than that of Good A, Material Z satisfies the applicable change in tariff classification and Good A would qualify as an originating good.

SECTION 5. DE MINIMIS

DE MINIMIS RULE FOR NON-ORIGINATING MATERIALS THAT DO NOT UNDERGO SUBJECT TO AUTHORIZATION, A REQUIRED TARIFF CHANGE

(1) Except as otherwise provided in subsection (4), a good shall be considered to originate in the territory of a NAFTA country where the value of all non-originating materials that are used in the production of the good and that do not undergo an applicable change in tariff classification as a result of production occurring entirely in the territory of one or more of the NAFTA countries is not more than seven percent

(a) of the transaction value of the good determined in accordance with Schedule II with respect to the transaction in which the producer of the good sold the good, adjusted to an F.O.B. basis, or

(b) of the total cost of the good, where there is no transaction value for the good under section 2(1) of Schedule III or the transaction value of the good is unacceptable under section 2(2) of that Schedule,

provided that,

(c) if, under the rule in which the applicable change in tariff classification is specified, the good is also subject to a regional value-content requirement, the value of those non-originating materials shall be taken into account in calculating the regional value content of the good in accordance with the method set out for that good, and

(d) the good satisfies all other applicable requirements of this appendix.

(2) For purposes of subsection (1), where

(a) Schedule I sets out two or more alternative rules for the tariff provision under which the good is classified, and

(b) the good, in accordance with subsection (1), is considered to originate under one of those rules,

the good is not required to satisfy the requirements specified in any alternative rule referred to in paragraph (a).

(3) For purposes of subsection (1), in the case of a good that is provided for in heading 2402, the percentage shall be nine percent instead of seven percent.

EXCEPTIONS

(4) Subsections (1) and (2) do not apply to

(a) a non-originating material provided for in Chapter 4 or tariff items 1901.90.31, 1901.90.41 and 1901.90.81 (dairy preparations containing over 10 percent by weight of milk solids) that is used in the production of a good provided for in Chapter 4;

(b) a non-originating material provided for in Chapter 4 or tariff items 1901.90.31, 1901.90.41 and 1901.90.81 (dairy preparations containing over 10 percent by weight of milk solids) that is used in the production of a good provided for in any of tariff items 1901.10.10 (infant preparations containing over 10 percent by weight of milk solids), 1901.20.10 (mixes and doughs, containing over 25 percent by weight of butterfat, not put up for retail sale), 1901.90.31, 1901.90.41 and 1901.90.81 (dairy preparations containing over 10 percent by weight of milk solids), heading 2105 and tariff items 2106.90.05, 2106.90.13, 2106.90.41, 2106.90.51 and 2106.90.61 (preparations containing over 10 percent by weight of milk solids), 2202.90.10 and 2202.90.20 (beverages containing milk) and 2309.90.31 (animal feeds containing over 10 percent by weight of milk solids);

(c) a non-originating material provided for in any of heading 0805 and subheadings 2009.11 through 2009.39 that is used in the production of a good provided for in any of subheadings 2009.11 through 2009.39 and tariff items 2106.90.48 and 2106.90.52 (concentrated fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins) and 2202.90.30, 2202.90.35 and 2202.90.36 (fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins);

(d) a non-originating material provided for in Chapter 9 that is used in the production of a good provided for in tariff item 2101.11.21 (instant coffee, not flavored);

(e) a non-originating material provided for in Chapter 15 that is used in the production of a good provided for in any of headings 1501 through 1508, 1512, 1514 and 1515;

(f) a non-originating material provided for in heading 1701 that is used in the production of a good provided for in any of headings 1701 through 1703;

(g) a non-originating material provided for in Chapter 17 or heading 1805 that is used in the production of a good provided for in subheading 1806.10;

(h) a non-originating material provided for in any of headings 2203 through 2208 that is used in the production of a good provided for in any of headings 2207 through 2208;

(i) a non-originating material that is used in the production of any non-portable gas stoves or ranges of subheading 7321.11 or 7321.19, subheadings 8415.10, 8415.20 through 8415.83, 8418.10 through 8418.21, household type refrigerators, other than electrical absorption type of subheading 8418.29, subheadings 8418.30 through 8418.40, 8421.12, 8422.11, 8450.11 through 8450.20 and 8451.21 through 8451.29 and tariff items 8479.89.55 (trash compactors) and 8516.60.40 (electric stoves or ranges);

(j) a printed circuit assembly that is a non-originating material used in the production of a good, where the applicable change

in tariff classification for the good places restrictions on the use of that non-originating material, such as by prohibiting, or limiting the quantity of, that non-originating material;

(k) a non-originating material that is a single juice ingredient provided for in heading 2009 that is used in the production of a good provided for in any of subheading 2009.90 and tariff items 2106.90.18 (concentrated mixtures of fruit or vegetable juice, fortified with minerals or vitamins) and 2202.90.37 (mixtures of fruit or vegetable juices, fortified with minerals or vitamins);

(l) a non-originating material that is used in the production of a good provided for in any of Chapters 1 through 27, unless the non-originating material is of a different subheading than the good for which origin is being determined under this section; or

(m) a non-originating material that is used in the production of a good provided for in any of Chapters 50 through 63.

DE MINIMIS RULE FOR REGIONAL VALUE-CONTENT REQUIREMENT

(5) A good that is subject to a regional value-content requirement shall be considered to originate in the territory of a NAFTA country and shall not be required to satisfy that requirement where

(a) the value of all non-originating materials used in the production of the good is not more than seven percent

(i) of the transaction value of the good determined in accordance with Schedule II with respect to the transaction in which the producer of the good sold the good, adjusted to an F.O.B. basis, or

(ii) of the total cost of the good, where there is no transaction value for the good under section 2(1) of Schedule III or the transaction value of the good is unacceptable under section 2(2) of that Schedule; and

(b) the good satisfies all other applicable requirements of this appendix.

DE MINIMIS RULE FOR TEXTILE GOODS

(6) A good provided for in any of Chapters 50 through 63, that does not originate in the territory of a NAFTA country because certain fibers or yarns that are used in the production of the component of the good that determines the tariff classification of the good do not undergo an applicable change in tariff classification as a result of production occurring entirely in the territory of one or more of the NAFTA countries, shall be considered to originate in the territory of a NAFTA country if

(a) the total weight of all those fibers or yarns is not more than seven percent of the total weight of that component; and

(b) the good satisfies all other applicable requirements of this appendix.

(7) For purposes of subsection (6),

(a) the component of a good that determines the tariff classification of that good shall be identified in accordance with the first of the following General Rules for the Interpretation of the Harmonized System under which the identification can be determined, namely, Rule 3(b), Rule 3(c) and Rule 4; and

(b) where the component of the good that determines the tariff classification of the good is a blend of two or more yarns or fibers, all yarns and fibers used in the production of the component shall be taken into account in determining the weight of fibers and yarns in that component.

(8) For purposes of subsections (1) and (5), the value of non-originating materials shall be determined in accordance with sections 7(1) through (4).

CALCULATION OF ''TOTAL COST'' FOR DE MINIMIS RULES: CHOICE OF METHODS

(9) For purposes of subsection (1)(b) and subsection (5)(a)(ii), the total cost of a good shall be, at the choice of the producer of the good,

(a) the total cost incurred with respect to all goods produced by the producer that can be reasonably allocated to that good in accordance with Schedule VII; or

(b) the aggregate of each cost that forms part of the total cost incurred with respect to that good that can be reasonably allocated to that good in accordance with Schedule VII.

CALCULATION OF TOTAL COST; APPLICATION OF SCHEDULES IX AND X FOR DETERMINING VALUE OF NON-ORIGINATING MATERIALS

(10) Total cost under subsection (9) consists of the costs referred to in section 2(6), and is calculated in accordance with that subsection and section 2(7).

(11) For purposes of determining the value under subsection (1) of non-originating materials that do not undergo an applicable change in tariff classification, where Schedule X is not being used to determine the value of those non-originating materials,

(a) if the value of those non-originating materials is being determined as a percentage of the transaction value of the good and the producer chooses under section 6(10) that one of the methods set out in Schedule IX be used to determine the value of those non-originating materials for purposes of calculating the regional value content of the good, the value of those non-originating materials shall be determined in accordance with that method;

(b) if

(i) the value of those non-originating materials is being determined as a percentage of the total cost of the good,

(ii) under the rule in which the applicable change in tariff classification is specified, the good is also subject to a regional value-content requirement and subsection (5)(a) does not apply with respect to that good,

(iii) the regional value content of the good is calculated on the basis of the net cost method, and

(iv) the producer chooses under section 6(15), 11(1), (3) or (6), 12(1) or 13(4) that the regional value content of the good be calculated over a period,

the value of those non-originating materials shall be the sum of the values of non-originating materials determined in accordance with that choice, divided by the number of units of the goods with respect to which the choice is made;

(c) if

(i) the value of those non-originating materials is being determined as a percentage of the total cost of the good,

(ii) under the rule in which the applicable change in tariff classification is specified, the good is not also subject to a regional value-content requirement or subsection (5)(a) applies with respect to that good, and

(iii) the producer chooses under section 2(7)(b) that, for purposes of section 5(9), the total cost of the good be calculated over a period,

the value of those non-originating materials shall be the sum of the values of non-originating materials divided by the number of units produced during that period; and

(d) in any other case, the value of those non-originating materials may, at the choice of the producer, be determined in accordance with one of the methods set out in Schedule IX.

(12) For purposes of subsection (5), the value of the non-originating materials used in the production of the good may, at the choice of the producer, be determined in accordance with one of the methods set out in Schedule IX.

EXAMPLES ILLUSTRATING DE MINIMIS RULES

(13) Each of the following examples is an ''Example'' as referred to in section 2(4).

Example 1: section 5(1)

Producer A, located in a NAFTA country, uses originating materials and non-originating materials in the production of copper anodes provided for in heading 7402. The rule set out in Schedule I for heading 7402 specifies a change in tariff classification from any other chapter. There is no applicable regional value-content requirement for this heading. Therefore, in order for the copper anode to qualify as an originating good under the rule set out in Schedule I, Producer A may not use in the production of the copper anode any non-originating material provided for in Chapter 74.

All of the materials used in the production of the copper anode are originating materials, with the exception of a small amount of copper scrap provided for in heading 7404, that is in the same chapter as the copper anode. Under section 5(1), if the value of the non-originating copper scrap does not exceed seven percent of the transaction value of the copper anode or the total cost of the copper anode, whichever is applicable, the copper anode would be considered an originating good.

Example 2: section 5(2)

Producer A, located in a NAFTA country, uses originating materials and non-originating materials in the production of ceiling fans provided for in subheading 8414.51. There are two alternative rules set out in Schedule I for subheading 8414.51, one of which specifies a change in tariff classification from any other heading. The other rule specifies both a change in tariff classification from the subheading under which parts of the ceiling fans are classified and a regional value-content requirement. Therefore, in order for the ceiling fan to qualify as an originating good under the first of the alternative rules, all of the materials that are classified under the subheading for parts of ceiling fans and used in the production of the completed ceiling fan must be originating materials.

In this case, all of the non-originating materials used in the production of the ceiling fan satisfy the change in tariff classification set out in the rule that specifies a change in tariff classification from any other heading, with the exception of one non-originating material that is classified under the subheading for parts of ceiling fans. Under section 5(1), if the value of the non-originating material that does not satisfy the change in tariff classification specified in the first rule does not exceed seven percent of the transaction value of the ceiling fan or the total cost of the ceiling fan, whichever is applicable, the ceiling fan would be considered an originating good. Therefore, under section 5(2), the ceiling fan would not be required to satisfy the alternative rule that specifies both a change in tariff classification and a regional value-content requirement.

Example 3: section 5(2)

Producer A, located in a NAFTA country, uses originating materials and non-originating materials in the production of plastic bags provided for in subheading 3923.29. The rule set out in Schedule I for subheading 3923.29 specifies both a change in tariff classification from any other heading, except from subheadings 3920.20 or 3920.71, under which certain plastic materials are classified, and a regional value-content requirement. Therefore, with respect to that part of

the rule that specifies a change in tariff classification, in order for the plastic bag to qualify as an originating good, any plastic materials that are classified under subheading 3920.20 or 3920.71 and that are used in the production of the plastic bag must be originating materials.

In this case, all of the non-originating materials used in the production of the plastic bag satisfy the specified change in tariff classification, with the exception of a small amount of plastic materials classified under subheading 3920.71. Section 5(1) provides that the plastic bag can be considered an originating good if the value of the non-originating plastic materials that do not satisfy the specified change in tariff classification does not exceed seven percent of the transaction value of the plastic bag or the total cost of the plastic bag, whichever is applicable. In this case, the value of those non-originating materials that do not satisfy the specified change in tariff classification does not exceed the seven percent limit.

However, the rule set out in Schedule I for subheading 3923.29 specifies both a change in tariff classification and a regional value-content requirement. Therefore, under section 5(1)(c), in order to be considered an originating good, the plastic bag must also, except as otherwise provided in section 5(5), satisfy the regional value-content requirement specified in that rule. As provided in section 5(1)(c), the value of the non-originating materials that do not satisfy the specified change in tariff classification, together with the value of all other non-originating materials used in the production of the plastic bag, will be taken into account in calculating the regional value content of the plastic bag.

Example 4: section 5(5)

Producer A, located in a NAFTA country, primarily uses originating materials in the production of shoes provided for in heading 6405. The rule set out in Schedule I for heading 6405 specifies both a change in tariff classification from any subheading other than subheadings 6401.10 through 6406.10 and a regional value-content requirement.

With the exception of a small amount of materials provided for in Chapter 39, all of the materials used in the production of the shoes are originating materials.

Under section 5(5), if the value of all of the non-originating materials used in the production of the shoes does not exceed seven percent of the transaction value of the shoes or the total cost of the shoes, whichever is applicable, the shoes are not required to satisfy the regional value-content requirement specified in the rule set out in Schedule I in order to be considered originating goods.

Example 5: section 5(5)

Producer A, located in a NAFTA country, produces barbers' chairs provided for in subheading 9402.10. The rule set out in Schedule I for goods provided for in heading 9402 specifies a change in tariff classification from any other chapter. All of the materials used in the production of these chairs are originating materials, with the exception of a small quantity of non-originating materials that are classified as parts of barbers' chairs. These parts undergo no change in tariff classification because subheading 9402.10 provides for both barbers' chairs and their parts.

Although Producer A's barbers' chairs do not qualify as originating goods under the rule set out in Schedule I, section 4(4)(b) provides, among other things, that, where there is no change in tariff classification from the non-originating materials to the goods because the subheading under which the goods are classified provides for both the goods and their parts, the goods shall qualify as originating goods if they satisfy a specified regional value-content requirement.

However, under section 5(5), if the value of the non-originating materials does not exceed seven percent of the transaction value of the barbers' chairs or the total cost of the barbers' chairs, whichever is applicable, the barbers' chairs will be considered originating goods and are not required to satisfy the regional value-content requirement set out in section 4(4)(b)(v).

Example 6: sections 5 (6) and (7)

Producer A, located in a NAFTA country, produces women's dresses provided for in subheading 6204.41 from fine wool fabric of heading 5112. This fine wool fabric, also produced by Producer A, is the component of the dress that determines its tariff classification under subheading 6204.41.

The rule set out in Schedule I for subheading 6204.41, under which the dress is classified, specifies both a change in tariff classification from any other chapter, except from those headings and chapters under which certain yarns and fabrics, including combed wool yarn and wool fabric, are classified, and a requirement that the good be cut and sewn or otherwise assembled in the territory of one or more of the NAFTA countries.

Therefore, with respect to that part of the rule that specifies a change in tariff classification, in order for the dress to qualify as an originating good, the combed wool yarn and the fine wool fabric made therefrom that are used by Producer A in the production of the dress must be originating materials.

At one point Producer A uses a small quantity of non-originating combed wool yarn in the production of the fine wool fabric. Under section 5(6), if the total weight of the non-originating combed wool yarn does not exceed seven percent of the total weight of all the yarn used in the production of the component of the dress that determines its tariff classification, that is, the wool fabric, the dress would be considered an originating good.

PART III

SECTION 6. REGIONAL VALUE CONTENT

(1) Except as otherwise provided in subsection (6), the regional value content of a good shall be calculated, at the choice of the exporter or producer of the good, on the basis of either the transaction value method or the net cost method.

TRANSACTION VALUE METHOD

(2) The transaction value method for calculating the regional value content of a good is as follows:

$$RVC = \frac{TV - VNM}{TV} \times 100$$

where

RVC is the regional value content of the good, expressed as a percentage;

TV is the transaction value of the good, determined in accordance with Schedule II with respect to the transaction in which the producer of the good sold the good, adjusted to an F.O.B. basis; and

VNM is the value of non-originating materials used by the producer in the production of the good, determined in accordance with section 7.

NET COST METHOD

(3) The net cost method for calculating the regional value content of a good is as follows:

$$RVC = \frac{NC - VNM}{NC} \times 100$$

where

RVC is the regional value content of the good, expressed as a percentage;

NC is the net cost of the good, calculated in accordance with subsection (11); and

VNM is the value of non-originating materials used by the producer in the production of the good, except as otherwise provided in sections 9 and 10, in accordance with section 7.

VNM DOES NOT INCLUDE VALUE OF NON-ORIGINATING MATERIALS USED IN ORIGINATING MATERIAL

(4) Except as otherwise provided in section 9 and section 10(1)(d), for purposes of calculating the regional value content of a good under subsection (2) or (3), the value of non-originating materials used by a producer in the production of the good shall not include

(a) the value of any non-originating materials used by another producer in the production of originating materials that are subsequently acquired and used by the producer of the good in the production of that good; or

(b) the value of any non-originating materials used by the producer in the production of a self-produced material that is an originating material and is designated as an intermediate material.

(5) For purposes of subsection (4),

(a) in the case of any self-produced material that is not designated as an intermediate material, only the value of any non-originating materials used in the production of the self-produced material shall be included in the value of non-originating materials used in the production of the good; and

(b) where a self-produced material that is designated as an intermediate material and is an originating material is used by the producer of the good with non-originating materials (whether or not those non-originating materials are produced by that producer) in the production of the good, the value of those non-originating materials shall be included in the value of non-originating materials.

NET COST METHOD REQUIRED IN CERTAIN CIRCUMSTANCES

(6) The regional value content of a good shall be calculated only on the basis of the net cost method where

(a) there is no transaction value for the good under section 2(1) of Schedule III;

(b) the transaction value of the good is unacceptable under section 2(2) of Schedule III;

(c) the good is sold by the producer to a related person and the volume, by units of

quantity, of sales by that producer of identical goods or similar goods, or any combination thereof, to related persons during the six month period immediately preceding the month in which the goods are sold exceeds 85 percent of the producer's total sales to all persons, whether or not related and regardless of location, after ''the producer's total sales''of identical goods or similar goods, or any combination thereof, during that period;

(d) the good is

(i) a motor vehicle provided for in any of headings 8701 and 8702, subheadings 8703.21 through 8703.90 and headings 8704, 8705 and 8706,

(ii) a good provided for in a tariff provision listed in Schedule IV or an automotive component assembly, automotive component, sub-component or listed material, and is for use in a motor vehicle referred to in subparagraph (i), either as original equipment or as an after-market part,

(iii) a good provided for in any of subheadings 6401.10 through 6406.10, or

(iv) a good provided for in heading 8469;

(e) the exporter or producer chooses to accumulate with respect to the good in accordance with section 14; or

(f) the good is an intermediate material and is subject to a regional value-content requirement.

OPTION TO CHANGE FROM TVM TO NCM FOR CALCULATION OF REGIONAL VALUE CONTENT

(7) If the exporter or producer of a good calculates the regional value content of the good on the basis of the transaction value method and the customs administration of a NAFTA country subsequently notifies that exporter or producer in writing, during the course of a verification of origin, that

(a) the transaction value of the good, as determined by the exporter or producer, is required to be adjusted under section 4 of Schedule II or is unacceptable under section 2(2) of Schedule III, there is no transaction value for the good under section 2(1) of Schedule III or the transaction value method may not be used because of the application of subsection (6)(c), or

(b) the value of any material used in the production of the good, as determined by the exporter or producer, is required to be adjusted under section 5 of Schedule VIII or is unacceptable under section 2(3) of Schedule VIII, or there is no transaction value for the material under section 2(2) of Schedule VIII or the transaction value method may not be used to calculate the regional value content of the material because of the application of subsection (6)(c),

the exporter or producer may choose that the regional value content of the good be calculated on the basis of the net cost method, in which case the calculation must be made within 60 days after the producer receives the notification, or such longer period as that customs administration specifies.

CHANGE FROM NCM TO TVM NOT PERMITTED

(8) If the exporter or producer of a good chooses that the regional value content of the good be calculated on the basis of the net cost method and the customs administration of a NAFTA country subsequently notifies that exporter or producer in writing, during the course of a verification of origin, that the good does not satisfy the applicable regional value-content requirement, the exporter or producer of the good may not recalculate the regional value content on the basis of the transaction value method.

(9) Nothing in subsection (7) shall be construed as preventing any review and appeal under Article 510 of the Agreement, as implemented in each NAFTA country, of an adjustment to or a rejection of

(a) the transaction value of the good; or

(b) the value of any material used in the production of the good.

APPLICATION OF SCHEDULE IX FOR DETERMINING VALUE OF ''IDENTICAL'' NON-ORIGINATING MATERIALS UNDER TVM

(10) For purposes of the transaction value method, where non-originating materials that are the same as one another in all respects, including physical characteristics, quality and reputation but excluding minor differences in appearance, are used in the production of a good, the value of those non-originating materials may, at the choice of the producer of the good, be determined in accordance with one of the methods set out in Schedule IX.

OPTIONS FOR CALCULATING THE NET COST OF A GOOD

(11) For purposes of subsection (3), the net cost of a good may be calculated, at the choice of the producer of the good, by

(a) calculating the total cost incurred with respect to all goods produced by that producer, subtracting any excluded costs that are included in that total cost, and reasonably allocating, in accordance with Schedule VII, the remainder to the good;

(b) calculating the total cost incurred with respect to all goods produced by that producer, reasonably allocating, in accordance with Schedule VII, that total cost to the good, and subtracting any excluded costs that are included in the amount allocated to that good; or

(c) reasonably allocating, in accordance with Schedule VII, each cost that forms part of the total cost incurred with respect to the good so that the aggregate of those costs does not include any excluded costs.

CALCULATION OF TOTAL COST

(12) Total cost under subsection (11) consists of the costs referred to in section 2(6), and is calculated in accordance with that subsection.

CALCULATION OF NET COST; EXCLUDED COSTS

(13) For purposes of calculating net cost under subsection (11),

(a) excluded costs shall be the excluded costs that are recorded on the books of the producer of the good;

(b) excluded costs that are included in the value of a material that is used in the production of the good shall not be subtracted from or otherwise excluded from the total cost; and

(c) excluded costs do not include any amount paid for research and development services performed in the territory of a NAFTA country.

NON-ALLOWABLE INTEREST; DETERMINATION UNDER SCHEDULE XI

(14) For purposes of calculating non-allowable interest costs, the determination of whether interest costs incurred by a producer are more than 700 basis points above the yield on debt obligations of comparable maturities issued by the federal government of the country in which the producer is located shall be made in accordance with Schedule XI.

USE OF ''AVERAGING'' OVER A PERIOD TO CALCULATE RVC UNDER NCM; PERIOD CANNOT BE CHANGED

(15) For purposes of the net cost method, the regional value content of the good, other than a good with respect to which a choice to average may be made under section 11(1), (3) or (6), 12(1) or 13(4), may be calculated, where the producer chooses to do so, by

(a) calculating the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer of the good with respect to the good and identical goods or similar goods, or any combination thereof, produced in a single plant by the producer over

(i) a month,

(ii) any consecutive three month or six month period that falls within and is evenly divisible into the number of months of the producer's fiscal year remaining at the beginning of that period, or

(iii) the producer's fiscal year; and

(b) using the sums referred to in paragraph (a) as the net cost and the value of non-originating materials, respectively.

(16) The calculation made under subsection (15) shall apply with respect to all units of the good produced during the period chosen by the producer under subsection (15)(a).

(17) A choice made under subsection (15) may not be rescinded or modified with respect to the goods or the period with respect to which the choice is made.

CHOICE OF AVERAGING PERIOD CANNOT BE CHANGED FOR REMAINDER OF FISCAL YEAR

(18) Where a producer chooses a one, three or six month period under subsection (15) with respect to goods, the producer shall be considered to have chosen under that subsection a period or periods of the same duration for the remainder of the producer's fiscal year with respect to those goods.

CHOICE OF NET COST METHOD CANNOT BE CHANGED FOR REMAINDER OF THE FISCAL YEAR

(19) Where the net cost method is required to be used or has been chosen and a choice has been made under subsection (15), the regional value content of the good shall be calculated on the basis of the net cost method over the period chosen under that subsection and for the remainder of the producer's fiscal year.

OBLIGATION TO PERFORM SELF-ANALYSIS AND GIVE NOTIFICATION OF CHANGED CIRCUMSTANCE IF RVC CALCULATED ON BASIS OF ESTIMATED COSTS

(20) Except as otherwise provided in sections 11(10), 12(11) and 13(10), where the producer of a good has calculated the regional value content of the good under the net cost method on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the period chosen in subsection (15)(a), the producer shall conduct an analysis at the end of the producer's fiscal year of the actual costs incurred over the period with respect to the production of the good and, if the good does not satisfy the regional value-content requirement on the basis of the actual costs during that period, immediately inform any person to whom the producer has provided a Certificate of Origin for the good, or a written statement that the good is an originating good, that the good is a non-originating good.

OPTION TO TREAT ANY MATERIAL AS NON-ORIGINATING

(21) For purposes of calculating the regional value content of a good, the producer of that good may choose to treat any material used in the production of that good as a non-originating material.

EXAMPLES OF CALCULATION OF RVC UNDER TVM AND NCM

(22) Each of the following examples is an ''Example'' as referred to in section 2(4).

Example 1: example of point of direct shipment (with respect to adjusted to an F.O.B. basis)

A producer has only one factory, at which the producer manufactures finished office chairs. Because the factory is located close to transportation facilities, all units of the finished good are stored in a factory warehouse 200 meters from the end of the production line. Goods are shipped worldwide from this warehouse. The point of direct shipment is the warehouse.

Example 2: examples of point of direct shipment (with respect to adjusted to an F.O.B. basis)

A producer has six factories, all located within the territory of one of the NAFTA countries, at which the producer produces garden tools of various types. These tools are shipped worldwide, and orders usually consist of bulk orders of various types of tools. Because different tools are manufactured at different factories, the producer decided to consolidate storage and shipping facilities and ships all finished products to a large warehouse located near the seaport, from which all orders are shipped. The distance from the factories to the warehouse varies from 3 km to 130 km. The point of direct shipment for each of the goods is the warehouse.

Example 3: examples of point of direct shipment (with respect to adjusted to an F.O.B. basis)

A producer has only one factory, located near the center of one of the NAFTA countries, at which the producer manufactures finished office chairs. The office chairs are shipped from that factory to three warehouses leased by the producer, one on the west coast, one near the factory and one on the east coast. The office chairs are shipped to buyers from these warehouses, the shipping location depending on the shipping distance from the buyer. Buyers closest to the west coast warehouse are normally supplied by the west coast warehouse, buyers closest to the east coast are normally supplied by the warehouse located on the east coast and buyers closest to the warehouse near the factory are normally supplied by that warehouse. In this case, the point of direct shipment is the location of the warehouse from which the office chairs are normally shipped to customers in the location in which the buyer is located.

Example 4: section 6(3), net cost method

A producer located in NAFTA country A sells Good A that is subject to a regional value-content requirement to a buyer located in NAFTA country B. The producer of Good A chooses that the regional value content of that good be calculated using the net cost method. All applicable requirements of this appendix, other than the regional value-content requirement, have been met. The applicable regional value-content requirement is 50 percent.

In order to calculate the regional value-content of Good A, the producer first calculates the net cost of Good A. Under section 6(11)(a), the net cost is the total cost of Good A (the aggregate of the product costs, period costs and other costs) per unit, minus the excluded costs (the aggregate of the sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs and non-allowable interest costs) per unit. The producer uses the following figures to calculate the net cost:

Product costs:	
Value of originating materials	$30.00
Value of non-originating materials	40.00
Other product costs	20.00
Period costs	10.00
Other costs	0.00
Total cost of Good A, per unit	$100.00
Excluded costs:	
Sales promotion, marketing and after-sales service cost	$5.00
Royalties	2.50
Shipping and packing costs	3.00
Non-allowable interest costs	1.50
Total excluded costs	$12.00

The net cost is the total cost of Good A, per unit, minus the excluded costs.

Total cost of Good A, per unit:	$100.00
Excluded costs	−12.00
Net cost of Good A, per unit	$88.00

The value for net cost ($88) and the value of non-originating materials ($40) are needed in order to calculate the regional value content. The producer calculates the regional value content of Good A under the net cost method in the following manner:

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{88 - 40}{88} \times 100$$

$$= 54.5\%$$

Therefore, under the net cost method, Good A qualifies as an originating good, with a regional value-content of 54.5 percent.

Example 5: section 6(6)(c), net cost method required for certain sales to related persons

On January 15, 1994, a producer located in NAFTA country A sells 1,000 units of Good A to a related person, located in NAFTA country B. During the six month period beginning on July 1, 1993 and ending on December 31, 1993, the producer sold 90,000 units of identical goods and similar goods to related persons from various countries, including that buyer. The producer's total sales of those identical goods and similar goods to all persons from all countries during that six month period were 100,000 units.

The total quantity of identical goods and similar goods sold by the producer to related persons during that six month period was 90 percent of the producer's total sales of those identical goods and similar goods to all persons. Under section 6(6)(c), the producer must use the net cost method to calculate the regional value content of Good A sold in January 1994, because the 85 percent limit was exceeded.

Example 6: section 6(11)(a)

A producer in a NAFTA country produces Good A and Good B during the producer's fiscal year.

The producer uses the following figures, which are recorded on the producer's books and represent all of the costs incurred with respect to both Good A and Good B, to calculate the net cost of those goods:

Product costs:	
Value of originating materials	$2,000
Value of non-originating materials	1,000
Other product costs	2,400
Period costs: (including $1,200 in excluded costs)	3,200
Other costs	400
Total cost of Good A and Good B	$9,000
The net cost is the total cost of Good A and Good B, minus the excluded costs incurred with respect to those goods.	
Total cost of Good A and Good B	$9,000
Excluded costs	−1,200
Net cost of Good A and Good B	$7,800

The net cost must then be reasonably allocated, in accordance with Schedule VII, to Good A and Good B.

Example 7: section 6(11)(b)

A producer located in a NAFTA country produces Good A and Good B during the producer's fiscal year. In order to calculate the regional value content of Good A and Good B, the producer uses the following figures that are recorded on the producer's books and incurred with respect to those goods:

Product costs:	
Value of originating materials	$2,000
Value of non-originating materials	1,000
Other product costs	2,400
Period costs: (including $1,200 in excluded costs)	3,200
Other costs	400

Total cost of Good A and Good B	$9,000

Under section 6(11)(b), the total cost of Good A and Good B is then reasonably allocated, in accordance with Schedule VII, to those goods. The costs are allocated in the following manner:

	Allocated to Good A	Allocated to Good B
Total cost ($9,000 for both Good A and Good B)	$5,220	$3,780

The excluded costs ($1,200) that are included in total cost allocated to Good A and Good B, in accordance with Schedule VII, are subtracted from that amount.

		Excluded Cost Allocated to Good A	Excluded Cost Allocated to Good B
Total excluded costs:			
Sales promotion, marketing and after-sale service costs	500	290	210
Royalties	200	116	84
Shipping and packing costs	500	290	210
Net cost (total cost minus excluded costs)		$4,524	$3,276

The net cost of Good A is thus $4,524, and the net cost of Good B is $3,276.

Example 8: section 6(11)(c)

A Producer located in a NAFTA country produces Good C and Good D. The following costs are recorded on the producer's books for the months of January, February and March, and each cost that forms part of the total cost are reasonably allocated, in accordance with Schedule VII, to Good C and Good D.

	Total cost: Good C and Good D (in thousands of dollars)	Allocated to Good C (in thousands of dollars)	Allocated to Good D (in thousands of dollars)
Product costs:			
Value of originating materials	100	0	100
Value of non-originating materials	900	800	100
Other product costs	500	300	200
Period costs (including $420 in excluded costs)	5,679	3,036	2,643
Minus Excluded Costs	420	300	120
Other costs	0	0	0
Total cost (aggregate of product costs, period costs and other costs)	6,759	3,836	2,923

Example 9: section 6(12)

Producer A, located in a NAFTA country, produces Good A that is subject to a regional value-content requirement. The producer chooses that the regional value content of that good be calculated using the net cost method. Producer A buys Material X from Producer B, located in a NAFTA country. Material X is a non-originating material and is used in the production of Good A. Producer A provides Producer B, at no charge, with tools to be used in the production of Material X. The cost of the tools that is recorded on the books of Producer A has been expensed in the current year. Pursuant to section 5(1)(b)(ii) of Schedule VIII, the value of the tools is included in the value of Material X. Therefore, the cost of the tools that is recorded on the books of Producer A and that has been expensed in the current year cannot be included as a separate cost in the net cost of Good A because it has already been included in the value of Material X.

Example 10: section 6(12)

Producer A, located in a NAFTA country, produces Good A that is subject to a regional value-content requirement. The producer chooses that the regional value content of that good be calculated using the net cost method and averages the calculation over the producer's fiscal year under section 6(15).

Producer A determines that during that fiscal year Producer A incurred a gain on foreign currency conversion of $10,000 and a loss on foreign currency conversion of $8,000, resulting in a net gain of $2,000. Producer A also determines that $7,000 of the gain on foreign currency conversion and $6,000 of the loss on foreign currency conversion is related to the purchase of non-originating materials used in the production of Good A, and $3,000 of the gain on foreign currency conversion and $2,000 of the loss on foreign currency conversion is not related to the production of Good A. The producer determines that the total cost of Good A is $45,000 before deducting the $1,000 net gain on foreign currency conversion related to the production of Good A. The total cost of Good A is therefore $44,000. That $1,000 net gain is not included in the value of non-originating materials under section 7(1).

Example 11: section 6(12)

Given the same facts as in example 10, except that Producer A determines that $6,000 of the gain on foreign currency conversion and $7,000 of the loss on foreign currency conversion is related to the purchase of non-originating materials used in the production of Good A. The total cost of Good A is $45,000, which includes the $1,000 net loss on foreign currency conversion related to the production of Good A. That $1,000 net loss is not included in the value of non-originating materials under section 7(1).

PART IV

SECTION 7. MATERIALS

VALUATION OF MATERIALS USED IN THE PRODUCTION OF A GOOD OTHER THAN CERTAIN AUTOMOTIVE GOODS

(1) Except as otherwise provided for non-originating materials used in the production of a good referred to in section 9(1) or 10(1), and except in the case of indirect materials, intermediate materials and packing materials and containers, for purposes of calculating the regional value content of a good and for purposes of sections 5(1) and (5), the value of a material that is used in the production of the good shall be

(a) except as otherwise provided in subsection (2), where the material is imported by the producer of the good into the territory of the NAFTA country in which the good is produced, the customs value of the material with respect to that importation, or

(b) where the material is acquired by the producer of the good from another person located in the territory of the NAFTA country in which the good is produced

(i) the transaction value, determined in accordance with section 2(1) of Schedule VIII, with respect to the transaction in which the producer acquired the material, or

(ii) the value determined in accordance with sections 6 through 11 of Schedule VIII, where, with respect to the transaction in which the producer acquired the material, there is no transaction value under section 2(2) of that Schedule or the transaction value is unacceptable under section 2(3) of that Schedule,

and shall include the following costs if they are not included under paragraph (a) or (b):

(c) the costs of freight, insurance and packing and all other costs incurred in transporting the material to the location of the producer,

(d) duties and taxes paid or payable with respect to the material in the territory of one or more of the NAFTA countries, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable,

(e) customs brokerage fees, including the cost of in-house customs brokerage services, incurred with respect to the material in the territory of one or more of the NAFTA countries, and

(f) the cost of waste and spoilage resulting from the use of the material in the production of the good, minus the value of any reusable scrap or by-product.

VALUATION OF MATERIAL IF CUSTOMS VALUE IS NOT IN ACCORDANCE WITH SCHEDULE VIII

(2) For purposes of subsection (1)(a), where the customs value of the material referred to in that paragraph was not determined in a manner consistent with Schedule VIII, the value of the material shall be determined in accordance with Schedule VIII with respect to the importation of that material and, where the costs referred to in subsections (1)(c) through (f) are not included in that value, those costs be added to that value.

COSTS RECORDED ON BOOKS

(3) For purposes of subsection (1), the costs referred to in subsections (1)(c) through (f) shall be the costs referred to in those paragraphs that are recorded on the books of the producer of the good.

DESIGNATION OF SELF-PRODUCED MATERIAL AS AN INTERMEDIATE MATERIAL; LIMITATION ON DESIGNATIONS; DESIGNATION IS OPTIONAL

(4) Except for purposes of determining the value of non-originating materials used in the production of a light-duty automotive good and except in the case of an automotive component assembly, automotive component or sub-component for use as original equipment in the production of a heavy-duty vehicle, for purposes of calculating the regional value content of a good the producer of the

good may designate as an intermediate material any self-produced material that is used in the production of the good, provided that where an intermediate material is subject to a regional value-content requirement, no other self-produced material that is subject to a regional value-content requirement and is incorporated into that intermediate material is also designated by the producer as an intermediate material.

(5) For purposes of subsection (4),

(a) in order to qualify as an originating material, a self-produced material that is designated as an intermediate material must qualify as an originating material under these Regulations;

(b) the designation of a self-produced material as an intermediate material shall be made solely at the choice of the producer of that self-produced material; and

(c) except as otherwise provided in section 14(4), the proviso set out in subsection (4) does not apply with respect to an intermediate material used by another producer in the production of a material that is subsequently acquired and used in the production of a good by the producer referred to in subsection (4).

VALUATION OF AN INTERMEDIATE MATERIAL

(6) The value of an intermediate material shall be, at the choice of the producer of the good,

(a) the total cost incurred with respect to all goods produced by the producer that can be reasonably allocated to that intermediate material in accordance with Schedule VII; or

(b) the aggregate of each cost that forms part of the total cost incurred with respect to that intermediate material that can be reasonably allocated to that intermediate material in accordance with Schedule VII.

CALCULATION OF TOTAL COST

(7) Total cost under subsection (6) consists of the costs referred to in section 2(6), and is calculated in accordance with that section and section 2(7).

RESCISSION OF A DESIGNATION DURING COURSE OF VERIFICATION; OPTION TO DESIGNATE ANOTHER INTERMEDIATE MATERIAL

(8) Where a producer of a good designates a self-produced material as an intermediate material under subsection (4) and the customs administration of a NAFTA country into which the good is imported determines during a verification of origin of the good that the intermediate material is a non-originating material and notifies the producer of this in writing before the written determination of whether the good qualifies as an originating good, the producer may rescind the designation, and the regional value content of the good shall be calculated as though the self-produced material were not so designated.

(9) A producer of a good who rescinds a designation under subsection (8)

(a) shall retain any rights of review and appeal under Article 510 of the Agreement, as implemented in each NAFTA country, with respect to the determination of the origin of the intermediate material as though the producer did not rescind the designation; and

(b) may, not later than 30 days after the customs administration referred to in subsection (8) notifies the producer in writing that the self-produced material referred to in paragraph (a) is a non-originating material, designate as an intermediate material another self-produced material that is incorporated into the good, subject to the proviso set out in subsection (4).

(10) Where a producer of a good designates another self-produced material as an intermediate material under subsection (9)(b) and the customs administration referred to in subsection (8) determines during the verification of origin of the good that that self-produced material is a non-originating material,

(a) the producer may rescind the designation, and the regional value content of the good shall be calculated as though the self-produced material were not so designated;

(b) the producer shall retain any rights of review and appeal under Article 510 of the Agreement, as implemented in each NAFTA country, with respect to the determination of the origin of the intermediate material as though the producer did not rescind the designation; and

(c) the producer may not designate another self-produced material that is incorporated into the good as an intermediate material.

INDIRECT MATERIALS; DEEMED ORIGINATING; VALUE AS RECORDED ON BOOKS OF PRODUCER

(11) For purposes of determining whether a good is an originating good, an indirect material that is used in the production of the good

(a) shall be considered to be an originating material, regardless of where that indirect material is produced; and

(b) if the good is subject to a regional value-content requirement, for purposes of calculating the net cost under the net cost method, the value of the indirect material shall be the costs of that material that are recorded on the books of the producer of the good.

PACKAGING MATERIALS AND CONTAINERS; ORIGIN DISREGARDED FOR TARIFF CHANGE RULES

(12) Packaging materials and containers, if classified under the Harmonized System with

the good that is packaged therein, shall be disregarded for purposes of

(a) determining whether all of the non-originating materials used in the production of the good undergo an applicable change in tariff classification; and

(b) determining under section 5(1) the value of non-originating materials that do not undergo an applicable change in tariff classification.

ACTUAL ORIGINATING STATUS CONSIDERED FOR RVC REQUIREMENT; VALUATION OF PACKAGING

(13) Where packaging materials and containers are classified under the Harmonized System with the good that is packaged therein and that good is subject to a regional value-content requirement, the value of those packaging materials and containers shall be taken into account as originating materials or non-originating materials, as the case may be, for purposes of calculating the regional value content of the good.

(14) For purposes of subsection (13), where packaging materials and containers are self-produced materials, the producer may choose to designate those materials as intermediate materials under subsection (4).

PACKING MATERIALS AND CONTAINERS; DISREGARDED FOR TARIFF CHANGE RULE AND FOR RVC REQUIREMENT; VALUE AS RECORDED ON BOOKS

(15) For purposes of determining whether a good is an originating good, packing materials and containers in which the good is packed

(a) shall be disregarded for purposes of determining whether

(i) the non-originating materials used in the production of the good undergo an applicable change in tariff classification, and

(ii) the good satisfies a regional value-content requirement; and

(b) if the good is subject to a regional value-content requirement, the value of the packing materials and containers shall be the costs thereof that are recorded on the books of the producer of the good.

FUNGIBLE MATERIALS; FUNGIBLE COMMINGLED GOODS; INVENTORY MANAGEMENT METHODS FOR DETERMINING WHETHER ORIGINATING

(16) Subject to subsection (16.1), for purposes of determining whether a good is an originating good,

(a) where originating materials and non-originating materials that are fungible materials

(i) are withdrawn from an inventory in one location and used in the production of the good, or

(ii) are withdrawn from inventories in more than one location in the territory of one or more of the NAFTA countries and used in the production of the good at the same production facility,

the determination of whether the materials are originating materials may be made on the basis of any of the applicable inventory management methods set out in Schedule X; and

(b) where originating goods and non-originating goods that are fungible goods are physically combined or mixed in inventory and prior to exportation do not undergo production or any other operation in the territory of the NAFTA country in which they were physically combined or mixed in inventory, other than unloading, reloading or any other operation necessary to preserve the goods in good condition or to transport the goods for exportation to the territory of another NAFTA country, the determination of whether the good is an originating good may be made on the basis of any of the applicable inventory management methods set out in Schedule X.

(16.1) Where fungible materials referred to in subsection (16)(a) and fungible goods referred to in subsection (16)(b) are withdrawn from the same inventory, the inventory management method used for the materials must be the same as the inventory management method used for goods, and where the averaging method is used, the respective averaging periods for fungible materials and fungible goods are to be used.

(16.2) A choice of inventory management methods under subsection (16) shall be considered to have been made when the customs administration of the NAFTA country into which the good is imported is informed in writing of the choice during the course of a verification of the origin of the good.

ACCESSORIES, SPARE PARTS AND TOOLS; DEEMED ORIGINATING FOR TARIFF CHANGE RULE; ACTUAL ORIGIN APPLICABLE FOR RVC REQUIREMENT

(17) Accessories, spare parts or tools that are delivered with a good and form part of the good's standard accessories, spare parts or tools are originating materials if the good is an originating good, and shall be disregarded for purposes of determining whether all the non-originating materials used in the production of the good undergo an applicable change in tariff classification or determining under section 5(1) the value of non-originating materials that do not undergo an applicable change in tariff classification, provided that

(a) the accessories, spare parts or tools are not invoiced separately from the good; and

(b) the quantities and value of the accessories, spare parts or tools are customary for the good, within the industry that produces the good.

(18) Where a good is subject to a regional value-content requirement, the value of accessories, spare parts and tools that are delivered with that good and form part of the good's standard accessories, spare parts or tools shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

(19) For purposes of subsection (18), where accessories, spare parts and tools are self-produced materials, the producer may choose to designate those materials as intermediate materials under subsection (4).

EXAMPLES ILLUSTRATING THE PROVISIONS ON MATERIALS

(20) Each of the following examples is an ''Example'' as referred to in section 2(4).

Example 1: section 7(2), Customs Value not Determined in a Manner Consistent with Schedule VIII

Producer A, located in NAFTA country A, imports material A into NAFTA country A. Producer A purchased material A from a middleman located in country B. The middleman purchased the material from a manufacturer located in country B. Under the laws in NAFTA country A that implement the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade,* the customs value of material A was based on the price actually paid or payable by the middleman to the manufacturer. Producer A uses material A to produce Good C, and exports Good C to NAFTA country D. Good C is subject to a regional value-content requirement.

Under section 4(1) of Schedule VIII, the price actually paid or payable is the total payment made or to be made by the producer to or for the benefit of the seller of the material. Section 1 of that Schedule defines producer and seller for purposes of the Schedule. A producer is the person who uses the material in the production of a good that is subject to a regional value-content requirement. A seller is the person who sells the material being valued to the producer.

The customs value of material A was not determined in a manner consistent with Schedule VIII because it was based on the price actually paid or payable by the middleman to the manufacturer, rather than on the price actually paid or payable by Producer A to the middleman. Thus, section 7(2) applies and material A is valued in accordance with Schedule VIII.

Example 2: section 7(5), Value of Intermediate Materials

A producer located in a NAFTA country produces Good B, which is subject to a regional value-content requirement under section 4(2)(b). The producer also produces Material A, which is used in the production of Good B. Both originating materials and non-originating materials are used in the production of Material A. Material A is subject to a change in tariff classification requirement under section 4(2)(a). The costs to produce Material A are the following:

Product costs:	
Value of originating materials	$1.00
Value of non-originating materials	7.50
Other product costs	1.50
Period costs (including $0.30 in royalties)	0.50
Other costs	0.10
Total cost of Material A	$10.60

The producer designates Material A as an intermediate material and determines that, because all of the non-originating materials that are used in the production of Material A undergo an applicable change in tariff classification set out in Schedule I, Material A would, under paragraph 4(2)(a) qualify as an originating material. The cost of the non-originating materials used in the production of Material A is therefore not included in the value of non-originating materials that are used in the production of Good B for the purpose of determining the regional value content of Good B. Because Material A has been designated as an intermediate material, the total cost of Material A, which is $10.60, is treated as the cost of originating materials for the purpose of calculating the regional value content of Good B. The total cost of Good B is determined in accordance with the following figures:

Product costs:	
Value of originating materials	
—intermediate materials	$10.60
—other materials	3.00
Value of non-originating materials	5.50
Other product costs	6.50
Period costs	2.50
Other costs	0.10

Total cost of Good B	$28.20

Example 3: section 7(5), Effects of the Designation of Self-produced Materials on Net Cost

The ability to designate intermediate materials helps to put the vertically integrated producer who is self-producing materials that are used in the production of a good on par with a producer who is purchasing materials and valuing those materials in accordance with subsection 7(1). The following situations demonstrate how this is achieved:

Situation 1

A producer located in a NAFTA country produces Good B, which is subject to a regional value-content requirement of 50 percent under the net cost method. Good B satisfies all other applicable requirements of these Regulations. The producer purchases Material A, which is used in the production of Good B, from a supplier located in a NAFTA country. The value of Material A determined in accordance with subsection 7(1) is $11.00. Material A is an originating material. All other materials used in the production of Good B are non-originating materials. The net cost of Good B is determined as follows:

Product costs:	
Value of originating materials (Material A)	$11.00
Value of non-originating materials	5.50
Other product costs	6.50
Period costs: (including $0.20 in excluded costs)	0.50
Other costs	0.10
Total cost of Good B	$23.60
Excluded costs: (included in period costs)	−0.20
Net cost of Good B	$23.40

The regional value content of Good B is calculated as follows:

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{\$23.40 - \$5.50}{\$23.40} \times 100$$

$$= 76.5\%$$

The regional value content of Good B is 76.5 percent, and Good B, therefore, qualifies as an originating good.

Situation 2

A producer located in a NAFTA country produces Good B, which is subject to a regional value-content requirement of 50 percent under the net cost method. Good B satisfies all other applicable requirements of these Regulations. The producer self-produces Material A which is used in the production of Good B. The costs to produce Material A are the following:

Product costs:	
Value of originating materials	$1.00
Value of non-originating materials	7.50
Other product costs	1.50
Period costs: (including $0.20 in excluded costs)	0.50
Other costs	0.10
Total cost of Material A	$10.60

Additional costs to produce Good B are the following:

Product costs:	
Value of originating materials	$0.00
Value of non-originating materials	5.50
Other product costs	6.50
Period costs: (including $0.20 in excluded costs)	0.50
Other costs	0.10
Total additional costs	$12.60

The producer does not designate Material A as an intermediate material under subsection 7(4). The net cost of Good B is calculated as follows:

	Costs of Material A (not designated as an intermediate material)	Additional Costs to Produce Good B	Total
Product costs:			
Value of originating materials	$1.00	$0.00	$1.00
Value of non-originating materials	7.50	5.50	13.00
Other product costs	1.50	6.50	8.00
Period costs (including $0.20 in excluded costs)	0.50	0.50	1.00
Other costs	0.10	0.10	0.20
Total cost of Good B	$10.60	$12.60	$23.20
Excluded costs (in period costs)	0.20	0.20	−0.40
Net cost of Good B (total cost minus excluded costs)			$22.80

The regional value content of Good B is calculated as follows:

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{\$22.80 - \$13.00}{\$22.80} \times 100$$

$$= 42.9\%$$

The regional value content of Good B is 42.9 percent, and Good B, therefore, does not qualify as an originating good.

Situation 3

A producer located in a NAFTA country produces Good B, which is subject to a regional value-content requirement of 50 percent under the net cost method. Good B satisfies all other applicable requirements of these Regulations. The producer self-produces Material A, which is used in the production of Good B. The costs to produce Material A are the following:

Product costs:	
Value of originating materials	$1.00
Value of non-originating materials	7.50
Other product costs	1.50
Period costs: (including $0.20 in excluded costs)	0.50
Other costs	0.10
Total cost of Material A	$10.60

Additional costs to produce Good B are the following:

Product costs:	
Value of originating materials	$0.00
Value of non-originating materials	5.50
Other product costs	6.50
Period costs: (including $0.20 in excluded costs)	0.50
Other costs	0.10
Total additional costs	$12.60

The producer designates Material A as an intermediate material under subsection 7(4). Material A qualifies as an originating material under paragraph 4(2)(a). Therefore, the value of non-originating materials used in the production of Material A is not included in the value of non-originating materials for the purposes of calculating the regional value content of Good B. The net cost of Good B is calculated as follows:

	Costs of Material A (designated as an intermediate material)	Additional Costs to Produce Good B	Total
Product costs:			
Value of originating materials	$10.60	$0.00	$10.60
Value of non-originating materials		5.50	5.50
Other product costs		6.50	6.50
Period costs (including $0.20 in excluded costs)		0.50	0.50
Other costs		0.10	0.10
Total cost of Good B	$10.60	$12.60	$23.20
Excluded costs (in period costs)		.20	−0.20
Net cost of Good B (total cost minus excluded costs)		.....	$23.00

The regional value content of Good B is calculated as follows:

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{\$23.00 - \$5.50}{\$23.00} \times 100$$

$$= 76.1\%$$

The regional value content of Good B is 76.1 percent, and Good B, therefore, qualifies as an originating good.

Example 4: Originating Materials Acquired from a Producer Who Produced Them Using Intermediate Materials

Producer A, located in NAFTA country A, produces switches. In order for the switches to qualify as originating goods, Producer A designates subassemblies of the switches as intermediate materials. The subassemblies are subject to a regional value-content requirement. They satisfy that requirement, and qualify as originating materials. The switches are also subject to a regional value-content requirement, and, with the subassemblies designated as intermediate materials, are determined to have a regional value content of 65 percent.

Producer A sells the switches to Producer B, located in NAFTA country B, who uses them to produce switch assemblies that are used in the production of Good B. The switch assemblies are subject to a regional value-

content requirement. Producers A and B are not accumulating their production within the meaning of section 14. Producer B is therefore able, under section 7(4), to designate the switch assemblies as intermediate materials.

If Producers A and B were accumulating their production within the meaning of section 14, Producer B would be unable to designate the switch assemblies as intermediate materials, because the production of both producers would be considered to be the production of one producer.

Example 5: Single Producer and Successive Designations of Materials Subject to a Regional Value-Content Requirement as Intermediate Materials

Producer A, located in NAFTA country, produces Material X and uses Material X in the production of Good B. Material X qualifies as an originating material because it satisfies the applicable regional value-content requirement. Producer A designates Material A as an intermediate material.

Producer A uses Material X in the production of Material Y, which is also used in the production of Good B. Material Y is also subject to a regional value-content requirement. Under the proviso set out in section 7(4), Producer A cannot designate Material Y as an intermediate material, even if Material Y satisfies the applicable regional value-content requirement, because Material X was already designated by Producer A as an intermediate material.

Example 6: Single Producer and Multiple Designations of Materials as Intermediate Materials

Producer X, who is located in NAFTA country X, uses non-originating materials in the production of self-produced materials A, B, and C. None of the self-produced materials are used in the production of any of the other self-produced materials.

Producer X uses the self-produced materials in the production of Good O, which is exported to NAFTA country Y. Materials A, B and C qualify as originating materials because they satisfy the applicable regional value-content requirements.

Because none of the self-produced materials are used in the production of any of the other self-produced materials, then even though each self-produced material is subject to a regional value-content requirement, Producer X may, under section 7(4), designate all of the self-produced materials as intermediate materials. The proviso set out in section 7(4) only applies where self-produced materials are used in the production of other self-produced materials and both are subject to a regional value-content requirement.

Example 7: section 7(17)

The following are examples of accessories, spare parts or tools that are delivered with a good and form part of the good's standard accessories, spare parts or tools:

(a) consumables that must be replaced at regular intervals, such as dust collectors for an air-conditioning system,

(b) a carrying case for equipment,

(c) a dust cover for a machine,

(d) an operational manual for a vehicle,

(e) brackets to attach equipment to a wall,

(f) a bicycle tool kit or a car jack,

(g) a set of wrenches to change the bit on a chuck,

(h) a brush or other tool to clean out a machine, and

(i) electrical cords and power bars for use with electronic goods.

Example 8: Value of Indirect Materials that are Assists

Producer A, located in a NAFTA country, produces Good A that is subject to a regional value-content requirement. The producer chooses that the regional value content of that good be calculated using the net cost method. Producer A buys Material X from Producer B, located in a NAFTA country, and uses it in the production of Good A. Producer A provides to Producer B, at no charge, tools to be used in the production of Material X. The tools have a value of $100 which is expensed in the current year by Producer A.

Material X is subject to a regional value-content requirement which Producer B chooses to calculate using the net cost method. For purposes of determining the value of non-originating materials in order to calculate the regional value content of Material X, the tools are considered to be an originating material because they are an indirect material. However, pursuant to section 7(11) they have a value of nil because the cost of the tools with respect to Material X is not recorded on the books of Producer B.

It is determined that Material X is a non-originating material. The cost of the tools that is recorded on the books of producer A is expensed in the current year. Pursuant to section 5 of Schedule VIII, the value of the tools (see section 5(1)(b)(ii) of Schedule VIII) must be included in the value of Material X by Producer A when calculating the regional value content of Good A. The cost of the tools, although recorded on the books of producer A, cannot be included as a separate cost in the net cost of Good A because it is already included in the value of Material X. The entire cost of Material X, which includes the cost of the tools, is included in the value of non-originating materials for purposes of the regional value content of Good A.

PART V

AUTOMOTIVE GOODS

SECTION 8. DEFINITIONS AND INTERPRETATION

For purposes of this part,

''after-market parts'' means goods that are not for use as original equipment in the production of light-duty vehicles or heavy-duty vehicles and that are

(a) goods provided for in a tariff provision listed in Schedule IV, or

(b) automotive component assemblies, automotive components, sub-components or listed materials;

''class of motor vehicles'' means any one of the following categories of motor vehicles:

(a) motor vehicles provided for in any of subheading 8701.20, tariff items 8702.10.30 and 8702.90.30 (vehicles for the transport of 16 or more persons), subheadings 8704.10, 8704.22, 8704.23, 8704.32 and 8704.90 and headings 8705 and 8706,

(b) motor vehicles provided for in any of subheadings 8701.10 and 8701.30 through 8701.90,

(c) motor vehicles provided for in any of tariff items 8702.10.60 and 8702.90.60 (vehicles for the transport of 15 or fewer persons) and subheadings 8704.21 and 8704.31, and

(d) motor vehicles provided for in any of subheadings 8703.21 through 8703.90;

''complete motor vehicle assembly process'' means the production of a motor vehicle from separate constituent parts, which parts include the following:

(a) a structural frame or unibody,

(b) body panels,

(c) an engine, a transmission and a drive train,

(d) brake components,

(e) steering and suspension components,

(f) seating and internal trim,

(g) bumpers and external trim,

(h) wheels, and

(i) electrical and lighting components;

''first prototype'' means the first motor vehicle that

(a) is produced using tooling and processes intended for the production of motor vehicles to be offered for sale, and

(b) follows the complete motor vehicle assembly process in a manner not specifically designed for testing purposes;

''floor pan of a motor vehicle'' means a component, comprising a single part or two or more parts joined together, with or without additional stiffening members, that forms the base of a motor vehicle, beginning at the firewall or bulkhead of the motor vehicle and ending

(a) where there is a luggage floor panel in the motor vehicle, at the place where that luggage floor panel begins, and

(b) where there is no luggage floor panel in the motor vehicle, at the place where the passenger compartment of the motor vehicle ends;

''heavy-duty automotive good'' means a heavy-duty vehicle or a heavy-duty component;

''heavy-duty component'' means an automotive component or automotive component assembly that is for use as original equipment in the production of a heavy-duty vehicle;

''marque'' means a trade name used by a marketing division of a motor vehicle assembler that is separate from any other marketing division of that motor vehicle assembler;

''model line'' means a group of motor vehicles having the same platform or model name;

''model name'' means the word, group of words, letter, number or similar designation assigned to a motor vehicle by a marketing division of a motor vehicle assembler

(a) to differentiate the motor vehicle from other motor vehicles that use the same platform design,

(b) to associate the motor vehicle with other motor vehicles that use different platform designs, or

(c) to denote a platform design;

''new building'' means a new construction to house a complete motor vehicle assembly process, where that construction includes the pouring or construction of a new foundation and floor, the erection of a new frame and roof, and the installation of new plumbing and electrical and other utilities;

''plant'' means a building, or buildings in close proximity but not necessarily contiguous, machinery, apparatus and fixtures that are under the control of a producer and are used in the production of any of the following:

(a) light-duty vehicles and heavy-duty vehicles,

(b) goods of a tariff provision listed in Schedule IV, and

(c) automotive component assemblies, automotive components, sub-components and listed materials;

''platform'' means the primary load-bearing structural assembly of a motor vehicle that determines the basic size of the motor vehicle, and is the structural base that supports the driveline and links the suspension components of the motor vehicle for various types of frames, such as the body-on-frame or space-frame, and monocoques;

''received in the territory of a NAFTA country'' means, with respect to section 9(2), the location at which a traced material arrives in the territory of a NAFTA country and is documented for any customs purpose, which, in the case of a traced material imported into

(a) Canada,

(i) where the traced material is imported on a vessel, as defined in section 2 of the *Reporting of Imported Goods Regulations*, is the location at which the traced material is last unloaded from the vessel and reported, under section 12 of the *Customs Act*, to a customs office, including reported for transportation under bond by a conveyance other than that vessel, and (ii) in any other case, is the location at which the traced material is reported, under section 12 of the *Customs Act*, to a customs office, including reported for transportation under bond,

(b) Mexico,

(i) where the traced material is imported on a vessel, the location at which the traced material is last unloaded from the vessel and reported for any customs purpose, and

(ii) in any other case, the location at which the traced material is reported for any customs purpose, and

(c) the United States, is the location at which the traced material is entered for any customs purpose, including entered for consumption, entered for warehouse or entered for transportation under bond, or admitted into a foreign trade zone;

''refit'' means a closure of a plant for a period of at least three consecutive months that is for purposes of plant conversion or retooling;

''size category'', with respect to a light-duty vehicle, means that the total of the interior volume for passengers and the interior volume for luggage is

(a) 85 cubic feet (2.38 m^3) or less,

(b) more than 85 cubic feet (2.38 m^3) but less than 100 cubic feet (2.80 m^3),

(c) 100 cubic feet (2.80 m^3) or more but not more than 110 cubic feet (3.08 m^3),

(d) more than 110 cubic feet (3.08 m^3) but less than 120 cubic feet (3.36 m^3), or

(e) 120 cubic feet (3.36 m^3) or more;

''traced material'' means a material, produced outside the territories of the NAFTA countries, that is imported from outside the territories of the NAFTA countries and is, when imported, of a tariff provision listed in Schedule IV;

''underbody'' means the floor pan of a motor vehicle.

SECTION 9. LIGHT-DUTY AUTOMOTIVE GOODS

VNM DETERMINED BY TRACING OF CERTAIN NON-ORIGINATING MATERIALS

(1) For purposes of calculating the regional value content of a light-duty automotive good under the net cost method, the value of non-originating materials used by the producer in the production of the good shall be the sum of the values of the non-originating materials that are traced materials and are incorporated into the good.

VALUATION OF TRACED MATERIALS FOR VNM IN THE RVC

(2) Except as otherwise provided in subsections (3) and (6) through (8), the value of each of the traced materials that is incorporated into a good shall be

(a) where the producer imports the traced material from outside the territories of the NAFTA countries and has or takes title to it at the time of importation, the sum of

(i) the customs value of the traced material,

(ii) where not included in that customs value, any freight, insurance, packing and other costs that were incurred in transporting the traced material to the first place at which it was received in the territory of a NAFTA country, and

(iii) where not included in that customs value, the costs referred to in subsection (4);

(b) where the producer imports the traced material from outside the territories of the NAFTA countries and does not have or take title to it at the time of importation, the sum of

(i) the customs value of the traced material,

(ii) where not included in that customs value, any freight, insurance, packing and other costs that were incurred in transporting the traced material to the place at which it was when the producer takes title in the territory of a NAFTA country, and

(iii) where not included in that customs value, the costs referred to in subsection (4);

(c) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and that person has or takes title to the material at the time of importation, if the producer has a statement that

(i) is signed by the person from whom the producer acquired the traced material, whether in the form in which it was imported into the territory of a NAFTA country or incorporated into another material, and

(ii) states

(A) the customs value of the traced material,

(B) where not included in that customs value, any freight, insurance, packing and other costs that were incurred in transporting the traced material to the first place at which it was received in the territory of a NAFTA country, and

(C) where not included in that customs value, the costs referred to in subsection (4),

the sum of the customs value of the traced material, the freight, insurance, packing and other costs referred to in subparagraph

(ii)(B) and the costs referred to in subparagraph (ii)(C);

(d) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and that person does not have or take title to the material at the time of importation, if the producer has a statement that

(i) is signed by the person from whom the producer acquired the traced material, whether in the form in which it was imported into the territory of a NAFTA country or incorporated into another material, and

(ii) states

(A) the customs value of the traced material,

(B) where not included in that customs value, any freight, insurance, packing and other costs that were incurred in transporting the traced material to the place at which it was located when the first person in the territory of a NAFTA country takes title, and

(C) where not included in that customs value, the costs referred to in subsection (4),

the sum of the customs value of the traced material, the freight, insurance, packing and other costs referred to in subparagraph (ii)(B) and the costs referred to in subparagraph (ii)(C);

(e) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and the producer acquires the traced material or a material that incorporates the traced material from a person in the territory of a NAFTA country who has title to it, if the producer has a statement that

(i) is signed by the person from whom the producer acquired the traced material or the material that incorporates it, and

(ii) states the value of the traced material or a material that incorporates the traced material, determined in accordance with subsection (5), with respect to a transaction that occurs after the customs value of the traced material was determined,

the value of the traced material or the material that incorporates the traced material, determined in accordance with subsection (5), with respect to the transaction referred to in that statement;

(f) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries, and the producer acquires a material that incorporates that traced material and the acquired material was produced in the territory of a NAFTA country and is subject to a regional value-content requirement, if the producer has a statement that

(i) is signed by the person from whom the producer acquired that material, and

(ii) states that the acquired material is an originating material and states the regional value content of the material,

an amount equal to $VM \times (1 - RVC)$

where

VM is the value of the acquired material, determined in accordance with subsection (5), with respect to the transaction in which the producer acquired that material, and

RVC is the regional value content of the acquired material, expressed as a decimal;

(g) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries, and the producer acquires a material that incorporates that traced material and the acquired material was produced in the territory of a NAFTA country and is subject to a regional value-content requirement, if the producer has a statement that

(i) is signed by the person from whom the producer acquired that material, and

(ii) states that the acquired material is an originating material but does not state any value with respect to the traced material,

an amount equal to $VM \times (1 - RVCR)$

where

VM is the value of the acquired material, determined in accordance with subsection (5), with respect to the transaction in which the producer acquired that material, and

RVCR is the regional value-content requirement for the acquired material, expressed as a decimal;

(h) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and the producer acquires a material that

(i) incorporates that traced material,

(ii) was produced in the territory of a NAFTA country, and

(iii) with respect to which an amount was determined in accordance with paragraph (f) or (g),

if the producer of the good has a statement signed by the person from whom the producer acquired that material that states that amount, the amount as determined in accordance with paragraph (f) or (g), as the case may be; and

(i) where a person other than the producer imports the traced material from outside the territories of the NAFTA countries and the producer does not have a statement described in any of paragraphs (c) through (h), the value of the traced material or any material that incorporates it, determined in accordance with subsection (5) with respect to the transaction in which the producer acquires the traced material or any material that incorporates it.

VALUE OF TRACED MATERIAL IF CUSTOMS VALUE IS NOT IN ACCORDANCE WITH SCHEDULE VIII

(3) For purposes of subsections (2) (a) through (d), where the customs value of the traced material referred to in those paragraphs was not determined in a manner consistent with Schedule VIII, the value of the material shall be the sum of

(a) the value of the material determined in accordance with Schedule VIII with respect to the transaction in which the person who imported the material from outside the territories of the NAFTA countries acquired it; and

(b) where not included in that value, the costs referred to in subsections (2)(a) (ii) and (iii), subsections (2)(b) (ii) and (iii), subsections (2)(c)(ii) (B) and (C) or subsections (2)(d)(ii) (B) and (C), as the case may be.

ADDITIONAL COSTS INCLUDED IN TRACED VALUE IF NOT ALREADY INCLUDED IN CUSTOMS VALUE

(4) The costs referred to in subsections (2) (a) through (d) and subsection (3) are the following:

(a) duties and taxes paid or payable with respect to the material in the territory of one or more of the NAFTA countries, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable; and

(b) customs brokerage fees, including the cost of in-house customs brokerage services, incurred with respect to the material in the territory of one or more of the NAFTA countries.

VALUE OF TRACED MATERIAL DETERMINED UNDER SCHEDULE VIII IF VALUE IS NOT CUSTOMS VALUE

(5) For purposes of subsections (2) (e) through (g) and (i) and subsections (6) and (7), the value of a material

(a) shall be the transaction value of the material, determined in accordance with section 2(1) of Schedule VIII with respect to the transaction referred to in that paragraph or subsection, or

(b) shall be determined in accordance with sections 6 through 11 of Schedule VIII, where, with respect to the transaction referred to in that paragraph or subsection, there is no transaction value for the material under section 2(2) of that Schedule, or the transaction value of the material is unacceptable under section 2(3) of that Schedule,

and, where not included under paragraph (a) or (b), shall include taxes, other than duties paid on an importation of a material from a NAFTA country, paid or payable with respect to the material in the territory of one or more of the NAFTA countries, other than taxes that are waived, refunded, refundable or otherwise recoverable, including credit against tax paid or payable.

(6) Where it is determined, during the course of a verification of origin of a light-duty automotive good with respect to which the producer of that good has a statement referred to in subsection (2) (f) or (g), that the acquired material referred to in that statement is not an originating material, the value of the acquired material shall, for purposes of subsection (2), be determined in accordance with subsection (5) with respect to the transaction in which that producer acquired it.

EFFECT ON VALUE OF TRACED MATERIAL IF VALUE ON A STATEMENT CANNOT BE VERIFIED

(7) Where any person who has information with respect to a statement referred to in any of subsections (2)(c) through (h) does not allow a customs administration to verify that information during a verification of origin, the value of the material with respect to which that person did not allow the customs administration to verify the information may be determined by that customs administration in accordance with subsection (5) with respect to the transaction in which that person sells, or otherwise transfers to another person, that material or a material that incorporates that material.

USE OF VALUE OF VNM AS DETERMINED UNDER SECTION 12(3) FOR TRACED MATERIAL INCORPORATED INTO ANOTHER MATERIAL

(8) Where a traced material is incorporated into a material produced in the territory of a NAFTA country and that material is incorporated into a light-duty automotive good, the statement referred to in subsection (2)(c), (d) or (e) may state the value of non-originating materials, determined in accordance with section 12(3), with respect to the material that incorporates the traced material.

INTERPRETATIONS AND CLARIFICATIONS FOR PROVISIONS APPLICABLE TO TRACING RULES FOR LIGHT-DUTY AUTOMOTIVE GOODS

(9) For purposes of this section,

(a) where a producer, in accordance with section 7(4), designates as an intermediate material any self-produced material used in the production of a light-duty automotive good,

(i) the designation applies solely to the calculation of the net cost of that good, and

(ii) the value of a traced material that is incorporated into that good shall be determined as though the designation had not been made;

(b) the value of a material not listed in Schedule IV, when imported from outside the territories of the NAFTA countries,

(i) shall not be included in the value of non-originating materials that are used in the production of a light-duty automotive good, and

(ii) shall be included in calculating the net cost of a light-duty automotive good that incorporates that material;

(c) except as otherwise provided in section 12(10), this section does not apply with respect to after-market parts;

(d) the costs referred to in subsections (2)(a)(ii) and (b)(ii), subsections (2)(c)(ii)(B) and (d)(ii)(B) and subsections (4) and (5) shall be the costs referred to in those paragraphs that are recorded on the books of the producer of the light-duty automotive good;

(e) for purposes of calculating the regional value content of a light-duty automotive good, the producer of that good may choose to treat any material used in the production of that good as a non-originating material, and the value of that material shall be determined in accordance with subsection (5) with respect to the transaction in which the producer acquired it; and

(f) any information set out in a statement referred to in subsection (2) that concerns the value of materials or costs shall be in the same currency as the currency of the country in which the person who provided the statement is located.

EXAMPLES OF APPLICATION OF TRACING FOR LIGHT-DUTY AUTOMOTIVE GOODS

(10) Each of the following examples is an ''Example'' as referred to in section 2(4).

Example 1:

Nuts and bolts provided for in heading 7318 are imported from outside the territories of the NAFTA countries and are used in the territory of a NAFTA country in the production of a light-duty automotive good referred to in section 9(1). Heading 7318 is not listed in Schedule IV so the nuts and bolts are not traced materials.

Because the nuts and bolts are not traced materials the value, under section 9(1), of the nuts and bolts is not included in the value of non-originating materials used in the light-duty automotive good even though the nuts and bolts are imported from outside the territories of the NAFTA countries.

The value, under section 9(9)(b), of the nuts and bolts is included in the net cost of the light-duty automotive good for the purposes of calculating, under section 9(1), regional value content of the motor vehicle.

Example 2:

A rear view mirror provided for in subheading 7009.10 is imported from outside the territories of the NAFTA countries and is used in the territory of a NAFTA country as original equipment in the production of a light-duty vehicle.

Subheading 7009.10 is listed in Schedule IV. The rear view mirror is a traced material. For purposes of calculating, under section 9(1), regional value content of the light-duty vehicle, the value of the mirror is included in the value of non-originating materials in accordance with sections 9(2) through (9).

Example 3:

Glass provided for in heading 7005 is imported from outside the territories of the NAFTA countries and is used in the territory of NAFTA country A in the production of a rear view mirror. The rear view mirror is a non-originating good because it fails to satisfy the applicable change in tariff classification.

That rear view mirror is exported to NAFTA country B where it is used as original equipment in the production of a light-duty vehicle. Even though the rear view mirror is a non-originating material and is provided for in a tariff item listed in Schedule IV, it is not a traced material because it was not imported from outside the territories of the NAFTA countries.

For purposes of calculating, under section 9(1), the regional value content of a light-duty vehicle in which the rear view mirror is incorporated, the value of the rear view mirror, under section 9(1), is not included in the value of non-originating materials used in the production of the light-duty vehicle.

Even though the glass provided for in heading 7005 that was used in the production of the rear view mirror and incorporated into the light-duty vehicle was imported from outside the territories of the NAFTA countries, the glass is not a traced material because heading 7005 is not listed in Schedule IV. For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle that incorporates the glass, the value of the glass is not included in the value of non-originating materials used in the production of the light-duty vehicle. The value of the rear view mirror would be included in the net cost of the light-duty vehicle, but the value of the imported glass would not be separately included in the value of non-originating materials of the light-duty vehicle.

Example 4:

An electric motor provided for in subheading 8501.10 is imported from outside the territories of the NAFTA countries and is used in the territory of a NAFTA country in the production of a seat frame provided for in subheading 9401.90. The seat frame, with the electric motor attached, is sold to a producer of seats provided for in subheading 9401.20. The seat producer sells the seat to a producer of light-duty vehicles. The seat is to be used as original equipment in the production of that light-duty vehicle.

Subheadings 8501.10 and 9401.20 are listed in Schedule IV; subheading 9401.90 is not. The electric motor is a traced material; the seat

is not a traced material because it was not imported from outside the territories of the NAFTA countries.

The seat is a light-duty automotive good referred to in section 9(1). For purposes of calculating, under section 9(1), the regional value content of the seat, the value of traced materials incorporated into it is included in the value of non-originating materials used in the production of the seat. The value of the electric motor is included in that value. (However, the value of the motor would not be included separately in the net cost of the seat because the value of the motor is included as part of the cost of the seat frame.)

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle, the value of the electric motor is included in the value of non-originating materials used in the production of the light-duty vehicle, even if the seat is an originating material.

Example 5:

Cast blocks, cast heads and connecting rod assemblies provided for in heading 8409 are imported from outside the territories of the NAFTA countries by an engine producer, who has title to them at the time of importation, and are used by the producer in the territory of NAFTA country A in the production of an engine provided for in heading 8407. After the regional value content of the engine is calculated, the engine is an originating good. It is not a traced material because it was not imported from outside the territories of the NAFTA countries. The engine is exported to NAFTA country B, to be used as original equipment by a producer of light-duty vehicles.

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle that incorporates the engine, because heading 8409 is listed in Schedule IV and because the cast blocks, cast heads and connecting rod assemblies were imported into the territory of a NAFTA country and are incorporated into the light-duty vehicle, the value of those materials, which are traced materials, is included in the value of non-originating materials used in the production of the light-duty vehicle, even though the engine is an originating material.

The producer of the light-duty vehicle did not import the traced materials. However, because that producer has a statement referred to in section 9(2)(c) and that statement states the value of non-originating materials of the traced materials in accordance with section 12(2), the producer of the light-duty vehicle may, in accordance with section 9(8), use that value as the value of non-originating materials of the light-duty vehicle with respect to that engine.

Example 6:

Aluminum ingots provided for in subheading 7601.10 and piston assemblies provided for in heading 8409 are imported from outside the territories of the NAFTA countries by an engine producer and are used by that producer in the territory of NAFTA country A in the production of an engine provided for in heading 8407. The aluminum ingots are used by the producer to produce an engine block; the piston assembly is then incorporated into the engine block and the producer designates, in accordance with section 7(4), a short block provided for in heading 8409 as an intermediate material. The intermediate material qualifies as an originating material. The engine that incorporates the short block is exported to NAFTA country B and used as original equipment in the production of a light-duty vehicle. The piston assemblies provided for in heading 8409 are traced materials; neither the engine nor the short block are traced materials because they were not imported from outside the territories of the NAFTA countries.

For purposes of calculating, under section 9(1), the regional value content of the engine, the value of the piston assemblies is included, under section 9(9)(a)(ii), in the value of non-originating materials, even if the intermediate material is an originating material. However, the value of the aluminum ingots is not included in the value of non-originating materials because subheading 7601.10 is not listed in Schedule IV. The value of the aluminum ingots does not need to be included separately in the net cost of the engine because that value is included in the value of the intermediate material, and the total cost of the intermediate material is included in the net cost of the engine.

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle that incorporates the engine (and the piston assemblies), the value of the piston assemblies incorporated into that light-duty vehicle is included in the value of non-originating materials of the light-duty vehicle.

Example 7:

An engine provided for in heading 8407 is imported from outside the territories of the NAFTA countries. The producer of the engine, located in the country from which the engine is imported, used in the production of the engine a piston assembly provided for in heading 8409 that was produced in a NAFTA country and is an originating good. The engine is used in the territory of a NAFTA country as original equipment in the production of a light-duty vehicle. The engine is a traced material.

For purposes of calculating, under section 9(1), the regional value content of a light-duty vehicle that incorporates that engine, the value of the engine is included in the value of non-originating materials of that light-duty vehicle. The value of the piston assembly, which was, before its exportation to outside the territories of the NAFTA

countries, an originating good, shall not be deducted from the value of non-originating materials used in the production of the light-duty vehicle. Under section 18 (transshipment), the piston assembly is no longer considered to be an originating good because it was used in the production of a good outside the territories of the NAFTA countries.

Example 8:

A wholesaler, located in City A in the territory of a NAFTA country, imports from outside the territories of the NAFTA countries rubber hoses provided for in heading 4009, which is listed in Schedule IV. The wholesaler takes title to the goods at the wholesaler's place of business in City A. The customs value of the imported goods is $500. All freight, taxes and duties associated with the good to the wholesaler's place of business total $100; the cost of the freight, included in that $100, from the place where it was received in the territory of a NAFTA country to the location of the wholesaler's place of business in City A is $25. The wholesaler sells the rubber hoses for $650 to a producer of light-duty vehicles who uses the goods in the territory of a NAFTA country as original equipment in the production of a light-duty vehicle. The light-duty vehicle producer pays $50 to have the goods shipped from the location of the wholesaler's place of business in City A to the location at which the light-duty vehicle is produced.

The rubber hoses are traced materials and they are incorporated into a light-duty automotive good. For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle,

(1) if the wholesaler takes title to the goods before the first place at which they were received in the territory of a NAFTA country, then the value of non-originating materials, where the light-duty vehicle producer has a statement referred to in section 9(2)(c), would not include the cost of freight from the place where they were received in the territory of a NAFTA country to the location of the wholesaler's place of business: in this situation, the value of non-originating materials would be $575;

(2) if the producer has a statement referred to in section 9(2)(d) that states the customs value of the traced material and, where not included in that price, the cost of taxes, duties, fees and transporting the goods to the place where title is taken, the light-duty vehicle producer may use those values as the value of non-originating materials with respect to the goods: in this situation, the value of non-originating materials would be $600; or

(3) if the wholesaler is unwilling to provide the light-duty vehicle producer with such a statement, the value of non-originating materials with respect to the traced materials will be the value of the materials with respect to the transaction in which the producer acquired them, as provided for in section 9(2)(i), in this instance $650; the costs of transporting the goods from the location of the wholesaler's place of business to the location of the producer will be included in the net cost of the goods, but not in the value of non-originating materials.

Example 9:

A wholesaler, located in City A in the territory of a NAFTA country, imports from outside the territories of the NAFTA countries rubber hose provided for in heading 4009, which is listed in Schedule IV. The wholesaler sells the good to a producer located in the territory of the NAFTA country who uses the hose to produce a power steering hose assembly, also provided for in heading 4009. The power steering hose assembly is then sold to a producer of light-duty vehicles who uses that good in the production of a light-duty vehicle. The rubber hose is a traced material; the power steering hose assembly is not a traced material because it was not imported from outside the territories of the NAFTA countries.

The wholesaler who imported the rubber hose from outside the territories of the NAFTA countries has title to it at the time of importation. The customs value of the good is $3, including freight and insurance and all other costs incurred in transporting the good to the first place at which it was received in the territory of the NAFTA country. Duties and fees and all other costs referred to in section 9(4), paid by the wholesaler with respect to the good, total an additional $1. The wholesaler sells the good to the producer of the power steering hose assemblies for $5, not including freight to the location of that producer. The power steering hose producer pays $2 to have the good delivered to the location of production. The value of the power steering hose assembly sold to the light-duty vehicle producer is $10, including freight for delivery of the goods to the location of the light-duty vehicle producer.

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle:

(1) if the motor vehicle producer has a statement referred to in section 9(2)(c) from the producer of the power steering hose assembly that states the customs value of the imported rubber hose incorporated in the power steering hose assembly, and the value of the duties, fees and other costs referred to in section 9(4), the producer may use those values as the value of non-originating materials with respect to that traced good: in this situation, that value would be the customs value of $3 and the cost of duties and fees of $1, provided that the wholesaler has provided the producer of the power steering hose assembly

with the information regarding the customs value of the imported good and the other costs;

(2) if the light-duty vehicle producer has a statement from the producer of the power steering hose assembly that states the value of the imported hose, with respect to the transaction in which the power steering hose assembly producer acquires the imported hose from the wholesaler, the light-duty vehicle producer may include that value as the value of non-originating materials, in accordance with section 9(2)(e): in this situation, that value is $5; and the $2 cost of transporting the good from the location of the wholesaler to the location of the producer, because that cost is separately identified, would not be included in the value of non-originating materials of the light-duty vehicle;

(3) if the light-duty vehicle producer has a statement referred to in section 9(2)(f) signed by the producer of the power steering hose assembly, the light-duty vehicle producer may use the formula set out in section 9(2)(f) to calculate the value of non-originating materials with respect to that acquired material: in this situation, assuming the regional value content is 55 per cent, the value of non-originating materials would be $4.50; and because the cost of transportation from the location of the producer of the power steering hose assembly to the location of the light-duty vehicle producer is included in the purchase price and not separately identified, it may not be deducted from the purchase price, because the formula referred to in section 9(2)(f) does not allow for the deduction of transportation costs that would otherwise not be non-originating;

(4) if the light-duty vehicle producer has a statement referred to in section 9(2)(g) signed by the producer of the power steering hose assembly, the light-duty vehicle producer may use the formula set out in section 9(2)(g) to calculate the value of non-originating materials with respect to that acquired material: in this situation, assuming the regional value-content requirement is 50 per cent, the value of non-originating materials would be $5; and because the cost of transportation from the location of the producer of the power steering hose assembly to the location of the light-duty vehicle producer is included in the purchase price and not separately identified, it may not be deducted from the purchase price, because the formula referred to in section 9(2)(g) does not allow for the deduction of transportation costs that would otherwise not be non-originating; or

(5) if the light-duty vehicle producer does not have a statement referred to in any of sections 9(2)(c) through (h) from the producer of the power steering hose assembly, the light-duty vehicle producer includes in the value of non-originating materials of the vehicles the value, determined in accordance with section 9(2)(i), of the power steering hose assembly: in this situation, that amount would be $10, the cost to the producer of acquiring that material.

Example 10:

A producer of light-duty vehicles located in City C in the territory of a NAFTA country imports from outside the territories of the NAFTA countries rubber hose provided for in heading 4009, which is listed in Schedule IV, and uses that good as original equipment in the production of a light-duty vehicle.

The rubber hose arrives at City A in the NAFTA country, but the producer of the light-duty vehicle does not have title to the good; it is transported under bond to City B, and on its arrival in City B, the producer of the light-duty vehicle takes title to it and the good is received in the territory of a NAFTA country. The good is then transported to the location of the light-duty vehicle producer in City C.

The customs value of the imported good is $4, the transportation and other costs referred to in subparagraph 9(2)(b)(ii) to City A are $3 and to City B are $2, and the cost of duties, taxes and other fees referred to in section 9(4) is $1. The cost of transporting the good from City B to the location of the producer in City C is $1. The rubber hose is traced material.

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle, the value, under section 9(2)(b), of non-originating materials of that vehicle is the customs value of the traced material and, where not included in that value, the cost of taxes, duties, fees and the cost of transporting the traced material to the place where title is taken. In this situation, the value of non-originating materials would be the customs value of the traced material, $4, the cost of duties taxes and other fees, $1, the cost of transporting the material to City A, $3, and the cost of transporting that material from City A to City B, $2, for a total of $10. The $1 cost of transporting the good from City B to the location of the producer in City C would not be included in the value of non-originating materials of the light-duty vehicle because a person of a NAFTA country has taken title to the traced material.

Example 11:

A radiator provided for in subheading 8708.91 is imported from outside the territories of the NAFTA countries by a producer of light-duty vehicles and is used in the territory of a NAFTA country as original equipment in the production of a light-duty vehicle.

The radiator is transported by ship from outside the territories of the NAFTA countries and arrives in the territory of the NAFTA country at City A. The radiator is not, however, unloaded at City A and although the radiator is physically present in the territory of the NAFTA country, it has not been received in the territory of a NAFTA country.

The ship sails in territorial waters from City A to City B and the radiator is unloaded there. The light-duty vehicle producer files, from City C in the same country, the entry for the radiator; the radiator enters the territory of the NAFTA country at City B.

Subheading 8708.91 is listed in Schedule IV. The radiator is a traced material.

For purposes of calculating, under section 9(1), the regional value content of the light-duty vehicle, the value of the radiator is included in the value of non-originating materials of the light-duty vehicle. The costs of any freight, insurance, packing and other costs incurred in transporting the radiator to City B are included in the value of non-originating materials of the light-duty vehicle, including the cost of transporting the radiator from City A to City B. The costs of any freight, insurance, packing and other costs that were incurred in transporting the radiator from City B to the location of the producer are not included in the value of non-originating materials of the light-duty vehicle.

Example 12:

Producer X, located in NAFTA country A, produces a car seat of subheading No. 9401.20 that is used in the production of a light-duty vehicle. The only non-originating material used in the production of the car seat is an electric motor of subheading No. 8501.20 that was imported by Producer X from outside the territories of the NAFTA countries. The electric motor is a material of a tariff provision listed in Schedule IV and thus is a traced material.

Producer X sells the car seat as original equipment to Producer Y, a light-duty vehicle producer, located in NAFTA country B. The car seat is an originating good because the non-originating material in the car seat (the electric motor) undergoes the applicable change in tariff classification set out in a rule that specifies only a change in tariff classification. Consequently, Producer X does not choose to calculate the regional value content of the car seat in accordance with section 12(1).

For purposes of determining, under section 9(1), the value of non-originating materials used in the production of the light-duty vehicle that incorporates the car seat, the value of the electric motor is included even though the car seat qualifies as an originating material.

Producer X provides Producer Y with a statement described in section 9(2)(c), with the value of non-originating material used in the production of the car seat determined in accordance with section 12(3), as is permitted by section 9(8). Producer Y uses that value as the value of non-originating materials used in the production of the light-duty vehicle with respect to the car seat.

Example 13:

This example has the same facts as in Example 12, except that the car seat does not qualify as an originating good under the rule that specifies only a change in tariff classification. Instead, it qualifies as an originating good under a rule that specifies a regional value-content requirement and a change in tariff classification. For purposes of that rule, Producer X chose to calculate the regional value content of the car seat in accordance with section 12(1) over a period set out in section 12(5)(a) and using a category set out in section 12(4)(a).

For purposes of the statement described in section 9(2)(c), Producer X determined, as is permitted under section 9(8), the value of non-originating material used in the production of the car seat in accordance with section 12(3) over a period set out in section 12(5)(a) and using a category set out in section 12(4)(e).

SECTION 10. HEAVY-DUTY AUTOMOTIVE GOODS

DETERMINING VNM FOR THE CALCULATION OF THE RVC FOR HEAVY-DUTY AUTOMOTIVE GOODS

(1) Except as otherwise provided in subsections (3) through (8) and section 12(10)(a), for purposes of calculating the regional value content of a heavy-duty automotive good under the net cost method, the value of non-originating materials used by the producer of the good in the production of the good shall be the sum of

(a) for each listed material that is a non-originating material, is a self-produced material and is used by the producer in the production of the good, at the choice of the producer, either

(i) the total cost incurred with respect to all goods produced by the producer that can be reasonably allocated to that listed material in accordance with Schedule VII,

(ii) the aggregate of each cost that forms part of the total cost incurred with respect to that listed material that can be reasonably allocated to that listed material in accordance with Schedule VII, or

(iii) the sum of

(A) the customs value of each non-originating material imported by the producer and used in the production of the listed material, and, where not included in that customs value, the costs referred to in subsections (2)(c) through (f), and

(B) the value of each non-originating material that is not imported by the producer of the listed material and is used in the production of the listed material, determined in accordance with subsection (2) with respect to the transaction in which the producer of the listed material acquired it;

(b) for each listed material that is a non-originating material, is produced in the territory of a NAFTA country and is acquired and used by the producer in the production of the good, at the choice of the producer, either

(i) the value of that non-originating listed material, determined in accordance with subsection (2), with respect to the transaction in which the producer acquired the listed material, or

(ii) where the producer of the good has a statement described in clause (A) or (B) with respect to each material that is a non-originating material used in the production of that listed material, the sum of

(A) the customs value of each non-originating material imported by the producer of the listed material and used in the production of that listed material, and, where not included in that customs value, the costs referred to in subsections (2)(c) through (f), if the producer of the good has a statement signed by the producer of the listed material that states the customs value of that non-originating material and the costs referred to in subsections (2)(c) through (f) that the producer of the listed material incurred with respect to the non-originating material, and

(B) the value of each non-originating material that is not imported by the producer of the listed material, and is acquired and used in the production of the listed material, determined in accordance with subsection (2) with respect to the transaction in which the producer of the listed material acquired that non-originating material, if the producer of the good has a statement signed by the producer of the listed material that states the value of the acquired material, determined in accordance with subsection (2) with respect to the transaction in which the producer of the listed material acquired the non-originating material;

(c) for each listed material, automotive component assembly, automotive component or sub-component that is imported from outside the territories of the NAFTA countries, and is used by the producer in the production of the good,

(i) where it is imported by the producer, the customs value of that non-originating listed material, automotive component assembly, automotive component or sub-component, and, where not included in that customs value, the costs referred to in subsections (2)(c) through (f), and

(ii) where it is not imported by the producer, the value of that non-originating listed material, automotive component assembly, automotive component or sub-component, determined in accordance with subsection (2) with respect to the transaction in which the producer acquired it;

(d) for each automotive component assembly, automotive component or sub-component that is an originating material and is acquired and used by the producer in the production of the good, at the choice of the producer,

(i) the sum of

(A) the value of each non-originating listed material used in the production of the originating material, determined under paragraphs (a) and (b),

(B) the value of each non-originating material incorporated into the originating material, determined under paragraph (c),

(C) the value of each non-originating listed material used in the production of a material referred to in paragraph (e) that is used in the production of the originating material, determined under paragraphs (a) and (b), and

(D) where the value of a non-originating listed material referred to in clause (C), and used in the production of a non-originating automotive component assembly, automotive component or sub-component that is used in the production of the originating material, is not included under clause (C), the value of that automotive component assembly, automotive component or sub-component, determined under paragraph (e)(ii),

if the producer has a statement, signed by the person from whom the originating material was acquired, that states the sum of the values, as determined by the producer of the originating material under paragraphs (a), (b), (c) and (e) of each non-originating material referred to in any of clauses (A) through (D) that is incorporated into that originating material;

(ii) an amount equal to the number resulting from applying the following formula:

$$VM \times (1 - RVC)$$

where

VM is the value of the acquired material, determined in accordance with subsection (2), with respect to the transaction in which the producer of the good acquired that material, and

RVC is the regional value content of the acquired material, expressed as a decimal,

if the material is subject to a regional value-content requirement and the producer has a statement, signed by the person from whom the producer acquired that material, that states that the acquired material is an originating material and states the regional value content of the material,

(iii) an amount equal to the number resulting from applying the following formula:

$$VM \times (1 - RVCR)$$

where

VM is the value of the acquired material, determined in accordance with subsection (2), with respect to the transaction in which the producer of the good acquired that material, and

RVCR is the regional value-content requirement for the acquired material, expressed as a decimal,

if the material is subject to a regional value-content requirement and the producer has a statement, signed by the person from whom the producer acquired that material, that states that the acquired material is an originating material but does not state the value of non-originating materials with respect to that acquired material; or

(iv) the value of that automotive component assembly, automotive component or sub-component determined in accordance with subsection (2) with respect to the transaction in which the producer acquired the material;

(e) for each automotive component assembly, automotive component or sub-component that is a non-originating material produced in the territory of a NAFTA country and that is acquired by the producer and used by the producer in the production of the good, at the choice of the producer, either

(i) the sum of the values of the non-originating materials incorporated into that non-originating material that is acquired by the producer, determined under paragraphs (a), (b), (c), (d) and (f), if the producer has a statement, signed by the person from whom the non-originating material was acquired, that states the sum of the values of the non-originating materials incorporated into that non-originating material, determined by the producer of the non-originating material in accordance with paragraphs (a), (b), (c), (d) and (f), or

(ii) the value of that non-originating automotive component assembly, automotive component or sub-component, determined in accordance with subsection (2) with respect to the transaction in which the producer acquired the material; and

(f) for each non-originating material that is not referred to in paragraph (a), (b), (c) or (e) and that is used by the producer in the production of the good,

(i) where it is imported by the producer, the customs value of that non-originating material, and, where not included in that customs value, the costs referred to in subsections (2)(c) through (f), and

(ii) where it is not imported by the producer, the value of that non-originating material, determined in accordance with subsection (2) with respect to the transaction in which the producer acquired the material.

APPLICATION OF SCHEDULE VIII TO DETERMINE VNM; ADDITIONAL COSTS TO BE INCLUDED

(2) For purposes of subsection (1)(a)(ii)(B), subsection (1)(b)(i), subsection (1)(b)(ii)(B), subsections (1)(c)(ii), (1)(d)(ii) through (iv), (1)(e)(ii) and subsection (1)(f)(ii), the value of a material

(a) shall be the transaction value of the material, determined in accordance with section 2(1) of Schedule VIII with respect to the transaction referred to in that clause, subparagraph or paragraph, or

(b) where, with respect to the transaction referred to in that clause, subparagraph, or paragraph, there is no transaction value for the material under section 2(2) of Schedule VIII or the transaction value of the material is unacceptable under section 2(3) of that Schedule, shall be determined in accordance with sections 6 through 11 of that Schedule,

and shall include the following costs where they are not included under paragraph (a) or (b):

(c) the costs of freight, insurance and packing, and all other costs incurred in transporting the material to the location of the producer,

(d) duties and taxes paid or payable with respect to the material in the territory of one or more of the NAFTA countries, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable,

(e) customs brokerage fees, including the cost of in-house customs brokerage and customs clearance services, incurred with respect to the material in the territory of one or more of the NAFTA countries, and

(f) the cost of waste and spoilage resulting from the use of the material in the production of the good, minus the value of any reusable scrap or by-product.

VALUE OF IMPORTED MATERIAL IF CUSTOMS VALUE IS NOT IN ACCORDANCE WITH SCHEDULE VIII

(3) For purposes of subsections (1)(a)(ii)(A) and (b)(ii)(A) and subsections (1)(c)(i) and (f)(i), where the customs value of an imported material referred to in those clauses or paragraphs was not determined in a manner consistent with Schedule VIII, the value of the material shall be determined in accordance with Schedule VIII with respect to the importation for which that customs value was determined and, where the costs referred to in sections (2)(c) through (f) are not included in that value, those costs shall be added to the value of the material.

OPTION TO USE SECTION 9 TRACING RULES IN CERTAIN CIRCUMSTANCES

(4) For purposes of calculating the regional value content of a heavy-duty component, where

(a) a heavy-duty component is produced in the same plant as an automotive component assembly or automotive component that is of the same heading or subheading as that heavy-duty component and is for use as original equipment in a light-duty vehicle, and

(b) it is not reasonable for the producer to know which of the production will constitute a heavy-duty component for use in a heavy-duty vehicle,

the value of the non-originating materials used in the production of the heavy-duty component in that plant may, at the choice of the producer, be determined in the manner set out in section 9.

(5) For purposes of calculating the regional value content of a heavy-duty vehicle, where a producer of such a vehicle acquires, for use by that producer in the production of the vehicle, a heavy-duty component with respect to which the value of non-originating materials has been determined in accordance with subsection (4), the value of the non-originating materials used by the producer with respect to that heavy-duty component is the value of non-originating materials determined under that subsection.

VNM MAY BE REDETERMINED FOR CERTAIN ACQUIRED MATERIALS

(6) Where it is determined, during the course of a verification of origin of a heavy-duty automotive good with respect to which the producer of that good has a statement referred to in subsection (1)(d)(ii) or (iii) that the acquired material referred to in that statement is not an originating material, the value of the acquired material shall, for purposes of subsection (1), be determined in accordance with subsection (2) with respect to the transaction in which that producer acquired it.

EFFECT ON VALUE OF TRACED MATERIAL IF VALUE ON A STATEMENT CANNOT BE VERIFIED

(7) Where any person who has information with respect to a statement referred to in subsection (1)(b)(ii), (d)(i) or (e)(i) does not allow a customs administration to verify that information during a verification of origin, the value of any material with respect to which that person did not allow the customs administration to verify the information may be determined by that customs administration in accordance with subsection (2) with respect to the transaction in which that person sells, or otherwise transfers to another person, that material or a material that incorporates that material.

USE OF VALUE OF VNM AS DETERMINED UNDER SECTION 12(3) FOR TRACED MATERIAL INCORPORATED INTO ANOTHER MATERIAL

(8) Where a heavy-duty component, sub-component or listed material is incorporated into a material produced in the territory of a NAFTA country and that material is incorporated into a heavy-duty automotive good, the statement referred to in subsection (1)(b)(ii), (d)(i) or (e)(i) may state the value of non-originating materials, determined in accordance with section 12(3), with respect to the material that incorporates the heavy-duty component, sub-component or listed material.

INTERPRETATIONS AND CLARIFICATIONS FOR PROVISIONS APPLICABLE TO RULES FOR DETERMINING VNM FOR HEAVY-DUTY AUTOMOTIVE GOODS

(9) For purposes of this section,

(a) for purposes of calculating the regional value content of a heavy-duty automotive good, sub-component or listed material, a producer of such a good may, in accordance with section 7(4), designate as an intermediate material any self-produced material, other than a heavy-duty component or sub-component, that is used in the production of that good;

(b) except as otherwise provided in section 12(10), this section does not apply with respect to after-market parts;

(c) this section does not apply to a sub-component for purposes of calculating its regional value content before it is incorporated into a heavy-duty automotive good;

(d) for purposes of calculating the regional value content of a heavy-duty automotive good, the producer of that good may choose to treat any material used in the production of that good as a non-originating material, and the value of that material shall be determined in accordance with subsection (2) with respect to the transaction in which the producer acquired it;

(e) any information set out in a statement referred to in subsections (1)(b)(ii), (d)(i) through (iii) or (e)(i) that concerns the value of materials or costs shall be in the same currency as the currency of the country in which the person who provided the statement is located; and

(f) total cost under subsections (1)(a)(i) and (ii) consists of the costs referred to section 2(6), and is calculated in accordance with that section and section 2(7).

EXAMPLES OF APPLICATION OF RULES FOR DETERMINING VNM FOR HEAVY-DUTY AUTOMOTIVE GOODS

(10) Each of the following examples is an ''Example'' as referred to in section 2(4).

Example 1: A listed material is imported from outside the territories of the NAFTA countries

A cast head, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and used in that country in the production of an engine that will be used as original equipment in the production of a heavy-duty vehicle. No other non-originating materials are used in the production of the engine. The cast head is a listed material; the engine is an automotive component.

Situation 1: Use of the listed material in an automotive component

For purposes of calculating the regional value content of the engine, the value of listed materials imported from outside the territories of the NAFTA countries is included in the value of non-originating materials used in the production of the engine. Because the cast head was produced outside the territories of the NAFTA countries, its value, under section 10(1)(c), is included in the value of non-originating materials used in the production of the engine.

Situation 2: Use of an originating automotive component incorporating the listed material

The engine is an originating material acquired by the producer of the heavy-duty vehicle. For purposes of calculating the regional value content of the heavy-duty vehicle that incorporates that engine (and incorporates the cast head), the value of non-originating materials used in the production of the heavy-duty vehicle is determined under section 10(1)(d) with respect to that engine. The producer may choose to include in the value of non-originating materials of the heavy-duty vehicle

(a) the value, determined under section 10(1)(d)(i), of the non-originating materials that are incorporated into the engine, which is the value, determined under sections 10(1) (a) through (c) and paragraph (e)(ii), of the non-originating materials;

(b) the value, determined under section 10(1)(d)(ii), which is an amount equal to the amount determined under section 10(1)(d)(iv) multiplied by the remainder of one minus the regional value content, expressed as a decimal, of the engine;

(c) the value, determined under section 10(1)(d)(iii), which is an amount equal to the amount determined under section 10(1)(d)(iv) multiplied by the remainder of one minus the regional value-content requirement, expressed as a decimal, for the engine; or

(d) the value, determined under section 10(1)(d)(iv), of the engine.

The heavy-duty vehicle producer may only choose the first option if that producer has a statement, referred to in section 10(1)(d)(i), from the person from whom the engine was acquired. In this situation, the value, determined under section 10(1)(c), of the cast head, is included in the value of non-originating materials of the heavy-duty vehicle, with respect to the engine that is used in the production of the heavy-duty vehicle.

The heavy-duty vehicle producer may only choose the second option if that producer has a statement, referred to in section 10(1)(d)(ii), from the person from whom the engine was acquired. In this situation, because of the application of the equation, the value of the cast head will be included in the amount determined under section 10(1)(d)(ii) and is, consequently, included in the value of non-originating materials used in the production of the heavy-duty vehicle.

The heavy-duty vehicle producer may only choose the third option if that producer has a statement, referred to in section 10(1)(d)(iii), from the person from whom the engine was acquired. In this situation, because of the application of the equation, the value of the cast head will be included in the amount determined under section 10(1)(d)(iii) and is, consequently, included in the value of non-originating materials used in the production of the heavy-duty vehicle.

Situation 3: Use of a non-originating automotive component incorporating the listed material

The engine is a non-originating material acquired by the producer of the heavy-duty vehicle. For purposes of calculating the regional value content of the heavy-duty vehicle that incorporates that engine (and incorporates the cast head), the value of non-originating materials used in the production of the heavy-duty vehicle is determined under section 10(1)(e) with respect to that engine. The producer of the heavy-duty vehicle may choose to include in the value of non-originating materials either

(a) the value, as determined under section 10(1)(e)(i), of the non-originating materials that are incorporated into the engine, which is the value of the non-originating materials as determined under sections 10(1)(a) through (d) and (f), or

(b) the value of the engine, determined under section 10(1)(e)(ii).

The heavy-duty vehicle producer may only choose the first option if that producer has a statement, referred to in section 10(1)(e)(i), from the person from whom the engine was acquired. In this situation, the value of the cast head, as determined under section 10(1)(c), is included in the value of non-originating materials used in the production of the heavy-duty vehicle, with respect to the engine that is used in the production of the heavy-duty vehicle.

Example 2: A material is imported from outside the territories of the NAFTA countries

A rocker arm assembly, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and used in that country in the production of an engine that will be used as original equipment in the production of a heavy-duty vehicle. No other non-originating materials are used in the production of the engine. The rocker arm assembly is neither a listed material nor a sub-component; the engine is an automotive component.

Situation 1: Use of the material in an automotive component

For purposes of calculating the regional value content of the engine, the value of non-originating materials that are not listed materials is included in the value of non-originating materials used in the production of the engine. Because the rocker arm assembly was produced outside the territories of the NAFTA countries, it is a non-originating material and its value, under section 10(1)(f), is included in the value of non-originating materials used in the production of the engine.

Situation 2: Use of an originating automotive component incorporating the material

The engine is an originating material acquired by the producer of the heavy-duty vehicle. For purposes of calculating the regional value content of the heavy-duty vehicle that incorporates that engine (and incorporates the rocker arm assembly), the value of non-originating materials used in the production of the heavy-duty vehicle is determined under section 10(1)(d) with respect to that engine. The producer may choose to include in the value of non-originating materials of the heavy-duty vehicle

(a) the value, determined under section 10(1)(d)(i), of the non-originating materials that are incorporated into the engine, which is the value, determined under sections 10(1) (a) through (c) and paragraph (e)(ii), of the non-originating materials;

(b) the value, determined under section 10(1)(d)(ii), which is an amount equal to the amount determined under section 10(1)(d)(iv) multiplied by the remainder of one minus the regional value content, expressed as a decimal, of the engine;

(c) the value, determined under section 10(1)(d)(iii), which is an amount equal to the amount determined under section 10(1)(d)(iv) multiplied by the remainder of one minus the regional value-content requirement, expressed as a decimal, for the engine; or

(d) the value, determined under section 10(1)(d)(iv), of the engine.

The heavy-duty vehicle producer may only choose the first option if that producer has a statement, referred to in section 10(1)(d)(i), from the person from whom the engine was acquired. In this situation, the value of the rocker arm assembly, as determined under section 10(1)(f), is not included in the value of non-originating materials of the heavy-duty vehicle, with respect to the engine that is used in the production of the heavy-duty vehicle.

The heavy-duty vehicle producer may only choose the second option if that producer has a statement, referred to in section 10(1)(d)(ii), from the person from whom the engine was acquired. In this situation, because of the application of the equation, the value of the rocker arm assembly will be included in the amount determined under section 10(1)(d)(ii) and will, consequently, be included in the value of non-originating materials used in the production of the heavy-duty vehicle.

The heavy-duty vehicle producer may only choose the third option if that producer has a statement, referred to in section 10(1)(d)(iii), from the person from whom the engine was acquired. In this situation, because of the application of the equation, the value of the rocker arm assembly will be included in the amount determined under section 10(1)(d)(iii) and will, consequently, be included in the value of non-originating materials used in the production of the heavy-duty vehicle.

Situation 3: Use of a non-originating automotive component incorporating the material

The engine is a non-originating material acquired by the producer of the heavy-duty vehicle. For purposes of calculating the regional value content of the heavy-duty vehicle that incorporates that engine (and incorporates the rocker arm assembly), the value of non-originating materials used in the production of the heavy-duty vehicle is determined under section 10(1)(e) with respect to that engine. The producer of the heavy-duty vehicle may choose to include in the value of non-originating materials either

(a) the value, as determined under section 10(1)(e)(i), of the non-originating materials that are incorporated into the engine, which is the value of the non-originating materials as determined under sections 10(1) (a) through (d) and (f), or

(b) the value of the engine, determined under section 10(1)(e)(ii).

The heavy-duty vehicle producer may only choose the first option if that producer has a

statement, referred to in section 10(1)(e)(i), from the person from whom the engine was acquired. In this situation, the value of the rocker arm assembly, as determined under section 10(1)(f), is included in the value of non-originating materials used in the production of the heavy-duty vehicle, with respect to the engine that is used in the production of the heavy-duty vehicle.

Situation 4: Use of the material in a self-produced automotive component

If the engine is a self-produced material rather than an acquired material, the heavy-duty vehicle producer is using the rocker arm assembly in the production of the heavy-duty vehicle rather than in the production of the engine, because, under section 7(4), the engine cannot be designated as an intermediate material. For purposes of calculating the regional value content of the heavy-duty vehicle, the value, under section 10(1)(f), of the rocker arm assembly is included in the value of non-originating materials used in the production of the heavy-duty vehicle.

Example 3: An automotive component is imported from outside the territories of the NAFTA countries

A transmission, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and used in that country as original equipment in the production of a heavy-duty vehicle. The transmission is an automotive component.

Situation: Use of the automotive component

For purposes of calculating the regional value content of the heavy-duty vehicle in which the transmission is used, the value of the transmission is included in the value of the non-originating materials under section 10(1)(c), regardless of whether the producer imported the transmission or acquired it from someone else in the territory of a NAFTA country.

Example 4: An automotive component is imported from outside the territories of the NAFTA countries

A transmission, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and combined with an engine to produce an engine-transmission assembly that will be used as original equipment in the production of a heavy-duty vehicle. The transmission is an automotive component; the engine-transmission assembly is an automotive component assembly.

Situation: Use of the automotive component assembly

The automotive component assembly is acquired by a producer who uses it in the production of a heavy-duty vehicle. If the automotive component assembly that incorporates the imported transmission is an originating material, the value of non-originating materials used in the production of the automotive component assembly is determined, at the choice of the producer, under any of section 10(1)(d) (i), (ii), (iii) and (iv). (See example 1 for more detailed explanations of these provisions.) If the automotive component assembly that incorporates the imported transmission is a non-originating material, the value of non-originating materials used in the production of the automotive component assembly is determined, at the choice of the producer, under section 10(1)(e) (i) or (ii). (See example 1 for more detailed explanations of these provisions.)

Regardless of whether the automotive component assembly is an originating material or a non-originating material, the value of the automotive component that was imported from outside the territories of the NAFTA countries is included in the value of non-originating materials used in the production of the heavy-duty vehicle. The transmission is a non-originating material, and, for purposes of calculating the regional value content of an automotive component assembly or heavy-duty vehicle that incorporates that transmission, the value of the transmission is included in the value of non-originating materials used in the production of the automotive component assembly or heavy-duty vehicle that incorporates it.

Example 5: A material is imported from outside the territories of the NAFTA countries

An aluminum ingot, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and used in that country in the production of cast block that will be used in an engine that will be used as original equipment in the production of a heavy-duty vehicle. The aluminum ingot is not a listed material; the cast block is a listed material; the engine is an automotive component.

Situation 1: Use of the material in an intermediate material that is a listed material

The engine producer designates the cast block as an intermediate material under section 7(4). For purposes of determining the origin of that cast block, because the aluminum ingot is classified under a different heading than the cast block, the cast block satisfies the applicable change in tariff classification and is an originating material.

Situation 2: Use of the listed material incorporating the material

For purposes of calculating the regional value content of the engine that incorporates that cast block (and thus incorporates the aluminum ingot), the value of non-originating materials is determined under section 10(1). Because none of sections 10(1) (a) through (f) require that a listed material that is an originating material be included in the value of non-originating materials used in the production of a good, the value of the cast block is not included in the

value of non-originating materials used in the production of the engine or in the value of non-originating materials used in the production of an automotive component assembly or heavy-duty vehicle that incorporates the engine.

Because section 10(1)(d) does not refer to a listed material that is an originating material, the value of the non-originating aluminum ingot used in the production of the originating cast block is not included in the value of non-originating materials used in the production of any good or material that incorporates the originating cast block.

Example 6: A non-originating listed material is used to produce a sub-component that is used to produce another sub-component

A crankshaft, produced in the territory of NAFTA country A from a forging imported from outside the territories of the NAFTA countries, is a non-originating material. The crankshaft is sold to another producer, located in the same country, who uses it to produce an originating block assembly. That block assembly is sold to another producer, also located in the same country, who uses it to produce a finished block. The finished block is sold to a producer of engines, who is located in NAFTA country B, for use in the production of a heavy-duty vehicle. The crankshaft is a listed material; the block assembly is a sub-component, as is the finished block.

Situation 1: Calculating the regional value content of the finished block

A sub-component is not a heavy-duty automotive good. As referred to in section 10(9)(c), for purposes of calculating the regional value content of the sub-component before it is incorporated into a heavy-duty automotive good, such as when the sub-component is exported from the territory of one NAFTA country to the territory of another NAFTA country, the value of non-originating materials of the sub-component includes only the value of non-originating materials used in the production of that sub-component. Because the block assembly is an originating material, its value is not included in the value of non-originating materials of the finished block, nor is the value of the non-originating crankshaft included in the value of non-originating materials used in the production of the finished block because the crankshaft was used in the production of the block assembly and was not used in the production of the finished block.

Situation 2: Calculating the regional value content of the component that incorporates the finished block

For purposes of calculating the regional value content of the heavy-duty vehicle that incorporates a sub-component, the value of non-originating materials used in the production of the sub-component is determined under section 10(1) (d) or (e) with respect to that sub-component. In this situation, the value, under section 10(1)(b), of the non-originating crankshaft is included in the value of non-originating materials used in the production of the engine. (See examples 1 and 2 for more detailed explanations of sections 10(1) (d) and (e).)

Example 7: A non-listed material is imported from outside the territories of the NAFTA countries and is used in the production of another non-listed material

A bumper part, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and is used in the production of a bumper. The bumper is used in the territory of a NAFTA country as original equipment in the production of a heavy-duty vehicle. Neither a bumper part nor a bumper is a listed material, sub-component, automotive component or automotive component assembly.

Situation 1: The non-listed material is an originating material

The bumper is an originating material. For purposes of calculating the regional value content of the heavy-duty vehicle, neither the value of the imported bumper part nor the value of the bumper is included in the value of the non-originating materials.

Situation 2: The non-listed material is a non-originating material

The bumper is a non-originating material. For purposes of calculating the regional value content of the heavy-duty vehicle, the value of non-originating materials used in the production of the heavy-duty vehicle is determined under section 10(1)(f) with respect to the bumper. In this situation, the value of the bumper is included in the value of non-originating materials of the heavy-duty vehicle. Because a bumper is not a listed material, the producer of the heavy-duty vehicle does not have the option, under section 10(1)(b)(ii), to include only the value of the imported bumper part in the value of non-originating materials used in the production of the heavy-duty vehicle.

Example 8:

Situation: Transhipment of a listed material

A producer, located in the territory of a NAFTA country, produces, in that country, a cast head that is an originating good. The producer exports the cast head to outside the territories of the NAFTA territories, where valves, springs, valve lifters, a camshaft and gears are added to it to create a cast head assembly. An engine producer, located in the territory of a NAFTA country, imports the cast head assembly into that country and uses it in the production of an engine that will be used as original equipment in the production of a heavy-duty vehicle. A cast head is a listed material; a cast head assembly is a sub-component.

For purposes of calculating the regional value content of the engine, the value of the imported cast head assembly is included in

the value of non-originating materials under section 10(1)(c). The value of the cast head cannot be deducted from the value determined under section 10(1)(c). Although the cast head was once an originating good, under section 18 when further production was performed with respect to the cast head outside the territories of the NAFTA countries, it was no longer an originating good.

Example 9: A material is imported from outside the territories of the NAFTA countries and a heavy-duty vehicle producer self-produces a non-originating listed material

A material, produced outside the territories of the NAFTA countries, is imported into the territory of a NAFTA country and used in that country in the production of a water pump that will be used as original equipment by the same producer in the production of a heavy-duty vehicle. Although the producer, under section 7(4), designates the water pump as an intermediate material it is a non-originating material because it fails to satisfy the regional value-content requirement. A water pump is a listed material.

For purposes of calculating the regional value content of the heavy-duty vehicle, the value of non-originating materials includes, at the choice of the producer, either the total cost, determined under section 10(1)(a)(i), of the water pump or the value, determined under section 10(1)(a)(iii)(A), of the material imported from outside the territories of the NAFTA countries.

Example 10: A material is acquired and used to produce a non-originating listed material

A material, produced outside the territories of the NAFTA countries, is acquired in the territory of a NAFTA country and is used in that country in the production of a water pump that will be used as original equipment in the production of a heavy-duty vehicle. The producer of the water pump and the producer of the heavy-duty vehicle are separate, unrelated producers, located in the same country. A water pump is a listed material. The producer of the water pump chose to calculate the regional value content of the water pump in accordance with section 12(1) over a period set out in section 12(5)(a) and using a category set out in section 12(4)(b). The water pump is a non-originating material because it fails to satisfy the regional value-content requirement.

For purposes of calculating the regional value content of the heavy-duty vehicle, the value of non-originating materials includes, at the choice of the producer, either the value, determined under section 10(1)(b)(i), of the water pump or, if the producer has a statement referred to in section 10(1)(b)(ii)(B), the value, determined under that section, of the material imported from outside the territories of the NAFTA countries.

The producer has a statement referred to in section 10(1)(b)(ii)(B) and chooses to use the value of non-originating material determined under that section. The statement states, as is permitted under section 10(8), the value of non-originating material used in the production of the water pump in accordance with section 12(3) over a period set out in section 12(5)(a) and using a category set out in section 12(4)(e).

SECTION 11. MOTOR VEHICLE AVERAGING

NC AND VNM FOR MOTOR VEHICLES MAY BE AVERAGED OVER PRODUCER'S FISCAL YEAR

(1) For purposes of calculating the regional value content of light-duty vehicles or heavy-duty vehicles, the producer of those motor vehicles may choose that

(a) the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer be calculated over the producer's fiscal year with respect to the motor vehicles that are in any one of the categories set out in subsection (5) that is chosen by the producer; and

(b) the sums referred to in paragraph (a) be used in the calculation referred to in section 6(3) as the net cost and the value of non-originating materials, respectively.

INFORMATION REQUIRED WHEN PRODUCER CHOOSES TO AVERAGE FOR MOTOR VEHICLES

(2) A choice made under subsection (1) shall

(a) state the category chosen by the producer, and

(i) where the category referred to in subsection (5)(a) is chosen, state the model line, model name, class of motor vehicle and tariff classification of the motor vehicles in that category, and the location of the plant at which the motor vehicles are produced,

(ii) where the category referred to in subsection (5)(b) is chosen, state the model name, class of motor vehicle and tariff classification of the motor vehicles in that category, and the location of the plant at which the motor vehicles are produced, and

(iii) where the category referred to in subsection (5)(c) is chosen, state the model line, model name, class of motor vehicle and tariff classification of the motor vehicles in that category, and the locations of the plants at which the motor vehicles are produced;

(b) state the basis of the calculation described in subsection (9);

(c) state the producer's name and address;

(d) state the period with respect to which the choice is made, including the starting and ending dates;

(e) state the estimated regional value content of motor vehicles in the category on the basis stated under paragraph (b);
(f) be dated and signed by an authorized officer of the producer; and
(g) be filed with the customs administration of each NAFTA country to which vehicles in that category are to be exported during the period covered by the choice, at least 10 days before the first day of the producer's fiscal year, or such shorter period as that customs administration may accept.

AVERAGING PERIOD

(3) Where the fiscal year of a producer begins after the date of the entry into force of the Agreement but before one year after that date, the producer may choose that the calculation of regional value content referred to in subsection (1) or (6) be made under that subsection over the period beginning on the date of the entry into force of the Agreement and ending at the end of that fiscal year, in which case the choice shall be filed with the customs administration of each NAFTA country to which vehicles are to be exported during the period covered by the choice not later than 10 days after the entry into force of the Agreement, or such longer period as that customs administration may accept.
(4) Where the fiscal year of a producer begins on the date of the entry into force of the Agreement, the producer may make the choice referred to in subsection (1) not later than 10 days after the entry into force of the Agreement, or such longer period as the customs administration referred to in subsection (2)(g) may accept.

CATEGORIES OF MOTOR VEHICLES FOR AVERAGING

(5) The categories referred to in subsection (1) are the following:
(a) the same model line of motor vehicles in the same class of motor vehicles produced in the same plant in the territory of a NAFTA country;
(b) the same class of motor vehicles produced in the same plant in the territory of a NAFTA country; and
(c) the same model line of motor vehicles produced in the territory of a NAFTA country.
(6) Where applicable, a producer may choose that the calculation of the regional value content of motor vehicles referred to in Schedule VI be made in accordance with that schedule.

TIMELY FILING OF CHOICE TO AVERAGE

(7) Subject to section 5(4) of Schedule VI, the choice referred to in subsection (6) shall be filed with the customs administration of the NAFTA country to which vehicles referred to in that schedule are to be exported, at least 10 days before the first day of the producer's fiscal year with respect to which that choice is to apply or such shorter period as the customs administration may accept.

CHOICE TO AVERAGE CANNOT BE RESCINDED

(8) A choice filed for the period referred to in subsection (1) or (3) may not be
(a) rescinded; or
(b) modified with respect to the category or basis of calculation.

AVERAGED NET COST AND VNM INCLUDED IN CALCULATION OF RVC ON THE BASIS OF PRODUCER'S OPTION TO INCLUDE ALL VEHICLES OF CATEGORY OR ONLY CERTAIN EXPORTED VEHICLES OF CATEGORY

(9) For purposes of this section, where a producer files a choice under subsection (1), (3) or (4), including a choice referred to in section 13(9), the net cost incurred and the values of non-originating materials used by the producer, with respect to
(a) all motor vehicles that fall within the category chosen by the producer and that are produced during the fiscal year or, in the case of a choice filed under subsection (3), during the period with respect to which the choice is made, or
(b) those motor vehicles to be exported to the territory of one or more of the NAFTA countries that fall within the category chosen by the producer and that are produced during the fiscal year or, in the case of a choice filed under subsection (3), during the period with respect to which the choice is made,
shall be included in the calculation of the regional value content under any of the categories set out in subsection (5).

YEAR-END ANALYSIS REQUIRED IF AVERAGING BASED ON ESTIMATED COSTS; OBLIGATION TO NOTIFY OF CHANGE IN STATUS

(10) Where the producer of a motor vehicle has calculated the regional value content of the motor vehicle on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the producer's fiscal year, the producer shall conduct an analysis at the end of the producer's fiscal year of the actual costs incurred over the period with respect to the production of the motor vehicle, and, if the motor vehicle does not satisfy the regional value content requirement on the basis of the actual costs, immediately inform any person to whom the producer has provided a Certificate of Origin for the motor vehicle, or a written statement that the motor vehicle is an originating good, that the motor vehicle is a non-originating good.
(11) The following example is an ''Example'' as referred to in section 2(4).
Example:

A motor vehicle producer located in NAFTA country A produces vehicles that fall within a category set out in section 11(5) that is chosen by the producer. The motor vehicles are to be sold in NAFTA countries A, B and C, as well as in country D, which is not a NAFTA country. Under section 11(1), the motor vehicle producer may choose that the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer be calculated over the producer's fiscal year. The producer may state in the choice the basis of the calculation as described in section 11(9)(a), in which case the calculation would be on the basis of all the motor vehicles produced regardless of where they are destined. Alternatively, the producer may state in the choice the basis of the calculation as described in section 11(9)(b). In this case, the producer would also need to state that the calculation is on the basis of

(a) the motor vehicles produced that are for export to NAFTA countries B and C;

(b) the motor vehicles produced that are for export to only NAFTA country B; or

(c) the motor vehicles produced that are for export to only NAFTA country C.

The calculation would be on the basis as described in the choice.

SECTION 12. AUTOMOTIVE PARTS AVERAGING

NC AND VNM FOR AUTOMOTIVE PARTS MAY BE AVERAGED TO DETERMINE RVC OF PARTS

(1) The regional value content of any or all goods that are of the same tariff provision listed in Schedule IV, or an automotive component assembly, an automotive component, a sub-component or a listed material, produced in the same plant, may, where the producer of those goods chooses to do so, be calculated by

(a) calculating the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer of the goods over the period set out in subsection (5) that is chosen by the producer with respect to any or all of those goods in any one of the categories set out in subsection (4) that is chosen by the producer; and

(b) using the sums referred to in paragraph (a) in the calculation referred to in section 6(3) as the net cost and the value of non-originating materials, respectively.

(2) The calculation of the regional value content made under subsection (1) shall apply with respect to each unit of the goods in the category set out in subsection (4) that is chosen by the producer and produced during the period chosen by the producer under subsection (5).

VNM FOR EACH UNIT IN A CATEGORY OF GOODS FOR WHICH AVERAGING USED

(3) The value of non-originating materials of each unit of the goods

(a) in the category set out in subsection (4) chosen by the producer, and

(b) produced during the period chosen by the producer under subsection (5),

shall be the sum of the values of non-originating materials referred to in subsection (1)(a) divided by the number of units of the goods in that category and produced during that period.

CATEGORIES OF AUTOMOTIVE PARTS FOR AVERAGING

(4) The categories referred to in subsection (1)(a) are the following:

(a) original equipment for use in the production of light- duty vehicles;

(b) original equipment for use in the production of heavy-duty vehicles;

(c) after-market parts;

(d) any combination of goods referred to in paragraphs (a) through (c);

(e) goods that are in a category set out in any of paragraphs (a) through (d) and are sold to one or more motor vehicle producers; and

(f) goods that are in a category set out in any of paragraphs (a) through (e) and are exported to the territory of one or more of the NAFTA countries.

PERIODS FOR AVERAGING RVC FOR AUTOMOTIVE PARTS

(5) The period referred to in subsection (1)(a) is,

(a) with respect to goods referred to in subsection (4)(a), (b) or (d), or subsection 4(e) or (f) where the goods in that category are in a category referred to in subsection 4(a) or (b), any month, any consecutive three month period that is evenly divisible into the number of months of the producer's fiscal year, or of the fiscal year of the motor vehicle producer to whom those goods are sold, remaining at the beginning of that period, or the fiscal year of that motor vehicle producer to whom those goods are sold; and

(b) with respect to goods referred to in subsection (4)(c), or subsection (4)(e) or (f) where the goods in that category are in a category referred to in subsection (4)(c), any month, any consecutive three month period that is evenly divisible into the number of months of the producer's fiscal year, or of the fiscal year of the motor vehicle producer to whom those goods are sold, remaining at the beginning of that period, or the fiscal year of that producer or of that motor vehicle producer to whom those goods are sold.

CHOICE TO AVERAGE MAY NOT BE RESCINDED

(6) A choice made under subsection (1) may not be rescinded or modified with respect to the goods or the period with respect to which the choice is made.

(7) Where a producer of goods chooses a one or three month period under subsection (5) with respect to the goods referred to in subsection (5)(a), that producer shall be considered to have chosen under that subsection a period or periods of the same duration for

(a) the remainder of the fiscal year of the motor vehicle producer to whom those goods are sold, where the producer chooses under subsection (9)(a) the fiscal year of that motor vehicle producer; and

(b) the remainder of the fiscal year of the producer of those goods, where the producer does not choose under subsection (9)(a) the fiscal year of the motor vehicle producer to whom the goods are sold.

(8) Where a producer of goods chooses a one or three month period under subsection (5) with respect to the goods referred to in subsection (5)(b), that producer shall be considered to have chosen under that subsection a period or periods of the same duration for the remainder of, at the choice of the producer, the producer's fiscal year or the fiscal year of the motor vehicle producer to whom those goods are sold.

(9) Where a producer of goods chooses a one or three month period under subsection (5) with respect to the goods, the producer may,

(a) with respect to goods referred to in subsection (5)(a), at the end of the fiscal year of the motor vehicle producer to whom those goods are sold, choose the fiscal year of that motor vehicle producer; and

(b) with respect to goods referred to in subsection (5)(b), at the end of the producer's fiscal year or the fiscal year of the motor vehicle producer to whom those goods are sold, as the case may be, choose the producer's fiscal year or the fiscal year of that motor vehicle producer.

APPLICABLE METHOD FOR AVERAGING VNM UNDER DIFFERENT CATEGORIES

(10) Where a producer chooses that the regional value content of goods be calculated in accordance with subsection (1) and the goods are in any of the categories set out in subsections (4) (d) through (f), the value of non-originating materials

(a) shall be determined in the manner set out in section 9, where any of those goods are light-duty automotive goods;

(b) shall be determined in the manner set out in section 10, where any of those goods are heavy-duty automotive goods but none of the goods are light-duty automotive goods; and

(c) shall be determined in the manner set out in section 7, where none of those goods are light-duty automotive goods or heavy-duty automotive goods.

YEAR-END ANALYSIS REQUIRED IF AVERAGING BASED ON ESTIMATED COSTS; OBLIGATION TO NOTIFY OF CHANGE IN STATUS

(11) Where the producer of a good has calculated the regional value content of the good on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the period chosen under subsection (1), the producer shall conduct an analysis, at the end of the producer's fiscal year following the end of that period, of the actual costs incurred over the period with respect to the production of the good and, if the good does not satisfy the regional value content requirement on the basis of the actual costs during that period, immediately inform any person to whom the producer has provided a Certificate of Origin for the good, or a written statement that the good is an originating good, that the good is a non-originating good.

SECTION 13. SPECIAL REGIONAL VALUE-CONTENT REQUIREMENTS

CHANGES IN REGIONAL VALUE CONTENT LEVEL FOR AUTOMOTIVE GOODS

(1) Notwithstanding the regional value-content requirement set out in Schedule I, and except as otherwise provided in subsection (2), the regional value-content requirement for a good referred to in paragraph (a) or (b) is as follows:

(a) for the fiscal year of a producer that begins on the day closest to January 1, 1998 and for the three following fiscal years of that producer, not less than 56 percent, and for the fiscal year of a producer that begins on the day closest to January 1, 2002 and thereafter, not less than 62.5 percent, in the case of

(i) a light-duty vehicle, and

(ii) a good provided for in any of headings 8407 and 8408 and subheading 8708.40, that is for use in a light-duty vehicle; and

(b) for the fiscal year of a producer that begins on the day closest to January 1, 1998 and for the three following fiscal years of that producer, not less than 55 percent, and for the fiscal year of a producer that begins on the day closest to January 1, 2002 and thereafter, not less than 60 percent, in the case of

(i) a heavy-duty vehicle,

(ii) a good provided for in any of headings 8407 and 8408 and subheading 8708.40 that is for use in a heavy-duty vehicle, and

(iii) except in the case of a good referred to in paragraph (a)(ii) or provided for in any of subheadings 8482.10 through 8482.80, 8483.20 and 8483.30, a good of a tariff provision listed in Schedule IV that is

subject to a regional value-content requirement and is for use in a light-duty vehicle or a heavy-duty vehicle.

REGIONAL VALUE CONTENT LEVEL FOR MOTOR VEHICLES PRODUCED IN A NEW PLANT OR IN A REFIT PLANT

(2) Notwithstanding the regional value-content requirement set out in Schedule I, the regional value-content requirement for a light-duty vehicle or a heavy-duty vehicle that is produced in a plant is as follows:

(a) not less than 50 percent for five years after the date on which the first prototype of the motor vehicle is produced in the plant by a motor vehicle assembler, if

(i) the motor vehicle is of a class, marque or, except in the case of a heavy-duty vehicle, size category and type of underbody, that was not previously produced by the motor vehicle assembler in the territory of any of the NAFTA countries,

(ii) the plant consists of, or includes, a new building in which the motor vehicle is assembled, and

(iii) the value of machinery that was never previously used for production, and that is used in the new building or buildings for the purposes of the complete motor vehicle assembly process with respect to that motor vehicle, is at least 90 percent of the value of all machinery used for purposes of that process; and

(b) not less than 50 percent for two years after the date on which the first prototype of the motor vehicle is produced in the plant by a motor vehicle assembler following a refit of that plant, if the motor vehicle is of a class, marque or, except in the case of a heavy-duty vehicle, size category and type of underbody, that was not assembled by the motor vehicle assembler in the plant before the refit.

VALUE OF MACHINERY IN A NEW PLANT

(3) For purposes of subsection (2)(a)(iii), the value of machinery shall be

(a) where the machinery was acquired by the producer of the motor vehicle from another person, the cost of that machinery that is recorded on the books of the producer;

(b) where the machinery was used previously by the producer of the motor vehicle in the production of another good, the cost of the machinery that is recorded on the books of the producer minus accumulated depreciation of that machinery that is recorded on those books; and

(c) where the machinery was produced by the producer of the good, the total cost incurred with respect to that machinery, calculated on the basis of the costs that are recorded on the books of the producer.

AVERAGING PERIOD FOR CALCULATION OF RVC FOR VEHICLES OF NEW PLANT OR REFIT PLANT

(4) For purposes of calculating the regional value content of a motor vehicle referred to in subsection (2) that is in any one of the categories set out in subsection (7) that is chosen by the producer, the producer may file with the customs administration of the NAFTA country into the territory of which vehicles in that category are to be imported a choice to calculate the regional value content of such vehicles by

(a) calculating the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer with respect to all of such motor vehicles in the category chosen over

(i) the period beginning on the day on which the first prototype of the motor vehicle is produced and ending on the last day of the producer's first fiscal year that begins on or after the beginning of the period,

(ii) a fiscal year of the producer that starts after the period referred to in subparagraph (i) and ends on or before the end of the period referred to in subsection (2)(a) or (b), or

(iii) the period beginning on the first day of the producer's fiscal year that begins before the end of the period referred to in subsection (2)(a) or (b) and ending at the end of that period; and

(b) using the sums referred to in paragraph (a) in the calculation referred to in section 6(3) as the net cost and the value of non-originating materials, respectively.

INFORMATION REQUIRED ON DOCUMENT FILED WHEN CHOOSING TO AVERAGE; TIMELY FILING;

(5) A choice made under subsection (4) shall

(a) state the category chosen by the producer and

(i) where the category referred to in subsection (7)(a) is chosen, the model name, model line, class of motor vehicle and tariff classification of the motor vehicles in that category, and the location of the plant at which the motor vehicles are produced, and

(ii) where the category referred to in subsection (7)(b) is chosen, state the model name, class of motor vehicle and tariff classification of the motor vehicles in that category, and the plant location at which the motor vehicles are produced;

(b) state the basis of the calculation described in subsection (8);

(c) state the producer's name and address;

(d) state the period with respect to which the choice is made, including the starting and ending dates;

(e) state the estimated regional value content of motor vehicles in the category on the basis stated under paragraph (b);

(f) state whether the choice is with respect to a motor vehicle referred to in subsection (2)(a) or (b);

(g) be dated and signed by an authorized officer of the producer; and

(h) be filed with the customs administration of each NAFTA country to which vehicles in that category are to be exported during the period covered by the choice, at least 10 days before the first day of the producer's fiscal year, or such shorter period as that customs administration may accept.

NO RESCISSION OR MODIFICATION PERMITTED

(6) A choice filed for the period referred to in subsection (4) may not be

(a) rescinded; or

(b) modified with respect to the category or basis of calculation.

CATEGORIES OF MOTOR VEHICLES FOR AVERAGING

(7) The categories referred to in subsection (4) are the following:

(a) the same model line of motor vehicles in the same class of motor vehicles produced in the same plant in the territory of a NAFTA country; and

(b) the same class of motor vehicles produced in the same plant in the territory of a NAFTA country.

(8) For purposes of subsection (4), the net cost incurred and the values of non-originating materials used by the producer, with respect to

(a) all motor vehicles that fall within the category chosen by the producer and that are produced during the period with respect to which the choice is made, or

(b) those motor vehicles to be exported to the territory of one or more of the NAFTA countries that fall within the category chosen by the producer and that are produced during the period with respect to which the choice is made,

shall be included in the calculation of the regional value content under any of the categories set out in subsection (7).

PERIOD FOR AVERAGING RVC OF MOTOR VEHICLES OF NEW OR REFIT PLANT

(9) Where the period referred to in subsection (4) ends on a day other than the last day of the producer's fiscal year, the producer may, for purposes of section 11, make the choice referred to in that section with respect to

(a) the period beginning on the day following the end of that period and ending on the last day of that fiscal year; or

(b) the period beginning on the day following the end of that period and ending on the last day of the following full fiscal year.

YEAR-END ANALYSIS REQUIRED IF AVERAGING BASED ON ESTIMATED COSTS; OBLIGATION TO NOTIFY OF CHANGE IN STATUS

(10) Where the producer of a motor vehicle has calculated the regional value content of the motor vehicle on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the producer's fiscal year, the producer shall conduct an analysis at the end of the producer's fiscal year of the actual costs incurred over the period with respect to the production of the motor vehicle, and, if the motor vehicle does not satisfy the regional value-content requirement on the basis of the actual costs, immediately inform any person to whom the producer has provided a Certificate of Origin for the motor vehicle, or a written statement that the motor vehicle is an originating good, that the motor vehicle is a non-originating good.

PART VI

GENERAL PROVISIONS

SECTION 14. ACCUMULATION

OPTION TO DETERMINE ORIGIN OF GOOD BY ACCUMULATING THE PRODUCTION OF A MATERIAL WITH PRODUCTION OF THE GOOD IN WHICH THE MATERIAL IS USED

(1) Subject to subsections (2) and (4), for purposes of determining whether a good is an originating good, an exporter or producer of a good may choose to accumulate the production, by one or more producers in the territory of one or more of the NAFTA countries, of materials that are incorporated into that good so that the production of the materials shall be considered to have been performed by that exporter or producer.

STATEMENT REQUIRED; INFORMATION AS TO NET COST AND VALUE OF NON-ORIGINATING MATERIALS FROM PRODUCTION OF MATERIAL IF ACCUMULATING FOR REGIONAL VALUE CONTENT REQUIREMENT

(2) Where a good is subject to a regional value-content requirement and an exporter or producer of the good has a statement signed by a producer of a material that is used in the production of the good that

(a) states the net cost incurred and the value of non-originating materials used by the producer of the material in the production of that material,

(i) the net cost incurred by the producer of the good with respect to the material shall be the net cost incurred by the producer of the material plus, where not included in the net cost incurred by the producer of the material, the costs referred to in sections 7(1)(c) through (e), and

(ii) the value of non-originating materials used by the producer of the good with respect to the material shall be the value of non-originating materials used by the producer of the material; or

(b) states any amount, other than an amount that includes any of the value of non-originating materials, that is part of the net cost incurred by the producer of the material in the production of that material,

(i) the net cost incurred by the producer of the good with respect to the material shall be the value of the material, determined in accordance with section 7(1), and

(ii) the value of non-originating materials used by the producer of the good with respect to the material shall be the value of the material, determined in accordance with section 7(1), minus the amount stated in the statement.

AVERAGING OF COSTS FROM ACCUMULATED PRODUCTION

(3) Where a good is subject to a regional value-content requirement and an exporter or producer of the good does not have a statement described in subsection (2) but has a statement signed by a producer of a material that is used in the production of the good that

(a) states the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer of the material in the production of that material and identical materials or similar materials, or any combination thereof, produced in a single plant by the producer of the material over a month or any consecutive three, six or twelve month period that falls within the fiscal year of the producer of the good, divided by the number of units of materials with respect to which the statement is made,

(i) the net cost incurred by the producer of the good with respect to the material shall be the sum of the net costs incurred by the producer of the material with respect to that material and the identical materials or similar materials, divided by the number of units of materials with respect to which the statement is made, plus, where not included in the net costs incurred by the producer of the material, the costs referred to in sections 7(1) (c) through (e), and

(ii) the value of non-originating materials used by the producer of the good with respect to the material shall be the sum of the values of non-originating materials used by the producer of the material with respect to that material and the identical materials or similar materials divided by the number of units of materials with respect to which the statement is made; or

(b) states any amount, other than an amount that includes any of the values of non-originating materials, that is part of the sum of the net costs incurred by the producer of the material in the production of that material and identical materials or similar materials, or any combination thereof, produced in a single plant by the producer of the material over a month or any consecutive three, six or twelve month period that falls within the fiscal year of the producer of the good, divided by the number of units of materials with respect to which the statement is made,

(i) the net cost incurred by the producer of the good with respect to the material shall be the value of the material, determined in accordance with section 7(1), and

(ii) the value of non-originating materials used by the producer of the good with respect to the material shall be the value of the material, determined in accordance with section 7(1), minus the amount stated in the statement.

ACCUMULATED PRODUCTION CONSIDERED TO BE PRODUCTION OF A SINGLE PRODUCER

(4) For purposes of section 7(4), where a producer of the good chooses to accumulate the production of materials under subsection (1), that production shall be considered to be the production of the producer of the good.

(5) For purposes of this section,

(a) in order to accumulate the production of a material,

(i) where the good is subject to a regional value-content requirement, the producer of the good must have a statement described in subsection (2) or (3) that is signed by the producer of the material, and

(ii) where an applicable change in tariff classification is applied to determine whether the good is an originating good, the producer of the good must have a statement signed by the producer of the material that states the tariff classification of all non-originating materials used by that producer in the production of that material and that the production of the material took place entirely in the territory of one or more of the NAFTA countries;

(b) a producer of a good who chooses to accumulate is not required to accumulate the production of all materials that are incorporated into the good; and

(c) any information set out in a statement referred to in subsection (2) or (3) that concerns the value of materials or costs shall be in the same currency as the currency of the country in which the person who provided the statement is located.

EXAMPLES OF ACCUMULATION OF PRODUCTION

(6) Each of the following examples is an ''Example'' as referred to in section 2(4).

Example 1: section 14(1)

Producer A, located in NAFTA country A, imports unfinished bearing rings provided for in subheading 8482.99 into NAFTA country A from a non-NAFTA territory. Producer A further processes the unfinished bearing rings into finished bearing rings, which are of the same subheading. The finished bearing rings of Producer A do not satisfy an applicable change in tariff classification and therefore do not qualify as originating goods. The net cost of the finished bearing rings (per unit) is calculated as follows:

Product costs:	
Value of originating materials	$0.15
Value of non-originating materials	0.75
Other product costs	0.35
Period costs: (including $0.05 in excluded costs)	0.15
Other costs	0.05
Total cost of the finished bearing rings, per unit	$1.45
Excluded costs: (included in period costs)	0.05
Net cost of the finished bearing rings, per unit	$1.40

Producer A sells the finished bearing rings to Producer B who is located in NAFTA country A for $1.50 each. Producer B further processes them into bearings, and intends to export the bearings to NAFTA country B. Although the bearings satisfy the applicable change in tariff classification, the bearings are subject to a regional value-content requirement.

Situation A:

Producer B does not choose to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. The net cost of the bearings (per unit) is calculated as follows:

Product costs:	
Value of originating materials	$0.45
Value of non-originating materials (value, per unit, of the bearing rings purchased from Producer A)	1.50
Other product costs	0.75
Period costs: (including $0.05 in excluded costs)	0.15
Other costs	0.05
Total cost of the bearings, per unit	$2.90
Excluded costs: (included in period costs)	0.05
Net cost of the bearings, per unit	$2.85

Under the net cost method, the regional value content of the bearings is

$$\mathrm{RVC} = \frac{\mathrm{NC} - \mathrm{VNM}}{\mathrm{NC}} \times 100$$

$$= \frac{\$2.85 - \$1.50}{\$2.85} \times 100$$

$$= 47.4\%$$

Therefore, the bearings are non-originating goods.

Situation B:

Producer B chooses to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. Producer A provides a statement described in section 14(2)(a) to Producer B. The net cost of the bearings (per unit) is calculated as follows:

Product costs:	
Value of originating materials ($0.45 + $0.15)	$0.60
Value of non-originating materials (value, per unit, of the unfinished bearing rings imported by Producer A)	0.75
Other product costs ($0.75 + $0.35)	1.10
Period costs: (($0.15 + $0.15), including $0.10 in excluded costs)	0.30
Other costs: ($0.05 + $0.05)	0.10
Total cost of the bearings, per unit	$2.85
Excluded costs: (included in period costs)	0.10
Net cost of the bearings, per unit	$2.75

Under the net cost method, the regional value content of the bearings is

$$\mathrm{RVC} = \frac{\mathrm{NC} - \mathrm{VNM}}{\mathrm{NC}} \times 100$$

$$= \frac{\$2.75 - \$0.75}{\$2.75} \times 100$$

$$= 72.7\%$$

Therefore, the bearings are originating goods.

Situation C:

Producer B chooses to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. Producer A provides to Producer B a statement described in section 14(2)(b) that specifies an amount equal to the net cost minus the value of non-originating materials used to produce the finished bearing rings ($1.40 − $0.75 = $0.65). The net cost of the bearings (per unit) is calculated as follows:

Product costs:	
Value of originating materials ($0.45 + $0.65)	$1.10
Value of non-originating materials ($1.50 − $0.65)	0.85
Other product costs	0.75
Period costs: (including $0.05 in excluded costs)	0.15
Other costs	0.05
Total cost of the bearings, per unit	$2.90
Excluded costs: (included in period costs)	0.05
Net cost of the bearings, per unit	$2.85

Under the net cost method, the regional value content of the bearings is

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{\$2.85 - \$0.85}{\$2.85} \times 100$$

$$= 70.2\%$$

Therefore, the bearings are originating goods.

Situation D:

Producer B chooses to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. Producer A provides to Producer B a statement described in section 14(2)(b) that specifies an amount equal to the value of other product costs used in the production of the finished bearing rings ($0.35). The net cost of the bearings (per unit) is calculated as follows:

Product costs:	
Value of originating materials	$0.45
Value of non-originating materials ($1.50 − $0.35)	1.15
Other product costs ($0.75 + $0.35)	1.10
Period costs: (including $0.05 in excluded costs)	0.15
Other costs	0.05
Total cost of the bearings, per unit	$2.90
Excluded costs: (included in period costs)	0.05
Net cost of the bearings, per unit	$2.85

Under the net cost method, the regional value content of the bearings is

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{\$2.85 - \$1.15}{\$2.85} \times 100$$

$$= 59.7\%$$

Therefore, the bearings are originating goods.

Example 2: section 14(1)

Producer A, located in NAFTA country A, imports non-originating cotton, carded or combed, provided for in heading 5203 for use in the production of cotton yarn provided for in heading 5205. Because the change from cotton, carded or combed, to cotton yarn is a change within the same chapter, the cotton does not satisfy the applicable change in tariff classification for heading 5205, which is a change from any other chapter, with certain exceptions. Therefore, the cotton yarn that Producer A produces from non-originating cotton is a non-originating good.

Producer A then sells the non-originating cotton yarn to Producer B, also located in NAFTA country A, who uses the cotton yarn in the production of woven fabric of cotton provided for in heading 5208. The change from non-originating cotton yarn to woven fabric of cotton is insufficient to satisfy the applicable change in tariff classification for heading 5208, which is a change from any heading outside headings 5208 through 5212, except from certain headings, under which various yarns, including cotton yarn provided for in heading 5205, are classified. Therefore, the woven fabric of cotton that Producer B produces from non-originating

cotton yarn produced by Producer A is a non-originating good.

However, under section 14(1), if Producer B chooses to accumulate the production of Producer A, the production of Producer A would be considered to have been performed by Producer B. The rule for heading 5208, under which the cotton fabric is classified, does not exclude a change from heading 5203, under which carded or combed cotton is classified. Therefore, under section 15(1), the change from carded or combed cotton provided for in heading 5203 to the woven fabric of cotton provided for in heading 5208 would satisfy the applicable change of tariff classification for heading 5208. The woven fabric of cotton would be considered as an originating good.

Producer B, in order to choose to accumulate Producer A's production, must have a statement described in section 14(4)(a)(ii).

SECTION 15. INABILITY TO PROVIDE SUFFICIENT INFORMATION

SUPPLIER OF MATERIAL UNABLE TO PROVIDE INFORMATION; BEYOND CONTROL OF SUPPLIER; PROCEDURE TO BE FOLLOWED BY CUSTOMS

(1) Where, during a verification of origin of a good, the person from whom a producer of the good acquired a material used in the production of that good is unable to provide the customs administration that is conducting the verification with sufficient information to substantiate that the material is an originating material or that the value of the material declared for purpose of calculating the regional value content of the good is accurate, and the inability of that person to provide the information is due to reasons beyond the control of that person, the customs administration shall, before making a determination as to the origin or value of the material, consider, where relevant, the following:

(a) whether the customs administration of the NAFTA country into the territory of which the good was imported issued an advance ruling under Article 509 of the Agreement, as implemented in each NAFTA country, with respect to that material that concluded that the material is an originating material or that the value of the material declared for purposes of calculating the regional value content of the good is accurate;

(b) whether an independent auditor has confirmed the accuracy of

(i) any signed statement referred to in this appendix with respect to the material,

(ii) the information that was used by the person from whom the producer acquired the material to substantiate whether the material is an originating material, or

(iii) the information submitted by the producer of the material with an application for an advance ruling where, on the basis of that information, the customs administration concluded that the material is an originating material or that the value declared for the purpose of calculating the regional value content of the good is accurate;

(c) whether the customs administration has, before the start of the origin verification of the good, conducted a verification of origin of identical materials or similar materials produced by the producer of the material and determined that

(i) the identical materials or similar materials are originating materials, or

(ii) any signed statement referred to in this appendix with respect to those identical materials or similar materials is accurate;

(d) whether the producer of the good has exercised due diligence to ensure that any signed statement that is referred to in this appendix with respect to the material and that was provided by the person from whom the producer acquired the material is accurate;

(e) where the customs administration has access only to partial records of the person from whom the producer acquired the material, whether the records provide sufficient evidence to substantiate that the material is an originating material or that the value of the material declared for purposes of calculating the regional value content of the good is accurate;

(f) whether the customs administration can obtain, subject to Article 507 of the Agreement, as implemented in each NAFTA country, by means other than those referred to in paragraphs (a) through (e), relevant information regarding the determination of the origin or value of the material from the customs administration of the NAFTA country in the territory of which the person from whom the producer acquired the material was located; and

(g) whether the producer of the good, the person from whom the producer acquired the material or a representative of that person or producer agrees to bear the expenses incurred in providing the customs administration with the assistance that it may require for determining the origin or value of the material.

''REASONS BEYOND CONTROL'' OF SUPPLIER

(2) For purposes of subsection (1), ''reasons beyond the control'' of the person from whom the producer of the good acquired the material includes

(a) the bankruptcy of the person from whom the producer acquired the material or any other financial distress situation or business reorganization that resulted in that person or a related person having lost control of the records containing the information that substantiate that the material

is an originating material or the value of the material declared for the purpose of calculating the regional value content of the good;

(b) any other reason that results in partial or complete loss of records of that producer that the producer could not reasonably have been expected to foresee, including loss of records due to fire, flooding or other natural cause.

EXPORTER OR PRODUCER OF GOOD UNABLE TO PROVIDE INFORMATION; REASONS BEYOND CONTROL OF EXPORTER OR PRODUCER; PROCEDURE TO BE FOLLOWED BY CUSTOMS

(3) Where, during a verification of origin of a good, the exporter or producer of the good is unable to provide the customs administration conducting the verification with sufficient information to substantiate that the good is an originating good, and the inability of that person to provide the information is due to reasons beyond the control of that person, the customs administration shall, before making a determination as to the origin of the good, consider, where relevant, the following:

(a) whether the customs administration of the NAFTA country into the territory of which the good was imported issued an advance ruling under Article 509 of the Agreement, as implemented in each NAFTA country, with respect to that good that concluded that the good is an originating good;

(b) whether an independent auditor has confirmed the accuracy of an origin statement with respect to the good;

(c) whether the customs administration has, before the start of the origin verification of the good, conducted a verification of origin of identical goods or similar goods produced by the producer of the good and determined that the identical goods or similar goods are originating goods;

(d) whether the exporter or producer of the good has exercised due diligence to ensure that the information provided to substantiate that the good is an originating good is sufficient; and

(e) where the customs administration has access only to partial records of the exporter or producer of the good, whether the records provide sufficient evidence to substantiate that the good is an originating good;

(f) whether the customs administration can obtain, subject to Article 507 of the Agreement, as implemented in each NAFTA country, by means other than those referred to in paragraphs (a) through (e), relevant information regarding the determination of the origin of the good from the customs administration of the NAFTA country in the territory of which the exporter or producer of the good was located; and

(g) whether the exporter or producer of the good or a representative of that person agrees to bear the expenses incurred in providing the customs administration with the assistance that it may require for determining the origin or value of the good.

''REASONS BEYOND CONTROL''

(4) For purposes of subsection (3), ''reasons beyond the control'' of the exporter or producer of the good includes

(a) the bankruptcy of the exporter or producer or any other financial distress situation or business reorganization that resulted in that person or a related person having lost control of the records containing the information that substantiate that the good is an originating good;

(b) any other reason that results in partial or complete loss of records of that exporter or producer that that person could not reasonably have been expected to foresee, including loss of records due to fire, flooding or other natural cause.

SECTION 16. TRANSSHIPMENT

EFFECT OF SUBSEQUENT PROCESSING OUTSIDE THE TERRITORY OF A NAFTA COUNTRY; LOSS OF ORIGINATING GOOD STATUS

(1) A good is not an originating good by reason of having undergone production that occurs entirely in the territory of one or more of the NAFTA countries that would enable the good to qualify as an originating good if subsequent to that production

(a) the good is withdrawn from customs control outside the territories of the NAFTA countries; or

(b) the good undergoes further production or any other operation outside the territories of the NAFTA countries, other than unloading, reloading or any other operation necessary to preserve the good in good condition, such as inspection, removal of dust that accumulates during shipment, ventilation, spreading out or drying, chilling, replacing salt, sulphur dioxide or other aqueous solutions, replacing damaged packing materials and containers and removal of units of the good that are spoiled or damaged and present a danger to the remaining units of the good, or to transport the good to the territory of a NAFTA country.

TRANSSHIPPED GOOD CONSIDERED ENTIRELY NON-ORIGINATING

(2) A good that is a non-originating good by application of subsection (1) is considered to be entirely non-originating for purposes of this appendix.

EXCEPTIONS FOR CERTAIN GOODS

(3) Subsection (1) does not apply with respect to:

(a) a ''smart card'' of subheading 8523.52, containing a single integrated circuit, where any further production or other operation that that good undergoes outside the territories of the NAFTA countries does not result in a change in the tariff classification of the good to any other subheading;

(b) a good of any of subheadings 8541.10 through 8541.60 or subheadings 8542.31 through 8542.39, where any further production or other operation that that good undergoes outside the territories of the NAFTA countries does not result in a change in the tariff classification of the good to a subheading outside subheadings 8541.10 through 8542.90;

(c) an electronic microassembly of subheading 8543.70, where any further production or other operation that that good undergoes outside the territories of the NAFTA countries does not result in a change in the tariff classification of the good to any other subheading; or

(d) an electronic microassembly of subheading 8548.90, where any further production or other operation that that good undergoes outside the territories of the NAFTA countries does not result in a change in the tariff classification of the good to any other subheading.

SECTION 17. NON-QUALIFYING OPERATIONS

MERE DILUTION; PRODUCTION OR PRICING PRACTICE TO CIRCUMVENT THE PROVISIONS OF THIS APPENDIX

17. A good is not an originating good merely by reason of

(a) mere dilution with water or another substance that does not materially alter the characteristics of the good; or

(b) any production or pricing practice with respect to which it may be demonstrated, on the basis of a preponderance of evidence, that the object was to circumvent this appendix.

SCHEDULE I

Schedule I shall be the text of Annex 401 to the Agreement as implemented in General Note 12 of the HTSUS.

SCHEDULE II

VALUE OF GOODS

SECTION 1. DEFINITIONS.

For purposes of this Schedule, unless otherwise stated:

''buyer'' refers to a person who purchases a good from the producer;

''buying commissions'' means fees paid by a buyer to that buyer's agent for the agent's services in representing the buyer in the purchase of a good;

''producer'' refers to the producer of the good being valued.

SECTION 2.

For purposes of Article 402(2) of the Agreement, as implemented by section 6(2) of this appendix, the transaction value of a good shall be the price actually paid or payable for the good, determined in accordance with section 3 and adjusted in accordance with section 4.

SECTION 3.

(1) The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the producer. The payment need not necessarily take the form of a transfer of money; it may be made by letters of credit or negotiable instruments. The payment may be made directly or indirectly to the producer. For an illustration of this, the settlement by the buyer, whether in whole or in part, of a debt owed by the producer is an indirect payment.

(2) Activities undertaken by the buyer on the buyer's own account, other than those for which an adjustment is provided in section 4, shall not be considered to be an indirect payment, even though the activities might be regarded as being for the benefit of the producer. For an illustration of this, the buyer, by agreement with the producer, undertakes activities relating to the marketing of the good. The costs of such activities shall not be added to the price actually paid or payable.

(3) The transaction value shall not include the following charges or costs, provided that they are distinguished from the price actually paid or payable:

(a) charges for construction, erection, assembly, maintenance or technical assistance related to the good undertaken after the good has been sold to the buyer; or

(b) duties and taxes paid in the country in which the buyer is located with respect to the good.

(4) The flow of dividends or other payments from the buyer to the producer that do not relate to the purchase of the good are not part of the transaction value.

SECTION 4.

(1) In determining the transaction value of a good, the following shall be added to the price actually paid or payable:

(a) to the extent that they are incurred by the buyer, or by a related person on behalf of the buyer, with respect to the good being valued and are not included in the price actually paid or payable

(i) commissions and brokerage fees, except buying commissions,

(ii) the costs of transporting the good to the producer's point of direct shipment and the costs of loading, unloading, handling and insurance that are associated with that transportation, and

(iii) where the packaging materials and containers in which the good is packaged for retail sale are classified with the good under the Harmonized System, the value of the packaging materials and containers;

(b) the value, reasonably allocated in accordance with subsection (12), of the following elements where they are supplied directly or indirectly to the producer by the buyer, free of charge or at reduced cost for use in connection with the production and sale of the good, to the extent that the value is not included in the price actually paid or payable:

(i) a material, other than an indirect material, used in the production of the good,

(ii) tools, dies, molds and similar indirect materials used in the production of the good,

(iii) an indirect material, other than those referred to in subparagraph (ii) or in paragraphs (c), (e) or (f) of the definition ''indirect material'' set out in Article 415 of the Agreement, as implemented by section 2(1) of this appendix, used in the production of the good, and

(iv) engineering, development, artwork, design work, and plans and sketches necessary for the production of the good, regardless of where performed;

(c) the royalties related to the good, other than charges with respect to the right to reproduce the good in the territory of one or more of the NAFTA countries, that the buyer must pay directly or indirectly as a condition of sale of the good, to the extent that such royalties are not included in the price actually paid or payable; and

(d) the value of any part of the proceeds of any subsequent resale, disposal or use of the good that accrues directly or indirectly to the producer.

(2) The additions referred to in subsection (1) shall be made to the price actually paid or payable under this section only on the basis of objective and quantifiable data.

(3) Where objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under subsection (1), the transaction value cannot be determined under section 2.

(4) No additions shall be made to the price actually paid or payable for the purpose of determining the transaction value except as provided in this section.

(5) The amounts to be added under subsections (1)(a) (i) and (ii) shall be

(a) those amounts that are recorded on the books of the buyer, or

(b) where those amounts are costs incurred by a related person on behalf of the buyer and are not recorded on the books of the buyer, those amounts that are recorded on the books of that related person.

(6) The value of the packaging materials and containers referred to in subsection (1)(a)(iii) and the value of the elements referred to in subsection (1)(b)(i) shall be

(a) where the packaging materials and containers or the elements are imported from outside the territory of the NAFTA country in which the producer is located, the customs value of the packaging materials and containers or the elements,

(b) where the buyer, or a related person on behalf of the buyer, purchases the packaging materials and containers or the elements from an unrelated person in the territory of the NAFTA country in which the producer is located, the price actually paid or payable for the packaging materials and containers or the elements,

(c) where the buyer, or a related person on behalf of the buyer, acquires the packaging materials and containers or the elements from an unrelated person in the territory of the NAFTA country in which the producer is located other than through a purchase, the value of the consideration related to the acquisition of the packaging materials and containers or the elements, based on the cost of the consideration that is recorded on the books of the buyer or the related person, or

(d) where the packaging materials and containers or the elements are produced by the buyer, or by a related person, in the territory of the NAFTA country in which the producer is located, the total cost of the packaging materials and containers or the elements, determined in accordance with subsection (7),

and shall include the following costs that are recorded on the books of the buyer or the related person supplying the packaging materials and containers or the elements on behalf of the buyer, to the extent that such costs are not included under paragraphs (a) through (d):

(e) the costs of freight, insurance, packing, and all other costs incurred in transporting the packaging materials and containers or the elements to the location of the producer,

(f) duties and taxes paid or payable with respect to the packaging materials and containers or the elements, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable,

(g) customs brokerage fees, including the cost of in-house customs brokerage services, incurred with respect to the packaging materials and containers or the elements, and

(h) the cost of waste and spoilage resulting from the use of the packaging materials and containers or the elements in the production of the good, less the value of renewable scrap or by-product.

(7) For purposes of subsection (6)(d), the total cost of the packaging materials and containers referred to in subsection (1)(a)(iii) or the elements referred to in subsection (1)(b)(i) shall be

(a) where the packaging materials and containers or the elements are produced by the buyer, at the choice of the buyer,

(i) the total cost incurred with respect to all goods produced by the buyer, calculated on the basis of the costs that are recorded on the books of the buyer, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule VII, or

(ii) the aggregate of each cost incurred by the buyer that forms part of the total cost incurred with respect to the packaging materials and containers or the elements, calculated on the basis of the costs that are recorded on the books of the buyer, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule VII; and

(b) where the packaging materials and containers or the elements are produced by a person who is related to the buyer, at the choice of the buyer,

(i) the total cost incurred with respect to all goods produced by that related person, calculated on the basis of the costs that are recorded on the books of that person, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule VII, or

(ii) the aggregate of each cost incurred by that related person that forms part of the total cost incurred with respect to the packaging materials and containers or the elements, calculated on the basis of the costs that are recorded on the books of that person, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule VII.

(8) Except as provided in subsections (10) and (11), the value of the elements referred to in subsections (1)(b)(ii) through (iv) shall be

(a) the cost of those elements that is recorded on the books of the buyer, or

(b) where such elements are provided by another person on behalf of the buyer and the cost is not recorded on the books of the buyer, the cost of those elements that is recorded on the books of that other person.

(9) Where the elements referred to in subsections (1)(b)(ii) through (iv) were previously used by or on behalf of the buyer, the value of the elements shall be adjusted downward to reflect that use.

(10) Where the elements referred to in subsections (1)(b)(ii) and (iii) were leased by the buyer or a person related to the buyer, the value of the elements shall be the cost of the lease as recorded on the books of the buyer or that related person.

(11) No addition shall be made to the price actually paid or payable for the elements referred to in subsection (1)(b)(iv) that are available in the public domain, other than the cost of obtaining copies of them.

(12) The producer shall choose the method of allocating to the good the value of the elements referred to in subsections (1)(b)(ii) through (iv), provided that the value is reasonably allocated to the good in a manner appropriate to the circumstances. The methods the producer may choose to allocate the value include allocating the value over the number of units produced up to the time of the first shipment or allocating the value over the entire anticipated production where contracts or firm commitments exist for that production. For an illustration of this, a buyer provides the producer with a mold to be used in the production of the good and contracts with the producer to buy 10,000 units of that good. By the time the first shipment of 1,000 units arrives, the producer has already produced 4,000 units. In these circumstances, the producer may choose to allocate the value of the mold over 4,000 units or 10,000 units but shall not choose to allocate the value of the elements to the first shipment of 1,000 units. The producer may choose to allocate the entire value of the elements to a single shipment of a good only where that single shipment comprises all of the units of the good acquired by the buyer under the contract or commitment for that number of units of the good between the producer and the buyer.

(13) The addition for the royalties referred to in subsection (1)(c) shall be the payment for the royalties that is recorded on the books of the buyer, or where the payment for the royalties is recorded on the books of another person, the payment for the royalties that is recorded on the books of that other person.

(14) The value of the proceeds referred to in subsection (1)(d) shall be the amount that is recorded for such proceeds on the books of the buyer or the producer.

SCHEDULE III

UNACCEPTABLE TRANSACTION VALUE

SECTION 1. DEFINITIONS.

For purposes of this Schedule, unless otherwise stated

''buyer'' refers to a person who purchases a good from the producer;

''customs administration'' refers to the customs administration of the NAFTA country into whose territory the good being valued is imported;

''producer'' refers to the producer of the good being valued.

SECTION 2.

(1) There is no transaction value for a good where the good is not the subject of a sale.

(2) The transaction value of a good is unacceptable where

(a) there are restrictions on the disposition or use of the good by the buyer, other than restrictions that

(i) are imposed or required by law or by the public authorities in the territory of the NAFTA country in which the buyer is located,

(ii) limit the geographical area in which the good may be resold, or

(iii) do not substantially affect the value of the good;

(b) the sale or price actually paid or payable is subject to a condition or consideration for which a value cannot be determined with respect to the good;

(c) part of the proceeds of any subsequent resale, disposal or use of the good by the buyer will accrue directly or indirectly to the producer, and an appropriate addition to the price actually paid or payable cannot be made in accordance with section 4(1)(d) of Schedule II; or

(d) except as provided in section 3, the producer and the buyer are related persons and the relationship between them influenced the price actually paid or payable for the good.

(3) The conditions or considerations referred to in subsection (2)(b) include the following circumstances:

(a) the producer establishes the price actually paid or payable for the good on condition that the buyer will also buy other goods in specified quantities;

(b) the price actually paid or payable for the good is dependent on the price or prices at which the buyer sells other goods to the producer of the good; and

(c) the price actually paid or payable is established on the basis of a form of payment extraneous to the good, such as where the good is a semi-finished good that has been provided by the producer to the buyer on condition that the producer will receive a specified quantity of the finished good from the buyer.

(4) For purposes of subsection (2)(b), conditions or considerations relating to the production or marketing of the good shall not render the transaction value unacceptable, such as where the buyer undertakes on the buyer's own account, even though by agreement with the producer, activities relating to the marketing of the good.

(5) Where objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under section 4(1) of Schedule II, the transaction value cannot be determined under the provisions of section 2 of that Schedule. For an illustration of this, a royalty is paid on the basis of the price actually paid or payable in a sale of a liter of a particular good that was purchased by the kilogram and made up into a solution. If the royalty is based partially on the purchased good and partially on other factors that have nothing to do with that good, such as when the purchased good is mixed with other ingredients and is no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the producer and the buyer, it would be inappropriate to add the royalty and the transaction value of the good could not be determined. However, if the amount of the royalty is based only on the purchased good and can be readily quantified, an addition to the price actually paid or payable can be made and the transaction value can be determined.

SECTION 3.

(1) In determining whether the transaction value is unacceptable under section 2(2)(d), the fact that the producer and the buyer are related persons shall not in itself be grounds for the customs administration to render the transaction value unacceptable. In such cases, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship between the producer and the buyer did not influence the price actually paid or payable. Where the customs administration has reasonable grounds for considering that the relationship between the producer and the buyer influenced the price, the customs administration shall communicate the grounds to the producer, and that producer shall be given a reasonable opportunity to respond to the grounds communicated by the customs administration. If that producer so requests, the customs administration shall communicate in writing the grounds on which it considers that the relationship between the producer and the buyer influenced the price actually paid or payable.

(2) Subsection (1) provides that, where the producer and the buyer are related persons, the circumstances surrounding the sale shall

be examined and the transaction value shall be accepted as the value provided that the relationship between the producer and the buyer did not influence the price actually paid or payable. It is not intended under subsection (1) that there should be an examination of the circumstances in all cases where the producer and the buyer are related persons. Such an examination will only be required where the customs administration has doubts that the price actually paid or payable is acceptable because of the relationship between the producer and the buyer. Where the customs administration does not have doubts that the price actually paid or payable is acceptable, it shall accept that price without requesting further information. For an illustration of this, the customs administration may have previously examined the relationship between the producer and the buyer, or it may already have detailed information concerning the relationship between the producer and the buyer, and may already be satisfied from that examination or information that the relationship between them did not influence the price actually paid or payable.

(3) In applying subsection (1), where the producer and the buyer are related persons and the customs administration has doubts that the transaction value is acceptable without further inquiry, the customs administration shall give the producer an opportunity to supply such further information as may be necessary to enable it to examine the circumstances surrounding the sale. In such a case, the customs administration shall examine the relevant aspects of the sale, including the way in which the producer and the buyer organize their commercial relations and the way in which the price actually paid or payable for the good being valued was arrived at, in order to determine whether the relationship between the producer and the buyer influenced that price actually paid or payable. Where it can be shown that the producer and the buyer buy from and sell to each other as if they were not related persons, the price actually paid or payable shall be considered as not having been influenced by the relationship between them. For an illustration of this, if the price actually paid or payable for the good had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way in which the producer settles prices for sales to unrelated buyers, the price actually paid or payable shall be considered as not having been influenced by the relationship between the buyer and the producer. As another illustration, where it is shown that the price actually paid or payable for the good is adequate to ensure recovery of the total cost of producing the good plus a profit that is representative of the producer's overall profit realized over a representative period of time, such as on an annual basis, in sales of goods of the same class or kind, the price actually paid or payable shall be considered as not having been influenced by the relationship between the producer and the buyer.

(4) In a sale between a producer and a buyer who are related persons, the transaction value shall be accepted and determined in accordance with section 2 of Schedule II wherever the producer demonstrates that the transaction value of the good in that sale closely approximates a test value referred to in subsection (5).

(5) The value to be used as a test value shall be the transaction value of identical goods or similar goods sold at or about the same time as the good being valued is sold to an unrelated buyer who is located in the territory of the NAFTA country in which the buyer is located.

(6) In applying a test value referred to in subsection (4), due account shall be taken of demonstrated differences in commercial levels, quantity levels, the value of the elements specified in section 4(1)(b) of Schedule II and the costs incurred by the producer in sales to unrelated buyers that are not incurred by the producer in sales to a related person.

(7) The application of the test value referred to in subsection (4) shall be used at the initiative of the producer and shall be used only for comparison purposes to determine whether the transaction value of the good is acceptable. The test value shall not be used as the transaction value of that good.

(8) Subsection (4) provides an opportunity for the producer to demonstrate that the transaction value closely approximates a test value previously accepted by the customs administration, and is therefore acceptable under subsections (1) and (4). Where the application of a test value under subsection (4) demonstrates that the transaction value of the good being valued is acceptable, the customs administration shall not examine the question of influence in regard to the relationship between the producer and the buyer under subsection (1). Where the customs administration already has sufficient information available, without further inquiries, that the transaction value closely approximates a test value referred to in subsection (4), the producer is not required to apply a test value to demonstrate that the transaction value is acceptable under that subsection.

(9) A number of factors must be taken into consideration for the purpose of determining whether the transaction value of the identical goods or similar goods closely approximates the transaction value of the good being valued. These factors include the nature of the good, the nature of the industry itself, the season in which the good is sold, and whether the difference in values is commercially significant. Since these factors

may vary from case to case, it would be impossible to apply an acceptable standardized difference such as a fixed amount or fixed percentage difference in each case. For an illustration of this, a small difference in value in a case involving one type of good could be unacceptable, while a large difference in a case involving another type of good might be acceptable for the purposes of determining whether the transaction value closely approximates a test value set out in subsection (4).

SCHEDULE IV

LIST OF TARIFF PROVISIONS FOR THE PURPOSES OF SECTION 9 OF THE APPENDIX

4009
4010.31 through 4010.34 and 4010.39.10 through 4010.39.20
4011
4016.93.10
4016.99.30 and 4016.99.55
7007.11 and 7007.21
7009.10
8301.20
8407.31
8407.32
8407.33
8407.34.05, 8407.34.14, 8407.34.18 and 8407.34.25
8407.34.35, 8407.34.44, 8407.34.48 and 8407.34.55
8408.20
8409
8413.30
8414.59.30
8414.80.05
8415.20
8421.39.40
8481.20, 8481.30 and 8481.80
8482.10 through 8482.80
8483.10 through 8483.40
8483.50
8501.10
8501.20
8501.31
8501.32.45
8507.20.40, 8507.30.40, 8507.40.40 and 8507.80.40
8511.30
8511.40
8511.50
8512.20
8512.40
ex 8519.81
8527.21
8527.29
8536.50
8536.90
8537.10.60
8539.10
8539.21
8544.30
8706
8707
8708.10.30
8708.21
8708.29.21 and 8708.29.25
8708.29.15
8708.30
8708.40
8708.50
8708.70.05, 8708.70.25 and 8708.70.45
8708.80
8708.91
8708.92
8708.93.15 and 8708.93.60
8708.94
8708.95
8708.99.03, 8708.99.27 and 8708.99.55
8708.99.06, 8708.99.31 and 8708.99.58
8708.99.16, 8708.99.41 and 8708.99.68
8708.99.23, 8708.99.48 and 8708.99.81
9031.80
9032.89
9401.20

SCHEDULE V

LIST OF AUTOMOTIVE COMPONENTS AND MATERIALS FOR THE PURPOSES OF SECTION 10 OF THE APPENDIX

Item	Column I automotive components	Column II listed materials
1.	Engines provided for in heading 8407 or 8408.	Cast blocks, cast heads, fuel nozzles, fuel injector pumps, glow plugs, turbochargers, superchargers, electronic engine controls, intake manifolds, exhaust manifolds, intake valves, exhaust valves, crankshafts, camshafts, alternators, starters, air cleaner assemblies, pistons, connecting rods and assemblies made therefrom, rotor assemblies for rotary engines, flywheels (for manual transmissions), flexplates (for automatic transmissions), oil pans, oil pumps, pressure regulators, water pumps, crankshaft gears, camshaft gears, radiator assemblies, charge-air coolers.
2.	Gear boxes (transmissions) provided for in subheading 8708.40.	(a) For manual transmissions: transmission cases and clutch housings; clutches; internal shifting mechanisms; gear sets, synchronizers and shafts; and (b) For torque convertor type transmissions: transmission cases and convertor housings; torque convertor assemblies; gear sets and clutches; electronic transmission controls.

SCHEDULE VI

REGIONAL VALUE-CONTENT CALCULATION FOR CAMI

SECTION 1. DEFINITIONS.

In this Schedule,

''closed'' means, with respect to a plant, a closure

(a) for purposes of re-tooling for a change in model line, or

(b) as a result of any event or circumstance (other than the imposition of antidumping duties or countervailing duties, or an interruption of operations resulting from a labor strike, lock-out, labor dispute, picketing or boycott of or by employees of CAMI Automotive, Inc. or General Motors of Canada Limited) that CAMI Automotive, Inc. or General Motors of Canada Limited could not reasonably have been expected to avert by corrective action or by exercise of due care and diligence, including a shortage of materials, failure of utilities, or inability to obtain or a delay in obtaining raw materials, parts, fuel or utilities;

''GM'' means General Motors of Canada Limited, General Motors Corporation, General Motors de Mexico, S.A. de C.V., and any subsidiary directly or indirectly owned by any of them, or by any combination thereof;

''producer'' means CAMI Automotive, Inc.

SECTION 2.

For purposes of section 11 of this appendix, for purposes of determining the regional value content, in a fiscal year, of a motor vehicle of a class of motor vehicles or a model line produced by the producer in the territory of Canada and imported into the territory of the United States, the producer may choose to calculate the regional value content by

(a) calculating

(i) the sum of

(A) the net cost incurred by the producer, during that fiscal year, in the production in the territory of Canada of motor vehicles of a category referred to in section 3 that is chosen by the producer, and

(B) the net cost incurred by General Motors of Canada Limited, during the fiscal year that corresponds most closely to the producer's fiscal year, in the production in the territory of Canada of a corresponding class of motor vehicles or model line, and

(ii) the sum of

(A) the value, determined in accordance with section 9 of this appendix for light-duty vehicles and section 10 of this appendix for heavy-duty vehicles, of the non-originating materials that are used by the producer, during that fiscal year, in the production in the territory of Canada of motor vehicles of a category referred to in section 2.1 that is chosen by the producer, and

(B) the value, determined in accordance with section 9 of this appendix for light-duty vehicles and section 10 of this appendix for heavy-duty vehicles, of the non-originating materials that are used by General Motors of Canada Limited, during the fiscal year that corresponds most closely to the producer's fiscal year, in the production in the territory of Canada of a corresponding class of motor vehicles or model line, and

(b) using the sums referred to in paragraphs (a)(i) and (ii) as the net cost and the value of non-originating materials, respectively, in the calculation referred to in section 6(3) of this appendix,

provided that

(c) at the beginning of the producer's fiscal year, General Motors of Canada Limited owns 50 percent or more of the voting common stock of the producer, and

(d) GM acquires 75 percent or more by unit of quantity of the class of motor vehicles or model line, as the case may be, that the producer produced in the territory of Canada in the producer's fiscal year for sale in the territory of one or more of the NAFTA countries.

SECTION 3.

The categories referred to in clauses 2(a)(i)(A) and (ii)(A) are the following:

(a) the class of motor vehicles that the producer produced in the territory of Canada in the producer's fiscal year for sale in the territory of one or more of the NAFTA countries; and

(b) the model line that the producer produced in the territory of Canada in the producer's fiscal year for sale in the territory of one or more of the NAFTA countries.

SECTION 4.

Where GM does not satisfy the requirement set out in section 2(d), the producer may choose that the regional value content be calculated in accordance with section 2 only for those motor vehicles that are acquired by GM for distribution under the GEO marque or another GM marque.

SECTION 5.

(1) The producer may choose that the calculation referred to in section 2 be made over a period of two fiscal years where

(a) any plant operated by the producer or by General Motors of Canada Limited is closed for more than two consecutive months; and

(b) the motor vehicles of a category referred to in section 3, with respect to

which the producer chooses that the regional value content be calculated in accordance with section 2, are produced in that plant.

(2) Subject to subsection (3), the period of two fiscal years referred to in subsection (1) corresponds to the fiscal year in which the plant is closed and, at the choice of the producer, the preceding or the subsequent fiscal year.

(3) Where the plant is closed for a period that spans two fiscal years, the calculation referred to in section 2 may be made only over those two fiscal years.

(4) Where the producer has chosen that the regional value content be calculated over two fiscal years under this section, the choice referred to in section 11(6) of this appendix shall be filed not later than 10 days after the end of the period during which the plant is closed, or at such later time as the customs administration may accept.

SECTION 6.

For purposes of this Schedule, a motor vehicle producer shall be deemed to be GM where, as a result of an amalgamation, reorganization, division or similar transaction, that motor vehicle producer

(a) acquires all or substantially all of the assets used by GM, and

(b) directly or indirectly controls, or is controlled by, GM, or both that motor vehicle producer and GM are controlled by the same person.

SCHEDULE VII

REASONABLE ALLOCATION OF COSTS

SECTION 1. DEFINITIONS.

For purposes of this Schedule,

''costs'' means any costs that are included in total cost and that need to be allocated pursuant to sections 5(9), 6(11) and 7(6) and sections 10(1)(a)(i) and (ii) of these Regulations, section 4(7) of Schedule II and sections 5(7) and 10(2) of Schedule VIII;

''discontinued operations'', in the case of a producer located in a NAFTA country, has the meaning set out in that NAFTA country's Generally Accepted Accounting Principles;

''indirect overhead'' means period costs and other costs;

''internal management purpose'' means any purpose relating to tax reporting, financial reporting, financial planning, decision-making, pricing, cost recovery, cost control management or performance measurement; and

''overhead'' means costs, other than direct material costs and direct labor costs.

SECTION 2. INTERPRETATION.

(1) In this Schedule, reference to ''producer'' shall, for purposes of section 4(7) of Schedule II, be read as a reference to ''buyer''.

(2) In this Schedule, reference to ''good'' shall,

(a) for purposes of section 6(14) of this appendix, be read as a reference to ''identical goods or similar goods, or any combination thereof'';

(b) for purposes of section 7(6) of this appendix, be read as a reference to ''intermediate material'';

(c) for purposes of section 11 of this appendix, be read as a reference to ''category of vehicles that is chosen pursuant to section 11(1) of this appendix'';

(d) for purposes of section 12 of this appendix, be read as a reference to ''category of goods chosen pursuant to section 12(1) of this appendix'';

(e) for purposes of section 13(4) of this appendix, be read as a reference to ''category of vehicles chosen pursuant to section 13(4) of this appendix'';

(f) for purposes of section 4(7) of Schedule II, be read as a reference to ''packaging materials and containers or the elements''; and

(g) for purposes of section 5(7) of Schedule VIII, be read as a reference to ''elements''.

METHODS TO REASONABLY ALLOCATE COSTS

SECTION 3.

(1) Where a producer of a good is using, for an internal management purpose, a cost allocation method to allocate to the good direct material costs, or part thereof, and that method reasonably reflects the direct material used in the production of the good based on the criterion of benefit, cause or ability to bear, that method shall be used to reasonably allocate the costs to the good.

(2) Where a producer of a good is using, for an internal management purpose, a cost allocation method to allocate to the good direct labor costs, or part thereof, and that method reasonably reflects the direct labor used in the production of the good based on the criterion of benefit, cause or ability to bear, that method shall be used to reasonably allocate the costs to the good.

(3) Where a producer of a good is using, for an internal management purpose, a cost allocation method to allocate to the good overhead, or part thereof, and that method is based on the criterion of benefit, cause or ability to bear, that method shall be used to reasonably allocate the costs to the good.

SECTION 4.

Where costs are not reasonably allocated to a good under section 3, those costs are reasonably allocated to the good if they are allocated,

(a) with respect to direct material costs, on the basis of any method that reasonably reflects the direct material used in the production of the good based on the criterion of benefit, cause or ability to bear;
(b) with respect to direct labor costs, on the basis of any method that reasonably reflects the direct labor used in the production of the good based on the criterion of benefit, cause or ability to bear; and
(c) with respect to overhead, on the basis of any of the following methods:
(i) the method set out in Addendum A, Addendum B or Addendum C,
(ii) a method based on a combination of the methods set out in Addenda A and B or Addenda A and C, and
(iii) a cost allocation method based on the criterion of benefit, cause or ability to bear.

SECTION 4.1.

Nothwithstanding section 3 and 7, where a producer allocates, for an internal management purpose, costs to a good that is not produced in the period in which the costs are expensed on the books of the producer (such as costs with respect to research and development, and obsolete materials), those costs shall be considered reasonably allocated if
(a) for purposes of section 6(11), they are allocated to a good that is produced in the period in which the costs are expensed, and
(b) the good produced in that period is within a group or range of goods, including identical goods or similar goods, that is produced by the same industry or industry sector as the goods to which the costs are expensed.

SECTION 5.

Any cost allocation method referred to in section 3, 4 or 4.1 that is used by a producer for the purposes of this appendix shall be used throughout the producer's fiscal year.

COSTS NOT REASONABLY ALLOCATED

SECTION 6.

The allocation to a good of any of the following is considered not to be reasonably allocated to the good:
(a) costs of a service provided by a producer of a good to another person where the service is not related to the good;
(b) gains or losses resulting from the disposition of a discontinued operation, except gains or losses related to the production of the good;
(c) cumulative effects of accounting changes reported in accordance with a specific requirement of the applicable Generally Accepted Accounting Principles; and''.
(d) gains or losses resulting from the sale of a capital asset of the producer.

SECTION 7.

Any costs allocated under section 3 on the basis of a cost allocation method that is used for an internal management purpose that is solely for the purpose of qualifying a good as an originating good are considered not to be reasonably allocated.

ADDENDUM A

COST RATIO METHOD

Calculation of Cost Ratio

For the overhead to be allocated, the producer may choose one or more allocation bases that reflect a relationship between the overhead and the good based on the criterion of benefit, cause or ability to bear.

With respect to each allocation base that is chosen by the producer for allocating overhead, a cost ratio is calculated for each good produced by the producer in accordance with the following formula:

$$CR = \frac{AB}{TAB}$$

where
CR is the cost ratio with respect to the good;
AB is the allocation base for the good; and
TAB is the total allocation base for all the goods produced by the producer.

Allocation to a Good of Costs Included in Overhead

The costs with respect to which an allocation base is chosen are allocated to a good in accordance with the following formula:

$$CAG = CA \times CR$$

where
CAG is the costs allocated to the good;
CA is the costs to be allocated; and
CR is the cost ratio with respect to the good.

Excluded Costs

Under section 6(11)(b) of this appendix, where excluded costs are included in costs to be allocated to a good, the cost ratio used to allocate that cost to the good is used to determine the amount of excluded costs to be

subtracted from the costs allocated to the good.

Allocation Bases for Costs

The following is a non-exhaustive list of allocation bases that may be used by the producer to calculate cost ratios:

Direct Labor Hours
Direct Labor Costs
Units Produced
Machine-hours
Sales Dollars or Pesos
Floor Space

''*Examples*''

The following examples illustrate the application of the cost ratio method to costs included in overhead.

Example 1: Direct Labor Hours

A producer who produces Good A and Good B may allocate overhead on the basis of direct labor hours spent to produce Good A and Good B. A total of 8,000 direct labor hours have been spent to produce Good A and Good B: 5,000 hours with respect to Good A and 3,000 hours with respect to Good B. The amount of overhead to be allocated is $6,000,000.

Calculation of the Ratios:
Good A: 5,000 hours/8,000 hours = .625
Good B: 3,000 hours/8,000 hours = .375
Allocation of overhead to Good A and Good B:
Good A: $6,000,000 × .625 = $3,750,000
Good B: $6,000,000 × .375 = $2,250,000

Example 2: Direct Labor Costs

A producer who produces Good A and Good B may allocate overhead on the basis of direct labor costs incurred in the production of Good A and Good B. The total direct labor costs incurred in the production of Good A and Good B is $60,000: $50,000 with respect to Good A and $10,000 with respect to Good B. The amount of overhead to be allocated is $6,000,000.

Calculation of the Ratios:
Good A: $50,000/$60,000 = .833
Good B: $10,000/$60,000 = .167
Allocation of Overhead to Good A and Good B:
Good A: $6,000,000 × .833 = $4,998,000
Good B: $6,000,000 × .167 = $1,002,000

Example 3: Units Produced

A producer of Good A and Good B may allocate overhead on the basis of units produced. The total units of Good A and Good B produced is 150,000: 100,000 units of Good A and 50,000 units of Good B. The amount of overhead to be allocated is $6,000,000.

Calculation of the Ratios:
Good A: 100,000 units/150,000 units = .667
Good B: 50,000 units/150,000 units = .333
Allocation of Overhead to Good A and Good B:
Good A: $6,000,000 × .667 = $4,002,000
Good B: $6,000,000 × .333 = $1,998,000

Example 4: Machine-hours

A producer who produces Good A and Good B may allocate machine-related overhead on the basis of machine-hours utilized in the production of Good A and Good B. The total machine-hours utilized for the production of Good A and Good B is 3,000 hours: 1,200 hours with respect to Good A and 1,800 hours with respect to Good B. The amount of machine-related overhead to be allocated is $6,000,000.

Calculation of the Ratios:
Good A: 1,200 machine-hours/3,000 machine-hours = .40
Good B: 1,800 machine-hours/3,000 machine-hours = .60
Allocation of Machine-Related Overhead to Good A and Good B:
Good A: $6,000,000 × .40 = $2,400,000
Good B: $6,000,000 × .60 = $3,600,000

Example 5: Sales Dollars or Pesos

A producer who produces Good A and Good B may allocate overhead on the basis of sales dollars. The producer sold 2,000 units of Good A at $4,000 and 200 units of Good B at $3,000. The amount of overhead to be allocated is $6,000,000.

Total Sales Dollars for Good A and Good B:
Good A: $4,000 × 2,000 = $8,000,000
Good B: $3,000 × 200 = $600,000
Total Sales Dollars: $8,000,000 + $600,000 = $8,600,000
Calculation of the Ratios:
Good A: $8,000,000/$8,600,000 = .93
Good B: $600,000/$8,600,000 = .07
Allocation of Overhead to Good A and Good B:
Good A: $6,000,000 × .93 = $5,580,000
Good B: $6,000,000 × .07 = $420,000

Example 6: Floor Space

A producer who produces Good A and Good B may allocate overhead relating to utilities (heat, water and electricity) on the basis of floor space used in the production and storage of Good A and Good B. The total floor space used in the production and storage of Good A and Good B is 100,000 square feet: 40,000 square feet with respect to Good A and 60,000 square feet with respect to Good B. The amount of overhead to be allocated is $6,000,000.

Calculation of the Ratios:
Good A: 40,000 square feet/100,000 square feet = .40
Good B: 60,000 square feet/100,000 square feet = .60
Allocation of Overhead (Utilities) to Good A and Good B:
Good A: $6,000,000 × .40 = $2,400,000
Good B: $6,000,000 × .60 = $3,600,000

ADDENDUM B

DIRECT LABOR AND DIRECT MATERIAL RATIO METHOD

Calculation of Direct Labor and Direct Material Ratio

For each good produced by the producer, a direct labor and direct material ratio is calculated in accordance with the following formula:

$$DLDMR = \frac{DLC + DMC}{TDLC + TDMC}$$

where
DLDMR is the direct labor and direct material ratio for the good;
DLC is the direct labor costs of the good;
DMC is the direct material costs of the good;
TDLC is the total direct labor costs of all goods produced by the producer; and
TDMC is the total direct material costs of all goods produced by the producer.

Allocation of Overhead to a Good

Overhead is allocated to a good in accordance with the following formula:

OAG = O × DLDMR

where
OAG is the overhead allocated to the good;
O is the overhead to be allocated; and
DLDMR is the direct labor and direct material ratio for the good.

Excluded Costs

Under section 6(11)(b) of this appendix, where excluded costs are included in overhead to be allocated to a good, the direct labor and direct material ratio used to allocate overhead to the good is used to determine the amount of excluded costs to be subtracted from the overhead allocated to the good.

''EXAMPLES''

Example 1:

The following example illustrates the application of the direct labor and direct material ratio method used by a producer of a good to allocate overhead where the producer chooses to calculate the net cost of the good in accordance with section 6(11)(a) of this appendix.

A producer produces Good A and Good B. Overhead (O) minus excluded costs (EC) is $30 and the other relevant costs are set out in the following table:

	Good A	Good B	Total
Direct labor costs (DLC)	$5	$5	$10
Direct material costs (DMC)	10	5	15
Totals	$15	$10	$25

Overhead Allocated to Good A

OAG (Good A) = O ($30) × DLDMR ($15/$25)
OAG (Good A) = $18.00

Overhead Allocated to Good B

OAG (Good B) = O ($30) × DLDMR ($10/$25)
OAG (Good B) = $12.00

Example 2:

The following example illustrates the application of the direct labor and direct material ratio method used by a producer of a good to allocate overhead where the producer chooses to calculate the net cost of the good in accordance with section 6(11)(b) of this appendix and where excluded costs are included in overhead.

A producer produces Good A and Good B. Overhead (O) is $50 (including excluded costs (EC) of $20). The other relevant costs are set out in the table of Example 1.

Overhead Allocated to Good A

OAG (Good A) = [O ($50) × DLDMR ($15/$25)] − [EC ($20) × DLDMR ($15/$25)]
OAG (Good A) = $18.00

Overhead Allocated to Good B

OAG (Good B) = [O ($50) × DLDMR ($10/$25)] − [EC ($20) × DLDMR ($10/$25)]
OAG (Good B) = $12.00

ADDENDUM C

DIRECT COST RATIO METHOD

Direct Overhead

Direct overhead is allocated to a good on the basis of a method based on the criterion of benefit, cause or ability to bear.

Indirect Overhead

Indirect overhead is allocated on the basis of a direct cost ratio.

Calculation of Direct Cost Ratio

For each good produced by the producer, a direct cost ratio is calculated in accordance with the following formula:

$$DCR = \frac{DLC + DMC + DO}{TDLC + TDMC + TDO}$$

where
DCR is the direct cost ratio for the good;
DLC is the direct labor costs of the good;
DMC is the direct material costs of the good;
DO is the direct overhead of the good;
TDLC is the total direct labor costs of all goods produced by the producer;
TDMC is the total direct material costs of all goods produced by the producer; and
TDO is the total direct overhead of all goods produced by the producer;

Allocation of Indirect Overhead to a Good

Indirect overhead is allocated to a good in accordance with the following formula:

IOAG = IO × DCR

where
IOAG is the indirect overhead allocated to the good;
IO is the indirect overhead of all goods produced by the producer; and
DCR is the direct cost ratio of the good.

Excluded Costs

Under section 6(11)(b) of this appendix, where excluded costs are included in
(a) direct overhead to be allocated to a good, those excluded costs are subtracted from the direct overhead allocated to the good; and
(b) indirect overhead to be allocated to a good, the direct cost ratio used to allocate indirect overhead to the good is used to determine the amount of excluded costs to be subtracted from the indirect overhead allocated to the good.

''EXAMPLES''

Example 1:

The following example illustrates the application of the direct cost ratio method used by a producer of a good to allocate indirect overhead where the producer chooses to calculate the net cost of the good in accordance with section 6(11)(a) of this appendix.

A producer produces Good A and Good B. Indirect overhead (IO) minus excluded costs (EC) is $30. The other relevant costs are set out in the following table:

	Good A	Good B	Total
Direct labor costs (DLC)	$5	$5	$10
Direct material costs (DMC)	10	5	15
Direct overhead (DO)	8	2	10
Totals	$23	$12	$35

Indirect Overhead Allocated to Good A

IOAG (Good A) = IO ($30) × DCR ($23/$35)

IOAG (Good A) = $19.71

Indirect Overhead Allocated to Good B

IOAG (Good B) = IO ($30) × DCR ($12/$35)

IOAG (Good B) = $10.29

Example 2:

The following example illustrates the application of the direct cost ratio method used by a producer of a good to allocate indirect overhead where the producer has chosen to calculate the net cost of the good in accordance with section 6(11)(b) of this appendix and where excluded costs are included in indirect overhead.

A producer produces Good A and Good B. The indirect overhead (IO) is $50 (including excluded costs (EC) of $20). The other relevant costs are set out in the table to Example 1.

Indirect Overhead Allocated to Good A

IOAG (Good A) = [IO ($50) × DCR ($23/$35)] − [EC ($20) × DCR ($23/$35)]

IOAG (Good A) = $19.72

Indirect Overhead Allocated to Good B

IOAG (Good B) = [IO ($50) × DCR ($12/$35)] − [EC ($20) × DCR ($12/$35)]

IOAG (Good B) = $10.28

SCHEDULE VIII

VALUE OF MATERIALS

SECTION 1. DEFINITIONS.

(1) For purposes of this Schedule, unless otherwise stated,

''buying commissions'' means fees paid by a producer to that producer's agent for the agent's services in representing the producer in the purchase of a material;

''customs administration'' refers to the customs administration of the NAFTA country into whose territory the good, in the production of which the material being valued is used, is imported;

''materials of the same class or kind'' means, with respect to materials being valued, materials that are within a group or range of materials that
(a) is produced by a particular industry or industry sector, and
(b) includes identical materials or similar materials;

''producer'' refers to
(a) in the case of section 10(1)(b)(i) of these Regulations, the producer of the listed material, and
(b) in any other case, the producer who used the material in the production of a good that is subject to a regional value-content requirement;

''seller'' refers to a person who sells the material being valued to the producer.

INTERPRETATION

(2) Where it is to be determined under section 9(3) of these Regulations whether the customs value of a material was determined in a manner consistent with this Schedule for purposes of section 9(2) (c) or (d) of these Regulations, a reference in this Schedule to ''producer'' shall be read as a reference to ''person other than the producer who imports the traced material from outside the territories of the NAFTA countries.

SECTION 2.

(1) Except as provided under subsections (2) and (3), the transaction value of a material under Article 402(9)(a) of the Agreement, as implemented by section 7(1)(b) and sections 9(5) and 10(2) of this appendix, shall be the price actually paid or payable for the material determined in accordance with section 4 and adjusted in accordance with section 5.

(2) There is no transaction value for a material where the material is not the subject of a sale.

(3) The transaction value of a material is unacceptable where

(a) there are restrictions on the disposition or use of the material by the producer, other than restrictions that

(i) are imposed or required by law or by the public authorities in the territory of the NAFTA country in which the producer of the good or the seller of the material is located,

(ii) limit the geographical area in which the material may be used, or

(iii) do not substantially affect the value of the material;

(b) the sale or price actually paid or payable is subject to a condition or consideration for which a value cannot be determined with respect to the material;

(c) part of the proceeds of any subsequent disposal or use of the material by the producer will accrue directly or indirectly to the seller, and an appropriate addition to the price actually paid or payable cannot be made in accordance with section 5(1)(d); and

(d) except as provided in section 3, the producer and the seller are related persons and the relationship between them influenced the price actually paid or payable for the material.

(4) The conditions or considerations referred to in subsection (3)(b) include the following circumstances:

(a) the seller establishes the price actually paid or payable for the material on condition that the producer will also buy other materials or goods in specified quantities;

(b) the price actually paid or payable for the material is dependent on the price or prices at which the producer sells other materials or goods to the seller of the material; and

(c) the price actually paid or payable is established on the basis of a form of payment extraneous to the material, such as where the material is a semi-finished material that has been provided by the seller to the producer on condition that the seller will receive a specified quantity of the finished material from the producer.

(5) For purposes of subsection (3)(b), conditions or considerations relating to the use of the material shall not render the transaction value unacceptable, such as where the producer undertakes on the producer's own account, even though by agreement with the seller, activities relating to the warranty of the material used in the production of a good.

(6) Where objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under section 5(1), the transaction value cannot be determined under the provisions of section 2(1). For an illustration of this, a royalty is paid on the basis of the price actually paid or payable in a sale of a liter of a particular good that is produced by using a material that was purchased by the kilogram and made up into a solution. If the royalty is based partially on the purchased material and partially on other factors that have nothing to do with that material, such as when the purchased material is mixed with other ingredients and is no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the seller and the producer, it would be inappropriate to add the royalty and the transaction value of the material could not be determined. However, if the amount of the royalty is based only on the purchased material and can be readily quantified, an addition to the price actually paid or payable can be made and the transaction value can be determined.

SECTION 3.

(1) In determining whether the transaction value is unacceptable under section 2(3)(d), the fact that the seller and the producer are related persons shall not in itself be grounds for the customs administration to render the transaction value unacceptable. In such cases, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted provided that the relationship between the seller and the producer did not influence the price actually paid or payable. Where the customs administration has reasonable grounds for considering that the relationship between the seller and the producer influenced the price, the customs administration shall communicate

the grounds to the producer, and that producer shall be given a reasonable opportunity to respond to the grounds communicated by the customs administration. If that producer so requests, the customs administration shall communicate in writing the grounds on which it considers that the relationship between the seller and the producer influenced the price actually paid or payable.

(2) Subsection (1) provides that, where the seller and the producer are related persons, the circumstances surrounding the sale shall be examined and the transaction value shall be accepted as the value provided that the relationship between the seller and the producer did not influence the price actually paid or payable. It is not intended under subsection (1) that there should be an examination of the circumstances in all cases where the seller and the producer are related persons. Such an examination will only be required where the customs administration has doubts that the price actually paid or payable is acceptable because of the relationship between the seller and the producer. Where the customs administration does not have doubts that the price actually paid or payable is acceptable, it shall accept that price without requesting further information. For an illustration of this, the customs administration may have previously examined the relationship between the seller and the producer, or it may already have detailed information concerning the relationship between the seller and the producer, and may already be satisfied from that examination or information that the relationship between them did not influence the price actually paid or payable.

(3) In applying subsection (1), where the seller and the producer are related persons and the customs administration has doubts that the transaction value is acceptable without further inquiry, the customs administration shall give the producer an opportunity to supply such further information as may be necessary to enable it to examine the circumstances surrounding the sale. In such a case, the customs administration shall examine the relevant aspects of the sale, including the way in which the seller and the producer organize their commercial relations and the way in which the price actually paid or payable by that producer for the material being valued was arrived at, in order to determine whether the relationship between the seller and the producer influenced that price actually paid or payable. Where it can be shown that the seller and the producer buy from and sell to each other as if they were not related persons, the price actually paid or payable shall be considered as not having been influenced by the relationship between them. For an illustration of this, if the price actually paid or payable for the material had been settled in a manner consistent with the normal pricing practices of the industry in question or with the way in which the seller settles prices for sales to unrelated buyers, the price actually paid or payable shall be considered as not having been influenced by the relationship between the producer and the seller. For another illustration of this, where it is shown that the price actually paid or payable for the material is adequate to ensure recovery of the total cost of producing the material plus a profit that is representative of the seller's overall profit realized over a representative period of time, such as on an annual basis, in sales of materials of the same class or kind, the price actually paid or payable shall be considered as not having been influenced by the relationship between the seller and the producer.

(4) In a sale between a seller and a producer who are related persons, the transaction value shall be accepted and determined in accordance with section 2(1), wherever the seller or the producer demonstrates that the transaction value of the material in that sale closely approximates one of the following test values that occurs at or about the same time as the sale and is chosen by the seller or the producer:

(a) the transaction value in sales to unrelated buyers of identical materials or similar materials, as determined in accordance with section 2(1);

(b) the value of identical materials or similar materials, as determined in accordance with section 9; or

(c) the value of identical materials or similar materials, as determined in accordance with section 10.

(5) In applying a test value referred to in subsection (4), due account shall be taken of demonstrated differences in commercial levels, quantity levels, the value of the elements specified in section 5(1)(b) and the costs incurred by the seller in sales to unrelated buyers that are not incurred by the seller in sales by the seller to a related person.

(6) The application of a test value referred to in subsection (4) shall be used at the initiative of the seller, or at the initiative of the producer with the consent of the seller, and shall be used only for comparison purposes to determine whether the transaction value of the material is acceptable. The test value shall not be used as the transaction value of that material.

(7) Subsection (4) provides an opportunity for the seller or the producer to demonstrate that the transaction value closely approximates a test value previously accepted by the customs administration of the NAFTA country in which the producer is located, and is therefore acceptable under subsection (1). Where the application of a test value under subsection (4) demonstrates that the

transaction value of the material being valued is acceptable, the customs administration shall not examine the question of influence in regard to the relationship between the seller and the producer under subsection (1). Where the customs administration already has sufficient information available, without further inquiries, that the transaction value closely approximates one of the test values determined under subsection (4), the seller or the producer is not required to apply a test value to demonstrate that the transaction value is acceptable under that subsection.

(8) A number of factors must be taken into consideration for the purpose of determining whether the transaction value of the identical materials or similar materials closely approximates the transaction value of the material being valued. These factors include the nature of the material, the nature of the industry itself, the season in which the material is sold, and whether the difference in values is commercially significant. Since these factors may vary from case to case, it would be impossible to apply an acceptable standardized difference such as a fixed amount or fixed percentage difference in each case. For an illustration of this, a small difference in value in a case involving one type of material could be unacceptable, while a large difference in a case involving another type of material might be acceptable for the purposes of determining whether the transaction value closely approximates a test value set out in subsection (4).

SECTION 4.

(1) The price actually paid or payable is the total payment made or to be made by the producer to or for the benefit of the seller of the material. The payment need not necessarily take the form of a transfer of money: it may be made by letters of credit or negotiable instruments. Payment may be made directly or indirectly to the seller. For an illustration of this, the settlement by the producer, whether in whole or in part, of a debt owed by the seller, is an indirect payment.

(2) Activities undertaken by the producer on the producer's own account, other than those for which an adjustment is provided in section 5, shall not be considered to be an indirect payment, even though the activities might be regarded as being for the benefit of the seller.

(3) The transaction value shall not include charges for construction, erection, assembly, maintenance or technical assistance related to the use of the material by the producer, provided that they are distinguished from the price actually paid or payable.

(4) The flow of dividends or other payments from the producer to the seller that do not relate to the purchase of the material are not part of the transaction value.

SECTION 5.

(1) In determining the transaction value of the material, the following shall be added to the price actually paid or payable:

(a) to the extent that they are incurred by the producer with respect to the material being valued and are not included in the price actually paid or payable,

(i) commissions and brokerage fees, except buying commissions, and

(ii) the costs of containers which, for customs purposes, are classified with the material under the Harmonized System;

(b) the value, reasonably allocated in accordance with subsection (12), of the following elements where they are supplied directly or indirectly to the seller by the producer free of charge or at reduced cost for use in connection with the production and sale of the material, to the extent that the value is not included in the price actually paid or payable:

(i) a material, other than an indirect material, used in the production of the material being valued,

(ii) tools, dies, molds and similar indirect materials used in the production of the material being valued,

(iii) an indirect material, other than those referred to in subparagraph (ii) or in paragraphs (c), (e) or (f) of the definition ''indirect material'' set out in Article 415 of the Agreement, as implemented by section 2(1) of this appendix, used in the production of the material being valued, and

(iv) engineering, development, artwork, design work, and plans and sketches performed outside the territory of the NAFTA country in which the producer is located that are necessary for the production of the material being valued;

(c) the royalties related to the material, other than charges with respect to the right to reproduce the material in the territory of the NAFTA country in which the producer is located that the producer must pay directly or indirectly as a condition of sale of the material, to the extent that such royalties are not included in the price actually paid or payable; and

(d) the value of any part of the proceeds of any subsequent disposal or use of the material that accrues directly or indirectly to the seller.

(2) The additions referred to in subsection (1) shall be made to the price actually paid or payable under this section only on the basis of objective and quantifiable data.

(3) Where objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under subsection (1), the transaction value cannot be determined under section 2(1).

(4) No additions shall be made to the price actually paid or payable for the purpose of determining the transaction value except as provided in this section.
(5) The amounts to be added under subsection (1)(a) shall be those amounts that are recorded on the books of the producer.
(6) The value of the elements referred to in subsection (1)(b)(i) shall be
(a) where the elements are imported from outside the territory of the NAFTA country in which the seller is located, the customs value of the elements,
(b) where the producer, or a related person on behalf of the producer, purchases the elements from an unrelated person in the territory of the NAFTA country in which the seller is located, the price actually paid or payable for the elements,
(c) where the producer, or a related person on behalf of the producer, acquires the elements from an unrelated person in the territory of the NAFTA country in which the seller is located other than through a purchase, the value of the consideration related to the acquisition of the elements, based on the cost of the consideration that is recorded on the books of the producer or the related person, or
(d) where the elements are produced by the producer, or by a related person, in the territory of the NAFTA country in which the seller is located, the total cost of the elements, determined in accordance with subsection (7),
and shall include the following costs, that are recorded on the books of the producer or the related person supplying the elements on behalf of the producer, to the extent that such costs are not included under paragraph (a) through (d):
(e) the costs of freight, insurance, packing, and all other costs incurred in transporting the elements to the location of the seller,
(f) duties and taxes paid or payable with respect to the elements, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable,
(g) customs brokerage fees, including the cost of in-house customs brokerage services, incurred with respect to the elements, and
(h) the cost of waste and spoilage resulting from the use of the elements in the production of the material, minus the value of reusable scrap or by-product.
(7) For the purposes of subsection (6)(d), the total cost of the elements referred to in subsection (1)(b)(i) shall be
(a) where the elements are produced by the producer, at the choice of the producer,
(i) the total cost incurred with respect to all goods produced by the producer, calculated on the basis of the costs that are recorded on the books of the producer, that can be reasonably allocated to the elements in accordance with Schedule VII, or
(ii) the aggregate of each cost incurred by the producer that forms part of the total cost incurred with respect to the elements, calculated on the basis of the costs that are recorded on the books of the producer, that can be reasonably allocated to the elements in accordance with Schedule VII; and
(b) where the elements are produced by a person who is related to the producer, at the choice of the producer,
(i) the total cost incurred with respect to all goods produced by that related person, calculated on the basis of the costs that are recorded on the books of that person, that can be reasonably allocated to the elements in accordance with Schedule VII, or
(ii) the aggregate of each cost incurred by that related person that forms part of the total cost incurred with respect to the elements, calculated on the basis of the costs that are recorded on the books of that person, that can be reasonably allocated to the elements in accordance with Schedule VII.
(8) Except as provided in subsections (10) and (11), the value of the elements referred to in subsections (1)(b)(ii) through (iv) shall be
(a) the cost of those elements that is recorded on the books of the producer; or
(b) where such elements are provided by another person on behalf of the producer and the cost is not recorded on the books of the producer, the cost of those elements that is recorded on the books of that other person.
(9) Where the elements referred to in subsections (1)(b)(ii) through (iv) were previously used by or on behalf of the producer, the value of the elements shall be adjusted downward to reflect that use.
(10) Where the elements referred to in subsections (1)(b)(ii) and (iii) were leased by the producer or a person related to the producer, the value of the elements shall be the cost of the lease that is recorded on the books of the producer or that related person.
(11) No addition shall be made to the price actually paid or payable for the elements referred to in subsection (1)(b)(iv) that are available in the public domain, other than the cost of obtaining copies of them.
(12) The producer shall choose the method of allocating to the material the value of the elements referred to in subsections (1)(b)(ii) through (iv), provided that the value is reasonably allocated to the material in a manner appropriate to the circumstances. The methods the producer may choose to allocate the value include allocating the value over the number of units produced up to the time of the first shipment or allocating the value

over the entire anticipated production where contracts or firm commitments exist for that production. For an illustration of this, a producer provides the seller with a mold to be used in the production of the material and contracts with the seller to buy 10,000 units of that material. By the time the first shipment of 1,000 units arrives, the seller has already produced 4,000 units. In these circumstances, the producer may choose to allocate the value of the mold over 4,000 units or 10,000 units but shall not choose to allocate the value of the elements to the first shipment of 1,000 units. The producer may choose to allocate the entire value of the elements to a single shipment of material only where that single shipment comprises all of the units of the material acquired by the producer under the contract or commitment for that number of units of the material between the seller and the producer.

(13) The addition for the royalties referred to in subsection (1)(c) shall be the payment for the royalties that is recorded on the books of the producer, or where the payment for the royalties is recorded on the books of another person, the payment for the royalties that is recorded on the books of that other person.

(14) The value of the proceeds referred to in subsection (1)(d) shall be the amount that is recorded for such proceeds on the books of the producer or the seller.

SECTION 6.

(1) If there is no transaction value under section 2(2) or the transaction value is unacceptable under section 2(3), the value of the material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of part IV of this appendix, shall be the transaction value of identical materials sold, at or about the same time as the material being valued was shipped to the producer, to a buyer located in the same country as the producer.

(2) In applying this section, the transaction value of identical materials in a sale at the same commercial level and in substantially the same quantity of materials as the material being valued shall be used to determine the value of the material. Where no such sale is found, the transaction value of identical materials sold at a different commercial level or in different quantities, adjusted to take into account the differences attributable to the commercial level or quantity, shall be used, provided that such adjustments can be made on the basis of evidence that clearly establishes that the adjustment is reasonable and accurate, whether the adjustment leads to an increase or a decrease in the value.

(3) A condition for adjustment under subsection (2) because of different commercial levels or different quantities is that such adjustment be made only on the basis of evidence that clearly establishes that an adjustment is reasonable and accurate. For an illustration of this, a bona fide price list contains prices for different quantities. If the material being valued consists of a shipment of 10 units and the only identical materials for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's bona fide price list and using the price applicable to a sale of 10 units. This does not require that sales had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a value under this section is not appropriate.

(4) If more than one transaction value of identical materials is found, the lowest such value shall be used to determine the value of the material under this section.

SECTION 7.

(1) If there is no transaction value under section 2(2) or the transaction value is unacceptable under section 2(3), and the value of the material cannot be determined under section 6, the value of the material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of part IV of this appendix, shall be the transaction value of similar materials sold, at or about the same time as the material being valued was shipped to the producer, to a buyer located in the same country as the producer.

(2) In applying this section, the transaction value of similar materials in a sale at the same commercial level and in substantially the same quantity of materials as the material being valued shall be used to determine the value of the material. Where no such sale is found, the transaction value of similar materials sold at a different commercial level or in different quantities, adjusted to take into account the differences attributable to the commercial level or quantity, shall be used, provided that such adjustments can be made on the basis of evidence that clearly establishes that the adjustment is reasonable and accurate, whether the adjustment leads to an increase or a decrease in the value.

(3) A condition for adjustment under subsection (2) because of different commercial levels or different quantities is that such adjustment be made only on the basis of evidence that clearly establishes that an adjustment is reasonable and accurate. For an illustration of this, a bona fide price list contains prices for different quantities. If the material being valued consists of a shipment of 10 units and the only similar materials for which a transaction value exists involved a sale of 500 units, and it is recognized that the

seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's bona fide price list and using the price applicable to a sale of 10 units. This does not require that sales had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a value under this section is not appropriate.

(4) If more than one transaction value of similar materials is found, the lowest such value shall be used to determine the value of the material under this section.

SECTION 8.

If there is no transaction value under section 2(2) or the transaction value is unacceptable under section 2(3), and the value of the material cannot be determined under section 6 or 7, the value of the material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of part IV of this appendix, shall be determined under section 9 or, when the value cannot be determined under that section, under section 10 except that, at the request of the producer, the order of application of sections 9 and 10 shall be reversed.

SECTION 9.

(1) Under this section, if identical materials or similar materials are sold in the territory of the NAFTA country in which the producer is located, in the same condition as the material was in when received by the producer, the value of the material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of part IV of this appendix, shall be based on the unit price at which those identical materials or similar materials are sold, in the greatest aggregate quantity by the producer or, where the producer does not sell those identical materials or similar materials, by a person at the same trade level as the producer, at or about the same time as the material being valued is received by the producer, to persons located in that territory who are not related to the seller, subject to deductions for the following:

(a) either the amount of commissions usually earned or the amount generally reflected for profit and general expenses, in connection with sales, in the territory of that NAFTA country, of materials of the same class or kind as the material being valued; and

(b) taxes, if included in the unit price, payable in the territory of that NAFTA country, which are either waived, refunded or recoverable by way of credit against taxes actually paid or payable.

(2) If neither identical materials nor similar materials are sold at or about the same time the material being valued is received by the producer, the value shall, subject to the deductions provided for under subsection (1), be based on the unit price at which identical materials or similar materials are sold in the territory of the NAFTA country in which the producer is located, in the same condition as the material was in when received by the producer, at the earliest date within 90 days after the date the material being valued was received by the producer.

(3) The expression ''unit price at which those identical materials or similar materials are sold, in the greatest aggregate quantity'' in subsection (1) means the price at which the greatest number of units is sold in sales between unrelated persons. For an illustration of this, materials are sold from a price list which grants favorable unit prices for purchases made in larger quantities.

Sale quantity	Unit price	Number of sales	Total quantity sold at each price
1–10 units	100	10 sales of 5 units	65
		5 sales of 3 units	
11–25 units	95	5 sales of 11 units	55
		1 sale of 20 units	
Over 25 units	90	1 sale of 30 units	80
		1 sale of 50 units	

The greatest number of units sold at a particular price is 80; therefore, the unit price in the greatest aggregate quantity is 90.

As another illustration of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. In this illustration, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is 95.

(4) Any sale to a person who supplies, directly or indirectly, free of charge or at reduced cost for use in connection with the production of the material, any of the elements specified in section 5(1)(b), shall not be taken into account in establishing the unit price for the purposes of this section.

(5) The amount generally reflected for profit and general expenses referred to in subsection (1)(a) shall be taken as a whole. The figure for the purposes of deducting an

amount for profit and general expenses shall be determined on the basis of information supplied by or on behalf of the producer unless the figures provided by the producer are inconsistent with those usually reflected in sales, in the country in which the producer is located, of materials of the same class or kind as the material being valued. Where the figures provided by the producer are inconsistent with those figures, the amount for profit and general expenses shall be based on relevant information other than that supplied by or on behalf of the producer.

(6) For the purposes of this section, general expenses are the direct and indirect costs of marketing the material in question.

(7) In determining either the commissions usually earned or the amount generally reflected for profit and general expenses under this section, the question as to whether certain materials are materials of the same class or kind as the material being valued shall be determined on a case-by-case basis with reference to the circumstances involved. Sales in the country in which the producer is located of the narrowest group or range of materials of the same class or kind as the material being valued, for which the necessary information can be provided, shall be examined. For the purposes of this section, ''materials of the same class or kind'' includes materials imported from the same country as the material being valued as well as materials imported from other countries or acquired within the territory of the NAFTA country in which the producer is located.

(8) For the purposes of subsection (2), the earliest date shall be the date by which sales of identical materials or similar materials are made, in sufficient quantity to establish the unit price, to other persons in the territory of the NAFTA country in which the producer is located.

SECTION 10.

(1) Under this section, the value of a material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of part IV of this appendix, shall be the sum of

(a) the cost or value of the materials used in the production of the material being valued, as determined on the basis of the costs that are recorded on the books of the producer of the material,

(b) the cost of producing the material being valued, as determined on the basis of the costs that are recorded on the books of the producer of the material, and

(c) an amount for profit and general expenses equal to that usually reflected in sales

(i) where the material being valued is imported by the producer into the territory of the NAFTA country in which the producer is located, to persons located in the territory of the NAFTA country in which the producer is located by producers of materials of the same class or kind as the material being valued who are located in the country in which the material is produced, and

(ii) where the material being valued is acquired by the producer from another person located in the territory of the NAFTA country in which the producer is located, to persons located in the territory of the NAFTA country in which the producer is located by producers of materials of the same class or kind as the material being valued who are located in the country in which the producer is located,

(d) the value of elements referred to in section 5(1)(b)(i), determined in accordance with section 5(6), and

(e) the value of elements referred to in sections 5(1)(b)(ii) through (iv), determined in accordance with section 5(8) and reasonably allocated to the material in accordance with section 5(12).

(2) For purposes of subsections (1)(a) and (b), where the costs recorded on the books of the producer of the material relate to the production of other goods and materials as well as to the production of the material being valued, the costs referred to in subsections (1)(a) and (b) with respect to the material being valued shall be those costs recorded on the books of the producer of the material that can be reasonably allocated to that material in accordance with Schedule VII.

(3) The amount for profit and general expenses referred to in subsection (1)(c) shall be determined on the basis of information supplied by or on behalf of the producer of the material being valued unless the profit and general expenses figures that are supplied with that information are inconsistent with those usually reflected in sales by producers of materials of the same class or kind as the material being valued who are located in the country in which the material is produced or the producer is located, as the case may be. The information supplied shall be prepared in a manner consistent with generally accepted accounting principles of the country in which the material being valued is produced. Where the material is produced in the territory of a NAFTA country, the information shall be prepared in accordance with the Generally Accepted Accounting Principles set out in the authorities listed for that NAFTA country in Schedule XII.

(4) For purposes of subsection (1)(c) and subsection (3), general expenses means the direct and indirect costs of producing and selling the material that are not included under subsections (1)(a) and (b).

(5) For purposes of subsection (3), the amount for profit and general expenses shall be taken as a whole. Where, in the information supplied by or on behalf of the producer

of a material, the profit figure is low and the general expenses figure is high, the profit and general expense figures taken together may nevertheless be consistent with those usually reflected in sales of materials of the same class or kind as the material being valued. Where the producer of a material can demonstrate that it is taking a nil or low profit on its sales of the material because of particular commercial circumstances, its actual profit and general expense figures shall be taken into account, provided that the producer of the material has valid commercial reasons to justify them and its pricing policy reflects usual pricing policies in the branch of industry concerned. For an illustration of this, such a situation might occur where producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or where the producers sell the material to complement a range of materials and goods being produced in the country in which the material is sold and accept a low profit to maintain competitiveness. A further illustration is where a material was being launched and the producer accepted a nil or low profit to offset high general expenses associated with the launch.

(6) Where the figures for the profit and general expenses supplied by or on behalf of the producer of the material are not consistent with those usually reflected in sales of materials of the same class or kind as the material being valued that are made by other producers in the country in which that material is sold, the amount for profit and general expenses may be based on relevant information other than that supplied by or on behalf of the producer of the material.

(7) Where a customs administration uses information other than that supplied by or on behalf of the producer of the material for the purposes of determining the value of a material under this section, the customs administration shall communicate to the producer, if that producer so requests, the source of such information, the data used and the calculations based upon such data, subject to the provisions on confidentiality under Article 507 of the Agreement, as implemented in each NAFTA country.

(8) Whether certain materials are of the same class or kind as the material being valued shall be determined on a case-by-case basis with reference to the circumstances involved. For purposes of determining the amount for profit and general expenses usually reflected under the provisions of this section, sales of the narrowest group or range of materials of the same class or kind, which includes the material being valued, for which the necessary information can be provided, shall be examined. For the purposes of this section, the materials of the same class or kind must be from the same country as the material being valued.

SECTION 11.

(1) Where there is no transaction value under section 2(2) or the transaction value is unacceptable under section 2(3), and the value of the materials cannot be determined under sections 6 through 10, the value of the material, referred to in Article 402(9)(b) of the Agreement, as implemented by section 7(1)(b)(ii) of part IV of this appendix, shall be determined under this section using reasonable means consistent with the principles and general provisions of this Schedule and on the basis of data available in the country in which the producer is located.

(2) The value of the material determined under this section shall not be determined on the basis of

(a) a valuation system which provides for the acceptance of the higher of two alternative values;

(b) a cost of production other than the value determined in accordance with section 10;

(c) minimum values;

(d) arbitrary or fictitious values;

(e) where the material is produced in the territory of the NAFTA country in which the producer is located, the price of the material for export from that territory; or

(f) where the material is imported, the price of the material for export to a country other than to the territory of the NAFTA country in which the producer is located.

(3) To the greatest extent possible, the value of the material determined under this section shall be based on the methods of valuation set out in sections 2 through 10, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of this section. For an illustration of this, under section 6, the requirement that the identical materials should be sold at or about the same time as the time the material being valued is shipped to the producer could be flexibly interpreted. Similarly, identical materials produced in a country other than the country in which the material is produced could be the basis for determining the value of the material, or the value of identical materials already determined under section 9 could be used. For another illustration, under section 7, the requirement that the similar materials should be sold at or about the same time as the material being valued are shipped to the producer could be flexibly interpreted. Likewise, similar materials produced in a country other than the country in which the material is produced could be the basis for determining the value of the material, or the value of similar materials already determined under the provisions of section 9 could be used. For a further illustration, under section 9, the ninety days requirement could be administered flexibly.

SCHEDULE IX

METHODS FOR DETERMINING THE VALUE OF NON-ORIGINATING MATERIALS THAT ARE IDENTICAL MATERIALS AND THAT ARE USED IN THE PRODUCTION OF A GOOD

DEFINITIONS AND INTERPRETATION

SECTION 1. DEFINITIONS.

For purposes of this Schedule,

''FIFO method'' means the method by which the value of non-originating materials first received in materials inventory, determined in accordance with section 7 of this appendix, is considered to be the value of non-originating materials used in the production of the good first shipped to the buyer of the good;

''identical materials'' means, with respect to a material, materials that are the same as that material in all respects, including physical characteristics, quality and reputation but excluding minor differences in appearance;

''LIFO method'' means the method by which the value of non-originating materials last received in materials inventory, determined in accordance with section 7 of this appendix, is considered to be the value of non-originating materials used in the production of the good first shipped to the buyer of the good;

''materials inventory'' means, with respect to a single plant of the producer of a good, an inventory of non-originating materials that are identical materials and that are used in the production of the good; and

''rolling average method'' means the method by which the value of non-originating materials used in the production of a good that is shipped to the buyer of the good is based on the average value, calculated in accordance with section 4, of the non-originating materials in materials inventory.

GENERAL

SECTION 2.

For purposes of sections 5(11) and (12) and 6(10) of this appendix, the following are the methods for determining the value of non-originating materials that are identical materials and are used in the production of a good:

(a) FIFO method;

(b) LIFO method; and

(c) rolling average method.

SECTION 3.

(1) Where a producer of a good chooses, with respect to non-originating materials that are identical materials, any of the methods referred to in section 2, the producer may not use another of those methods with respect to any other non-originating materials that are identical materials and that are used in the production of that good or in the production of any other good.

(2) Where a producer of a good produces the good in more than one plant, the method chosen by the producer shall be used with respect to all plants of the producer in which the good is produced.

(3) The method chosen by the producer to determine the value of non-originating materials may be chosen at any time during the producer's fiscal year and may not be changed during that fiscal year.

AVERAGE VALUE FOR ROLLING AVERAGE METHOD

SECTION 4.

(1) The average value of non-originating materials that are identical materials and that are used in the production of a good that is shipped to the buyer of the good is calculated by dividing

(a) the total value of non-originating materials that are identical materials in materials inventory prior to the shipment of the good, determined in accordance with section 7 of this appendix,

by

(b) the total units of those non-originating materials in materials inventory prior to the shipment of the good.

(2) The average value calculated under subsection (1) is applied to the remaining units of non-originating materials in materials inventory.

ADDENDUM

''EXAMPLES'' ILLUSTRATING THE APPLICATION OF THE METHODS FOR DETERMINING THE VALUE OF NON-ORIGINATING MATERIALS THAT ARE IDENTICAL MATERIALS AND THAT ARE USED IN THE PRODUCTION OF A GOOD

The following ''examples'' are based on the figures set out in the table below and on the following assumptions:

(a) Materials A are non-originating materials that are identical materials that are used in the production of Good A;

(b) one unit of Materials A is used to produce one unit of Good A;

(c) all other materials used in the production of Good A are originating materials; and

(d) Good A is produced in a single plant.

Date (M/D/Y)	Materials inventory (Receipts of materials A)		Sales (Shipments of good A)
	Quantity (units)	Unit cost*	Quantity (units)
01/01/94	200	$1.05	
01/03/94	1,000	1.00	
01/05/94	1,000	1.10	
01/08/94			500
01/09/94			500
01/10/94	1,000	1.05	
01/14/94			1,500
01/16/94	2,000	1.10	
01/18/94			1,500

*Unit cost is determined in accordance with section 7 of this appendix.

Example 1: FIFO method

By applying the FIFO method:

(1) the 200 units of Materials A received on 01/01/94 and valued at $1.05 per unit and 300 units of the 1,000 units of Material A received on 01/03/94 and valued at $1.00 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/08/94; therefore, the value of the non-originating materials used in the production of those goods is considered to be $510 [(200 unit × $1.05) + ($300 units × $1.00)];

(2) 500 units of the remaining 700 units of Materials A received on 01/03/94 and valued at $1.00 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/09/94; therefore, the value of the non-originating materials used in the production of those goods is considered to be $500 (500 units × $1.00);

(3) the remaining 200 units of the 1,000 of Materials A received on 01/03/94 and valued at $1.00 per unit, the 1,000 units of Materials A received on 01/05/94 and valued at $1.10 per unit, and 300 units of the 1,000 Materials A received on 01/10/94 and valued at $1.05 per unit are considered to have been used in the production of the 1,500 units of Good A shipped on 01/14/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,615 [(200 units × $1.00) + (1,000 units × $1.10) + (300 units × $1.05)]; and

(4) the remaining 700 units of the 1,000 units of Materials A received on 01/10/94 and valued at $1.05 per unit and 800 units of the 2,000 units of Materials A received on 01/16/94 and valued at $1.10 per unit are considered to have been used in the production of the 1,500 units of Good A shipped on 01/18/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,615 [(700 × $1.05) + (800 × $1.10)].

Example 2: LIFO method

By applying the LIFO method:

(1) 500 units of the 1,000 units of Materials A received on 01/05/94 and valued at $1.10 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/08/94; therefore, the value of the non-originating materials used in the production of those goods is considered to be $550 (500 units × $1.10);

(2) the remaining 500 units of the 1,000 units of Materials A received on 01/05/94 and valued at $1.10 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/09/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $550 (500 units × $1.10);

(3) the 1,000 units of Materials A received on 01/10/94 and valued at $1.05 per unit and 500 units of the 1,000 units of Material A received on 01/03/94 and valued at $1.00 per unit are considered to have been used in the production of the 1,500 units of Good A shipped on 01/14/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,550 [(1,000 units × $1.05) + (500 units × $1.00)]; and

(4) 1,500 units of the 2,000 units of Materials A received on 01/16/94 and valued at $1.10 per unit are considered to have been used in the production of the 1,500 units of Good A shipped on 01/18/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,650 (1,500 units × $1.10).

Example 3: Rolling average method

The following table identifies the average value of non-originating Materials A as determined under the rolling average method. For purposes of this example, a new average value of non-originating Materials A is calculated after each receipt.

	Materials inventory			
	Date (M/D/Y)	Quantity (units)	Unit cost*	Total value
Beginning Inventory	1/1/94	200	$1.05	$210

Materials inventory				
	Date (M/D/Y)	Quantity (units)	Unit cost*	Total value
Receipt	1/3/94	1,000	1.00	1,000
AVERAGE VALUE		1,200	1.008	1,210
Receipt	1/5/94	1,000	1.10	1,100
AVERAGE VALUE		2,200	1.05	2,310
Shipment	1/8/94	500	1.05	525
AVERAGE VALUE		1,700	1.05	1,785
Shipment	1/9/94	500	1.05	525
AVERAGE VALUE		1,200	1.05	1,260
Receipt	1/16/94	2,000	1.10	2,200
AVERAGE VALUE		3,200	1.08	3,460

* Unit cost is determined in accordance with section 7 of this appendix.

By applying the rolling average method:
(1) the value of non-originating materials used in the production of the 500 units of Good A shipped on 01/08/94 is considered to be $525 (500 units × $1.05); and
(2) the value of non-originating materials used in the production of the 500 units of Good A shipped on 01/09/94 is considered to be $525 (500 units × $1.05).

SCHEDULE X

INVENTORY MANAGEMENT METHODS

PART I

FUNGIBLE MATERIALS

DEFINITIONS AND INTERPRETATION

SECTION 1. DEFINITIONS.

For purposes of this part,
''average method'' means the method by which the origin of fungible materials withdrawn from materials inventory is based on the ratio, calculated under section 5, of originating materials and non-originating materials in materials inventory;
''FIFO method'' means the method by which the origin of fungible materials first received in materials inventory is considered to be the origin of fungible materials first withdrawn from materials inventory;
''LIFO method'' means the method by which the origin of fungible materials last received in materials inventory is considered to be the origin of fungible materials first withdrawn from materials inventory;
''materials inventory'' means,
(a) with respect to a producer of a good, an inventory of fungible materials that are used in the production of the good, and
(b) with respect to a person from whom the producer of the good acquired those fungible materials, an inventory from which fungible materials are sold or otherwise transferred to the producer of the good;
''opening inventory'' means the materials inventory at the time an inventory management method is chosen;
''origin identifier'' means any mark that identifies fungible materials as originating materials or non-originating materials.

GENERAL

SECTION 2.

The inventory management methods for determining whether fungible materials referred to in section 7(16)(a) of this appendix are originating materials are the following:
(a) specific identification method;
(b) FIFO method;
(c) LIFO method; and
(d) average method.

SECTION 3.

A producer of a good, or a person from whom the producer acquired the fungible materials that are used in the production of the good, may choose only one of the inventory management methods referred to in section 2, and, if the averaging method is chosen, only one averaging period in each fiscal year of that producer or person for the materials inventory.

SPECIFIC IDENTIFICATION METHOD

SECTION 4.

(1) Except as otherwise provided under subsection (2), where the producer or person referred to in section 3 chooses the specific identification method, the producer or person shall physically segregate, in materials inventory, originating materials that are fungible materials from non-originating materials that are fungible materials.
(2) Where originating materials or non-originating materials that are fungible materials are marked with an origin identifier, the producer or person need not physically segregate those materials under subsection (1) if the origin identifier remains visible throughout the production of the good.

AVERAGE METHOD

SECTION 5.

Where the producer or person referred to in section 3 chooses the average method, the origin of fungible materials withdrawn from materials inventory is determined on the basis of the ratio of originating materials and non-originating materials in materials inventory that is calculated under sections 6 through 8.

SECTION 6.

(1) Except as otherwise provided in sections 7 and 8, the ratio is calculated with respect to a month or three-month period, at the choice of the producer or person, by dividing

(a) the sum of

(i) the total units of originating materials or non-originating materials that are fungible materials and that were in materials inventory at the beginning of the preceding one-month or three-month period, and

(ii) the total units of originating materials or non-originating materials that are fungible materials and that were received in materials inventory during that preceding one-month or three-month period,

by

(b) the sum of

(i) the total units of originating materials and non-originating materials that are fungible materials and that were in materials inventory at the beginning of the preceding one-month or three-month period, and

(ii) the total units of originating materials and non-originating materials that are fungible materials and that were received in materials inventory during that preceding one-month or three-month period.

(2) The ratio calculated with respect to a preceding month or three-month period under subsection (1) is applied to the fungible materials remaining in materials inventory at the end of the preceding month or three-month period.

SECTION 7.

(1) Where the good is subject to a regional value-content requirement and the regional value content is calculated under the net cost method and the producer or person chooses to average over a period under sections 6(15), 11(1), (3) or (6), 12(1) or 13(4) of this appendix, the ratio is calculated with respect to that period by dividing

(a) the sum of

(i) the total units of originating materials or non-originating materials that are fungible materials and that were in materials inventory at the beginning of the period, and

(ii) the total units of originating materials or non-originating materials that are fungible materials and that were received in materials inventory during that period,

by

(b) the sum of

(i) the total units of originating materials and non-originating materials that are fungible materials and that were in materials inventory at the beginning of the period, and

(ii) the total units of originating materials or non-originating materials that are fungible materials and that were received in materials inventory during that period.

(2) The ratio calculated with respect to a period under subsection (1) is applied to the fungible materials remaining in materials inventory at the end of the period.

SECTION 8.

(1) Where the good is subject to a regional value-content requirement and the regional value content of that good is calculated under the transaction value method or the net cost method, the ratio is calculated with respect to each shipment of the good by dividing

(a) the total units of originating materials or non-originating materials that are fungible materials and that were in materials inventory prior to the shipment,

by

(b) the total units of originating materials and non-originating materials that are fungible materials and that were in materials inventory prior to the shipment.

(2) The ratio calculated with respect to a shipment of a good under subsection (1) is applied to the fungible materials remaining in materials inventory after the shipment.

MANNER OF DEALING WITH OPENING INVENTORY

SECTION 9.

(1) Except as otherwise provided under subsections (2) and (3), where the producer or person referred to in section 3 has fungible materials in opening inventory, the origin of those fungible materials is determined by

(a) identifying, in the books of the producer or person, the latest receipts of fungible materials that add up to the amount of fungible materials in opening inventory;

(b) determining the origin of the fungible materials that make up those receipts; and

(c) considering the origin of those fungible materials to be the origin of the fungible materials in opening inventory.

(2) Where the producer or person chooses the specific identification method and has, in opening inventory, originating materials or non-originating materials that are fungible

materials and that are marked with an origin identifier, the origin of those fungible materials is determined on the basis of the origin identifier.

(3) The producer or person may consider all fungible materials in opening inventory to be non-originating materials.

PART II

FUNGIBLE GOODS

Definitions and Interpretation

SECTION 10. Definitions.

For purposes of this part,

''average method'' means the method by which the origin of fungible goods withdrawn from finished goods inventory is based on the ratio, calculated under section 12, of originating goods and non-originating goods in finished goods inventory;

''FIFO method'' means the method by which the origin of fungible goods first received in finished goods inventory is considered to be the origin of fungible goods first withdrawn from finished goods inventory;

''finished goods inventory'' means an inventory from which fungible goods are sold or otherwise transferred to another person;

''LIFO method'' means the method by which the origin of fungible goods last received in finished goods inventory is considered to be the origin of fungible goods first withdrawn from finished goods inventory;

''opening inventory'' means the finished goods inventory at the time an inventory management method is chosen; and

''origin identifier'' means any mark that identifies fungible goods as originating goods or non-originating goods.

General

SECTION 11.

The inventory management methods for determining whether fungible goods referred to in section 7(16)(b) of this appendix are originating goods are the following:

(a) specific identification method;

(b) FIFO method;

(c) LIFO method; and

(d) average method.

SECTION 12.

An exporter of a good, or a person from whom the exporter acquired the fungible good, may choose only one of the inventory management methods referred to in section 11, including only one averaging period in the case of the average method, in each fiscal year of that exporter or person for each finished goods inventory of the exporter or person.

Specific Identification Method

SECTION 13.

(1) Except as provided under subsection (2), where the exporter or person referred to in section 12 chooses the specific identification method, the exporter or person shall physically segregate, in finished goods inventory, originating goods that are fungible goods from non-originating goods that are fungible goods.

(2) Where originating goods or non-originating goods that are fungible goods are marked with an origin identifier, the exporter or person need not physically segregate those goods under subsection (1) if the origin identifier is visible on the fungible goods.

Average Method

SECTION 14.

(1) Where the exporter or person referred to in section 12 chooses the average method, the origin of each shipment of fungible goods withdrawn from finished goods inventory during a month or three-month period, at the choice of the exporter or person, is determined on the basis of the ratio of originating goods and non-originating goods in finished goods inventory for the preceding one-month or three-month period that is calculated by dividing

(a) the sum of

(i) the total units of originating goods or non-originating goods that are fungible goods and that were in finished goods inventory at the beginning of the preceding one-month or three-month period, and

(ii) the total units of originating goods or non-originating goods that are fungible goods and that were received in finished goods inventory during that preceding one-month or three-month period,

by

(b) the sum of

(i) the total units of originating goods and non-originating goods that are fungible goods and that were in finished goods inventory at the beginning of the preceding one-month or three-month period, and

(ii) the total units of originating goods and non-originating goods that are fungible goods and that were received in finished goods inventory during that preceding one-month or three-month period.

(2) The calculation with respect to a preceding month or three-month period under subsection (1) is applied to the fungible goods remaining in finished goods inventory at the end of the preceding month or three-month period.

MANNER OF DEALING WITH OPENING INVENTORY

SECTION 15.

(1) Except as otherwise provided under subsections (2) and (3), where the exporter or person referred to in section 12 has fungible goods in opening inventory, the origin of those fungible goods is determined by

(a) identifying, in the books of the exporter or person, the latest receipts of fungible goods that add up to the amount of fungible goods in opening inventory;

(b) determining the origin of the fungible goods that make up those receipts; and

(c) considering the origin of those fungible goods to be the origin of the fungible goods in opening inventory.

(2) Where the exporter or person chooses the specific identification method and has, in opening inventory, originating goods or non-originating goods that are fungible goods and that are marked with an origin identifier, the origin of those fungible goods is determined on the basis of the origin identifier.

(3) The exporter or person may consider all fungible goods in opening inventory to be non-originating goods.

ADDENDUM A

''EXAMPLES'' ILLUSTRATING THE APPLICATION OF THE INVENTORY MANAGEMENT METHODS TO DETERMINE THE ORIGIN OF FUNGIBLE MATERIALS

The following ''examples'' are based on the figures set out in the table below and on the following assumptions:

(a) originating Material A and non-originating Material A that are fungible materials are used in the production of Good A;

(b) one unit of Material A is used to produce one unit of Good A;

(c) Material A is only used in the production of Good A;

(d) all other materials used in the production of Good A are originating materials; and

(e) the producer of Good A exports all shipments of Good A to the territory of a NAFTA country.

Date (M/D/Y)	Materials inventory (Receipts of material A)			Sales (Shipments of good A)
	Quantity (units)	Unit cost *	Total value	Quantity (units)
12/18/93	100 (O [1])	$1.00	$100	
12/27/93	100 (N [2])	1.10	110	
01/01/94	200 (OI [3])			
01/01/94	1,000 (O)	1.00	1,000	
01/05/94	1,000 (N)	1.10	1,100	
01/10/94				100
01/10/94	1,000 (O)	1.05	1,050	
01/15/94				700
01/16/94	2,000 (N)	1.10	2,200	
01/20/94				1,000
01/23/94				900

* Unit cost is determined in accordance with section 7 of this appendix.
[1] ''O'' denotes originating materials.
[2] ''N'' denotes non-originating materials.
[3] ''OI'' denotes opening inventory.

Example 1: FIFO method

Good A is subject to a regional value-content requirement. Producer A is using the transaction value method to determine the regional value content of Good A.

By applying the FIFO method:

(1) the 100 units of originating Material A in opening inventory that were received in materials inventory on 12/18/93 are considered to have been used in the production of the 100 units of Good A shipped on 01/10/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $0;

(2) the 100 units of non-originating Material A in opening inventory that were received in materials inventory on 12/27/93 and 600 units of the 1,000 units of originating Material A that were received in materials inventory on 01/01/94 are considered to have been used in the production of the 700 units of Good A shipped on 01/15/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $110 (100 units × $1.10);

(3) the remaining 400 units of the 1,000 units of originating Material A that were received in materials inventory on 01/01/94 and 600 units of the 1,000 units of non-originating Material A that were received in materials inventory on 01/05/94 are considered to have been used in the production of the 1,000 units of Good A shipped on 01/20/94; therefore, the value of non-originating materials used in

the production of those goods is considered to be $660 (600 units × $1.10); and

(4) the remaining 400 units of the 1,000 units of non-originating Material A that were received in materials inventory on 01/05/94 and 500 units of the 1,000 units of originating Material A that were received in materials inventory on 01/10/94 are considered to have been used in the production of the 900 units of Good A shipped on 01/23/94; therefore, the value of non-originating materials used in the production of those goods is considered to be $440 (400 units × $1.10).

Example 2: LIFO method

Good A is subject to a change in tariff classification requirement and the non-originating Material A used in the production of Good A does not undergo the applicable change in tariff classification. Therefore, where originating Material A is used in the production of Good A, Good A is an originating good and, where non-originating Material A is used in the production of Good A, Good A is a non-originating good.

By applying the LIFO method:

(1) 100 units of the 1,000 units of non-originating Material A that were received in materials inventory on 01/05/94 are considered to have been used in the production of the 100 units of Good A shipped on 01/10/94;

(2) 700 units of the 1,000 units of originating Material A that were received in materials inventory on 01/10/94 are considered to have been used in the production of the 700 units of Good A shipped on 01/15/94;

(3) 1,000 units of the 2,000 units of non-originating Material A that were received in materials inventory on 01/16/94 are considered to have been used in the production of the 1,000 units of Good A shipped on 01/20/94; and

(4) 900 units of the remaining 1,000 units of non-originating Material A that were received in materials inventory on 01/16/94 are considered to have been used in the production of the 900 units of Good A shipped on 01/23/94.

Example 3: Average method

Good A is subject to an applicable regional value-content requirement. Producer A is using the transaction value method to determine the regional value content of Good A. Producer A determines the average value of non-originating Material A and the ratio of originating Material A to total value of originating Material A and non-originating Material A in the following table.

	Date (M/D/Y)	Materials inventory						Sales (Shipments of good A)
		(Receipts of material A)			(Non-originating material)			
		Quantity (units)	Total value	Unit cost *	Quantity (units)	Total value	Ratio	Quantity (units)
Receipt	12/18/93	100 (O [1])	$100	$1.00				
Receipt	12/27/93	*100 (N [2])*	*110*	*1.10*	*100*	*$110.00*		
NEW AVERAGE INV. VALUE.		200 (OI [3])	210	1.05	100	105.00	0.50	
Receipt	01/01/94	*1,000 (O)*	*1,000*	*1.00*				
NEW AVERAGE INV. VALUE.		1,200	1,210	1.01	100	101.00	0.08	
Receipt	01/05/94	*1,000 (N)*	*1,100*	*1.10*	*1,000*	*1,100.00*		
NEW AVERAGE INV. VALUE.		2,200	2,310	1.05	1,100	1,155.00	0.50	
Shipment	01/10/94	(100)	(105)	1.05	(50)	(52.50)		100
Receipt	01/10/94	*1,000 (O)*	*1,050*	*1.05*				
NEW AVERAGE INV. VALUE.		3,100	3,255	1.05	1,050	1,102.50	0.34	
Shipment	01/15/94	(700)	(735)	1.05	(238)	(249.90)		700
Receipt	01/16/94	*2,000 (N)*	*2,200*	*1.10*	*2,000*	*2,000.00*		
NEW AVERAGE INV. VALUE.		4,400	4,720	1.07	2,816	3,013.20	0.64	
Shipment	01/20/94	(1,000)	(1,070)	1.07	(640)	(648.80)		1,000
Shipment	01/23/94	(*900*)	(*963*)	*1.07*	(*576*)	(*616.32*)		900
NEW AVERAGE INV. VALUE.		2,500	2,687	1.07	1,596	1,707.24	0.64	

* Unit cost is determined in accordance with section 7 of this appendix.

[1] "O" denotes originating materials.

[2] "N" denotes non-originating materials.

[3] "OI" denotes opening inventory.

By applying the average method:
(1) before the shipment of the 100 units of Material A on 01/10/94, the ratio of units of originating Material A to total units of Material A in materials inventory was .50 (1,100 units/2,200 units) and the ratio of units of non-originating Material A to total units of Material A in materials inventory was .50 (1,100 units/2,200 units); based on those ratios, 50 units (100 units × .50) of originating Material A and 50 units (100 units × .50) of non-originating Material A are considered to have been used in the production of the 100 units of Good A shipped on 01/10/94; therefore, the value of non-originating Material A used in the production of those goods is considered to be $52.50 [100 units × $1.05 (average unit value) × .50]; the ratios are applied to the units of Material A remaining in materials inventory after the shipment: 1,050 units (2,100 units × .50) are considered to be originating materials and 1,050 units (2,100 units × .50) are considered to be non-originating materials;
(2) before the shipment of the 700 units of Good A on 01/15/94, the ratio of units of originating Material A to total units of Material A in materials inventory was 66% (2,050 units/3,100 units) and the ratio of units of non-originating Material A to total units of Material A in materials inventory was 34% (1,050 units/3,100 units); based on those ratios, 462 units (700 units × .66) of originating Material A and 238 units (700 units × .34) of non-originating Material A are considered to have been used in the production of the 700 units of Good A shipped on 01/15/94; therefore, the value of non-originating Material A used in the production of those goods is considered to be $249.90 [700 units × $1.05 (average unit value) × 34%]; the ratios are applied to the units of Material A remaining in materials inventory after the shipment: 1,584 units (2,400 units × .66) are considered to be originating materials and 816 units (2,400 units × .34) are considered to be non-originating materials;
(3) before the shipment of the 1,000 units of Material A on 01/20/94, the ratio of units of originating Material A to total units of Material A in materials inventory was 36% (1,584 units/4,400 units) and the ratio of units of non-originating Material A to total units of Material A in materials inventory was 64% (2,816 units/4,400 units); based on those ratios, 360 units (1,000 units × .36) of originating Material A and 640 units (1,000 units × .64) of non-originating Material A are considered to have been used in the production of the 1,000 units of Good A shipped on 01/20/94; therefore, the value of non-originating Material A used in the production of those goods is considered to be $684.80 [1,000 units × $1.07 (average unit value) × 64%]; those ratios are applied to the units of Material A remaining in materials inventory after the shipment: 1,224 units (3,400 units × .36) are considered to be originating materials and 2,176 units (3,400 units × .64) are considered to be non-originating materials;
(4) before the shipment of the 900 units of Good A on 01/23/94, the ratio of units of originating Material A to total units of Material A in materials inventory was 36% (1,224 units/3,400 units) and the ratio of units of non-originating Material A to total units of Material A in materials inventory was 64% (2,176 units/3,400 units; based on those ratios, 324 units (900 units × .36) of originating Material A and 576 units (900 units × .64) of non-originating Material A are considered to have been used in the production of the 900 units of Good A shipped on 01/23/94; therefore, the value of non-originating Material A used in the production of those goods is considered to be $616.32 [900 units × $1.07 (average unit value) × 64%]; those ratios are applied to the units of Material A remaining in materials inventory after the shipment: 900 units (2,500 units × .36) are considered to be originating materials and 1,600 units (2,500 units × .64) are considered to be non-originating materials.

Example 4: Average method

Good A is subject to an applicable regional value-content requirement. Producer A is using the net cost method and is averaging over a period of one month under section 6(15)(a) of this appendix to determine the regional value content of Good A.

By applying the average method:

the ratio of units of originating Material A to total units of Material A in materials inventory for January 1994 is 40.4% (2,100 units/5,200 units);

based on that ratio, 1,091 units (2,700 units × .404) of originating Material A and 1,609 units (2,700 units-1,091 units) of non-originating Material A are considered to have been used in the production of the 2,700 units of Good A shipped in January 1994; therefore, the value of non-originating materials used in the production of those goods is considered to be $0.64 per unit [$5,560 (total value of Material A in materials inventory)/ $5,200 (units of Material A in materials inventory) = $1.07 (average unit value) × (1-.404)] or $1,728 ($0.64 × 2,700 units); and

that ratio is applied to the units of Material A remaining in materials inventory on January 31, 1994: 1,010 units (2,500 units × .404) are considered to be originating materials and 1,490 units (2,500 units-1,010 units) are considered to be non-originating materials.

ADDENDUM B

''EXAMPLES'' ILLUSTRATING THE APPLICATION OF THE INVENTORY MANAGEMENT METHODS TO DETERMINE

THE ORIGIN OF FUNGIBLE GOODS

The following ''examples'' are based on the figures set out in the table below and on the

assumption that Exporter A acquires originating Good A and non-originating Good A that are fungible goods and physically combines or mixes Good A before exporting those goods to the buyer of those goods.

Date (M/D/Y)	Finished goods inventory (receipts of good A)	Sales (shipments of good A)
	Quantity (units)	Quantity (units)
12/18/93	100 (O[1])	
12/27/93	100 (N[2])	
01/01/94	200 (OI[3])	
01/01/94	1,000 (O)	
01/05/94	1,000 (N)	
01/10/94		100
01/15/94	1,000 (O)	
01/16/94		700
01/20/94	2,000 (N)	
01/20/94		1,000
01/23/94		900

[1] ''O'' denotes originating goods.
[2] ''N'' denotes non-originating goods.
[3] ''OI'' denotes opening inventory.

Example 1: FIFO method

By applying the FIFO method:

(1) the 100 units of originating Good A in opening inventory that were received in finished goods inventory on 12/18/93 are considered to be the 100 units of Good A shipped on 01/10/94;

(2) the 100 units of non-originating Good A in opening inventory that were received in finished goods inventory on 12/27/93 and 600 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/01/94 are considered to be the 700 units of Good A shipped on 01/15/94;

(3) the remaining 400 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/01/94 and 600 units of the 1,000 units of non-originating Good A that were received in finished goods inventory on 01/05/94 are considered to be the 1,000 units of Good A shipped on 01/20/94; and

(4) the remaining 400 units of the 1,000 units of non-originating Good A that were received in finished goods inventory on 01/05/94 and 500 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/10/94 are considered to be the 900 units of Good A shipped on 01/23/94.

Example 2: LIFO method

By applying the LIFO method:

(1) 100 units of the 1,000 units of non-originating Good A that were received in finished goods inventory on 01/05/94 are considered to be the 100 units of Good A shipped on 01/10/94;

(2) 700 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/10/94 are considered to be the 700 units of Good A shipped on 01/15/94;

(3) 1,000 units of the 2,000 units of non-originating Good A that were received in finished goods inventory on 01/16/94 are considered to be the 1,000 units of Good A shipped on 01/20/94; and

(4) 900 units of the remaining 1,000 units of non-originating Good A that were received in finished goods inventory on 01/16/94 are considered to be the 900 units of Good A shipped on 01/23/94.

Example 3: Average method

Exporter A chooses to determine the origin of Good A on a monthly basis. Exporter A exported 3,000 units of Good A during the month of February 1994. The origin of the units of Good A exported during that month is determined on the basis of the preceding month, that is January 1994.

By applying the average method:

the ratio of originating goods to all goods in finished goods inventory for the month of January 1994 is 40.4% (2,100 units/5,200 units); based on that ratio, 1,212 units (3,000 units × .404) of Good A shipped in February 1994 are considered to be originating goods and 1,788 units (3,000 units − 1,212 units) of Good A are considered to be non-originating goods; and

that ratio is applied to the units of Good A remaining in finished goods inventory on January 31, 1994: 1,010 units (2,500 units × .404) are considered to be originating goods and 1,490 units (2,500 units − 1,010 units) are considered to be non-originating goods.

SCHEDULE XI

METHOD FOR CALCULATING NON-ALLOWABLE INTEREST COSTS

DEFINITIONS AND INTERPRETATION

SECTION 1. DEFINITIONS.

For purposes of this Schedule,

''fixed-rate contract'' means a loan contract, installment purchase contract or other financing agreement in which the interest rate remains constant throughout the life of the contract or agreement;

''linear interpolation'' means, with respect to the yield on federal government debt obligations, the application of the following mathematical formula:

$$A + [((B - A) \times (E - D))/(C - D)]$$

where

A is the yield on federal government debt obligations that are nearest in maturity but of shorter maturity than the weighted average principal maturity of the payment schedule under the fixed-rate contract or variable-rate contract to which they are being compared,

B is the yield on federal government debt obligations that are nearest in maturity but of greater maturity than the weighted average principal maturity of that payment schedule,

C is the maturity of federal government debt obligations that are nearest in maturity but of greater maturity than the weighted average principal maturity of that payment schedule,

D is the maturity of federal government debt obligations that are nearest in maturity but of shorter maturity than the weighted average principal maturity of that payment schedule, and

E is the weighted average principal maturity of that payment schedule; ''payment schedule'' means the schedule of payments, whether on a weekly, bi-weekly, monthly, yearly or other basis, of principal and interest, or any combination thereof, made by a producer to a lender in accordance with the terms of a fixed-rate contract or variable-rate contract;

''variable-rate contract'' means a loan contract, installment purchase contract or other financing agreement in which the interest rate is adjusted at intervals during the life of the contract or agreement in accordance with its terms;

''weighted average principal maturity'' means, with respect to fixed-rate contracts and variable-rate contracts, the number of years, or portion thereof, that is equal to the number obtained by

(a) dividing the sum of the weighted principal payments,

(i) in the case of a fixed-rate contract, by the original amount of the loan, and

(ii) in the case of a variable-rate contract, by the principal balance at the beginning of the interest rate period for which the weighted principal payments were calculated, and

(b) rounding the amount determined under paragraph (a) to the nearest single decimal place and, where that amount is the midpoint between two such numbers, to the greater of those two numbers;

''weighted principal payment'' means,

(a) with respect to fixed-rate contracts, the amount determined by multiplying each principal payment under the contract by the number of years, or portion thereof, between the date the producer entered into the contract and the date of that principal payment, and

(b) with respect to variable-rate contracts

(i) the amount determined by multiplying each principal payment made during the current interest rate period by the number of years, or portion thereof, between the beginning of that interest rate period and the date of that payment, and

(ii) the amount equal to the outstanding principal owing, but not necessarily due, at the end of the current interest rate period, multiplied by the number of years, or portion thereof, between the beginning and the end of that interest rate period;

''yield on federal government debt obligations'' means

(a) in the case of a producer located in Canada, the yield for federal government debt obligations set out in the Bank of Canada's *Weekly Financial Statistics*

(i) where the interest rate is adjusted at intervals of less than one year, under the title ''Treasury Bills'', and

(ii) in any other case, under the title ''Selected Government of Canada benchmark bond yields'',

for the week that the producer entered into the contract or the week of the most recent interest rate adjustment date, if any, under the contract,

(b) in the case of a producer located in Mexico, the yield for federal government debt obligations set out in *La Seccion de Indicadores Monetarios, Financieros, y de Finanzas Publicas, de los Indicadores Economicos,* published by the Banco de Mexico under the title *''Certificados de la Tesoreria de la Federacion''* for the week that the producer entered into the contract or the week of the most recent interest rate adjustment date, if any, under the contract, and

(c) in the case of a producer located in the United States, the yield for federal government debt obligations set out in the Federal Reserve statistical release (H.15) *Selected Interest Rates*

(i) where the interest rate is adjusted at intervals of less than one year, under the title ''U.S. government securities, Treasury bills, Secondary market'', and

(ii) in any other case, under the title ''U.S. Government Securities, Treasury constant maturities'',

for the week that the producer entered into the contract or the week of the most recent interest rate adjustment date, if any, under the contract.

GENERAL

SECTION 2.

For purposes of calculating non-allowable interest costs

(a) with respect to a fixed-rate contract, the interest rate under that contract shall be compared with the yield on federal government debt obligations that have maturities of the same length as the weighted average principal maturity of the payment schedule under the contract (that yield determined by linear interpolation, where necessary);

(b) with respect to a variable-rate contract

(i) in which the interest rate is adjusted at intervals of less than or equal to one year, the interest rate under that contract shall be compared with the yield on federal government debt obligations that have maturities closest in length to the interest rate adjustment period of the contract, and

(ii) in which the interest rate is adjusted at intervals of greater than one year, the interest rate under the contract shall be compared with the yield on federal government debt obligations that have maturities of the same length as the weighted average principal maturity of the payment schedule under the contract (that yield determined by linear interpolation, where necessary); and

(c) with respect to a fixed-rate or variable-rate contract in which the weighted average principal maturity of the payment schedule under the contract is greater than the maturities offered on federal government debt obligations, the interest rate under the contract shall be compared to the yield on federal government debt obligations that have maturities closest in length to the weighted average principal maturity of the payment schedule under the contract.

ADDENDUM

''EXAMPLE'' ILLUSTRATING THE APPLICATION OF THE METHOD FOR CALCULATING NON-ALLOWABLE INTEREST COSTS IN THE CASE OF A FIXED-RATE CONTRACT

The following example is based on the figures set out in the table below and on the following assumptions:

(a) a producer in a NAFTA country borrows $1,000,000 from a person of the same NAFTA country under a fixed-rate contract;

(b) under the terms of the contract, the loan is payable in 10 years with interest paid at the rate of 6 percent per year on the declining principal balance;

(c) the payment schedule calculated by the lender based on the terms of the contract requires the producer to make annual payments of principal and interest of $135,867.36 over the life of the contract;

(d) there are no federal government debt obligations that have maturities equal to the 6-year weighted average principal maturity of the contract; and

(e) the federal government debt obligations that are nearest in maturity to the weighted average principal maturity of the contract are of 5- and 7-year maturities, and the yields on them are 4.7 percent and 5.0 percent, respectively.

Years of loan	Principal balance [1]	Interest payment [2]	Principal payment [3]	Payment schedule	Weighted principal payment [4]
1	$924,132.04	$60,000.00	$75,867.96	$135,867.96	$75,867.96
2	843,712.00	55,447.92	80,420.04	135,867.96	160,840.08
3	758,466.76	50,622.72	85,245.24	135,867.96	255,735.72
4	668,106.81	45,508.01	90,359.95	135,867.96	361,439.82
5	572,325.26	40,086.41	95,781.55	135,867.96	478,907.76
6	470,796.81	34,339.52	101,528.44	135,867.96	609,170.67
7	363,176.66	28,247.81	107,620.15	135,867.96	753,341.06
8	249,099.30	21,790.60	114,077.36	135,867.96	912,618.88
9	128,177.30	14,945.96	120,922.00	135,867.96	1,088,298.02
10	(0.00)	7,690.66	128,177.32	135,867.96	1,281,773.22
					$5,977,993.19

[1] The principal balance represents the loan balance at the end of each full year the loan is in effect and is calculated by subtracting the current year's principal payment from the prior year's ending loan balance.

[2] Interest payments are calculated by multiplying the prior year's ending loan balance by the contract interest rate of 6 percent.

[3] Principal payments are calculated by subtracting the current year's interest payments from the annual payment schedule amount.

[4] The weighted principal payment is determined by, for each year of the loan, multiplying that year's principal payment by the number of years the loan had been in effect at the end of that year.

[5] The weighted average principal maturity of the contract is calculated by dividing the sum of the weighted principal payments by the original loan amount and rounding the amount determined to the nearest decimal place.

By applying the above method:

Weighted Average Principal Maturity

$5,977,993.19 / $1,000,000 = 5.977993 or 6 years [5]

(1) the weighted average principal maturity of the payment schedule under the 6 percent contract is 6 years;

(2) the yields on the closest maturities for comparable federal government debt obligations of 5 years and 7 years are 4.7 percent and 5.0 percent, respectively; therefore, using linear interpolation, the yield on a federal government debt obligation that has a maturity equal to the weighted average principal maturity of the contract is 4.85 percent. This number is calculated as follows:

$4.7 + [((5.0 - 4.7) \times (6 - 5)) / (7 - 5)]$

$= 4.7 + 0.15$

$= 4.85\%$; and

(3) the producer's contract interest rate of 6 percent is within 700 basis points of the 4.85 percent yield on the comparable federal government debt obligation; therefore, none of the producer's interest costs are considered to be non-allowable interest costs for purposes of the definition ''non-allowable interest costs.''

''EXAMPLE'' ILLUSTRATING THE APPLICATION OF THE METHOD FOR CALCULATING NON-ALLOWABLE INTEREST COSTS IN THE CASE OF A VARIABLE-RATE CONTRACT

The following example is based on the figures set out in the tables below and on the following assumptions:

(a) a producer in a NAFTA country borrows $1,000,000 from a person of the same NAFTA country under a variable-rate contract;

(b) under the terms of the contract, the loan is payable in 10 years with interest paid at the rate of 6 percent per year for the first two years and 8 percent per year for the next two years on the principal balance, with rates adjusted each two years after that;

(c) the payment schedule calculated by the lender based on the terms of the contract requires the producer to make annual payments of principal and interest of $135,867.96 for the first two years of the loan, and of $146,818.34 for the next two years of the loan;

(d) there are no federal government debt obligations that have maturities equal to the 1.9-year weighted average principal maturity of the first two years of the contract;

(e) there are no federal government debt obligations that have maturities equal to the 1.9-year weighted average principal maturity of the third and fourth years of the contract; and

(f) the federal government debt obligations that are nearest in maturity to the weighted average principal maturity of the contract are 1- and 2-year maturities, and the yields on them are 3.0 percent and 3.5 percent respectively.

Beginning of year	Principal balance	Interest rate (%)	Interest payment	Principal payment	Payment schedule	Weighted principal payment
1	$1,000,000.00	6.00	$60,000.00	$75,867.96	$135,867.96	$75,867.96
2	924,132.04	6.00	55,447.92	80,420.04	135,867.96	1,848,264.08
						$1,924,132.04

Weighted Average Principal Maturity

$1,924,132.04/$1,000,000 = 1.92413204 or 1.9 years

By applying the above method:

(1) the weighted average principal maturity of the payment schedule of the first two years of the contract is 1.9 years;

(2) the yield on the closest maturities of federal government debt obligations of 1 year and 2 years are 3.0 and 3.5 percent, respectively; therefore, using linear interpolation, the yield on a federal government debt obligation that has a maturity equal to the weighted average principal maturity of the payment schedule of the first two years of the contract is 3.45 percent. This amount is calculated as follows:

$3.0 + [((3.5 - 3.0) \times (1.9 - 1.0)) / (2.0 - 1.0)]$

$= 3.0 + 0.45$

$= 3.45\%$; and

(3) the producer's contract rate of 6 percent for the first two years of the loan is within 700 basis points of the 3.45 percent yield on federal government debt obligations that have maturities equal to the 1.9-year weighted average principal maturity of the payment schedule of the first two years of the producer's loan contract; therefore, none of the producer's interest costs are considered to be non-allowable interest costs for purposes of the definition ''non-allowable interest costs''.

Beginning of year	Principal balance	Interest rate (%)	Interest payment	Principal payment	Payment schedule	Weighted principal payment
1	$1,000,000.00	6.00	$60,000.00	$75,867.96	$135,867.96	
2	924,132.04	6.00	55,447.92	80,420.04	135,867.96	
3	843,712.01	8.00	67,496.96	79,321.38	146,818.34	$79,321.38

Beginning of year	Principal balance	Interest rate (%)	Interest payment	Principal payment	Payment schedule	Weighted principal payment
4	764,390.62	8.00	61,151.25	85,667.09	146,818.34	1,528,781.24
						$1,608,102.62

Weighted Average Principal Maturity
$1,608,102.62 / $843,712.01 = 1.905985 or 1.9 years
By applying the above method:
(1) the weighted average principal maturity of the payment schedule under the first two years of the contract is 1.9 years;
(2) the federal government debt obligations that are nearest in maturities to the weighted average principal maturity of the contract are 1- and 2-year maturities, and the yields on them are 3.0 and 3.5 percent, respectively; therefore, using linear interpolation, the yield on a federal government debt obligation that has a maturity equal to the weighted average principal maturity of the payment schedule of the first two years of the contract is 3.45 percent. This amount is calculated as follows:
$3.0 + [((3.5 - 3.0) \times (1.9 - 1.0)) / (2.0 - 1.0)]$
$= 3.0 + 0.45$
$= 3.45\%$
(3) the producer's contract interest rate, for the third and fourth years of the loan, of 8 percent is within 700 basis points of the 3.45 percent yield on federal government debt obligations that have maturities equal to the 1.9-year weighted average principal maturity of the payment schedule under the third and fourth years of the producer's loan contract; therefore, none of the producer's interest costs are considered to be non-allowable interest costs for purposes of the definition ''non-allowable interest costs''.

SCHEDULE XII

GENERALLY ACCEPTED ACCOUNTING PRINCIPLES

SECTION 1.

Generally Accepted Accounting Principles means the recognized consensus or substantial authoritative support in the territory of a NAFTA country with respect to the recording of revenues, expenses, costs, assets and liabilities, disclosure of information and preparation of financial statements. These standards may be broad guidelines of general application as well as detailed standards, practices and procedures.

SECTION 2.

For purposes of Generally Accepted Accounting Principles, the recognized consensus or authoritative support are referred to or set out in the following publications:

(a) with respect to the territory of Canada, *The Canadian Institute of Chartered Accountants Handbook*, as updated from time to time;
(b) with respect to the territory of Mexico, *Los Principios de Contabilidad Generalmente Aceptados*, issued by the *Instituto Mexicano de Contadores Públicos A.C. (IMCP)*, including the *boletines complementarios*, as updated from time to time; and
(c) with respect to the territory of the United States,
(i) the following publications of the American Institute of Certified Public Accountants (AICPA), as updated from time to time:
(A) AICPA Professional Standards,
(B) Committee on Accounting Procedure Accounting Research Bulletins,
(C) Accounting Principles Board Opinions and Statements,
(D) APB Accounting and Auditing Guides,
(E) AICPA Statements of Position, and
(F) AICPA Issues Papers and Practice Bulletins,
(ii) the following publications of the Financial Accounting Standards Board (FASB), as updated from time to time:
(A) FASB Accounting Standards and Interpretations,
(B) FASB Technical Bulletins, and
(C) FASB Concepts Statements.

[T.D. 95–68, 60 FR 46364, Sept. 6, 1995, as amended by T.D. 02–15, 67 FR 15482, Apr. 2, 2002; 67 FR 19810, Apr. 23, 2002; CBP Dec. 15–07, 80 FR 26830, May 11, 2015]

PART 182—UNITED STATES-MEXICO-CANADA AGREEMENT

Sec.

Subpart A—General Provisions

Subpart B—Import Requirements

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 3(i) and General Note 11, Harmonized Tariff Schedule of the United States (HTSUS)), 1624, 4513, 4535;

Section 182.1 also issued under 19 U.S.C. 4502;

Subpart D also issued under 19 U.S.C. 1520(d);

Subpart E also issued under 19 U.S.C. 4534;

Subpart 182.61 also issued under 19 U.S.C. 4531, 4532;

Subpart G also issued under 19 U.S.C. 4533.

SOURCE: 85 FR 39693, July 1, 2020, unless otherwise noted.

Subpart A—General Provisions

§ 182.0 Scope.

This part implements the duty preference and related customs provisions applicable to imported and exported goods under the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA), signed on December 10, 2019, and entered into force on July 1, 2020, and under the United States-Mexico-Canada Agreement Implementation Act (134 Stat. 11) (the Act). For goods entered for consumption, or withdrawn from warehouse for consumption, prior to July 1, 2020, please see the NAFTA provisions in part 181 of this chapter. Except as otherwise specified in this part, the procedures and other requirements set forth in this part are in addition to the CBP procedures and requirements of general application contained elsewhere in this chapter.

§ 182.1 General definitions.

The definitions applicable to rules of origin are contained in Appendix A. This section sets forth the general definitions used throughout this part. As used in this part, the following terms will have the meanings indicated unless either the context in which they are used requires a different meaning or a different definition is prescribed for a particular section of this part:

Canada, when used in a geographical rather than governmental context, means the ''Territory'' of Canada as defined in Appendix A to this part;

Claim for preferential tariff treatment means a claim that a good is entitled to the customs duty rate applicable under the USMCA to an originating good and to an exemption from the merchandise processing fee;

Commercial importation means the importation of a good into the United States, Canada, or Mexico for the purpose of sale, or any commercial, industrial, or other like use.

Customs duty includes a duty or charge of any kind imposed on or in connection with the importation of a good, and any surtax or surcharge imposed in connection with such importation, but does not include any:

(1) Charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994;

(2) Fee or other charge in connection with the importation commensurate with the cost of services rendered;

(3) Antidumping or countervailing duty; and

(4) Premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff-rate quotas, or tariff preference levels;

Customs Valuation Agreement means the Agreement on Implementation of Article VII of the *General Agreement on Tariffs and Trade 1994*, set out in Annex 1A to the WTO Agreement;

Days means calendar days, and includes Saturdays, Sundays and holidays;

Enterprise means an entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association or similar organization;

Exporter means an exporter located in the territory of a USMCA country and an exporter required under this part to maintain records regarding exportations of a good;

GATT 1994 means the *General Agreement on Tariffs and Trade 1994*, set out in Annex 1A to the WTO Agreement;

Goods means merchandise, product, article, or material;

Goods of a USMCA country means domestic products as these are understood in the GATT 1994 or such goods as the USMCA country may agree, and includes originating goods of a USMCA country;

HTSUS means the Harmonized Tariff Schedule of the United States as promulgated by the U.S. International Trade Commission;

Identical goods means goods that are the same in all respects, including physical characteristics, quality, and reputation, irrespective of minor differences in appearance that are not relevant to a determination of origin of those goods;

Importer means an importer located in the territory of a USMCA country and an importer required under this part to maintain records regarding importations of a good;

Indirect material means a material used or consumed in the production, testing, or inspection of a good but not physically incorporated into the good, or a material used or consumed in the maintenance of buildings or the operation of equipment associated with the production of a good, including:

(1) Fuel and energy,

(2) Tools, dies, and molds,

(3) Spare parts and materials used or consumed in the maintenance of equipment or buildings,

(4) Lubricants, greases, compounding materials and other materials used or consumed in production or used to operate equipment or buildings,

(5) Gloves, glasses, footwear, clothing, safety equipment, and supplies,

(6) Equipment, devices and supplies used or consumed for testing or inspecting the goods,

(7) Catalysts and solvents, and

(8) Any other material that is not incorporated into the good but if the use in the production of the good can reasonably be demonstrated to be a part of that production;

Material means a good that is used in the production of another good, and includes a part or ingredient;

Mexico, when used in a geographical rather than governmental context, means the ''Territory'' of Mexico as defined in Appendix A to this part;

Originating, when used with regard to a good or material, means a good or material qualifying as originating under the rules of origin set forth in General Note 11, HTSUS, and in Appendix A to this part;

Person means a natural person or an enterprise;

Post-importation duty refund claim means a claim filed by the importer of a good for a refund of any excess customs duties at any time within one year after the date of importation of the good where the good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment was made.

Preferential tariff treatment means the customs duty rate applicable under the USMCA to an originating good;

Producer means a person who engages in the production of a good;

Series of importations means two or more customs entries covering a good arriving the same day from the same exporter and consigned to the same person;

United States, when used in a geographical rather than governmental context, means the territory of the United States as defined in Appendix A to this part;

Used means used or consumed in the production of a good;

USMCA means the Agreement between the United States of America, the United Mexican States, and Canada, entered into force by the United States, Canada and Mexico on July 1, 2020.

USMCA country means a Party to the USMCA;

Value means the value of a good or material for the purpose of calculating customs duties or for the purpose of applying this part;

WTO means the World Trade Organization; and

WTO Agreement means the *Marrakesh Agreement Establishing the World Trade Organization* done at Marrakesh on April 15, 1994.

[CBP Dec. 21–10, 86 FR 35583, July 6, 2021]

§ 182.2 Confidentiality.

(a) *Maintaining confidentiality.* Subject to paragraph (b) of this section, CBP must maintain the confidentiality of the information that it receives from the public when the information is considered trade secrets under the Trade Secrets Act (18 U.S.C. 1905), personally identifiable information under the Privacy Act (5 U.S.C. 552a), or privileged or confidential commercial or financial information. This information must be maintained as confidential in accordance with part 103 of this chapter, 6 CFR part 5, and all other applicable statutes and regulations.

(b) *Authorized disclosures.* CBP may only disclose the confidential information in paragraph (a) of this section to third parties and to other USMCA countries for purposes of administration or enforcement of the customs laws or if otherwise authorized by law, and pursuant to the routine uses of the systems of record notices (SORNs) for the trade systems maintained by CBP. This does not preclude the disclosure of confidential information to U.S. government authorities responsible for the administration and enforcement of USMCA requirements, such as the Department of Labor, and of customs and revenue matters.

[CBP Dec. 21–10, 86 FR 35584, July 6, 2021]

Subpart B—Import Requirements

§ 182.11 Filing of claim for preferential tariff treatment upon importation.

(a) *Basis of claim.* An importer may make a claim for USMCA preferential tariff treatment, including an exemption from the merchandise processing fee, based on a written or electronic certification of origin, as specified in § 182.12, completed by the importer, exporter, or producer for the purpose of certifying that a good qualifies as an originating good.

(b) *Making a claim.* The claim is made by including on the entry summary, or equivalent documentation, or by the method specified for equivalent reporting via a CBP-authorized electronic data interchange system, the letters ''S'' or ''S+'' as a prefix to the subheading of the HTSUS under which each originating good is classified.

(c) *Corrected claim.* If, after making the claim specified in paragraph (b) of this section, the importer has reason to believe that the certification of origin is based on inaccurate information or

is otherwise invalid, the importer must promptly and voluntarily correct the claim or certification of origin, pay any duties that may be due, and submit a statement either in writing to the CBP office where the original claim was filed or via a CBP-authorized electronic data interchange system in accordance with §182.124 of this part (*see* §§182.122 and 182.124 of this part).

[CBP Dec. 21–10, 86 FR 35584, July 6, 2021]

§182.12 Certification of origin.

(a) *General.* An importer who makes a claim, pursuant to §182.11(b), based on a certification of origin completed by the importer, exporter, or producer that the good is originating must submit, at the request of CBP, a copy of the certification of origin. The certification of origin:

(1) Need not be in a prescribed format but must be in writing or must be transmitted electronically pursuant to any electronic means authorized by CBP for that purpose;

(2) May be provided on an invoice or any other document, except an invoice or commercial document issued in the territory of a non-USMCA country;

(3) Must be in the possession of the importer at the time the claim for preferential tariff treatment is made;

(4) Must include the following information to be valid:

(i) Whether the certifier is the importer, exporter, or producer in accordance with this subpart;

(ii) The certifier's name, title, address (including country), telephone number, and email address;

(iii) The exporter's name, address (including country), email address, and telephone number if different from the certifier, unless the producer is completing the certification of origin and does not know the identity of the exporter;

(iv) The producer's name, address (including country), email address, and telephone number, if different from the certifier or exporter; or if there are multiple producers, ''Various'' or a list of producers (*see also* paragraph (c) of this section);

(v) If known, the importer's name, address, email address, and telephone number; or if there are multiple importers, ''Various'' or a list of importers;

(vi) The legal name, address (including country), telephone number, and email address (if any) of the responsible official or authorized agent of the importer, exporter, or producer signing the certification;

(vii) A description of the good for which preferential tariff treatment is claimed, which must be sufficiently detailed to relate it to the invoice and the Harmonized System (HS) nomenclature;

(viii) The HTSUS tariff classification, to six or more digits, as necessary for the specific change in tariff classification rule for the good set forth in General Note 11, HTSUS;

(ix) The applicable rule of origin set forth in General Note 11, HTSUS, under which the good qualifies as an originating good;

(x) In the case of a good listed in Schedule II of Appendix A of this part, the following statement must be included: ''Schedule II of the USMCA Rules of Origin Uniform Regulations'';

(xi) If the certification of origin covers a single shipment of a good, the invoice number related to the exportation, if known;

(xii) In case of a blanket certification issued with respect to multiple shipments of identical goods within any period specified in the certification of origin, not exceeding 12 months from the date of certification, the period that the certification covers; and

(5) Must include the following statement: ''I certify that the goods described in this document qualify as originating and the information contained in this document is true and accurate. I assume responsibility for proving such representations and agree to maintain and present upon request or to make available during a verification visit, documentation necessary to support this certification.''

(b) *Address.* For the purposes of the certification of origin provided for in paragraph (a) of this section:

(1) The address of the exporter provided under paragraph (a)(4)(iii) is the place of export of the good in a USMCA country's territory;

(2) The address of a producer provided under paragraph (a)(4)(iv) is the place

of production of the good in a USMCA country's territory; and

(3) The address of the importer provided under paragraph (a)(4)(v) must be in a USMCA country's territory.

(c) *Confidentiality of producer information*. For the purposes of the information provided under paragraph (a)(4)(iv) of this section, a person that wishes for this information to remain confidential may state ''Available upon request by the importing authorities.''

(d) *Responsible official or agent*. The certification of origin provided for in paragraph (a) of this section must be signed and dated by a responsible official of the importer, exporter, or producer, or by the importer's, exporter's, or producer's authorized agent having knowledge of the relevant facts.

(e) *Language*. The certification provided for in paragraph (a) of this section must be completed in English, French, or Spanish. If the certification of origin is not in English, CBP may require the importer to submit an English translation of the certification.

(f) *Basis of a certification of origin*. (1) A certification of origin may be completed by the importer, exporter, or producer of the good on the basis of:

(i) The certifier of the certification of origin of the good having information, including documents, that demonstrate that the good is originating; or

(ii) In the case of an exporter who is not the producer of the good, reasonable reliance on the producer's written representation, such as in a certification of origin, that the good is originating.

(2) CBP may not require that an exporter or producer complete a certification of origin, or provide a certification of origin or written representation to another person.

(g) *Applicability of certification of origin*. The certification of origin provided for in paragraph (a) of this section may be applicable to:

(1) A shipment of goods into the United States, which may consist of:

(i) A single shipment of goods that results in the filing of one or more entries; or

(ii) More than one shipment of goods that results in the filing of one entry.

(2) Multiple shipments of identical goods into the United States that occur within a specified blanket period, not exceeding 12 months, set out in the certification.

(h) *Validity of certification of origin*. A certification of origin that is properly completed, signed, and dated in accordance with the requirements of this section will be accepted as valid for four years following the date on which it was completed.

[CBP Dec. 21–10, 86 FR 35584, July 6, 2021]

§ 182.13 Importer obligations.

(a) *General*. An importer who makes a claim for USMCA preferential tariff treatment:

(1) Will be deemed to have made a statement based on a valid certification of origin that the good qualifies as an originating good;

(2) Is responsible for the truthfulness of the claim and of all the information and data contained in the certification of origin provided for in § 182.12; and

(3) Is responsible for submitting supporting documents requested by CBP, and for the truthfulness of the information contained in those documents. When a certification of origin prepared by an exporter or producer forms the basis of a claim for preferential tariff treatment and CBP requests the submission of supporting documents, the importer will provide to CBP, or arrange for the direct submission by the exporter or producer of, information relied on by the exporter or producer in preparing the certification.

(b) *Exemption from penalties*. An importer will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for making an incorrect claim for preferential tariff treatment or submitting an incorrect certification of origin, provided that the importer promptly and voluntarily corrects the claim or certification of origin, pays any duties and merchandise processing fees, if applicable, that may be due, and submits a statement either in writing or via a CBP-authorized electronic data interchange system to the CBP office where the original claim was filed in accordance with § 182.124 (*see* §§ 182.122 and 182.124).

[CBP Dec. 21–10, 86 FR 35585, July 6, 2021]

§ 182.14 Certification of origin not required.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an importer will not be required to submit a copy of a certification of origin under § 182.12 for:

(1) A non-commercial importation of a good; or

(2) A commercial importation for which the value of the originating goods does not exceed $2,500 in U.S. dollars.

(b) *Exception.* If CBP determines that an importation described in paragraph (a) of this section is part of a series of importations carried out or planned for the purpose of evading compliance with the certification requirements of § 182.12, CBP will notify the importer that for that importation the importer must submit to CBP a copy of the certification of origin. The importer must submit such a copy within 30 days from the date of the notice. Failure to timely submit a copy of the certification of origin will result in denial of the claim for preferential tariff treatment.

[CBP Dec. 21–10, 86 FR 35585, July 6, 2021]

§ 182.15 Maintenance of records.

(a) *General.* An importer claiming USMCA preferential tariff treatment for a good must maintain for a minimum of five years from the date of importation of the good, all records and documents that the importer has demonstrating that the good qualifies for preferential tariff treatment under the USMCA, including the certification of origin and records related to transit and transshipment. These records are in addition to any other records that the importer is required to prepare, maintain, or make available to CBP under part 163 of this chapter.

(b) *Method of maintenance.* The records and documents referred to in paragraph (a) of this section must be maintained by importers as provided in § 163.5 of this chapter.

[CBP Dec. 21–10, 86 FR 35585, July 6, 2021]

§ 182.16 Effect of noncompliance; failure to provide documentation regarding transshipment.

(a) *General.* If the importer fails to comply with applicable requirements under this subpart, including submission of a complete certification of origin prepared in accordance with §§ 182.12 and 182.14, when requested, CBP may deny preferential tariff treatment to the imported good.

(b) *Failure to provide documentation regarding transshipment.* Where the requirements for preferential tariff treatment set forth elsewhere in this subpart are met, CBP nevertheless may deny preferential tariff treatment to an originating good if the good is transported outside the territories of the USMCA countries, and at the request of CBP, the importer of the good does not provide evidence demonstrating to the satisfaction of CBP that the transit and transshipment conditions set forth in Appendix A of this part were met.

[CBP Dec. 21–10, 86 FR 35585, July 6, 2021]

Subpart C—Export Requirements

§ 182.21 Certification of origin for goods exported to Canada or Mexico.

(a) *Submission of certification of origin to CBP.* An exporter or producer who completes a certification of origin for a good exported from the United States to Canada or Mexico must provide a copy of the certification of origin (written or electronic) to CBP upon request.

(b) *Notification of errors in certification of origin.* An exporter or producer who completes a certification of origin for a good exported from the United States to Canada or Mexico and who has reason to believe that the certification contains or is based on incorrect information must promptly and voluntarily notify every person, in writing, to whom the certification was provided of any change that could affect the accuracy or validity of the certification. Notification of an incorrect certification must also be given either in writing or via a CBP-authorized electronic data interchange system to CBP specifying the correction in accordance with § 182.124 (*see* §§ 182.123 and 182.124).

(c) *Maintenance of records*—(1) *General.* An exporter or producer who completes a certification of origin or a producer who provides a written representation for a good exported from the

United States to Canada or Mexico must maintain, for a period of at least five years after the date the certification was completed, all records and supporting documents relating to the origin of a good for which the certification of origin was completed, including the certification or copies thereof and records and documents associated with:

(i) The purchase, cost, value, and shipping of, and payment for, the good or material;

(ii) The purchase, cost, value, and shipping of, and payment for, all materials, including indirect materials, used in the production of the good or material; and

(iii) The production of the good in the form in which the good is exported or the production of the material in the form in which it was sold.

(2) *Method of maintenance.* The records referred to in paragraph (c) of this section must be maintained as provided in §163.5 of this chapter.

(3) *Availability of records.* For purposes of determining compliance with the provisions of this part, the records required to be maintained under this section must be stored and made available for examination and inspection by a CBP official in the same manner as provided in part 163 of this chapter.

[CBP Dec. 21–10, 86 FR 35585, July 6, 2021]

Subpart D—Post-Importation Duty Refund Claims

§182.31 Right to make post-importation claim for preferential tariff treatment and refund duties.

Notwithstanding any other available remedy, where a good would have qualified as an originating good when it was imported into the United States but no claim for preferential tariff treatment was made, the importer of that good may file a claim for a refund of any excess customs duties at any time within one year after the date of importation of the good in accordance with 19 U.S.C. 1520(d) and the procedures set forth in §182.32. Unless the importer fails to comply with the applicable requirements in this part, CBP may refund any excess customs duties by liquidation or reliquidation of the entry covering the good in accordance with §182.33.

[CBP Dec. 21–10, 86 FR 35586, July 6, 2021]

§182.32 Filing procedures.

(a) *Place of filing.* A post-importation claim for a refund must be filed with CBP, either at the port of entry or electronically.

(b) *Contents of claim.* A post-importation claim for a refund must be filed by presentation of the following:

(1) A written or electronic declaration or statement stating that the good was an originating good at the time of importation and setting forth the number and date of the entry or entries covering the good;

(2) A copy of a written or electronic certification of origin prepared in accordance with §182.12 demonstrating that the good qualifies for preferential tariff treatment;

(3) A written statement indicating whether the importer of the good provided a copy of the entry summary or equivalent documentation to any other person. If such documentation was so provided, the statement must identify each recipient by name, CBP identification number, and address and must specify the date on which the documentation was provided; and

(4) A written statement indicating whether or not any person has filed a protest, petition, or request for reliquidation; and if any such protest, petition, or request for reliquidation has been filed, the statement must identify the filing by number and date.

[CBP Dec. 21–10, 86 FR 35586, July 6, 2021]

§182.33 CBP processing procedures.

(a) *Status determination.* After receipt of a post-importation claim made pursuant to §182.32, CBP will determine whether the entry covering the good has been liquidated and, if liquidation has taken place, whether the liquidation has become final.

(b) *Pending protest, petition, or request for reliquidation or judicial review.* If CBP determines that any protest, petition, or request for reliquidation relating to the good has not been finally decided, CBP will suspend action on the claim filed under §182.32 until the decision on the protest, petition, or request

for reliquidation becomes final. If a summons involving the tariff classification or dutiability of the good is filed in the Court of International Trade, CBP will suspend action on the claim filed under §182.32 until judicial review has been completed.

(c) *Allowance of claim*—(1) *Unliquidated entry*. If CBP determines that a claim for a refund filed under §182.32 should be allowed and the entry covering the good has not been liquidated, CBP will take into account the claim for refund in connection with the liquidation of the entry.

(2) *Liquidated entry*. If CBP determines that a claim for a refund filed under §182.32 should be allowed and the entry covering the good has been liquidated, whether or not the liquidation has become final, the entry must be reliquidated in order to effect a refund of customs duties under this section. If the entry is otherwise to be reliquidated based on administrative review of a protest or as a result of judicial review, CBP will reliquidate the entry taking into account the claim for refund under §182.32.

(d) *Denial of claim*—(1) *General*. CBP may deny a claim for a refund filed under §182.32 if the claim was not filed timely, if the importer has not complied with the requirements of §182.32 or the other applicable requirements in this part, or if, following an origin verification, CBP determines either that the imported good was not an originating good at the time of importation or that a basis exists upon which preferential tariff treatment may be denied.

(2) *Unliquidated entry*. If CBP determines that a claim for a refund filed under §182.32 should be denied and the entry covering the good has not been liquidated, CBP will deny the claim in connection with the liquidation of the entry, and notice of the denial and the reason for the denial will be provided to the importer in writing or via a CBP-authorized electronic data interchange system.

(3) *Liquidated entry*. If CBP determines that a claim for a refund filed under §182.32 should be denied and the entry covering the good has been liquidated, whether or not the liquidation has become final, the claim may be denied without reliquidation of the entry. If the entry is otherwise to be reliquidated based on administrative review of a protest, petition, or request for reliquidation or as a result of judicial review, such reliquidation may include denial of the claim filed under this subpart. In either case, CBP will provide notice of the denial and the reason for the denial to the importer in writing or via a CBP-authorized electronic data interchange system.

[CBP Dec. 21–10, 86 FR 35586, July 6, 2021]

Subpart E—Restrictions on Drawback and Duty-Deferral Programs

§182.41 Applicability.

This subpart sets forth the provisions regarding drawback claims and duty-deferral programs under Article 2.5 of the USMCA and applies to any good that is a ''good subject to USMCA drawback'' within the meaning of 19 U.S.C. 4534. The provisions of this subpart apply to goods which are entered for consumption, or withdrawn from warehouse for consumption, into the United States on or after July 1, 2020. The requirements and procedures set forth in this subpart for USMCA drawback are in addition to the general definitions, requirements, and procedures for all drawback claims set forth in part 190 of this chapter, unless otherwise specifically provided in this subpart. Also, the requirements and procedures set forth in this subpart for USMCA duty-deferral programs are in addition to the requirements and procedures for manipulation, manufacturing, and smelting and refining warehouses contained in part 19 and part 144 of this chapter, for foreign trade zones under part 146 of this chapter, and for temporary importations under bond contained in part 10 of this chapter.

[CBP Dec. 21–10, 86 FR 35587, July 6, 2021]

§182.42 Duties and fees not subject to drawback.

The following duties or fees which may be applicable to a good entered for consumption or withdrawn from warehouse for consumption in the Customs territory of the United States are not

subject to drawback under this subpart:

(a) Antidumping and countervailing duties;

(b) A premium offered or collected on a good with respect to quantitative import restrictions, tariff-rate quotas or tariff preference levels; and

(c) Customs duties paid or owed under unused merchandise substitution drawback. There will be no payment of such drawback under 19 U.S.C. 1313(j)(2) on goods exported to Canada or Mexico.

[CBP Dec. 21–10, 86 FR 35587, July 6, 2021]

§ 182.43 Eligible goods subject to USMCA drawback.

Except as otherwise provided in this subpart, drawback is authorized for an imported good that is entered for consumption and is:

(a) Subsequently exported to Canada or Mexico (*see* 19 U.S.C. 1313(j)(1));

(b) Used as a material in the production of another good that is subsequently exported to Canada or Mexico (*see* 19 U.S.C. 1313(a)); or

(c) Substituted by a good of the same kind and quality as defined in §182.44(d) and used as a material in the production of another good that is subsequently exported to Canada or Mexico (*see* 19 U.S.C. 1313(b)).

[CBP Dec. 21–10, CBP Dec. 21–10, 86 FR 35587, July 6, 2021]

§ 182.44 Calculation of drawback.

(a) *General.* Except in the case of goods specified in §182.45, drawback of the duties previously paid upon importation of a good into the United States may be granted by the United States, upon presentation of a USMCA drawback claim under this subpart, on the lower amount of:

(1) The total duties paid or owed on the good in the United States; or

(2) The total amount of duties paid on the exported good upon subsequent importation into Canada or Mexico.

(b) *Individual relative value and duty comparison principle.* For purposes of this section, relative value will be determined, and the comparison between the duties referred to in paragraph (a)(1) of this section and the duties referred to in paragraph (a)(2) of this section will be made, separately with reference to each individual exported good, including where two components or materials are used to produce one exported good or one component or material is divided among multiple exported goods.

(c) *Direct identification manufacturing drawback under 19 U.S.C. 1313(a).* Upon presentation of the USMCA drawback claim under 19 U.S.C. 1313(a), in which the amount of drawback payable is based on the lesser amount of the customs duties paid on the good either to the United States or to Canada or Mexico, the amount of drawback refunded may not exceed 99 percent of the duty paid on such imported merchandise into the United States.

(d) *Substitution manufacturing drawback under 19 U.S.C. 1313(b).* Upon presentation of a USMCA drawback claim under 19 U.S.C. 1313(b), on which the amount of drawback payable is based on the lesser amount of the customs duties paid on the good either to the United States or to Canada or Mexico, the amount of drawback is the same as that which would have been allowed had the substituted merchandise used in manufacture been itself imported.

(1) *General.* For purposes of drawback under this subpart, the term ''same kind and quality'' has the same meaning as the 8-digit HTSUS substitution standard established in 19 U.S.C. 1313(b)(1) (*see* §§190.2 and 190.22(a)(1)(i) of this chapter).

(2) *Special rule for sought chemical elements.* For purposes of drawback under this subpart, for sought chemical elements, the term ''same kind and quality'' has the same meaning as the 8-digit HTSUS substitution standard established in 19 U.S.C. 1313(b)(4) (*see* §190.22(a)(2) of this chapter).

(e) *Meats cured with imported salt.* Meats, whether packed or smoked, which have been cured with imported salt may be eligible for drawback in aggregate amounts of not less than $100 in duties paid on the imported salt upon exportation of the meats to Canada or Mexico (*see* 19 U.S.C. 1313(f)).

(f) *Jet aircraft engines.* A foreign-built jet aircraft engine that has been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts, may be eligible for drawback of

duties paid on the imported merchandise in aggregate amounts of not less than $100 upon exportation of the engine to Canada or Mexico (19 U.S.C. 1313(h)).

(g) *Unused goods under 19 U.S.C. 1313(j)(1) that have changed in condition.* An imported good that is unused in the United States under 19 U.S.C. 1313(j)(1) and that is shipped to Canada or Mexico not in the same condition within the meaning of § 182.45(b)(1) may be eligible for drawback under this section except when the shipment to Canada or Mexico does not constitute an exportation under 19 U.S.C. 1313(j)(4).

[CBP Dec. 21–10, 86 FR 35587, July 6, 2021]

§ 182.45 Goods eligible for full drawback.

(a) *Goods originating in Canada or Mexico.* A Canadian or Mexican originating good that is dutiable and is imported into the United States is eligible for drawback without regard to the limitation on drawback set forth in § 182.44 if that good is originating under the rules of origin set out in General Note 11, HTSUS, and Appendix A of this part, and is:

(1) Subsequently exported to Canada or Mexico;

(2) Used as a material in the production of another good that is subsequently exported to Canada or Mexico; or

(3) Substituted by a good of the same 8-digit HTSUS subheading number and used as a material in the production of another good that is subsequently exported to Canada or Mexico.

(b) *Claims under 19 U.S.C 1313(j)(1) for goods in same condition.* A good imported into the United States and subsequently exported to Canada or Mexico in the same condition is eligible for drawback under 19 U.S.C. 1313(j)(1) without regard to the limitation on drawback set forth in § 182.44 .

(1) *Same condition defined.* For purposes of this subpart, a reference to a good in

the ''same condition'' includes a good that has been subjected to any of the following operations provided that no such operation materially alters the characteristics of the good:

(i) Mere dilution with water or another substance;

(ii) Cleaning, including removal of rust, grease, paint or other coatings;

(iii) Application of preservative, including lubricants, protective encapsulation, or preservation paint;

(iv) Trimming, filing, slitting or cutting;

(v) Putting up in measured doses, or packing, repacking, packaging or repackaging; or

(vi) Testing, marking, labelling, sorting, grading, or inspecting a good.

(2) *Commingling of fungible goods*—(i) *General*—(A) *Inventory of other than all non-originating goods.* Commingling of fungible originating and non-originating goods in inventory is permissible provided that the origin of the goods and the identification of entries for designation for same condition drawback are on the basis of an approved inventory management method set forth in the Appendix A to this part (*see* 19 CFR 102.1).

(B) *Inventory of the non-originating goods.* If all goods in a particular inventory are non-originating goods, identification of entries for designation for same condition drawback must be on the basis of one of the accounting methods in § 190.14 of this chapter, as appropriate.

(ii) *Exception.* Agricultural goods imported from Mexico may not be commingled with fungible agricultural goods in the United States for purposes of same condition drawback under this subpart.

(c) *Goods not conforming to sample or specifications or shipped without consent of consignee under 19 U.S.C. 1313(c).* An imported good exported to Canada or Mexico by reason of failure of the good to conform to sample or specification or by reason of shipment of the good without the consent of the consignee is eligible for drawback under 19 U.S.C. 1313(c) without regard to the limitation on drawback set forth in § 182.44. Such a good must be exported or destroyed within the statutory 5-year time period and in compliance with the requirements set forth in subpart D of part 190 of this chapter, as applicable.

(d) *Certain goods exported to Canada or Mexico.* A good provided for in U.S. tariff items 1701.13.20 or 1701.14.20 that is imported into the Customs territory of the United States under any re-export

or like program that is used as a material, or substituted for by a good of the same kind and quality that is used as a material, in the production of a good provided for in Canadian tariff item 1701.99.00 or Mexican tariff items 1701.99.01, 1701.99.02, and 1701.99.99 (relating to refined sugar), is eligible for drawback without regard to the limitation on drawback set forth in §182.44. Same kind and quality for purposes of this subsection means that the imported good and the substituted good must be capable of being used interchangeably in the manufacture or production of the exported or destroyed articles with no substantial change in the manufacturing or production process.

(e) *Certain goods exported to Canada.* Goods identified in Article 2.5.6(g) of the USMCA and in 19 U.S.C. 4534(a)(7) and (8), if exported to Canada, are eligible for drawback without regard to the limitations on drawback set forth in §182.44.

(f) *Certain goods that are exported or deemed exported.* Goods that are delivered:

(1) To a duty-free shop,

(2) For ship's stores or supplies for ships or aircrafts, or

(3) For the use in a project undertaken jointly by the United States and a USMCA country, and destined to become the property of the United States, are eligible upon exportation for drawback without regard to the limitations on drawback set forth in §182.44.

[CBP Dec. 21–10, 86 FR 35587, July 6, 2021]

§182.46 Filing of drawback claim.

(a) *Time of filing.* A drawback claim under this subpart must be filed within 5 years after the date of importation of the goods on which drawback is claimed. No extension will be granted unless it is established that a CBP official was responsible for the untimely filing. Drawback will be allowed only if the completed good is exported within 5 years after importation of the merchandise identified or designated to support the claim.

(b) *Method of filing.* A drawback claim must be filed electronically through a CBP-authorized electronic system (*see* §190.51 of this chapter).

[CBP Dec. 21–10, 86 FR 35587, July 6, 2021]

§182.47 Completion of claim for drawback.

(a) *General.* A claim for drawback will be granted, upon the submission of appropriate documentation to substantiate compliance with the drawback laws and regulations of the United States, evidence of exportation to Canada or Mexico, and satisfactory evidence of the payment of duties to Canada or Mexico. Unless otherwise provided in this subpart, the documentation, filing procedures, time and place requirements and other applicable procedures required to determine whether a good qualifies for drawback must be in accordance with the provisions of part 190 of this chapter, as appropriate; however, a drawback claim subject to the provisions of this subpart must be filed separately from any part 190 drawback claim (that is, a claim that involves goods exported to countries other than Canada or Mexico). Claims inappropriately filed or otherwise not completed within the periods specified in §182.46 will be considered abandoned.

(b) *Complete drawback claim*—(1) *General.* A complete drawback claim under this subpart must consist of the filing of the appropriate completed drawback entry, evidence of exportation (a copy of the Canadian or Mexican customs entry showing the amount of duty paid to Canada or Mexico) and its supporting documents, and a certification from the Canadian or Mexican importer as to the amount of duties paid. Each drawback entry filed under this subpart must be filed using the indicator ''USMCA Drawback''.

(2) *Specific claims.* The following documentation, for the drawback claims specified below, must be submitted to CBP in order for a drawback claim to be processed under this subpart. Missing documentation or incorrect or incomplete information on required customs forms or supporting documentation will result in an incomplete drawback claim.

(i) *Manufacturing drawback claim.* The following must be submitted in connection with a claim for direct identification manufacturing drawback or substitution manufacturing drawback:

(A) A completed CBP Form 331, or its electronic equivalent, to establish the manufacture of goods made with imported merchandise and, if applicable, the identity of substituted domestic, duty-paid or duty-free merchandise, and including the tariff classification number of the imported merchandise;

(B) CBP Form 7501, or its electronic equivalent, or the import entry number;

(C) [Reserved]

(D) Evidence of exportation and satisfactory evidence of the payment of duties in Canada or Mexico, as provided in paragraph (c) of this section;

(E) Waiver of right to drawback. If the person exporting to Canada or Mexico was not the importer or the manufacturer, written waivers executed by the importer or manufacturer and by any intervening person to whom the good was transferred must be submitted in order for the claim to be considered complete; and

(F) An affidavit of the party claiming drawback stating that no other drawback claim has been made on the designated goods, that such party has not provided an exporter's certification of origin pertaining to the exported goods to another party except as stated on the drawback claim, and that the party agrees to notify CBP if the party subsequently provides such an exporter's certification of origin to any person.

(ii) *Same condition drawback claim under 19 U.S.C. 1313(j)(1).* The following must be submitted in connection with a drawback claim covering a good in the same condition:

(A) The foreign entry number and date of entry, the HTSUS classification for the foreign entry, the amount of duties paid for the foreign entry and the applicable exchange rate, and, if applicable, a certification from the claimant that provides as follows: ''Same condition—The undersigned certifies that the merchandise herein described is in the same condition as when it was imported under the above import entry(s) and further certifies that this merchandise was not subjected to any process of manufacture or other operation except the allowable operations as provided for by regulation.'';

(B) Information sufficient to trace the movement of the imported goods after importation;

(C) In-bond application submitted pursuant to part 18 of this chapter, if applicable. This is required for merchandise which is examined at one port but exported through border points outside of that port. Such goods must travel in bond from the location where they were examined to the point of the border crossing (exportation). If examination is waived, in-bond transportation is not required;

(D) *Notification of intent to export or waiver of prior notice.* CBP must be notified at least 5 business days in advance of the intended date of exportation in order to have the opportunity to examine the goods (*see* §190.35 of this chapter);

(E) *Evidence of exportation.* Acceptable documentary evidence of exportation to Canada or Mexico may include originals or copies of any of the following documents that are issued by the exporting carrier: bill of lading, air waybill, freight waybill, export ocean bill of lading, Canadian customs manifest, and cargo manifest. Supporting documentary evidence must establish fully the time and fact of exportation, the identity of the exporter, and the identity and location of the ultimate consignee of the exported goods;

(F) *Waiver of right to drawback.* If the party exporting to Canada or Mexico was not the importer, a written waiver from the importer and from each intermediate person to whom the goods were transferred is required in order for the claim to be considered complete; and

(G) An affidavit of the party claiming drawback stating that no other drawback claim has been made on the designated goods.

(iii) *Nonconforming or improperly shipped goods drawback claim.* The following must be submitted in the case of goods not conforming to sample or specifications, or shipped without the consent of the consignee and subject to a drawback claim under 19 U.S.C. 1313(c):

(A) Customs Form 7501, or its electronic equivalent, to establish the fact of importation, the receipt of the imported goods, and the identity of the party to whom drawback is payable (*see* § 182.48(b));

(B) [Reserved]

(C) CBP Form 7512, or its electronic equivalent, if applicable;

(D) Notification of intent to export or waiver of prior notice. CBP must be notified at least 5 business days in advance of the intended date of exportation in order to have the opportunity to examine the goods (*see* § 190.42 of this chapter); and

(E) Evidence of exportation, as provided in paragraph (b)(2)(ii)(E) of this section.

(iv) *Meats cured with imported salt.* The provisions of paragraph (b)(2)(i) of this section relating to direct identification manufacturing drawback will apply to claims for drawback on meats cured with imported salt filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart, and the forms referred to in that paragraph must be modified to show that the claim is being made for refund of duties paid on salt used in curing meats.

(v) *Jet aircraft engines.* The provisions of paragraph (b)(2)(i) of this section relating to direct identification manufacturing drawback will apply to claims for drawback on foreign-built jet aircraft engines repaired or reconditioned in the United States filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart and the provisions of subpart N of part 190 of this chapter.

(c) [Reserved]

[CBP Dec. 21–10, 86 FR 35587, July 6, 2021]

§ 182.49 Retention of records.

All records required to be kept by the exporter, importer, manufacturer or producer under this subpart with respect to manufacturing drawback claims, and all records kept by others which complement the records of the importer, exporter, manufacturer or producer, including any person who transfers or enables another person to make or perfect a drawback claim, must be retained for at least three years from the date of liquidation of such claims or longer period if required by law (*see* §§ 190.10, 190.15, 190.38, and 190.175(c) of this chapter).

[CBP Dec. 21–10, 86 FR 35589, July 6, 2021]

§ 182.50 Liquidation and payment of drawback claims.

(a) *General.* When the drawback claim has been fully completed by the filing of all required documents, and exportation of the articles has been established and the amount of duties paid to Canada or Mexico has been established, the entry will be liquidated to determine the proper amount of drawback due either in accordance with the limitation on drawback set forth in § 182.44 of this subpart or in accordance with the regular drawback calculation. The liquidation procedures of subpart H of part 190 of this chapter, as appropriate, will control for purposes of this subpart.

(b) [Reserved]

(c) *Accelerated payment.* Accelerated drawback payment procedures will apply as set forth in § 190.92 of this chapter, as appropriate. However, a person who receives drawback of duties under this procedure must repay the duties paid if a USMCA drawback claim is adversely affected thereafter by administrative or court action.

[CBP Dec. 21–10, 86 FR 35589, July 6, 2021]

§ 182.51 Prevention of improper payment of claims.

(a) *Double payment of claim.* The drawback claimant must certify to CBP that the claimant has not earlier received payment on the same import entry for the same designation of goods. If, notwithstanding such a certification, such an earlier payment was in fact made to the claimant, the claimant must repay any amount paid on the second claim.

(b) *Preparation of Certification of Origin.* The drawback claimant must, within 30 calendar days after the filing of the drawback claim under this subpart, submit to CBP a written statement as to whether the claimant has prepared, or has knowledge that another person has prepared, a certification of origin provided for under § 182.12 and pertaining to the goods

which are covered by the claim. If, following such 30-day period, the claimant prepares, or otherwise learns of the existence of, any such certification of origin, the claimant must, within 30 calendar days thereafter, disclose that fact to CBP.

[CBP Dec. 21–10, 86 FR 35590, July 6, 2021]

§ 182.52 Subsequent claims for preferential tariff treatment.

If a claim for a refund of duties is allowed by the Canadian or Mexican customs administration under Article 5.11 of the USMCA (post-importation claim) or under any other circumstance after drawback has been granted under this subpart, the appropriate CBP official must reliquidate the drawback claim and obtain a refund of the amount paid in drawback in excess of the amount permitted to be paid under § 182.44.

[CBP Dec. 21–10, 86 FR 35590, July 6, 2021]

§ 182.54 Verification of claim for drawback, waiver or reduction of duties.

The allowance of a claim for drawback, waiver or reduction of duties submitted under this subpart is subject to such verification, including verification with the Canadian or Mexican customs administration, of any documentation obtained in Canada or Mexico and submitted in connection with the claim, as CBP may deem necessary.

[CBP Dec. 21–10, 86 FR 35590, July 6, 2021]

Subpart F—Rules of Origin

§ 182.61 Rules of origin.

The regulations, implementing the rules of origin provisions of General Note 11, Harmonized Tariff Schedule of the United States (HTSUS), and Chapters Four and Six of the USMCA, are contained in Appendix A to this part.

§ 182.62 [Reserved]

Subpart G—Origin Verifications and Determinations

§ 182.71 Applicability.

This subpart contains the general origin verification and determination provisions applicable to goods claiming preferential tariff treatment under § 182.11(b) or § 182.32.

[CBP Dec. 21–10, 86 FR 35590, July 6, 2021]

§ 182.72 Verification of claim for preferential tariff treatment.

(a) *Verification.* A claim for preferential tariff treatment made under § 182.11(b) or 182.32, including any statements or other information submitted to CBP in support of the claim, will be subject to such verification as CBP deems necessary. CBP may initiate the verification of goods imported into the United States under the USMCA with the importer, or with the exporter or producer who completed the certification of origin. A verification of a claim for preferential tariff treatment under the USMCA may be conducted by means of one or more of the following:

(1) Requests for information or questionnaires, including a request for documents, to the importer, exporter, or producer;

(2) Verification visits to the premises of the exporter or producer in Mexico or Canada in order to request information, including documents, and to observe production processes and facilities; and

(3) Any other procedure to which the USMCA countries may agree.

(b) *Verification of a material.* When conducting a verification of a good imported into the United States, CBP may conduct a verification of the material that is used in the production of that good. A verification of a material producer may be conducted pursuant to any of the verification means set forth in paragraph (a) of this section. With the exception of §§ 182.73(c) and 182.75, the provisions in this subpart also apply to the verification of a material and references to the term ''producer'' apply to a producer of a good or to a material producer.

(c) *Sending information directly to CBP.* During a verification, CBP will accept information, including documents, directly from an importer, exporter, or producer.

(d) *Applicable accounting principles.* When conducting a verification to which Generally Accepted Accounting Principles or an otherwise accepted inventory method may be relevant, CBP

will apply and accept the Generally Accepted Accounting Principles applicable in the USMCA country in which the production is performed or from which the good is exported, as appropriate, or an otherwise accepted inventory management method as provided for in Appendix A of this part. If information, including documents, books and records, were not maintained accordingly, CBP will provide the importer, exporter or producer 30 days to record costs in accordance with Appendix A of this part.

[CBP Dec. 21–10, 86 FR 35590, July 6, 2021]

§ 182.73 Notification and response procedures.

(a) *Requests for information and questionnaires.* When conducting a verification through a request for information or a questionnaire as provided for in § 182.72(a)(1), CBP will send the importer, exporter or producer a written request for information, a written questionnaire, or its electronic equivalent, including a request for specific documentation to support the claim for preferential tariff treatment.

(1) *Contents.* The written request for information, written questionnaire, or its electronic equivalent will contain the following:

(i) The objective and scope of the verification, including the specific issue that the verification is seeking to resolve; and

(ii) Sufficient information to identify the good or material that is the subject of the verification.

(2) *Availability of records*—(i) *Verification of a good.* The importer, exporter, or producer must make the records, which are required to be maintained to demonstrate that the good qualifies for preferential tariff treatment under the USMCA, available for inspection by a CBP official conducting a verification. CBP may deny the claim for preferential tariff treatment of the good for failure to maintain the required records or if a CBP official is denied access to the records.

(ii) *Verification of a material.* During the verification of a material, any records in the material producer's possession demonstrating that the material qualifies as originating must be made available for inspection by a CBP official conducting a verification. CBP may consider the material that is used in the production of the good and is the subject of the verification to be non-originating material if a CBP official is denied access to these records.

(b) *Notification of a verification visit.* Prior to conducting a verification visit in Canada or Mexico, CBP will provide the exporter or producer, using one of the communication means specified in paragraph (d)(2) of this section, with a notification stating the intent to conduct a verification visit and containing the following:

(1) The objective and scope of the verification, including the specific issue that the verification is seeking to resolve;

(2) Sufficient information to identify the good or material that is the subject of the verification;

(3) A request for the written consent of the exporter or producer whose premises are going to be visited;

(4) The legal authority for the visit;

(5) The proposed date and location of the visit;

(6) The specific purpose of the visit; and

(7) The names and titles of the U.S. officials conducting the visit.

(c) *Importer notification.* When CBP initiates a verification by sending a request for information or questionnaire under paragraph (a) of this section to an exporter or producer or by sending a notification of a verification visit under paragraph (b) of this section, CBP will notify the importer claiming preferential tariff treatment of the good that CBP has initiated a verification of that good, subject to the confidentiality provisions in § 182.2.

(d) *Means of communications.* (1) For purposes of a verification, it is sufficient for CBP to use the contact information provided in the certification of origin for any communication sent to the importer, exporter, or producer.

(2) For purposes of a verification, CBP will send all communication to the exporter or producer by any means that can produce a confirmation of receipt including:

(i) Electronic mail;

(ii) International courier services;

(iii) Certified or registered mail services; or

(iv) A CBP-authorized electronic data interchange system.

(e) *Time periods.* Any time periods specified in this subpart begin from the date of confirmation of receipt, provided for in paragraph (d)(2) of this section, when sending communication to the exporter or producer, and begin from the date the communication is sent when sending communication to the importer.

(f) *Response time for a request for information, a questionnaire, and a notification of a verification visit*—(1) *Request for information and questionnaire.* When CBP sends a request for information or a questionnaire, the importer, exporter, or producer will have 30 days from the date specified in paragraph (e) of this section to respond and provide the requested documentation. CBP may deny the claim for preferential tariff treatment of the good, or consider the material that is used in the production of the good to be non-originating material, for failure to respond to the request for information subject to the conditions in §182.75(c)(1), or for failure to respond to the questionnaire.

(2) *Notification of a verification visit.* When CBP sends a notification of a verification visit, the exporter or producer will have 30 days from the date specified in paragraph (e) of this section to consent to or deny the verification visit. CBP may deny the claim for preferential tariff treatment of the good, or consider the material that is used in the production of the good to be non-originating material, for failure to provide consent for a verification visit within the 30-day response period, unless a postponement is requested in accordance with §182.74(b).

[CBP Dec. 21–10, 86 FR 35590, July 6, 2021]

§182.74 Verification visit procedures.

(a) *Written consent required.* Prior to conducting a verification visit in Canada or Mexico, CBP must obtain the written consent of the exporter or producer whose premises are to be visited. The exporter or producer must submit this written consent, requested in the notification of a verification visit under §182.73(b)(3), to CBP through one of the communication means specified in §182.73(d)(2), within the time period provided in §182.73(f)(2), unless a postponement is requested in accordance with paragraph (b) of this section.

(b) *Postponement of a verification visit*—(1) *Request for postponement by an exporter or producer.* Within 15 days of confirmed receipt of the notification of a verification visit, the exporter or producer may, on a single occasion, using one of the communication means specified in §182.73(d)(2), request the postponement of the verification visit for a period not to exceed 30 days from the proposed date of the visit.

(2) *Notification of a postponement.* CBP will notify the exporter or producer when a postponement request under paragraph (b)(1) of this section is received and will provide the new date of the verification visit. The Mexican or Canadian customs administration where the verification visit will occur may also, within 15 days of confirmed receipt of the notification of a verification visit, postpone the verification visit for a period not to exceed 60 days from the proposed date of the visit or for a longer period as CBP and the Mexican or Canadian customs administration may decide. CBP will notify the exporter or producer if the verification visit is postponed at the request of the Mexican or Canadian customs administration.

(c) *Availability of records*—(1) *Verification of a good.* The exporter or producer must make the records, which are required to be maintained to demonstrate that the good qualifies for preferential tariff treatment under the USMCA, available for inspection by a CBP official conducting a verification and provide facilities for that inspection during the verification visit. CBP may deny the claim for preferential tariff treatment of the good for failure to maintain these records or if a CBP official is denied access to these records.

(2) *Verification of a material.* During the verification of a material, any records in the material producer's possession demonstrating that the material qualifies as originating must be made available for inspection by a CBP official conducting a verification. CBP may consider the material that is the used in the production of the good and is the subject of the verification visit to be non-originating material if a CBP

official is denied access to these records.

(d) *Observers.* The exporter or producer may designate up to two observers to be present during the verification visit, if the exporter or producer chooses, provided that:

(1) The observers do not participate in a manner other than as observers;

(2) The failure of the exporter or producer to designate observers does not result in the postponement of the visit; and

(3) The exporter or producer identifies to CBP any observers designated to be present during the visit.

[CBP Dec. 21–10, 86 FR 35591, July 6, 2021]

§ 182.75 Determinations of origin.

(a) *Contents.* For verifications initiated under this part, CBP will issue a determination of origin that sets forth:

(1) A description of the good that was the subject of the verification;

(2) A statement setting forth the findings of facts made in connection with the verification and upon which the determination is based; and

(3) The legal basis for the determination.

(b) *Parties who will receive a determination of origin.* CBP will issue the determination of origin to the importer, and to the exporter or producer who is subject to the verification and either completed the certification of origin or provided information directly to CBP during the verification, subject to the confidentiality provisions in §182.2, within 120 days (or in exceptional cases and upon notification to the parties, within 210 days) after CBP has determined that it has received all the information necessary to issue a determination of origin, including any information necessary from the exporter or producer.

(c) *Negative determinations*—(1) *When a request for information must be sent to the exporter or producer prior to issuing a negative determination.* If a claim for preferential tariff treatment is based on a certification of origin completed by the exporter or producer, and, in response to a request for information, the importer does not provide CBP with sufficient information to verify or substantiate the claim, CBP will send a written request for information or its electronic equivalent to the exporter or producer that completed the certification of origin, subject to the confidentiality provisions in §182.2, prior to issuing a negative determination.

(2) *Denial of preferential tariff treatment.* CBP may deny the claim for preferential tariff treatment if:

(i) The certification of origin is not submitted to CBP upon request as required pursuant to §182.12(a);

(ii) The claim or certification of origin is invalid or based on inaccurate information and is not corrected within the required time period pursuant to §182.11(c);

(iii) CBP determines that the importer, exporter, or producer failed to provide sufficient information to substantiate the claim;

(iv) CBP determines that the good does not qualify for preferential tariff treatment, including failing to meet the rules of origin requirements in General Note 11, HTSUS, and Appendix A to this part;

(v) The importer, exporter, or producer fails to respond to the request for information pursuant to §182.73(f)(1) subject to the conditions in §182.75(c)(1);

(vi) The importer, exporter, or producer fails to respond to the questionnaire pursuant to §182.73(f)(1);

(vii) The exporter or producer fails to consent to a verification visit pursuant to §182.74;

(viii) The importer, exporter, or producer fails to maintain records demonstrating that the good qualifies for preferential tariff treatment as required pursuant to this part;

(ix) The importer, exporter, or producer denies access, as requested by CBP, to records or documentation that are in its possession or required to be maintained pursuant to this part;

(x) The exporter or producer denies access to records or documentation that are in its possession or required to be maintained, or to facilities during a verification visit as required pursuant to this part;

(xi) CBP finds a pattern of conduct pursuant to §182.76; or

(xii) CBP determines that any other reason to deny a claim for preferential tariff treatment as set forth in this part applies

(3) *Intent to deny*. Prior to issuing a negative determination, CBP will inform the importer, and the exporter or producer who is subject to the verification and either completed the certification of origin or provided information directly to CBP during the verification, of CBP's intent to deny preferential tariff treatment, subject to the confidentiality provisions in §182.2. This intent to deny will contain the preliminary results of the verification, the effective date of the denial of preferential tariff treatment, and a notice to the importer, exporter, or producer that CBP will provide 30 days to submit additional information, including documents, related to the preferential tariff treatment of the good.

(4) *Issuance of a negative determination of origin*. CBP will issue a negative determination of origin to the parties specified in paragraph (b) of this section if CBP determines, at least 30 days after receipt by the importer, exporter, or producer of the intent to deny issued pursuant to paragraph (c)(3) of this section, that one or more of the reasons for denial of preferential tariff treatment under paragraph (c)(2) of this section continues to apply. In addition to the contents of the determination set forth in paragraph (a) of this section, unless CBP determines that there is a pattern of conduct of false or unsupported representations pursuant to §182.76, a negative determination of origin will provide the exporter or producer with the information necessary to file a protest as provided for in 19 U.S.C. 1514(e) and part 174 of this chapter.

[CBP Dec. 21–10, 86 FR 35591, July 6, 2021]

§182.76 Repeated false or unsupported preference claims.

Where the verification reveals a pattern of conduct by the importer, exporter, or producer of false or unsupported representations relevant to a claim that a good imported into the United States qualifies for preferential tariff treatment under the USMCA, CBP may withhold preferential tariff treatment under the USMCA for entries of identical goods covered by subsequent statements, declarations, or certifications by that importer, exporter, or producer until CBP determines that representations of that person are in conformity with this part and with General Note 11, HTSUS.

[CBP Dec. 21–10, 86 FR 35592, July 6, 2021]

Subpart H—Textile and Apparel Goods

§§ 182.81–182.82 [Reserved]

Subpart I—Automotive Goods

§§ 182.91–182.93 [Reserved]

Subpart J—Commercial Samples and Goods Returned after Repair or Alteration

SOURCE: CBP Dec. 21–10, 86 FR 35592, July 6, 2021, unless otherwise noted.

§182.111 Commercial samples of negligible value.

(a) *General*. Commercial samples of negligible value imported from Canada or Mexico may qualify for duty-free entry under subheading 9811.00.60, HTSUS. For purposes of this section, ''commercial samples of negligible value'' means commercial samples which have a value, individually or in the aggregate as shipped, of not more than one U.S. dollar, or the equivalent amount in the currency of Canada or Mexico, or which are so marked, torn, perforated, or otherwise treated that they are unsuitable for sale or for use except as commercial samples.

(b) *Qualification for duty-free entry*. Commercial samples of negligible value imported from Canada or Mexico will qualify for duty-free entry under subheading 9811.00.60, HTSUS, only if:

(1) The samples are imported solely for the purpose of soliciting orders for foreign goods or services; and

(2) If valued over one U.S. dollar, the samples are properly marked, torn, perforated or otherwise treated prior to arrival in the United States so that they are unsuitable for sale or for use except as commercial samples.

§ 182.112 Goods re-entered after repair or alteration in Canada or Mexico.

(a) *General.* This section sets forth the rules that apply for purposes of obtaining duty-free treatment on goods returned after repair or alteration in Canada or Mexico as provided for in subheadings 9802.00.40 and 9802.00.50, HTSUS. Goods returned after having been repaired or altered in Canada or Mexico, regardless of whether the repair or alteration could be performed in the United States or has increased the value of the good and regardless of their origin, are eligible for duty-free treatment, provided that the requirements of this section are met. For purposes of this section, ''repairs or alterations'' means restoration, addition, renovation, re-dyeing, cleaning, resterilizing, or other treatment that does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the United States.

(b) *Goods not eligible for duty-free treatment after repair or alteration.* The duty-free treatment referred to in paragraph (a) of this section will not apply to goods that:

(1) In their condition, as exported from the United States to Canada or Mexico, are incomplete for their intended use and for which the processing operation performed in Canada or Mexico constitutes an operation that is performed as a matter of course in the preparation or manufacture of finished goods; or

(2) Are imported under a duty-deferral program that are exported for repair or alteration and are not re-imported under a duty-deferral program.

(c) *Documentation.* The provisions of § 10.8(a), (b), and (c) of this chapter, relating to the documentary requirements for goods entered under subheading 9802.00.40 or 9802.00.50, HTSUS, will apply in connection with the entry of goods which are returned from Canada or Mexico after having been exported for repairs or alterations and which are claimed to be duty-free.

Subpart K—Penalties

SOURCE: CBP Dec. 21–10, 86 FR 35593, July 6. 2021, unless otherwise noted.

§ 182.121 General.

Except as otherwise provided in this subpart, all criminal, civil, or administrative penalties which may be imposed on U.S. importers, exporters, and producers for violations of the customs and related U.S. laws and regulations will also apply to U.S. importers, exporters, and producers for violations of the U.S. laws and regulations relating to the USMCA.

§ 182.122 Corrected claim or certification of origin by importers.

An importer who makes a corrected claim under § 182.11(c) will not be subject to civil or administrative penalties under 19 U.S.C. 1592 for having made an incorrect claim or having submitted an incorrect certification of origin, provided that the corrected claim is promptly and voluntarily made in accordance with § 182.124.

§ 182.123 Corrected certification of origin by U.S. exporters or producers.

Civil or administrative penalties provided for under 19 U.S.C. 1592 will not be imposed on an exporter or producer who completed a certification of origin for a good exported from the United States to Canada or Mexico when the exporter or producer promptly and voluntarily provides written notification pursuant to §§ 182.21(b) and 182.124 with respect to the making of an incorrect certification of origin.

§ 182.124 Framework for correcting claims or certifications of origin.

(a) ''*Promptly and voluntarily*'' *defined.* Except as provided for in paragraph (b) of this section, for purposes of this part, the making of a corrected claim or certification of origin by an importer or the providing of written notification of an incorrect certification of origin by an exporter or producer will be deemed to have been done promptly and voluntarily if:

(1)(i) Done before the commencement of a formal investigation, within the meaning of § 162.74(g) of this chapter; or

(ii) Done before any of the events specified in § 162.74(i) of this chapter has occurred; or

(iii) Done within 30 days after the importer, exporter, or producer initially

becomes aware that the claim or certification is incorrect; and

(2) Accompanied by a statement setting forth the information specified in paragraph (c) of this section; and

(3) In the case of a corrected claim or certification of origin by an importer, accompanied or followed by a tender of any actual loss of duties and merchandise processing fees, if applicable, in accordance with paragraph (d) of this section.

(b) *Exception in cases involving fraud or subsequent incorrect claims*—(1) *Fraud.* Notwithstanding paragraph (a) of this section, a person who acted fraudulently in making an incorrect claim or certification of origin may not make a voluntary correction of that claim or certification of origin. For purposes of this paragraph, the term ''fraud'' will have the meaning set forth in paragraph (C)(3) of Appendix B to part 171 of this chapter.

(2) *Subsequent incorrect claims.* An importer who makes one or more incorrect claims after becoming aware that a claim involving the same merchandise and circumstances is invalid may not make a voluntary correction of the subsequent claims pursuant to paragraph (a) of this section.

(c) *Statement.* For purposes of this part, each corrected claim or certification of origin must be accompanied by a statement, submitted in writing or via a CBP-authorized electronic data interchange system, which:

(1) Identifies the class or kind of good to which the incorrect claim or certification of origin relates;

(2) In the case of a corrected claim or certification of origin by an importer, identifies each affected import transaction, including each port of importation and the approximate date of each importation;

(3) In the case of a written notification of an incorrect certification of origin by an exporter or producer, identifies each affected export transaction, including each port of exportation and the approximate date of each exportation. A producer who provides written notification that certain information in a certification of origin is incorrect and who is unable to identify the specific export transactions under this paragraph must provide as much information concerning those transactions as the producer, by the exercise of good faith and due diligence, is able to obtain;

(4) Specifies the nature of the incorrect statements or omissions regarding the claim or certification of origin; and

(5) Sets forth, to the best of the person's knowledge, the true and accurate information or data which should have been covered by or provided in the claim or certification of origin, and states that the person will provide any additional information or data which is unknown at the time of making the corrected claim or certification of origin within 30 days or within any extension of that 30-day period as CBP may permit in order for the person to obtain the information or data.

(d) *Tender of actual loss of duties.* A U.S. importer who makes a corrected claim must tender any actual loss of duties at the time of making the corrected claim, or within 30 days thereafter, or within any extension of that 30-day period as CBP may allow in order for the importer to obtain the information or data necessary to calculate the duties owed.

APPENDIX A TO PART 182—RULES OF ORIGIN REGULATIONS

UNIFORM REGULATIONS REGARDING THE INTERPRETATION, APPLICATION, AND ADMINISTRATION OF CHAPTER 4 (RULES OF ORIGIN) AND RELATED PROVISIONS IN CHAPTER 6 (TEXTILE AND APPAREL GOODS) OF THE AGREEMENT BETWEEN THE UNITED STATES OF AMERICA, THE UNITED MEXICAN STATES, AND CANADA[1]

PART I

SECTION 1. DEFINITIONS AND INTERPRETATIONS

(1) *Definitions.* The following definitions apply in these Regulations,

accessories, spare parts, tools, instructional or other information materials means goods that are delivered with a good, whether or not they are physically affixed to that good, and that are used for the transport, protection, maintenance or cleaning of the good, for instruction in the assembly, repair or use of that good, or as replacements for

[1] Please note that the citing conventions in Appendix A might not conform to the ordinary citing conventions in the Code of Federal Regulations (CFR) because the language is added pursuant to an international agreement without revision.

consumable or interchangeable parts of that good;

adjusted to exclude any costs incurred in the international shipment of the good means, with respect to the transaction value of a good, adjusted by

(a) deducting the following costs if those costs are included in the transaction value of the good:

(i) The costs of transporting the good after it is shipped from the point of direct shipment,

(ii) the costs of unloading, loading, handling and insurance that are associated with that transportation, and

(iii) the cost of packing materials and containers, and

(b) if those costs are not included in the transaction value of the good, adding

(i) the costs of transporting the good from the place of production to the point of direct shipment,

(ii) the costs of loading, unloading, handling and insurance that are associated with that transportation, and

(iii) the costs of loading the good for shipment at the point of direct shipment;

Agreement means the *United States-Mexico-Canada Agreement;*[2]

applicable change in tariff classification means, with respect to a non-originating material used in the production of a good, a change in tariff classification specified in a rule established in Schedule I (PSRO Annex) for the tariff provision under which the good is classified;

aquaculture means the farming of aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants from seed stock such as eggs, fry, fingerlings, or larvae, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding, or protection from predators;

costs incurred in packing means, with respect to a good or material, the value of the packing materials and containers in which the good or material is packed for shipment and the labor costs incurred in packing it for shipment, but does not include the costs of preparing and packaging it for retail sale;

Customs Valuation Agreement means the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, set out in Annex 1A to the WTO Agreement;

customs value means

(a) in the case of Canada, value for duty as defined in the *Customs Act,* except that for the purpose of determining that value the reference in section 55 of that Act to ''in accordance with the regulations made under the *Currency Act*'' is to be read as a reference to ''in accordance with subsection 2(1) of these *CUSMA Rules of Origin Regulations*'',

(b) in the case of Mexico, the *valor en aduana* as determined in accordance with the *Ley Aduanera*, converted, if such value is not expressed in Mexican currency, to Mexican currency at the rate of exchange determined in accordance with subsection 2(1), and

(c) in the case of the United States, the value of imported merchandise as determined by the U.S. Customs and Border Protection in accordance with section 402 of the *Tariff Act of 1930*, as amended, converted, if that value is not expressed in United States currency, to United States currency at the rate of exchange determined in accordance with subsection 2(1);

days means calendar days, and includes Saturdays, Sundays and holidays;

direct labor costs means costs, including fringe benefits, that are associated with employees who are directly involved in the production of a good;

direct material costs means the value of materials, other than indirect materials and packing materials and containers, that are used in the production of a good;

direct overhead means costs, other than direct material costs and direct labor costs, that are directly associated with the production of a good;

enterprise means an entity constituted or organized under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture, association or similar organization;

excluded costs means, with respect to net cost or total cost, sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs and non-allowable interest costs;

fungible goods means goods that are interchangeable for commercial purposes with another good and the properties of which are essentially identical;

fungible materials means materials that are interchangeable with another material for commercial purposes and the properties of which are essentially identical;

Harmonized System means the *Harmonized Commodity Description and Coding System,* including its General Rules of Interpretation, Section Notes, Chapter Notes and Subheading Notes, as set out in

(a) in the case of Canada, the *Customs Tariff,*

(b) in the case of Mexico, the *Tarifa de la Ley de los Impuestos Generales de Importación y de Exportación,* and

(c) in the case of the United States, the *Harmonized Tariff Schedule of the United States;*

[2] Please be aware that, in other contexts, the United States-Mexico-Canada Agreement is referred to by its official name, the Agreement Between the United States of America, the United Mexican States, and Canada.

identical goods means, with respect to a good, including the valuation of a good, goods that

(a) are the same in all respects as that good, including physical characteristics, quality and reputation but excluding minor differences in appearance,

(b) were produced in the same country as that good, and

(c) were produced

(i) by the producer of that good, or

(ii) by another producer, if no goods that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that good;

identical materials means, with respect to a material, including the valuation of a material, materials that

(a) are the same as that material in all respects, including physical characteristics, quality and reputation but excluding minor differences in appearance,

(b) were produced in the same country as that material, and

(c) were produced

(i) by the producer of that material, or

(ii) by another producer, if no materials that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that material;

incorporated means, with respect to the production of a good, a material that is physically incorporated into that good, and includes a material that is physically incorporated into another material before that material or any subsequently produced material is used in the production of the good;

indirect material means a material used or consumed in the production, testing or inspection of a good but not physically incorporated into the good, or a material used or consumed in the maintenance of buildings or the operation of equipment associated with the production of a good, including

(a) fuel and energy,

(b) tools, dies, and molds,

(c) spare parts and materials used or consumed in the maintenance of equipment and buildings,

(d) lubricants, greases, compounding materials and other materials used or consumed in production or used to operate equipment and buildings,

(e) gloves, glasses, footwear, clothing, safety equipment, and supplies,

(f) equipment, devices and supplies used or consumed for testing or inspecting the goods,

(g) catalysts and solvents, and

(h) any other material that is not incorporated into the good but if the use in the production of the good can reasonably be demonstrated to be part of that production;

interest costs means all costs paid or payable by a person to whom credit is, or is to be advanced, for the advancement of credit or the obligation to advance credit;

intermediate material means a material that is self-produced and used in the production of a good, and designated as an intermediate material under subsection 8(6);

location of the producer means,

(a) the place where the producer uses a material in the production of the good; or

(b) the warehouse or other receiving station where the producer receives materials for use in the production of the good, provided that it is located within a radius of 75 km (46.60 miles) from the production site.

material means a good that is used in the production of another good, and includes a part or ingredient;

month means a calendar month;

national means a natural person who is a citizen or permanent resident of a USMCA country, and includes

(a) with respect to Mexico, a national or citizen according to Articles 30 and 34, respectively, of the Mexican Constitution, and

(b) with respect to the United States, a ''national of the United States'' as defined in the Immigration and Nationality Act on the date of entry into force of the Agreement;

net cost means total cost minus sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost;

net cost of a good means the net cost that can be reasonably allocated to a good using the method set out in subsection 7(3) (Regional Value Content);

net cost method means the method of calculating the regional value content of a good that is set out in subsection 7(3) (Regional Value Content);

non-allowable interest costs means interest costs incurred by a producer on the producer's debt obligations that are more than 700 basis points above the interest rate issued by the federal government for comparable maturities of the country in which the producer is located;

non-originating good means a good that does not qualify as originating under these Regulations;

non-originating material means a material that does not qualify as originating under these Regulations;

originating good means a good that qualifies as originating under these Regulations;

originating material means a material that qualifies as originating under these Regulations;

packaging materials and containers means materials and containers in which a good is packaged for retail sale;

packing materials and containers means materials and containers that are used to protect a good during transportation, but does not include packaging materials and containers;

payments means, with respect to royalties and sales promotion, marketing and after-

sales service costs, the costs expensed on the books of a producer, whether or not an actual payment is made;

person means a natural person or an enterprise;

person of a USMCA country means a national, or an enterprise constituted or organized under the laws of a USMCA country;

point of direct shipment means the location from which a producer of a good normally ships that good to the buyer of the good;

producer means a person who engages in the production of a good;

production means growing, cultivating, raising, mining, harvesting, fishing, trapping, hunting, capturing, breeding, extracting, manufacturing, processing, or assembling a good, or aquaculture;

reasonably allocate means to apportion in a manner appropriate to the circumstances;

recovered material means a material in the form of one or more individual parts that results from:

(a) The disassembly of a used good into individual parts; and

(b) the cleaning, inspecting, testing or other processing of those parts as necessary for improvement to sound working condition;

related person means a person related to another person on the basis that

(a) they are officers or directors of one another's businesses,

(b) they are legally recognized partners in business,

(c) they are employer and employee,

(d) any person directly or indirectly owns, controls or holds 25 percent or more of the outstanding voting stock or shares of each of them,

(e) one of them directly or indirectly controls the other,

(f) both of them are directly or indirectly controlled by a third person, or

(g) they are members of the same family;

remanufactured good means a good classified in HS Chapters 84 through 90 or under heading 94.02 except goods classified under HS headings 84.18, 85.09, 85.10, and 85.16, 87.03 or subheadings 8414.51, 8450.11, 8450.12, 8508.11, and 8517.11, that is entirely or partially composed of recovered materials and:

(a) Has a similar life expectancy and performs the same as or similar to such a good when new; and

(b) has a factory warranty similar to that applicable to such a good when new;

reusable scrap or by-product means waste and spoilage that is generated by the producer of a good and that is used in the production of a good or sold by that producer;

right to use, for the purposes of the definition of royalties, includes the right to sell or distribute a good;

royalties means payments of any kind, including payments under technical assistance or similar agreements, made as consideration for the use of, or right to use, a copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, or secret formula or process, excluding those payments under technical assistance or similar agreements that can be related to specific services such as

(a) personnel training, without regard to where the training is performed, or

(b) if performed in the territory of one or more of the USMCA countries, engineering, tooling, die-setting, software design and similar computer services, or other services;

sales promotion, marketing, and after-sales service costs means the following costs related to sales promotion, marketing and after-sales service:

(a) Sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing and after-sales service literature (product brochures, catalogs, technical literature, price lists, service manuals, or sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; or entertainment;

(b) sales and marketing incentives; consumer, retailer or wholesaler rebates; or merchandise incentives;

(c) salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, or pension), travelling and living expenses, or membership and professional fees for sales promotion, marketing and after-sales service personnel;

(d) recruiting and training of sales promotion, marketing and after-sales service personnel, and after-sales training of customers' employees, if those costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;

(e) product liability insurance;

(f) office supplies for sales promotion, marketing and after-sales service of goods, if those costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(g) telephone, mail and other communications, if those costs are identified separately for sales promotion, marketing, and after-sales service of goods on the financial statements or cost accounts of the producer;

(h) rent and depreciation of sales promotion, marketing, and after-sales service offices and distribution centers;

(i) property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing, and after-sales service offices and distribution centers, if those costs are identified separately for sales promotion, marketing and after-sales

service of goods on the financial statements or cost accounts of the producer; and

(j) payments by the producer to other persons for warranty repairs;

self-produced material means a material that is produced by the producer of a good and used in the production of that good;

shipping and packing costs means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, excluding the costs of preparing and packaging the good for retail sale;

similar goods means, with respect to a good, goods that

(a) although not alike in all respects to that good, have similar characteristics and component materials that enable the goods to perform the same functions and to be commercially interchangeable with that good,

(b) were produced in the same country as that good, and

(c) were produced

(i) by the producer of that good, or

(ii) by another producer, if no goods that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that good;

similar materials means, with respect to a material, materials that

(a) although not alike in all respects to that material, have similar characteristics and component materials that enable the materials to perform the same functions and to be commercially interchangeable with that material,

(b) were produced in the same country as that material, and

(c) were produced

(i) by the producer of that material, or

(ii) by another producer, if no materials that satisfy the requirements of paragraphs (a) and (b) were produced by the producer of that material;

subject to a regional value content requirement means, with respect to a good, that the provisions of these Regulations that are applied to determine whether the good is an originating good include a regional value content requirement;

tariff provision means a heading, subheading or tariff item;

territory means:

(a) For Canada, the following zones or waters as determined by its domestic law and consistent with international law:

(i) The land territory, air space, internal waters, and territorial sea of Canada,

(ii) the exclusive economic zone of Canada, and

(iii) the continental shelf of Canada;

(b) for Mexico,

(i) the land territory, including the states of the Federation and Mexico City,

(ii) the air space, and

(iii) the internal waters, territorial sea, and any areas beyond the territorial seas of Mexico within which Mexico may exercise sovereign rights and jurisdiction, as determined by its domestic law, consistent with the *United Nations Convention on the Law of the Sea,* done at Montego Bay on December 10, 1982; and

(c) for the United States,

(i) the customs territory of the United States, which includes the 50 states, the District of Columbia, and Puerto Rico,

(ii) the foreign trade zones located in the United States and Puerto Rico, and

(iii) the territorial sea and air space of the United States and any area beyond the territorial sea within which, in accordance with customary international law as reflected in the *United Nations Convention on the Law of the Sea,* the United States may exercise sovereign rights or jurisdiction.

total cost means all product costs, period costs, and other costs incurred in the territory of one or more of the USMCA countries, where:

(a) Product costs are costs that are associated with the production of a good and include the value of materials, direct labor costs, and direct overheads;

(b) period costs are costs, other than product costs, that are expensed in the period in which they are incurred, such as selling expenses and general and administrative expenses; and

(c) other costs are all costs recorded on the books of the producer that are not product costs or period costs, such as interest.

Total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

transaction value means the customs value as determined in accordance with the Customs Valuation Agreement, that is, the price actually paid or payable for a good or material with respect to a transaction of the producer of the good, adjusted in accordance with the principles of Articles 8(1), 8(3), and 8(4) of the Customs Valuation Agreement, regardless of whether the good or material is sold for export;

transaction value method means the method of calculating the regional value content of a good that is set out in subsection 7(2) (Regional Value Content);

used means used or consumed in the production of a good;

USMCA country means a Party to the Agreement;

value means the value of a good or material for the purpose of calculating customs duties or for the purpose of applying these Regulations.

verification of origin means a verification of origin of goods under

(a) in the case of Canada, paragraph 42.1(1)(a) of the *Customs Act*,

(b) in the case of Mexico, Article 5.9 of the Agreement, and

(c) in the case of the United States, section 509 of the Tariff Act of 1930, as amended.

(2) *Interpretation: ''similar goods'' and ''similar materials''*. For the purposes of the definitions of *similar goods* and *similar materials*, the quality of the goods or materials, their reputation and the existence of a trademark are among the factors to be considered for the purpose of determining whether goods or materials are similar.

(3) *Other definitions*. For the purposes of these Regulations,

(a) *chapter*, unless otherwise indicated, refers to a chapter of the Harmonized System;

(b) *heading* refers to any four-digit number set out in the ''Heading'' column in the Harmonized System, or the first four digits of any tariff provision;

(c) *subheading* refers to any six-digit number, set out in the ''H.S. Code'' column in the Harmonized System or the first six digits of any tariff provision;

(d) *tariff item* refers to the first eight digits in the tariff classification number under the Harmonized System as implemented by each USMCA country;

(e) any reference to a tariff item in Chapter Four of the Agreement or these Regulations that includes letters is to be reflected as the appropriate eight-digit number in the Harmonized System as implemented in each USMCA country; and

(f) *books* refers to,

(i) with respect to the books of a person who is located in a USMCA country,

(A) books and other documents that support the recording of revenues, expenses, costs, assets and liabilities and that are maintained in accordance with Generally Accepted Accounting Principles set out in the publications listed in Schedule X with respect to the territory of the USMCA country in which the person is located, and

(B) financial statements, including note disclosures, that are prepared in accordance with Generally Accepted Accounting Principles set out in the publications listed in Schedule X with respect to the territory of the USMCA country in which the person is located, and

(ii) with respect to the books of a person who is located outside the territories of the USMCA countries,

(A) books and other documents that support the recording of revenues, expenses, costs, assets and liabilities and that are maintained in accordance with generally accepted accounting principles applied in that location or, if there are no such principles, in accordance with the International Accounting Standards, and

(B) financial statements, including note disclosures, that are prepared in accordance with generally accepted accounting principles applied in that location or, if there are no such principles, in accordance with the International Accounting Standards.

(4) *Use of examples*. If an example, referred to as an ''Example'', is set out in these Regulations, the example is for the purpose of illustrating the application of a provision, and if there is any inconsistency between the example and the provision, the provision prevails to the extent of the inconsistency.

(5) *References to domestic laws*. Except as otherwise provided, references in these Regulations to domestic laws of the USMCA countries apply to those laws as they are currently in effect and as they may be amended or superseded.

(6) *Calculation of Total Cost*. For the purposes of subsections 5(11), 7(11) and 8(8),

(a) total cost consists of all product costs, period costs and other costs that are recorded, except as otherwise provided in subparagraphs (b)(i) and (ii), on the books of the producer without regard to the location of the persons to whom payments with respect to those costs are made;

(b) in calculating total cost,

(i) the value of materials, other than intermediate materials, indirect materials and packing materials and containers, is the value determined in accordance with subsections 8(1) and 8(2),

(ii) the value of intermediate materials used in the production of the good or material with respect to which total cost is being calculated must be calculated in accordance with subsection 8(6),

(iii) the value of indirect materials and the value of packing materials and containers is to be the costs that are recorded on the books of the producer for those materials, and

(iv) product costs, period costs and other costs, other than costs referred to in subparagraphs (i) and (ii), is to be the costs thereof that are recorded on the books of the producer for those costs;

(c) total cost does not include profits that are earned by the producer, regardless of whether they are retained by the producer or paid out to other persons as dividends, or taxes paid on those profits, including capital gains taxes;

(d) gains related to currency conversion that are related to the production of the good must be deducted from total cost, and losses related to currency conversion that are related to the production of the good must be included in total cost;

(e) the value of materials with respect to which production is accumulated under section 9 must be determined in accordance with that section; and

(f) total cost includes the impact of inflation as recorded on the books of the producer, if recorded in accordance with the

Generally Accepted Accounting Principles of the producer's country.

(7) *Period for the calculation of total cost.* For the purpose of calculating total cost under subsections 5(11) and 7(11) and 8(8),

(a) if the regional value content of the good is calculated on the basis of the net cost method and the producer has elected under subsection 7(15), 16(1) or (3) to calculate the regional value content over a period, the total cost must be calculated over that period; and

(b) in any other case, the producer may elect that the total cost be calculated over

(i) a one-month period,

(ii) any consecutive three-month or six-month period that falls within and is evenly divisible into the number of months of the producer's fiscal year remaining at the beginning of that period, or

(iii) the producer's fiscal year.

(8) *Election not modifiable.* An election made under subsection (7) may not be rescinded or modified with respect to the good or material, or the period, with respect to which the election is made.

(9) *Election considered made with respect to period.* If a producer chooses a one, three or six-month period under subsection (7) with respect to a good or material, the producer is considered to have chosen under that subsection a period or periods of the same duration for the remainder of the producer's fiscal year with respect to that good or material.

(10) *Election considered made with respect to cost.* With respect to a good exported to a USMCA country, an election to average is considered to have been made

(a) in the case of an election referred to in subsection 16(1) or (3), if the election is received by the customs administration of that USMCA country; and

(b) in the case of an election referred to in subsection 1(7), 7(15) or 16(10), if the customs administration of that USMCA country is informed in writing during the course of a verification of origin of the good that the election has been made.

SECTION 2. CONVERSION OF CURRENCY

2 (1) *Conversion of currency.* If the value of a good or a material is expressed in a currency other than the currency of the country where the producer of the good is located, that value must be converted to the currency of the country in which that producer is located, based on the following rates of exchange:

(a) In the case of the sale of that good or the purchase of that material, the rate of exchange used by the producer for the purpose of recording that sale or purchase, or

(b) in the case of a material that is acquired by the producer other than by a purchase,

(i) if the producer used a rate of exchange for the purpose of recording another transaction in that other currency that occurred within 30 days of the date on which the producer acquired the material, that rate, or

(ii) in any other case,

(A) with respect to a producer located in Canada, the rate of exchange referred to in section 5 of the *Currency Exchange for Customs Valuation Regulations* for the date on which the material was shipped directly to the producer,

(B) with respect to a producer located in Mexico, the rate of exchange published by the *Banco de Mexico* in the *Diario Oficial de la Federación*, under the title ''*TIPO de cambio para solventar obligaciones denominadas en moneda extranjera pagaderas en la República Mexicana*'', for the date on which the material was shipped directly to the producer, and

(C) with respect to a producer located in the United States, the rate of exchange referred to in 31 U.S.C. 5151 for the date on which the material was shipped directly to the producer.

(2) *Information in other currency in statement.* If a producer of a good has a statement referred to in section 9 that includes information in a currency other than the currency of the country in which that producer is located, the currency must be converted to the currency of the country in which the producer is located based on the following rates of exchange:

(a) If the material was purchased by the producer in the same currency as the currency in which the information in the statement is provided, the rate of exchange must be the rate used by the producer for the purpose of recording the purchase; or

(b) if the material was purchased by the producer in a currency other than the currency in which the information in the statement is provided,

(i) and the producer used a rate of exchange for the purpose of recording a transaction in that other currency that occurred within 30 days of the date on which the producer acquired the material, the rate of exchange must be that rate, or

(ii) in any other case,

(A) with respect to a producer located in Canada, the rate of exchange is the rate referred to in section 5 of the *Currency Exchange for Customs Valuation Regulations* for the date on which the material was shipped directly to the producer,

(B) with respect to a producer located in Mexico, the rate of exchange is the rate published by the *Banco de Mexico* in the *Diario Oficial de la Federacion*, under the title ''*TIPO de cambio para solventar obligaciones denominadas en moneda extranjera pagaderas en la Republica Mexicana*'', for the date on which the material was shipped directly to the producer, and

(C) with respect to a producer located in the United States, the rate of exchange is the rate referred to in 31 U.S.C. 5151 for the date on which the material was shipped directly to the producer; and

(c) if the material was acquired by the producer other than by a purchase,

(i) if the producer used a rate of exchange for the purpose of recording a transaction in that other currency that occurred within 30 days of the date on which the producer acquired the material, the rate of exchange must be that rate, and

(ii) in any other case,

(A) with respect to a producer located in Canada, the rate of exchange must be the rate referred to in section 5 of the *Currency Exchange for Customs Valuation Regulations* for the date on which the material was shipped directly to the producer,

(B) with respect to a producer located in Mexico, the rate of exchange must be the rate published by the *Banco de Mexico* in the *Diario Oficial de la Federacion,* under the title ''*TIPO de cambio para solventar obligaciones denominadas en moneda extranjera pagaderas en la Republica Mexicana*'', for the date on which the material was shipped directly to the producer, and

(C) with respect to a producer located in the United States, the rate of exchange must be the rate referred to in 31 U.S.C. 5151 for the date on which the material was shipped directly to the producer.

PART II

SECTION 3. ORIGINATING GOODS

3(1) *Wholly obtained goods.* A good is originating in the territory of a USMCA country if the good satisfies all other applicable requirements of these Regulations and is:

(a) A mineral good or other naturally occurring substance extracted in or taken from the territory of one or more of the USMCA countries;

(b) a plant, plant good, vegetable, or fungus, grown, harvested, picked, or gathered in the territory of one or more of the USMCA countries;

(c) a live animal born and raised in the territory of one or more of the USMCA countries;

(d) a good obtained from a live animal in the territory of one or more of the USMCA countries;

(e) an animal obtained from hunting, trapping, fishing, gathering or capturing in the territory of one or more of the USMCA countries;

(f) a good obtained from aquaculture in the territory of one or more of the USMCA countries;

(g) fish, shellfish or other marine life taken from the sea, seabed or subsoil outside the territories of the USMCA countries and, under international law, outside the territorial sea of non-USMCA countries, by vessels that are registered, listed, or recorded with a USMCA country and entitled to fly the flag of that USMCA country;

(h) a good produced from goods referred to in paragraph (g) on board a factory ship where the factory ship is registered, listed, or recorded with a USMCA country and entitled to fly the flag of that USMCA country;

(i) a good, other than fish, shellfish or other marine life, taken by a USMCA country or a person of a USMCA country from the seabed or subsoil outside the territories of the USMCA countries, if that USMCA country has the right to exploit that seabed or subsoil;

(j) waste and scrap derived from:

(i) Production in the territory of one or more of the USMCA countries, or

(ii) used goods collected in the territory of one or more of the USMCA countries, provided the goods are fit only for the recovery of raw materials; or

(k) a good produced in the territory of one or more of the USMCA countries, exclusively from a good referred to in any of paragraphs (a) through (j), or from their derivatives, at any stage of production.

(2) *Goods produced from non-originating materials.* A good, produced entirely in the territory of one or more of the USMCA countries, is originating in the territory of a USMCA country if each of the non-originating materials used in the production of the good satisfies all applicable requirements of Schedule I (PSRO Annex), and the good satisfies all other applicable requirements of these Regulations.

(3) *Goods produced exclusively from originating materials.* A good is originating in the territory of a USMCA country if the good is produced entirely in the territory of one or more of the USMCA countries exclusively from originating materials and the good satisfies all other applicable requirements of these Regulations.

(4) *Exceptions to the change in tariff classification requirement.* Except in the case of a good of any of Chapters 61 through 63, a good is originating in the territory of a USMCA country if:

(a) One or more of the non-originating materials used in the production of that good cannot satisfy the change in tariff classification requirements set out in Schedule I (PSRO Annex) because both the good and its materials are classified in the same subheading or same heading that is not further subdivided into subheadings, and,

(i) the good is produced entirely in the territory of one or more of the USMCA countries;

(ii) the regional value content of the good, calculated in accordance with section 7 (Regional Value Content), is not less than 60 percent if the transaction value method is

used, or not less than 50 percent if the net cost method is used; and

(iii) the good satisfies all other applicable requirements of these Regulations; or

(b) it was imported into the territory of a USMCA country in an unassembled or a disassembled form but classified as an assembled good in accordance with rule 2(a) of the General Rules of Interpretation for the Harmonized System and,

(i) the good is produced entirely in the territory of one or more of the USMCA countries;

(ii) the regional value content of the good, calculated in accordance with section 7 (Regional Value Content), is not less than 60 percent if the transaction value method is used, or not less than 50 percent if the net cost method is used; and

(iii) the good satisfies all other applicable requirements of these Regulations.

(5) *Interpretation of goods and parts of goods.* For the purposes of paragraph (4)(a),

(a) the determination of whether a heading or subheading provides for a good and its parts is to be made on the basis of the nomenclature of the heading or subheading and the relevant Section or Chapter Notes, in accordance with the General Rules for the Interpretation of the Harmonized System; and

(b) if, in accordance with the Harmonized System, a heading includes parts of goods by application of a Section Note or Chapter Note of the Harmonized System and the subheadings under that heading do not include a subheading designated ''Parts'', a subheading designated ''Other'' under that heading is to be considered to cover only the goods and parts of the goods that are themselves classified under that subheading.

(6) *Requirement to meet one rule.* For the purposes of subsection (2), if Schedule I (PSRO Annex) sets out two or more alternative rules for the tariff provision under which a good is classified, if the good satisfies the requirements of one of those rules, it need not satisfy the requirements of another of the rules in order to qualify as an originating good.

(7) *Special rule for certain goods.* A good is originating in the territory of a USMCA country if the good is referred to in Schedule II and is imported from the territory of a USMCA country.

(8) *Self-produced material considered as a material.* For the purpose of determining whether non-originating materials undergo an applicable change in tariff classification, a self-produced material may, at the choice of the producer of that material, be considered as a material used in the production of a good into which the self-produced material is incorporated.

(9) *Each of the following examples is an ''Example'' as referred to in subsection 1(4).*

Example 1: Subsection 3(2) Regarding the 'component that determines the tariff classification' of a textile or apparel good)

Producer A, located in a USMCA country, produces women's wool overcoats of subheading 6202.11 from two different fabrics, one for the body and another for the sleeves. Both fabrics are produced using originating and non-originating materials. The overcoat's body is made of woven wool and silk fabric, and the sleeves are made of knit cotton fabric.

For the purpose of determining if the women's wool overcoats are originating goods, Producer A must take into account Note 2 of Chapter 62 of Schedule I, which indicates that the applicable rule will apply only to the component that determines the tariff classification of the good and that the component must satisfy the tariff change requirements set out in the rule for that good.

The woven fabric (80% wool and 20% silk) used for the body is the component of the women's wool overcoat that determines its tariff classification under subheading 6202.11, because it constitutes the predominant material by weight and makes up the largest surface area of the overcoat. This fabric is made by Producer A from originating wool yarn classified in heading 51.06 and non-originating silk yarn classified in heading 50.04.

Since the knit cotton fabric used in the sleeves is not the component that determines the tariff classification of the good, it does not need to meet the requirements set out in the rule for the good.

Producer A must determine whether the non-originating materials used in the production of the component that determines the tariff classification of the women's wool overcoats (the woven fabric) satisfy the requirements established in the product-specific rule of origin, which requires both a change in tariff classification from any other chapter, except from some headings and chapters under which certain yarns and fabrics are classified, and a requirement that the good be cut or knit to shape and sewn or otherwise assembled in the territory of one or more of the USMCA countries. The non-originating silk yarn of heading 50.04 used by Producer A satisfies the change in tariff classification requirement, since heading 50.04 is not excluded under the product-specific rule of origin. Additionally, the overcoats are cut and sewn in the territory of one of the USMCA countries, and therefore the women's wool overcoats would be considered to be originating goods.

Example 2: (Subsection 3(2))

Producer A, located in a USMCA country, produces T-shirts of subheading 6109.10 from knit cotton and polyester fabric (60% cotton and 40% polyester), which is also produced by Producer A using originating cotton yarn of heading 52.05 and polyester yarn made of non-originating filaments of heading 54.02.

As the t-shirt is made of a single fabric and classified under GRI 1 in subheading 6109.10,

this fabric is the component that determines tariff classification. Therefore, to be considered originating by application of the tariff-shift rule for subheading 6109.10, each of the non-originating materials used in the production of the t-shirt must undergo the required change in tariff classification.

In this case, the non-originating polyester filaments of heading 54.02 used in the production of the T-shirts do not satisfy the change in tariff classification set out in the product-specific rule of origin. In addition, the weight of the non-originating polyester is over the ''de minimis'' allowance. Therefore, the T-shirts do not qualify as originating goods.

Example 3: (subsection 3(2))—Note 2 contained in Section XI—Textiles and Textile Articles (Chapter 50–63)

Producer A, located in a USMCA country, produces fabrics of subheading 5211.42 from originating cotton and polyester yarns, and non-originating rayon filament. For the purpose of determining if the fabrics are originating goods, Producer A must consider Note 2 of Section XI of Schedule I, which indicates a good of Chapter 50 through 63 is considered as originating, regardless of whether the rayon filaments used in its production are non-originating materials, provided that the good meets the requirements of the applicable product-specific rule of origin.

With the exception of the rayon filaments of heading 54.03, that Note 2 of Section XI of Schedule I allows, all of the materials used in the production of the fabrics are originating materials, and since General Interpretative Note (d) of Schedule I provides that a change in tariff classification of a product-specific rule of origin applies only to non-originating materials, the fabrics are considered to be originating goods.

Example 4: Subsection 3(2) Note 2 and 5 of Chapter 62 regarding the interpretation of the component that determines the tariff classification and the requirement for pockets.

Producer A, located in a USMCA country, produces men's suits classified in subheading 6203.12, which are made of three fabrics: A non-originating fabric of subheading 5407.61 used to make a visible lining, an originating fabric of 5514.41 used to make the outer part of the suit and a non-originating fabric of subheading 5513.21 used to make pocket bags.

For the purpose of determining if the men's suits are originating goods, Producer A should take into account Note 2 of Chapter 62 of Schedule I, which indicates that the applicable rule will only apply to the component that determines the tariff classification of the good and that the component must satisfy the tariff change requirements set out in the rule for that good.

The originating fabric used to make the outer part of the suit is the component of the suit that determines the tariff classification under subheading 6203.12, because it constitutes the predominant material by weight and is the largest surface area of the suit. The origin of the fabric used as visible lining is disregarded for the purpose of determining whether the suit is an originating good since that fabric is not considered the component that determines the tariff classification, and there are no Chapter notes related to visible lining for apparel goods.

Additionally, Producer A uses a non-originating fabric of subheading 5513.21 for the pocket bags of the suits, so it should take into account the second paragraph of Note 5 of Chapter 62 of Schedule I, which requires that the pocket bag fabric must be formed and finished in the territory of one or more USMCA countries from yarn wholly formed in one or more USMCA countries.

In this case, for the production of men's suits, Producer A uses non-originating fabric for the pockets, and such fabric was not formed and finished in the territory of one or more Parties, therefore the suits would be considered to be non-originating goods.

Example 5 (subsection 3(7)): A wholesaler located in USMCA Country A imports non-originating storage units provided for in subheading 8471.70 from outside the territory of the USMCA countries. The wholesaler resells the storage units to a buyer in USMCA Country B. While in the territory of Country A, the storage units do not undergo any production and therefore do not meet the rule in Schedule I for goods of subheading 8471.70 when imported into the territory of USMCA Country B.

Notwithstanding the rule in Schedule I, the storage units of subheading 8471.70 are considered originating goods when they are imported to the territory of USMCA Country B because they are referred to in Schedule II and were imported from the territory of another USMCA country.

The buyer in USMCA Country B subsequently uses the storage units provided for in subheading 8471.70 as a material in the production of another good. For the purpose of determining whether the other good originates, the buyer in USMCA Country B may treat the storage units of subheading 8471.70 as originating materials.

Example 6 subsection 3(8): Self-produced Materials as Materials for the purpose of Determining Whether Non-originating Materials Undergo an Applicable Change in Tariff Classification

Producer A, located in a USMCA country, produces Good A. In the production process, Producer A uses originating Material X and non-originating Material Y to produce Material Z. Material Z is a self-produced material that will be used to produce Good A.

The rule set out in Schedule I for the heading under which Good A is classified specifies a change in tariff classification from any other heading. In this case, both Good A and the non-originating Material Y are of the same heading. However, the self-produced Material Z is of a heading different than that of Good A.

For the purpose of determining whether the non-originating materials that are used in the production of Good A undergo the applicable change in tariff classification, Producer A has the option to consider the self-produced Material Z as the material that must undergo a change in tariff classification. As Material Z is of a heading different than that of Good A, Material Z satisfies the applicable change in tariff classification and Good A would qualify as an originating good.

SECTION 4. TREATMENT OF RECOVERED MATERIALS USED IN THE PRODUCTION OF A REMANUFACTURED GOOD

4(1) *Treatment of recovered materials used in the production of remanufactured goods.* A recovered material derived in the territory of one or more of the USMCA countries, will be treated as originating, provided that:

(a) It is the result of a disassembly process of a used good into individual parts;

(b) It has undergone certain processing, such as cleaning, inspection, testing or other improvement processing, to sound working condition; and

(c) It is used in the production of, and incorporated into, a remanufactured good.

(2) *Recovered material not used in remanufactured good.* In the case that the recovered material is not used or incorporated in the production of a remanufactured good, it is originating only if it satisfies the requirements established in Section 3, and satisfies all other applicable requirements in these Regulations.

(3) *Requirements of Schedule I (PSRO Annex).* A remanufactured good is originating in the territory of a USMCA country only if it satisfies the applicable requirements established in Schedule I (PSRO Annex), and satisfies all other applicable requirements in these Regulations.

(4) Each of the following examples is an ''Example'' as referred to in subsection 1(4)

Example 1: (Section 4)

In July 2023, Producer A located in a USMCA country manufactures water pumps of subheading 8413.30 for use in automotive engines. In addition to selling new water pumps, Producer A also sells water pumps that incorporate used parts.

To obtain the used parts, Producer A disassembles used water pumps in a USMCA country and cleans, inspects, and tests the individual parts. Accordingly, these parts qualify as recovered materials.

The water pumps that Producer A manufactures incorporate the recovered materials, have the same life expectancy and performance as new water pumps, and are sold with a warranty that is similar to the warranty for new water pumps. The water pumps therefore qualify as remanufactured goods, and the recovered materials are treated as originating materials when determining whether the good qualifies as an originating good.

In this case, because the water pumps are for use in an automotive good, the provisions of Part VI apply. Because the water pump is a part listed in Table B, the RVC required is 70% under the net cost method or 80% under the transaction value method.

The producer chooses to calculate the RVC using net cost as follows:

Water pump net cost = $1,000
Value of recovered materials = $600
Value other originating materials = $20
Value of non-originating materials = $280
RVC = (NC − VNM)/NC × 100
RVC = (1,000 − 280)/1,000 × 100 = 72%

The remanufactured water pumps are originating goods because their regional value content exceeds the 70% requirement by net cost method.

Example 2: Section 4

Producer A located in a USMCA country, uses recovered materials derived in the territory of a USMCA country in the production of self-propelled ''bulldozers'' classified in subheading 8429.11.

In the production of the bulldozers, Producer A uses recovered engines, classified in heading 84.07. The engines are recovered materials because they are disassembled from used bulldozers in a USMCA country and then subject to cleaning, inspecting and technical tests to verify their sound working condition.

In addition to the recovered materials, other non-originating materials, classified in subheading 8413.91, are also used in the production of the bulldozers.

Producer A's bulldozers are considered a ''remanufactured good'' because they are classified in a tariff provision set out in the definition of a remanufactured good, are partially composed of recovered materials, have a similar life expectancy and perform the same as or similar to new self-propelled bulldozers, and have a factory warranty similar to new self-propelled bulldozers.

Once the recovered engines are used in the production of, and incorporated into, the remanufactured bulldozers, the recovered engines would be treated considered as originating materials for the purpose of determining if the remanufactured bulldozers are originating.

The rule of origin set out in in Schedule I for subheading 8429.11 specifies a change in tariff classification from any other subheading.

In this case, because the recovered engines are treated as originating materials, and the non-originating materials, classified in subheading 8413.91, satisfy the requirements set out in Schedule I, the remanufactured bulldozers are originating goods.

SECTION 5. DE MINIMIS

5(1) *De minimis rule for non-originating materials*. Except as otherwise provided in subsection (3) (Exceptions), a good is originating in the territory of a USMCA country if

(a) the value of all non-originating materials that are used in the production of the good and that do not undergo an applicable change in tariff classification as a result of production occurring entirely in the territory of one or more of the USMCA countries is not more than ten percent

(i) of the transaction value of the good, determined in accordance with Schedule III (Value of Goods), and adjusted to exclude any costs incurred in the international shipment of the good, or

(ii) of the total cost of the good;

(b) if the good is also subject to a regional content requirement under the rule in which the applicable change in tariff classification is specified, the value of those non-originating materials is to be taken into account in calculating the regional value content of the good in accordance with the method set out for that good; and

(c) the good satisfies all other applicable requirements of these Regulations.

(2) *Only one rule to satisfy*. If Schedule I (PSRO Annex) sets out two or more alternative rules for the tariff provision under which the good is classified, and the good is considered an originating good under one of those rules in accordance with subsection (1), it need not satisfy the requirements of any alternative rule to be originating.

(3) *Exceptions*. Subsections (1) and (2) do not apply to:

(a) A non-originating material of heading 04.01 through 04.06, or a non-originating material that is a dairy preparation containing over 10 percent by dry weight of milk solids of subheading 1901.90 or 2106.90, used in the production of a good of heading 04.01 through 04.06;

(b) a non-originating material of heading 04.01 through 04.06, or a non-originating material that is a dairy preparation containing over 10 percent by dry weight of milk solids of subheading 1901.90 or 2106.90, used in the production of a good of:

(i) Infant preparations containing over 10 percent by dry weight of milk solids of subheading 1901.10,

(ii) mixes and doughs, containing over 25 percent by dry weight of butterfat, not put up for retail sale of subheading 1901.20,

(iii) dairy preparations containing over 10 percent by dry weight of milk solids of subheading 1901.90 or 2106.90,

(iv) goods of heading 21.05,

(v) beverages containing milk of subheading 2202.90, or

(vi) animal feeds containing over 10 percent by dry weight of milk solids of subheading 2309.90;

(c) a non-originating material of any of heading 08.05 and subheadings 2009.11 through 2009.39 that is used in the production of a good of any of subheadings 2009.11 through 2009.39 or a fruit or vegetable juice of any single fruit or vegetable, fortified with minerals or vitamins, concentrated or unconcentrated, of subheading 2106.90 or 2202.90;

(d) a non-originating material of Chapter 9 that is used in the production of instant coffee, not flavored, of subheading 2101.11;

(e) a non-originating material of Chapter 15 that is used in the production of a good of any of headings 15.01 through 15.08, 15.12, 15.14 or 15.15;

(f) a non-originating material of heading 17.01 that is used in the production of a good of any of headings 17.01 through 17.03;

(g) a non-originating material of Chapter 17 or heading 18.05 that is used in the production of a good of subheading 1806.10;

(h) a non-originating material that is pears, peaches or apricots of Chapter 8 or 20 that is used in the production of a good of heading 20.08;

(i) a non-originating material that is a single juice ingredient of heading 20.09 that is used in the production of a good of any of subheading 2009.90, or tariff item 2106.90.cc or 2202.90.bb;

(j) a non-originating material of heading 22.03 through 22.08 that used in the production of a good provided for in any of heading 22.07 or 22.08;

(k) a non-originating material that is used in the production of a good of any of Chapters 1 through 27, unless the non-originating material is of a different subheading than the good for which origin is being determined under this section; or

(l) a non-originating material that is used in the production of a good of any of Chapters 50 through 63.

(4) *De minimis rule for regional value content requirement*. A good that is subject to a regional value content requirement is originating in the territory of a USMCA country and is not required to satisfy that requirement if

(a) the value of all non-originating materials used in the production of the good is not more than ten per cent

(i) of the transaction value of the good, determined in accordance with Schedule III (Value of the Good), and adjusted to exclude any costs incurred in the international shipment of the good, or

(ii) of the total cost of the good, and

(b) the good satisfies all other applicable requirements of these Regulations.

(5) *Value of non-originating materials for subsections (1) and (4)*. For the purposes of subsections (1) and (4), the value of non-originating materials is to be determined in accordance with subsections 8(1) through (6).

(6) *De minimis rule for textile goods.* A good of any of Chapters 50 through 60 or heading 96.19, that contains non-originating materials that do not satisfy the applicable change in tariff classification requirements, will be considered originating in the territory of a USMCA country if:

(a) The total weight of all those non-originating materials is not more than ten per cent of the total weight of the good, of which the total weight of elastomeric content may not exceed seven per cent of the total weight of the good; and

(b) the good satisfies all other applicable requirements of these Regulations.

(7) A good of any of Chapters 61 through 63, that contains non-originating fibers or yarns in the component of the good that determines the tariff classification that do not undergo the applicable change in tariff classification requirements, will be considered originating in the territory of a USMCA country if:

(a) The total weight of all those non-originating materials is not more than ten per cent of the total weight of that component, of which the elastomeric content may not exceed seven per cent; and

(b) the good satisfies all other applicable requirements of these Regulations.

(8) For purposes of subsection (7),

(a) the component of a good that determines the tariff classification of that good is identified in accordance with the first of the following General Rules for the Interpretation of the Harmonized System under which the identification can be determined, namely, Rule 3(b), Rule 3(c) and Rule 4; and

(b) if the component of the good that determines the tariff classification of the good is a blend of two or more yarns or fibers, all yarns and fibers used in the production of the component must be taken into account in determining the weight of fibers and yarns in that component.

(9) For the purpose of determining if a good of Chapter 61 through 63 is originating, the requirements set out in Schedule I (PSRO Annex) only apply to the component that determines the tariff classification of the good. Materials that are not part of the component that determines the tariff classification of the good are disregarded when determining if a good is originating. Similarly, for the purposes of Section 5 as applicable to a good of Chapters 61 through 63, only the materials used in the component that determines the tariff classification are taken into account in the de minimis calculation.

(10) Subsection (6) does not apply to sewing thread, narrow elastic bands, and pocket bag fabric subject to the requirements set out in Chapter 61 Notes 2 through 4, Chapter 62 Notes 3 through 5 or for coated fabric as set out in Chapter 63 Note 2 of Schedule I (PSRO Annex).

(11) *Calculation of ''Total Cost'', choice of methods.* For the purposes of paragraph (1)(a)(ii) and subparagraph (4)(a)(ii), the total cost of a good is, at the choice of the producer of the good,

(a) the total cost incurred with respect to all goods produced by the producer that can be reasonably allocated to that good in accordance with Schedule V; or

(b) the aggregate of each cost that forms part of the total cost incurred with respect to that good that can be reasonably allocated to that good in accordance with Schedule V.

(12) *Calculation of total cost.* Total cost under subsection (11) consists of the costs referred to in subsection 1(6), and is calculated in accordance with that subsection and subsection 1(7).

(13) *Value of non-originating materials—other methods.* For the purpose of determining the value under subsection (1) of non-originating materials that do not undergo an applicable change in tariff classification, if an inventory management method either recognized in the Generally Accepted Accounting Principles (GAAP) of the USMCA country where the production was performed or a method set out in Schedule VIII, is not being used to determine the value of those non-originating materials, the following methods are to be used:

(a) If the value of those non-originating materials is being determined as a percentage of the transaction value of the good and the producer chooses under subsection 7(10) to use one of the methods recognized in the GAAP of the USMCA country where the material was produced, or a method set out in Schedule VII to determine the value of those non-originating materials for the purpose of calculating the regional value content of the good, the value of those non-originating materials must be determined in accordance with that method;

(b) if the following conditions are met and if the value of those non-originating materials is equal to the sum of the values of non-originating materials, determined in accordance with the election under subparagraph (iv), divided by the number of units of the goods with respect to which the election is made

(i) the value of those non-originating materials is being determined as a percentage of the total cost of the good,

(ii) under the rule in which the applicable change in tariff classification is specified, the good is also subject to a regional value content requirement and paragraph (5)(a) does not apply with respect to that good,

(iii) the regional value content of the good is calculated on the basis of the net cost method, and

(iv) the producer elects under subsection 7(15), 16(1) or (10) that the regional value content of the good be calculated over a period;

(c) if the conditions below are met the value of those non-originating materials is the sum of the values of non-originating materials divided by the number of units produced during the period under subparagraph (iii):

(i) The value of those non-originating materials is being determined as a percentage of the total cost of the good,

(ii) under the rule in which the applicable change in tariff classification is specified, the good is not also subject to a regional value content requirement or paragraph (6)(a) applies with respect to that good, and

(iii) the producer elects under paragraph 1(7)(b) that, for the purposes of subsection 5(11), the total cost of the good be calculated over a period; and

(d) in any other case, the value of those non-originating materials may, at the choice of the producer, be determined in accordance with an inventory management method recognized in the GAAP of the USMCA country where the production was performed or one of the methods set out in Schedule VII.

(14) *Value of non-originating materials—production of the good.* For the purposes of subsection (4), the value of the non-originating materials used in the production of the good may, at the choice of the producer, be determined in accordance with an inventory management method recognized in the GAAP of the USMCA country where the production was performed or one of the methods set out in Schedule VII

(15) *Examples illustrating de minimis rules.* Each of the following examples is an ''Example'' as referred to in subsection 1(4).

Example 1: Subsection 5(1)

Producer A, located in a USMCA country, uses originating materials and non-originating materials in the production of aluminum powder of heading 76.03. The product-specific rule of origin set out in Schedule I for heading 76.03 specifies a change in tariff classification from any other chapter. There is no applicable regional value content requirement for this heading. Therefore, in order for the aluminum powder to qualify as an originating good under the rule set out in Schedule I, Producer A may not use any non-originating material of Chapter 76 in the production of the aluminum powder.

All of the materials used in the production of the aluminum powder are originating materials, with the exception of a small amount of aluminum scrap of heading 76.02, that is in the same chapter as the aluminum powder. Under subsection 5(1), if the value of the non-originating aluminum scrap does not exceed ten per cent of the transaction value of the aluminum powder or the total cost of the aluminum powder, whichever is applicable, the aluminum powder would be considered an originating good.

Example 2: Subsection 5(2)

Producer A, located in a USMCA country, uses originating materials and non-originating materials in the production of fans of subheading 8414.59. There are two alternative rules set out in Schedule I for subheading 8414.59, one of which specifies a change in tariff classification from any other heading. The other rule specifies both a change in tariff classification from the subheading under which parts of the fans are classified and a regional value content requirement. In order for the fan to qualify as an originating good under the first of the alternative rules, all of the materials that are classified under the subheading for parts of fans and used in the production of the completed fan must be originating materials.

In this case, all of the non-originating materials used in the production of the fan satisfy the change in tariff classification set out in the rule that specifies a change in tariff classification from any other heading, with the exception of one non-originating material that is classified under the subheading for parts of fans. Under subsection 5(1), if the value of the non-originating material that does not satisfy the change in tariff classification specified in the first rule does not exceed ten per cent of the transaction value of the fan or the total cost of the fan, whichever is applicable, the fan would be considered an originating good. Therefore, under subsection 5(2), the fan would not be required to satisfy the alternative rule that specifies both a change in tariff classification and a regional value content requirement.

Example 3: Subsection 5(2)

Producer A, located in a USMCA country, uses originating materials and non-originating materials in the production of copper anodes of heading 74.02. The product-specific rule of origin set out in Schedule I for heading 74.02 specifies both a change in tariff classification from any other heading, except from heading 74.04, under which certain copper materials are classified, and a regional value content requirement. With respect to that part of the rule that specifies a change in tariff classification, in order for the copper anode to qualify as an originating good, any copper materials that are classified under heading 74.02 or 74.04 and that are used in the production of the copper anode must be originating materials.

In this case, all of the non-originating materials used in the production of the copper anode satisfy the specified change in tariff classification, with the exception of a small amount of copper materials classified under heading 74.04. Subsection 5(1) provides that the copper anode can be considered an originating good if the value of the non-originating copper materials that do not satisfy the specified change in tariff classification does not exceed ten per cent of the transaction value of the copper anode or the total cost of the copper anode, whichever is applicable. In this case, the value of those non-originating materials that do not satisfy the specified change in tariff classification does not exceed the ten per cent limit.

However, the rule set out in Schedule I for heading 74.02 specifies both a change in tariff

classification and a regional value content requirement. Under paragraph 5(1)(b), in order to be considered an originating good, the copper anode must also, except as otherwise provided in subsection 5(4), satisfy the regional value content requirement specified in that rule. As provided in paragraph 5(1)(b), the value of the non-originating materials that do not satisfy the specified change in tariff classification, together with the value of all other non-originating materials used in the production of the copper anode, will be taken into account in calculating the regional value content of the copper anode.

Example 4: Subsection 5(4)

Producer A, located in a USMCA country, primarily uses originating materials in the production of shoes of heading 64.05. The product-specific rule of origin set out in Schedule I for heading 64.05 specifies both a change in tariff classification from any heading other than headings 64.01 through 64.05 or subheading 6406.10 and a regional value content requirement.

With the exception of a small amount of materials of Chapter 39, all of the materials used in the production of the shoes are originating materials.

Under subsection 5(4), if the value of all of the non-originating materials used in the production of the shoes does not exceed ten per cent of the transaction value of the shoes or the total cost of the shoes, whichever is applicable, the shoes are not required to satisfy the regional value content requirement specified in the rule set out in Schedule I in order to be considered originating goods.

Example 5: Subsection 5(4)

Producer A, located in a USMCA country, produces barbers' chairs of subheading 9402.10. The product-specific rule of origin set out in Schedule I for goods of subheading 9402.10 specifies a change in tariff classification from any other subheading. All of the materials used in the production of these chairs are originating materials, with the exception of a small quantity of non-originating materials that are classified as parts of barbers' chairs. These parts undergo no change in tariff classification because subheading 9402.10 provides for both barbers' chairs and their parts.

Although Producer A's barbers' chairs do not qualify as originating goods under the rule set out in Schedule I, paragraph 3(4)(a) provides, among other things, that, if there is no change in tariff classification from the non-originating materials to the goods because the subheading under which the goods are classified provides for both the goods and their parts, the goods will qualify as originating goods if they satisfy a specified regional value content requirement.

However, under subsection 5(4), if the value of the non-originating materials does not exceed ten per cent of the transaction value of the barbers' chairs or the total cost of the barbers' chairs, whichever is applicable, the barbers' chairs will be considered originating goods and are not required to satisfy the regional value content requirement set out in subparagraph 3(4)(a)(ii).

Example 6: Subsection 5(6):

Producer A, located in a USMCA country, manufactures an infant diaper, classified in heading 96.19, consisting of an outer shell of 94 percent nylon and 6 percent elastomeric fabric, by weight, and a terry knit cotton absorbent crotch. All materials used are produced in a USMCA country, except for the elastomeric fabric, which is from a non-USMCA country. The elastomeric fabric is only 6 percent of the total weight of the diaper. The product otherwise satisfies all other applicable requirements of these Regulations. Therefore, the product is considered originating from a USMCA country as per subsection (6).

Example 7: Subsection 5(6)

Producer A, located in a USMCA country, produces cotton fabric of subheading 5209.11 from cotton yarn of subheading 5205.11. This cotton yarn is also produced by Producer A.

The product-specific rule of origin set out in Schedule I for subheading 5209.11, under which the fabric is classified, specifies a change in tariff classification from any other heading outside 52.08 through 52.12, except from certain headings under which certain yarns are classified, including cotton yarn of subheading 5205.11.

Therefore, with respect to that part of the rule that specifies a change in tariff classification, in order for the fabric to qualify as an originating good, the cotton yarn that is used by Producer A in the production of the fabric must be an originating material.

At one point Producer A uses a small quantity of non-originating cotton yarn in the production of the cotton fabric. Under subsection 5(6), if the total weight of the non-originating cotton yarn does not exceed ten per cent of the total weight of the cotton fabric, it would be considered an originating good.

Example 8: Subsections 5(7) and (8)

Producer A, located in a USMCA country, produces women's dresses of subheading 6204.41 from fine wool fabric of heading 51.12. This fine wool fabric, also produced by Producer A, is the component of the dress that determines its tariff classification under subheading 6204.41.

The product-specific rule of origin set out in Schedule I for subheading 6204.41, under which the dress is classified, specifies both a change in tariff classification from any other chapter, except from those headings and chapters under which certain yarns and fabrics, including combed wool yarn and wool fabric, are classified, and a requirement that the good be cut and sewn or otherwise assembled in the territory of one or more of the USMCA countries. In addition, narrow elastics classified in subheading 5806.20 or heading 60.02 and sewing thread classified in heading 52.04, 54.01 or 55.08 or yarn classified in heading 54.02 that is used as sewing thread, must be formed and finished in the territory of one or more of the USMCA countries for

the dress to be originating. Furthermore, if the dress has a pocket, the pocket bag fabric must be formed and finished in the territory of one or more of the USMCA countries for the dress to be originating.

Therefore, with respect to that part of the rule that specifies a change in tariff classification, in order for the dress to qualify as an originating good, the combed wool yarn and the fine wool fabric made therefrom that are used by Producer A in the production of the dress must be originating materials. In addition, the sewing thread, narrow elastics and pocket bags that are used by Producer A in the production of the dress must also be formed and finished in the territory of one or more of the USMCA countries.

At one point Producer A uses a small quantity of non-originating combed wool yarn in the production of the fine wool fabric. Under subsection 5(7), if the total weight of the non-originating combed wool yarn does not exceed ten per cent of the total weight of all the yarn used in the production of the component of the dress that determines its tariff classification, that is, the wool fabric, the dress would be considered an originating good.

Example 9: Subsection 5(7)

Producer A, located in a USMCA country, manufactures women's knit sweaters, which have knit bodies and woven sleeves. The knit body is composed of 95 percent polyester and 5 percent spandex, by weight. The sleeves are made of non-USMCA woven fabric that is 100 percent polyester. All materials of the knit body are from a USMCA country, except for the spandex, which is from a non-USMCA country. The sweater is cut and sewn in a USMCA country. Since the knit body gives the garment its essential character, the sweater is classified in subheading 6110.30. The product-specific rule of origin set out in Schedule I for subheading 6110.30 is that the product is both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the USMCA countries. The sleeves are disregarded in determining whether the sweater originates in a USMCA country because only the component that determines the tariff classification of the good must be originating and the de minimis provision is applied to that component. Moreover, the total weight of the spandex is less than 10 percent of the total weight of the knit body fabric, which is the component that determines the tariff classification of the sweater, and the spandex does not exceed seven percent of the total weight of good. Assuming that the women's knit sweater satisfies all other applicable requirements of these Regulations, the women's knit sweater is originating from the USMCA country.

Example 10: Subsection 5(9)

A men's shirt of Chapter 61 is made using two different fabrics; one for the body and another for the sleeves. The component that determines the tariff classification of the men's shirt would be the fabric used for the body, as it constitutes the material that predominates by weight and makes up the largest surface area of the shirt's exterior. If this fabric is produced using non-originating fibers and yarns that do not satisfy a tariff change rule, the de minimis provision would be calculated on the basis of the total weight of the non-originating fibers or yarns used in the production of the fabric that makes up the body of the shirt. The weight of these non-originating fibers or yarns must be ten percent or less of the total weight of that fabric and any elastomeric content must be seven per cent or less of the total weight of that fabric.

Alternatively, if the shirt is made entirely of the same fabric, the component that determines the tariff classification of that shirt would be that fabric, as the shirt is made out of the same material throughout. Therefore, under this second scenario, the total weight of all non-originating fibers and yarns used in the production of the shirt that do not satisfy a tariff change rule, must be ten percent or less of the total weight of the shirt, and any elastomeric content must be seven per cent or less of the total weight of that shirt, for the shirt to be considered as an originating good.

Example 11: Subsection 5(9)

Producer A, located in a USMCA country, produces women´s blouses of subheading 6206.40 from a fabric also produced by Producer A using 90% by weight originating polyester yarns of subheading 5402.33, 3% by weight non-originating lyocell yarn of subheading 5403.49 and 7% by weight non-originating elastomeric filament yarn of subheading 5402.44. This fabric is the component of the women´s blouses that determines its tariff classification under subheading 6206.40.

The product-specific rule of origin of Schedule I applicable to the women´s blouses of subheading 6206.40 requires a change in tariff classification from any other chapter, except from those headings and chapters under which certain yarns and fabrics, including polyester, lyocell and elastomeric filament yarns, are classified and a requirement that the good is cut and sewn or otherwise assembled in the territory of one or more of the USMCA countries.

In this case, the non-originating lyocell yarns of subheading 5403.49 and the non-originating elastomeric filament yarn of subheading 5402.44 do not satisfy the change in tariff classification required by the product-specific rule of origin of Schedule I, because the product specific rule of origin for heading 62.06 excludes a change from Chapter 54 to heading 62.06.''

However, according to subsection (7), a textile or apparel good classified in Chapters 61 through 63 of the Harmonized System that contains non-originating fibers or yarns in the component of the good that determines its tariff classification that do not satisfy the applicable change in tariff classification, will nonetheless be considered an originating good if the total weight of all those fibers or yarns is not more than 10 percent of the total weight of that component, of which the total weight of elastomeric

content may not exceed 7 percent of the total weight of the component, and such good meets all the other applicable requirements of these Regulations.

Since the weight of the non-originating materials used by Producer A does not exceed 10 percent of the total weight of the component that determines the tariff classification of the women's blouses, and the weight of elastomeric content also does not exceed 7 percent of such total weight, the women's blouses qualify as originating goods.

Example 12: Subsection 5(10)

A producer located in a USMCA country manufactures boys' swimwear of subheading 6211.11 from fabric that has been woven in a USMCA country from yarn spun in a USMCA country; however, the producer uses non-originating narrow elastic of heading 60.02 in the waist-band of the swimwear. As a result of the use of non-originating narrow elastic of heading 60.02 in the waistband, and provided the garment is imported into a USMCA country at least 18 months after the Agreement enters into force, the swimwear is considered non-originating because it does not satisfy the requirement set out in Note 3 of Chapter 62. In addition, subsection 5(7) is not applicable regarding the narrow elastic of 60.02 and the good is therefore a non-originating good.

SECTION 6. SETS OF GOODS, KITS OR COMPOSITE GOODS

6 (1) This section applies to a good that is classified as a set as a result of the application of rule 3 of the General Rules for the Interpretation of the Harmonized System.

(2) *Requirements.* Except as otherwise provided in Schedule I (PSRO Annex), a set is originating in the territory of one or more of the USMCA countries only if each good in the set is originating and both the set and the goods meet the other applicable requirements of these Regulations.

(3) *Exceptions.* Notwithstanding, subsection 2, a set is only originating if the value of all the non-originating goods included in the set does not exceed 10 percent of the value of the set.

(4) *Value.* For the purposes of subsection 3, the value of non-originating goods in the set and the value of the set is to be calculated in the same manner as the value of non-originating materials determined in accordance with section 8 and the value of the good determined in accordance with section 7.

(5) *Examples. Each of the following examples is an ''Example'' as referred to in subsection 1(4).*

Example 1 (paint set)

Producer A assembles a paint set for arts and crafts. The set includes tubes of paint, paint brushes, and paper all presented in a reusable wooden box. The paint set for arts and crafts is classified in subheading 3210.00 as a result of the application of Rule 3 of the General Rules for the Interpretation of the Harmonized System and, as a result, Section 6 will apply with respect to such set. The paint, paper and wooden box are all originating as they each undergo the changes required in the product-specific rules of origin in Schedule I. The paint brushes, which represent four percent of the value of the set, are produced in the territory of a non-USMCA country and are therefore non-originating. The set is nonetheless originating.

Example 2: Subsection 6(2)

Producer A, located in a USMCA country, uses originating materials and non-originating materials to assemble a manicure set of subheading 8214.20. The set includes a nail nipper, cuticle scissors, a nail clipper and a nail file with cardboard support, all presented in a plastic case with zipper. The items are not classified as a set as a result of the application of rule 3 of the General Rules for the Interpretation of the Harmonized System. The Harmonized System specifies that manicure sets are classified in subheading 8214.20. This means that the specific rule of origin set out in Schedule I is applied. This rule requires a change in tariff classification from any other chapter. In order for the manicure set to qualify as an originating good under the rule set out in Schedule I, Producer A may not use any non-originating material of Chapter 82 in the assembly of the manicure set.

In this case, Producer A, located in a USMCA country, produces the nail nipper, the cuticle scissors and the nail clipper included in the set, and all qualify as originating. Despite being classified in the same chapter as the manicure set (chapter 82), the originating nail nipper, the cuticle scissors and the nail clipper satisfy the change in tariff classification applicable to the manicure set. The nail file with cardboard support (6805.20) and the plastic case with zipper (4202.12) are imported from outside the territories of the USMCA countries; however, these items are not classified in chapter 82, so they satisfy the applicable change in tariff classification. Therefore, the manicure set is an originating good.

Example 3: Pants set Section 6(2)

Producer A makes a pants set, containing men's cotton denim trousers and a polyester belt, packed together for a retail sale. The trousers are made of cotton fabric formed and finished from yarn in a USMCA country. The sewing thread is formed and finished in a USMCA country. The pocket bag fabric is formed and finished in a USMCA country, of yarn wholly formed in a USMCA country. The trousers are cut and sewn in USMCA country A. A polyester webbing belt with a metal buckle is made in a non-USMCA country and shipped to USMCA country A, where it is threaded through the belt loops of the trousers. The value of the belt is 8% of the value of the trousers and belt combined.

The men's trousers are classified under subheading 6203.42. The rule of origin set out in Schedule I for subheading 6203.42 requires that the trousers be made from fabric produced in a

USMCA country from yarn produced in a USMCA country. The trousers satisfy the product-specific rules provided in Schedule I and are considered originating. However, the belt does not satisfy the rules and would not be considered originating. The set is nonetheless an originating good if the belt value is 10% or less of the value of the set. Since the value of the belt is 8% of the value of the set, the men's trousers and belt set would be treated as an originating good under the USMCA.

Example 4: Shirt and Tie Set Section 6(2)

Producer A makes a boys' shirt and tie set in a USMCA country. The shirt is constructed from 55% cotton, 45% polyester, solid color, dyed, woven fabric, classified in subheading 5210.31. The fabric contains 73.2 total yarns per square centimeter and 76 metric yarns. The shirt is packaged in a retail polybag with a coordinating color, 100% polyester, woven fabric tie. The yarns used in the shirt fabric are spun in non-USMCA country and the fabric is woven and dyed in the same non-USMCA country. The shirt fabric is sent to the USMCA country where it is cut and sewn into finished garments. The coordinating tie is made in a non-USMCA country from fabric that is woven in that country from yarns that are spun in that country. The value of the coordinating tie is approximately 13% of the value of the set.

The shirt is classified under heading 62.05. The shirt satisfies the product-specific rule for subheading 62.05 set out in Schedule I and is considered originating because it is wholly made from fabric of heading 5210.31 (not of square construction, containing more than 70 warp ends and filling picks per square centimeter, of average yarn number exceeding 70 metric) and cut and sewn into finished garments in the USMCA country. On the other hand, the tie does not satisfy the product specific rule for heading 62.15 and would not be considered originating. For purposes of the sets rule, provided the tie is valued at 10% or less of the value of the set, the set will be treated as originating. However, since the value of the coordinating tie is approximately 13% of the value of the set, the shirt and tie set would not be treated as an originating good under the USMCA.

Example 5: Chef set Section 6(2)

Producer A, located in a USMCA country, produces a chef set for retail sale using originating and non-originating materials. This set includes an apron, cooking gloves and a chef hat. The chef set is classified in heading 62.11 as a result of the application of rule 3 of the General Rules for the Interpretation of the Harmonized System. For this reason, subsection (3) applies to this set. Both the apron and cooking gloves meet the product-specific rules of origin for their respective product categories and are therefore considered to be originating. The chef hat, which represents 9.7 percent of the value of the set, is produced in the territory of a non-USMCA country and is therefore non-originating. The set is nonetheless an originating good because less than ten percent of the value of the set is non-originating.

PART III

SECTION 7. REGIONAL VALUE CONTENT

7 (1) *Calculation.* Except as otherwise provided in subsection (6), the regional value content of a good is to be calculated, at the choice of the importer, exporter or producer of the good, on the basis of either the transaction value method or the net cost method.

(2) *Transaction value method.* The transaction value method for calculating the regional value content of a good is as follows:

RVC = (TV − VNM)/TV * 100

Where

RVC is the regional value content of the good, expressed as a percentage;

TV is the transaction value of the good, determined in accordance with Schedule III with respect to the transaction in which the producer of the good sold the good, adjusted to exclude any costs incurred in the international shipment of the good; and

VNM is the value of non-originating materials used by the producer in the production of the good, determined in accordance with section 8.

(3) *Net cost method.* The net cost method for calculating the regional value content of a good is as follows:

RVC = (NC − VNM)/NC * 100

Where

RVC is the regional value content of the good, expressed as a percentage;

NC is the net cost of the good, calculated in accordance with subsection (11); and

VNM is the value of non-originating materials used by the producer in the production of the good, determined, except as otherwise provided in sections 14 and 15 and, in accordance with section 8.

(4) *Non-originating materials—values not included.* For the purpose of calculating the regional value content of a good under subsection (2) or (3), the value of non-originating materials used by a producer in the production of the good must not include

(a) the value of any non-originating materials used by another producer in the production of originating materials that are subsequently acquired and used by the producer of the good in the production of that good; or

(b) the value of any non-originating materials used by the producer in the production of a self-produced material that is an originating material and is designated as an intermediate material.

(5) *Self-produced material.* For the purposes of subsection (4),

(a) in the case of any self-produced material that is not designated as an intermediate material, only the value of any non-

originating materials used in the production of the self-produced material is to be included in the value of non-originating materials used in the production of the good; and

(b) if a self-produced material that is designated as an intermediate material and is an originating material is used by the producer of the good with non-originating materials (whether or not those non-originating materials are produced by that producer) in the production of the good, the value of those non-originating materials is to be included in the value of non-originating materials.

(6) *Net cost method—when required.* The regional value content of a good is to be calculated only on the basis of the net cost method if the rule set in Schedule I (PSRO Annex) does not provide a rule based on the transaction value method;

(7) *Net cost method—when change permitted.* If the importer, exporter or producer of a good calculates the regional value content of the good on the basis of the transaction value method and the customs administration of a USMCA country subsequently notifies that importer, exporter or producer in writing, during the course of a verification of origin, that

(a) the transaction value of the good, as determined by the importer, exporter or producer, is required to be adjusted under section 4 of Schedule III, or

(b) the value of any material used in the production of the good, as determined by the importer, exporter or producer, is required to be adjusted under section 5 of Schedule VI, the importer, exporter or producer may choose that the regional value content of the good be calculated on the basis of the net cost method, in which case the calculation must be made within 30 days after receiving the notification, or such longer period as that customs administration specifies.

(8) *Net cost method—no change permitted.* If the importer, exporter or producer of a good chooses that the regional value content of the good be calculated on the basis of the net cost method and the customs administration of a USMCA country subsequently notifies that importer, exporter or producer in writing, during the course of a verification of origin, that the good does not satisfy the applicable regional value content requirement, the importer, exporter or producer of the good may not recalculate the regional value content on the basis of the transaction value method.

(9) *Clarification.* Nothing in subsection (7) is to be construed as preventing any review and appeal under Article 5.15 of the Agreement, as implemented in each USMCA country, of an adjustment to or a rejection of

(a) the transaction value of the good; or

(b) the value of any material used in the production of the good.

(10) *Value of identical non-originating materials.* For the purposes of the transaction value method, if non-originating materials that are the same as one another in all respects, including physical characteristics, quality and reputation but excluding minor differences in appearance, are used in the production of a good, the value of those non-originating materials may, at the choice of the producer of the good, be determined in accordance with one of the methods set out in Schedule VII.

(11) *Calculating the net cost of a good.* For the purposes of subsection (3), the net cost of a good may be calculated, at the choice of the producer of the good, by

(a) calculating the total cost incurred with respect to all goods produced by that producer, subtracting any excluded costs that are included in that total cost, and reasonably allocating, in accordance with Schedule V, the remainder to the good;

(b) calculating the total cost incurred with respect to all goods produced by that producer, reasonably allocating, in accordance with Schedule V, that total cost to the good, and subtracting any excluded costs that are included in the amount allocated to that good; or

(c) reasonably allocating, in accordance with Schedule V, each cost that forms part of the total cost incurred with respect to the good so that the aggregate of those costs does not include any excluded costs.

(12) *Calculation of total cost.* Total cost under subsection (11) consists of the costs referred to in subsection 1(6), and is calculated in accordance with that subsection and subsection 1(7).

(13) *Calculation of net cost of a good.* For the purpose of calculating the net cost under subsection (11),

(a) excluded costs must be the excluded costs that are recorded on the books of the producer of the good;

(b) excluded costs that are included in the value of a material that is used in the production of the good must not be subtracted from or otherwise excluded from the total cost; and

(c) excluded costs do not include any amount paid for research and development services performed in the territory of a USMCA country.

(14) *Non-allowable interest.* For the purpose of calculating non-allowable interest costs, the determination of whether interest costs incurred by a producer are more than 700 basis points above the interest rate of comparable maturities issued by the federal government of the country in which the producer is located is to be made in accordance with Schedule IX.

(15) *Use of ''averaging'' over a period.* For the purposes of the net cost method, the regional value content of the good, other than a good with respect to which an election to

average may be made under subsection 16(1) or (10), may be calculated, if the producer elects to do so, by

(a) calculating the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer of the good with respect to the good and identical goods or similar goods, or any combination thereof, produced in a single plant by the producer over

(i) a one-month period,

(ii) any consecutive three-month or six-month period that falls within and is evenly divisible into the number of months of the producer's fiscal year remaining at the beginning of that period, or

(iii) the producer's fiscal year; and

(b) using the sums referred to in paragraph (a) as the net cost and the value of non-originating materials, respectively.

(16) *Application*. The calculation made under subsection (15) applies with respect to all units of the good produced during the period chosen by the producer under paragraph (15)(a).

(17) *No change to the goods or period*. An election made under subsection (15) may not be rescinded or modified with respect to the goods or the period with respect to which the election is made.

(18) *Period considered to be chosen*. If a producer chooses a one, three or six-month period under subsection (15) with respect to a good, the producer will be considered to have chosen under that subsection a period or periods of the same duration for the remainder of the producer's fiscal year with respect to this good.

(19) *Method and period for remainder of fiscal year*. If the net cost method is required to be used or has been chosen and an election has been made under subsection (15), the regional value content of the good is to be calculated on the basis of the net cost method over the period chosen under that subsection and for the remainder of the producer's fiscal year.

(20) *Analysis of actual costs*. Except as otherwise provided in subsections 16(9), if the producer of a good has calculated the regional value content of the good under the net cost method on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the period chosen under paragraph (15)(a), the producer must conduct an analysis at the end of the producer's fiscal year of the actual costs incurred over the period with respect to the production of the good.

(21) *Option to treat any material as non-originating*. For the purpose of calculating the regional value content of a good, the producer of that good may choose to treat any material used in the production of that good as a non-originating material.

(22) *Examples*. Each of the following examples is an ''Example'' as referred to in subsection 1(4).

Example 1: Example of point of direct shipment (with respect to adjusted to exclude any costs incurred in the international shipment of the good)

A producer has only one factory, at which the producer manufactures finished office chairs. Because the factory is located close to transportation facilities, all units of the finished good are stored in a factory warehouse 200 meters from the end of the production line. Goods are shipped worldwide from this warehouse. The point of direct shipment is the warehouse.

Example 2: Examples of point of direct shipment (with respect to adjusted to exclude any costs incurred in the international shipment of the good)

A producer has six factories, all located within the territory of one of the USMCA countries, at which the producer produces garden tools of various types. These tools are shipped worldwide, and orders usually consist of bulk orders of various types of tools. Because different tools are manufactured at different factories, the producer decided to consolidate storage and shipping facilities and ships all finished products to a large warehouse located near the seaport, from which all orders are shipped. The distance from the factories to the warehouse varies from 3 km to 130 km. The point of direct shipment for each of the goods is the warehouse.

Example 3: Examples of point of direct shipment (with respect to adjusted to exclude any costs incurred in the international shipment of the good)

A producer has only one factory, located near the center of one of the USMCA countries, at which the producer manufactures finished office chairs. The office chairs are shipped from that factory to three warehouses leased by the producer, one on the west coast, one near the factory and one on the east coast. The office chairs are shipped to buyers from these warehouses, the shipping location depending on the shipping distance from the buyer. Buyers closest to the west coast warehouse are normally supplied by the west coast warehouse, buyers closest to the east coast are normally supplied by the warehouse located on the east coast and buyers closest to the warehouse near the factory are normally supplied by that warehouse. In this case, the point of direct shipment is the location of the warehouse from which the office chairs are normally shipped to customers in the location in which the buyer is located.

Example 4: Subsection 7(3), net cost method

A producer located in USMCA country A sells Good A that is subject to a regional value content requirement to a buyer located in USMCA country B. The producer of Good A chooses that the regional value content of that good be calculated using the net cost method. All applicable requirements of these Regulations, other than the regional value content requirement,

have been met. The applicable regional value content requirement is 50 per cent.

In order to calculate the regional value content of Good A, the producer first calculates the net cost of Good A. Under paragraph 6(11)(a), the net cost is the total cost of Good A (the aggregate of the product costs, period costs and other costs) per unit, minus the excluded costs (the aggregate of the sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs and non-allowable interest costs) per unit. The producer uses the following figures to calculate the net cost:

Product costs:

Value of originating materials $30.00
Value of non-originating materials 40.00
Other product costs 20.00
Period costs 10.00
Other costs 0.00
Total cost of Good A, per unit $100.00
Excluded costs:
Sales promotion, marketing and after-sales service cost $5.00
Royalties 2.50
Shipping and packing costs 3.00
Non-allowable interest costs 1.50
Total excluded costs $12.00

The net cost is the total cost of Good A, per unit, minus the excluded costs.

Total cost of Good A, per unit: $100.00
Excluded costs:—12.00
Net cost of Good A, per unit: $ 88.00

The value for net cost ($88) and the value of non-originating materials ($40) are needed in order to calculate the regional value content. The producer calculates the regional value content of Good A under the net cost method in the following manner:

*RVC = (NC − VNM)/NC*100*
*= (88–40)/88*100*
= 54.5%

Therefore, under the net cost method, Good A qualifies as an originating good, with a regional value content of 54.5 per cent.

Example 5: Paragraph 7(11)(a)

A producer in a USMCA country produces Good A and Good B during the producer's fiscal year.

The producer uses the following figures, which are recorded on the producer's books and represent all of the costs incurred with respect to both Good A and Good B, to calculate the net cost of those goods:

Product costs:
Value of originating materials $2,000
Value of non-originating materials 1,000
Other product costs 2,400
Period costs: (including $1,200 in excluded costs) 3,200
Other costs: 400
Total cost of Good A and Good B: $9,000

The net cost is the total cost of Good A and Good B, minus the excluded costs incurred with respect to those goods.

Total cost of Good A and Good B: $9,000
Excluded costs:—1,200
Net cost of Good A and Good B: $7,800

The net cost must then be reasonably allocated, in accordance with Schedule V, to Good A and Good B.

Example 6: Paragraph 7(11)(b))

A producer located in a USMCA country produces Good A and Good B during the producer's fiscal year. In order to calculate the regional value content of Good A and Good B, the producer uses the following figures that are recorded on the producer's books and incurred with respect to those goods:

Product costs:

Value of originating materials $2,000
Value of non-originating materials 1,000
Other product costs 2,400
Period costs: (including $1,200 in excluded costs) 3,200
Other costs: 400
Total cost of Good A and Good B: $9,000

Under paragraph 6(11)(b), the total cost of Good A and Good B is then reasonably allocated, in accordance with Schedule VII, to those goods. The costs are allocated in the following manner:

Allocated to Good A 5,220
Allocated to Good B 3,780
Total cost ($9,000 for both Good A and Good B)

The excluded costs ($1,200) that are included in total cost allocated to Good A and Good B, in accordance with Schedule VII, are subtracted from that amount.

Total Excluded costs:

Sales promotion, marketing and after-sale service costs 500
Royalties 200
Shipping and packing costs 500
Excluded Cost Allocated to Good A:
Sales promotion, marketing and after-sale service costs 290
Royalties 116
Shipping and packing costs 290
Net cost (total cost minus excluded costs): $4,524
Excluded Cost Allocated to Good B:
Sales promotion, marketing and after-sale service costs 210
Royalties 84
Shipping and packing costs 210
Net cost (total cost minus excluded costs): $3,276

The net cost of Good A is thus $4,524, and the net cost of Good B is $3,276.

Example 7: Paragraph 7(11)(c)

A producer located in a USMCA country produces Good C and Good D. The following costs are recorded on the producer's books for the months of January, February and March, and each cost that forms part of the total cost are reasonably allocated, in accordance with Schedule VII, to Good C and Good D.

Total cost: Good C and Good D (in thousands of dollars)

Product costs:

Value of originating materials 100
Value of non-originating materials 900

Other product costs 500
Period costs: (including $420 in excluded costs) 5,679
Minus Excluded costs 420
Other costs: 0
Total cost (aggregate of product costs, period costs and other costs): 6,759
Allocated to Good C (in thousands of dollars): Product costs:
Value of originating materials 0
Value of non-originating materials 800
Other product costs 300
Period costs: (including $420 in excluded costs) 3,036
Minus Excluded costs 300
Other costs: 0
Total cost (aggregate of product costs, period costs and other costs): 3,836
Allocated to Good D (in thousands of dollars): Product costs:
Value of originating materials 100
Value of non-originating materials 100
Other product costs 200
Period costs: (including $420 in excluded costs) 2,643
Minus Excluded costs 120
Other costs: 0
Total cost (aggregate of product costs, period costs and other costs): 2,923

Example 8: Subsection 7(12)

Producer A, located in a USMCA country, produces Good A that is subject to a regional value content requirement. The producer chooses that the regional value content of that good be calculated using the net cost method. Producer A buys Material X from Producer B, located in a USMCA country. Material X is a non-originating material and is used in the production of Good A. Producer A provides Producer B, at no charge, with molds to be used in the production of Material X. The cost of the molds that is recorded on the books of Producer A has been expensed in the current year. Pursuant to subparagraph 4(1)(b)(ii) of Schedule VI, the value of the molds is included in the value of Material X. Therefore, the cost of the molds that is recorded on the books of Producer A and that has been expensed in the current year cannot be included as a separate cost in the net cost of Good A because it has already been included in the value of Material X.

Example 9: Subsection 7(12)

Producer A, located in a USMCA country, produces Good A that is subject to a regional value content requirement. The producer chooses that the regional value content of that good be calculated using the net cost method and averages the calculation over the producer's fiscal year under subsection 7(15). Producer A determines that during that fiscal year Producer A incurred a gain on foreign currency conversion of $10,000 and a loss on foreign currency conversion of $8,000, resulting in a net gain of $2,000. Producer A also determines that $7,000 of the gain on foreign currency conversion and $6,000 of the loss on foreign currency conversion is related to the purchase of non-originating materials used in the production of Good A, and $3,000 of the gain on foreign currency conversion and $2,000 of the loss on foreign currency conversion is not related to the production of Good A. The producer determines that the total cost of Good A is $45,000 before deducting the $1,000 net gain on foreign currency conversion related to the production of Good A. The total cost of Good A is therefore $44,000. That $1,000 net gain is not included in the value of non-originating materials under subsection 8(1).

Example 10: Subsection 7(12)

Given the same facts as in example 9, except that Producer A determines that $6,000 of the gain on foreign currency conversion and $7,000 of the loss on foreign currency conversion is related to the purchase of non-originating materials used in the production of Good A. The total cost of Good A is $45,000, which includes the $1,000 net loss on foreign currency conversion related to the production of Good A. That $1,000 net loss is not included in the value of non-originating materials under subsection 8(1).

PART IV

SECTION 8. MATERIALS

8 (1) *Value of material used in production.* Except as otherwise provided for non-originating materials used in the production of a good referred to in section 14 or subsection 15(1), and except in the case of indirect materials, intermediate materials and packing materials and containers, for the purpose of calculating the regional value content of a good and for the purposes of subsection 5(1) and (4), the value of a material that is used in the production of the good is to be

(a) except as otherwise provided in subsection (4), if the material is imported by the producer of the good into the territory of the USMCA country in which the good is produced, the transaction value of the material at the time of importation, including the costs incurred in the international shipment of the material,

(b) if the material is acquired by the producer of the good from another person located in the territory of the USMCA country in which the good is produced

(i) the price paid or payable by the producer in the USMCA country where the producer is located,

(ii) the value as determined for an imported material in subparagraph (a), or (iii) the earliest ascertainable price paid or payable in the territory of the USMCA country where the good is produced, or

(c) for a material that is self-produced

(i) all the costs incurred in the production of the material, which includes general expenses, and

(ii) an amount equivalent to the profit added in the normal course of trade, or equal to the profit that is usually reflected in the sale of goods of the same class or kind as the

self-produced material that is being valued provided that no self-produced material that has been used in its production has been valued including the amount equivalent or equal to the profit according to this paragraph.

(2) *Adjustments to the value of materials.* The following costs may be deducted from the value of a non-originating material or material of undetermined origin, if they are included under subsection (1):

(a) the costs of freight, insurance and packing and all other costs incurred in transporting the material to the location of the producer;

(b) duties and taxes paid or payable with respect to the material in the territory of one or more of the USMCA countries, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable,

(c) customs brokerage fees, including the cost of in-house customs brokerage services, incurred with respect to the material in the territory of one or more of the USMCA countries, and

(d) the cost of waste and spoilage resulting from the use of the material in the production of the good, minus the value of any reusable scrap or by-product.

(3) *Documentary evidence required.* If the cost or expense listed in subsection (2) is unknown or documentary evidence of the amount of the adjustment is not available, then no adjustment is allowed for that particular cost or expense.

(4) *Transaction value not acceptable.* For the purposes of paragraph (1)(a), if the transaction value of the material referred to in that paragraph is not acceptable or if there is no transaction value in accordance with Schedule IV (Unacceptable Transaction Value), the value of the material must be determined in accordance with Schedule VI (Value of Materials) and, if the costs referred to in subsection (2) are included in that value, those costs may be deducted from that value.

(5) *Costs recorded on books.* For the purposes of subsection (1), the costs referred to in paragraph (1)(c) are to be the costs referred to in those paragraphs that are recorded on the books of the producer of the good.

(6) *Designation of self-produced material as an intermediate material.* For the purpose of calculating the regional value content of a good the producer of the good may designate as an intermediate material any self-produced material that is used in the production of the good, provided that if an intermediate material is subject to a regional value content requirement, no other self-produced material that is subject to a regional value content requirement and is incorporated into that intermediate material is also designated by the producer as an intermediate material.

(7) *Particulars.* For the purposes of subsection (6),

(a) in order to qualify as an originating material, a self-produced material that is designated as an intermediate material must qualify as an originating material under these Regulations;

(b) the designation of a self-produced material as an intermediate material is to be made solely at the choice of the producer of that self-produced material; and

(c) except as otherwise provided in subsection 9(4), the proviso set out in subsection (6) does not apply with respect to an intermediate material used by another producer in the production of a material that is subsequently acquired and used in the production of a good by the producer referred to in subsection (6).

(8) *Value of an intermediate material.* The value of an intermediate material will be, at the choice of the producer of the good,

(a) the total cost incurred with respect to all goods produced by the producer that can be reasonably allocated to that intermediate material in accordance with Schedule V; or

(b) the aggregate of each cost that forms part of the total cost incurred with respect to that intermediate material that can be reasonably allocated to that intermediate material in accordance with Schedule V.

(9) *Calculation of total cost.* Total cost under subsection (8) consists of the costs referred to in subsection 1(6), and is calculated in accordance with that subsection and subsection 1(7).

(10) *Rescission of a designation.* If a producer of a good designates a self-produced material as an intermediate material under subsection (6) and the customs administration of a USMCA country into which the good is imported determines during a verification of origin of the good that the intermediate material is a non-originating material and notifies the producer of this in writing before the written determination of whether the good qualifies as an originating good, the producer may rescind the designation, and the regional value content of the good must be calculated as though the self-produced material were not so designated.

(11) *Effect of a rescission.* A producer of a good who rescinds a designation under subsection (10) may, not later than 30 days after the customs administration referred to in subsection (10) notifies the producer in writing that the self-produced material referred to in paragraph (a) is a non-originating material, designate as an intermediate material another self-produced material that is incorporated into the good, subject to the provision set out in subsection (6).

(12) *Second rescission.* If a producer of a good designates another self-produced material as an intermediate material under subsection (6) and the customs administration referred to in subsection (10) determines during the verification of origin of the good that that self-produced material is a non-originating material,

(a) the producer may rescind the designation, and the regional value content of the good will be calculated as though the self-produced material were not so designated; and,

(b) the producer may not designate another self-produced material that is incorporated into the good as an intermediate material.

(13) *Indirect materials.* For the purpose of determining whether a good is an originating good, an indirect material that is used in the production of the good

(a) will be considered to be an originating material, regardless of where that indirect material is produced; and

(b) if the good is subject to a regional value content requirement, for the purpose of calculating the net cost under the net cost method, the value of the indirect material is to be the costs of that material that are recorded on the books of the producer of the good.

(14) *Packaging materials and containers.* Packaging materials and containers, if classified under the Harmonized System with the good that is packaged therein, will be disregarded for the purpose of

(a) determining whether all of the non-originating materials used in the production of the good undergo an applicable change in tariff classification;

(b) determining whether a good is wholly obtained or produced; and

(c) determining under subsection 5(1) the value of non-originating materials that do not undergo an applicable change in tariff classification.

(15) *Value of packaging materials and containers—cases where taken into account.* If packaging materials and containers in which a good is packaged for retail sale are classified under the Harmonized System with the good that is packaged therein and that good is subject to a regional value content requirement, the value of those packaging materials and containers will be taken into account as originating materials or non-originating materials, as the case may be, for the purpose of calculating the regional value content of the good.

(16) *Packaging materials and containers—self-produced.* For the purposes of subsection (15), if packaging materials and containers are self-produced materials, the producer may choose to designate those materials as intermediate materials under subsection (6).

(17) *Packing materials and containers.* For the purpose of determining whether a good is an originating good, packing materials and containers are disregarded.

(18) *Fungible materials and fungible goods.* A fungible material or good is originating if:

(a) when originating and non-originating fungible materials

(i) are withdrawn from an inventory in one location and used in the production of the good, or

(ii) are withdrawn from inventories in more than one location in the territory of one or more of the USMCA countries and used in the production of the good at the same production facility, the determination of whether the materials are originating is made on the basis of an inventory management method recognized in the Generally Accepted Accounting Principles of, or otherwise accepted by, the USMCA country in which the production is performed or an inventory management method set out in Schedule VIII; or

(b) when originating and non-originating fungible goods are commingled and exported in the same form, the determination of whether the goods are originating is made on the basis of an inventory management method recognized in the Generally Accepted Accounting Principles of, or otherwise accepted by, the USMCA country from which the good is exported or an inventory management method set out in Schedule VIII.

(19) The inventory management method selected under subsection 18 must be used throughout the fiscal year of the producer or the person that selected the inventory management method.

(20) An importer may claim that a fungible material or good is originating if the importer, producer, or exporter has physically segregated each fungible material or good as to allow their specific identification.

(21) *Choice of inventory management method.* If fungible materials referred to in paragraph (18)(a) and fungible goods referred to in paragraph (18)(b) are withdrawn from the same inventory, the inventory management method used for the materials must be the same as the inventory management method used for the goods, and if the averaging method is used, the respective averaging periods for fungible materials and fungible goods are to be used.

(22) *Written notice.* A choice of inventory management methods under subsection (18) will be considered to have been made when the customs administration of the USMCA country into which the good is imported is informed in writing of the choice during the course of a verification of origin of the good.

(23) *Accessories, spare parts, tools or instructional or other information materials.* For the purposes of subsections (24) through (27), ''accessories, spare parts, tools, or instructional or other information materials'' are covered when

(a) they are classified with, delivered with, but not invoiced separately from the good, and

(b) their type, quantity and value are customary for the good, within the industry that produces the good.

(24) *Exclusion*. Accessories, spare parts, tools, or instructional or other information materials are to be disregarded for the purpose of determining

(a) whether a good is wholly obtained;

(b) whether all the non-originating materials used in the production of the good satisfy a process or applicable change in tariff classification requirement established in Schedule I (PSRO Annex); or,

(c) under subsection 5(1), the value of non-originating materials that do not undergo an applicable change in tariff classification.

(25) *Value for regional value content requirement*. If a good is subject to a regional value content requirement, the value of accessories, spare parts, tools, or instructional or other information materials is to be taken into account as originating materials or non-originating materials, as the case may be, in calculating the regional value content of the good.

(26) *Designation*. For the purposes of subsection (25), if accessories, spare parts, tools, or instructional or other information materials are self-produced materials, the producer may choose to designate those materials as intermediate materials under subsection (6).

(27) *Originating status*. A good's accessories, spare parts, tools, or instructional or other information materials have the originating status of the good with which they are delivered.

(28) *Examples illustrating the provisions on materials*. Each of the following examples is an ''Example'' as referred to in subsection 1(4).

Example 1: Subsection 8(4), Transaction Value not Determined in a Manner Consistent with Schedule VI

Producer A, located in USMCA country A, imports a bicycle chainring into USMCA country A. Producer A purchased the chainring from a middleman located in country B. The middleman purchased the chainring from a manufacturer located in country B. Under the laws in USMCA country A that implement the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, the customs value of the chainring was based on the price actually paid or payable by the middleman to the manufacturer. Producer A uses the chainring to produce a bicycle, and exports the bicycle to USMCA country C. The bicycle is subject to a regional value content requirement.

Under subsection 3(1) of Schedule VI (Value of Materials), the price actually paid or payable is the total payment made or to be made by the producer to or for the benefit of the seller of the material. Section 1 of that Schedule defines producer and seller for the purposes of the Schedule. A producer is the person who uses the material in the production of a good that is subject to a regional value content requirement. A seller is the person who sells the material being valued to the producer.

The transaction value of the chainring was not determined in a manner consistent with Schedule VI because it was based on the price actually paid or payable by the middleman to the manufacturer, rather than on the price actually paid or payable by Producer A to the middleman. Thus, subsection 8(4) applies and the chainring is valued in accordance with Schedule IV.

Example 2: Subsection 8(7), Value of Intermediate Materials

A producer located in a USMCA country produces a bicycle, which is subject to a regional value content requirement under section 3(2). The producer also produces a chain ring, which is used in the production of the bicycle. Both originating materials and non-originating materials are used in the production of the chainring. The chainring is subject to a change in tariff classification requirement under section 3(2). The costs to produce the chainring are the following:

Product costs:

Value of originating materials $ 1.00
Value of non-originating materials 7.50
Other product costs 1.50
Period costs (including $0.30 in royalties): 0.50
Other costs: 0.10
Total cost of the chainring: $10.60

The producer designates the chainring as an intermediate material and determines that, because all of the non-originating materials that are used in the production of the chainring undergo an applicable change in tariff classification set out in Schedule I, the chainring would, under section 3(2) qualify as an originating material. The cost of the non-originating materials used in the production of the chainring is therefore not included in the value of non-originating materials that are used in the production of the bicycle for the purpose of determining its regional value content of the bicycle. Because the chainring has been designated as an intermediate material, the total cost of the chainring, which is $10.60, is treated as the cost of originating materials for the purpose of calculating the regional value content of the bicycle. The total cost of the bicycle is determined in accordance with the following figures:

Product costs:

Value of originating materials
—intermediate materials $10.60
—other materials 3.00
Value of non-originating materials 5.50
Other product costs 6.50
Period costs: 2.50
Other costs: 0.10
Total cost of the bicycle: $28.20

Example 3: Subsection 8(7), Effects of the Designation of Self-produced Materials on Net Cost

The ability to designate intermediate materials helps to put the vertically integrated producer who is self-producing materials that are used in the production of a good on par with a producer who is purchasing materials and valuing those materials in accordance with subsection 8(1). The following situations demonstrate how this is achieved:

Situation 1

A producer located in a USMCA country produces a bicycle, which is subject to a regional value content requirement of 50 per cent under the net cost method. The bicycle satisfies all other applicable requirements of these Regulations. The producer purchases a bicycle frame, which is used in the production of the bicycle, from a supplier located in a USMCA country. The value of the frame determined in accordance with subsection 8(1) is $11.00. The frame is an originating material. All other materials used in the production of the bicycle are non-originating materials.

The net cost of the bicycle is determined as follows:

Product costs:

Value of originating materials (bicycle frame) $11.00
Value of non-originating materials 5.50
Other product costs 6.50
Period costs: (including $0.20 in excluded costs) 0.50
Other costs: 0.10
Total cost of the bicycle: $23.60
Excluded costs: (included in period costs) 0.20
Net cost of the bicycle: $23.40

The regional value content of the bicycle is calculated as follows:

*RVC = (NC − VNM)/NC*100*
*= ($23.40 − $5.50)/$23.50*100*
= 76.5%

The regional value content of the bicycle is 76.5 per cent, and the bicycle, therefore, qualifies as an originating good.

Situation 2

A producer located in a USMCA country produces a bicycle, which is subject to a regional value content requirement of 50 per cent under the net cost method. The bicycle satisfies all other applicable requirements of these Regulations. The producer self-produces the bicycle frame which is used in the production of the bicycle. The costs to produce the frame are the following:

Product costs:

Value of originating materials $ 1.00
Value of non-originating materials 7.50
Other product costs 1.50
Period costs: (including $0.20 in excluded costs) 0.50
Other costs: 0.10
Total cost of the bicycle frame: $10.60

Additional costs to produce the bicycle are the following:

Product costs:

Value of originating materials $ 0.00
Value of non-originating materials 5.50
Other product costs 6.50
Period costs: (Including $0.20 in excluded costs) 0.50
Other costs: 0.10
Total additional costs: $12.60

The producer does not designate the bicycle frame as an intermediate material under subsection 8(4). The net cost of the bicycle is calculated as follows:

	Costs of the bicycle frame (not designated as an intermediate material)	*Additional costs to produce the bicycle*	*Total*
Product costs:			
Value of originating materials	*$ 1.00*	*$ 0.00*	*$ 1.00*
Value of non-originating materials	*7.50*	*5.50*	*13.00*
Other product costs	*1.50*	*6.50*	*8.00*
Period costs (including $0.20 in excluded costs)	*0.50*	*0.50*	*1.00*
Other costs	*0.10*	*0.10*	*0.20*
Total cost of the bicycle	*10.60*	*12.60*	*23.20*
Excluded costs (in period costs)	*0.20*	*0.20*	*0.40*
Net cost of the bicycle (total cost minus excluded costs):	.....	.....	*22.80*

The regional value content of the bicycle is calculated as follows:

RVC = (NC − VNM)/NC*100
*= ($22.80 − $13.00)/$22.80*100*
= 42.9%

The regional value content of the bicycle is 42.9 per cent, and the bicycle, therefore, does not qualify as an originating good.

Situation 3

A producer located in a USMCA country produces the bicycle, which is subject to a regional value content requirement of 50 per cent under the net cost method. The bicycle satisfies all other applicable requirements of these Regulations. The producer self-produces the bicycle frame, which is used in the production of the bicycle. The costs to produce the frame are the following:

Product costs:

Value of originating materials $ 1.00
Value of non-originating materials 7.50
Other product costs 1.50

Period costs: (Including $0.20 in excluded costs) 0.50

Other costs: 0.10
Total cost of the bicycle frame: $10.60

Additional costs to produce the bicycle are the following: Product costs: 0.10

Product costs:

Value of originating materials $ 0.00
Value of non-originating materials 5.50
Other product costs 6.50
Period costs: (including $0.20 in excluded costs) 0.50
Other costs: 0.10
Total additional costs: $12.60

The producer designates the frame as an intermediate material under subsection 8(6). The frame qualifies as an originating material under section 3(2). Therefore, the value of non-originating materials used in the production of the frame is not included in the value of non-originating materials for the purpose of calculating the regional value content of the bicycle. The net cost of the bicycle is calculated as follows:

	Costs of the bicycle frame (not designated as an intermediate material)	*Additional costs to produce the bicycle*	*Total*
Product costs:			
Value of originating materials	*$10.60*	*$0.00*	*$10.60*
Value of non-originating materials	.....	*5.50*	*5.50*
Other product costs	.....	*6.50*	*6.50*
Period costs (including $0.20 in excluded costs)	.....	*0.50*	*0.50*
Other costs	.....	*0.10*	*0.10*
Total cost of the bicycle	*10.60*	*12.60*	*23.20*
Excluded costs (in period costs)	.....	*0.20*	*0.20*
Net cost of the bicycle (total cost minus excluded costs):	.....	.....	*23.00*

The regional value content of the bicycle is calculated as follows:

RVC = (NC − VNM)/NC*100
= ($23.00 − $5.50)/$23.00*100
= 76.1%

The regional value content of the bicycle is 76.1 per cent, and the bicycle, therefore, qualifies as an originating good.

Example 4: Originating Materials Acquired from a Producer Who Produced Them Using Intermediate Materials

Producer A, located in USMCA country A, produces switches. In order for the switches to qualify as originating goods, Producer A designates subassemblies of the switches as intermediate materials. The subassemblies are subject to a regional value content requirement. They satisfy that requirement, and qualify as originating materials. The switches are also subject to a regional value content requirement, and, with the subassemblies designated as intermediate materials, are determined to have a regional value content of 65 per cent.

Producer A sells the switches to Producer B, located in USMCA country B, who uses them to produce switch assemblies that are used in the production of Good B. The switch assemblies are subject to a regional value content requirement. Producers A and B are not accumulating their production within the meaning of section 9. Producer B is therefore able, under subsection 8(6), to designate the switch assemblies as intermediate materials.

If Producers A and B were accumulating their production within the meaning of section 9, Producer B would be unable to designate the switch assemblies as intermediate materials, because the production of both producers would be considered to be the production of one producer.

Example 5: Single Producer and Successive Designations of Materials Subject to a Regional Value Content Requirement as Intermediate Materials

Producer A, located in USMCA country, produces Material X and uses Material X in the production of Good B. Material X qualifies as an originating material because it satisfies the applicable regional value content requirement. Producer A designates Material X as an intermediate material.

Producer A uses Material X in the production of Material Y, which is also used in the production of Good B. Material Y is also subject to a regional value content requirement. Under the proviso set out in subsection 8(6), Producer A cannot designate Material Y as an intermediate

material, even if Material Y satisfies the applicable regional value content requirement, because Material X was already designated by Producer A as an intermediate material.

Example 6: Single Producer and Multiple Designations of Materials as Intermediate Materials

Producer X, who is located in USMCA country X, uses non-originating materials in the production of self-produced materials A, B and C. None of the self-produced materials are used in the production of any of the other self-produced materials.

Producer X uses the self-produced materials in the production of Good O, which is exported to USMCA country Y. Materials A, B and C qualify as originating materials because they satisfy the applicable regional value content requirements.

Because none of the self-produced materials are used in the production of any of the other self-produced materials, then even though each self-produced material is subject to a regional value content requirement, Producer X may, under subsection 8(6), designate all of the self-produced materials as intermediate materials. The proviso set out in subsection 8(6) only applies if self-produced materials are used in the production of other self-produced materials and both are subject to a regional value content requirement.

Example 7: Subsection 8(23) Accessories, Spare Parts, Tools, Instruction or Other Information Materials

The following are examples of accessories, spare parts, tools, instructional or other information materials that are delivered with a good and form part of the good's standard accessories, spare parts, tools, instructional or other information materials:

(a) Consumables that must be replaced at regular intervals, such as dust collectors for an air-conditioning system,

(b) a carrying case for equipment,

(c) a dust cover for a machine,

(d) an operational manual for a vehicle,

(e) brackets to attach equipment to a wall,

(f) a bicycle tool kit or a car jack,

(g) a set of wrenches to change the bit on a chuck,

(h) a brush or other tool to clean out a machine, and

(i) electrical cords and power bars for use with electronic goods.

Example 8: Value of Indirect Materials that are Assists

Producer A, located in a USMCA country, produces a well-water pump that is subject to a regional value content requirement. The producer chooses that the regional value content of that good be calculated using the net cost method. Producer A buys a mold-injected plastic water flow sensor from Producer B, located in the same USMCA country, and uses it in the production of the well-water pump. Producer A provides to Producer B, at no charge, molds to be used in the production of the water flow sensor. The molds have a value of $100 which is expensed in the current year by Producer A.

The water flow sensor is subject to a regional value content requirement which Producer B chooses to calculate using the net cost method. For the purpose of determining the value of non-originating materials in order to calculate the regional value content of the water flow sensor, the molds are considered to be an originating material because they are an indirect material. However, pursuant to subsection 8(13) they have a value of nil because the cost of the molds with respect to the water flow sensor is not recorded on the books of Producer B.

It is determined that the water flow sensor is a non-originating material. The cost of the molds that is recorded on the books of producer A is expensed in the current year. Pursuant to section 4 of Schedule VI (Value of Materials), the value of the molds (see subparagraph 4(1)(b)(ii) of Schedule VI) must be included in the value of the water flow sensor by Producer A when calculating the regional value content of the well-water pump. The cost of the molds, although recorded on the books of producer A, cannot be included as a separate cost in the net cost of the well-water pump because it is already included in the value of the water flow sensor. The entire cost of the water flow sensor, which includes the cost of the molds, is included in the value of non-originating materials for the purposes of the regional value content of the well-water pump.

PART V GENERAL PROVISIONS

SECTION 9. ACCUMULATION

(9) (1) Subject to subsections (2) through (5) (a) a good is originating if the good is produced in the territory of one or more of the USMCA countries by one or more producers, provided that the good satisfies the requirements of section 3 and all other applicable requirements of these Regulations;

(b) an originating good or material of one or more of the USMCA countries is considered as originating in the territory of another USMCA country when used as a material in the production of a good in the territory of another USMCA country; and

(c) production undertaken on a non-originating material in the territory of one or more of the USMCA countries may contribute toward the originating status of a good, regardless of whether that production was sufficient to confer originating status to the material itself.

(2) *Accumulation using the net cost method.* If a good is subject to a regional value content requirement based on the net cost method and an exporter or producer of the good has a statement signed by a producer of a material that is used in the production of the good that states

(a) the net cost incurred and the value of non-originating materials used by the producer of the material in the production of that material,

(i) net cost incurred by the producer of the good with respect to the material is to be the net cost incurred by the producer of the material plus, if not included in the net cost incurred by the producer of the material, the costs referred to in paragraphs 8(2)(a) through (c), and

(ii) the value of non-originating materials used by the producer of the good with respect to the material is to be the value of non-originating materials used by the producer of the material; or

(b) any amount, other than an amount that includes any of the value of non-originating materials, that is part of the net cost incurred by the producer of the material in the production of that material,

(i) the net cost incurred by the producer of the good with respect to the material is to be the value of the material, determined in accordance with subsection 8(1), and

(ii) the value of non-originating materials used by the producer of the good with respect to the material is to be the value of the material, determined in accordance with subsection 8(1), minus the amount stated in the statement.

(3) *Accumulation using the transaction value method.* If a good is subject to a regional value content requirement based on the transaction value method and an exporter or producer of the good has a statement signed by a producer of a material that is used in the production of the good that states the value of non-originating materials used by the producer of the material in the production of that material, the value of non-originating materials used by the producer of the good with respect to the material is the value of non-originating materials used by the producer of the material.

(4) *Averaging of costs—net cost method.* If a good is subject to a regional value content requirement based on the net cost method and an exporter or producer of the good does not have a statement described in subsection (2) but has a statement signed by a producer of a material that is used in the production of the good that

(a) states the sum of the net costs incurred and the sum of the values of non-originating materials used by the producer of the material in the production of that material and identical materials or similar materials, or any combination thereof, produced in a single plant by the producer of the material over a month or any consecutive three, six or twelve month period that falls within the fiscal year of the producer of the good, divided by the number of units of materials with respect to which the statement is made,

(i) the net cost incurred by the producer of the good with respect to the material is to be the sum of the net costs incurred by the producer of the material with respect to that material and the identical materials or similar materials, divided by the number of units of materials with respect to which the statement is made, plus, if not included in the net costs incurred by the producer of the material, the costs referred to in paragraphs 8(2)(a) through (c), and

(ii) the value of non-originating materials used by the producer of the good with respect to the material is to be the sum of the values of non-originating materials used by the producer of the material with respect to that material and the identical materials or similar materials divided by the number of units of materials with respect to which the statement is made; or

(b) states any amount, other than an amount that includes any of the values of non-originating materials, that is part of the sum of the net costs incurred by the producer of the material in the production of that material and identical materials or similar materials, or any combination thereof, produced in a single plant by the producer of the material over a month or any consecutive three, six or twelve month period that falls within the fiscal year of the producer of the good, divided by the number of units of materials with respect to which the statement is made,

(i) the net cost incurred by the producer of the good with respect to the material is to be the value of the material, determined in accordance with subsection 8(1), and

(ii) the value of non-originating materials used by the producer of the good with respect to the material is to be the value of the material, determined in accordance with subsection 8(1), minus the amount stated in the statement.

(5) *Averaging of costs—transaction value method.* If a good is subject to a regional value content requirement based on the transaction value method and an exporter or producer of the good does not have a statement described in subsection (3) but has a statement signed by a producer of a material that is used in the production of the good that states the sum of the values of non-originating materials used by the producer of the material in the production of that material and identical materials or similar materials, or any combination thereof, produced in a single plant by the producer of the material over a month or any consecutive three, six or twelve month period that falls within the fiscal year of the producer of the good, divided by the number of units of materials with respect to which the statement is made, the value of non-originating materials used by the producer of the good with respect to the material is the sum of the values of non-originating materials used by the producer of the material with respect to that material

and the identical materials or similar materials divided by the number of units of materials with respect to which the statement is made.

(6) *Single producer*. For the purposes of subsection 8(6), if a producer of the good chooses to accumulate the production of materials under subsection (1), that production will be considered to be the production of the producer of the good.

(7) *Particulars*. For the purposes of this section,

(a) in order to accumulate the production of a material,

(i) if the good is subject to a regional value content requirement, the producer of the good must have a statement described in subsection (2) through (5) that is signed by the producer of the material, and

(ii) if an applicable change in tariff classification is applied to determine whether the good is an originating good, the producer of the good must have a statement signed by the producer of the material that states the tariff classification of all non-originating materials used by that producer in the production of that material and that the production of the material took place entirely in the territory of one or more of the USMCA countries;

(b) a producer of a good who chooses to accumulate is not required to accumulate the production of all materials that are incorporated into the good; and

(c) any information set out in a statement referred to in subsection (2) through (5) that concerns the value of materials or costs is to be in the same currency as the currency of the country in which the person who provided the statement is located.

(8) *Examples of accumulation of production*.

Each of the following examples is an ''Example'' as referred to in subsection 1(4).

Example 1: Subsection 9(1)

Producer A, located in USMCA country A, imports unfinished bearing rings provided for in subheading 8482.99 into USMCA country A from a non-USMCA territory. Producer A further processes the unfinished bearing rings into finished bearing rings, which are of the same subheading. The finished bearing rings of Producer A do not satisfy an applicable change in tariff classification and therefore do not qualify as originating goods.

The net cost of the finished bearing rings (per unit) is calculated as follows:

Product costs:	
Value of originating materials	$0.15
Value of non-originating materials	0.75
Other product costs	0.35
Period costs: (including $0.05 in excluded costs)	0.15
Other costs:	0.05
Total cost of the finished bearing rings, per unit:	1.45
Excluded costs: (included in period costs)	0.05
Net cost of the finished bearing rings, per unit:	1.40

Producer A sells the finished bearing rings to Producer B who is located in USMCA country A for $1.50 each. Producer B further processes them into bearings, and intends to export the bearings to USMCA country B. Although the bearings satisfy the applicable change in tariff classification, the bearings are subject to a regional value content requirement.

Situation A:

Producer B does not choose to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. The net cost of the bearings (per unit) is calculated as follows:

Product costs:	
Value of originating materials	$0.45
Value of non-originating materials (value, per unit, of the bearing rings purchased from Producer A)	1.50
Other product costs	0.75
Period costs: (Including $0.05 in excluded costs)	0.15
Other costs	0.05
Total cost of the bearings, per unit:	2.90
Excluded costs: (Included in period costs)	0.05

Net cost of the bearings, per unit:	2.85

Under the net cost method, the regional value content of the bearings is

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{\$2.85 - \$1.50}{\$2.85} \times 100$$

$$= 47.4\%$$

Therefore, the bearings are non-originating goods.

Situation B:

Producer B chooses to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. Producer A provides a statement described in paragraph 9(2)(a) to Producer B. The net cost of the bearings (per unit) is calculated as follows:

Product costs:	
Value of originating materials ($0.45 + $0.15)	$0.60
Value of non-originating materials (value, per unit, of the unfinished bearing rings imported by Producer A)	0.75
Other product costs ($0.75 + $0.35)	1.10
Period costs: (($0.15 + $0.15), including $0.10 in excluded costs)	0.30
Other costs: ($0.05 + $0.05)	0.10
Total cost of the bearings, per unit:	2.85
Excluded costs: (Included in period costs)	0.10
Net cost of the bearings, per unit:	2.75

Under the net cost method, the regional value content of the bearings is

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{\$2.75 - \$0.75}{\$2.75} \times 100$$

$$= 72.7\%$$

Therefore, the bearings are originating goods.

Situation C:

Producer B chooses to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. Producer A provides to Producer B a statement described in paragraph 9(2)(b) that specifies an amount equal to the net cost minus the value of non-originating materials used to produce the finished bearing rings ($1.40 − 0.75 = $0.65). The net cost of the bearings (per unit) is calculated as follows:

Product costs:	
Value of originating materials ($0.45 + $0.65)	$1.10
Value of non-originating materials ($1.50 − $0.65)	0.85
Other product costs	0.75
Period costs: (Including $0.05 in excluded costs)	0.15
Other costs	0.05
Total cost of the bearings, per unit:	2.90
Excluded costs: (Included in period costs)	0.05
Net cost of the bearings, per unit:	2.85

Under the net cost method, the regional value content of the bearings is

$$RVC = \frac{NC - VNM}{NC} \times 100$$

$$= \frac{\$2.85 - \$0.85}{\$2.85} \times 100$$

$$= 70.2\%$$

Therefore, the bearings are originating goods.

Situation D:

Producer B chooses to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. Producer A provides to Producer B a statement described in paragraph 9(2)(b) that specifies an amount equal to the value of other product costs used in the production of the finished bearing rings ($0.35). The net cost of the bearings (per unit) is calculated as follows:

Product costs:	
Value of originating materials	$0.45
Value of non-originating materials ($1.50 − $0.35)	1.15
Other product costs ($0.75 + $0.35)	1.10
Period costs: (Including $0.05 in excluded costs)	0.15
Other costs	0.05
Total cost of the bearings, per unit:	2.90
Excluded costs: (Included in period costs)	0.05
Net cost of the bearings, per unit:	2.85

Under the net cost method, the regional value content of the bearings is

$$RVC = \frac{NC - VNM}{NC} \times 100$$
$$= \frac{\$2.85 - \$1.15}{\$2.85} \times 100$$
$$= 59.7\%$$

Therefore, the bearings are originating goods.

Example 2: Section 9(1)

Producer A, located in USMCA country A, imports non-originating cotton, carded or combed, provided for in heading 52.03 for use in the production of cotton yarn provided for in heading 52.05. Because the change from cotton, carded or combed, to cotton yarn is a change within the same chapter, the cotton does not satisfy the applicable change in tariff classification for heading 52.05, which is a change from any other chapter, with certain exceptions. Therefore, the cotton yarn that Producer A produces from non-originating cotton is a non-originating good.

Producer A then sells the non-originating cotton yarn to Producer B, also located in USMCA country A, who uses the cotton yarn in the production of woven fabric of cotton provided for in heading 52.08. The change from non-originating cotton yarn to woven fabric of cotton is insufficient to satisfy the applicable change in tariff classification for heading 52.08, which is a change from any heading outside headings 52.08 through 52.12, except from certain headings, under which various yarns, including cotton yarn provided for in heading 52.05, are classified.

Therefore, the woven fabric of cotton that Producer B produces from non-originating cotton yarn produced by Producer A is a non-originating good.

However, Producer B can choose to accumulate the production of Producer A. The rule for heading 52.08, under which the cotton fabric is classified, does not exclude a change from heading 52.03, under which carded or combed cotton is classified. Therefore, under section 15(1), the change from carded or combed cotton provided for in heading 52.03 to the woven fabric of cotton provided for in heading 52.08 would satisfy the applicable change of tariff classification for heading 52.08. The woven fabric of cotton would be considered as an originating good.

Producer B, in order to choose to accumulate Producer A's production, must have a statement described in subsection 9(7).

Situation E:

Producer B chooses to accumulate costs incurred by Producer A with respect to the bearing rings used in the production of the bearings. Producer A provides to Producer B a signed statement described in subsection 9(3) that specifies the value of non-originating materials used in the production of the finished bearing rings ($0.75). Producer B chooses to calculate the regional value content of the bearings under the transaction value method. The regional value content of the bearings (per unit) is calculated as follows:

Transaction value of the bearings, per unit	$3.15
Costs incurred, per unit, in the international shipment of the good (included in transaction value of the bearings)	0.15
Transaction value, per unit, adjusted to exclude any costs incurred in the international shipment of the good	3.00
Value of non-originating materials (value, per unit, of the unfinished bearing rings imported by Producer A)	0.75

Under the transaction value method, the regional value content of the bearings is

RVC = (TV − VNM)/TV × 100
= ($3.00 − $0.75)/$3.00 × 100
= 75%

Therefore, because the bearings have a regional value content of at least 60 percent under transaction value method, the bearings are originating goods.

SECTION 10. TRANSSHIPMENT

10 (1) *Transport requirements to retain originating status.* If an originating good is transported outside the territories of the USMCA countries, the good retains its originating status if

(a) the good remains under customs control outside the territories of the USMCA countries; and

(b) the good does not undergo further production or any other operation outside the

territories of the USMCA countries, other than unloading; reloading; separation from a bulk shipment; storing; labeling or other marking required by the importing USMCA country; or any other operation necessary to transport the good to the territory of the importing USMCA country or to preserve the good in good condition, including:

(i) Inspection;

(ii) removal of dust that accumulates during shipment;

(iii) ventilation;

(iv) spreading out or drying;

(v) chilling;

(vi) replacing salt, sulphur dioxide or other aqueous solutions; or

(vii) replacing damaged packing materials and containers and removal of units of the good that are spoiled or damaged and present a danger to the remaining units of the good.

(2) *Good entirely non-originating.* A good that is a non-originating good by application of subsection (1) is considered to be entirely non-originating for the purposes of these Regulations.

(3) *Exceptions for certain goods.* Subsection (1) does not apply with respect to

(a) a ''smart card'' of subheading 8523.52 containing a single integrated circuit, if any further production or other operation that that good undergoes outside the territories of the USMCA countries does not result in a change in the tariff classification of the good to any other subheading;

(b) a good of any of subheadings 8541.10 through 8541.60 or 8542.31 through 8542.39, if any further production or other operation that that good undergoes outside the territories of the USMCA countries does not result in a change in the tariff classification of the good to a subheading outside of that group;

(c) an electronic microassembly of subheading 8543.90, if any further production or other operation that that good undergoes outside the territories of the USMCA countries does not result in a change in the tariff classification of the good to any other subheading; or

(d) an electronic microassembly of subheading 8548.90, if any further production or other operation that that good undergoes outside the territories of the USMCA countries does not result in a change in the tariff classification of the good to any other subheading.

SECTION 11. NON-QUALIFYING OPERATIONS

11 A good is not an originating good merely by reason of

(a) mere dilution with water or another substance that does not materially alter the characteristics of the good; or

(b) any production or pricing practice with respect to which it may be demonstrated, on the basis of a preponderance of evidence, that the object was to circumvent these Regulations.

PART VI AUTOMOTIVE GOODS

SECTION 12. DEFINITIONS AND INTERPRETATION

(1) For purposes of this part,

aftermarket part means a good that is not for use as original equipment in the production of passenger vehicles, light trucks or heavy trucks as defined in these Regulations;

all-terrain vehicle means a vehicle that does not meet United States federal safety and emissions standards permitting unrestricted on-road use or the equivalent Mexican and Canadian on-road standards;

annual purchase value (APV) means the sum of the values of high-wage materials purchased annually by a producer for use in the production of passenger vehicles, light trucks or heavy trucks in a plant located in the territory of a USMCA country;

average base hourly wage rate means the average hourly rate of pay based on all the hours performed on direct production work at a plant or facility, even if such workers performing that work are paid on a salary, piece-rate, or day-rate basis. This includes all hours performed by full-time, part time, temporary, and seasonal workers. The rate of pay does not include benefits, bonuses or shift-premiums, or premium pay for overtime, holidays or weekends. If a worker is paid by a third party, such as a temporary employment agency, only the wages received by the worker are included in the average base hourly wage rate calculation.

For direct production workers, the average base hourly wage rate of pay is calculated based on all their working hours. For other workers performing direct production work, the average base hourly rate is calculated based on the number of hours performing direct production work. The rate also does not include any hours worked by interns, trainees, students, or any worker that does not have an express or implied compensation agreement with the employer.

If any direct production worker or worker performing direct production work is compensated by a method other than hourly, such as a salary, piece-rate, or day-rate basis, the worker's hourly base wage rate-is calculated by converting the salary, piece-rate, or day-rate to an hourly equivalent. This hourly equivalent is then multiplied by the number of hours worked in direct production for purposes of calculating the average base hourly wage rate.

class of motor vehicles means one of the following categories of motor vehicles:

(a) Road tractors for semi-trailers of subheading 8701.20, vehicles for the transport of 16 or more persons of subheading 8702.10 or 8702.90, motor vehicles for the transport of goods of subheading 8704.10, 8704.22, 8704.23,

8704.32 or 8704.90, special purpose motor vehicles of heading 87.05, or chassis fitted with engines of heading 87.06;

(b) tractors of subheading 8701.10 or 8701.30 through 8701.90;

(c) vehicles for the transport of 15 or fewer persons of subheading 8702.10 or 8702.90, or light trucks of subheading 8704.21 or 8704.31; or

(d) passenger vehicles of subheading 8703.21 through 8703.90;

complete motor vehicle assembly process means the production of a motor vehicle from separate constituent parts, including the following:

(a) A structural frame or unibody
(b) body panels
(c) an engine, a transmission and a drive train
(d) brake components
(e) steering and suspension components
(f) seating and internal trim
(g) bumpers and external trim
(h) wheels and
(i) electrical and lighting components;

direct production work means work by any employee directly involved in the production of passenger vehicles, light trucks, heavy trucks, or parts used in the production of these vehicles in the territory of a USMCA country. It also includes work by an employee directly involved in the set-up, operation, or maintenance of tools or equipment used in the production of those vehicles or parts. Direct production work may take place on a production line, at a workstation, on the shop floor, or in another production area.

Direct production work also includes:

(a) Material handling of vehicles or parts;

(b) inspection of vehicles or parts, including inspections that are normally categorized as quality control and, for heavy trucks, pre-sale inspections carried out at the place where the vehicle is produced;

(c) work performed by skilled tradespeople, such as process or production engineers, mechanics, technicians and other employees responsible for maintaining and ensuring the operation of the production line or tools and equipment used in the production of vehicles or parts; and

(d) on-the-job training regarding the execution of a specific production task.

Direct production work does not include any work by executive or management staff that have the authority to make final decisions to hire, fire, promote, transfer and discipline employees; workers engaged in research and development, or work by engineering or other personnel that are not responsible for maintaining and ensuring the operation of the production line or tools and equipment used in the production of vehicles or parts. It also does not include any work by interns, trainees, students, or any worker that does not have an express or implied compensation agreement with the employer.

direct production worker means any worker whose primary responsibilities are direct production work, meaning at least 85% of the worker's time is spent performing direct production work.

first motor vehicle prototype means the first motor vehicle that

(a) is produced using tooling and processes intended for the production of motor vehicles to be offered for sale, and

(b) follows the complete motor vehicle assembly process in a manner not specifically designed for testing purposes;

heavy truck means a vehicle other than a vehicle that is solely or principally for off-road use of subheading 8701.20, 8704.22, 8704.23, 8704.32 or 8704.90, or a chassis fitted with an engine of heading 87.06 that is for use in such a vehicle;

high-wage assembly plant for passenger vehicle or light truck parts means a qualifying wage-rate production plant, operated by a corporate producer, or by a supplier with whom the producer has a contract of at least 3 years for the materials listed in sub-paragraphs (a) through (c), provided that the plant is located in the territory of a USMCA country and that it has a production capacity of:

(a) 100,000 or more engines of heading 84.07 or 84.08,

(b) 100,000 or more transmissions of subheading 8708.40, or

(c) 25,000 or more advanced battery packs;

Such engines, transmissions, or advanced battery packs are not required to qualify as originating;

high-wage assembly plant for heavy truck parts means a qualifying wage rate production plant, operated by a corporate producer, or by a supplier with whom the producer has a contract of at least 3 years for the materials listed in sub-paragraphs (a) through (c), provided that the plant is located in the territory of a USMCA country and that it has a production capacity of:

(a) 20,000 or more engines of heading 84.07 or 84.08,

(b) 20,000 or more transmissions of subheading 8708.40, or

(c) 20,000 or more advanced battery packs;

Such engines, transmissions, or advanced battery packs are not required to qualify as originating;

high-wage labor costs (HWLC) means the sum of wage expenditures, not including benefits, for workers who perform direct production work at a qualifying wage-rate vehicle assembly plant;

high-wage material (HWM) means a material that is produced in a qualifying wage-rate production plant;

high-wage technology expenditures means wage expenditures—expressed as a percentage of a passenger vehicle, light truck, or

heavy truck producer's total production wage expenditures—at a corporate level in the territory of one or more of the USMCA countries on:

(a) Research and development, including prototype development, design, engineering, or testing operations and any work undertaken by a producer for the purpose of creating new, or improving existing, materials, parts, vehicles or processes, including incremental improvements thereto, and

(b) information technology, including software development, technology integration, vehicle communications, or information technology support operations,

Expenditures on capital or other non-wage costs for R&D or IT are not included. For greater certainty, there is no minimum wage rate associated with high-wage technology expenditures;

high-wage transportation or related costs for shipping means costs incurred by a producer for transportation, logistics, or material handling associated with the movement of high-wage parts or materials within the territories of the USMCA countries, provided that the transportation, logistics, or material handling provider pays an average base hourly wage rate to direct production employees performing these services of at least:

(a) US$16 in the United States;

(b) CA$20.88 in Canada; and

(c) MXN$294.22 in Mexico;

High-wage transportation or related costs for shipping may be included in high wage material and manufacturing expenses if those costs are not otherwise included;

light truck means a vehicle of subheading 8704.21 or 8704.31, except for a vehicle that is solely or principally for off-road use;

marque means the trade name used by a separate marketing division of a motor vehicle assembler;

model line means a group of motor vehicles having the same platform or model name;

model name means the word, group of words, letter, number or similar designation assigned to a motor vehicle by a marketing division of a motor vehicle assembler to:

(a) Differentiate the motor vehicle from other motor vehicles that use the same platform design,

(b) associate the motor vehicle with other motor vehicles that use different platform designs, or

(c) denote a platform design;

motorhome or entertainer coach means a vehicle of heading 87.02 or 87.03 built on a self-propelled motor vehicle chassis that is solely or principally designed as temporary living quarters for recreational, camping, entertainment, corporate or seasonal use;

motor vehicle assembler means a producer of motor vehicles and any related persons or joint ventures in which the producer participates;

new building means a new construction, including at least the pouring or construction of a new foundation and floor, the erection of a new structure and roof and installation of new plumbing, electrical and other utilities to house a complete vehicle assembly process;

passenger vehicle means a vehicle of subheading 8703.21 through 8703.90, except for:

(a) A vehicle with a compression-ignition engine of subheading 8703.31 through 8703.33 or a vehicle of subheading 8703.90 with both a compression-ignition engine and an electric motor for propulsion,

(b) a three- or four-wheeled motorcycle,

(c) an all-terrain vehicle,

(d) a motorhome or entertainer coach, or

(e) an ambulance, hearse or prison van;

plant means a building, or buildings in close proximity but not necessarily contiguous, machinery, apparatus and fixtures that are under the control of a producer and are used in the production of any of the following:

(a) Passenger vehicles, light trucks or heavy trucks,

(b) a good listed in Table A.1, A.2, B, C, D, E, F or G;

platform means the primary load-bearing structural assembly of a motor vehicle that determines the basic size of the motor vehicle, and is the structural base that supports the driveline and links the suspension components of the motor vehicle for various types of frames, such as the body-on-frame or space-frame, and monocoques;

qualifying wage-rate production plant means a plant that produces materials for passenger vehicles, light trucks or heavy trucks located in the territory of a USMCA country, at which the average base hourly wage rate is at least:

(a) US$16 in the United States;

(b) CA$20.88 in Canada; and

(c) MXN$294.22 in Mexico;

qualifying wage-rate vehicle assembly plant means a passenger vehicle, light truck or heavy truck assembly plant located in the territory of a USMCA country, at which the average base hourly wage rate is at least:

(a) US$16 in the United States;

(b) CA$20.88 in Canada; and

(c) MXN$294.22 in Mexico;

refit means a plant closure, for purposes of plant conversion or retooling, that lasts at least three months;

size category, with respect to a light-duty vehicle, means that the total of the interior volume for passengers and the interior volume for luggage is

(a) 85 cubic feet (2.38 m^3) or less,

(b) more than 85 cubic feet (2.38 m3) but less than 100 cubic feet (2.80 m3),

(c) 100 cubic feet (2.80 m3) or more but not more than 110 cubic feet (3.08 m3),

(d) more than 110 cubic feet (3.08 m3) but less than 120 cubic feet (3.36 m3), or

(e) 120 cubic feet (3.36 m3) or more;

super-core means the parts listed in column 1 of Table A.2 of this Part, which are considered as a single part for the purpose of performing a Regional Value Content calculation in accordance with subsections 14(10), 14(11), 14(13) and 16(10);

total vehicle plant assembly annual purchase value (TAPV) means the sum of the values of all parts or materials purchased, on an annual basis, for use in the production of passenger vehicles, light trucks or heavy trucks in a plant located in the territory of a USMCA country;

underbody means a component, comprising a single part or two or more parts joined together, with or without additional stiffening members, that forms the base of a motor vehicle, beginning at the fire-wall or bulkhead of the motor vehicle and ending:

(a) If there is a luggage floor panel in the motor vehicle, at the place where that luggage floor panel begins, or

(b) if there is no luggage floor panel in the motor vehicle, at the place where the passenger compartment of the motor vehicle ends;

vehicle that is solely or principally for off-road use means a vehicle that does not meet U.S. federal safety and emissions standards permitting unrestricted on-road use or the equivalent Mexican and Canadian on-road standards.

SECTION 13: PRODUCT-SPECIFIC RULES OF ORIGIN FOR VEHICLES AND CERTAIN AUTO PARTS

(1) Except as provided for in section 19 (Alternative Staging Regimes), the product-specific rule of origin for a good of heading 87.01 through 87.08 is:

8701.10 A change to a good of subheading 8701.10 from any other heading, provided there is a regional value content of not less than 60 percent under the net cost method.

8701.20 A change to a good of subheading 8701.20 from any other heading, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027; or

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

8701.30–8701.90 A change to a good of subheading 8701.30 through 8701.90 from any other heading, provided there is a regional value content of not less than 60 percent under the net cost method.

8702.10–8702.90

(1) A change to a motor vehicle for the transport of 15 or fewer persons of subheading 8702.10 through 8702.90 from any other heading, provided there is a regional value content of not less than 62.5 percent under the net cost method; or

(2) A change to a motor vehicle for the transport of 16 or more persons of subheading 8702.10 through 8702.90 from any other heading, provided there is a regional value content of not less than 60 percent under the net cost method.

8703.10 A change to subheading 8703.10 from any other heading, provided there is a regional value content of not less than:

(a) 60 percent under the transaction value method, or

(b) 50 percent under the net cost method.

8703.21–8703.90 (1) A change to a passenger vehicle of subheading 8703.21 through 8703.90 from any other heading, provided there is a regional value content of not less than:

(a) 66 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 69 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 72 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 75 percent under the net cost method, beginning on July 1, 2023, and thereafter; or

(2) A change to any other good of subheading 8703.21 through 8703.90 from any other heading, provided there is a regional value content of not less than 62.5 percent under the net cost method.

8704.10 A change to a good of subheading 8704.10 from any other heading, provided there is a regional value content of not less than 60 percent under the net cost method.

8704.21 (1) A change to a light truck of subheading 8704.21 from any other heading, provided there is a regional value content of not less than:

(a) 66 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 69 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 72 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 75 percent under the net cost method, beginning on July 1, 2023, and thereafter; or

(2) A change to a vehicle that is solely or principally for off-road use subheading 8704.21 from any other heading, provided there is a regional value content of not less than 62.5 percent under the net cost method.

8704.22–8704.23 (1) A change to a heavy truck of subheading 8704.22 through 8704.23 from any other heading, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter; or

(2) A change to a vehicle that is solely or principally for off-road use subheading

8704.22 through 8704.23 from any other heading, provided there is a regional value content of not less than 60 percent under the net cost method.

8704.31 (1) A change to a light truck of subheading 8704.31 from any other heading, provided there is a regional value content of not less than:

(a) 66 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 69 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 72 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 75 percent under the net cost method, beginning on July 1, 2023, and thereafter; or

(2) A change to a vehicle that is solely or principally for off-road use subheading 8704.31 from any other heading, provided there is a regional value content of not less than 62.5 percent under the net cost method.

8704.32–8704.90 (1) A change to a heavy truck of subheading 8704.32 through 8704.90 from any other heading, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter; or

(2) A change to a vehicle that is solely or principally for off-road use of subheading 8704.32 through 8704.90 from any other heading, provided there is a regional value content of not less than 60 percent under the net cost method.

87.05 A change to heading 87.05 from any other heading, provided there is a regional value content of not less than 60 percent under the net cost method.

87.06 For a good of heading 87.06 for use as original equipment in a passenger vehicle or light truck:

(1) No required change in tariff classification provided there is a regional value content of not less than:

(a) 66 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 69 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 72 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 75 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a good of heading 87.06 for use as original equipment in a heavy truck:

(2) No required change in tariff classification provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For any other good of heading 87.06 for use as original equipment in any other vehicle, or as an aftermarket part:

(3) No required change in tariff classification provided there is a regional value content of not less than 60 percent under the net cost method.

87.07 For a good of heading 87.07 for use as original equipment in a passenger vehicle or light truck:

(1) No required change in tariff classification provided there is a regional value content of not less than:

(a) 66 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 69 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 72 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 75 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a good of heading 87.07 for use as original equipment in a heavy truck:

(2) A change to heading 87.07 from any other chapter; or

(3) No required change in tariff classification provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For any other good of heading 87.07 for use as original equipment in any other vehicle or as an aftermarket part:

(4) A change to heading 87.07 from any other chapter; or

(5) No required change in tariff classification provided there is a regional value content of not less than 60 percent under the net cost method.

8708.10 For a good of subheading 8708.10 for use as original equipment in a passenger vehicle or light truck:

(1) A change to subheading 8708.10 from any other heading; or

(2) A change to subheading 8708.10 from subheading 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a good of subheading 8708.10 for use as original equipment in a heavy truck:

(3) A change to subheading 8708.10 from any other heading; or

(4) A change to subheading 8708.10 from subheading 8708.99, whether or not there is

also a change from any other heading, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For any other good of subheading 8708.10 for use as original equipment in any other vehicle or as an aftermarket part:

(5) A change to subheading 8708.10 from any other heading; or

(6) A change to subheading 8708.10 from subheading 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method.

8708.21 For a good of subheading 8708.21 for use as original equipment in a passenger vehicle or light truck:

(1) A change to subheading 8708.21 from any other heading; or

(2) A change to subheading 8708.21 from subheading 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a good of subheading 8708.21 for use as original equipment in a heavy truck:

(3) A change to subheading 8708.21 from any other heading; or

(4) A change to subheading 8708.21 from subheading 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For any other good of subheading 8708.21 for use as original equipment in any other vehicle or as an aftermarket part:

(5) A change to subheading 8708.10 from any other heading; or

(6) A change to subheading 8708.10 from subheading 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method.

8708.29 For a body stamping of subheading 8708.29 for use as original equipment in a passenger vehicle or light truck:

(1) No required change in tariff classification to a body stamping of subheading 8708.29, provided there is a regional value content of not less than:

(a) 66 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 69 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 72 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 75 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For any other good of subheading 8708.29 for use as original equipment in a passenger vehicle or light truck:

(2) A change to subheading 8708.29 from any other heading; or

(3) No required change in tariff classification to subheading 8708.29, provided there is a regional value content of not less than:

(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a good of subheading 8708.29 for use as original equipment in a heavy truck:

(4) A change to subheading 8708.29 from any other heading; or

(5) No required change in tariff classification to subheading 8708.29, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For any other good of subheading 8708.29 for use as original equipment in any other vehicle or as an aftermarket part:

(6) A change to subheading 8708.29 from any other heading; or

(7) No required change in tariff classification to subheading 8708.29, provided there is a regional value content of not less than 50 percent under the net cost method.

8708.30 For a good of subheading 8708.30 for use as original equipment in a passenger vehicle or light truck:

(1) A change to subheading 8708.30 from any other heading; or

(2) No required change in tariff classification to subheading 8708.30, provided there is a regional value content of not less than:

(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a good of subheading 8708.30 for use as original equipment in a heavy truck:

(3) A change to subheading 8708.30 from any other heading; or

(4) No required change in tariff classification to subheading 8708.30, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For any other good of subheading 8708.30 for use as original equipment in any other vehicle or as an aftermarket part:

(5) A change to mounted brake linings of subheading 8708.30 from any other heading; or

(6) A change to mounted brake linings of subheading 8708.30 from parts of mounted brake linings, brakes or servo-brakes of subheading 8708.30 or 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method;

(7) A change to any other good of subheading 8708.30 from any other heading; or

(8) A change to any other good of subheading 8708.30 from mounted brake linings or parts of brakes or servo-brakes of subheading 8708.30, or 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method.

8708.40 For a good of subheading 8708.40 for use as original equipment in a passenger vehicle or light truck:

(1) No required change in tariff classification to subheading 8708.40, provided there is a regional value content of not less than:

(a) 66 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 69 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 72 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 75 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a good of subheading 8708.40 for use as original equipment in a heavy truck:

(2) A change to subheading 8708.40 from any other heading; or

(3) No required change in tariff classification to subheading 8708.40, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For a good of subheading 8708.40 for use as original equipment in any other vehicle or as an aftermarket part:

(4) A change to gear boxes of subheading 8708.40 from any other heading; or

(5) A change to gear boxes of subheading 8708.40 from any other good of subheading 8708.40 or 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method;

(6) A change to any other good of subheading 8708.40 from any other heading; or

(7) No required change in tariff classification to any other good of subheading 8708.40, provided there is a regional value content of not less than 50 percent under the net cost method.

8708.50 For a good of subheading 8708.50 for use as original equipment in a passenger vehicle or light truck:

(1) No required change in tariff classification to subheading 8708.50, provided there is a regional value content of not less than:

(a) 66 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 69 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 72 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 75 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a good of subheading 8708.50 for use as original equipment in a heavy truck:

(2) A change to drive-axles with differential, whether or not provided with other transmission components, for vehicles of heading 87.03, of subheading 8708.50 from any other heading, except from subheading 8482.10 through 8482.80; or

(3) A change to drive-axles with differential, whether or not provided with other transmission components, for vehicles of heading 87.03, of subheading 8708.50 from subheading 8482.10 through 8482.80 or parts of drive-axles of subheading 8708.50, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

(4) A change to other drive-axles with differential, whether or not provided with other transmission components, of subheading 8708.50 from any other heading; or

(5) A change to other drive-axles with differential, whether or not provided with other transmission components, of subheading 8708.50 from subheading 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

(6) A change to non-driving axles and parts thereof, for vehicles of heading 87.03, of subheading 8708.50 from any other heading, except from subheading 8482.10 through 8482.80; or

(7) A change to non-driving axles and parts thereof, for vehicles of heading 87.03, of subheading 8708.50 from subheading 8482.10 through 8482.80 or 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter;

(8) A change to other non-driving axles and parts thereof of subheading 8708.50 from any other heading; or

(9) A change to other non-driving axles and parts thereof of subheading 8708.50 from subheading 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

(10) A change to any other good of subheading 8708.50 from any other heading; or

(11) No required change in tariff classification to any other good of subheading 8708.50, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For a good of subheading 8708.50 for use as original equipment in any other vehicle or as an aftermarket part:

(12) A change to drive-axles with differential, whether or not provided with other transmission components, for vehicles of heading 87.03, of subheading 8708.50 from any other heading, except from subheading 8482.10 through 8482.80; or

(13) A change to drive-axles with differential, whether or not provided with other transmission components, for vehicles of heading 87.03, of subheading 8708.50 from subheading 8482.10 through 8482.80 or parts of drive-axles of subheading 8708.50, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method;

(14) A change to other drive-axles with differential, whether or not provided with other transmission components, of subheading 8708.50 from any other heading; or

(15) A change to other drive-axles with differential, whether or not provided with other transmission components, of subheading 8708.50 from subheading 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method;

(16) A change to non-driving axles and parts thereof, for vehicles of heading 87.03, of subheading 8708.50 from any other heading, except from subheading 8482.10 through 8482.80; or

(17) A change to non-driving axles and parts thereof, for vehicles of heading 87.03, of subheading 8708.50 from subheading 8482.10 through 8482.80 or 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method;

(18) A change to other non-driving axles and parts thereof of subheading 8708.50 from any other heading; or

(19) A change to other non-driving axles and parts thereof of subheading 8708.50 from subheading 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method;

(20) A change to any other good of subheading 8708.50 from any other heading; or

(21) No required change in tariff classification to any other good of subheading 8708.50, provided there is a regional value content of not less than 50 percent under the net cost method.

8708.70 For a good of subheading 8708.70 for use as original equipment in a passenger vehicle or light truck:

(1) A change to subheading 8708.70 from any other heading; or

(2) A change to subheading 8708.70 from subheading 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method.

(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a good of subheading 8708.70 for use as original equipment in a heavy truck:

(3) A change to subheading 8708.70 from any other heading; or

(4) A change to subheading 8708.70 from subheading 8708.99, whether or not there is

also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method.

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For any other good of subheading 8708.70 for use as original equipment in any other vehicle or as an aftermarket part:

(5) A change to subheading 8708.70 from any other heading; or

(6) A change to subheading 8708.70 from subheading 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method.

8708.80 For a good of subheading 8708.80 for use as original equipment in a passenger vehicle or light truck:

(1) No required change in tariff classification to subheading 8708.80, provided there is a regional value content of not less than:

(a) 66 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 69 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 72 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 75 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a good of subheading 8708.80 for use as original equipment in a heavy truck:

(2) A change to McPherson struts of subheading 8708.80 from parts thereof of subheading 8708.80 or any other subheading, provided there is a regional value content of not less than 50 percent under the net cost method;

(3) A change to any other good of subheading 8708.80 from any other heading; or

(4) A change to suspension systems (including shock absorbers) of subheading 8708.80 from parts thereof of subheading 8708.80 or 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter; or

(5) No required change in tariff classification to parts of suspension systems (including shock absorbers) of subheading 8708.80, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For any other good of subheading 8708.80 for use as original equipment in any other vehicle or as an aftermarket part:

(6) A change to McPherson struts of subheading 8708.80 from parts thereof of subheading 8708.80 or any other subheading, provided there is a regional value content of not less than 50 percent under the net cost method;

(7) A change to subheading 8708.80 from any other heading;

(8) A change to suspension systems (including shock absorbers) of subheading 8708.80 from parts thereof of subheading 8708.80 or 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method; or

(9) No required change in tariff classification to parts of suspension system (including shock absorbers) of subheading 8708.80, provided there is a regional value content of not less than 50 percent under the net cost method.

8708.91 For a good of subheading 8708.91 for use as original equipment in a passenger vehicle or light truck:

(1) A change to radiators of subheading 8708.91 from any other heading;

(2) A change to radiators of subheading 8708.91 from any other good of subheading 8708.91, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023; or

(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.

(3) No required change in tariff classification to any other good of subheading 8708.91, provided there is a regional value content of not less than:

(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023; or

(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a good of subheading 8708.91 for use as original equipment in a heavy truck:

(4) No required change in tariff classification to any other good of subheading 8708.91, provided there is a regional value content of not less than:

(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;
(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023; or
(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.
(5) A change to radiators of subheading 8708.91 from any other heading;
(6) A change to radiators of subheading 8708.91 from any other good of subheading 8708.91, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:
(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;
(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;
(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For any other good of subheading 8708.91 for use as original equipment in any other vehicle or as an aftermarket part:

(7) A change to radiators of subheading 8708.91 from any other heading;
(8) A change to radiators of subheading 8708.91 from any other good of subheading 8708.91, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method; or
(9) No required change in tariff classification to any other good of subheading 8708.91, provided there is a regional value content of not less than 50 percent under the net cost method.

8708.92 For a good of subheading 8708.92 for use as original equipment in a passenger vehicle or light truck:

(1) A change to silencers (mufflers) or exhaust pipes of subheading 8708.92 from any other heading;
(2) A change to silencers (mufflers) or exhaust pipes of subheading 8708.92 from any other good of subheading 8708.92, whether or not there is also a change from any other heading, provided there is a regional value content of not less than; or
(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;
(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;
(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;
(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.
(3) No required change in tariff classification to any other good of subheading 8708.92, provided there is a regional value content of not less than:
(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;
(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;
(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023; or
(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a good of subheading 8708.92 for use as original equipment in a heavy truck:

(4) A change to silencers (mufflers) or exhaust pipes of subheading 8708.92 from any other heading;
(5) A change to silencers (mufflers) or exhaust pipes of subheading 8708.92 from any other good of subheading 8708.92, whether or not there is also a change from any other heading, provided there is a regional value content of not less than; or
(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;
(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;
(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.
(6) No required change in tariff classification to any other good of subheading 8708.92, provided there is a regional value content of not less than:
(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;
(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;
(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023; or
(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For any other good of subheading 8708.92 for use as original equipment in any other vehicle or as an aftermarket part:

(7) A change to silencers (mufflers) or exhaust pipes of subheading 8708.92 from any other heading;
(8) A change to silencers (mufflers) or exhaust pipes of subheading 8708.92 from any other good of subheading 8708.92, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method; or
(9) No required change in tariff classification to any other good of subheading 8708.92, provided there is a regional value content of not less than 50 percent under the net cost method.

8708.93 For a good of subheading 8708.93 for use as original equipment in a passenger vehicle or light truck:

(1) A change to subheading 8708.93 from any other heading;
(2) A change to subheading 8708.93 from subheading 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 70 percent under the net cost method; or
(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;
(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;
(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a good of subheading 8708.93 for use as original equipment in a heavy truck:

(3) A change to subheading 8708.93 from any other heading;

(4) A change to subheading 8708.93 from subheading 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 70 percent under the net cost method; or

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For any other good of subheading 8708.93 for use as original equipment in any other vehicle or as an aftermarket part:

(5) A change to subheading 8708.93 from any other heading;

(6) A change to subheading 8708.93 from subheading 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method.

8708.94 For a good of subheading 8708.94 for use as original equipment in a passenger vehicle or light truck:

(1) No required change in tariff classification to subheading 8708.94, provided there is a regional value content of not less than:

(a) 66 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 69 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 72 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 75 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a good of subheading 8708.94 for use as original equipment in a heavy truck:

(2) A change to subheading 8708.94 from any other heading; or

(3) A change to steering wheels, steering columns or steering boxes of subheading 8708.94 from parts thereof of subheading 8708.94 or 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter;

(4) No required change in tariff classification to parts of steering wheels, steering columns or steering boxes of subheading 8708.94, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For any other good of subheading 8708.94 for use as original equipment in any other vehicle or as an aftermarket part:

(5) A change to subheading 8708.94 from any other heading; or

(6) A change to steering wheels, steering columns or steering boxes of subheading 8708.94 from parts thereof of subheading 8708.94 or 8708.99, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 percent under the net cost method;

(7) No required change in tariff classification to parts of steering wheels, steering columns or steering boxes of subheading 8708.94, provided there is a regional value content of not less than 50 percent under the net cost method.

8708.95 For a good of subheading 8708.95 for use as original equipment in a passenger vehicle or light truck:

(1) A change to subheading 8708.95 from any other heading; or

(2) No required change in tariff classification to subheading 8708.95, provided there is a regional value content of not less than:

(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;

(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;

(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;

(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a good of subheading 8708.95 for use as original equipment in a heavy truck:

(1) A change to subheading 8708.95 from any other heading; or

(2) No required change in tariff classification to subheading 8708.95, provided there is a regional value content of not less than:

(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;

(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For any other good of subheading 8708.95 for use as original equipment in any other vehicle or as an aftermarket part:

(3) A change to subheading 8708.95 from any other heading; or

(4) No required change in tariff classification to subheading 8708.95, provided there is a regional value content of not less than 50 percent under the net cost method.

8708.99 For a chassis frame of subheading 8708.99 for use as original equipment in a passenger vehicle or light truck:

(1) No required change in tariff classification to subheading 8708.99, provided there is a regional value content of not less than:

(a) 66 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;
(b) 69 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;
(c) 72 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;
(d) 75 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For a chassis of subheading 8708.99 for use as original equipment in a heavy truck:

(2) No required change in tariff classification to subheading 8708.99, provided there is a regional value content of not less than:
(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;
(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;
(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For any other good of subheading 8708.99 for use as original equipment in a passenger vehicle or light truck:

8708.99.aa A change to tariff item 8708.99.aa from any other subheading, provided there is a regional value content of not less than:
(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;
(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;
(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;
(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.

8708.99.bb A change to tariff item 8708.99.bb from any other heading, except from subheading 8482.10 through 8482.80 or tariff item 8482.99.aa; or

A change to tariff item 8708.99.bb from subheadings 8482.10 through 8482.80 or tariff item 8482.99.aa, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:
(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;
(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;
(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;
(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.

8708.99 A change to subheading 8708.99 from any other heading; or

No required change in tariff classification to subheading 8708.99, provided there is a regional value content of not less than:
(a) 62.5 percent under the net cost method, beginning on July 1, 2020 until June 30, 2021;
(b) 65 percent under the net cost method, beginning on July 1, 2021 until June 30, 2022;
(c) 67.5 percent under the net cost method, beginning on July 1, 2022 until June 30, 2023;
(d) 70 percent under the net cost method, beginning on July 1, 2023, and thereafter.

For any other good of subheading 8708.99 for use as original equipment in a heavy truck:

8708.99.aa A change to tariff item 8708.99.aa from any other subheading, provided there is a regional value content of not less than:
(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;
(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;
(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

8708.99.bb A change to tariff item 8708.99.bb from any other heading, except from subheading 8482.10 through 8482.80 or tariff item 8482.99.aa; or

A change to tariff item 8708.99.bb from subheadings 8482.10 through 8482.80 or tariff item 8482.99.aa, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:
(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;
(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;
(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

8708.99 A change to subheading 8708.99 from any other heading; or

No required change in tariff classification to subheading 8708.99, provided there is a regional value content of not less than:
(a) 60 percent under the net cost method, beginning on July 1, 2020 until June 30, 2024;
(b) 64 percent under the net cost method, beginning on July 1, 2024 until June 30, 2027;
(c) 70 percent under the net cost method, beginning on July 1, 2027, and thereafter.

For any other good of subheading 8708.99 for use as original equipment in any other vehicle or as an aftermarket part:

8708.99.aa A change to tariff item 8708.99.aa from any other subheading, provided there is a regional value content of not less than 50 per cent under the net cost method.

8708.99.bb A change to tariff item 8708.99.bb from any other heading, except from subheading 8482.10 through 8482.80 or tariff item 8482.99.aa; or

A change to tariff item 8708.99.bb from subheadings 8482.10 through 8482.80 or tariff item 8482.99.aa, whether or not there is also a change from any other heading, provided there is a regional value content of not less than 50 per cent under the net cost method.

8708.99 A change to subheading 8708.99 from any other heading; or

No required change in tariff classification to subheading 8708.99, provided there is a regional value content of not less than 50 percent under the net cost method.

SECTION 14: FURTHER REQUIREMENTS RELATED TO THE REGIONAL VALUE CONTENT FOR PASSENGER VEHICLES, LIGHT TRUCKS, AND PARTS THEREOF

Roll-Up of Originating Materials

(1) The value of non-originating materials used by the producer in the production of a passenger vehicle, light truck and parts thereof must not, for the purpose of calculating the regional value content of the good, include the value of non-originating materials used to produce originating materials that are subsequently used in the production of the good. For greater certainty, if the production undertaken on non-originating materials results in the production of a good that qualifies as originating, no account is to be taken of the non-originating material contained therein if that good is used in the subsequent production of another good.

Requirements Related to Core Parts Listed in Table A.1

(2) A part listed in Table A.1 that is for use as original equipment in the production of a passenger vehicle or light truck, except for batteries of subheading 8507.60 that are used as the primary source of electrical power for the propulsion of an electric passenger vehicle or an electric light truck, is originating only if it satisfies the regional value content requirement in sections 13 or 14 or Schedule I (PSRO Annex).

(3) A battery of subheading 8507.60 that is used as the primary source of electrical power for the propulsion of an electric passenger vehicle or an electric light truck is originating if it meets the applicable requirements set out in section 14 or Schedule I (PSRO Annex).

Parts Listed in Column 1 of Table A.2 Must Be Originating for Passenger Vehicle or Light Truck To Be Originating

(4) In addition to other applicable requirements set out in these Regulations, a passenger vehicle or light truck is only originating if the parts listed in column 1 of Table A.2 used in its production are originating. The value of non-originating materials (VNM) for such parts must be calculated in accordance with subsections 14(7) through 14(8), or, at the choice of the vehicle producer or exporter, subsections 14(9) through 14(11). The net cost of a part must be calculated in accordance with section 7 (Regional Value Content), without regard to the VNM calculation method chosen.

Parts Listed in Column 1 of Table A.2 Must Meet an RVC Requirement; Advanced Batteries May Meet an RVC or Tariff Shift Requirement

(5) Except for an advanced battery of subheading 8507.60, a part listed in column 1 of Table A.2, that is for use in a passenger vehicle or light truck, must meet the regional value content requirement of section 13 or Schedule I (PSRO Annex) to be considered originating.

(6) An advanced battery of subheading 8507.60, that is for use in a passenger vehicle or light truck, is originating if it meets the applicable change in tariff classification or regional value content requirements set out in Schedule I (PSRO Annex).

VNM for Core Parts May Include All Non-Originating Materials, or Only Materials Listed in Column 2 of Table A.2

(7) For the purpose of satisfying the requirement specified in subsections (4) through (6), the regional value content of a part listed in column 1 of Table A.2, the value of non-originating materials (VNM) may be determined, at the choice of the vehicle producer or exporter, taking into consideration:

(a) The value of all non-originating materials used in the production of the part; or

(b) the value of non-originating components that are listed in column 2 of Table A.2 that are used in the production of the part.

(8) For the purposes of a regional value content calculation for a good listed in column 1 of Table A.2, based on paragraph (7)(b), any non-originating materials used in the production of the good that are not listed in column 2 of Table A.2 may be disregarded. For greater certainty, any non-originating parts listed in column 2 of Table A.2 must be included in the VNM calculation. Any parts not listed in column 2 of Table A.2 or materials or components used to produce such parts should also not be part of the VNM calculation.

(9) Subsections (7) and (8) do not apply when calculating the regional value content of a part listed in Column 1 of Table A.2 traded on its own. The rules for such parts are listed in section 13 or Schedule I of these Regulations.

Parts Listed in Column 1 of Table A.2 May Be Treated as a Single, Super-Core Part

(10) For the purpose of satisfying the requirement specified in subsections (4) through (6) and as an alternative to determining the VNM based on the method in subsection (7), the regional value content of the parts listed in column 1 of Table A.2 of these Regulations may be determined, at the choice of the vehicle producer or exporter, by treating these parts as a single part, which may be referred to as a super-core part,

using the sum of the net cost of each part listed under column 1 of Table A.2 of these Regulations, and when calculating the VNM taking into consideration:

(a) The sum of the value of all non-originating materials used in the production of the parts listed under column 1 of table A.2; or

(b) the sum of the value of the non-originating components that are listed in column 2 of Table A.2 that are used in the production of the parts listed in column 1 of Table A.2.

(11) If a non-originating material used in the production of a component listed in column 2 of Table A.2 undergoes further production such that it satisfies the requirements of these Regulations, the component is treated as originating when determining the originating status of the subsequently produced part listed in column 1 of Table A.2, regardless of whether that component was produced by the producer of the part.

(12) The regional value content requirement for the parts listed in column 1 of Table A.2 may be averaged in accordance with the provisions in Section 16. Such an average may be calculated using the average regional value content for each individual parts category in the left hand column of Table A.2, or by calculating the average regional value content for all parts in the left hand column of Table A by treating them as a single part, defined as a super-core. Once this average, by either methodology, exceeds the required thresholds listed in subsection (13), all parts used to calculate this average are considered originating.

RVC Requirements Related to Parts Listed in Tables A.1 and A.2

(13) Further to subsections (2), (7) and (10), the following regional value content thresholds apply to parts for use as original equipment listed under Table A.1 and column 1 of Table A.2:

(a) 66 percent under the net cost method or 76 percent under the transaction value method beginning on July 1, 2020 until June 30, 2021;

(b) 69 percent under the net cost method or 79 percent under the transaction value method beginning on July 1, 2021 until June 30, 2022;

(c) 72 percent under the net cost method or 82 percent under the transaction value method, beginning on July 1, 2022 until June 30, 2023; or

(d) 75 percent under the net cost method or 85 percent under the transaction value method, beginning on July 1, 2023, and thereafter.

Requirements Related to Principal and Complementary Parts Listed in Tables B and C

(14) Notwithstanding the regional value content requirements set out in Schedule I (PSRO Annex), a material listed in Table B is considered originating if it satisfies the applicable change in tariff classification requirement or the applicable regional value-content requirement provided in Schedule I (PSRO Annex).

(15) Further to subsection (14), the following regional value content thresholds apply to parts for use as original equipment listed under Table B:

(a) 62.5 percent under the net cost method or 72.5 percent under the transaction value method beginning on July 1, 2020 until June 30, 2021;

(b) 65 percent under the net cost method or 75 percent under the transaction value method beginning on July 1, 2021 until June 30, 2022;

(c) 67.5 percent under the net cost method or 77.5 percent under the transaction value method, beginning on July 1, 2022 until June 30, 2023; or

(d) 70 percent under the net cost method or 80 percent under the transaction value method, beginning on July 1, 2023, and thereafter.

(16) Notwithstanding the regional value content requirements set out in Schedule I (PSRO Annex), a material listed in Table C is originating if it meets the applicable change in tariff classification requirement or the applicable regional value-content requirement provided in Schedule I (PSRO Annex).

(17) Further to subsection (16), the following regional value content thresholds apply to parts for use as original equipment listed under Table C:

(a) 62 percent under the net cost method or 72 percent under the transaction value method beginning on July 1, 2020 until June 30, 2021;

(b) 63 percent under the net cost method or 73 percent under the transaction value method beginning on July 1, 2021 until June 30, 2022;

(c) 64 percent under the net cost method or 74 percent under the transaction value method, beginning on July 1, 2022 until June 30, 2023; or

(d) 65 percent under the net cost method or 75 percent under the transaction value method, beginning on July 1, 2023, and thereafter.

(18) For greater certainty, subsections (13), (15) or (17) do not apply to aftermarket parts.

SECTION 15: FURTHER REQUIREMENTS RELATED TO THE REGIONAL VALUE CONTENT FOR HEAVY TRUCKS AND PARTS THEREOF

(1) The value of non-originating materials used by the producer in the production of a heavy truck and parts thereof must not, for the purpose of calculating the regional value content of the good, include the value of non-originating materials used to produce originating materials that are subsequently used in the production of the good.

(2) Notwithstanding the Product-Specific Rules of Origin in Schedule I (PSRO Annex),

the regional value content requirement for a part listed in Table D that is for use in a heavy truck is:

(a) 60 percent under the net cost method or 70 percent under the transaction value method, if the corresponding rule includes a transaction value method, beginning on July 1, 2020 until June 30, 2024;

(b) 64 percent under the net cost method or 74 percent under the transaction value method, if the corresponding rule includes a transaction value method beginning on July 1, 2024 until June 30, 2027; or

(c) 70 percent under the net cost method or 80 percent under the transaction value method, if the corresponding rule includes a transaction value method, beginning on July 1, 2027, and thereafter.

(3) Notwithstanding the Product-Specific Rules of Origin in Schedule I (PSRO Annex), the regional value content requirement for a part listed in Table E that is for use in a heavy truck is:

(a) 50 percent under the net cost method or 60 percent under the transaction value method, if the corresponding rule includes a transaction value method, beginning on July 1, 2024 until June 30, 2027; or

(b) 54 percent under the net cost method or 64 percent under the transaction value method, if the corresponding rule includes a transaction value method beginning on July 1, 2024 until June 30, 2027; or

(c) 60 percent under the net cost method or 70 percent under the transaction value method, if the corresponding rule includes a transaction value method, beginning on July 1, 2027, and thereafter.

(4) Notwithstanding section 13 (Product-Specific Rules of Origin for Vehicles) or Schedule I (PSRO Annex), an engine of heading 84.07 or 84.08, or a gear box (transmission) of subheading 8708.40, or a chassis classified in 8708.99, that is for use in a heavy truck, is originating only if it satisfies the applicable regional value content requirement in subsection (2).

SECTION 16: AVERAGING FOR PASSENGER VEHICLES, LIGHT TRUCKS AND HEAVY TRUCKS

(1) For the purpose of calculating the regional value content of a passenger vehicle, light truck, or heavy truck, the calculation may be averaged over the producer's fiscal year, using any one of the following categories, on the basis of either all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of one or more of the other USMCA countries:

(a) The same model line of motor vehicles in the same class of vehicles produced in the same plant in the territory of a USMCA country;

(b) the same class of motor vehicles produced in the same plant in the territory of a USMCA country;

(c) the same model line or same class of motor vehicles produced in the territory of a USMCA country; or

(d) any other category as the USMCA countries may decide.

(2) For the purposes of paragraph (1)(c), vehicles within the same model line or class may be averaged separately if such vehicles are subject to different regional value content requirements.

(3) If a producer chooses to use averaging for the purpose of calculating regional value content, the producer must state the category it has chosen, and:

(a) If the category referred to in paragraph (1)(a) is chosen, state the model line, model name, class of passenger vehicle, light truck, or heavy truck and tariff classification of the motor vehicles in that category, and the location of the plant at which the motor vehicles are produced,

(b) if the category referred to in paragraph (1)(b) is chosen, state the model name, class of passenger vehicle, light truck, or heavy truck and tariff classification of the motor vehicles in that category, and the location of the plant at which the motor vehicles are produced,

(c) if the category referred to in paragraph (1)(c) is chosen, state the model line, model name, class of motor vehicle and tariff classification of the passenger vehicle, light truck, or heavy truck in that category, and the locations of the plants at which the motor vehicles are produced,

(d) if the category referred to in paragraph (1)(d) is chosen, state the model lines, model names, classes of motor vehicles and tariff classifications of the passenger vehicles, light trucks, or heavy trucks, and the location of the plants at which the motor vehicles are produced, or

(e) if the category referred to in paragraph (1)(e) is chosen, state the model lines, model names, classes of motor vehicles and tariff classifications of the passenger vehicles, light trucks, or heavy trucks, the location of the plants at which the motor vehicles are produced and the party or parties to which the vehicles are exported;

Averaging Period

(4) If the fiscal year of a producer begins after July 1, 2020, but before July 1, 2021, the producer may calculate its regional value content for passenger vehicles, light trucks, heavy trucks, other vehicles, core parts listed in Table A.2 used in the production of passenger vehicles, light trucks or heavy trucks, an automotive good listed in Tables A.1, B, C, D or E, steel and aluminum purchasing requirement and labor value content, for the period beginning on July 1, 2020 and ending at the end of the following fiscal year.

Averaging After Entry Into Force + D133

(5) For the period July 1, 2020 to June 30, 2023, the producer may calculate its regional value content for passenger vehicles, light trucks, heavy trucks, other vehicles, core parts listed in Table A.2 used in the production of passenger vehicles, light trucks or heavy trucks, an automotive good listed in Tables A.1, B, C, D or E, steel and aluminum purchasing requirement and labor value content, for the following periods:

(a) July 1, 2020 to June 30, 2021

(b) July 1, 2021 to June 30, 2022

(c) July 1, 2022 to June 30, 2023, and

(d) July 1, 2023 to the end of the producer's fiscal year.

Additionally, a producer may calculate its regional value content for heavy trucks and parts listed in Table D or E, steel and aluminum purchasing requirement and labor value content, for the following periods:

(a) July 1, 2023 to June 30, 2024

(b) July 1 2024 to June 30, 2025

(c) July 1 2025 to June 30, 2026

(d) July 1 2026 to June 30, 2027 and

(e) July 1, 2027 to the end of the producer's fiscal year.

Timely Filing of Choice to Average

(6) If a producer chooses to average its regional value content calculations the producer must notify the customs administration of the USMCA country to which passenger vehicles, light trucks, heavy trucks or other vehicles are to be exported, by July 31, 2020 and subsequently at least 10 days before the first day of the producer's fiscal year during which the vehicles will be exported, or such shorter period as the customs administration may accept.

Choice to Average May Not Be Rescinded

(7) The producer may not modify or rescind the category of passenger vehicles, light trucks, heavy trucks or other vehicles or the period that they have notified the customs authority they intend to use for their averaged regional value calculation.

Averaged Net Cost and VNM Included in Calculation of RVC on the Basis of Producer's Option To Include All Vehicles of Category or Only Certain Exported Vehicles of Category

(8) For purposes of sections 13 through 15, if a producer chooses to average its net cost calculation, the net costs incurred and the values of non-originating materials used by the producer, with respect to

(a) all passenger vehicles, light trucks, or heavy trucks that fall within the category chosen by the producer and that are produced during the fiscal year, or partial fiscal year if the producer's fiscal year begins after July 1, 2020, or

(b) those passenger vehicles, light trucks, or heavy trucks to be exported to the territory of one or more of the USMCA countries that fall within the category chosen by the producer and that are produced during the fiscal year or, or partial fiscal year if the producer's fiscal year begins after July 1, 2020, must be included in the calculation of the regional value content under any of the categories set out in subsection (1).

Year-End Analysis Required if Averaging Based of Estimated Costs; Obligation To Notify of Change in Status

(9) If the producer of a passenger vehicle, light truck, heavy truck or other vehicle has calculated the regional value content of the motor vehicle on the basis of estimated costs, including standard costs, budgeted forecasts or other similar estimating procedures, before or during the producer's fiscal year, the producer must conduct an analysis at the end of the producer's fiscal year of the actual costs incurred over the period with respect to the production of the motor vehicle, and, if the passenger vehicle, light truck, or heavy truck does not satisfy the regional value content requirement on the basis of the actual costs, immediately inform any person to whom the producer has provided a Certificate of Origin for the motor vehicle, or a written statement that the motor vehicle is an originating good, that the motor vehicle is a non-originating good.

(10) For the purpose of calculating the regional value content for an automotive good listed in Tables A.1, B, C, D, or E, produced in the same plant, a core part listed in Table A.2, or when treating the parts listed in column 1 of Table A.2 as a super-core, for use in a passenger vehicle or light truck, the calculation may be averaged:

(a) Over the fiscal year of the motor vehicle producer to whom the good is sold;

(b) over any quarter or month;

(c) over the fiscal year of the producer of the automotive material; or

(d) over any of the categories in paragraph (1)(a) through (d), provided that the good was produced during the fiscal year, quarter, or month forming the basis for the calculation, in which:

(i) The average in paragraph (9)(a) is calculated separately for those goods sold to one or more passenger vehicle, light truck, or heavy truck producer, or

(ii) the average in paragraph (9)(a) or (d) is calculated separately for those goods that are exported to the territory of another USMCA country.

Example Relating to the Fiscal Year of a Producer Not Coinciding With the Entry Into Force of The Agreement

(11) The following example is an ''Example'' as referred to in subsection 1(4).

Example: Subsection (4)

The agreement enters into force on July 1, 2020. A producer's fiscal year begins on January 1, 2021. The producer may calculate their regional value content over the 18-month period beginning on July 1, 2020 and ending on December 31, 2021.

SECTION 17: STEEL AND ALUMINUM

(1) In addition to meeting the requirements of sections 13 through 16 or Schedule I (PSRO Annex), a passenger vehicle, light truck, or heavy truck is originating only if, during a time period provided for in subsection (2), at least 70 percent, by value, of the vehicle producer's purchases at the corporate level in the territories of one or more of the USMCA countries of:

(a) Steel listed in Table S; and

(b) aluminum listed in Table S;

are of originating goods.

(2) For the purposes of subsection (1), only the value of the steel or aluminum listed in Table S that is used in the production of the part will be taken into consideration for a part of subheading 8708.29 or 8708.99 listed in Table S.

(3) The requirement set out in subsection (1) applies to steel and aluminum purchases made by the producer of passenger vehicles, light trucks or heavy trucks, including purchases made directly by the vehicle producer from a steel producer, purchases by the vehicle producer from a steel service center or a steel distributor. Subsection (1) also applies to steel or aluminum covered by a contractual arrangement in which a producer of passenger vehicles, light trucks, or heavy trucks negotiates the terms under which steel or aluminum will be supplied to a parts producer by a steel producer or supplier selected by the vehicle producer, for use in the production of parts that are supplied by the parts producer to a producer of passenger vehicles, light trucks, or heavy trucks. Such purchases must also include steel and aluminum purchases for major stampings that form the ''body in white'' or chassis frame, regardless of whether the vehicle producer or parts producer makes such purchases.

(4) The requirement set out in subsection (1) applies to steel and aluminum purchased for use in the production of passenger vehicles, light trucks or heavy trucks. Subsection (1) does not apply to steel and aluminum purchased by a producer for other uses, such as the production of other vehicles, tools, dies or molds.

(5) For the purpose subsection (1), as it applies to a steel good set out in Table S, a good is originating if:

(a) Beginning on July 1, 2020 until June 30, 2027 the good satisfies the applicable requirements established in Schedule I (PSRO Annex) or section 13 and all other applicable requirements of these Regulations; or

(b) beginning on July 1, 2027 the good satisfies all other applicable requirements of these Regulations, and provided that all steel manufacturing processes occur in one or more of the USMCA countries, except for metallurgical processes involving the refinement of steel additives. Such steel manufacturing processes include the initial melting and mixing and continues through the coating stage. This requirement does not apply to raw materials of used in the steel manufacturing process, including iron ore or reduced, processed, or pelletized iron ore of heading 26.01, pig iron of heading 72.01, raw alloys of heading 72.02 or steel scrap of heading 72.04.

(6) The vehicle producer may calculate the value of steel and aluminum purchases in subsection (1) by the following methods:

(a) For steel or aluminum imported or acquired in the territory of a USMCA country:

(i) The price paid or payable by the producer in the USMCA country where the producer is located;

(ii) the net cost of the material at the time of importation; or

(iii) the transaction value of the material at the time of importation.

(b) For steel or aluminum that is self-produced:

(i) All costs incurred in the production of materials, which includes general expenses, and

(ii) an amount equivalent to the profit added in the normal course of trade, or equal to the profit that is usually reflected in the sale of goods of the same class or kind as the self-produced material that is being valued.

(7) For the purpose of determining the vehicle producer's purchases of steel or aluminum in subsection 17(1), the producer may calculate the purchases:

(a) Over the previous fiscal year of the producer;

(b) over the previous calendar year;

(c) over the quarter or month to date in which the vehicle is exported;

(d) over the producer's fiscal year to date in which the vehicle is exported; or

(e) over the calendar year to date in which the vehicle is exported.

(8) If the producer chooses to base a steel or aluminum calculation on paragraph (7)(c), (d) or (e), that calculation may be based on the producer's estimated purchases for the applicable period.

(9) For the purpose of determining the vehicle producer's purchases of steel or aluminum in subsection (1), the producer may calculate the purchases on the basis of:

(a) All motor vehicles produced in one or more plants in the territory of one or more USMCA countries;

(b) all motor vehicles exported to the territory of one or more USMCA countries;

(c) all motor vehicles in a category set out in subsection 16(1) that are produced in one

or more plants in the territory of one or more USMCA countries; or,

(d) all motor vehicles in a category set out in subsection 16(1) exported to the territory of one or more USMCA countries.

(10) The producer may choose different periods for the purpose of its steel and aluminum calculations.

(11) If the producer of a passenger vehicle, light truck, or heavy truck has calculated steel or aluminum purchases on the basis of estimates before or during the applicable period, the producer must conduct an analysis at the end of the producer's fiscal year of the actual purchases made over the period with respect to the production of the vehicle, and, if the passenger vehicle, light truck, or heavy truck does not satisfy the steel or aluminum requirement on the basis of the actual purchases, immediately inform any person to whom the producer has provided a certification of origin for the vehicle, or a written statement that the vehicle is an originating good, that the vehicle is a non-originating good.

SECTION 18: LABOR VALUE CONTENT

Labor Value Content Requirements for Passenger Vehicles

(1) In addition to the requirements in sections 13 through 17 and Schedule I (PSRO Annex), a passenger vehicle is originating only if the vehicle producer certifies that the passenger vehicle meets a Labor Value Content (LVC) requirement of:

(a) 30 percent, consisting of at least 15 percentage points of high-wage material and labor expenditures, no more than 10 percentage points of technology expenditures, and no more than 5 percentage points of high-wage assembly expenditures, beginning on July 1, 2020 until June 30, 2021;

(b) 33 percent, consisting of at least 18 percentage points of high-wage material and labor expenditures, no more than 10 percentage points of technology expenditures, and no more than 5 percentage points of high-wage assembly expenditures, beginning on July 1, 2021 until June 30, 2022;

(c) 36 percent, consisting of at least 21 percentage points of high-wage material and labor expenditures, no more than 10 percentage points of technology expenditures, and no more than 5 percentage points of high-wage assembly expenditures, beginning on July 1, 2022 until June 30, 2023; or

(d) 40 percent, consisting of at least 25 percentage points of high-wage material and labor expenditures, no more than 10 percentage points of technology expenditures, and no more than 5 percentage points of high-wage assembly expenditures, beginning on July 1, 2023, and thereafter.

LVC Requirement Related to Light Trucks or Heavy Trucks

(2) In addition to the requirements set out in sections 13 through 17 and Schedule I (PSRO Annex), a light truck or heavy truck is originating only if the vehicle producer certifies that the truck meets an LVC requirement of 45 percent, consisting of at least 30 percentage points based on high-wage material and labor expenditures, no more than 10 percentage points based on technology expenditures, and no more than 5 percentage points based on high-wage assembly expenditures.

Calculation of LVC Requirement

(3) For purposes of an LVC calculation for a passenger vehicle, light truck or heavy truck, a producer may include:

(a) An amount for high-wage materials used in production;

(b) an amount for high-wage labor costs incurred in the assembly of the vehicle;

(c) an amount for high-wage transportation or related costs for shipping materials to the location of the vehicle producer, if not included in the amount for high-wage materials;

(d) a credit for technology expenditures; and

(e) a credit for high-wage assembly expenditures.

(4) *High wage materials.* The amount that may be included for high-wage materials used in production is the net cost or the annual purchase value of materials that undergo production in a qualifying-wage-rate production plant and that are used in the production of passenger vehicles, light trucks or heavy trucks in a plant located in the territory of a USMCA country.

(5) A plant engaged in the production of vehicles or parts may be certified as a qualifying wage-rate vehicle assembly plant or a qualifying-wage-rate production plant based on the average wage paid to direct production workers at the plant for July 1 to December 31, 2020, or for July 1 to June 30, 2021. In subsequent periods, the certification of a qualifying-wage-rate production plant based on period less than 12 months is valid for the following period of the same length. The certification of a qualifying-wage-rate production plant based on a 12-month period is valid for the following 12 months.

(6) For the purpose of meeting the Labor Value Content requirement a producer may use one of the following formulas:

(a) Formula based on net cost

$$LVC = \frac{((HWLC + HWM) \times 100) + HWTC + HWAC}{NC}$$

(b) Formula based on total annual purchase value

$$LVC = \frac{((APV + HWLC^*) \times 100) + HWTC + HWAC}{(TAPV + HWLC^*)}$$

*HWLC is included in the numerator at the choice of the producer and, if included, must also be included in the denominator

Where:

APV is the annual purchase value of high-wage material expenditures

HWAC is the credit for high-wage assembly expenditures;

HWLC is the sum of the high-wage labor costs incurred in the assembly of the vehicle;

HWM is the sum or the high-wage material expenditures used in production;

HWTC is the credit for high-wage technology expenditures;

HWT is the high-wage transportation or related costs for shipping materials used in production, if not included in the amount for HWM;

NC is the net cost of the vehicle, and

TAPV is the total vehicle plant assembly annual purchase value of parts and materials for use in the production of the vehicle

High Wage Material Expenditures

(7) The high wage material expenditures may be calculated as sum of the following values:

(a) The annual purchase value (APV) or net cost, depending on the formula used, of a self-produced high-wage material used in the production of a vehicle;

(b) the APV or net cost, depending on the formula used, of an imported or acquired high-wage material used in the production of a vehicle;

(c) the APV or net cost, depending on the formula used, of a high-wage material used in the production of a part or material that is used in the production of an intermediate or self-produced part that is subsequently used in the production of a vehicle; and

(d) the APV or net cost depending on the formula used of a high wage material used in the production of a part or material that is subsequently used in the production of a vehicle.

(8) It is suggested, but not required, that the vehicle producer calculate the high-wage material and labor expenditures in the order described in paragraph (7). A vehicle producer need not calculate the elements in paragraphs 7(b) to (d) if the previous element or elements is sufficient to meet the LVC requirement.

High-Wage Technology Expenditures Credit

(9) The high-wage technology expenditures credit (HWTC) is based on annual vehicle producer expenditures at the corporate level in one or more USMCA countries on wages paid by the producer for research and development (R&D) or information technology (IT), calculated as a percentage of total annual vehicle producer expenditures on wages paid to direct production workers in one or more USMCA countries. Expenditures on capital or other non-wage costs for R&D or IT are not included.

(10) To determine the high-wage technology expenditures credit (HWTC), the following formula may be used:

$$HWTC = \frac{\text{Annual producer expenditures for R\&D or IT}}{\text{Total annual vehicle production expenditures}} \times 100$$

Where
HWTC is the credit for high-wage technology expenditures, expressed as a percentage;

(11) For the purposes of subsection 14(10), expenditures on wages for R&D include wage expenditures on research and development including prototype development, design, engineering, testing, or certifying operations.

High-Wage Assembly Credit

(12) A high-wage assembly credit of five percentage points may be included in the LVC for passenger vehicles or light trucks produced by a producer that operates a high-wage assembly plant for passenger vehicle or light truck parts or has a long-term supply contract for those parts (*i.e.* a contract with a minimum of three years) with such a plant.

(13) A high-wage assembly credit of five percentage points may be included in the LVC for heavy trucks produced by a producer that operates a high-wage assembly plant for heavy truck parts or has a long-term supply contract (*i.e.,* a contract with a minimum of three years) for those parts with such a plant.

(14) A high-wage assembly plant for passenger vehicle, light truck, or heavy truck parts need only have the capacity to produce the minimum amount of originating parts specified in the definition. There is no need to maintain or provide records or other documents that certify such parts are originating, as long as information demonstrating the capacity to produce these minimum amounts is maintained and can be provided.

Averaging for LVC Requirement

(15) For the purpose of calculating the LVC of a passenger vehicle, light truck or heavy truck, the producer may elect to average the calculation using any one of the following categories, on the basis of either all vehicles in the category or only those vehicles in the category that are exported to the territory of one or more of the other USMCA countries:

(a) The same model line of vehicles in the same class of vehicles produced in the same plant in the territory of a USMCA country;

(b) the same class of vehicles produced in the same plant in the territory of a USMCA country;

(c) the same model line of vehicles or same class of vehicles produced in the territory of a USMCA country;

(d) any other category as the USMCA countries may decide.

(16) An election made under subsection (15) must

(a) state the category chosen by the producer, and

(i) if the category referred to in paragraph (15)(a) is chosen, state the model line, model name, class of vehicle and tariff classification of the vehicles in that category, and the location of the plant at which the vehicles are produced,

(ii) if the category referred to in paragraph (15)(b) is chosen, state the model name, class of vehicle and tariff classification of the vehicles in that category, and the location of the plant at which the vehicles are produced, and

(iii) if the category referred to in paragraph (15)(c) is chosen, state the model line, model name, class of vehicle and tariff classification of the vehicles in that category, and the locations of the plants at which the vehicles are produced;

(b) state whether the basis of the calculation is all vehicles in the category or only those vehicles in the category that are exported to the territory of one or more of the other USMCA countries;

(c) state the producer's name and address;

(d) state the period with respect to which the election is made, including the starting and ending dates;

(e) state the estimated labor value content of vehicles in the category on the basis stated under paragraph (b);

(f) be dated and signed by an authorized officer of the producer; and

(g) be filed with the customs administration of each USMCA country to which vehicles in that category are to be exported during the period covered by the election, by July 31, 2020, and subsequently at least 10 days before the first day of the producer's fiscal year, or such shorter period as that customs administration may accept.

(17) An election filed for the vehicles referred to in subsection (16) may not be

(a) rescinded; or

(b) modified with respect to the category or basis of calculation.

(18) For purposes of this section, if a producer files an election under paragraph (16)(a), it must include the labor value content and the net cost of the producer's passenger vehicles, light trucks or heavy trucks, calculated under one of the categories set out in subsection (15), with respect to

(a) all vehicles that fall within the category chosen by the producer, or

(b) those vehicles to be exported to the territory of one or more of the USMCA countries that fall within the category chosen by the producer.

LVC Periods

(19) For the purposes of determining the LVC in this section, the producer may base the calculation on the following periods:

(a) The previous fiscal year of the producer;

(b) the previous calendar year;

(c) the quarter or month to date in which the vehicle is produced or exported;

(d) the producer's fiscal year to date in which the vehicle is produced or exported; or

(e) the calendar year to date in which the vehicle is produced or exported.

Transportation and Related Costs

(20) High-wage transportation or related costs for shipping may be included in a producer's LVC calculation, if not included in the amount for high-wage materials. Alternatively, a producer may aggregate such costs within the territories of one or more of the USMCA countries. Based on this aggregate amount, the producer may attribute an amount for transportation or related costs for shipping for purposes of the LVC calculation. Transportation or related costs for shipping incurred in transporting a material from outside the territories of the USMCA countries to the territory of a USMCA country are not included in this calculation.

Value of Materials for LVC Purposes

(21) The value of both originating and non-originating materials must be taken into account for the purpose of calculating the labor value content of a good. For greater certainty, the full value of a non-originating material that has undergone production in a qualifying-wage-rate production plant may be included in the HWM described in subsection 6.

Excess LVC May Be Used Towards RVC Requirement for Heavy Trucks

(22) For the period ending July 1, 2027, if a producer certifies a Labor Value Content for a heavy truck that is higher than 45 percent by increasing the amount of high wage material and manufacturing expenditures above 30 percentage points, the producer may use the points above 30 percentage points as a credit towards the regional value content percentages under section 13, provided that the regional value content percentage is not below 60 percent.

SECTION 19: ALTERNATIVE STAGING REGIME

(1) For the purposes of this section, eligible vehicles means passenger vehicles or light trucks for which an alternative staging regime has been approved by the USMCA countries.

(2) Notwithstanding sections 13 through 18, eligible vehicles are subject to the requirements set forth in subsection (4) from July 1, 2020 to June 30, 2025, or any other period provided for in the producer's approved alternative staging regime. Eligible vehicles are also subject to any other applicable requirements established in these Regulations.

(3) Passenger vehicles or light trucks that are not eligible vehicles may qualify as originating under the rules of origin established in sections 13 through 18, and any other applicable requirements established in these Regulations.

(4) Eligible vehicles are considered originating if they meet the following requirements:

(a) A regional value content of not less than 62.5 percent, under the net cost method;

(b) for parts listed in Table A.1, except lithium ion batteries of subheading 8507.60, a regional value content of not less than:

(i) 62.5 percent where the net cost method is used; or

(ii) 72.5 percent where the transaction value method is used if the corresponding rule includes a transaction value method; and

(iii) for lithium-ion batteries of 8507.60, a change from within subheading 8507.60 or from any other subheading for lithium-ion batteries of 8507.60

(c) at least 70 percent of a vehicle producer's purchases of steel and at least 70 percent of a vehicle producer's purchases of aluminum, by value, must qualify as originating under the rules of origin established in Schedule I (PSRO Annex). This requirement will not apply to vehicle producers that have an exemption under an approved alternative staging regime from having to satisfy this requirement; and

(d) a labor value content of at least 25 percent, consisting of at least ten percentage points of high-wage material and manufacturing expenditures, no more than ten percentage points of high-wage technology expenditures, and no more than five percentage points of high-wage assembly expenditures.

(5) Eligible vehicles are exempt from the core parts requirement set out in section 14.

(6) All methods and calculations for the requirements applicable to eligible vehicles must be based on the applicable provisions in these Regulations.

(7) Vehicles that are presently covered under the alternative staging regime described in Article 403.6 of the NAFTA Agreement as of November 30, 2019, may continue to use this regime, including any regulations that were effect prior to entry into force of the USMCA, according to each USMCA country's approval process for use of the alternative staging regime. After the expiration of the period under the Article 403.6 alternative staging period, such vehicles will be eligible for preferential treatment under the requirements described in subsection (4), until the end of the USMCA alternative staging period described in subsection (2). For greater certainty, such vehicles will also be eligible for preferential tariff treatment under the other rules of origin set forth in these regulations.

SECTION 20: REGIONAL VALUE CONTENT FOR OTHER VEHICLES

(1) The value of non-originating materials used by the producer in the production of

other vehicles and parts thereof must not, for the purpose of calculating the regional value content of the good, include the value of non-originating materials used to produce originating materials that are subsequently used in the production of the good.

(2) Notwithstanding section 13 and Schedule I (PSRO Annex), the regional value content requirement is 62.5 percent under the net cost method for:

(a) A motor vehicle for the transport of 15 or fewer persons of subheading 8702.10 or 8702.90;

(b) a passenger vehicle with a compression-ignition engine as the primary motor of propulsion of subheading 8703.21 through 8703.90,

(c) a three or four-wheeled motorcycle of subheading 8703.21 through 8703.90,

(d) a motorhome or entertainer coach of subheading 8703.21 through 8703.90;

(e) an ambulance, a hearse, a prison van of subheading 8703.21 through 8703.90;

(f) a vehicle solely principally for off-road use of subheading 8703.21 through 8703.90; or

(g) a vehicle of subheading 8704.21 or 8704.31 that is solely or principally for off-road use; and

(h) a good of heading 84.07 or 84.08, or subheading 8708.40, that is for use in a motor vehicle in paragraphs (a) through (g).

(3) Notwithstanding section 13 and Schedule I (PSRO Annex), the regional value content requirement is 60 percent under the net cost method for:

(a) A good that is:

(i) A motor vehicle of heading 87.01, except for subheading 8701.20;

(ii) a motor vehicle for the transport of 16 or more persons of subheading 8702.10 or 8702.90;

(iii) a motor vehicle of subheading 8704.10;

(iv) a motor vehicle of subheading 8704.22, 8704.23, 8704.32, or 8704.90 that is solely or principally for off-road use;

(v) a motor vehicle of heading 87.05; or,

(vi) a good of heading 87.06 that is not for use in a passenger vehicle, light truck, or heavy truck;

(b) a good of heading 84.07 or 84.08, or subheading 8708.40, that is for use in a motor vehicle in paragraph (3)(a); or

(c) except for a good in paragraph (3)(b) or of subheading 8482.10 through 8482.80, 8483.20, or 8483.30, a good in Table F that is subject to a regional value content requirement and that is for use in a motor vehicle in paragraphs (2)(a) through (g) or (3)(a).

(4) For the purpose of calculating the regional value content under the net cost method for a good that is a motor vehicle provided for in paragraphs (2)(a) through (g) or (3)(a), a good listed in Table F for use as original equipment in the production of a good in paragraphs (2)(a) through (g), or a component listed in Table G for use as original equipment in the production of the motor vehicle in paragraph (3)(a), the value of non-originating materials used by the producer in the production of the good must be the sum of:

(a) For each material used by the producer listed in Table F or Table G, whether or not produced by the producer, at the choice of the producer and determined in accordance with section 7 (Regional Value Content), either

(i) the value of such material that is non-originating, or

(ii) the value of non-originating materials used in the production of such material; and

(b) the value of any other non-originating material used by the producer that is not listed in Table F or Table G, determined in accordance with section 7 (Regional Value Content).

(5) For greater certainty, notwithstanding subsection (4), for purposes of a good that is a motor vehicle provided for in paragraphs (2)(a) through (g) or (3)(a), the value of non-originating materials is the sum of the values of all non-originating materials used by the producer in the production of the vehicle.

(6) For the purpose of calculating the regional value content of a motor vehicle covered by subsections (2) or (3), the producer may average its calculation over its fiscal year, using any one of the following categories, on the basis of either all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of one or more of the other USMCA countries:

(a) The same model line of motor vehicles in the same class of vehicles produced in the same plant in the territory of a USMCA country;

(b) the same class of motor vehicles produced in the same plant in the territory of a USMCA country; or

(c) the same model line of motor vehicles produced in the territory of a USMCA country.

(7) For the purpose of calculating the regional value content for a good listed in Table F, or a component or material listed in Table G, produced in the same plant, the producer of the good may:

(a) Average its calculation:

(i) Over the fiscal year of the motor vehicle producer to whom the good is sold,

(ii) over any quarter or month, or

(iii) over its fiscal year, if the good is sold as an aftermarket part;

(b) calculate the average referred to in paragraph (a) separately for a good sold to one or more motor vehicle producers; or

(c) with respect to any calculation under this subsection, calculate the average separately for goods that are exported to the territory of one or more of the USMCA countries.

(8) The regional value content requirement for a motor vehicle identified in subsection (2) or (3) is:

(a) 50 percent for five years after the date on which the first motor vehicle prototype is produced in a plant by a motor vehicle assembler, if:

(i) It is a motor vehicle of a class, or marque, or, except for a motor vehicle identified in subsection (3), size category and underbody, not previously produced by the motor vehicle assembler in the territory of any of the USMCA countries,

(ii) the plant consists of a new building in which the motor vehicle is assembled, and

(iii) the plant contains substantially all new machinery that is used in the assembly of the motor vehicle; or

(b) 50 percent for two years after the date on which the first motor vehicle prototype is produced at a plant following a refit, if it is a different motor vehicle of a class, or marque, or, except for a motor vehicle identified in subsection (3), size category and underbody, that was assembled by the motor vehicle assembler in the plant before the refit.

Note: The Regional Value Content requirements set out in sections 13 or 14 or Schedule I (PSRO Annex) apply to a good for use as original equipment in the production of a passenger vehicle or light truck. For an aftermarket part, the applicable product-specific rule of origin set out in section 13 or 14 or Schedule I (PSRO Annex) is the alternative that includes the phrase ''for any other good.''

TABLE A.1—CORE PARTS FOR PASSENGER VEHICLES AND LIGHT TRUCKS

HS 2012	Description
8407.31	Reciprocating piston engines of a kind used for the propulsion of passenger vehicles of Chapter 87, of a cylinder capacity not exceeding 50 cc.
8407.32	Reciprocating piston engines of a kind used for the propulsion of vehicles of Chapter 87, of a cylinder capacity exceeding 50 cc but not exceeding 250 cc.
8407.33	Reciprocating piston engines of a kind used for the propulsion of vehicles of Chapter 87, of a cylinder capacity exceeding 250 cc but not exceeding 1,000 cc.
8407.34	Reciprocating piston engines of a kind used for the propulsion of vehicles of Chapter 87, of a cylinder capacity exceeding 1,000 cc.
Ex 8408.20	Compression-ignition internal combustion piston engines of a kind used for the propulsion of vehicles of subheading 8704.21 or 8704.31.
8409.91	Parts suitable for use solely or principally with the engines of heading 84.07 or 84.08, suitable for use solely or principally with spark-ignition internal combustion piston engines.
8409.99	Parts suitable for use solely or principally with the engines of heading 84.07 or 84.08, other.
8507.60	Lithium-ion batteries that are used as the primary source of electrical power for the propulsion of an electric passenger vehicle or electric light truck.
8706.00	Chassis fitted with engines, for the motor vehicles of heading 87.03 or subheading 8704.21 or 8704.31.
8707.10	Bodies for the vehicles of heading 87.03.
8707.90	Bodies for the vehicles of subheading 8704.21 or 8704.31.
Ex 8708.29	Body stampings.
8708.40	Gear boxes and parts thereof.
8708.50	Drive axles with differential, whether or not provided with other transmission components, and non-driving axles; parts thereof.
8708.80	Suspension systems and parts thereof (including shock absorbers).
8708.94	Steering wheels, steering columns, and steering boxes; parts thereof.
Ex 8708.99	Chassis frames.

The following table sets out the parts and components applicable to Table A.2 and their related tariff provisions, to facilitate implementation of the core parts requirement pursuant to Article 3.7 of the Appendix to the Annex 4–B of the Agreement.

These parts, and components used to produce such parts, are for the production of a passenger vehicle or light truck in order to meet the requirements under Section 14. The prefix ''ex'' is used to indicate that only the parts described in the components column and used in the production of parts for use as original equipment in a passenger vehicle or light truck are taken into consideration when performing the calculation.

TABLE A.2—PARTS AND COMPONENTS FOR DETERMINING THE ORIGIN OF PASSENGER VEHICLES AND LIGHT TRUCKS UNDER SECTIONS 13 OR 14 OR SCHEDULE I (PSRO ANNEX)

Column 1 *(the parts listed in this column may be referred to collectively as a super-core part)*	Column 2	
Parts	Components	6-Digit HS Subheading
Engines	Spark-ignition reciprocating or rotary internal combustion piston engines and Compression-ignition internal combustion piston engines (diesel or semi-diesel engines).	ex 8407.33, ex 8407.34, ex 8408.20.
	Heads	ex 8409.91, ex 8409.99.
	Blocks	ex 8409.91, ex 8409.99.
	Crankshafts	ex 8483.10.
	Crankcases	ex 8409.91, ex 8409.99.
	Pistons	ex 8409.91.
	Rods	ex 8409.91, ex 8409.99.
	Head subassembly	ex 8409.91, ex 8409.99.
Transmissions	Gear boxes	ex 8708.40.
	Transmission cases	ex 8708.40.
	Torque converters	ex 8708.40, ex 8483.90.
	Torque converter housings	ex 8708.40, ex 8483.90.
	Gears and gear blanks	ex 8708.40, ex 8483.90.
	Clutches, including continuously variable transmissions, but not parts thereof.	ex 8708.93.
	Valve body assembly	ex 8481.90, ex 8708.40.
Body and Chassis	Major stampings that form the ''body in white'' or chassis frame.	ex 8707.10, ex 8707.90, ex 8708.29, ex 8708.99.
	Major body panel stampings	ex 8708.10, ex 8708.29.
	Secondary panel stampings	ex 8708.29.
	Structural panel stampings	ex 8708.29, ex 8708.99.
	Stamped Frame components	ex 8708.29, ex 8708.99.
Axles	Drive-axles with differential, whether or not provided with other transmission components, and non-driving axles.	ex 8708.50.
	Axle shafts	ex 8708.50.
	Axle housings	ex 8708.50.
	Axle hubs	ex 8482.10, ex 8482.20, ex 8708.50, ex 8708.99.
	Carriers	ex 8708.50.
	Differentials	ex 8708.50.
Suspension Systems	Suspension systems (including shock absorbers)	ex 8708.80.
	Shock absorbers	ex 8708.80.
	Struts	ex 8708.80.
	Control arms	ex 8708.80.
	Sway bars	ex 8708.80.
	Knuckles	ex 8708.80.
	Coil springs	ex 7320.20.
	Leaf springs	ex 7320.10.
Steering Systems	Steering wheels, steering columns and steering boxes	ex 8708.94.
	Steering columns	ex 8708.94.
	Steering gears/racks	ex 8708.94.
	Control units	ex 8537.10, ex 8537.90, ex 8543.70.
Advanced Batteries	Batteries of a kind used as the primary source for the propulsion of electrical power for electrically powered vehicles for passenger vehicles and light trucks.	ex 8507.60, ex 8507.80.
	Cells	ex 8507.60, ex 8507.80, ex 8507.90.
	Modules/arrays	ex 8507.60, ex 8507.80, ex 8507.90.
	Assembled packs	ex 8507.60, ex 8507.80.

Note: The Regional Value Content requirements set out in section 13 or 14 or Schedule I (PSRO Annex) apply to a good for use as original equipment in the production of a passenger vehicle or light truck.

For an aftermarket part, the applicable product-specific rule of origin set out in section 13 or 14 or Schedule I (PSRO Annex) is the alternative that includes the phrase ''for any other good.''

TABLE B—PRINCIPAL PARTS FOR PASSENGER VEHICLES AND LIGHT TRUCKS

HS 2012	Description
8413.30	Fuel, lubricating or cooling medium pumps for internal combustion piston engines.
8413.50	Other reciprocating positive displacement pumps.
8414.59	Other fans.
8414.80	Other air or gas pumps, compressors and fans.
8415.20	Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which humidity cannot be separately regulated, of a kind used for persons, in motor vehicles.
Ex 8479.89	Electronic brake systems, including ABS and ESC systems.
8482.10	Ball bearings.
8482.20	Tapered roller bearings, including cone and tapered roller assemblies.
8482.30	Spherical roller bearings.
8482.40	Needle roller bearings.
8482.50	Other cylindrical roller bearings.
8482.80	Other ball or roller bearings, including combined ball/roller bearings.
8483.10	Transmission shafts (including cam shafts and crank shafts) and cranks.
8483.20	Bearing housings, incorporating ball or roller bearings.
8483.30	Bearing housings, not incorporating ball or roller bearings; plain shaft bearings.
8483.40	Gears and gearing, other than toothed wheels, chain sprockets and other transmission elements presented separately; ball or roller screws; gear boxes and other speed changers, including torque converters.
8483.50	Flywheels and pulleys, including pulley blocks.
8483.60	Clutches and shaft couplings (including universal joints).
8501.32	Other DC motors and generators of an output exceeding 750 W but not exceeding 75 kW.
8501.33	Other DC motors and generators of an output exceeding 75 kW but not exceeding 375 kW.
8505.20	Electro-magnetic couplings, clutches and brakes.
8505.90	Other electro-magnets; electro-magnetic or permanent magnet chucks, clamps and similar holding devices; electro-magnetic lifting heads; including parts.
8511.40	Starter motors and dual purpose starter-generators of a kind used for spark-ignition or compression-ignition internal combustion engines.
8511.50	Other generators.
8511.80	Other electrical ignition or starting equipment of a kind used for spark-ignition or compression-ignition internal combustion engines.
Ex 8511.90	Parts of electrical ignition or starting equipment of a kind used for spark-ignition or compression-ignition internal combustion engines.
8537.10	Electric controls for a voltage not exceeding 1,000 V.
8708.10	Bumpers and parts thereof.
8708.21	Safety seat belts.
Ex 8708.29	Other parts and accessories of bodies (including cabs) of motor vehicles (excluding body stampings).
8708.30	Brakes and servo-brakes; parts thereof.
8708.70	Road wheels and parts and accessories thereof.
8708.91	Radiators and parts thereof.
8708.92	Silencers (mufflers) and exhaust pipes; parts thereof.
8708.93	Clutches and parts thereof.
8708.95	Safety airbags with inflator system; parts thereof.
Ex 8708.99	Other parts and accessories of motor vehicles of headings 87.01 to 87.05 (excluding chassis frames).
9401.20	Seats of a kind used for motor vehicles.

Note: The Regional Value Content requirements set out in sections 13 or 14 or Schedule I (PSRO Annex) apply to a good for use as original equipment in the production of a passenger vehicle or light truck. For an aftermarket part, the applicable product-specific rule of origin set out in section 13 or 14 or Schedule I (PSRO Annex) is the alternative that includes the phrase ''for any other good.''

TABLE C—COMPLEMENTARY PARTS FOR PASSENGER VEHICLES AND LIGHT TRUCKS

HS 2012	Description
4009.12	Tubes, pipes and hoses of vulcanised rubber other than hard rubber, not reinforced or otherwise combined with other materials, with fittings.
4009.22	Tubes, pipes and hoses of vulcanised rubber other than hard rubber, reinforced or otherwise combined only with metal, with fittings.
4009.32	Tubes, pipes and hoses of vulcanised rubber other than hard rubber, reinforced or otherwise combined only with textile materials, with fittings.
4009.42	Tubes, pipes and hoses of vulcanised rubber other than hard rubber, reinforced or otherwise combined with other materials, with fittings.
8301.20	Locks of a kind used for motor vehicles.
Ex 8421.39	Catalytic converters.
8481.20	Valves for oleohydraulic or pneumatic transmissions.
8481.30	Check (nonreturn) valves.

TABLE C—COMPLEMENTARY PARTS FOR PASSENGER VEHICLES AND LIGHT TRUCKS—Continued

HS 2012	Description
8481.80	Other taps, cocks, valves and similar appliances, including pressure-reducing valves and thermostatically controlled valves.
8501.10	Electric motors of an output not exceeding 37.5 W.
8501.20	Universal AC/DC motors of an output exceeding 37.5 W.
8501.31	Other DC motors and generators of an output not exceeding 750 W.
Ex 8507.20	Other lead-acid batteries of a kind used for the propulsion of motor vehicles of Chapter 87.
Ex 8507.30	Nickel-cadmium batteries of a kind used for the propulsion of motor vehicles of Chapter 87.
Ex 8507.40	Nickel-iron batteries of a kind used for the propulsion of motor vehicles of Chapter 87.
Ex 8507.80	Other batteries of a kind used for the propulsion of motor vehicles of Chapter 87.
8511.30	Distributors; ignition coils.
8512.20	Other lighting or visual signalling equipment.
8512.40	Windshield wipers, defrosters and demisters.
Ex 8519.81	Cassette decks.
8536.50	Other electrical switches, for a voltage not exceeding 1,000 V.
Ex 8536.90	Junction boxes.
8539.10	Sealed beam lamp units.
8539.21	Tungsten halogen filament lamp.
8544.30	Ignition wiring sets and other wiring sets of a kind used in motor vehicles.
9031.80	Other measuring and checking instruments, appliances & machines.
9032.89	Other automatic regulating or controlling instruments and apparatus.

Note: The Regional Value Content requirements set out in sections 13 or 15 or Schedule I (PSRO Annex) apply to a good for use as original equipment in the production of a heavy truck. For an aftermarket part, the applicable product-specific rule of origin set out in section 13 or Schedule I (PSRO Annex) is the alternative that includes the phrase ''for any other good.''

TABLE D—PRINCIPAL PARTS FOR HEAVY TRUCKS

8407.31	Reciprocating piston engines of a kind used for the propulsion of passenger vehicles of Chapter 87, of a cylinder capacity not exceeding 50 cc.
8407.32	Reciprocating piston engines of a kind used for the propulsion of vehicles of Chapter 87, of a cylinder capacity exceeding 50 cc but not exceeding 250 cc.
8407.33	Reciprocating piston engines of a kind used for the propulsion of vehicles of Chapter 87, of a cylinder capacity exceeding 250 cc but not exceeding 1,000 cc.
8407.34	Reciprocating piston engines of a kind used for the propulsion of vehicles of Chapter 87, of a cylinder capacity exceeding 1,000 cc.
8408.20	Compression-ignition internal combustion piston engines of a kind used for the propulsion of vehicles of Chapter 87.
8409.91	Parts suitable for use solely or principally with the engines of heading 84.07 or 84.08, suitable for use solely or principally with spark-ignition internal combustion piston engines.
8409.99	Parts suitable for use solely or principally with the engines of heading 84.07 or 84.08, other.
8413.30	Fuel, lubricating or cooling medium pumps for internal combustion piston engines.
Ex 8414.59	Turbochargers and superchargers.
8414.80	Other air or gas pumps, compressors and fans.
8415.20	Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which humidity cannot be separately regulated, of a kind used for persons, in motor vehicles.
8483.10	Transmission shafts (including cam shafts and crank shafts) and cranks.
8483.40	Gears and gearing, other than toothed wheels, chain sprockets and other transmission elements presented separately; ball or roller screws; gear boxes and other speed changers, including torque converters.
8483.50	Flywheels and pulleys, including pulley blocks.

TABLE D—PRINCIPAL PARTS FOR HEAVY TRUCKS—Continued

Ex 8501.32 ...	Other DC motors and generators of an output exceeding 750 W but not exceeding 75 kW, of a kind used for the propulsion of motor vehicles of Chapter 87.
8511.40	Starter motors and dual purpose starter-generators of a kind used for spark-ignition or compression-ignition internal combustion engines.
8511.50	Other generators.
8537.10	Electric controls for a voltage not exceeding 1,000 V.
8706.00	Chassis fitted with engines, for the motor vehicles of heading 87.01 through 87.05.
8707.90	Bodies for the vehicles of heading 87.01, 87.02, 87.04 or 87.05.
8708.10	Bumpers and parts thereof.
8708.21	Safety seat belts.
8708.29	Other parts and accessories of bodies (including cabs) of motor vehicles.
8708.30	Brakes and servo-brakes; parts thereof.
8708.40	Gear boxes and parts thereof.
8708.50	Drive axles with differential, whether or not provided with other transmission components, and non-driving axles; and parts thereof.
8708.70	Road wheels and parts and accessories thereof.
8708.80	Suspension systems and parts thereof (including shock absorbers).
8708.91	Radiators and parts thereof.
8708.92	Silencers (mufflers) and exhaust pipes; parts thereof.
8708.93	Clutches and parts thereof.
8708.94	Steering wheels, steering columns and steering boxes; parts thereof.
8708.95	Safety airbags with inflator system; parts thereof.
8708.99	Other parts and accessories of motor vehicles of headings 87.01 to 87.05.
9401.20	Seats of a kind used for motor vehicles.

Note: The Regional Value Content requirements set out in sections 13 or 15 or Schedule I (PSRO Annex) apply to a good for use as original equipment in the production of a heavy truck. For an aftermarket part, the applicable product-specific rule of origin set out in section 13 or Schedule I (PSRO Annex) is the alternative that includes the phrase ''for any other good.''

TABLE E—COMPLEMENTARY PARTS FOR HEAVY TRUCKS

8413.50	Other reciprocating positive displacement pumps.
Ex 8479.89 ...	Electronic brake systems, including ABS and ESC systems.
8482.10	Ball bearings.
8482.20	Tapered roller bearings, including cone and tapered roller assemblies.
8482.30	Spherical roller bearings.
8482.40	Needle roller bearings.
8482.50	Other cylindrical roller bearings.
8483.20	Bearing housings, incorporating ball or roller bearings.
8483.30	Bearing housings, not incorporating ball or roller bearings; plain shaft bearings.
8483.60	Clutches and shaft couplings (including universal joints).
8505.20	Electro-magnetic couplings, clutches and brakes.
8505.90	Other electro-magnets; electro-magnetic or permanent magnet chucks, clamps and similar holding devices; electro-magnetic lifting heads; including parts.
8507.60	Lithium-ion batteries.
8511.80	Other electrical ignition or starting equipment of a kind used for spark-ignition or compression-ignition internal combustion engines.
8511.90	Parts of electrical ignition or starting equipment of a kind used for spark-ignition or compression-ignition internal combustion engines or generators and cut-outs of a kind used in conjunction with such engines.

Note: The Regional Value Content requirements set out in section 20 or Schedule I (PSRO Annex) apply to a good for use in a vehicle specified in subsections 20(2) and 20(3).

TABLE F—PARTS FOR OTHER VEHICLES

HS 2012	Description
40.09	Tubes, pipes and hoses.
4010.31	Endless transmission belts (V-belts), V-ribbed, of an outside circumference exceeding 60 cm but not exceeding 180 cm.
4010.32	Endless transmission belts (V-belts), other than V-ribbed, of an outside circumference exceeding 60 cm but not exceeding 180 cm.
4010.33	Endless transmission belts (V-belts), V-ribbed, of an outside circumference exceeding 180 cm but not exceeding 240 cm.
4010.34	Endless transmission belts (V-belts), other than V-ribbed, of an outside circumference exceeding 180 cm but not exceeding 240 cm.
4010.39.aa	Other endless transmission belts (V-belts).
40.11	New pneumatic tires, of rubber.
4016.93.aa	Gaskets, washers and other seals of vulcanised rubber other than hard rubber.
4016.99.aa	Vibration control goods.
7007.11	Toughened (tempered) safety glass of a size and shape suitable for incorporation in vehicles.
7007.21	Laminated safety glass of a size and shape suitable for incorporation in vehicles.
7009.10	Rearview mirrors for vehicles.
8301.20	Locks of a kind used for motor vehicles.
8407.31	Reciprocating piston engines of a kind used for the propulsion of passenger vehicles of Chapter 87, of a cylinder capacity not exceeding 50 cc.
8407.32	Reciprocating piston engines of a kind used for the propulsion of vehicles of Chapter 87, of a cylinder capacity exceeding 50 cc but not exceeding 250 cc.
8407.33	Reciprocating piston engines of a kind used for the propulsion of vehicles of Chapter 87, of a cylinder capacity exceeding 250 cc but not exceeding 1,000 cc.
8407.34.aa	Reciprocating piston engines of a kind used for the propulsion of vehicles of Chapter 87, of a cylinder capacity exceeding 1,000 cc but not exceeding 2,000 cc.
8407.34.bb	Reciprocating piston engines of a kind used for the propulsion of vehicles of Chapter 87, of a cylinder capacity exceeding 2,000 cc.
8408.20	Compression-ignition internal combustion piston engines of a kind used for the propulsion of vehicles of Chapter 87.
84.09	Parts suitable for use solely or principally with spark-ignition internal combustion piston engines.
8413.30	Fuel, lubricating or cooling medium pumps for internal combustion piston engines.
8414.80.aa	Other air or gas pumps, compressors and fans (turbochargers and superchargers for motor vehicles, where not provided for under subheading 8414.59).
8414.59.aa	Other fans (turbochargers and superchargers for motor vehicles, where not provided for under subheading 8414.80).
8415.20	Air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity, including those machines in which humidity cannot be separately regulated, of a kind used for persons, in motor vehicles.
8421.39.aa	Catalytic converters.
8481.20	Valves for oleohydraulic or pneumatic transmissions.
8481.30	Check (nonreturn) valves.
8481.80	Other taps, cocks, valves and similar appliances, including pressure-reducing valves and thermostatically controlled valves.
8482.10 through 8482.80	Ball or roller bearings.
8483.10	Transmission shafts (including cam shafts and crank shafts) and cranks.
8483.20	Bearing housings, incorporating ball or roller bearings.
8483.30	Bearing housings; not incorporating ball or roller bearings; plain shaft bearings.
8483.40	Gears and gearing, other than toothed wheels, chain sprockets and other transmission elements presented separately; ball or roller screws; gear boxes and other speed changes, including torque converters.
8483.50	Flywheels and pulleys, including pulley blocks.
8501.10	Electric motors and generators of an output not exceeding 37.5 W.
8501.20	Universal AC/DC motors of an output exceeding 37.5 W.
8501.31	Other DC motors and generators of an output not exceeding 750 W.
8501.32.aa	Other DC motors and generators of an output exceeding 750 W but not exceeding 75 kW of a kind used for the propulsion of vehicles of Chapter 87.
8507.20.aa, 8507.30.aa, 8507.40.aa and 8507.80.aa.	Batteries that provide primary source for electric cars.
8511.30	Distributors; ignition coils.
8511.40	Starter motors and dual purpose starter-generators of a kind used for spark-ignition or compressing-ignition internal combustion engines.
8511.50	Other generators.
8512.20	Other lighting or visual signalling equipment.
8512.40	Windshield wipers, defrosters and demisters.
ex 8519.81	Cassette decks.
8527.21	Radios combined with cassette players.
8527.29	Radios.

TABLE F—PARTS FOR OTHER VEHICLES—Continued

HS 2012	Description
8536.50	Other electrical switches, for a voltage not exceeding 1,000 V.
8536.90	Junction boxes.
8537.10.bb	Motor control centers.
8539.10	Sealed beam lamp units.
8539.21	Tungsten halogen filament lamp.
8544.30	Ignition wiring sets and other wiring sets of a kind used in vehicles.
87.06	Chassis fitted with engines, for the motor vehicles of heading 87.01 through 87.05.
87.07	Bodies (including cabs) for the motor vehicles of headings 87.01 to 87.05.
8708.10.aa	Bumpers (but not parts thereof).
8708.21	Safety seat belts.
8708.29.aa	Body stampings.
8708.29.cc	Door assemblies.
8708.30	Brakes and servo-brakes; parts thereof.
8708.40	Gear boxes and parts thereof.
8708.50	Drive axles with differential, whether or not provided with other transmission components, and non-driving axles.
8708.70.aa	Road wheels, but not parts or accessories thereof.
8708.80	Suspension systems and parts thereof (including shock absorbers).
8708.91	Radiators and parts thereof.
8708.92	Silencers (mufflers) and exhaust pipes; parts thereof.
8708.93.aa	Clutches (but not parts thereof).
8708.94	Steering wheels, steering columns and steering boxes; parts thereof.
8708.95	Safety airbags with inflator systems, and parts thereof.
8708.99.aa	Vibration control goods containing rubber.
8708.99.bb	Double flanged wheel hub units incorporating ball bearings.
8708.99.ee	Other parts for powertrains.
8708.99.hh	Other parts and accessories not provided for elsewhere in subheading 8708.99.
9031.80	Other measuring and checking instruments, appliances & machines.
9032.89	Other automatic regulating or controlling instruments and apparatus.
9401.20	Seats of a kind used for motor vehicles.

TABLE G—LIST OF COMPONENTS AND MATERIALS FOR OTHER VEHICLES

1. Component: Engines provided for in heading 84.07 or 84.08

Materials: Cast block, cast head, fuel nozzle, fuel injector pumps, glow plugs, turbochargers and superchargers, electronic engine controls, intake manifold, exhaust manifold, intake/exhaust valves, crankshaft/camshaft, alternator, starter, air cleaner assembly, pistons, connecting rods and assemblies made therefrom (or rotor assemblies for rotary engines), flywheel (for manual transmissions), flexplate (for automatic transmissions), oil pan, oil pump and pressure regulator, water pump, crankshaft and camshaft gears, and radiator assemblies or charge-air coolers.

2. Component: Gear boxes (transmissions) provided for in subheading 8708.40

Materials: (a) For manual transmissions—transmission case and clutch housing; clutch; internal shifting mechanism; gear sets, synchronizers and shafts; and (b) for torque convertor type transmissions—transmission case and convertor housing; torque convertor assembly; gear sets and clutches; and electronic transmission controls.

The following table lists the HS subheadings for steel and aluminum subject to the USMCA steel and aluminum purchasing requirements set out in Section 17 to facilitate implementation of the steel and aluminum purchasing requirement, pursuant to Article 6.3 of the Appendix to Annex 4–B of the Agreement.

The prefix ''ex'' is used to indicate that only goods described in the ''Description'' column are taken into consideration when performing the calculation.

These descriptions cover structural steel or aluminum purchases by vehicle producers used in the production of passenger vehicles, light trucks, or heavy trucks, including all steel or aluminum purchases used for the production of major stampings that form the ''body in white'' or chassis frame as defined in Table A.2 (Parts and Components for Passenger Vehicles and Light Trucks). The descriptions do not cover structural steel or aluminum purchased by parts producers or suppliers used in the production of other automotive parts.

TABLE S—STEEL AND ALUMINUM

S	Description	6-Digit HS subheading(s)
Steel	Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, hot-rolled, not clad, plated or coated:	
	Other, in coils, not further worked than hot-rolled, pickled	7208.25, 7208.26, 7208.27.
	Other, in coils, not further worked than hot-rolled	7208.36, 7208.37, 7208.38, 7208.39.
	Other, not in coils, not further worked than hot-rolled	7208.51, 7208.52, 7208.53, 7208.54.
	Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, cold-rolled (cold-reduced), not clad, plated or coated:	
	In coils, not further worked than cold-rolled (cold-reduced):	7209.15, 7209.16, 7209.17, 7209.18.
	Not in coils, not further worked than cold-rolled (cold-reduced):	7209.25, 7209.26, 7209.27, 7209.28, 7209.90.
	Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, clad, plated or coated:	
	Electrolytically plated or coated with zinc	7210.30.
	Otherwise plated or coated with zinc, Other (Not Corrugated).	7210.49.
	Other plated or coated with aluminum	7210.69.
	Other: Clad; Other: Electrolytically coated or plated with base metal, Other.	7210.90.
	Flat-rolled products of iron or non-alloy steel, of a width of less than 600 mm, not clad, plated or coated:	
	Other, of a thickness of 4.75 mm or more	7211.14.
	Other:	7211.19.
	Not further worked than cold-rolled (cold-reduced), Containing by weight less than 0.25 percent of carbon:	7211.23.
	Flat-rolled products of iron or non-alloy steel, of a width of less than 600 mm, clad, plated or coated:	
	Electrolytically plated or coated with zinc	7212.20.
	Otherwise plated or coated with zinc	7212.30.
	Bars and rods, hot-rolled, in irregularly wound coils, of iron or non-alloy steel.	
	Other, of free-cutting steel	7213.20.
	Other: Other	7213.99.
	Other bars and rods of iron or non-alloy steel, not further worked than forged, hot-rolled, hot-drawn or hot-extruded, but including those twisted after rolling	
	Other, of free-cutting steel	7214.30.
	Of rectangular (other than square) cross-section	7214.91.
	Other: Other	7214.99.
	Flat-rolled products of other alloy steel, of a width of 600 mm or more.	
	Other, not further worked than hot-rolled, in coils:	7225.30.
	Other, not further worked than hot-rolled, not in coils:	7225.40.
	Other, not further worked than cold-rolled (cold-reduced):	7225.50.
	Electrolytically plated or coated with zinc	7225.91.
	Other: Otherwise plated or coated with zinc	7225.92.
	Other: Other	7225.99.
	Flat-rolled products of other alloy steel, of a width of less than 600 mm:	
	Other: Not further worked than hot-rolled: Of tool steel (other than high-speed steel):.	7226.91.
	Not further worked than cold-rolled (cold-reduced):	7226.92.
	Other:	7226.99.
	Bars and rods, hot-rolled, in irregularly wound coils, of other alloy steel.	
	Of silico-manganese steel	7227.20.
	Other	7227.90.
	Other bars and rods of other alloy steel; angles, shapes and sections, of other alloy steel; hollow drill bars and rods, of alloy or non-alloy steel.	
	Bars and rods, of high speed steel	7228.10.
	Bars and rods, of silico-manganese steel	7228.20.
	Other bars and rods, not further worked than hot-rolled, hot-drawn or extruded.	7228.30.
	Other bars and rods	7228.60
	Other tubes, pipes and hollow profiles (for example, open seamed or welded, riveted or similarly closed), of iron or steel:.	

TABLE S—STEEL AND ALUMINUM—Continued

S	Description	6-Digit HS subheading(s)
	Other, welded, of circular cross section, of iron or nonalloy steel:.	7306.30.
	Other, welded, of circular cross section, of other alloy steel:	7306.50.
	Other, welded, of noncircular cross section:	7306.61, 7306.69, ≤7306.90.
	Parts and accessories of the motor vehicles of headings 8701 to 8705:.	
	Major, secondary, and structural body panel stampings, that form the ''body in white''.	ex 8708.29.
	Stamped frame components that form the chassis frame	ex 8708.99.
		HS heading or subheading
Aluminum.		
	Unwrought aluminum	76.01.
	Aluminum waste and scrap	76.02.
	Aluminum bars, rods and profiles	76.04.
	Aluminum wire	76.05.
	Aluminum plates, sheets and strip, of a thickness exceeding 0.2 mm:.	76.06.
	Aluminum tubes and pipes	76.08.
	Parts and accessories of the motor vehicles of headings 8701 to 8705:.	
	Major, secondary, and structural body panel stampings, that form the ''body in white''.	ex 8708.29.
	Stamped frame components that form the chassis frame	ex 8708.99.

SCHEDULE I (PSRO ANNEX)

1. This schedule is deemed to be the contents of Sections A, B and C of Annex 4–B of the Agreement, as implemented in General Note 11 of the Harmonized Tariff Schedule of the United States,[3] except that the following rules of interpretation apply:

(a) For the purpose of Chapter 61, Note 2 or Chapter 62, Note 3 of Annex 4–B, a fabric of subheading 5806.20 or heading 60.02 is considered formed from yarn and finished in the territory of one or more Parties if all production processes and finishing operations, starting with the weaving, knitting, needling, tufting, or other process, and ending with the fabric ready for cutting or assembly without further processing, took place in the territories of one or more of the USMCA countries, even if non-originating yarn is used in the production of the fabric of subheading 5806.20 or heading 60.02;

(b) for the purposes of Chapter 61, Note 3 and Chapter 62, Note 4 of Annex 4–B, sewing thread is considered formed and finished in the territory of one or more Parties if all production processes and finishing operations, starting with the extrusion of filaments, strips, film or sheet, and including slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with the finished single or plied thread ready for use for sewing without further processing, took place in the territories of one or more of the USMCA countries even if non-originating fibre is used in the production of sewing thread of heading 52.04, 54.01 or 55.08, or yarn of heading 54.02 used as sewing thread referred to in the Notes;

(c) for the purpose of Chapter 61, Note 4 or Chapter 62, Note 5 of Annex 4–B, pocket bag fabric is considered formed and finished in the territory of one or more of the Parties if all production processes and finishing operations, starting with the weaving, knitting, needling, tufting, felting, entangling, or other process, and ending with the fabric ready for cutting or assembly without further processing, took place in the territories of one or more of the USMCA countries, even if non-originating fiber is used in the production of the yarn used to produce the pocket bag fabric;

(d) for the purpose of Chapter 61, Note 4 or Chapter 62, Note 5 of Annex 4–B, pocket bag fabric is considered a pocket or pockets if the pockets in which fabric is shaped to form a bag is not visible as the pocket is in the interior of the garment (*i.e.* pockets consisting of ''bags'' in the interior of the garment). Visible pockets such as patch pockets, cargo pockets, or typical shirt pockets are not subject to these notes;

(e) for the purpose of Chapter 61, Note 4 or Chapter 62, Note 5 of Annex 4–B, yarn is considered wholly formed in the territory of one

[3] The language ''in General Note 11 of the Harmonized Tariff Scheduled of the United States'' differs from the trilaterally agreed upon uniform regulations because the Parties contemplated that the language ''by each USMCA country'' would be replaced with the specific Party's reference to the location of the rules of origin under domestic law.

or more Parties if all the production processes and finishing operations, starting with the extrusion of filaments, strips, film, or sheet, and including slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a finished single or plied yarn, took place in the territory of one or more of the USMCA countries, even if non-originating fiber is used in the production of the yarn used to produce the pocket bag fabric; and,

(f) for the purpose of Chapter 63, Note 2 of Annex 4–B, a fabric of heading 59.03 is considered formed and finished in the territory of one or more Parties if all production processes and finishing operations, starting with the weaving, knitting, needling, tufting, felting, entangling, or other process, including coating, covering, laminating, or impregnating, and ending with the fabric ready for cutting or assembly without further processing, took place in the territories of one or more of the USMCA countries, even if non-originating fiber or yarn is used in the production of the fabric of heading 5903;

SCHEDULE II (MOST-FAVORED-NATION RATES OF DUTY ON CERTAIN GOODS SET OUT IN TABLE 2.10.1 OF THE AGREEMENT)

A. Automatic Data Processing Machines (ADP):		
	8471.30.	
	8471.41.	
	8471.49.	
B. Digital Processing Units:		
	8471.50.	
C. Input or Output Units:		
Combined Input/Output Units.		
Canada	8471.60.00.	
Mexico	8471.60.02.	
United States.	8471.60.10.	
Display Units.		
Canada	8528.42.00, 8528.52.00, 8528.62.00.	
Mexico	8528.41.99, 8528.51.01, 8528.51.99, 8528.61.01.	
United States.	8528.42.00, 8528.52.00, 8528.62.00.	
Other Input or Output Units.		
Canada	8471.60.00.	
Mexico	8471.60.03, 8471.60.99	
United States.	8471.60.20, 8471.60.70, 8471.60.80, 8471.60.90.	
D. Storage Units:		
	8471.70.	
E. Other Units of Automatic Data Processing Machines:		
	8471.80.	
F. Parts of Computers:		
	8443.99	parts of machines of subheading 8443.31 and 8443.32, excluding facsimile machines and teleprinters.
	8473.30	parts of ADP machines and units thereof.
	8517.70	parts of LAN equipment of subheading 8517.62.
Canada	8529.90.19, 8529.90.50, 8529.90.90.	parts of monitors and projectors of subheading 8528.42, 8528.52, and 8528.62.

Mexico	8529.90.01, 8529.90.06	parts of monitors or projectors of subheadings 8528.41, 8528.51, and 8528.61.
United States	8529.90.22, 8529.90.75, 8529.90.99.	parts of monitors and projectors of subheading 8528.42, 8528.52, and 8528.62.
G. Computer Power Supplies:		
Canada	8504.40.30, 8504.40.90, 8504.90.10, 8504.90.20, 8504.90.90.	
Mexico	8504.40.12, 8504.40.14, 8504.90.02, 8504.90.07, 8504.90.08.	parts of goods classified in tariff item 8504.40.12.
United States	8504.40.60, 8504.40.70, 8504.90.20, 8504.90.41.	

SCHEDULE III (VALUE OF GOODS)

1 Unless otherwise stated, the following definitions apply in this Schedule.

buyer refers to a person who purchases a good from the producer;

buying commissions means fees paid by a buyer to that buyer's agent for the agent's services in representing the buyer in the purchase of a good;

producer refers to the producer of the good being valued.

2 For purposes of subsection 7(2) of these Regulations, the transaction value of a good is the price actually paid or payable for the good, determined in accordance with section 3 and adjusted in accordance with section 4.

3 (1) The price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the producer. The payment need not necessarily take the form of a transfer of money. It may be made by letters of credit or negotiable instruments. The payment may be made directly or indirectly to the producer. For an illustration of this, the settlement by the buyer, whether in whole or in part, of a debt owed by the producer is an indirect payment.

(2) Activities undertaken by the buyer on the buyer's own account, other than those for which an adjustment is provided in section 4, must not be considered to be an indirect payment, even though the activities may be regarded as being for the benefit of the producer. For an illustration of this, the buyer, by agreement with the producer, undertakes activities relating to the marketing of the good. The costs of such activities must not be added to the price actually paid or payable.

(3) The transaction value must not include the following charges or costs, provided that they are distinguished from the price actually paid or payable:

(a) Charges for construction, erection, assembly, maintenance or technical assistance related to the good undertaken after the good is sold to the buyer; or

(b) duties and taxes paid in the country in which the buyer is located with respect to the good.

(4) The flow of dividends or other payments from the buyer to the producer that do not relate to the purchase of the good are not part of the transaction value.

4 (1) In determining the transaction value of a good, the following must be added to the price actually paid or payable:

(a) To the extent that they are incurred by the buyer, or by a related person on behalf of the buyer, with respect to the good being valued and are not included in the price actually paid or payable

(i) commissions and brokerage fees, except buying commissions,

(ii) the costs of transporting the good to the producer's point of direct shipment and the costs of loading, unloading, handling and insurance that are associated with that transportation, and

(iii) where the packaging materials and containers are classified with the good under the Harmonized System, the value of the packaging materials and containers;

(b) the value, reasonably allocated in accordance with subsection (13), of the following elements if they are supplied directly or indirectly to the producer by the buyer, free of charge or at reduced cost for use in connection with the production and sale of the good, to the extent that the value is not included in the price actually paid or payable:

(i) A material, other than an indirect material, used in the production of the good,

(ii) tools, dies, molds and similar indirect materials used in the production of the good,

(iii) an indirect material, other than those referred to in subparagraph (ii) or in paragraphs (c), (e) or (f) of the definition indirect material set out in subsection 1(1) of these Regulations, used in the production of the good, and

(iv) engineering, development, artwork, design work, and plans and sketches necessary

for the production of the good, regardless of where performed;

(c) the royalties related to the good, other than charges with respect to the right to reproduce the good in the territory of one or more of the USMCA countries, that the buyer must pay directly or indirectly as a condition of sale of the good, to the extent that such royalties are not included in the price actually paid or payable; and

(d) the value of any part of the proceeds of any subsequent resale, disposal or use of the good that accrues directly or indirectly to the producer.

(2) The additions referred to in subsection (1) must be made to the price actually paid or payable under this section only on the basis of objective and quantifiable data.

(3) If objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under subsection (1), the transaction value cannot be determined under section 2.

(4) Additions must not be made to the price actually paid or payable for the purpose of determining the transaction value except as provided in this section.

(5) The amounts to be added under subparagraphs (1)(a)(i) and (ii) are:

(a) Those amounts that are recorded on the books of the buyer; or

(b) if those amounts are costs incurred by a related person on behalf of the buyer and are not recorded on the books of the buyer, those amounts that are recorded on the books of that related person.

(6) The value of the packaging materials and containers referred to in subparagraph (1)(a)(iii) and the value of the elements referred to in subparagraph (1)(b)(i) are

(a) if the packaging materials and containers or the elements are imported from outside the territory of the USMCA country in which the producer is located, the customs value of the packaging materials and containers or the elements,

(b) if the buyer, or a related person on behalf of the buyer, purchases the packaging materials and containers or the elements from a person who is not a related person in the territory of the USMCA country in which the producer is located, the price actually paid or payable for the packaging materials and containers or the elements,

(c) if the buyer, or a related person on behalf of the buyer, acquires the packaging materials and containers or the elements from a person who is not a related person in the territory of the USMCA country in which the producer is located other than through a purchase, the value of the consideration related to the acquisition of the packaging materials and containers or the elements, based on the cost of the consideration that is recorded on the books of the buyer or the related person, or

(d) if the packaging materials and containers or the elements are produced by the buyer, or by a related person, in the territory of the USMCA country in which the producer is located, the total cost of the packaging materials and containers or the elements, determined in accordance with subsection (8),

(7) The value referred to in subsection (6), to the extent that such costs are not included under paragraphs 6(a) through (d), must include the following costs that are recorded on the books of the buyer or the related person supplying the packaging materials and containers or the elements on behalf of the buyer:

(a) The costs of freight, insurance, packing, and all other costs incurred in transporting the packaging materials and containers or the elements to the location of the producer,

(b) duties and taxes paid or payable with respect to the packaging materials and containers or the elements, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable,

(c) customs brokerage fees, including the cost of in-house customs brokerage services, incurred with respect to the packaging materials and containers or the elements, and

(d) the cost of waste and spoilage resulting from the use of the packaging materials and containers or the elements in the production of the good, less the value of renewable scrap or by-product.

(8) For purposes of paragraph (6)(d), the total cost of the packaging materials and containers referred to in subparagraph (1)(a)(iii) or the elements referred to in subparagraph (1)(b)(i) are

(a) if the packaging materials and containers or the elements are produced by the buyer, at the choice of the buyer:

(i) The total cost incurred with respect to all goods produced by the buyer, calculated on the basis of the costs that are recorded on the books of the buyer, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule V, or

(ii) the aggregate of each cost incurred by the buyer that forms part of the total cost incurred with respect to the packaging materials and containers or the elements, calculated on the basis of the costs that are recorded on the books of the buyer, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule V; and

(b) if the packaging materials and containers or the elements are produced by a person who is related to the buyer, at the choice of the buyer:

(i) The total cost incurred with respect to all goods produced by that related person, calculated on the basis of the costs that are

recorded on the books of that person, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule V, or

(ii) the aggregate of each cost incurred by that related person that forms part of the total cost incurred with respect to the packaging materials and containers or the elements, calculated on the basis of the costs that are recorded on the books of that person, that can be reasonably allocated to the packaging materials and containers or the elements in accordance with Schedule V.

(9) Except as provided in subsections (11) and (12), the value of the elements referred to in subparagraphs (1)(b)(ii) through (iv) are

(a) the cost of those elements that is recorded on the books of the buyer; or

(b) if such elements are provided by another person on behalf of the buyer and the cost is not recorded on the books of the buyer, the cost of those elements that is recorded on the books of that other person.

(10) If the elements referred to in subparagraphs (1)(b)(ii) through (iv) were previously used by or on behalf of the buyer, the value of the elements must be adjusted downward to reflect that use.

(11) Where the elements referred to in subparagraphs (1)(b)(ii) and (iii) were leased by the buyer or a person related to the buyer, the value of the elements are the cost of the lease as recorded on the books of the buyer or that related person.

(12) An addition must not be made to the price actually paid or payable for the elements referred to in subparagraph (1)(b)(iv) that are available in the public domain, other than the cost of obtaining copies of them.

(13) The producer must choose the method of allocating to the good the value of the elements referred to in subparagraphs (1)(b)(ii) through (iv), provided that the value is reasonably allocated to the good. The methods the producer may choose to allocate the value include allocating the value over the number of units produced up to the time of the first shipment or allocating the value over the entire anticipated production where contracts or firm commitments exist for that production. For an illustration of this, a buyer provides the producer with a mold to be used in the production of the good and contracts with the producer to buy 10,000 units of that good. By the time the first shipment of 1,000 units arrives, the producer has already produced 4,000 units. In these circumstances, the producer may choose to allocate the value of the mold over 4,000 units or 10,000 units but must not choose to allocate the value of the elements to the first shipment of 1,000 units. The producer may choose to allocate the entire value of the elements to a single shipment of a good only if that single shipment comprises all of the units of the good acquired by the buyer under the contract or commitment for that number of units of the good between the producer and the buyer.

(14) The addition for the royalties referred to in paragraph (1)(c) is the payment for the royalties that is recorded on the books of the buyer, or if the payment for the royalties is recorded on the books of another person, the payment for the royalties that is recorded on the books of that other person.

(15) The value of the proceeds referred to in paragraph (1)(d) is the amount that is recorded for such proceeds on the books of the buyer or the producer.

SCHEDULE IV UNACCEPTABLE TRANSACTION VALUE

1 Unless otherwise stated, the following definitions apply in this Schedule.

buyer refers to a person who purchases a good from the producer;

producer refers to the producer of the good being valued.

2 (1) There is no transaction value for a good if the good is not the subject of a sale.

(2) The transaction value of a good is unacceptable if:

(a) There are restrictions on the disposition or use of the good by the buyer, other than restrictions that

(i) are imposed or required by law or by the public authorities in the territory of the USMCA country in which the buyer is located,

(ii) limit the geographical area in which the good may be resold, or

(iii) do not substantially affect the value of the good;

(b) the sale or price actually paid or payable is subject to a condition or consideration for which a value cannot be determined with respect to the good;

(c) part of the proceeds of any subsequent resale, disposal or use of the good by the buyer will accrue directly or indirectly to the producer, and an appropriate addition to the price actually paid or payable cannot be made in accordance with paragraph 4(1)(d) of Schedule III; or

(d) the producer and the buyer are related persons and the relationship between them influenced the price actually paid or payable for the good.

(3) The cases or considerations referred to in paragraph (2)(b) include the following:

(a) The producer establishes the price actually paid or payable for the good on condition that the buyer will also buy other goods in specified quantities;

(b) the price actually paid or payable for the good is dependent on the price or prices at which the buyer sells other goods to the producer of the good; and

(c) the price actually paid or payable is established on the basis of a form of payment extraneous to the good, such as where the good is a semi-finished good that is provided

by the producer to the buyer on condition that the producer will receive a specified quantity of the finished good from the buyer.

(4) For purposes of paragraph (2)(b), conditions or considerations relating to the production or marketing of the good must not render the transaction value unacceptable, such as if the buyer undertakes on the buyer's own account, even though by agreement with the producer, activities relating to the marketing of the good.

(5) If objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under subsection 4(1) of Schedule III, the transaction value cannot be determined under the provisions of section 2 of that Schedule. For an illustration of this, a royalty is paid on the basis of the price actually paid or payable in a sale of a litre of a particular good that was purchased by the kilogram and made up into a solution. If the royalty is based partially on the purchased good and partially on other factors that have nothing to do with that good, such as when the purchased good is mixed with other ingredients and is no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the producer and the buyer, it would be inappropriate to add the royalty and the transaction value of the good could not be determined. However, if the amount of the royalty is based only on the purchased good and can be readily quantified, an addition to the price actually paid or payable can be made and the transaction value can be determined.

SCHEDULE V (REASONABLE ALLOCATION OF COSTS)

Definitions and Interpretation

1 of the following definitions apply in this Schedule,

costs means any costs that are included in total cost and that can or need to be allocated in a reasonable manner under to subsections 5(11), 7(11) and 8(8) of these Regulations, subsection 4(8) of Schedule III and subsections 4(8) and 9(3) of Schedule VI;

discontinued operation, in the case of a producer located in a USMCA country, has the meaning set out in that USMCA country's Generally Accepted Accounting Principles;

indirect overhead means period costs and other costs;

internal management purpose means any purpose relating to tax reporting, financial reporting, financial planning, decision-making, pricing, cost recovery, cost control management or performance measurement;

overhead means costs, other than direct material costs and direct labor costs.

2 (1) In this Schedule, reference to ''producer'', for purposes of subsection 4(8) of Schedule III, is to be read as a reference to ''buyer''.

(2) In this Schedule, a reference to ''good'',

(a) for purposes of subsection 7(15) of these Regulations, is to be read as a reference to ''identical goods or similar goods, or any combination thereof'';

(b) for purposes of subsection 8(8) of these Regulations, is to be read as a reference to ''intermediate material'';

(c) for purposes of section 16 of these Regulations, is to be read as a reference to ''category of vehicles that is chosen pursuant to subsection 16(1) of these Regulations'';

(d) for purposes of subsection 4(8) of Schedule III, be read as a reference to ''packaging materials and containers or the elements''; and

(e) for purposes of subsection 4(8) of Schedule VI, be read as a reference to ''elements''.

Methods to Reasonably Allocate Costs

3 (1) If a producer of a good is using, for an internal management purpose, a cost allocation method to allocate to the good direct material costs, or part thereof, and that method reasonably reflects the direct material used in the production of the good based on the criterion of benefit, cause or ability to bear, that method must be used to reasonably allocate the costs to the good.

(2) If a producer of a good is using, for an internal management purpose, a cost allocation method to allocate to the good direct labor costs, or part thereof, and that method reasonably reflects the direct labor used in the production of the good based on the criterion of benefit, cause or ability to bear, that method must be used to reasonably allocate the costs to the good.

(3) If a producer of a good is using, for an internal management purpose, a cost allocation method to allocate to the good overhead, or part thereof, and that method is based on the criterion of benefit, cause or ability to bear, that method must be used to reasonably allocate the costs to the good.

4 If costs are not reasonably allocated to a good under section 3, those costs are reasonably allocated to the good if they are allocated:

(a) With respect to direct material costs, on the basis of any method that reasonably reflects the direct material used in the production of the good based on the criterion of benefit, cause or ability to bear;

(b) with respect to direct labor costs, on the basis of any method that reasonably reflects the direct labor used in the production of the good based on the criterion of benefit, cause or ability to bear; and

(c) with respect to overhead, on the basis of any of the following methods:

(i) The method set out in Appendix A, B or C,

(ii) a method based on a combination of the methods set out in Appendices A and B or Appendices A and C, and

(iii) a cost allocation method based on the criterion of benefit, cause or ability to bear.

5 Notwithstanding sections 3 and 8, if a producer allocates, for an internal management purpose, costs to a good that is not produced in the period in which the costs are expensed on the books of the producer (such as costs with respect to research and development, and obsolete materials), those costs must be considered reasonably allocated if:

(a) For purposes of subsection 7(11) of these Regulations, they are allocated to a good that is produced in the period in which the costs are expensed, and

(b) the good produced in that period is within a group or range of goods, including identical goods or similar goods, that is produced by the same industry or industry sector as the goods to which the costs are expensed.

6 Any cost allocation method referred to in section 3, 4 or 5 that is used by a producer for the purposes of these Regulations must be used throughout the producer's fiscal year.

Costs Not Reasonably Allocated

7 The allocation to a good of any of the following is considered not to be reasonably allocated to the good:

(a) Costs of a service provided by a producer of a good to another person where the service is not related to the good;

(b) gains or losses resulting from the disposition of a discontinued operation, except gains or losses related to the production of the good;

(c) cumulative effects of accounting changes reported in accordance with a specific requirement of the applicable Generally Accepted Accounting Principles; and

(d) gains or losses resulting from the sale of a capital asset of the producer.

8 Any costs allocated under section 3 on the basis of a cost allocation method that is used for an internal management purpose that is solely for the purpose of qualifying a good as an originating good are considered not to be reasonably allocated.

APPENDIX A—COST RATIO METHOD

Calculation of Cost Ratio

For the overhead to be allocated, the producer may choose one or more allocation bases that reflect a relationship between the overhead and the good based on the criterion of benefit, cause or ability to bear.

With respect to each allocation base that is chosen by the producer for allocating overhead, a cost ratio is calculated for each good produced by the producer as determined by the formula:

$$CR = AB \div TAB$$

where

CR is the cost ratio with respect to the good;
AB is the allocation base for the good; and
TAB is the total allocation base for all the goods produced by the producer.

Allocation to a Good of Costs Included in Overhead

The costs with respect to which an allocation base is chosen are allocated to a good in accordance with the following formula:

$$CAG = CA \times CR$$

where

CAG is the costs allocated to the good;
CA is the costs to be allocated; and
CR is the cost ratio with respect to the good.

Excluded Costs

Under paragraph 7(11)(b) of these Regulations, where excluded costs are included in costs to be allocated to a good, the cost ratio used to allocate that cost to the good is used to determine the amount of excluded costs to be subtracted from the costs allocated to the good.

Allocation Bases for Costs

The following is a non-exhaustive list of allocation bases that may be used by the producer to calculate cost ratios:

- Direct labor hours
- Direct labor costs
- Units produced
- Machine-hours
- Sales dollars or pesos
- Floor space

''Examples''

The following examples illustrate the application of the cost ratio method to costs included in overhead.

Example 1: Direct Labor Hours

A producer who produces Good A and Good B may allocate overhead on the basis of direct labor hours spent to produce Good A and Good B. A total of 8,000 direct labor hours have been spent to produce Good A and Good B: 5,000 hours with respect to Good A and 3,000 hours with respect to Good B. The amount of overhead to be allocated is $6,000,000.

Calculation of the ratios:

Good A: 5,000 hours/8,000 hours = .625
Good B: 3,000 hours/8,000 hours = .375

Allocation of overhead to Good A and Good B:

Good A: $6,000,000 × .625 = $3,750,000
Good B: $6,000,000 × .375 = $2,250,000

Example 2: Direct Labor Costs

A producer who produces Good A and Good B may allocate overhead on the basis of direct labour costs incurred in the production of Good

A and Good B. The total direct labor costs incurred in the production of Good A and Good B is $60,000: $50,000 with respect to Good A and $10,000 with respect to Good B. The amount of overhead to be allocated is $6,000,000.

Calculation of the ratios:

Good A: $50,000/$60,000 = .833
Good B: $10,000/$60,000 = .167

Allocation of Overhead to Good A and Good B:

Good A: $6,000,000 × .833 = $4,998,000
Good B: $6,000,000 × .167 = $1,002,000

Example 3: Units Produced

A producer of Good A and Good B may allocate overhead on the basis of units produced. The total units of Good A and Good B produced is 150,000: 100,000 units of Good A and 50,000 units of Good B. The amount of overhead to be allocated is $6,000,000.

Calculation of the ratios:

Good A: 100,000 units/150,000 units = .667
Good B: 50,000 units/150,000 units = .333

Allocation of Overhead to Good A and Good B:

Good A: $6,000,000 × .667 = $4,002,000
Good B: $6,000,000 × .333 = $1,998,000

Example 4: Machine-Hours

A producer who produces Good A and Good B may allocate machine-related overhead on the basis of machine-hours utilized in the production of Good A and Good B. The total machine-hours utilized for the production of Good A and Good B is 3,000 hours: 1,200 hours with respect to Good A and 1,800 hours with respect to Good B. The amount of machine-related overhead to be allocated is $6,000,000.

Calculation of the ratios:

Good A: 1,200 machine-hours/3,000 machine-hours = .40
Good B: 1,800 machine-hours/3,000 machine-hours = .60

Allocation of machine-related overhead to Good A and Good B:

Good A: $6,000,000 × .40 = $2,400,000
Good B: $6,000,000 × .60 = $3,600,000

Example 5: Sales Dollars or Pesos

A producer who produces Good A and Good B may allocate overhead on the basis of sales dollars. The producer sold 2,000 units of Good A at $4,000 and 200 units of Good B at $3,000. The amount of overhead to be allocated is $6,000,000.

Total sales dollars for Good A and Good B:

Good A: $4,000 × 2,000 units = $8,000,000
Good B: $3,000 × 200 units = $600,000
Total sales dollars: $8,000,000 + $600,000 = $8,600,000

Calculation of the ratios:

Good A: $8,000,000/$8,600,000 = .93
Good B: $600,000/$8,600,000 = .07

Allocation of Overhead to Good A and Good B:

Good A: $6,000,000 × .93 = $5,580,000
Good B: $6,000,000 × .07 = $420,000

Example 6: Floor Space

A producer who produces Good A and Good B may allocate overhead relating to utilities (heat, water and electricity) on the basis of floor space used in the production and storage of Good A and Good B. The total floor space used in the production and storage of Good A and Good B is 100,000 square feet: 40,000 square feet with respect to Good A and 60,000 square feet with respect to Good B. The amount of overhead to be allocated is $6,000,000.

Calculation of the Ratios:

Good A: 40,000 square feet/100,000 square feet = .40
Good B: 60,000 square feet/100,000 square feet = .60

Allocation of overhead (utilities) to Good A and Good B:

Good A: $6,000,000 × .40 = $2,400,000
Good B: $6,000,000 × .60 = $3,600,000

Appendix B—Direct Labor and Direct Material Ratio Method

Calculation of Direct Labor and Direct Material Ratio

For each good produced by the producer, a direct labor and direct material ratio is calculated by the formula:

DLDMR = (DLC + DMC) ÷ (TDLC + TDMC)

where

DLDMR is the direct labor and direct material ratio for the good;
DLC is the direct labor costs of the good;
DMC is the direct material costs of the good;
TDLC is the total direct labor costs of all goods produced by the producer; and
TDMC is the total direct material costs of all goods produced by the producer.

Allocation of Overhead to a Good

Overhead is allocated to a good by the formula:

OAG = O × DLDMR

where

OAG is the overhead allocated to the good;
O is the overhead to be allocated; and
DLDMR is the direct labor and direct material ratio for the good.

Excluded Costs

Under paragraph 7(11)(b) of these Regulations, if excluded costs are included in overhead to be allocated to a good, the direct

labor and direct material ratio used to allocate overhead to the good is used to determine the amount of excluded costs to be subtracted from the overhead allocated to the good.

''*Examples*''

Example 1

The following example illustrates the application of the direct labor and direct material ratio method used by a producer of a good to allocate overhead where the producer chooses to calculate the net cost of the good in accordance with paragraph 7(11)(a) of these Regulations. A producer produces Good A and Good B. Overhead (O) minus excluded costs (EC) is $30 and the other relevant costs are set out in the following table:

	Good A ($)	Good B ($)	Total ($)
Direct labor costs (DLC)	5	5	10
Direct material costs (DMC)	10	5	15
Totals	15	10	25

Overhead Allocated to Good A

OAG (Good A) = O ($30) × DLDMR ($15/$25)
OAG (Good A) = $18.00

Overhead Allocated to Good B

OAG (Good B) = O ($30) × DLDMR ($10/$25)
OAG (Good B) = $12.00

Example 2

The following example illustrates the application of the direct labor and direct material ratio method used by a producer of a good to allocate overhead where the producer chooses to calculate the net cost of the good in accordance with paragraph 7(11)(b) of these Regulations and where excluded costs are included in overhead.

A producer produces Good A and Good B. Overhead (O) is $50 (including excluded costs (EC) of $20). The other relevant costs are set out in the table to Example 1.

Overhead Allocated to Good A

OAG (Good A) = [O ($50) × DLDMR ($15/$25)] − [EC ($20) × DLDMR ($15/$25)]
OAG (Good A) = $18.00

Overhead Allocated to Good B

OAG (Good B) = [O ($50) × DLDMR ($10/$25)] − [EC ($20) × DLDMR ($10/$25)]
OAG (Good B) = $12.00

APPENDIX C—DIRECT COST RATIO METHOD

Direct Overhead

Direct overhead is allocated to a good on the basis of a method based on the criterion of benefit, cause or ability to bear.

Indirect Overhead

Indirect overhead is allocated on the basis of a direct cost ratio.

Calculation of Direct Cost Ratio

For each good produced by the producer, a direct cost ratio is calculated by the formula:

DCR = (DLC + DMC + DO) ÷ (TDLC + TDMC + TDO)

where

DCR is the direct cost ratio for the good;
DLC is the direct labor costs of the good;
DMC is the direct material costs of the good;
DO is the direct overhead of the good;
TDLC is the total direct labor costs of all goods produced by the producer;
TDMC is the total direct material costs of all goods produced by the producer; and
TDO is the total direct overhead of all goods produced by the producer.

Allocation of Indirect Overhead to a Good

Indirect overhead is allocated to a good by the formula:

IOAG = IO × DCR

where

IOAG is the indirect overhead allocated to the good;
IO is the indirect overhead of all goods produced by the producer; and
DCR is the direct cost ratio of the good.

Excluded Costs

Under paragraph 7(11)(b) of these Regulations, if excluded costs are included in

(a) direct overhead to be allocated to a good, those excluded costs are subtracted from the direct overhead allocated to the good; and

(b) indirect overhead to be allocated to a good, the direct cost ratio used to allocate indirect overhead to the good is used to determine the amount of excluded costs to be subtracted from the indirect overhead allocated to the good.

''*Examples*''

Example 1

The following example illustrates the application of the direct cost ratio method used by a producer of a good to allocate indirect overhead where the producer chooses to calculate the net cost of the good in accordance with paragraph 7(11)(a) of these Regulations. A producer produces Good A and Good B. Indirect overhead

(IO) minus excluded costs (EC) is $30. The other relevant costs are set out in the following table:

	Good A ($)	Good B ($)	Total ($)
Direct labor costs (DLC)	5	5	10
Direct material costs (DMC)	10	5	15
Direct overhead (DO) ...	8	2	10
Totals	23	12	35

Indirect Overhead Allocated to Good A

IOAG (Good A) = IO ($30) × DCR ($23/$35)
IOAG (Good A) = $19.71

Indirect Overhead Allocated to Good B

IOAG (Good B) = IO ($30) × DCR ($12/$35)
IOAG (Good B) = $10.29

Example 2

The following example illustrates the application of the direct cost ratio method used by a producer of a good to allocate indirect overhead if the producer has chosen to calculate the net cost of the good in accordance with paragraph 7(11)(b) of these Regulations and where excluded costs are included in indirect overhead.

A producer produces Good A and Good B. The indirect overhead (IO) is $50 (including excluded costs (EC) of $20). The other relevant costs are set out in the table to Example 1.

Indirect Overhead Allocated to Good A

IOAG (Good A) = [IO ($50) × DCR ($23/$35)] − [EC ($20) × DCR ($23/$35)]
IOAG (Good A) = $19.72

Indirect Overhead Allocated to Good B

IOAG (Good B) = [IO ($50) × DCR ($12/$35)] − [EC ($20) × DCR ($12/$35)]
IOAG (Good B) = $10.28

SCHEDULE VI VALUE OF MATERIALS

1 (1) Unless otherwise stated, the following definitions apply in this Schedule.

buying commissions means fees paid by a producer to that producer's agent for the agent's services in representing the producer in the purchase of a material;

materials of the same class or kind means, with respect to materials being valued, materials that are within a group or range of materials that

(a) is produced by a particular industry or industry sector, and

(b) includes identical materials or similar materials;

producer refers to the producer who used the material in the production of a good that is subject to a regional value-content requirement;

seller refers to a person who sells the material being valued to the producer.

2 (1) Except as provided under subsection (2), the transaction value of a material under paragraph 8(1)(b) of these Regulations is the price actually paid or payable for the material determined in accordance with section 3 and adjusted in accordance with section 4.

(2) There is no transaction value for a material if the material is not the subject of a sale.

(3) The transaction value of a material is unacceptable if:

(a) there are restrictions on the disposition or use of the material by the producer, other than restrictions that

(i) are imposed or required by law or by the public authorities in the territory of the USMCA country in which the producer of the good or the seller of the material is located,

(ii) limit the geographical area in which the material may be used, or

(iii) do not substantially affect the value of the material;

(b) the sale or price actually paid or payable is subject to a condition or consideration for which a value cannot be determined with respect to the material;

(c) part of the proceeds of any subsequent disposal or use of the material by the producer will accrue directly or indirectly to the seller, and an appropriate addition to the price actually paid or payable cannot be made in accordance with paragraph 4(1)(d); or

(d) the producer and the seller are related persons and the relationship between them influenced the price actually paid or payable for the material.

(4) The cases or considerations referred to in paragraph (3)(b) include the following:

(a) the seller establishes the price actually paid or payable for the material on condition that the producer will also buy other materials or goods in specified quantities;

(b) the price actually paid or payable for the material is dependent on the price or prices at which the producer sells other materials or goods to the seller of the material; and

(c) the price actually paid or payable is established on the basis of a form of payment extraneous to the material, such as where the material is a semi-finished material that is provided by the seller to the producer on condition that the seller will receive a specified quantity of the finished material from the producer.

(5) For purposes of paragraph (3)(b), conditions or considerations relating to the use of the material will not render the transaction

value unacceptable, such as where the producer undertakes on the producer's own account, even though by agreement with the seller, activities relating to the warranty of the material used in the production of a good.

(6) If objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under subsection 4(1), the transaction value cannot be determined under the provisions of subsection 2(1). For an illustration of this, a royalty is paid on the basis of the price actually paid or payable in a sale of a litre of a particular good that is produced by using a material that was purchased by the kilogram and made up into a solution. If the royalty is based partially on the purchased material and partially on other factors that have nothing to do with that material, such as when the purchased material is mixed with other ingredients and is no longer separately identifiable, or when the royalty cannot be distinguished from special financial arrangements between the seller and the producer, it would be inappropriate to add the royalty and the transaction value of the material could not be determined. However, if the amount of the royalty is based only on the purchased material and can be readily quantified, an addition to the price actually paid or payable can be made and the transaction value can be determined.

3 (1) The price actually paid or payable is the total payment made or to be made by the producer to or for the benefit of the seller of the material. The payment need not necessarily take the form of a transfer of money. It may be made by letters of credit or negotiable instruments. Payment may be made directly or indirectly to the seller. For an illustration of this, the settlement by the producer, whether in whole or in part, of a debt owed by the seller, is an indirect payment.

(2) Activities undertaken by the producer on the producer's own account, other than those for which an adjustment is provided in section 4, must not be considered to be an indirect payment, even though the activities might be regarded as being for the benefit of the seller.

(3) The transaction value must not include charges for construction, erection, assembly, maintenance or technical assistance related to the use of the material by the producer, provided that they are distinguished from the price actually paid or payable.

(4) The flow of dividends or other payments from the producer to the seller that do not relate to the purchase of the material are not part of the transaction value.

4 (1) In determining the transaction value of the material, the following must be added to the price actually paid or payable:

(a) To the extent that they are incurred by the producer with respect to the material being valued and are not included in the price actually paid or payable,

(i) commissions and brokerage fees, except buying commissions, and

(ii) the costs of containers which, for customs purposes, are classified with the material under the Harmonized System;

(b) the value, reasonably allocated in accordance with subsection (13), of the following elements if they are supplied directly or indirectly to the seller by the producer free of charge or at reduced cost for use in connection with the production and sale of the material, to the extent that the value is not included in the price actually paid or payable:

(i) A material, other than an indirect material, used in the production of the material being valued,

(ii) tools, dies, mold and similar indirect materials used in the production of the material being valued,

(iii) an indirect material, other than those referred to in subparagraph (ii) or in paragraphs (c), (e) or (f) of the definition *indirect material* in subsection 1(1) of these Regulations, used in the production of the material being valued, and

(iv) engineering, development, artwork, design work, and plans and sketches made outside the territory of the USMCA country in which the producer is located that are necessary for the production of the material being valued;

(c) the royalties related to the material, other than charges with respect to the right to reproduce the material in the territory of the USMCA country in which the producer is located that the producer must pay directly or indirectly as a condition of sale of the material, to the extent that such royalties are not included in the price actually paid or payable; and

(d) the value of any part of the proceeds of any subsequent disposal or use of the material that accrues directly or indirectly to the seller.

(2) The additions referred to in subsection (1) must be made to the price actually paid or payable under this section only on the basis of objective and quantifiable data.

(3) If objective and quantifiable data do not exist with regard to the additions required to be made to the price actually paid or payable under subsection (1), the transaction value cannot be determined under subsection 2(1).

(4) Additions must not be made to the price actually paid or payable for the purpose of determining the transaction value except as provided in this section.

(5) The amounts to be added under paragraph (1)(a) must be those amounts that are recorded on the books of the producer.

(6) The value of the elements referred to in subparagraph (1)(b)(i) must be:

(a) Where the elements are imported from outside the territory of the USMCA country

in which the seller is located, the customs value of the elements,

(b) where the producer, or a related person on behalf of the producer, purchases the elements from a person who is not a related person in the territory of the USMCA country in which the seller is located, the price actually paid or payable for the elements,

(c) where the producer, or a related person on behalf of the producer, acquires the elements from a person who is not a related person in the territory of the USMCA country in which the seller is located other than through a purchase, the value of the consideration related to the acquisition of the elements, based on the cost of the consideration that is recorded on the books of the producer or the related person, or

(d) where the elements are produced by the producer, or by a related person, in the territory of the USMCA country in which the seller is located, the total cost of the elements, determined in accordance with subsection (8),

(7) Those elements must include the following costs, that are recorded on the books of the producer or the related person supplying the elements on behalf of the producer, to the extent that such costs are not included under paragraphs (6)(a) through (d):

(a) The costs of freight, insurance, packing, and all other costs incurred in transporting the elements to the location of the seller,

(b) duties and taxes paid or payable with respect to the elements, other than duties and taxes that are waived, refunded, refundable or otherwise recoverable, including credit against duty or tax paid or payable,

(c) customs brokerage fees, including the cost of in-house customs brokerage services, incurred with respect to the elements, and

(d) the cost of waste and spoilage resulting from the use of the elements in the production of the material, minus the value of reusable scrap or by-product.

(8) For the purposes of paragraph (6)(d), the total cost of the elements referred to in subparagraph (1)(b)(i) are:

(a) Where the elements are produced by the producer, at the choice of the producer,

(i) the total cost incurred with respect to all goods produced by the producer, calculated on the basis of the costs that are recorded on the books of the producer, that can be reasonably allocated to the elements in accordance with Schedule V, or

(ii) the aggregate of each cost incurred by the producer that forms part of the total cost incurred with respect to the elements, calculated on the basis of the costs that are recorded on the books of the producer, that can be reasonably allocated to the elements in accordance with Schedule V; and

(b) if the elements are produced by a person who is related to the producer, at the choice of the producer:

(i) The total cost incurred with respect to all goods produced by that related person, calculated on the basis of the costs that are recorded on the books of that person, that can be reasonably allocated to the elements in accordance with Schedule V, or

(ii) the aggregate of each cost incurred by that related person that forms part of the total cost incurred with respect to the elements, calculated on the basis of the costs that are recorded on the books of that person, that can be reasonably allocated to the elements in accordance with Schedule V.

(9) Except as provided in subsections (11) and (12), the value of the elements referred to in subparagraphs (1)(b)(ii) through (iv) are:

(a) The cost of those elements that is recorded on the books of the producer; or

(b) if such elements are provided by another person on behalf of the producer and the cost is not recorded on the books of the producer, the cost of those elements that is recorded on the books of that other person.

(10) If the elements referred to in subparagraphs (1)(b)(ii) through (iv) were previously used by or on behalf of the producer, the value of the elements must be adjusted downward to reflect that use.

(11) If the elements referred to in subparagraphs (1)(b)(ii) and (iii) were leased by the producer or a person related to the producer, the value of the elements are the cost of the lease that is recorded on the books of the producer or that related person.

(12) An addition must not be made to the price actually paid or payable for the elements referred to in subparagraph (1)(b)(iv) that are available in the public domain, other than the cost of obtaining copies of them.

(13) The producer must choose the method of allocating to the material the value of the elements referred to in subparagraphs (1)(b)(ii) through (iv), provided that the value is reasonably allocated. The methods the producer may choose to allocate the value include allocating the value over the number of units produced up to the time of the first shipment or allocating the value over the entire anticipated production where contracts or firm commitments exist for that production. For an illustration of this, a producer provides the seller with a mold to be used in the production of the material and contracts with the seller to buy 10,000 units of that material. By the time the first shipment of 1,000 units arrives, the seller has already produced 4,000 units. In these circumstances, the producer may choose to allocate the value of the mold over 4,000 units or 10,000 units but must not choose to allocate the value of the elements to the first shipment of 1,000 units. The producer may choose to allocate the entire value of the elements to a single shipment of material only where that single shipment comprises all of

the units of the material acquired by the producer under the contract or commitment for that number of units of the material between the seller and the producer.

(14) The addition for the royalties referred to in paragraph (1)(c) is the payment for the royalties that is recorded on the books of the producer, or where the payment for the royalties is recorded on the books of another person, the payment for the royalties that is recorded on the books of that other person.

(15) The value of the proceeds referred to in paragraph (1)(d) is the amount that is recorded for those proceeds on the books of the producer or the seller.

5 (1) If there is no transaction value under subsection 2(2) or the transaction value is unacceptable under subsection 2(3), the value of the material, referred to in subparagraph 8(1)(b)(ii) of these Regulations, is the transaction value of identical materials sold, at or about the same time as the material being valued was shipped to the producer, to a buyer located in the same country as the producer.

(2) In applying this section, the transaction value of identical materials in a sale at the same commercial level and in substantially the same quantity of materials as the material being valued shall be used to determine the value of the material. If no such sale is found, the transaction value of identical materials sold at a different commercial level or in different quantities, adjusted to take into account the differences attributable to the commercial level or quantity, must be used, provided that such adjustments can be made on the basis of evidence that clearly establishes that the adjustment is reasonable and accurate, whether the adjustment leads to an increase or a decrease in the value.

(3) A condition for adjustment under subsection (2) because of different commercial levels or different quantities is that such adjustment be made only on the basis of evidence that clearly establishes that an adjustment is reasonable and accurate. For an illustration of this, a bona fide price list contains prices for different quantities. If the material being valued consists of a shipment of 10 units and the only identical materials for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's bona fide price list and using the price applicable to a sale of 10 units. This does not require that sales had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a value under this section is not appropriate.

(4) If more than one transaction value of identical materials is found, the lowest such value must be used to determine the value of the material under this section.

6 (1) If there is no transaction value under subsection 2(2) or the transaction value is unacceptable under subsection 2(3), and the value of the material cannot be determined under section 5, the value of the material, referred to in subparagraph 8(1)(b)(ii) of these Regulations, is the transaction value of similar materials sold, at or about the same time as the material being valued was shipped to the producer, to a buyer located in the same country as the producer.

(2) In applying this section, the transaction value of similar materials in a sale at the same commercial level and in substantially the same quantity of materials as the material being valued must be used to determine the value of the material. Where no such sale is found, the transaction value of similar materials sold at a different commercial level or in different quantities, adjusted to take into account the differences attributable to the commercial level or quantity, must be used, provided that such adjustments can be made on the basis of evidence that clearly establishes that the adjustment is reasonable and accurate, whether the adjustment leads to an increase or a decrease in the value.

(3) A condition for adjustment under subsection (2) because of different commercial levels or different quantities is that such adjustment be made only on the basis of evidence that clearly establishes that an adjustment is reasonable and accurate. For an illustration of this, a bona fide price list contains prices for different quantities. If the material being valued consists of a shipment of 10 units and the only similar materials for which a transaction value exists involved a sale of 500 units, and it is recognized that the seller grants quantity discounts, the required adjustment may be accomplished by resorting to the seller's bona fide price list and using the price applicable to a sale of 10 units. This does not require that sales had to have been made in quantities of 10 as long as the price list has been established as being bona fide through sales at other quantities. In the absence of such an objective measure, however, the determination of a value under this section is not appropriate.

(4) If more than one transaction value of similar materials is found, the lowest of those values must be used to determine the value of the material under this section.

7 If there is no transaction value under subsection 2(2) or the transaction value is unacceptable under subsection 2(3), and the value of the material cannot be determined under section 5 or 6, the value of the material, referred to in subparagraph 8(1)(b)(ii) of these Regulations, must be determined under section 8 or, when the value cannot be determined under that section, under section 9 except that, at the request of the producer, the

order of application of sections 8 and 9 must be reversed.

8 (1) Under this section, if identical materials or similar materials are sold in the territory of the USMCA country in which the producer is located, in the same condition as the material was in when received by the producer, the value of the material, referred to in subparagraph 8(1)(b)(ii) of these Regulations, must be based on the unit price at which those identical materials or similar materials are sold, in the greatest aggregate quantity by the producer or, where the producer does not sell those identical materials or similar materials, by a person at the same trade level as the producer, at or about the same time as the material being valued is received by the producer, to persons located in that territory who are not related to the seller, subject to deductions for the following:

(a) Either the amount of commissions usually earned or the amount generally reflected for profit and general expenses, in connection with sales, in the territory of that USMCA country, of materials of the same class or kind as the material being valued; and

(b) taxes, if included in the unit price, payable in the territory of that USMCA country, which are either waived, refunded or recoverable by way of credit against taxes actually paid or payable.

(2) If neither identical materials nor similar materials are sold at or about the same time the material being valued is received by the producer, the value must, subject to the deductions provided for under subsection (1), be based on the unit price at which identical materials or similar materials are sold in the territory of the USMCA country in which the producer is located, in the same condition as the material was in when received by the producer, at the earliest date within 90 days after the day on which the material being valued was received by the producer.

(3) The expression ''unit price at which those identical materials or similar materials are sold, in the greatest aggregate quantity'' in subsection (1) means the price at which the greatest number of units is sold in sales between persons who are not related persons. For an illustration of this, materials are sold from a price list which grants favourable unit prices for purchases made in larger quantities.

Sale quantity	Unit price	Number of sales	Total quantity sold at each price
1–10 units	100	10 sales of 5 units 5 sales of 3 units	65
11–25 units	95	5 sales of 11 units	55
Over 25 units	90	1 sale of 30 units 1 sale of 50 units	80

The greatest number of units sold at a particular price is 80; therefore, the unit price in the greatest aggregate quantity is 90.

As another illustration of this, two sales occur. In the first sale 500 units are sold at a price of 95 currency units each. In the second sale 400 units are sold at a price of 90 currency units each. In this illustration, the greatest number of units sold at a particular price is 500; therefore, the unit price in the greatest aggregate quantity is 95.

(4) Any sale to a person who supplies, directly or indirectly, free of charge or at reduced cost for use in connection with the production of the material, any of the elements specified in paragraph 4(1)(b), must not be taken into account in establishing the unit price for the purposes of this section.

(5) The amount generally reflected for profit and general expenses referred to in paragraph (1)(a) must be taken as a whole. The figure for the purpose of deducting an amount for profit and general expenses must be determined on the basis of information supplied by or on behalf of the producer unless the figures provided by the producer are inconsistent with those usually reflected in sales, in the country in which the producer is located, of materials of the same class or kind as the material being valued. If the figures provided by the producer are inconsistent with those figures, the amount for profit and general expenses must be based on relevant information other than that supplied by or on behalf of the producer.

(6) For the purposes of this section, general expenses are the direct and indirect costs of marketing the material in question.

(7) In determining either the commissions usually earned or the amount generally reflected for profit and general expenses under this section, the question as to whether certain materials are materials of the same class or kind as the material being valued must be determined on a case-by-case basis with reference to the circumstances involved. Sales in the country in which the producer is located of the narrowest group or range of materials of the same class or kind as the material being valued, for which the

necessary information can be provided, must be examined. For the purposes of this section, ''materials of the same class or kind'' includes materials imported from the same country as the material being valued as well as materials imported from other countries or acquired within the territory of the USMCA country in which the producer is located.

(8) For the purposes of subsection (2), the earliest date is the date by which sales of identical materials or similar materials are made, in sufficient quantity to establish the unit price, to other persons in the territory of the USMCA country in which the producer is located.

9 (1) Under this section, the value of a material, referred to in subparagraph 8(1)(b)(ii) of these Regulations, is the sum of:

(a) The cost or value of the materials used in the production of the material being valued, as determined on the basis of the costs that are recorded on the books of the producer of the material,

(b) the cost of producing the material being valued, as determined on the basis of the costs that are recorded on the books of the producer of the material, and

(c) an amount for profit and general expenses equal to that usually reflected in sales

(i) where the material being valued is imported by the producer into the territory of the USMCA country in which the producer is located, to persons located in the territory of the USMCA country in which the producer is located by producers of materials of the same class or kind as the material being valued who are located in the country in which the material is produced, and

(ii) where the material being valued is acquired by the producer from another person located in the territory of the USMCA country in which the producer is located, to persons located in the territory of the USMCA country in which the producer is located by producers of materials of the same class or kind as the material being valued who are located in the country in which the producer is located.

(2) This value of a material, to the extent it is not are not already included under paragraph (a) or (b) must include the following costs and where the elements are supplied directly or indirectly to the producer of the material being valued by the producer free of charge or at a reduced cost for use in the production of that material,

(a) the value of elements referred to in subparagraph 4(1)(b)(i), determined in accordance with subsections 4(6) and (7), and

(b) the value of elements referred to in subparagraphs 4(1)(b)(ii) through (iv), determined in accordance with subsection 4(9) and reasonably allocated to the material in accordance with subsection 4(13).

(3) For purposes of paragraphs (1)(a) and (b), if the costs recorded on the books of the producer of the material relate to the production of other goods and materials as well as to the production of the material being valued, the costs referred to in paragraphs (1)(a) and (b) with respect to the material being valued must be those costs recorded on the books of the producer of the material that can be reasonably allocated to that material in accordance with Schedule V.

(4) The amount for profit and general expenses referred to in paragraph (1)(c) must be determined on the basis of information supplied by or on behalf of the producer of the material being valued unless the profit and general expenses figures that are supplied with that information are inconsistent with those usually reflected in sales by producers of materials of the same class or kind as the material being valued who are located in the country in which the material is produced or the producer is located, as the case may be. The information supplied must be prepared in a manner consistent with generally accepted accounting principles of the country in which the material being valued is produced. If the material is produced in the territory of a USMCA country, the information must be prepared in accordance with the Generally Accepted Accounting Principles set out in the authorities listed for that USMCA country in Schedule X.

(5) For purposes of paragraph (1)(c) and subsection (4), general expenses means the direct and indirect costs of producing and selling the material that are not included under paragraphs (1)(a) and (b).

(6) For purposes of subsection (4), the amount for profit and general expenses must be taken as a whole. If, in the information supplied by or on behalf of the producer of a material, the profit figure is low and the general expenses figure is high, the profit and general expense figures taken together may nevertheless be consistent with those usually reflected in sales of materials of the same class or kind as the material being valued. If the producer of a material can demonstrate that it is taking a nil or low profit on its sales of the material because of particular commercial circumstances, its actual profit and general expense figures must be taken into account, provided that the producer of the material has valid commercial reasons to justify them and its pricing policy reflects usual pricing policies in the branch of industry concerned. For an illustration of this, such a situation might occur if producers have been forced to lower prices temporarily because of an unforeseeable drop in demand, or if the producers sell the material to complement a range of materials and goods being produced in the country in which the material is sold and accept a low profit to maintain competitiveness. A further illustration is if a material was being

launched and the producer accepted a nil or low profit to offset high general expenses associated with the launch.

(7) If the figures for the profit and general expenses supplied by or on behalf of the producer of the material are not consistent with those usually reflected in sales of materials of the same class or kind as the material being valued that are made by other producers in the country in which that material is sold, the amount for profit and general expenses may be based on relevant information other than that supplied by or on behalf of the producer of the material.

(8) Whether certain materials are of the same class or kind as the material being valued will be determined on a case-by-case basis with reference to the circumstances involved. For purposes of determining the amount for profit and general expenses usually reflected under the provisions of this section, sales of the narrowest group or range of materials of the same class or kind, which includes the material being valued, for which the necessary information can be provided, shall be examined. For the purposes of this section, the materials of the same class or kind must be from the same country as the material being valued.

10 (1) If there is no transaction value under subsection 2(2) or the transaction value is unacceptable under subsection 2(3), and the value of the material cannot be determined under sections 5 through 9, the value of the material, referred to in subparagraph 8(1)(b)(ii) of these Regulations, must be determined under this section using reasonable means consistent with the principles and general provisions of this Schedule and on the basis of data available in the country in which the producer is located.

(2) The value of the material determined under this section must not be determined on the basis of

(a) a valuation system which provides for the acceptance of the higher of two alternative values;

(b) a cost of production other than the value determined in accordance with section 9;

(c) minimum values;

(d) arbitrary or fictitious values;

(e) if the material is produced in the territory of the USMCA country in which the producer is located, the price of the material for export from that territory; or

(f) if the material is imported, the price of the material for export to a country other than to the territory of the USMCA country in which the producer is located.

(3) To the greatest extent possible, the value of the material determined under this section must be based on the methods of valuation set out in sections 2 through 9, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of this section. For an illustration of this, under section 5, the requirement that the identical materials should be sold at or about the same time as the time the material being valued is shipped to the producer could be flexibly interpreted. Similarly, identical materials produced in a country other than the country in which the material is produced could be the basis for determining the value of the material, or the value of identical materials already determined under section 8 could be used. For another illustration, under section 6, the requirement that the similar materials should be sold at or about the same time as the material being valued are shipped to the producer could be flexibly interpreted. Likewise, similar materials produced in a country other than the country in which the material is produced could be the basis for determining the value of the material, or the value of similar materials already determined under the provisions of section 8 could be used. For a further illustration, under section 8, the ninety days requirement could be administered flexibly.

SCHEDULE VII (METHODS FOR DETERMINING THE VALUE OF NON-ORIGINATING MATERIALS THAT ARE IDENTICAL MATERIALS AND THAT ARE USED IN THE PRODUCTION OF A GOOD)

Definitions

1 The following definitions apply in this Schedule.

FIFO method means the method by which the value of non-originating materials first received in materials inventory, determined in accordance with section 8 of these Regulations, is considered to be the value of non-originating materials used in the production of the good first shipped to the buyer of the good;

identical materials means, with respect to a material, materials that are the same as that material in all respects, including physical characteristics, quality and reputation but excluding minor differences in appearance;

LIFO method means the method by which the value of non-originating materials last received in materials inventory, determined in accordance with section 8 of these Regulations, is considered to be the value of non-originating materials used in the production of the good first shipped to the buyer of the good;

materials inventory means, with respect to a single plant of the producer of a good, an inventory of non-originating materials that are identical materials and that are used in the production of the good;

rolling average method means the method by which the value of non-originating materials used in the production of a good that is shipped to the buyer of the good is based on the average value, calculated in accordance

with section 4, of the non-originating materials in materials inventory.

General

2 For purposes of subsections 5(13) and (14) and 7(10) of these Regulations, the following are the methods for determining the value of non-originating materials that are identical materials and are used in the production of a good:

(a) FIFO method;

(b) LIFO method; and

(c) rolling average method.

3 (1) If a producer of a good chooses, with respect to non-originating materials that are identical materials, any of the methods referred to in section 2, the producer may not use another of those methods with respect to any other non-originating materials that are identical materials and that are used in the production of that good or in the production of any other good.

(2) If a producer of a good produces the good in more than one plant, the method chosen by the producer must be used with respect to all plants of the producer in which the good is produced.

(3) The method chosen by the producer to determine the value of non-originating materials may be chosen at any time during the producer's fiscal year and may not be changed during that fiscal year.

Average Value for Rolling Average Method

4 (1) The average value of non-originating materials that are identical materials and that are used in the production of a good that is shipped to the buyer of the good is calculated by dividing:

(a) The total value of non-originating materials that are identical materials in materials inventory prior to the shipment of the good, determined in accordance with section 8 of these Regulations, by

(b) the total units of those non-originating materials in materials inventory prior to the shipment of the good.

(2) The average value calculated under subsection (1) is applied to the remaining units of non-originating materials in materials inventory.

APPENDIX ''EXAMPLES'' ILLUSTRATING THE APPLICATION OF THE METHODS FOR DETERMINING THE VALUE OF NON-ORIGINATING MATERIALS THAT ARE IDENTICAL MATERIALS AND THAT ARE USED IN THE PRODUCTION OF A GOOD

The following examples are based on the figures set out in the table below and on the following assumptions:

(a) Materials A are non-originating materials that are identical materials that are used in the production of Good A;

(b) one unit of Materials A is used to produce one unit of Good A;

(c) all other materials used in the production of Good A are originating materials; and

(d) Good A is produced in a single plant.

Materials Inventory (Receipts of Materials A)		Sales (Shipments of Good A)	
Date (M/D/Y)	Quantity (units)	Unit cost ($)	Quantity (units)
01/01/21	200	1.05	
01/03/21	1,000	1.00	
01/05/21	1,000	1.10	
01/08/21			500
01/09/21			500
01/10/21	1,000	1.05	
01/14/21			1,500
01/16/21	2,000	1.10	
01/18/21			1,500

* Unit cost is determined in accordance with section 8 of these Regulations.

Example 1: FIFO method

By applying the FIFO Method:

(1) The 200 units of Materials A received on 01/01/21 and valued at $1.05 per unit and 300 units of the 1,000 units of Material A received on 01/03/21 and valued at $1.00 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/08/21; therefore, the value of the non-originating materials used in the production of those goods is considered to be $510 [(200 units × $1.05) + (300 units × $1.00)];

(2) 500 units of the remaining 700 units of Materials A received on 01/03/21 and valued at $1.00 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/09/21; therefore, the value of the non-originating materials used in the production of those goods is considered to be $500 (500 units × $1.00);

(3) the remaining 200 units of the 1,000 units of Materials A received on 01/03/21 and valued at $1.00 per unit, the 1,000 units of Materials A received on 01/05/21 and valued at $1.10 per unit, and 300 units of the 1,000 units of Materials A received on 01/10/21 and valued at $1.05 per unit

are considered to have been used in the production of the 1,500 units of Good A shipped on 01/14/21; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,615 [(200 units × $1.00) + (1,000 units × $1.10) + (300 units x $1.05)]; and

(4) the remaining 700 units of the 1,000 units of Materials A received on 01/10/21 and valued at $1.05 per unit and 800 units of the 2,000 units of Materials A received on 01/16/21 and valued at $1.10 per unit are considered to have been used in the production of the 1,500 units of Good A shipped on 01/18/21; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,615 [(700 units × $1.05) + (800 units × $1.10)].

Example 2: LIFO Method

By applying the LIFO method:

(1) 500 units of the 1,000 units of Materials A received on 01/05/21 and valued at $1.10 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/08/21; therefore, the value of the non-originating materials used in the production of those goods is considered to be $550 (500 units × $1.10);

(2) the remaining 500 units of the 1,000 units of Materials A received on 01/05/21 and valued at $1.10 per unit are considered to have been used in the production of the 500 units of Good A shipped on 01/09/21; therefore, the value of non-originating materials used in the production of those goods is considered to be $550 (500 units × $1.10);

(3) the 1,000 units of Materials A received on 01/10/21 and valued at $1.05 per unit and 500 units of the 1,000 units of Material A received on 01/03/21 and valued at $1.00 per unit are considered to have been used in the production of the 1,500 units of Good A shipped on 01/14/21; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,550 [(1,000 units × $1.05) + (500 units × $1.00)]; and

(4) 1,500 units of the 2,000 units of Materials A received on 01/16/21 and valued at $1.10 per unit are considered to have been used in the production of the 1,500 units of Good A shipped on 01/18/21; therefore, the value of non-originating materials used in the production of those goods is considered to be $1,650 (1,500 units × $1.10).

Example 3: Rolling Average Method

The following table identifies the average value of non-originating Materials A as determined under the rolling average method. For purposes of this example, a new average value of non-originating Materials A is calculated after each receipt.

Materials inventory	Date (M/D/Y)	Quantity (units)	Unit cost* ($)	Total value ($)
Beginning Inventory	01/01/21	200	1.05	210
Receipt	01/03/21	1,000	1.00	1,000
AVERAGE VALUE	.....	1,200	1.008	1,210
Receipt	01/05/21	1,000	1.10	1,100
AVERAGE VALUE	.....	2,200	1.05	2,310
Shipment	01/08/21	500	1.05	525
AVERAGE VALUE	.....	1,700	1.05	1,785
Shipment	01/09/21	500	1.05	525
AVERAGE VALUE	.....	1,200	1.05	1,260
Receipt	01/16/21	2,000	1.10	2,200
AVERAGE VALUE	.....	3,200	1.08	3,460

* Unit cost is determined in accordance with section 8 of these Regulations.

By applying the rolling average method:

(1) The value of non-originating materials used in the production of the 500 units of Good A shipped on 01/08/21 is considered to be $525 (500 units × $1.05); and

(2) the value of non-originating materials used in the production of the 500 units of Good A shipped on 01/09/21 is considered to be $525 (500 units × $1.05).

SCHEDULE VIII (INVENTORY MANAGEMENT METHODS)

Part I Fungible Materials

Definitions

1 The following definitions apply in this Part,

average method means the method by which the origin of fungible materials withdrawn from materials inventory is based on the ratio, calculated under section 5, of originating materials and non-originating materials in materials inventory;

FIFO method means the method by which the origin of fungible materials first received in materials inventory is considered to be the origin of fungible materials first withdrawn from materials inventory;

LIFO method means the method by which the origin of fungible materials last received in materials inventory is considered to be the origin of fungible materials first withdrawn from materials inventory;

materials inventory means,

(a) with respect to a producer of a good, an inventory of fungible materials that are used in the production of the good, and

(b) with respect to a person from whom the producer of the good acquired those fungible materials, an inventory from which fungible materials are sold or otherwise transferred to the producer of the good;

opening inventory means the materials inventory at the time an inventory management method is chosen;

origin identifier means any mark that identifies fungible materials as originating materials or non-originating materials.

General

2 The following inventory management methods may be used for determining whether fungible materials referred to in paragraph 8(18)(a) of these Regulations are:

(a) Specific identification method;

(b) FIFO method;

(c) LIFO method; and

(d) average method.

3 A producer of a good, or a person from whom the producer acquired the fungible materials that are used in the production of the good, may choose only one of the inventory management methods referred to in section 2, and, if the averaging method is chosen, only one averaging period in each fiscal year of that producer or person for the materials inventory.

Specific Identification Method

4 (1) Except as otherwise provided under subsection (2), if the producer or person referred to in section 3 chooses the specific identification method, the producer or person must physically segregate, in materials inventory, originating materials that are fungible materials from non-originating materials that are fungible materials.

(2) If originating materials or non-originating materials that are fungible materials are marked with an origin identifier, the producer or person need not physically segregate those materials under subsection (1) if the origin identifier remains visible throughout the production of the good.

Average Method

5 If the producer or person referred to in section 3 chooses the average method, the origin of fungible materials withdrawn from materials inventory is determined on the basis of the ratio of originating materials and non-originating materials in materials inventory that is calculated under sections 6 through 8.

6 (1) Except as otherwise provided in sections 7 and 8, the ratio is calculated with respect to a month or three-month period, at the choice of the producer or person, by dividing

(a) the sum of

(i) the total units of originating materials or non-originating materials that are fungible materials and that were in materials inventory at the beginning of the preceding one-month or three-month period, and

(ii) the total units of originating materials or non-originating materials that are fungible materials and that were received in materials inventory during that preceding one-month or three-month period, by

(b) the sum of

(i) the total units of originating materials and non-originating materials that are fungible materials and that were in materials inventory at the beginning of the preceding one-month or three-month period, and

(ii) the total units of originating materials and non-originating materials that are fungible materials and that were received in materials inventory during that preceding one-month or three-month period.

(2) The ratio calculated with respect to a preceding month or three-month period under subsection (1) is applied to the fungible materials remaining in materials inventory at the end of the preceding month or three-month period.

7 (1) If the good is subject to a regional value-content requirement and the regional value content is calculated under the net cost method and the producer or person chooses to average over a period under subsections 7(15), 16(1) or (10) of these Regulations, the ratio is calculated with respect to that period by dividing

(a) the sum of

(i) the total units of originating materials or non-originating materials that are fungible materials and that were in materials inventory at the beginning of the period, and

(ii) the total units of originating materials or non-originating materials that are fungible materials and that were received in materials inventory during that period, by

(b) the sum of

(i) the total units of originating materials and non-originating materials that are fungible materials and that were in materials inventory at the beginning of the period, and

(ii) the total units of originating materials and non-originating materials that are fungible materials and that were received in materials inventory during that period.

(2) The ratio calculated with respect to a period under subsection (1) is applied to the fungible materials remaining in materials inventory at the end of the period.

8 (1) If the good is subject to a regional value-content requirement and the regional value content of that good is calculated under the transaction value method or the net cost method, the ratio is calculated with respect to each shipment of the good by dividing

(a) the total units of originating materials or non-originating materials that are fungible materials and that were in materials inventory prior to the shipment, by

(b) the total units of originating materials and non-originating materials that are fungible materials and that were in materials inventory prior to the shipment.

(2) The ratio calculated with respect to a shipment of a good under subsection (1) is applied to the fungible materials remaining in materials inventory after the shipment.

Manner of Dealing With Opening Inventory

9 (1) Except as otherwise provided under subsections (2) and (3), if the producer or person referred to in section 3 has fungible materials in opening inventory, the origin of those fungible materials is determined by

(a) identifying, in the books of the producer or person, the latest receipts of fungible materials that add up to the amount of fungible materials in opening inventory;

(b) identifying the origin of the fungible materials that make up those receipts; and

(c) considering the origin of those fungible materials to be the origin of the fungible materials in opening inventory.

(2) If the producer or person chooses the specific identification method and has, in opening inventory, originating materials or non-originating materials that are fungible materials and that are marked with an origin identifier, the origin of those fungible materials is determined on the basis of the origin identifier.

(3) The producer or person may consider all fungible materials in opening inventory to be non-originating materials.

Part II Fungible Goods

Definitions

10 The following definitions apply in this Part,

average method means the method by which the origin of fungible goods withdrawn from finished goods inventory is based on the ratio, calculated under section 14, of originating goods and non-originating goods in finished goods inventory;

FIFO method means the method by which the origin of fungible goods first received in finished goods inventory is considered to be the origin of fungible goods first withdrawn from finished goods inventory;

finished goods inventory means an inventory from which fungible goods are sold or otherwise transferred to another person;

LIFO method means the method by which the origin of fungible goods last received in finished goods inventory is considered to be the origin of fungible goods first withdrawn from finished goods inventory;

opening inventory means the finished goods inventory at the time an inventory management method is chosen;

origin identifier means any mark that identifies fungible goods as originating goods or non-originating goods.

General

11 The following inventory management methods may be used for determining whether fungible goods referred to in paragraph 8(18)(b) of these Regulations are originating goods:

(a) Specific identification method;

(b) FIFO method;

(c) LIFO method; and

(d) average method.

12 An exporter of a good, or a person from whom the exporter acquired the fungible good, may choose only one of the inventory management methods referred to in section 11, including only one averaging period in the case of the average method, in each fiscal year of that exporter or person for each finished goods inventory of the exporter or person.

Specific Identification Method

13 (1) Except as provided under subsection (2), if the exporter or person referred to in section 12 chooses the specific identification method, the exporter or person must physically segregate, in finished goods inventory, originating goods that are fungible goods from non-originating goods that are fungible goods.

(2) If originating goods or non-originating goods that are fungible goods are marked with an origin identifier, the exporter or person need not physically segregate those goods under subsection (1) if the origin identifier is visible on the fungible goods.

Average Method

14 (1) If the exporter or person referred to in section 12 chooses the average method, the origin of each shipment of fungible goods withdrawn from finished goods inventory during a month or three-month period, at the choice of the exporter or person, is determined on the basis of the ratio of originating goods and non-originating goods in finished goods inventory for the preceding one-month or three-month period that is calculated by dividing

(a) the sum of

(i) the total units of originating goods or non-originating goods that are fungible goods and that were in finished goods inventory at the beginning of the preceding one-month or three-month period, and

(ii) the total units of originating goods or non-originating goods that are fungible goods and that were received in finished goods inventory during that preceding one-month or three-month period, by

(b) the sum of

(i) the total units of originating goods and non-originating goods that are fungible goods and that were in finished goods inventory at the beginning of the preceding one-month or three-month period, and

(ii) the total units of originating goods and non-originating goods that are fungible goods and that were received in finished goods inventory during that preceding one-month or three-month period.

(2) The ratio calculated with respect to a preceding month or three-month period under subsection (1) is applied to the fungible goods remaining in finished goods inventory at the end of the preceding month or three-month period.

Manner of Dealing With Opening Inventory

15 (1) Except as otherwise provided under subsections (2) and (3), if the exporter or person referred to in section 12 has fungible goods in opening inventory, the origin of those fungible goods is determined by

(a) identifying, in the books of the exporter or person, the latest receipts of fungible goods that add up to the amount of fungible goods in opening inventory;

(b) determining the origin of the fungible goods that make up those receipts; and

(c) considering the origin of those fungible goods to be the origin of the fungible goods in opening inventory.

(2) If the exporter or person chooses the specific identification method and has, in opening inventory, originating goods or non-originating goods that are fungible goods and that are marked with an origin identifier, the origin of those fungible goods is determined on the basis of the origin identifier.

(3) The exporter or person may consider all fungible goods in opening inventory to be non-originating goods.

APPENDIX A

''Examples'' Illustrating the Application of the Inventory Management Methods To Determine the Origin of Fungible Materials

The following examples are based on the figures set out in the table below and on the following assumptions:

(a) Originating Material A and non-originating Material A that are fungible materials are used in the production of Good A;

(b) one unit of Material A is used to produce one unit of Good A;

(c) Material A is only used in the production of Good A;

(d) all other materials used in the production of Good A are originating materials; and

(e) the producer of Good A exports all shipments of Good A to the territory of a USMCA country.

Materials inventory (Receipts of Material A)				Sales (Shipments of Good A)
Date (M/D/Y)	Quantity (units)	Unit cost *	Total value	Quantity (units)
12/18/20	100 (O [1])	$1.00	$ 100	
12/27/20	100 (N [2])	1.10	110	
01/01/21	200 (OI [3])			
01/01/21	1,000 (O)	1.00	1,000	
01/05/21	1,000 (N)	1.10	1,100	
01/10/21				100
01/10/21	1,000 (O)	1.05	1,050	
01/15/21				700
01/16/21	2,000 (N)	1.10	2,200	
01/20/21				1,000
01/23/21				900

* Unit cost is determined in accordance with section 8 of these Regulations.
[1] ''O'' denotes originating materials.
[2] ''N'' denotes non-originating materials.
[3] ''OI'' denotes opening inventory.

Example 1: FIFO Method

Good A is subject to a regional value-content requirement. Producer A is using the transaction value method to determine the regional value content of Good A.

By applying the FIFO method:

(1) The 100 units of originating Material A in opening inventory that were received in materials inventory on 12/18/20 are considered to have been used in the production of the 100 units of Good A shipped on 01/10/21; therefore, the value of non-originating materials used in the production of those goods is considered to be $0;

(2) the 100 units of non-originating Material A in opening inventory that were received in materials inventory on 12/27/20 and 600 units of the 1,000 units of originating Material A that were received in materials inventory on 01/01/21 are considered to have been used in the production of the 700 units of Good A shipped on 01/15/21; therefore, the value of non-originating materials used in the production of those goods is considered to be $110 (100 units × $1.10);

(3) the remaining 400 units of the 1,000 units of originating Material A that were received in materials inventory on 01/01/21 and 600 units of the 1,000 units of non-originating Material A that were received in materials inventory on 01/05/21 are considered to have been used in the production of the 1,000 units of Good A shipped on 01/20/21; therefore, the value of non-originating materials used in the production of those goods is considered to be $660 (600 units × $1.10); and

(4) the remaining 400 units of the 1,000 units of non-originating Material A that were received in materials inventory on 01/05/21 and 500 units of the 1,000 units of originating Material A that were received in materials inventory on 01/10/21 are considered to have been used in the production of the 900 units of Good A shipped on 01/23/21; therefore, the value of non-originating materials used in the production of those goods is considered to be $440 (400 units × $1.10).

Example 2: LIFO Method

Good A is subject to a change in tariff classification requirement and the non-originating Material A used in the production of Good A does not undergo the applicable change in tariff classification. Therefore, if originating Material A is used in the production of Good A, Good A is an originating good and, if non-originating Material A is used in the production of Good A, Good A is a non-originating good.

By applying the LIFO method:

(1) 100 units of the 1,000 units of non-originating Material A that were received in materials inventory on 01/05/21 are considered to have been used in the production of the 100 units of Good A shipped on 01/10/21;

(2) 700 units of the 1,000 units of originating Material A that were received in materials inventory on 01/10/21 are considered to have been used in the production of the 700 units of Good A shipped on 01/15/21;

(3) 1,000 units of the 2,000 units of non-originating Material A that were received in materials inventory on 01/16/21 are considered to have been used in the production of the 1,000 units of Good A shipped on 01/20/21; and

(4) 900 units of the remaining 1,000 units of non-originating Material A that were received in materials inventory on 01/16/21 are considered to have been used in the production of the 900 units of Good A shipped on 01/23/21.

Example 3: Average Method

Good A is subject to an applicable regional value-content requirement. Producer A is using the transaction value method to determine the regional value content of Good A. Producer A determines the average value of non-originating Material A and the ratio of originating Material A to total value of originating Material A and non-originating Material A in the following table.

Material inventory			Sales					
(Receipts of Material A)			(Non-originating material)				(Shipments of Good A)	
	Date (M/D/Y)	Quantity (units)	Total value	Unit cost*	Quantity (units)	Total value	Ratio	Quantity (units)
Receipt	12/18/20	100 (O[1])	$ 100	$1.00				
Receipt	12/27/20	100 (N[2])	110	1.10	100	$ 110.00		
New AVG INV Value		200 (OI[3])	210	1.05	100	105.00	0.50	
Receipt	01/01/21	1,000 (O)	1,000	1.00				
New AVG INV Value		1,200	1,210	1.01	100	101.00	0.08	
Receipt	01/05/21	1,000 (N)	1,100	1.10	1,000	1,100.00		
New AVG INV Value		2,200	2,310	1.05	1,100	1,155.00	0.50	
Shipment	01/10/21	(100)	(105)	1.05	(50)	(52.50)		100
Receipt	01/10/21	1,000 (O)	1,050	1.05				
New AVG INV Value		3,100	3,255	1.05	1,050	1,102.50	0.34	
Shipment	01/15/21	(700)	(735)	1.05	(238)	(249.90)		700
Receipt	01/16/21	2,000 (N)	2,200	1.10	2,000	2,200.00		
New AVG INV Value		4,400	4,720	1.07	2,812	3,008.84	0.64	
Shipment	01/20/21	(1,000)	(1,070)	1.07	(640)	(684.80)		1,000
Shipment	01/23/21	(900)	(963)	1.07	(576)	(616.32)		900
New AVG INV Value		2,500	2,687	1.07	1,596	1,707.24	0.64	

*Unit cost is determined in accordance with section 8 of these Regulations.
[1]"O" denotes originating materials.
[2]"N" denotes non-originating materials.
[3]"OI" denotes opening inventory.

By applying the average method:

(1) Before the shipment of the 100 units of Material A on 01/10/21, the ratio of units of originating Material A to total units of Material A in materials inventory was .50 (1,100 units/2,200 units) and the ratio of units of non-originating Material A to total units of Material A in materials inventory was .50 (1,100 units/2,200 units);

based on those ratios, 50 units (100 units × .50) of originating Material A and 50 units (100 units × .50) of non-originating Material A are considered to have been used in the production of the 100 units of Good A shipped on 01/10/21; therefore, the value of non-originating Material A used in the production of those goods is considered to be $52.50 [100 units × $1.05 (average unit value) × .50];

the ratios are applied to the units of Material A remaining in materials inventory after the shipment: 1,050 units (2,100 units × .50) are considered to be originating materials and 1,050 units (2,100 units × .50) are considered to be non-originating materials;

(2) before the shipment of the 700 units of Good A on 01/15/21, the ratio of units of originating Material A to total units of Material A in materials inventory was 66% (2,050 units/3,100 units) and the ratio of units of non-originating Material A to total units of Material A in materials inventory was 34% (1,050 units/3,100 units);

based on those ratios, 462 units (700 units × .66) of originating Material A and 238 units (700 units × .34) of non-originating Material A are considered to have been used in the production of the 700 units of Good A shipped on 01/15/21; therefore, the value of non-originating Material A used in the production of those goods is considered to be $249.90 [700 units × $1.05 (average unit value) × 34%];

the ratios are applied to the units of Material A remaining in materials inventory after the shipment: 1,584 units (2,400 units × .66) are considered to be originating materials and 816 units (2,400 units × .34) are considered to be non-originating materials;

(3) before the shipment of the 1,000 units of Material A on 01/20/21, the ratio of units of originating Material A to total units of Material A in materials inventory was 36% (1,584 units/4,400 units) and the ratio of units of non-originating Material A to total units of Material A in materials inventory was 64% (2,816 units/4,400 units);

based on those ratios, 360 units (1,000 units × .36) of originating Material A and 640 units (1,000 units × .64) of non-originating Material A are considered to have been used in the production of the 1,000 units of Good A shipped on 01/20/21; therefore, the value of non-originating Material A used in the production of those goods is considered to be $684.80 [1,000 units × $1.07 (average unit value) × 64%];

those ratios are applied to the units of Material A remaining in materials inventory after the shipment: 1,224 units (3,400 units × .36) are considered to be originating materials and 2,176 units (3,400 units × .64) are considered to be non-originating materials;

(4) before the shipment of the 900 units of Good A on 01/23/21, the ratio of units of originating Material A to total units of Material A in materials inventory was 36% (1,224 units/3,400 units) and the ratio of units of non-originating Material A to total units of Material A in materials inventory was 64% (2,176 units/3,400 units);

based on those ratios, 324 units (900 units × .36) of originating Material A and 576 units (900 units × .64) of non-originating Material A are considered to have been used in the production of the 900 units of Good A shipped on 01/23/21; therefore, the value of non-originating Material A used in the production of those goods is considered to be $616.32 [900 units × $1.07 (average unit value) × 64%];

those ratios are applied to the units of Material A remaining in materials inventory after the shipment: 900 units (2,500 units × .36) are considered to be originating materials and 1,600 units (2,500 units × .64) are considered to be non-originating materials.

Example 4: Average Method

Good A is subject to an applicable regional value-content requirement. Producer A is using the net cost method and is averaging over a period of one month under paragraph 7(15)(a) of these Regulations to determine the regional value content of Good A.

By applying the average method:

The ratio of units of originating Material A to total units of Material A in materials inventory for January 2021 is 40.4% (2,100 units/5,200 units);

based on that ratio, 1,091 units (2,700 units × .404) of originating Material A and 1,609 units (2,700 units—1,091 units) of non-originating Material A are considered to have been used in the production of the 2,700 units of Good A shipped in January 2021; therefore, the value of non-originating materials used in the production of those goods is considered to be $0.64 per unit [$5,560 (total value of Material A in materials inventory)/5,200 (units of Material A in materials inventory) = $1.07 (average unit value) × (1 − .404)] or $1,728 ($0.64 × 2,700 units); and

that ratio is applied to the units of Material A remaining in materials inventory on January 31, 2021: 1,010 units (2,500 units × .404) are considered to be originating materials and 1,490 units (2,500 units − 1,010 units) are considered to be non-originating materials.

Appendix B

''Examples'' Illustrating the Application of the Inventory Management Methods to Determine the Origin of Fungible Goods

The following examples are based on the figures set out in the table below and on the assumption that Exporter A acquires originating Good A and non-originating Good A that are fungible goods and physically combines or mixes Good A before exporting those goods to the buyer of those goods.

Finished goods inventory (Receipts of Good A)		Sales (Shipments of Good A)
Date (M/D/Y)	Quantity (units)	Quantity (units)
12/18/20	100 (O[1])	
12/27/20	100 (N[2])	
01/01/21	200 (OI[3])	
01/01/21	1,000 (O)	
01/05/21	1,000 (N)	
01/10/21		100
01/10/21	1,000 (O)	
01/15/21		700
01/16/21	2,000 (N)	
01/20/21		1,000
01/23/21		900

[1] "O" denotes originating goods.
[2] "N" denotes non-originating goods.
[3] "OI" denotes opening inventory.

Example 1: FIFO Method

By applying the FIFO method:

(1) The 100 units of originating Good A in opening inventory that were received in finished goods inventory on 12/18/20 are considered to be the 100 units of Good A shipped on 01/10/21;

(2) the 100 units of non-originating Good A in opening inventory that were received in finished goods inventory on 12/27/20 and 600 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/01/21 are considered to be the 700 units of Good A shipped on 01/15/21;

(3) the remaining 400 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/01/21 and 600 units of the 1,000 units of non-originating Good A that were received in finished goods inventory on 01/05/21 are considered to be the 1,000 units of Good A shipped on 01/20/21; and

(4) the remaining 400 units of the 1,000 units of non-originating Good A that were received in finished goods inventory on 01/05/21 and 500 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/10/21 are considered to be the 900 units of Good A shipped on 01/23/21.

Example 2: LIFO Method

By applying the LIFO method:

(1) 100 units of the 1,000 units of non-originating Good A that were received in finished goods inventory on 01/05/21 are considered to be the 100 units of Good A shipped on 01/10/21;

(2) 700 units of the 1,000 units of originating Good A that were received in finished goods inventory on 01/10/21 are considered to be the 700 units of Good A shipped on 01/15/21;

(3) 1,000 units of the 2,000 units of non-originating Good A that were received in finished goods inventory on 01/16/21 are considered to be the 1,000 units of Good A shipped on 01/20/21; and

(4) 900 units of the remaining 1,000 units of non-originating Good A that were received in finished goods inventory on 01/16/21 are considered to be the 900 units of Good A shipped on 01/23/21.

Example 3: Average Method

Exporter A chooses to determine the origin of Good A on a monthly basis. Exporter A exported 3,000 units of Good A during the month of February 2021. The origin of the units of Good A exported during that month is determined on the basis of the preceding month, that is January 2021.

By applying the average method:

The ratio of originating goods to all goods in finished goods inventory for the month of January 2021 is 40.4% (2,100 units/5,200 units);

based on that ratio, 1,212 units (3,000 units × .404) of Good A shipped in February 2021 are considered to be originating goods and 1,788 units (3,000 units − 1,212 units) of Good A are considered to be non-originating goods; and

that ratio is applied to the units of Good A remaining in finished goods inventory on January 31, 2021: 1,010 units (2,500 units × .404) are considered to be originating goods and 1,490 units (2,500 units − 1,010 units) are considered to be non-originating goods.

SCHEDULE IX (METHOD FOR CALCULATING NON-ALLOWABLE INTEREST COSTS)

Definitions and Interpretation

1 For purposes of this Schedule,

fixed-rate contract means a loan contract, instalment purchase contract or other financing agreement in which the interest rate remains constant throughout the life of the contract or agreement;

linear interpolation means, with respect to the interest rate issued by the federal government, the application of the following mathematical formula:

$$A + [((B - A) \times (E - D))/(C - D)]$$

where

A is the interest rate issued by the federal government debt obligations that are nearest in maturity but of shorter maturity than the weighted average principal maturity of the payment schedule under the fixed-rate contract or variable-rate contract to which they are being compared,

B is the interest rate issued by the federal government debt obligations that are nearest in maturity but of greater maturity than the weighted average principal maturity of that payment schedule,

C is the maturity of federal government debt obligations that are nearest in maturity but of greater maturity than the weighted average principal maturity of that payment schedule,

D is the maturity of federal government debt obligations that are nearest in maturity but of shorter maturity than the weighted average principal maturity of that payment schedule, and

E is the weighted average principal maturity of that payment schedule;

payment schedule means the schedule of payments, whether on a weekly, bi-weekly, monthly, yearly or other basis, of principal and interest, or any combination thereof, made by a producer to a lender in accordance with the terms of a fixed-rate contract or variable-rate contract;

variable-rate contract means a loan contract, instalment purchase contract or other financing agreement in which the interest rate is adjusted at intervals during the life of the contract or agreement in accordance with its terms;

weighted average principal maturity means, with respect to fixed-rate contracts and variable-rate contracts, the numbers of years, or portion thereof, that is equal to the number obtained by

(a) dividing the sum of the weighted principal payments,

(i) in the case of a fixed-rate contract, by the original amount of the loan, and

(ii) in the case of a variable-rate contract, by the principal balance at the beginning of the interest rate period for which the weighted principal payments were calculated, and

(b) rounding the amount determined under paragraph (a) to the nearest single decimal place and, if that amount is the midpoint between two such numbers, to the greater of those two numbers;

weighted principal payment means,

(a) with respect to fixed-rate contracts, the amount determined by multiplying each principal payment under the contract by the number of years, or portion thereof, between the date the producer entered into the contract and the date of that principal payment, and

(b) with respect to variable-rate contracts

(i) the amount determined by multiplying each principal payment made during the current interest rate period by the number of years, or portion thereof, between the beginning of that interest rate period and the date of that payment, and

(ii) the amount equal to the outstanding principal owing, but not necessarily due, at the end of the current interest rate period, multiplied by the number of years, or portion thereof, between the beginning and the end of that interest rate period;

interest rate issued by the federal government means

(a) in the case of a producer located in Canada, the weekly average of the yield for federal government debt obligations set out in the Bank of Canada's *Daily Digest*

(i) if the interest rate is adjusted at intervals of less than one year, under the title ''Treasury Bills—1 Month'', and

(ii) in any other case, under the title ''Government of Canada benchmark bond yields—3 Year'', for the week that the producer entered into the contract or the week of the most recent interest rate adjustment date, if any, under the contract,

(b) in the case of a producer located in Mexico, the yield for federal government debt obligations set out in *La Seccion de Indicadores Monetarios, Financieros, y de Finanzas Publicas, de los Indicadores Economicos,* published by the Banco de Mexico under the title ''*Certificados de la Tesoreria de la Federacion''* for the week that the producer entered into the contract or the week of the most recent interest rate adjustment date, if any, under the contract, and

(c) in the case of a producer located in the United States, the yield for federal government debt obligations set out in the Federal Reserve statistical release (H.15) *Selected Interest Rates*

(i) if the interest rate is adjusted at intervals of less than one year, under the title ''U.S. government securities, Treasury bills, Secondary market'', and

(ii) in any other case, under the title ''U.S. Government Securities, Treasury constant maturities'', for the week that the producer entered into the contract or the week of the most recent interest rate adjustment date, if any, under the contract.

General

2. For purposes of calculating non-allowable interest costs

(a) with respect to a fixed-rate contract, the interest rate under that contract must be compared with the interest rate issued by the federal government debt obligations that have maturities of the same length as the weighted average principal maturity of the payment schedule under the contract (that yield determined by linear interpolation, if necessary);

(b) with respect to a variable-rate contract

(i) in which the interest rate is adjusted at intervals of less than or equal to one year, the interest rate under that contract must be compared with the interest rate issued by the federal government on debt obligations that have maturities closest in length to the interest rate adjustment period of the contract, and

(ii) in which the interest rate is adjusted at intervals of greater than one year, the interest rate under the contract must be compared with the interest rate issued by the federal government on debt obligations that have maturities of the same length as the weighted average principal maturity of the payment schedule under the contract (that yield determined by linear interpolation, if necessary); and

(c) with respect to a fixed-rate or variable-rate contract in which the weighted average principal maturity of the payment schedule under the contract is greater than the maturities offered on federal government debt obligations, the interest rate under the contract must be compared to the interest rate issued by the federal government on debt obligations that have maturities closest in length to the weighted average principal maturity of the payment schedule under the contract.

APPENDIX ''EXAMPLE'' ILLUSTRATING THE APPLICATION OF THE METHOD FOR CALCULATING NON-ALLOWABLE INTEREST COSTS IN THE CASE OF A FIXED-RATE CONTRACT

The following example is based on the figures set out in the table below and on the following assumptions:

(a) *A producer in a USMCA country borrows $1,000,000 from a person of the same USMCA country under a fixed-rate contract;*

(b) *under the terms of the contract, the loan is payable in 10 years with interest paid at the rate of 6 per cent per year on the declining principal balance;*

(c) *the payment schedule calculated by the lender based on the terms of the contract requires the producer to make annual payments of principal and interest of $135,867.36 over the life of the contract;*

(d) *there are no federal government debt obligations that have maturities equal to the 6-year weighted average principal maturity of the contract; and*

(e) *the federal government debt obligations that are nearest in maturity to the weighted average principal maturity of the contract are of 5- and 7-year maturities, and the yields on them are 4.7 per cent and 5.0 per cent, respectively.*

Years of loan	Principal balance [1]	Interest payment [2]	Principal payment [3]	Payment schedule	Weighted principal payment [4]
1	$924,132.04	$60,000.00	$75,867.96	$135,867.96	$75,867.96
2	843,712.00	55,447.92	80,420.04	135,867.96	160,840.08
3	758,466.76	50,622.72	85,245.24	135,867.96	255,735.72
4	668,106.81	45,508.01	90,359.95	135,867.96	361,439.82
5	572,325.26	40,086.41	95,781.55	135,867.96	478,907.76
6	470,796.81	34,339.52	101,528.44	135,867.96	609,170.67
7	363,176.66	28,247.81	107,620.15	135,867.96	753,341.06
8	249,099.30	21,790.60	114,077.36	135,867.96	912,618.88
9	128,177.30	14,945.96	120,922.00	135,867.96	1,088,298.02
10	(0.00)	7,690.66	128,177.32	135.867.96	1,281,773.22
					$5,977,993.19

[1] The principal balance represents the loan balance at the end of each full year the loan is in effect and is calculated by subtracting the current year's principal payment from the prior year's ending loan balance.

[2] Interest payments are calculated by multiplying the prior year's ending loan balance by the contract interest rate of 6 per cent.

[3] Principal payments are calculated by subtracting the current year's interest payments from the annual payment schedule amount.

[4] The weighted principal payment is determined by, for each year of the loan, multiplying that year's principal payment by the number of years the loan had been in effect at the end of that year.

[5] The weighted average principal maturity of the contract is calculated by dividing the sum of the weighted principal payments by the original loan amount and rounding the amount determined to the nearest decimal place.

Weighted Average Principal Maturity

$5,977,993.19/$1,000,000 = 5.977993 or 6 years[5]

By applying the above method,

(1) the weighted average principal maturity of the payment schedule under the 6 per cent contract is 6 years;

(2) the yields on the closest maturities for comparable federal government debt obligations of 5 years and 7 years are 4.7 per cent and 5.0 per cent, respectively; therefore, using linear interpolation, the yield on a federal government debt obligation that has a maturity equal to the weighted average principal maturity of the contract is 4.85 per cent. This number is calculated as follows:

$$4.7 + [((5.0 - 4.7) \times (6 - 5))/(7 - 5)]$$
$$= 4.7 + 0.15$$
$$= 4.85\%; \text{ and}$$

(3) the producer's contract interest rate of 6 per cent is within 700 basis points of the 4.85 per cent yield on the comparable federal government debt obligation; therefore, none of the producer's interest costs are considered to be non-

allowable interest costs for purposes of the definition non-allowable interest costs in subsection 1(1) of these Regulations.

''EXAMPLE'' ILLUSTRATING THE APPLICATION OF THE METHOD FOR CALCULATING NON-ALLOWABLE INTEREST COSTS IN THE CASE OF A VARIABLE-RATE CONTRACT

The following example is based on the figures set out in the tables below and on the following assumptions:

(a) *a producer in a USMCA country borrows $1,000,000 from a person of the same USMCA country under a variable-rate contract;*

(b) *under the terms of the contract, the loan is payable in 10 years with interest paid at the rate of 6 per cent per year for the first two years and 8 per cent per year for the next two years on the principal balance, with rates adjusted each two years after that;*

(c) *the payment schedule calculated by the lender based on the terms of the contract requires the producer to make annual payments of principal and interest of $135,867.96 for the first two years of the loan, and of $146,818.34 for the next two years of the loan;*

(d) *there are no federal government debt obligations that have maturities equal to the 1.9-year weighted average principal maturity of the first two years of the contract;*

(e) *there are no federal government debt obligations that have maturities equal to the 1.9-year weighted average principal maturity of the third and fourth years of the contract; and*

(f) *the federal government debt obligations that are nearest in maturity to the weighted average principal maturity of the contract are 1- and 2-year maturities, and the yields on them are 3.0 per cent and 3.5 per cent respectively.*

Beginning of year	Principal balance	Interest rate (%)	Interest payment	Principal payment	Payment schedule	Weighted principal payment
1	$1,000,000.00	6.00	$60,000.00	$75,867.96	$135,867.96	$75,867.96
2	*924,132.04*	6.00	55,447.92	80,420.04	135,867.96	1,848,264.08
						$1,924,132.04

Weighted Average Principal Maturity

$1,924,132.04/$1,000,000 = 1.92413204 or 1.9 years

By applying the above method:

(1) The weighted average principal maturity of the payment schedule of the first two years of the contract is 1.9 years;

(2) the yield on the closest maturities of federal government debt obligations of 1 year and 2 years are 3.0 and 3.5 per cent, respectively; therefore, using linear interpolation, the yield on a federal government debt obligation that has a maturity equal to the weighted average principal maturity of the payment schedule of the first two years of the contract is 3.45 per cent. This amount is calculated as follows:

3.0 + [((3.5 − 3.0) × (1.9 − 1.0))/(2.0 − 1.0)];
= 3.0 + 0.45
= 3.45%; and

(3) the producer's contract rate of 6 per cent for the first two years of the loan is within 700 basis points of the 3.45 per cent interest rate issued by the federal government on debt obligations that have maturities equal to the 1.9-year weighted average principal maturity of the payment schedule of the first two years of the producer's loan contract; therefore, none of the producer's interest costs are considered to be non-allowable interest costs for purposes of the definition non-allowable interest costs in subsection 1(1) of these Regulations.

Beginning of year	Principal balance	Interest rate (%)	Interest payment	Principal payment	Payment schedule	Weighted principal payment
1	$1,000,000.00	6.00	$60,000.00	$75,867.96	$135,867.96	
2	924,132.04	6.00	55,447.92	80,420.04	135,867.96	
3	843,712.01	8.00	67,496.96	79,321.38	146,818.34	$79,321.38
4	764,390.62	8.00	61,151.25	85,667.09	146,818.34	1,528,781.24
						$1,608,102.62

Weighted Average Principal Maturity

$1,608,102.62/$843,712.01 = 1.905985 or 1.9 years

By applying the above method:

(1) The weighted average principal maturity of the payment schedule under the first two years of the contract is 1.9 years;

(2) the federal government debt obligations that are nearest in maturities to the weighted average principal maturity of the contract are 1- and 2-year maturities, and the yields on them are 3.0 and 3.5 per cent, respectively; therefore, using linear interpolation, the yield on a federal government debt obligation that has a maturity

equal to the weighted average principal maturity of the payment schedule of the first two years of the contract is 3.45 per cent. This amount is calculated as follows:

3.0 + [((3.5 − 3.0) × (1.9 − 1.0))/(2.0 − 1.0)];
= 3.0 + 0.45
= 3.45%

(3) the producer's contract interest rate, for the third and fourth years of the loan, of 8 per cent is within 700 basis points of the 3.45 per cent interest rate issued by the federal government on debt obligations that have maturities equal to the 1.9-year weighted average principal maturity of the payment schedule under the third and fourth years of the producer's loan contract; therefore, none of the producer's interest costs are considered to be non-allowable interest costs for purposes of the definition non-allowable interest costs in subsection 1(1) of these Regulations.

SCHEDULE X (GENERALLY ACCEPTED ACCOUNTING PRINCIPLES)

1. Generally Accepted Accounting Principles means the recognized consensus or substantial authoritative support in the territory of a USMCA country with respect to the recording of revenues, expenses, costs, assets and liabilities, disclosure of information and preparation of financial statements. These standards may be broad guidelines of general application as well as detailed standards, practices and procedures.

2. For purposes of Generally Accepted Accounting Principles, the recognized consensus or authoritative support are referred to or set out in the following publications:

(a) With respect to the territory of Canada, *The Chartered Professional Accountants of Canada Handbook*, as updated from time to time;

(b) with respect to the territory of Mexico, *Los Principios de Contabilidad Generalmente Aceptados*, issued by the *Instituto Mexicano de Contadores Públicos A.C. (IMCP)*, including the *boletines complementarios*, as updated from time to time; and

(c) with respect to the territory of the United States, Financial Accounting Standards Board (FASB) Accounting Standards Codification and any interpretive guidance recognized by the American Institute of Certified Public Accountants (AICPA).

PART 190—MODERNIZED DRAWBACK

Sec.

Subpart S—Drawback Compliance Program

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1313, 1624;
§§ 190.2, 190.10, 190.15, 190.23, 190.38, 190.51 issued under 19 U.S.C. 1508;
§ 190.84 also issued under 19 U.S.C. 1514;
§§ 190.111, 190.112 also issued under 19 U.S.C. 1309;
§§ 190.151(a)(1), 190.153, 190.157, 190.159 also issued under 19 U.S.C. 1557;
§§ 190.182–190.186 also issued under 19 U.S.C. 81c;
§§ 190.191–190.195 also issued under 19 U.S.C. 1593a.

SOURCE: 83 FR 64997, Dec. 18, 2018, unless otherwise noted.

§ 190.0 Scope.

This part sets forth general provisions applicable to all drawback claims and specialized provisions applicable to specific types of drawback claims filed under 19 U.S.C. 1313, as amended. For drawback claims and specialized provisions applicable to specific types of drawback claims filed pursuant to 19 U.S.C. 1313, as it was in effect on or before February 24, 2016, please see part 191 of this chapter. Additional drawback provisions relating to the North American Free Trade Agreement (NAFTA) are contained in subpart E of part 181 of this chapter, and provisions relating to the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA) are contained in subpart E of part 182 of this chapter.

[83 FR 64997, Dec. 18, 2018, as amended by CBP Dec. 21–10, 86 FR 35594, July 6, 2021]

§ 190.0a Claims filed under NAFTA and USMCA.

Claims for drawback filed under the provisions of part 181 or part 182 of this chapter must be filed separately from claims filed under the provisions of this part.

[83 FR 64997, Dec. 18, 2018, as amended by CBP Dec. 21–10, 86 FR 35594, July 6, 2021]

Subpart A—General Provisions

§ 190.1 Authority of the Commissioner of CBP.

Pursuant to DHS Delegation number 7010.3, the Commissioner of CBP has the authority to prescribe, and pursuant to Treasury Order No. 100–16 (set forth in the appendix to part 0 of this chapter), the Secretary of the Treasury has the sole authority to approve, rules and regulations regarding drawback.

§ 190.2 Definitions.

For the purposes of this part:

Abstract. *Abstract* means the summary of the actual production records of the manufacturer.

Act. *Act*, unless indicated otherwise, means the Tariff Act of 1930, as amended.

Bill of materials. *Bill of materials* refers to a record that identifies each component incorporated into a manufactured or produced article (and includes components used in the manufacturing or production process). This may include a record kept in the normal course of business.

Designated merchandise. *Designated merchandise* means either eligible imported duty-paid merchandise or drawback products selected by the drawback claimant as the basis for a drawback claim under 19 U.S.C. 1313(b) or (j)(2), as applicable, or qualified articles selected by the claimant as the basis for drawback under 19 U.S.C. 1313(p).

Destruction. Destruction means the destruction of articles or merchandise to the extent that they have no commercial value. For purposes of 19 U.S.C. 1313(a), (b), (c), and (j), *destruction* also includes a process by which materials are recovered from imported merchandise or from an article manufactured from imported merchandise, as provided for in 19 U.S.C. 1313(x).

Direct identification drawback. Direct identification drawback includes drawback authorized pursuant to section 313(j)(1) of the Act, as amended (19 U.S.C. 1313(j)(1)), on imported merchandise exported, or destroyed under CBP supervision, without having been used in the United States (*see* also sections 313(c), (e), (f), (g), (h), and (q)). Direct identification is involved in manufacturing drawback pursuant to section 313(a) of the Act, as amended (19 U.S.C. 1313(a)), on imported merchandise used to manufacture or produce an article which is either exported or destroyed. Merchandise or articles may be identified for purposes of direct identification drawback by use of the accounting methods provided for in §190.14.

Document. In this part, *document* has its normal meaning and includes information input into and contained within an electronic data field, and electronic versions of hard-copy documents.

Drawback. Drawback, as authorized for payment by CBP, means the refund, in whole or in part, of the duties, taxes, and/or fees paid on imported merchandise, which were imposed under Federal law upon entry or importation, and the refund of internal revenue taxes paid on domestic alcohol as prescribed in 19 U.S.C. 1313(d). More broadly, drawback also includes the refund or remission of other excise taxes pursuant to other provisions of law.

Drawback claim. Drawback claim, as authorized for payment by CBP, means the drawback entry and related documents required by regulation which together constitute the request for drawback payment. All drawback claims must be filed electronically through a CBP-authorized Electronic Data Interchange system. More broadly, drawback claim also includes claims for refund or remission of other excise taxes pursuant to other provisions of law.

Drawback entry. Drawback entry means the document containing a description of, and other required information concerning, the exported or destroyed article upon which a drawback claim is based and the designated imported merchandise for which drawback of the duties, taxes, and fees paid upon importation is claimed. Drawback entries must be filed electronically.

Drawback office. Drawback office means any of the locations where drawback claims and related applications or requests may be submitted. CBP may, in its discretion, transfer or share work between the different drawback offices even though the submission may have been to a particular office.

Drawback product. A *drawback product* means a finished or partially finished product manufactured in the United States under the procedures in this part for manufacturing drawback. A drawback product may be exported, or destroyed under CBP supervision with a claim for drawback, or it may be used in the further manufacture of other drawback products by manufacturers or producers operating under the procedures in this part for manufacturing drawback, in which case drawback may be claimed upon exportation or destruction of the ultimate product. Products manufactured or produced from substituted merchandise (imported or domestic) also become ''drawback products'' when applicable substitution requirements of the Act are met. For purposes of section 313(b) of the Act, as amended (19 U.S.C. 1313(b)), drawback products may be designated as the basis for drawback or deemed to be substituted merchandise (*see* 19 U.S.C. 1313(b)). For a drawback product to be designated as the basis for a drawback claim, any transfer of the product must be properly documented (*see* §190.24).

Exportation. Exportation means the severance of goods from the mass of goods belonging to this country, with the intention of uniting them with the mass of goods belonging to some foreign country. An exportation may be deemed to have occurred when goods subject to drawback are admitted into a foreign trade zone in zone-restricted status, or are laden upon qualifying aircraft or vessels as aircraft or vessel

supplies in accordance with section 309(b) of the Act, as amended (19 U.S.C. 1309(b)) (*see* §§10.59 through 10.65 of this chapter).

Exporter. *Exporter* means that person who, as the principal party in interest in the export transaction, has the power and responsibility for determining and controlling the sending of the items out of the United States. In the case of ''deemed exportations'' (*see* definition of *exportation* in this section), *exporter* means that person who, as the principal party in interest in the transaction deemed to be an exportation, has the power and responsibility for determining and controlling the transaction. In the case of aircraft or vessel supplies under 19 U.S.C. 1309(b), *exporter* means the party who has the power and responsibility for lading supplies on the qualifying aircraft or vessel.

Filing. *Filing* means the electronic delivery to CBP of any document or documentation, as provided for in this part.

Formula. *Formula* refers to records that identify the quantity of each element, material, chemical, mixture, or other substance incorporated into a manufactured article (and includes those used in the manufacturing or production process). This includes records kept in the normal course of business.

Fungible merchandise or articles. *Fungible merchandise or articles* means merchandise or articles which for commercial purposes are identical and interchangeable in all situations.

General manufacturing drawback ruling. A *general manufacturing drawback ruling* means a description of a manufacturing or production operation for drawback and the regulatory requirements and interpretations applicable to that operation (*see* §190.7).

Intermediate party. Intermediate party means any party in the chain of commerce leading to the exporter (or destroyer) from the importer and who has acquired, purchased, or possessed the imported or substituted merchandise (or any intermediate or finished article, in the case of manufacturing drawback) as allowed under the applicable regulations for the type of drawback claimed, which authorize the transfer of the imported or other drawback eligible merchandise by that intermediate party to another party.

Manufacture or production. *Manufacture or production* means a process, including, but not limited to, an assembly, by which merchandise is either made into a new and different article having a distinctive name, character or use; or is made fit for a particular use even though it is not made into a new and different article.

Multiple products. *Multiple products* mean two or more products produced concurrently by a manufacture or production operation or operations.

Per unit averaging. *Per unit averaging* means the equal apportionment of the amount of duties, taxes, and fees eligible for drawback for all units covered by a single line item on an entry summary to each unit of merchandise. This method of refund calculation is required for certain substitution drawback claims (*see* §190.51(b)(ii)), which may also be subject to additional limitations under the ''lesser of'' rules, if applicable (*see* §190.22(a)(1)(ii) and 190.32(b)).

Possession. *Possession*, for purposes of substitution unused merchandise drawback (19 U.S.C. 1313(j)(2)), means physical or operational control of the merchandise, including ownership while in bailment, in leased facilities, in transit to, or in any other manner under the operational control of, the party claiming drawback.

Records. *Records* include, but are not limited to, written or electronic business records, statements, declarations, documents and electronically generated or machine readable data which pertain to a drawback claim or to the information contained in the records required by Chapter 4 of Title 19, United States Code, in connection with the filing of a drawback claim and which may include records normally kept in the ordinary course of business (*see* 19 U.S.C. 1508).

Relative value. *Relative value* means, except for purposes of §190.51(b), the value of a product divided by the total value of all products which are necessarily manufactured or produced concurrently in the same operation. Relative value is based on the market value, or other value approved by CBP, of each such product determined as of

the time it is first separated in the manufacturing or production process. Market value is generally measured by the selling price, not including any packaging, transportation, or other identifiable costs, which accrue after the product itself is processed. Drawback must be apportioned to each such product based on its relative value at the time of separation.

Schedule. A *schedule* means a document filed by a drawback claimant, under section 313(a) or (b), as amended (19 U.S.C. 1313(a) or (b)), showing the quantity of imported or substituted merchandise used in or appearing in each article exported or destroyed that justifies a claim for drawback.

Schedule B. Schedule B means the Department of Commerce Schedule B, Statistical Classification of Domestic and Foreign Commodities Exported from the United States.

Sought chemical element. A *sought chemical element*, under section 313(b), means an element listed in the Periodic Table of Elements that is imported into the United States or a chemical compound (a distinct substance formed by a chemical union of two or more elements in definite proportion by weight) consisting of those elements, either separately in elemental form or contained in source material.

Specific manufacturing drawback ruling. A *specific manufacturing drawback ruling* means a letter of approval (or its electronic equivalent) issued by CBP Headquarters in response to an application filed by a manufacturer or producer for a ruling on a specific manufacturing or production operation for drawback, as described in the format in Appendix B of this part. Specific manufacturing drawback rulings are subject to the provisions in part 177 of this chapter.

Substituted merchandise or articles. Substituted merchandise or articles means merchandise or articles that may be substituted as follows:

(1) For manufacturing drawback pursuant to section 1313(b), substituted merchandise must be classifiable under the same 8-digit HTSUS subheading number as the designated imported merchandise;

(2) For rejected merchandise drawback pursuant to section 1313(c)(2), substituted merchandise must be classifiable under the same 8-digit HTSUS subheading number and have the same specific product identifier (such as part number, SKU, or product code) as the designated imported merchandise;

(3) For unused merchandise drawback pursuant to section 1313(j)(2), substituted merchandise must be classifiable under the same 8-digit HTSUS subheading number as the designated imported merchandise except for wine which may also qualify pursuant to §190.32(d), but when the 8-digit HTSUS subheading number under which the imported merchandise is classified begins with the term ''other,'' then the other merchandise may be substituted for imported merchandise for drawback purposes if the other merchandise and such imported merchandise are classifiable under the same 10-digit HTSUS statistical reporting number and the article description for that 10-digit HTSUS statistical reporting number does not begin with the term ''other''; but when the first 8 digits of the 10-digit Schedule B number applicable to the exported merchandise are the same as the first 8 digits of the HTSUS subheading number under which the imported merchandise is classified, the merchandise may be substituted (without regard to whether the Schedule B number corresponds to more than one 8-digit HTSUS subheading number); and

(4) For substitution drawback of finished petroleum derivatives pursuant to section 1313(p), a substituted article must be of the same kind and quality as the qualified article for which it is substituted, that is, the articles must be commercially interchangeable or described in the same 8-digit HTSUS subheading number (*see* §190.172(b)).

Unused merchandise. Unused merchandise means, for purposes of unused merchandise drawback claims, imported merchandise or other merchandise upon which either no operations have been performed or upon which any operation or combination of operations has been performed (including, but not limited to, testing, cleaning, repacking, inspecting, sorting, refurbishing,

freezing, blending, repairing, reworking, cutting, slitting, adjusting, replacing components, relabeling, disassembling, and unpacking), but which does not amount to a manufacture or production for drawback purposes under 19 U.S.C. 1313(a) or (b).

Verification. *Verification* means the examination of any and all records, maintained by the claimant, or any party involved in the drawback process, which are required by the appropriate CBP officer to render a meaningful recommendation concerning the drawback claimant's conformity to the law and regulations and the determination of supportability, correctness, and validity of the specific claim or groups of claims being verified.

Wine. *Wine*, for purposes of substitution unused merchandise drawback under 19 U.S.C. 1313(j)(2) and pursuant to the alternative standard for substitution (*see* 19 CFR 190.32(d)), refers to table wine. Consistent with Alcohol and Tobacco Tax and Trade Bureau (TTB) regulations, table wine is a ''Class 1 grape wine'' that satisfies the requirements of 27 CFR 4.21(a)(1) and having an alcoholic content not in excess of 14 percent by volume pursuant to 27 CFR 4.21(a)(2)).

§ 190.3 Duties, taxes, and fees subject or not subject to drawback.

(a) Drawback is allowable pursuant to 19 U.S.C. 1313 on duties, taxes, and fees paid on imported merchandise which were imposed under Federal law upon entry or importation, including:

(1) Ordinary customs duties, including:

(i) Duties paid on an entry, or withdrawal from warehouse, for consumption for which liquidation has become final;

(ii) Estimated duties paid on an entry, or withdrawal from warehouse, for consumption, for which liquidation has not become final, subject to the conditions and requirements of § 190.81(b); and

(iii) Tenders of duties after liquidation of the entry, or withdrawal from warehouse, for consumption for which the duties are paid, subject to the conditions and requirements of § 190.81(c), including:

(A) Voluntary tenders (for purposes of this section, a ''voluntary tender'' is a payment of duties on imported merchandise in excess of duties included in the liquidation of the entry, or withdrawal from warehouse, for consumption, provided that the liquidation has become final and that the other conditions of this section and § 190.81 are met);

(B) Tenders of duties in connection with notices of prior disclosure under 19 U.S.C. 1592(c)(4); and

(C) Duties restored under 19 U.S.C. 1592(d).

(2) Marking duties assessed under section 304(c), Tariff Act of 1930, as amended (19 U.S.C. 1304(c));

(3) Internal revenue taxes which attach upon importation;

(4) Merchandise processing fees (*see* § 24.23 of this chapter); and

(5) Harbor maintenance taxes (*see* § 24.24 of this chapter).

(b) Drawback is not allowable on antidumping and countervailing duties which were imposed on any merchandise entered, or withdrawn from warehouse, for consumption (*see* 19 U.S.C. 1677h).

(c) Drawback is not allowed when the identified merchandise, the designated imported merchandise, or the substituted merchandise (when applicable), consists of an agricultural product which is duty-paid at the over-quota rate of duty established under a tariff-rate quota, except that:

(1) Agricultural products as described in this paragraph are eligible for drawback under 19 U.S.C. 1313(j)(1); and

(2) Tobacco otherwise meeting the description of agricultural products in this paragraph is eligible for drawback under 19 U.S.C. 1313(j)(1) or 19 U.S.C. 1313(a).

§ 190.4 Merchandise in which a U.S. Government interest exists.

(a) *Restricted meaning of Government*. A U.S. Government instrumentality operating with nonappropriated funds is considered a Government entity within the meaning of this section.

(b) *Allowance of drawback*. If the merchandise is sold to the U.S. Government, drawback will be available only to the:

(1) Department, branch, agency, or instrumentality of the U.S. Government which purchased it; or

(2) Supplier, or any of the parties specified in § 190.82, provided the claim is supported by documentation signed by a proper officer of the department, branch, agency, or instrumentality concerned certifying that the right to drawback was reserved by the supplier or other parties with the knowledge and consent of the department, branch, agency, or instrumentality.

(c) *Bond.* No bond will be required when a U.S. Government entity claims drawback.

§ 190.5 Guantanamo Bay, insular possessions, trust territories.

Guantanamo Bay Naval Station is considered foreign territory for drawback purposes and, accordingly, drawback may be permitted on articles shipped there from the customs territory of the United States. Drawback is not allowed, except on claims made under 19 U.S.C. 1313(j)(1), on articles shipped from the customs territory of the United States to the U.S. Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Guam, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island. *See* 19 U.S.C. 1313(y). Puerto Rico, which is part of the customs territory of the United States, is not considered foreign territory for drawback purposes and, accordingly, drawback may not be permitted on articles shipped there from elsewhere in the customs territory of the United States.

§ 190.6 Authority to sign or electronically certify drawback documents.

(a) Documents listed in paragraph (b) of this section must be signed or electronically certified only by one of the following:

(1) The president, a vice president, secretary, treasurer, or any other employee legally authorized to bind the corporation;

(2) A full partner of a partnership;

(3) The owner of a sole proprietorship;

(4) Any employee of the business entity with a power of attorney;

(5) An individual acting on his or her own behalf; or

(6) A licensed customs broker with a power of attorney to sign the applicable drawback document.

(b) The following documents require execution in accordance with paragraph (a) of this section:

(1) Drawback entries;

(2) Notices of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback;

(3) Certifications to assign the right to claim drawback (*see* §§ 190.28 and 190.82); and

(4) Abstracts, schedules and extracts from monthly abstracts, and bills of materials and formulas, if not included as part of a drawback claim.

(c) The following documents (*see* also part 177 of this chapter) may be executed by one of the persons described in paragraph (a) of this section or by any other individual legally authorized to bind the person (or entity) for whom the document is executed:

(1) A letter of notification of intent to operate under a general manufacturing drawback ruling under § 190.7;

(2) An application for a specific manufacturing drawback ruling under § 190.8;

(3) An application for waiver of prior notice under § 190.91 or a 1-time waiver of prior notice under § 190.36;

(4) An application for approval of accelerated payment of drawback under § 190.92; and

(5) An application for certification in the Drawback Compliance Program under § 190.193.

§ 190.7 General manufacturing drawback ruling.

(a) *Purpose; eligibility.* General manufacturing drawback rulings are designed to simplify drawback for certain common manufacturing operations but do not preclude or limit the use of applications for specific manufacturing drawback rulings (*see* § 190.8). A manufacturer or producer engaged in an operation that falls within a published general manufacturing drawback ruling may submit a letter of notification of intent to operate under that general ruling. Where a separately-incorporated subsidiary of a parent corporation is engaged in manufacture or production for drawback, the subsidiary is the proper party to submit the letter of

notification, and cannot operate under a letter of notification submitted by the parent corporation.

(b) *Procedures*—(1) *Publication*. General manufacturing drawback rulings are contained in Appendix A to this part. As deemed necessary by CBP, new general manufacturing drawback rulings will be issued as CBP Decisions and added to the appendix thereafter.

(2) *Submission*. Letters of notification of intent to operate under a general manufacturing drawback ruling must be submitted to any drawback office where drawback entries will be filed, concurrent with or prior to filing a claim, provided that the general manufacturing drawback ruling will be followed without variation. If there is any variation from the general manufacturing drawback ruling, the manufacturer or producer must apply for a specific manufacturing drawback ruling under §190.8.

(3) *Information required*. Each manufacturer or producer submitting a letter of notification of intent to operate under a general manufacturing drawback ruling under this section must provide the following specific detailed information:

(i) Name and address of manufacturer or producer (if the manufacturer or producer is a separately-incorporated subsidiary of a corporation, the subsidiary corporation must submit a letter of notification in its own name);

(ii) In the case of a business entity, the names of the persons listed in §190.6(a)(1) through (6) who will sign drawback documents;

(iii) Locations of the factories which will operate under the letter of notification;

(iv) Identity (by T.D. or CBP Decision number and title) of the general manufacturing drawback ruling under which the manufacturer or producer will operate;

(v) Description of the merchandise and articles, unless specifically described in the general manufacturing drawback ruling, and the applicable 8-digit HTSUS subheading number(s) for imported merchandise that will be designated as part of substitution manufacturing drawback claims;

(vi) Description of the manufacturing or production process, unless specifically described in the general manufacturing drawback ruling;

(vii) Basis of claim used for calculating drawback; and

(viii) IRS (Internal Revenue Service) number (with suffix) of the manufacturer or producer.

(c) *Review and action by CBP*. The drawback office to which the letter of notification of intent to operate under a general manufacturing drawback ruling was submitted will review the letter of notification of intent.

(1) *Acknowledgment*. The drawback office will promptly issue a letter acknowledging receipt of the letter of intent and authorizing the person to operate under the identified general manufacturing drawback ruling, subject to the requirements and conditions of that general manufacturing drawback ruling and the law and regulations, to the person who submitted the letter of notification if:

(i) The letter of notification is complete (*i.e.*, contains the information required in paragraph (b)(3) of this section);

(ii) The general manufacturing drawback ruling identified by the manufacturer or producer is applicable to the manufacturing or production process;

(iii) The general manufacturing drawback ruling identified by the manufacturer or producer will be followed without variation; and

(iv) The described manufacturing or production process is a manufacture or production as defined in §190.2.

(2) *Computer-generated number*. With the letter of acknowledgment the drawback office will include the unique computer-generated number assigned to the acknowledgment of the letter of notification of intent to operate. This number must be stated when the person files manufacturing drawback claims with CBP under the general manufacturing drawback ruling.

(3) *Non-conforming letters of notification of intent*. If the letter of notification of intent to operate does not meet the requirements of paragraph (c)(1) of this section in any respect, the drawback office will promptly and in writing specifically advise the person of this fact and why this is so. A letter of notification of intent to operate which

is not acknowledged may be resubmitted to the drawback office to which it was initially submitted with modifications and/or explanations addressing the reasons CBP may have given for non-acknowledgment, or the matter may be referred (by letter from the manufacturer or producer) to CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade).

(d) *Procedure to modify a general manufacturing drawback ruling.* Modifications are allowed under the same procedure terms as provided for in §190.8(g) for specific manufacturing drawback rulings.

(e) *Duration.* Acknowledged letters of notification under this section will remain in effect under the same terms as provided for in §190.8(h) for specific manufacturing drawback rulings.

§ 190.8 Specific manufacturing drawback ruling.

(a) *Applicant.* Unless operating under a general manufacturing drawback ruling (*see* §190.7), each manufacturer or producer of articles intended to be claimed for drawback must apply for a specific manufacturing drawback ruling. Where a separately-incorporated subsidiary of a parent corporation is engaged in manufacture or production for drawback, the subsidiary is the proper party to apply for a specific manufacturing drawback ruling, and cannot operate under any specific manufacturing drawback ruling approved in favor of the parent corporation.

(b) *Sample application.* Sample formats for applications for specific manufacturing drawback rulings are contained in Appendix B to this part.

(c) *Content of application.* The application of each manufacturer or producer must include the following information as applicable:

(1) Name and address of the applicant;

(2) Internal Revenue Service (IRS) number (with suffix) of the applicant;

(3) Description of the type of business in which engaged;

(4) Description of the manufacturing or production process, which shows how the designated and substituted merchandise is used to make the article that is to be exported or destroyed;

(5) In the case of a business entity, the names of persons listed in §190.6(a)(1) through (6) who will sign drawback documents;

(6) Description of the imported merchandise including specifications and applicable 8-digit HTSUS subheading(s);

(7) Description of the exported article and applicable 8-digit HTSUS subheadings;

(8) How manufacturing drawback is calculated;

(9) Summary of the records kept to support claims for drawback; and

(10) Identity and address of the recordkeeper if other than the claimant.

(d) *Submission of application.* An application for a specific manufacturing drawback ruling must be submitted to CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade). Applications may be physically delivered (in triplicate) or submitted via email. Claimants must indicate if drawback claims are to be filed under the ruling at more than one drawback office.

(e) *Review and action by CBP.* CBP Headquarters will review each application for a specific manufacturing drawback ruling.

(1) *Approval.* If the application is consistent with the drawback law and regulations, CBP Headquarters will issue a letter of approval to the applicant and will upload a copy of the application for the specific manufacturing drawback ruling to the Automated Commercial Environment (ACE) along with a copy of the letter of approval. Each specific manufacturing drawback ruling will be assigned a unique manufacturing number which will be included in the letter of approval to the applicant from CBP Headquarters, which must be used when filing manufacturing drawback claims.

(2) *Disapproval.* If the application is not consistent with the drawback law and regulations, CBP Headquarters will promptly and in writing inform the applicant that the application cannot be approved and will specifically advise the applicant why this is so. A disapproved application may be resubmitted with modifications and/or explanations addressing the reasons

given for disapproval; a disapproval may be appealed to CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade).

(f) *Schedules and supplemental schedules.* When an application for a specific manufacturing drawback ruling states that drawback is to be based upon a schedule, as defined in §190.2, filed by the manufacturer or producer, the schedule will be reviewed by CBP Headquarters. The application may include a request for authorization for the filing of supplemental schedules with the drawback office where claims are filed.

(g) *Procedure to modify a specific manufacturing drawback ruling*—(1) *Supplemental application.* Except as provided for limited modifications in paragraph (g)(2) of this section, a manufacturer or producer desiring to modify an existing specific manufacturing drawback ruling may submit a supplemental application for such modification to CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade). Such a supplemental application may, at the discretion of the manufacturer or producer, be in the form of the original application, or it may identify the specific manufacturing drawback ruling to be modified (by T.D. or CBP Decision number, if applicable, and unique computer-generated number) and include only those paragraphs of the application that are to be modified, with a statement that all other paragraphs are unchanged and are incorporated by reference in the supplemental application.

(2) *Limited modifications.* (i) A supplemental application for a specific manufacturing drawback ruling must be submitted to the drawback office where the original claim(s) was filed if the modifications are limited to:

(A) The location of a factory, or the addition of one or more factories where the methods followed and records maintained are the same as those at another factory operating under the existing specific manufacturing drawback ruling of the manufacturer or producer;

(B) The succession of a sole proprietorship, partnership or corporation to the operations of a manufacturer or producer;

(C) A change in name of the manufacturer or producer;

(D) A change in the persons who will sign drawback documents in the case of a business entity;

(E) A change in the basis of claim used for calculating drawback;

(F) A change in the decision to use or not to use an agent under §190.9, or a change in the identity of an agent under that section;

(G) A change in the drawback office where claims will be filed under the ruling (*see* paragraph (g)(2)(iii) of this section);

(H) An authorization to continue operating under a ruling approved under 19 CFR part 191 (*see* paragraph (g)(2)(iv) of this section); or

(I) Any combination of the foregoing changes.

(ii) A limited modification, as provided for in this paragraph (g)(2), must contain only the modifications to be made, in addition to identifying the specific manufacturing drawback ruling and being signed by an authorized person. To effect a limited modification, the manufacturer or producer must file with the drawback office(s) where claims were originally filed a letter stating the modifications to be made. The drawback office will promptly acknowledge acceptance of the limited modifications.

(iii) To transfer a claim to another drawback office, the manufacturer or producer must file with the second drawback office where claims will be filed, a written application to file claims at that office, with a copy of the application and approval letter under which claims are currently filed. The manufacturer or producer must provide a copy of the written application to file claims at the new drawback office to the drawback office where claims are currently filed.

(iv) To file a claim under this part based on a ruling approved under 19 CFR part 191, the manufacturer or producer must file a supplemental application for a limited modification no later than February 23, 2019, which provides the following:

(A) Revised parallel columns with the required annotations for the applicable 8-digit HTSUS subheading number(s);

(B) Revised bill of materials or formula with the required annotations for the applicable 8-digit HTSUS subheading number(s); and

(C) A certification of continued compliance, which states: ''The undersigned acknowledges the current statutory requirements under 19 U.S.C. 1313 and the regulatory requirements in 19 CFR part 190, and hereby certifies its continuing eligibility for operating under the manufacturing drawback ruling in compliance therewith.''

(h) *Duration.* Subject to 19 U.S.C. 1625 and part 177 of this chapter, a specific manufacturing drawback ruling under this section will remain in effect indefinitely unless:

(1) No drawback claim is filed under the ruling for a period of 5 years and notice of termination is published in the Customs Bulletin; or

(2) The manufacturer or producer to whom approval of the ruling was issued files a request to terminate the ruling, in writing, with CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade).

§ 190.9 Agency.

(a) *General.* An owner of the identified merchandise, the designated imported merchandise and/or the substituted merchandise that is used to produce the exported articles may employ another person to do part, or all, of the manufacture or production under 19 U.S.C. 1313(a) or (b) and as defined in § 190.2. For purposes of this section, such owner is the principal and such other person is the agent. Under 19 U.S.C. 1313(b), the principal will be treated as the manufacturer or producer of merchandise used in manufacture or production by the agent. The principal must be able to establish by its manufacturing records, the manufacturing records of its agent(s), or the manufacturing records of both (or all) parties, compliance with all requirements of this part (*see*, in particular, § 190.26).

(b) *Requirements*—(1) *Contract.* The manufacturer must establish that it is the principal in a contract between it and its agent who actually does the work on either the designated or substituted merchandise, or both, for the principal. The contract must include:

(i) Terms of compensation to show that the relationship is an agency rather than a sale;

(ii) How transfers of merchandise and articles will be recorded by the principal and its agent;

(iii) The work to be performed on the merchandise by the agent for the principal;

(iv) The degree of control that is to be exercised by the principal over the agent's performance of work;

(v) The party who is to bear the risk of loss on the merchandise while it is in the agent's custody; and

(vi) The period that the contract is in effect.

(2) *Ownership of the merchandise by the principal.* The records of the principal and/or the agent must establish that the principal had legal and equitable title to the merchandise before receipt by the agent. The right of the agent to assert a lien on the merchandise for work performed does not derogate the principal's ownership interest under this section.

(3) *Sales prohibited.* The relationship between the principal and agent must not be that of a seller and buyer. If the parties' records show that, with respect to the merchandise that is the subject of the principal-agent contract, the merchandise is sold to the agent by the principal, or the articles manufactured by the agent are sold to the principal by the agent, those records are inadequate to establish existence of a principal-agency relationship under this section.

(c) *Specific manufacturing drawback rulings; general manufacturing drawback rulings*—(1) *Owner.* An owner who intends to operate under the principal-agent procedures of this section must state that intent in any letter of notification of intent to operate under a general manufacturing drawback ruling filed under § 190.7 or in any application for a specific manufacturing drawback ruling filed under § 190.8.

(2) *Agent.* Each agent operating under this section must have filed a letter of notification of intent to operate under

a general manufacturing drawback ruling (*see* §190.7), for an agent, covering the articles manufactured or produced, or have obtained a specific manufacturing drawback ruling (*see* §190.8), as appropriate.

(d) *Certificate*—(1) *Contents of certificate*. The principal for whom processing is conducted under this section must file, with any drawback claim, a certificate, subject to the recordkeeping requirements of §§190.15 and 190.26, certifying that upon request by CBP it can establish the following:

(i) Quantity of merchandise transferred from the principal to the agent;

(ii) Date of transfer of the merchandise from the principal to the agent;

(iii) Date of manufacturing or production operations performed by the agent;

(iv) Total quantity, description, and 10-digit HTSUS classification of merchandise appearing in or used in manufacturing or production operations performed by the agent;

(v) Total quantity, description, and 10-digit HTSUS classification of articles produced in manufacturing or production operations performed by the agent;

(vi) Quantity and 10-digit HTSUS classification of articles transferred from the agent to the principal; and

(vii) Date of transfer of the articles from the agent to the principal.

(2) *Blanket certificate*. The certificate required under paragraph (d)(1) of this section may be a blanket certificate for a stated period.

§190.10 Transfer of merchandise.

(a) *Ability to transfer merchandise*. (1) A party may transfer drawback eligible merchandise or articles to another party, provided that the transferring party:

(i) Imports and pays duties, taxes, and/or fees on such imported merchandise;

(ii) Receives such imported merchandise;

(iii) In the case of 19 U.S.C. 1313(j)(2), receives such imported merchandise, substituted merchandise, or any combination of such imported and substituted merchandise; or

(iv) Receives an article manufactured or produced under 19 U.S.C. 1313(a) and/or (b).

(2) The transferring party must maintain records that:

(i) Document the transfer of that merchandise or article;

(ii) Identify such merchandise or article as being that to which a potential right to drawback exists; and

(iii) Assign such right to the transferee (*see* §190.82).

(b) *Required records*. The records that support the transfer must include the following information:

(1) The party to whom the merchandise or articles are delivered;

(2) Date of physical delivery;

(3) Import entry number and entry line item number;

(4) Quantity delivered and, for substitution claims, total quantity attributable to the relevant import entry line item number;

(5) Total duties, taxes, and fees paid on, or attributable to, the delivered merchandise, and, for substitution claims, total duties, taxes, and fees paid on, or attributable to, the relevant import entry line item number;

(6) Date of importation;

(7) Port where import entry filed;

(8) Person from whom received;

(9) Description of the merchandise delivered;

(10) The 10-digit HTSUS classification for the designated imported merchandise (such HTSUS number must be from the entry summary line item and other entry documentation for the merchandise); and

(11) If the merchandise transferred is substituted for the designated imported merchandise under 19 U.S.C. 1313(j)(2), the 10-digit HTSUS classification of the substituted merchandise (as if it had been imported).

(c) *Line item designation for partial transfers of merchandise*. Regardless of any agreement between the transferor and the transferee, the method used for the first filed claim relating to merchandise reported on that entry summary line item will be the exclusive basis for the calculation of refunds (either using per unit averaging or not) for any subsequent claims for any other merchandise reported on that

same entry summary line item. *See* § 190.51(a)(3).

(d) *Retention period.* The records listed in paragraph (b) of this section must be retained by the issuing party for 3 years from the date of liquidation of the related claim or longer period if required by law (*see* 19 U.S.C. 1508(c)(3)).

(e) *Submission to CBP.* If the records required under paragraph (b) of this section or additional records requested by CBP are not provided by the claimant upon request by CBP, the part of the drawback claim dependent on those records will be denied.

(f) *Warehouse transfer and withdrawals.* The person in whose name merchandise is withdrawn from a bonded warehouse will be considered the importer for drawback purposes. No records are required to document prior transfers of merchandise while in a bonded warehouse.

§ 190.11 Valuation of merchandise.

The values declared to CBP as part of a complete drawback claim pursuant to § 190.51 must be established as provided below. If the drawback eligible merchandise or articles are destroyed, then the value of the imported merchandise and any substituted merchandise must be reduced by the value of materials recovered during destruction in accordance with 19 U.S.C. 1313(x).

(a) *Designated imported merchandise.* The value of the imported merchandise is determined as follows:

(1) *Direct identification claims.* The value of the imported merchandise is the customs value of the imported merchandise upon entry into the United States (see subpart E of part 152 of this chapter); or, if the merchandise is identified pursuant to an approved accounting method, then the value of the imported merchandise is the customs value that is properly attributable to the imported merchandise as identified by the appropriate recordkeeping (see § 190.14, varies by accounting method).

(2) *Substitution claims.* The value of the designated imported merchandise is the per unit average value, which is the entered value for the applicable entry summary line item apportioned equally over each unit covered by the line item.

(b) *Exported merchandise or articles.* The value of the exported merchandise or articles eligible for drawback is the selling price as declared for the Electronic Export Information (EEI), including any adjustments and exclusions required by 15 CFR 30.6(a). If there is no selling price for the EEI, then the value is the other value as declared for the EEI including any adjustments and exclusions required by 15 CFR 30.6(a) (e.g., the market price, if the goods are shipped on consignment). (For special types of transactions where certain unusual conditions are involved, the value for the EEI is determined pursuant to 15 CFR part 30 subpart C.) If no EEI is required (*see*, 15 CFR part 30 subpart D for a complete list of exemptions), then the claimant must provide the value that would have been set forth on the EEI when the exportation took place, but for the exemption from the requirement for an EEI.

(c) *Destroyed merchandise or articles.* The value of the destroyed merchandise or articles eligible for drawback is the value at the time of destruction, determined as if the merchandise had been exported in its condition at the time of its destruction and an EEI had been required.

(d) *Substituted merchandise for manufacturing drawback claims.* The value of the substituted merchandise for manufacturing drawback claims pursuant to 19 U.S.C. 1313(b) is the cost of acquisition or production for the manufacturer or producer who used the substituted merchandise in manufacturing or production. These costs must be based on records kept in the ordinary course of business and may be determined on the basis of any of the inventory accounting methods recognized in the Generally Accepted Accounting Principles. Any inventory management method which is used by a manufacturer or producer for valuation of the substituted merchandise for manufacturing drawback claims under 19 U.S.C. 1313(b) must be used without variation with other methods for a period of at least 1 year.

§ 190.12 Claim filed under incorrect provision.

A drawback claim filed under this part and pursuant to any provision of section 313 of the Act, as amended (19 U.S.C. 1313), may be deemed filed pursuant to any other provision thereof should the drawback office determine that drawback is not allowable under the provision as originally filed, but that it is allowable under such other provision. To be allowable under such other provision, the claim must meet each of the requirements of such provision. The claimant may raise alternative provisions prior to liquidation and by protest (*see* part 174 of this chapter).

§ 190.13 Packaging materials.

(a) *Imported packaging material.* Drawback is provided for in section 313(q)(1) of the Act, as amended (19 U.S.C. 1313(q)(1)), on imported packaging material used to package or repackage merchandise or articles exported or destroyed pursuant to section 313(a), (b), (c), or (j) of the Act, as amended (19 U.S.C. 1313(a), (b), (c), or (j)). The amount of drawback payable on the packaging material is determined pursuant to the particular drawback provision to which the packaged goods themselves are subject. The packaging material must be separately identified on the claim, and all other information and documents required for the particular drawback provision under which the claim is made must be provided for the packaging material.

(b) *Packaging material manufactured in United States from imported materials.* Drawback is provided for in section 313(q)(2) of the Act, as amended (19 U.S.C. 1313(q)(2)), on packaging material that is manufactured or produced in the United States from imported materials and used to package or repackage articles that are exported or destroyed under section 313(a) or (b) of the Act, as amended (19 U.S.C. 1313(a) or (b)). The packaging material and the imported merchandise used in the manufacture or production of the packaging material must be separately identified on the claim, and all other information and documents required for the particular drawback provision under which the claim is made must be provided for the packaging material as well as the imported merchandise used in its manufacture or production, for purposes of determining the applicable drawback payable. Drawback under 19 U.S.C. 1313(q)(2) is allowed, regardless of whether or not any of the articles or merchandise the packaging contains are actually eligible for drawback.

§ 190.14 Identification of merchandise or articles by accounting method.

(a) *General.* This section provides for the identification of merchandise or articles for drawback purposes by the use of accounting methods. This section applies to identification of merchandise or articles in inventory or storage, as well as identification of merchandise used in manufacture or production, as defined in § 190.2. This section is not applicable to situations in which the drawback law authorizes substitution (substitution is allowed in specified situations under 19 U.S.C. 1313(b), 1313(j)(2), 1313(k), and 1313(p); this section does apply to situations in these subsections in which substitution is not allowed, as well as to the subsections of the drawback law under which no substitution is allowed). When substitution is authorized, merchandise or articles may be substituted without reference to this section, under the criteria and conditions specifically authorized in the statutory and regulatory provisions providing for the substitution.

(b) *Conditions and criteria for identification by accounting method.* Manufacturers, producers, claimants, or other appropriate persons may identify for drawback purposes lots of merchandise or articles under this section, subject to each of the following conditions and criteria:

(1) The lots of merchandise or articles to be so identified must be fungible as defined in § 190.2;

(2) The person using the identification method must be able to establish that inventory records (for example, material control records), prepared and used in the ordinary course of business, account for the lots of merchandise or articles to be identified as being received into and withdrawn from the same inventory. Even if merchandise or articles are received or withdrawn

at different geographical locations, if such inventory records treat receipts or withdrawals as being from the same inventory, those inventory records may be used to identify the merchandise or articles under this section, subject to the conditions of this section. If any such inventory records (that is, inventory records prepared and used in the ordinary course of business) treat receipts and withdrawals as being from different inventories, those inventory records must be used and receipts into or withdrawals from the different inventories may not be accounted for together. If units of merchandise or articles can be specifically identified (for example, by serial number), the merchandise or articles must be specifically identified and may not be identified by accounting method, unless it is established that inventory records, prepared and used in the ordinary course of business, treat the merchandise or articles to be identified as being received into and withdrawn from the same inventory (subject to the above conditions);

(3) Unless otherwise provided in this section or specifically approved by CBP (by a binding ruling under part 177 of this chapter), all receipts (or inputs) into and all withdrawals from the inventory must be recorded in the accounting record;

(4) The records which support any identification method under this section are subject to verification by CBP (*see* §190.61). If CBP requests such verification, the person using the identification method must be able to demonstrate how, under generally accepted accounting procedures, the records which support the identification method used account for all merchandise or articles in, and all receipts into and withdrawals from, the inventory, and the drawback per unit for each receipt and withdrawal; and

(5) Any accounting method which is used by a person for drawback purposes under this section must be used exclusively, without using other methods for a period of at least 1 year, unless approval is given by CBP for a shorter period.

(c) *Approved accounting methods.* The following accounting methods are approved for use in the identification of merchandise or articles for drawback purposes under this section. If a claim is eligible for the use of any accounting method, the claimant must indicate on the drawback entry whether an accounting method was used, and if so, which accounting method was used, to identify the merchandise as part of the complete claim (see §190.51).

(1) *First-in, first-out (FIFO)*—(i) *General.* The FIFO method is the method by which fungible merchandise or articles are identified by recordkeeping on the basis of the first merchandise or articles received into the inventory. Under this method, withdrawals are from the oldest (first-in) merchandise or articles in the inventory at the time of withdrawal.

(ii) *Example.* If the beginning inventory is zero, 100 units with $1 drawback attributable per unit are received in inventory on the 2nd of the month, 50 units with no drawback attributable per unit are received into inventory on the 5th of the month, 75 units are withdrawn for domestic (non-export) shipment on the 10th of the month, 75 units with $2 drawback attributable per unit are received in inventory on the 15th of the month, 100 units are withdrawn for export on the 20th of the month, and no other receipts or withdrawals occurred in the month, the drawback attributable to the 100 units withdrawn for export on the 20th is a total of $75 (25 units from the receipt on the 2nd with $1 drawback attributable per unit, 50 units from the receipt on the 5th with no drawback attributable per unit, and 25 units from the receipt on the 15th with $2 drawback attributable per unit). The basis of the foregoing and the effects on the inventory of the receipts and withdrawals, and balance in the inventory thereafter are as follows: On the 2nd of the month the receipt of 100 units ($1 drawback/unit) results in a balance of that amount; the receipt of 50 units ($0 drawback/unit) on the 5th results in a balance of 150 units (100 with $1 drawback/unit and 50 with $0 drawback/unit); the withdrawal on the 10th of 75 units ($1 drawback/unit) results in a balance of 75 units (25 with $1 drawback/unit and 50 with $0 drawback/unit); the receipt of 75 units ($2 drawback/unit) on the 15th results in a balance of 150 units (25 with $1 drawback/

unit, 50 with $0 drawback/unit, and 75 with $2 drawback/unit); the withdrawal on the 20th of 100 units (25 with $1 drawback/unit, 50 with $0 drawback/unit, and 25 with $2 drawback unit) results in a balance of 50 units (all 50 with $2 drawback/unit).

(2) *Last-in, first out (LIFO)*—(i) *General.* The LIFO method is the method by which fungible merchandise or articles are identified by recordkeeping on the basis of the last merchandise or articles received into the inventory. Under this method, withdrawals are from the newest (last-in) merchandise or articles in the inventory at the time of withdrawal.

(ii) *Example.* In the example in paragraph (c)(1)(ii) of this section, the drawback attributable to the 100 units withdrawn for export on the 20th is a total of $175 (75 units from the receipt on the 15th with $2 drawback attributable per unit and 25 units from the receipt on the 2nd with $1 drawback attributable per unit). The basis of the foregoing and the effects on the inventory of the receipts and withdrawals, and balance in the inventory thereafter are as follows: On the 2nd of the month the receipt of 100 units ($1 drawback/unit) results in a balance of that amount; the receipt of 50 units ($0 drawback/unit) on the 5th results in a balance of 150 units (100 with $1 drawback/unit and 50 with $0 drawback/unit); the withdrawal on the 10th of 75 units (50 with $0 drawback/unit and 25 with $1 drawback/unit) results in a balance of 75 units (all with $1 drawback/unit); the receipt of 75 units ($2 drawback/unit) on the 15th results in a balance of 150 units (75 with $1 drawback/unit and 75 with $2 drawback/unit); the withdrawal on the 20th of 100 units (75 with $2 drawback/unit and 25 with $1 drawback/unit) results in a balance of 50 units (all 50 with $1 drawback/unit).

(3) *Low-to-high*—(i) *General.* The low-to-high method is the method by which fungible merchandise or articles are identified by recordkeeping on the basis of the lowest drawback amount per unit of the merchandise or articles in inventory. Merchandise or articles with no drawback attributable to them (for example, domestic merchandise or duty-free merchandise) must be accounted for and are treated as having the lowest drawback attributable to them. Under this method, withdrawals are from the merchandise or articles with the least amount of drawback attributable to them, then those with the next higher amount, and so forth. If the same amount of drawback is attributable to more than one lot of merchandise or articles, withdrawals are from the oldest (first-in) merchandise or articles among those lots with the same amount of drawback attributable. Drawback requirements are applicable to withdrawn merchandise or articles as identified (for example, if the merchandise or articles identified were attributable to an import more than 5 years before the claimed export, no drawback could be granted).

(ii) *Ordinary low-to-high*—(A) *Method.* Under the ordinary low-to-high method, all receipts into and all withdrawals from the inventory are recorded in the accounting record and accounted for so that each withdrawal, whether for export or domestic shipment, is identified by recordkeeping on the basis of the lowest drawback amount per unit of the merchandise or articles available in the inventory.

(B) *Example.* In this example, the beginning inventory is zero, and receipts into and withdrawals from the inventory are as follows:

Date	Receipt ($ per unit)	Withdrawals
Jan. 2	100 (zero)	
Jan. 5	50 ($1.00)	
Jan. 15		50 (export).
Jan. 20	50 ($1.01)	
Jan. 25	50 ($1.02)	
Jan. 28		50 (domestic).
Jan. 31	50 ($1.03)	
Feb. 5		100 (export).
Feb. 10	50 ($.95)	
Feb. 15		50 (export).
Feb. 20	50 (zero)	
Feb. 23		50 (domestic).
Feb. 25	50 ($1.05)	
Feb. 28		100 (export).
Mar. 5	50 ($1.06)	
Mar. 10	50 ($.85)	
Mar. 15		50 (export).
Mar. 21		50 (domestic).
Mar. 20	50 ($1.08)	
Mar. 25	50 ($.90)	
Mar. 31		100 (export).

NOTE TO PARAGRAPH (c)(3)(ii)(B): The drawback attributable to the January 15 withdrawal for export is zero (the available receipt with the lowest drawback amount per unit is the January 2 receipt), the drawback attributable to the January 28 withdrawal

for domestic shipment (no drawback) is zero (the remainder of the January 2 receipt), the drawback attributable to the February 5 withdrawal for export is $100.50 (the January 5 and January 20 receipts), the drawback attributable to the February 15 withdrawal for export is $47.50 (the February 10 receipt), the drawback attributable to the February 23 withdrawal for domestic shipment (no drawback) is zero (the February 20 receipt), the drawback attributable to the February 28 withdrawal for export is $102.50 (the January 25 and January 31 receipts), the drawback attributable to the March 15 withdrawal for export is $42.50 (the March 10 receipt), the drawback attributable to the March 21 withdrawal for domestic shipment (no drawback) is $52.50 (the February 25 receipt), and the drawback attributable to the March 31 withdrawal for export is $98.00 (the March 25 and March 5 receipts). Remaining in inventory is the March 20 receipt of 50 units ($1.08 drawback/unit). Total drawback attributable to withdrawals for export in this example would be $391.00.

(iii) *Low-to-high method with established average inventory turn-over period*—(A) *Method.* Under the low-to-high method with established average inventory turn-over period, all receipts into and all withdrawals for export are recorded in the accounting record and accounted for so that each withdrawal is identified by recordkeeping on the basis of the lowest drawback amount per available unit of the merchandise or articles received into the inventory in the established average inventory turn-over period preceding the withdrawal.

(B) *Accounting for withdrawals (for domestic shipments and for export).* Under the low-to-high method with established average inventory turn-over period, domestic withdrawals (withdrawals for domestic shipment) are not accounted for and do not affect the available units of merchandise or articles. All withdrawals for export must be accounted for whether or not drawback is available or claimed on the withdrawals. Once a withdrawal for export is made and accounted for under this method, the merchandise or articles withdrawn are no longer available for identification.

(C) *Establishment of inventory turn-over period.* For purposes of the low-to-high method with established average inventory turn-over period, the average inventory turn-over period is based on the rate of withdrawal from inventory and represents the time in which all of the merchandise or articles in the inventory at a given time must have been withdrawn based on that rate. To establish an average of this time, at least 1 year, or 3 turn-over periods (if inventory turns over fewer than 3 times per year), must be averaged. The inventory turn-over period must be that for the merchandise or articles to be identified, except that if the person using the method has more than one kind of merchandise or articles with different inventory turn-over periods, the longest average turn-over period established under this section may be used (instead of using a different inventory turn-over period for each kind of merchandise or article).

(D) *Example.* In the example in paragraph (c)(3)(ii)(B) of this section (but, as required for this method, without accounting for domestic withdrawals, and with an established average inventory turn-over period of 30 days), the drawback attributable to the January 15 withdrawal for export is zero (the available receipt in the preceding 30 days with the lowest amount of drawback is the January 2 receipt, of which 50 units will remain after the withdrawal), the drawback attributable to the February 5 withdrawal for export is $101.50 (the January 20 and January 25 receipts), the drawback attributable to the February 15 withdrawal for export is $47.50 (the February 10 receipt), the drawback attributable to the February 28 withdrawal for export is $51.50 (the February 20 and January 31 receipts), the drawback attributable to the March 15 withdrawal for export is $42.50 (the March 10 receipt), and the drawback attributable to the March 31 withdrawal for export is $98.00 (the March 25 and March 5 receipts). No drawback may be claimed on the basis of the January 5 receipt or the February 25 receipt because in the case of each, there were insufficient withdrawals for export within the established average inventory turn-over period; the 50 units remaining from the January 2 receipt after the January 15 withdrawal are

not identified for a withdrawal for export because there is no other withdrawal for export (other than the January 15 withdrawal) within the established average inventory turn-over period; the March 20 receipt (50 units at $1.08) is not yet attributed to withdrawals for export. Total drawback attributable to withdrawals for export in this example would be $341.00.

(iv) *Low-to-high blanket method*—(A) *Method.* Under the low-to-high blanket method, all receipts into and all withdrawals for export are recorded in the accounting record and accounted for. Each withdrawal is identified on the basis of the lowest drawback amount per available unit of the merchandise or articles received into inventory in the applicable statutory period for export preceding the withdrawal (e.g., 180 days under 19 U.S.C. 1313(p) and 5 years for other types of drawback claims pursuant to 19 U.S.C. 1313(r)). Drawback requirements are applicable to withdrawn merchandise or articles as identified (for example, no drawback could be granted generally if the merchandise or articles identified were attributable to an import made more than 5 years before the claimed export; and, for claims pursuant to 19 U.S.C. 1313(p), no drawback could be granted if the merchandise or articles identified were attributable to an import that was entered more than 180 days after the date of the claimed export or if the claimed export was more than 180 days after the close of the manufacturing period attributable to an import).

(B) *Accounting for withdrawals (for domestic shipments and for export).* Under the low-to-high blanket method, domestic withdrawals (withdrawals for domestic shipment) are not accounted for and do not affect the available units of merchandise or articles. All withdrawals for export must be accounted for whether or not drawback is available or claimed on the withdrawals. Once a withdrawal for export is made and accounted for under this method, the merchandise or articles withdrawn are no longer available for identification.

(C) *Example.* In the example in paragraph (c)(3)(ii)(B) of this section (but, as required for this method, without accounting for domestic withdrawals), the drawback attributable to the January 15 withdrawal for export is zero (the available receipt in the inventory with the lowest amount of drawback is the January 2 receipt, of which 50 units will remain after the withdrawal), the drawback attributable to the February 5 withdrawal for export is $50.00 (the remainder of the January 2 receipt and the January 5 receipt), the drawback attributable to the February 15 withdrawal for export is $47.50 (the February 10 receipt), the drawback attributable to the February 28 withdrawal for export is $50.50 (the February 20 and January 20 receipts), the drawback attributable to the March 15 withdrawal for export is $42.50 (the March 10 receipt), and the drawback attributable to the March 31 withdrawal for export is $96.00 (the March 25 and January 25 receipts). Receipts not attributed to withdrawals for export are the January 31 (50 units at $1.03), February 25 (50 units at $1.05), March 5 (50 units at $1.06), and March 20 (50 units at $1.08) receipts. Total drawback attributable to withdrawals for export in this example would be $286.50.

(4) *Average*—(i) *General.* The average method is the method by which fungible merchandise or articles are identified on the basis of the calculation by recordkeeping of the amount of drawback that may be attributed to each unit of merchandise or articles in the inventory. In this method, the ratio of:

(A) The total units of a particular receipt of the fungible merchandise in the inventory at the time of a withdrawal to;

(B) The total units of all receipts of the fungible merchandise (including each receipt into inventory) at the time of the withdrawal;

(C) Is applied to the withdrawal, so that the withdrawal consists of a proportionate quantity of units from each particular receipt and each receipt is correspondingly decreased. Withdrawals and corresponding decreases to receipts are rounded to the nearest whole number.

(ii) *Example.* In the example in paragraph (c)(1)(ii) of this section, the drawback attributable to the 100 units withdrawn for export on the 20th is a total of $133 (50 units from the receipt

on the 15th with $2 drawback attributable per unit, 33 units from the receipt on the 2nd with $1 drawback attributable per unit, and 17 units from the receipt on the 5th with $0 drawback attributable per unit). The basis of the foregoing and the effects on the inventory of the receipts and withdrawals, and balance in the inventory thereafter are as follows: On the 2nd of the month the receipt of 100 units ($1 drawback/unit) results in a balance of that amount; the receipt of 50 units ($0 drawback/unit) on the 5th results in a balance of 150 units (100 with $1 drawback/unit and 50 with $0 drawback/unit); the withdrawal on the 10th of 75 units (50 with $1 drawback/unit (applying the ratio of 100 units from the receipt on the 2nd to the total of 150 units at the time of withdrawal) and 25 with $0 drawback/unit (applying the ratio of 50 units from the receipt on the 5th to the total of 150 units at the time of withdrawal)) results in a balance of 75 units (with 50 with $1 drawback/unit and 25 with $0 drawback/unit, on the basis of the same ratios); the receipt of 75 units ($2 drawback/unit) on the 15th results in a balance of 150 units (50 with $1 drawback/unit, 25 with $0 drawback/unit, and 75 with $2 drawback/unit); the withdrawal on the 20th of 100 units (50 with $2 drawback/unit (applying the ratio of the 75 units from the receipt on the 15th to the total of 150 units at the time of withdrawal), 33 with $1 drawback/unit (applying the ratio of the 50 units remaining from the receipt on the 2nd to the total of 150 units at the time of withdrawal, and 17 with $0 drawback/unit (applying the ratio of the 25 units remaining from the receipt on the 5th to the total of 150 units at the time of withdrawal)) results in a balance of 50 units (25 with $2 drawback/unit, 17 with $1 drawback/unit, and 8 with $0 drawback/unit, on the basis of the same ratios).

(5) *Inventory turn-over for limited purposes.* A properly established average inventory turn-over period, as provided for in paragraph (c)(3)(iii)(C) of this section, may be used to determine:

(i) The fact and date(s) of use in manufacture or production of the designated imported merchandise and other (substituted) merchandise (*see* 19 U.S.C. 1313(b)); or

(ii) The fact and date(s) of manufacture or production of the exported or destroyed articles (*see* 19 U.S.C. 1313(a) and (b)).

(d) *Approval of other accounting methods.* (1) Persons proposing to use an accounting method for identification of merchandise or articles for drawback purposes which has not been previously approved for such use (*see* paragraph (c) of this section), or which includes modifications from the methods listed in paragraph (c) of this section, may seek approval by CBP of the proposed accounting method under the provisions for obtaining an administrative ruling (*see* part 177 of this chapter). The conditions applied and the criteria used by CBP in approving such an alternative accounting method, or a modification of one of the approved accounting methods, will be the criteria in paragraph (b) of this section, as well as those in paragraph (d)(2) of this section.

(2) In order for a proposed accounting method to be approved by CBP for purposes of this section, it must meet the following criteria:

(i) For purposes of calculations of drawback, the proposed accounting method must be either revenue neutral or favorable to the Government; and

(ii) The proposed accounting method should be:

(A) Generally consistent with commercial accounting procedures, as applicable for purposes of drawback;

(B) Consistent with inventory or material control records used in the ordinary course of business by the person proposing the method; and

(C) Easily administered by CBP.

§ 190.15 Recordkeeping.

Pursuant to 19 U.S.C. 1508(c)(3), all records which pertain to the filing of a drawback claim or to the information contained in the records required by 19 U.S.C. 1313 in connection with the filing of a drawback claim must be retained for 3 years after liquidation of such claims or longer period if required by law (under 19 U.S.C. 1508, the same records may be subject to a different period for different purposes).

Subpart B—Manufacturing Drawback

§ 190.21 Direct identification manufacturing drawback.

Section 313(a) of the Act, as amended (19 U.S.C. 1313(a)), provides for drawback upon the exportation, or destruction under CBP supervision, of articles manufactured or produced in the United States with the use of imported merchandise, provided that those articles have not been used in the United States prior to such exportation or destruction. The amount of drawback allowable will not exceed 99 percent of the amount of duties, taxes, and fees paid with respect to the imported merchandise. However, duties may not be refunded upon the exportation or destruction of flour or by-products produced from imported wheat. Where two or more products result, drawback must be distributed among the products in accordance with their relative values, as defined in §190.2, at the time of separation. Merchandise may be identified for drawback purposes under 19 U.S.C. 1313(a) in the manner provided for and prescribed in §190.14.

§ 190.22 Substitution drawback.

(a)(1) *General*—(i) *Substitution standard.* If imported, duty-paid merchandise or merchandise classifiable under the same 8-digit HTSUS subheading number as the imported merchandise is used in the manufacture or production of articles within a period not to exceed 5 years from the date of importation of such imported merchandise, then upon the exportation, or destruction under CBP supervision, of any such articles, without their having been used in the United States prior to such exportation or destruction, drawback is provided for in section 313(b) of the Act, as amended (19 U.S.C. 1313(b)). Drawback is allowable even though none of the imported, duty-paid merchandise may actually have been used in the manufacture or production of the exported or destroyed articles. The amount of duties, taxes, and fees eligible for drawback is determined by per unit averaging, as defined in §190.2, for any drawback claim based on 19 U.S.C. 1313(b).

(ii) *Allowable refund*—(A) *Exportation.* In the case of an article that is exported, the amount of drawback allowable will not exceed 99 percent of the lesser of:

(*1*) The amount of duties, taxes, and fees paid with respect to the imported merchandise; or

(*2*) The amount of duties, taxes, and fees that would apply to the substituted merchandise if the substituted merchandise were imported.

(B) *Destruction.* In the case of an article that is destroyed, the amount of drawback allowable will not exceed 99 percent of the lesser of:

(*1*) The amount of duties, taxes, and fees paid with respect to the imported merchandise (after the value of the imported merchandise has been reduced by the value of materials recovered during destruction as provided in 19 U.S.C. 1313(x)); or

(*2*) The amount of duties, taxes, and fees that would apply to the substituted merchandise if the substituted merchandise were imported (after the value of the imported merchandise has been reduced by the value of materials recovered during destruction as provided in 19 U.S.C. 1313(x)).

(C) *Federal excise tax.* For purposes of drawback of internal revenue tax imposed under Chapters 32, 38 (with the exception of Subchapter A of Chapter 38), 51, and 52 of the Internal Revenue Code of 1986, as amended (IRC), drawback granted on the export or destruction of substituted merchandise will be limited to the amount of taxes paid (and not returned by refund, credit, or drawback) on the substituted merchandise.

(2) *Special rule for sought chemical elements*—(i) *Substitution standard.* A sought chemical element, as defined in §190.2, may be considered imported merchandise, or merchandise classifiable under the same 8-digit HTSUS subheading number as such imported merchandise, used in the manufacture or production of an article as described in paragraph (a)(1)(i) of this section, and it may be substituted for source material containing that sought chemical element, without regard to whether the sought chemical element and the source material are classifiable under the same 8-digit HTSUS subheading

number, and apportioned quantitatively, as appropriate (*see* §190.26(b)(4)).

(ii) *Allowable refund.* The amount of drawback allowable will be determined in accordance with paragraph (a)(1)(ii) of this section. The value of the substituted source material must be determined based on the quantity of the sought chemical element present in the source material, as calculated per §190.26(b)(4).

(b) *Use by same manufacturer or producer at different factory.* Duty-paid merchandise or drawback products used at one factory of a manufacturer or producer within 5 years after the date on which the material was imported may be designated as the basis for drawback on articles manufactured or produced in accordance with these regulations at other factories of the same manufacturer or producer.

(c) *Designation.* A manufacturer or producer may designate any eligible imported merchandise or drawback product which it has used in manufacture or production.

(d) *Designation by successor*—(1) *General rule.* Upon compliance with the requirements in this section and under 19 U.S.C. 1313(s), a drawback successor as defined in paragraph (d)(2) of this section may designate merchandise or drawback product used by a predecessor before the date of succession as the basis for drawback on articles manufactured or produced by the successor after the date of succession.

(2) *Drawback successor.* A ''drawback successor'' is a manufacturer or producer to whom another entity (predecessor) has transferred, by written agreement, merger, or corporate resolution:

(i) All or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor; or

(ii) The assets and other business interests of a division, plant, or other business unit of such predecessor, but only if in such transfer the value of the transferred realty, personalty, and intangibles (other than drawback rights, inchoate or otherwise) exceeds the value of all transferred drawback rights, inchoate or otherwise.

(3) *Certifications and required evidence*—(i) *Records of predecessor.* The predecessor or successor must certify that the successor is in possession of the predecessor's records which are necessary to establish the right to drawback under the law and regulations with respect to the merchandise or drawback product.

(ii) *Merchandise not otherwise designated.* The predecessor or successor must certify that the predecessor has not designated and will not designate, nor enable any other person to designate, such merchandise or product as the basis for drawback.

(iii) *Value of transferred property.* In instances in which assets and other business interests of a division, plant, or other business unit of a predecessor are transferred, the predecessor or successor must specify, and maintain supporting records to establish, the value of the drawback rights and the value of all other transferred property.

(iv) *Review by CBP.* The written agreement, merger, or corporate resolution, provided for in paragraph (d)(2) of this section, and the records and evidence provided for in paragraph (d)(3)(i) through (iii) of this section, must be retained by the appropriate party(s) for 3 years from the date of liquidation of the related claim and are subject to review by CBP upon request.

(e) *Multiple products*—(1) *General.* Where two or more products are produced concurrently in a substitution manufacturing operation, drawback will be distributed to each product in accordance with its relative value (*see* §190.2) at the time of separation.

(2) *Claims covering a manufacturing period.* Where the claim covers a manufacturing period rather than a manufacturing lot, the entire period covered by the claim is the time of separation of the products and the value per unit of product is the market value for the period (as provided for in the definition of relative value in §190.2). Manufacturing periods in excess of one month may not be used without specific approval of CBP.

(3) *Recordkeeping.* Records must be maintained showing the relative value of each product at the time of separation.

§ 190.23 Methods and requirements for claiming drawback.

Claims must be based on one or more of the methods specified in paragraph (a) of this section and comply with all other requirements specified in this section.

(a) *Method of claiming drawback.*—(1) *Used in.* Drawback may be paid based on the amount of the imported or substituted merchandise used in the manufacture of the exported article, where there is no waste or the waste is valueless or unrecoverable. This method must be used when multiple products also necessarily and concurrently result from the manufacturing process, and there is no valuable waste (*see* paragraph (a)(2) of this section).

(2) *Used in less valuable waste.* Drawback is allowable under this method based on the quantity of merchandise or drawback products used to manufacture the exported or destroyed article, reduced by an amount equal to the quantity of this merchandise that the value of the waste would replace. This method must be used when multiple products also necessarily and concurrently result from the manufacturing process, and there is valuable waste.

(3) *Relative value.* Drawback is also allowable under this method when two or more products result from manufacturing or production. The relative value method must be used when multiple products also necessarily and concurrently result from the manufacturing process, and drawback must be distributed among the products in accordance with their relative values (as defined in § 190.2) at the time of separation.

(4) *Appearing in.* Drawback is allowable under this method based only on the amount of imported or substituted merchandise that appears in (is contained in) the exported articles. The appearing in method may not be used if there are multiple products also necessarily and concurrently resulting from the manufacturing process.

(b) *Abstract or schedule.* A drawback claimant may use either the abstract or schedule method to show the quantity of material used or appearing in the exported or destroyed article. An abstract is the summary of records which shows the total quantity used in or appearing in all articles produced during the period covered by the abstract. A schedule shows the quantity of material actually used in producing, or appearing in, each unit of product. Manufacturers or producers submitting letters of notification of intent to operate under a general manufacturing drawback ruling (*see* § 190.7) and applicants for approval of specific manufacturing drawback rulings (*see* § 190.8) must state whether the abstract or schedule method is used; if no such statement is made, drawback claims must be based upon the abstract method.

(c) *Claim for waste.*—(1) *Valuable waste.* When the waste has a value and the drawback claim is not limited to the quantity of imported or substituted merchandise or drawback products appearing in the exported or destroyed articles claimed for drawback, the manufacturer or producer must keep records to show the market value of the merchandise or drawback products used to manufacture or produce the exported or destroyed articles, as well as the market value of the resulting waste, under the used in less valuable waste method (as provided for in the definition of relative value in § 190.2).

(2) *If claim for waste is waived.* If claim for waste is waived, only the ''appearing in'' basis may be used (*see* paragraph (a)(4) of this section). Waste records need not be kept unless required to establish the quantity of imported duty-paid merchandise or drawback products appearing in the exported or destroyed articles claimed for drawback.

§ 190.24 Transfer of merchandise.

Evidence of any transfers of merchandise (*see* § 190.10) must be evidenced by records, as defined in § 190.2.

§ 190.25 Destruction under CBP supervision.

A claimant may destroy merchandise and obtain drawback by complying with the procedures set forth in § 190.71 relating to destruction.

§ 190.26 Recordkeeping.

(a) *Direct identification.* (1) *Records required.* Each manufacturer or producer under 19 U.S.C. 1313(a) must keep

records to allow the verifying CBP official to trace all articles manufactured or produced for exportation or destruction with drawback, from importation, through manufacture or production, to exportation or destruction. To this end, these records must specifically establish:

(i) The date or inclusive dates of manufacture or production;

(ii) The quantity, identity, and 8-digit HTSUS subheading number(s) of the imported duty-paid merchandise or drawback products used in or appearing in (*see* §190.23) the articles manufactured or produced;

(iii) The quantity, if any, of the non-drawback merchandise used, when these records are necessary to determine the quantity of imported duty-paid merchandise or drawback product used in the manufacture or production of the exported or destroyed articles or appearing in them;

(iv) The quantity and description of the articles manufactured or produced;

(v) The quantity of waste incurred, if applicable; and

(vi) That the articles on which drawback is claimed were exported or destroyed within 5 years after the importation of the duty-paid merchandise, without having been used in the United States prior to such exportation or destruction. (If the articles were commingled after manufacture or production, their identity may be maintained in the manner prescribed in §190.14.)

(2) *Accounting.* The merchandise and articles to be exported or destroyed will be accounted for in a manner which will enable the manufacturer, producer, or claimant:

(i) To determine, and the CBP official to verify, the applicable import entry and any transfers of the merchandise associated with the claim; and

(ii) To identify with respect to that import entry, and any transfers of the merchandise, the imported merchandise or drawback products used in manufacture or production.

(b) *Substitution.* The records of the manufacturer or producer of articles manufactured or produced in accordance with 19 U.S.C. 1313(b) must establish the facts in paragraph (a)(1)(i), (iv) through (vi) of this section, and:

(1) The quantity, identity, and specifications of the merchandise designated (imported duty-paid, or drawback product);

(2) The quantity, identity, and specifications of the substituted merchandise before its use to manufacture or produce (or appearing in) the exported or destroyed articles;

(3) That, within 5 years after the date of importation of the imported duty-paid merchandise, the manufacturer or producer used the designated merchandise in manufacturing or production and that during the same5-year period it manufactured or produced the exported or destroyed articles; and

(4) If the designated merchandise is a sought chemical element, as defined in §190.2, that was contained in imported material and a substitution drawback claim is made based on that chemical element:

(i) The duties, taxes, and fees paid on the imported material must be apportioned among its constituent components. The claim on the chemical element that is the designated merchandise must be limited to the duty apportioned to that element on a unit-for-unit attribution using the unit of measure set forth in the HTSUS that is applicable to the imported material. If the material is a compound with other constituents, including impurities, and the purity of the compound in the imported material is shown by satisfactory analysis, that purity, converted to a decimal equivalent of the percentage, is multiplied against the entered amount of the material to establish the amount of pure compound. The amount of the element in the pure compound is to be determined by use of the atomic weights of the constituent elements and converting to the decimal equivalent of their respective percentages and multiplying that decimal equivalent against the above-determined amount of pure compound.

(ii) The amount claimed as drawback based on the sought chemical element must be deducted from the amounts paid on the imported material that may be claimed on any other drawback claim.

Example to paragraph (b)(4): Synthetic rutile that is shown by appropriate analysis in the entry papers to be 91.7%

pure titanium dioxide is imported and dutiable at a 5% ad valorem duty rate. The amount of imported synthetic rutile is 30,000 pounds with an entered value of $12,000. The total duty paid is $600. Titanium in the synthetic rutile is designated as the basis for a drawback claim under 19 U.S.C. 1313(b). The amount of titanium dioxide in the synthetic rutile is determined by converting the purity percentage (91.7%) to its decimal equivalent (.917) and multiplying the entered amount of synthetic rutile (30,000 pounds) by that decimal equivalent (.917 × 30,000 = 27,510 pounds of titanium dioxide contained in the 30,000 pounds of imported synthetic rutile). The titanium, based on atomic weight, represents 59.93% of the constituents in titanium dioxide. Multiplying that percentage, converted to its decimal equivalent, by the amount of titanium dioxide determines the titanium content of the imported synthetic rutile (.5993 × 27,510 pounds of titanium dioxide = 16,486.7 pounds of titanium contained in the imported synthetic rutile). Therefore, up to 16,486.7 pounds of titanium is available to be designated as the basis for drawback. As the per unit duty paid on the synthetic rutile is calculated by dividing the duty paid ($600) by the amount of imported synthetic rutile (30,000 pounds), the per unit duty is two cents of duty per pound of the imported synthetic rutile ($600 ÷ 30,000 = $0.02). The duty on the titanium is calculated by multiplying the amount of titanium contained in the imported synthetic rutile by two cents of duty per pound (16,486.7 × $0.02 = $329.73 duty apportioned to the titanium). The product is then multiplied by 99% to determine the maximum amount of drawback available ($329.73 × .99 = $326.44). If an exported titanium alloy ingot weighs 17,000 pounds, in which 16,000 pounds of titanium was used to make the ingot, drawback is determined by multiplying the duty per pound ($0.02) by the weight of the titanium contained in the ingot (16,000 pounds) to calculate the duty available for drawback ($0.02 × 16,000 = $320.00). Because only 99% of the duty can be claimed, drawback is determined by multiplying this available duty amount by 99% (.99 × $320.00 = $316.80). As the oxygen content of the titanium dioxide is 45% of the synthetic rutile, if oxygen is the designated merchandise on another drawback claim, 45% of the duty claimed on the synthetic rutile would be available for drawback based on the substitution of oxygen.

(c) *Valuable waste records.* When waste has a value and the manufacturer, producer, or claimant, has not limited the claims based on the quantity of imported or substituted merchandise appearing in the articles exported or destroyed, the manufacturer or producer must keep records to show the market value of the merchandise used to manufacture or produce the exported or destroyed article, as well as the quantity and market value of the waste incurred (as provided for in the definition of relative value in §190.2). In such records, the quantity of merchandise identified or designated for drawback, under 19 U.S.C. 1313(a) or 1313(b), respectively, must be based on the quantity of merchandise actually used to manufacture or produce the exported or destroyed articles. The waste replacement reduction will be determined by reducing from the quantity of merchandise actually used by the amount of merchandise which the value of the waste would replace.

(d) *Purchase of manufactured or produced articles for exportation or destruction.* Where the claimant purchases articles from the manufacturer or producer and exports or destroys them, the claimant must maintain records to document the transfer of articles received.

(e) *Multiple claimants*—(1) *General.* Multiple claimants may file for drawback with respect to the same export or destruction (for example, if an automobile is exported, where different parts of the automobile have been produced by different manufacturers under drawback conditions and the exporter waives the right to claim drawback and assigns such right to the manufacturers under §190.82).

(2) *Procedures*—(i) *Submission of letter.* Each drawback claimant must file a separate letter, as part of the claim, describing the component article to which each claim will relate. Each letter must show the name of the claimant and bear a statement that the

claim will be limited to its respective component article. The exporter or destroyer must endorse the letters, as required, to show the respective interests of the claimants.

(ii) *Blanket waivers and assignments of drawback rights.* Exporters may waive and assign their drawback rights for all, or any portion, of their exportations with respect to a particular commodity for a given period to a drawback claimant.

(f) *Retention of records.* Pursuant to 19 U.S.C. 1508(c)(3), all records required to be kept by the manufacturer, producer, or claimant with respect to drawback claims, and records kept by others to complement the records of the manufacturer, producer, or claimant with respect to drawback claims must be retained for 3 years after the date of liquidation of the related claims (under 19 U.S.C. 1508, the same records may be subject to a different retention period for different purposes).

§ 190.27 Time limitations for manufacturing drawback.

(a) *Direct identification.* Drawback will be allowed on imported merchandise used to manufacture or produce articles that are exported or destroyed under CBP supervision within 5 years after importation of the merchandise identified to support the claim.

(b) *Substitution.* Drawback will be allowed on the imported merchandise if the following conditions are met:

(1) The designated merchandise is used in manufacture or production within 5 years after importation;

(2) Within the 5-year period described in paragraph (b)(1) of this section, the exported or destroyed articles, or drawback products, were manufactured or produced; and

(3) The completed articles must be exported or destroyed under CBP supervision within 5 years of the date of importation of the designated merchandise, or within 5 years of the earliest date of importation associated with a drawback product.

(c) *Drawback claims filed before specific or general manufacturing drawback ruling approved or acknowledged.* Drawback claims may be filed before the letter of notification of intent to operate under a general manufacturing drawback ruling covering the claims is acknowledged (§ 190.7), or before the specific manufacturing drawback ruling covering the claims is approved (§ 190.8), but no drawback will be paid until such acknowledgement or approval, as appropriate.

§ 190.28 Person entitled to claim manufacturing drawback.

The exporter (or destroyer) will be entitled to claim drawback, unless the exporter (or destroyer), by means of a certification, assigns the right to claim drawback to the manufacturer, producer, importer, or intermediate party. Such certification must accompany each claim and also affirm that the exporter (or destroyer) has not claimed and will not itself claim drawback or assign the right to claim drawback on the particular exportation or destruction to any other party. The certification provided for under this section may be a blanket certification for a stated period. Drawback is paid to the claimant, who may be the manufacturer, producer, intermediate party, importer, or exporter (or destroyer).

§ 190.29 Certification of bill of materials or formula.

At the time of filing a claim under 19 U.S.C. 1313(a) or (b), the claimant must certify the following:

(a) The claimant is in possession of the applicable bill of materials or formula for the exported or destroyed article(s), which will be promptly provided upon request;

(b) The bill of materials or formula identifies the imported and/or substituted merchandise and the exported or destroyed article(s) by their 8-digit HTSUS subheading numbers; and

(c) The bill of materials or formula identifies the manufactured quantities of the imported and/or substituted merchandise and the exported or destroyed article(s).

Subpart C—Unused Merchandise Drawback

§ 190.31 Direct identification unused merchandise drawback.

(a) *General.* Section 313(j)(1) of the Act, as amended (19 U.S.C. 1313(j)(1)),

provides for drawback upon the exportation or destruction under CBP supervision of imported merchandise upon which was paid any duty, tax, or fee imposed under Federal law upon entry or importation, if the merchandise has not been used within the United States before such exportation or destruction. The total amount of drawback allowable will not exceed 99 percent of the amount of duties, taxes, and fees paid with respect to the imported merchandise.

(b) *Time of exportation or destruction.* Drawback will be allowable on imported merchandise if, before the close of the 5-year period beginning on the date of importation and before the drawback claim is filed, the merchandise is exported from the United States or destroyed under CBP supervision.

(c) *Operations performed on imported merchandise.* The performing of any operation or combination of operations, not amounting to manufacture or production under the provisions of the manufacturing drawback law as provided for in 19 U.S.C. 1313(j)(3), on imported merchandise is not a use of that merchandise for purposes of this section.

§ 190.32 Substitution unused merchandise drawback.

(a) *General.* Section 313(j)(2) of the Act, as amended (19 U.S.C. 1313(j)(2)), provides for drawback of duties, taxes, and fees paid on imported merchandise based on the export or destruction under CBP supervision of substituted merchandise (as defined in §190.2, pursuant to 19 U.S.C. 1313(j)(2)), before the close of the 5-year period beginning on the date of importation of the imported merchandise and before the drawback claim is filed, and before such exportation or destruction the substituted merchandise is not used in the United States (*see* paragraph (e) of this section) and is in the possession of the party claiming drawback. The amount of duties, taxes, and fees eligible for drawback is determined by per unit averaging, as defined in 19 CFR 190.2, for any drawback claim based on 19 U.S.C. 1313(j)(2).

(b) *Allowable refund*—(1) *Exportation.* In the case of an article that is exported, subject to paragraph (b)(3) of this section, the total amount of drawback allowable will not exceed 99 percent of the lesser of:

(i) The amount of duties, taxes, and fees paid with respect to the imported merchandise; or

(ii) The amount of duties, taxes, and fees that would apply to the exported article if the exported article were imported.

(2) *Destruction.* In the case of an article that is destroyed, subject to paragraph (b)(3) of this section, the total amount of drawback allowable will not exceed 99 percent of the lesser of:

(i) The amount of duties, taxes, and fees paid with respect to the imported merchandise (after the value of the imported merchandise has been reduced by the value of materials recovered during destruction as provided in 19 U.S.C. 1313(x)); or

(ii) The amount of duties, taxes, and fees that would apply to the destroyed article if the destroyed article had been imported (after the value of the imported merchandise has been reduced by the value of materials recovered during destruction as provided in 19 U.S.C. 1313(x)).

(3) *Federal excise tax.* For purposes of drawback of internal revenue tax imposed under Chapters 32, 38 (with the exception of Subchapter A of Chapter 38), 51, and 52 of the Internal Revenue Code of 1986, as amended (IRC), drawback granted on the export or destruction of substituted merchandise will be limited to the amount of taxes paid (and not returned by refund, credit, or drawback) on the substituted merchandise.

(c) *Determination of HTSUS classification for substituted merchandise.* Requests for binding rulings on the classification of imported, substituted, or exported merchandise may be submitted to CBP pursuant to the procedures set forth in part 177.

(d) *Claims for wine*—(1) *Alternative substitution standard.* In addition to the 8-digit HTSUS substitution standard in §190.2, drawback of duties, taxes, and fees, paid on imported wine as defined in §190.2 may be allowable under 19 U.S.C. 1313(j)(2) with respect to wine if the imported wine and the exported wine are of the same color and the price variation between the imported

wine and the exported wine does not exceed 50 percent.

(2) *Allowable refund.* For any drawback claim for wine (as defined in §190.2) based on 19 U.S.C. 1313(j)(2), the total amount of drawback allowable will not exceed 99 percent of the duties, taxes, and fees paid with respect to the imported merchandise, without regard to the limitations in paragraph (b)(1) or (b)(2) of this section.

(3) *Required certification.* When the basis for substitution for wine drawback claims under 19 U.S.C. 1313(j)(2) is the alternative substitution standard rule set forth in (d)(1), claims under this subpart may be paid and liquidated if:

(i) The claimant specifies on the drawback entry that the basis for substitution is the alternative substitution standard for wine; and

(ii) The claimant provides a certification, as part of the complete claim (*see* 190.51(a)), stating that:

(A) The imported wine and the exported wine are a Class 1 grape wine (as defined in 27 CFR 4.21(a)(1)) of the same color (*i.e.*, red, white, or rosé);

(B) The imported wine and the exported wine are table wines (as defined in 27 CFR 4.21(a)(2)) and the alcoholic content does not exceed 14 percent by volume; and

(C) The price variation between the imported wine and the exported wine does not exceed 50 percent.

(e) *Operations performed on substituted merchandise.* The performing of any operation or combination of operations, not amounting to manufacture or production as provided for in 19 U.S.C. 1313(j)(3)(B), on the substituted merchandise is not a use of that merchandise for purposes of this section.

(f) *Designation by successor; 19 U.S.C. 1313(s)*—(1) *General rule.* Upon compliance with the requirements of this section and under 19 U.S.C. 1313(s), a drawback successor as defined in paragraph (f)(2) of this section may designate either of the following as the basis for drawback on merchandise possessed by the successor after the date of succession:

(i) Imported merchandise which the predecessor, before the date of succession, imported; or

(ii) Imported and/or substituted merchandise that was transferred to the predecessor from the person who imported and paid duty on the imported merchandise.

(2) *Drawback successor.* A ''drawback successor'' is an entity to which another entity (predecessor) has transferred, by written agreement, merger, or corporate resolution:

(i) All or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor; or

(ii) The assets and other business interests of a division, plant, or other business unit of such predecessor, but only if in such transfer the value of the transferred realty, personalty, and intangibles (other than drawback rights, inchoate or otherwise) exceeds the value of all transferred drawback rights, inchoate or otherwise.

(3) *Certifications and required evidence*—(i) *Records of predecessor.* The predecessor or successor must certify that the successor is in possession of the predecessor's records which are necessary to establish the right to drawback under the law and regulations with respect to the imported and/or substituted merchandise.

(ii) *Merchandise not otherwise designated.* The predecessor or successor must certify that the predecessor has not designated and will not designate, nor enable any other person to designate, the imported and/or substituted merchandise as the basis for drawback.

(iii) *Value of transferred property.* In instances in which assets and other business interests of a division, plant, or other business unit of a predecessor are transferred, the predecessor or successor must specify, and maintain supporting records to establish, the value of the drawback rights and the value of all other transferred property.

(iv) *Review by CBP.* The written agreement, merger, or corporate resolution, provided for in paragraph (f)(2) of this section, and the records and evidence provided for in paragraph (f)(3)(i) through (iii) of this section, must be retained by the appropriate party(s) for 3 years from the date of liquidation of the related claim and are subject to review by CBP upon request.

§ 190.33 Person entitled to claim unused merchandise drawback.

(a) *Direct identification.* (1) Under 19 U.S.C. 1313(j)(1), as amended, the exporter or destroyer will be entitled to claim drawback.

(2) The exporter or destroyer may waive the right to claim drawback and assign such right to the importer or any intermediate party. A drawback claimant under 19 U.S.C. 1313(j)(1) other than the exporter or destroyer must secure and retain a certification signed by the exporter or destroyer waiving the right to claim drawback, and stating that it did not and will not authorize any other party to claim the exportation or destruction for drawback (*see* §190.82). The certification provided for under this section may be a blanket certification for a stated period. The claimant must file such certification with each claim.

(b) *Substitution.* (1) Under 19 U.S.C. 1313(j)(2), as amended, the following parties may claim drawback:

(i) In situations where the exporter or destroyer of the substituted merchandise is also the importer of the imported merchandise, that party will be entitled to claim drawback.

(ii) In situations where the person who imported and paid the duty on the imported merchandise transfers the imported merchandise, substituted merchandise, or any combination of imported and substituted merchandise to the person who exports or destroys that merchandise, the exporter or destroyer will be entitled to claim drawback. (Any such transferred merchandise, regardless of its origin, will be treated as imported merchandise for purposes of drawback under 19 U.S.C. 1313(j)(2), and any retained merchandise will be treated as domestic merchandise.)

(iii) In situations where the transferred merchandise described in paragraph (b)(1)(ii) of this section is the subject of further transfer(s), such transfer(s) must be documented by records, including records kept in the normal course of business, and the exporter or destroyer will be entitled to claim drawback (multiple substitutions are not permitted).

(2) The exporter or destroyer may waive the right to claim drawback and assign such right to the importer or to any intermediate party, provided that the claimant had possession of the substituted merchandise prior to its exportation or destruction. A drawback claimant under 19 U.S.C. 1313(j)(2) other than the exporter or destroyer must secure and retain a certification signed by the exporter or destroyer that such party waived the right to claim drawback, and stating that it did not and will not authorize any other party to claim the exportation or destruction for drawback (*see* §190.82). The certification provided for under this section may be a blanket certification for a stated period. The claimant must file such certification with each claim.

§ 190.34 Transfer of merchandise.

Any transfer of merchandise (*see* §190.10) must be recorded in records, which may include records kept in the normal course of business, as defined in §190.2.

§ 190.35 Notice of intent to export or destroy; examination of merchandise.

(a) *Notice.* A notice of intent to export or destroy merchandise which may be the subject of an unused merchandise drawback claim (19 U.S.C. 1313(j)) must be provided to CBP to give CBP the opportunity to examine the merchandise. The claimant or the exporter (for destruction under CBP supervision, see §190.71) must file at the port of intended examination a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on CBP Form 7553 at least 5 working days prior to the date of intended exportation unless CBP approves another filing period or the claimant has been granted a waiver of prior notice (*see* §190.91).

(b) *Required information.* The notice must certify that the merchandise has not been used in the United States before exportation or destruction. In addition, if applicable, the notice must provide the bill of lading number, if known, the name and telephone number, mailing address, and, if available, fax number and email address of a contact person, and the location of the merchandise.

(c) *Decision to examine or to waive examination.* Within 2 working days after receipt of the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback (*see* paragraph (a) of this section), CBP will notify the party designated on the Notice in writing of CBP's decision to either examine the merchandise to be exported, or to waive examination. If CBP timely notifies the designated party, in writing, of its decision to examine the merchandise (*see* paragraph (d) of this section), but the merchandise is exported without having been presented to CBP for examination, any drawback claim, or part thereof, based on the Notice will be denied. If CBP notifies the designated party, in writing, of its decision to waive examination of the merchandise, or, if timely notification of a decision by CBP to examine or to waive examination has not been received, the merchandise may be exported without delay.

(d) *Time and place of examination.* If CBP gives timely notice of its decision to examine the exported merchandise, the merchandise to be examined must be promptly presented to CBP. CBP must examine the merchandise within 5 working days after presentation of the merchandise. The merchandise may be exported without examination if CBP fails to timely examine the merchandise after presentation to CBP. If the examination is to be completed at a port other than the port of actual exportation or destruction, the merchandise must be transported in-bond to the port of exportation or destruction.

(e) *Extent of examination.* The appropriate CBP office may permit release of merchandise without examination, or may examine, to the extent determined to be necessary, the items to be exported or destroyed.

§ 190.36 Failure to file Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback.

(a) *General; application.* Merchandise which has been exported or destroyed without complying with the requirements of § 190.35(a), § 190.42(a), § 190.71(a), or § 190.91 may be eligible for unused merchandise drawback under 19 U.S.C. 1313(j) or under 19 U.S.C. 1313(c) subject to the following conditions:

(1) *Application.* The claimant must file a written application with the drawback office where the drawback claims will be filed. Such application must include the following:

(i) Required information.

(A) Name, address, and Internal Revenue Service (IRS) number (with suffix) of applicant;

(B) Name, address, and IRS number(s) (with suffix(es)) of exporter(s), if applicant is not the exporter;

(C) Export period covered by this application;

(D) Commodity/product lines of imported and exported merchandise covered in this application (and the applicable HTSUS numbers);

(E) The origin of the above merchandise;

(F) Estimated number of export transactions covered in this application;

(G) Estimated number of drawback claims and estimated time of filing those claims to be covered in this application;

(H) The port(s) of exportation;

(I) Estimated dollar value of potential drawback claims to be covered in this application;

(J) The relationship between the parties involved in the import and export transactions; and

(K) Provision(s) of drawback covered under the application;

(ii) Written declarations regarding:

(A) The reason(s) that CBP was not notified of the intent to export; and

(B) Whether the applicant, to the best of its knowledge, will have future exportations or destructions on which unused merchandise drawback might be claimed; and

(iii) A certification that the following documentary evidence will be made available for CBP to review upon request:

(A) For the purpose of establishing that the imported merchandise was not used in the United States (for purposes of drawback under 19 U.S.C. 1313(j)(1)) or that the exported or destroyed merchandise was not used in the United States and satisfied the requirements for substitution with the imported merchandise (for purposes of drawback under 19 U.S.C. 1313(j)(2)), and, as applicable:

(*1*) Records;

(*2*) Any laboratory records prepared in the ordinary course of business; and/or

(*3*) Inventory records prepared in the ordinary course of business tracing all relevant movements and storage of the imported merchandise, substituted merchandise, and/or exported merchandise; and

(B) Evidence establishing compliance with all other applicable drawback requirements.

(2) *One-time use.* The procedure provided for in this section may be used by a claimant only once, unless good cause is shown (for example, successorship).

(3) *Claims filed pending disposition of application.* Drawback claims may be filed under this section pending disposition of the application. However, those drawback claims will not be processed or paid until the application is approved by CBP.

(b) *CBP action.* In order for CBP to evaluate the application under this section, CBP may request, and the applicant must provide, any of the information listed in paragraph (a)(1)(iii)(A)(*1*) through (*3*) of this section. In making its decision to approve or deny the application under this section, CBP will consider factors such as, but not limited to, the following:

(1) Information provided by the claimant in the written application;

(2) Any of the information listed in paragraphs (a)(1)(iii)(A)(*1*) through (*3*) of this section and requested by CBP under paragraph (b); and

(3) The applicant's prior record with CBP.

(c) *Time for CBP action.* CBP will notify the applicant in writing within 90 days after receipt of the application of its decision to approve or deny the application, or of CBP's inability to approve, deny or act on the application and the reason therefor.

(d) *Appeal of denial of application.* If CBP denies the application, the applicant may file a written appeal with the drawback office which issued the denial, provided that the applicant files this appeal within 30 days of the date of denial. If CBP denies this initial appeal, the applicant may file a further written appeal with CBP Headquarters, Office of Trade, Trade Policy and Programs, provided that the applicant files this further appeal within 30 days of the denial date of the initial appeal. CBP may extend the 30-day period for appeal to the drawback office or to CBP Headquarters, for good cause, if the applicant applies in writing for such extension within the appropriate 30-day period above.

(e) *Future intent to export or destroy unused merchandise.* If an applicant states it will have future exportations or destructions on which unused merchandise drawback may be claimed (*see* paragraph (a)(1)(ii)(B) of this section), the applicant will be informed of the procedures for waiver of prior notice (*see* §190.91). If the applicant seeks waiver of prior notice under §190.91, any documentation submitted to CBP to comply with this section will be included in the request under §190.91. An applicant that states that it will have future exportations or destructions on which unused merchandise drawback may be claimed (*see* paragraph (a)(1)(ii)(B) of this section) and which does not obtain waiver of prior notice must notify CBP of its intent to export or destroy prior to each such exportation or destruction, in accordance with §190.35.

§190.37 Destruction under CBP supervision.

A claimant may destroy merchandise and obtain unused merchandise drawback by complying with the procedures set forth in §190.71 relating to destruction.

§190.38 Recordkeeping.

(a) *Maintained by claimant; by others.* Pursuant to 19 U.S.C. 1508(c)(3), all records which are necessary to be maintained by the claimant under this part with respect to drawback claims, and records kept by others to complement the records of the claimant, which are essential to establish compliance with the legal requirements of 19 U.S.C. 1313(j)(1) or (j)(2), as applicable, and this part with respect to drawback claims, must be retained for 3 years after liquidation of such claims (under 19 U.S.C. 1508, the same records may be subject to a different retention period for different purposes).

(b) *Accounting for the merchandise.* Merchandise subject to drawback under 19 U.S.C. 1313(j)(1) and (j)(2) must be accounted for in a manner which will enable the claimant:

(1) To determine, and CBP to verify, the applicable import entry or transfer(s) of drawback-eligible merchandise;

(2) To determine, and CBP to verify, the applicable exportation or destruction; and

(3) To identify, with respect to the import entry or any transfer(s) of drawback-eligible merchandise, the imported merchandise designated as the basis for the drawback claim.

Subpart D—Rejected Merchandise

§ 190.41 Rejected merchandise drawback.

Section 313(c) of the Act, as amended (19 U.S.C. 1313(c)), provides for drawback upon the exportation or destruction under CBP supervision of imported merchandise which has been entered, or withdrawn from warehouse, for consumption, duty-paid, and which: Does not conform to sample or specifications; has been shipped without the consent of the consignee; or has been determined to be defective as of the time of importation; or ultimately sold at retail by the importer or the person who received the merchandise from the importer, and for any reason returned to and accepted by the importer or the person who received the merchandise from the importer. The total amount of drawback allowable will be 99 percent of the amount of duties paid with respect to the imported, duty-paid merchandise. *See* subpart P of this part for drawback of internal revenue taxes for unmerchantable or nonconforming distilled spirits, wines, or beer.

§ 190.42 Procedures and supporting documentation.

(a) *Time limit for exportation or destruction.* Drawback will be denied on merchandise that is exported or destroyed after the statutory 5-year time period.

(b) *Required documentation.* The claimant must submit documentation to CBP as part of the complete drawback claim (*see* § 190.51) to establish that the merchandise did not conform to sample or specification, was shipped without the consent of the consignee, or was defective as of the time of importation (*see* § 190.45 for additional requirements for claims made on rejected retail merchandise under 19 U.S.C. 1313(c)(1)(C)(ii)). If the claimant was not the importer, the claimant must also:

(1) Submit a statement signed by the importer and every other person, other than the ultimate purchaser, that owned the goods, that no other claim for drawback was made on the goods by any other person; and

(2) Certify that records are available to support the statement required in paragraph (b)(1) of this section.

(c) *Notice.* A notice of intent to export or destroy merchandise which may be the subject of a rejected merchandise drawback claim (19 U.S.C. 1313(c)) must be provided to CBP to give CBP the opportunity to examine the merchandise. The claimant, or the exporter (for destruction under CBP supervision, see § 190.71), must file at the port of intended redelivery to CBP custody a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on CBP Form 7553 at least 5 working days prior to the date of intended return to CBP custody, unless the claimant has been granted a waiver of prior notice (*see* § 190.91) or complies with the procedures for 1-time waiver in § 190.36.

(d) *Required information.* The notice must provide the bill of lading number, if known, the name and telephone number, mailing address, and, if available, fax number and email address of a contact person, and the location of the merchandise.

(e) *Decision to waive examination.* Within 2 working days after receipt of the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback (*see* paragraph (c) of this section), CBP will notify, in writing, the party designated on the Notice of CBP's decision to either examine the merchandise to be exported or destroyed, or to waive examination. If CBP timely notifies the designated party, in writing, of its decision to examine the merchandise (*see* paragraph (f) of this section), but the merchandise

is exported or destroyed without having been presented to CBP for such examination, any drawback claim, or part thereof, based on the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback, must be denied. If CBP notifies the designated party, in writing, of its decision to waive examination of the merchandise, or, if timely notification of a decision by CBP to examine or to waive examination is absent, the merchandise may be exported or destroyed without delay and will be deemed to have been returned to CBP custody.

(f) *Time and place of examination.* If CBP gives timely notice of its decision to examine the merchandise to be exported or destroyed, the merchandise to be examined must be promptly presented to CBP. CBP must examine the merchandise within 5 working days after presentation of the merchandise. The merchandise may be exported or destroyed without examination if CBP fails to timely examine the merchandise after presentation to CBP, and in such case the merchandise will be deemed to have been returned to CBP custody. If the examination is to be completed at a port other than the port of actual exportation or destruction, the merchandise must be transported in-bond to the port of exportation or destruction.

(g) *Extent of examination.* The appropriate CBP office may permit release of merchandise without examination, or may examine, to the extent determined to be necessary, the items exported or destroyed.

(h) *Drawback claim.* When filing the drawback claim, the drawback claimant must correctly calculate the amount of drawback due (*see* § 190.51(b)). The procedures for restructuring a claim (*see* § 190.53) apply to rejected merchandise drawback if the claimant has an ongoing export program which qualifies for this type of drawback.

(i) *Exportation.* Claimants must provide documentary evidence of exportation (*see* subpart G of this part). The claimant may establish exportation by mail as set out in § 190.74.

§ 190.43 Unused merchandise drawback claim.

Rejected merchandise may be the subject of an unused merchandise drawback claim under 19 U.S.C. 1313(j)(1), in accordance with subpart C of this part, to the extent that the merchandise qualifies therefor.

§ 190.44 [Reserved]

§ 190.45 Returned retail merchandise.

(a) *Special rule for substitution.* Section 313(c)(1)(C)(ii) of the Tariff Act of 1930, as amended (19 U.S.C. 1313(c)(1)(C)(ii)), provides for drawback upon the exportation or destruction under CBP supervision of imported merchandise which has been entered, or withdrawn from warehouse, for consumption, duty-paid and ultimately sold at retail by the importer, or the person who received the merchandise from the importer, and for any reason returned to and accepted by the importer, or the person who received the merchandise from the importer.

(b) *Eligibility requirements.* (1) Drawback is allowable pursuant to compliance with all requirements set forth in this subpart; and

(2) The claimant must also show by evidence satisfactory to CBP that drawback may be claimed by—

(i) Designating an entry of merchandise that was imported within 1 year before the date of exportation or destruction of the merchandise described in paragraph (a) under CBP supervision.

(ii) Certifying that the same 8-digit HTSUS subheading number and specific product identifier (such as part number, SKU, or product code) apply to both the merchandise designated for drawback (in the import documentation) and the returned merchandise.

(c) *Allowable refund.* The total amount of drawback allowable will not exceed 99 percent of the amount of duties paid with respect to the imported merchandise.

(d) *Denial of claims.* No drawback will be refunded if CBP is not satisfied that the claimant has provided, upon request, the documentation necessary to support the certification required in paragraph (b)(2)(ii) of this section.

Subpart E—Completion of Drawback Claims

§ 190.51 Completion of drawback claims.

(a) *General*—(1) *Complete claim.* Unless otherwise specified, a complete drawback claim under this part will consist of the successful electronic transmission to CBP of the drawback entry (as described in paragraph (a)(2) of this section), applicable Notice(s) of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on CBP Form 7553, applicable import entry data, and evidence of exportation or destruction as provided for under subpart G of this part.

(2) *Drawback entry.* The drawback entry is to be filed through a CBP-authorized electronic system and must include the following:

(i) Claimant identification number;

(ii) Broker identification number (if applicable);

(iii) If requesting accelerated payment under § 190.92, surety code and bond type (and, for single transaction bonds, also the bond number and amount of bond);

(iv) Port code for the drawback office where the claim is being filed;

(v) Drawback entry number and provision(s) under which drawback is claimed;

(vi) Statement of eligibility for applicable privileges (as provided for in subpart I of this part);

(vii) Amount of refund claimed for each of relevant duties, taxes, and fees (calculated to two decimal places);

(viii) For each designated import entry line item, the entry number and the line item number designating the merchandise, a description of the merchandise, a unique import tracing identification number(s) (ITIN) (used to associate the imported merchandise and any substituted merchandise with any intermediate products (if applicable) and the drawback-eligible exported or destroyed merchandise or finished article(s)), as well as the following information for the merchandise designated as the basis for the drawback claim: The 10-digit HTSUS classification, amount of duties paid, applicable entered value (*see* 19 CFR 190.11(a)), quantity, and unit of measure (using the unit(s) of measure required under the HTSUS for substitution manufacturing and substitution unused merchandise drawback claims), as well as the types and amounts of any other duties, taxes, or fees for which a refund is requested;

(ix) For manufacturing claims under 19 U.S.C. 1313(a) or (b), each associated ruling number, along with the following information: Corresponding information for the factory location, the basis of the claim (as provided for in § 190.23), the date(s) of use of the imported and/or substituted merchandise in manufacturing or processing (or drawback product containing the imported or substituted merchandise), a description of and the 10-digit HTSUS classification for the drawback product or finished article that is manufactured or produced, the quantity and unit of measure for the drawback product or finished article that is manufactured or produced, the disposition of the drawback product or finished article that is manufactured or produced (transferred, exported, or destroyed), unique manufacture tracing identification number(s) (MTIN) (used to associate the manufactured merchandise, including any intermediate products, with the drawback-eligible exported or destroyed finished article(s)), and a certification from the claimant that provides as follows: ''The article(s) described above were manufactured or produced and disposed of as stated herein in accordance with the drawback ruling on file with CBP and in compliance with applicable laws and regulations.'';

(x) Indicate whether the designated imported merchandise, other substituted merchandise, or finished article (for manufacturing claims) was transferred to the drawback claimant prior to the exportation or destruction of the eligible merchandise, and for unused merchandise drawback claims under 19 U.S.C. 1313(j), provide a certification from the client that provides as follows: ''The undersigned hereby certifies that the exported or destroyed merchandise herein described is unused in the United States and further certifies that this merchandise was not

subjected to any process of manufacture or other operation except the allowable operations as provided for by regulation.'';

(xi) Indicate whether the eligible merchandise was exported or destroyed and provide the applicable 10-digit HTSUS or Department of Commerce Schedule B classification, quantity, and unit of measure (the unit of measure specified must be the same as that which was required under the HTSUS for the designated imported merchandise in paragraph (viii) for substitution unused merchandise drawback claims) and, for claims under 19 U.S.C. 1313(c), specify the basis as one of the following:

(A) Merchandise does not conform to sample or specifications;

(B) Merchandise was defective at time of importation;

(C) Merchandise was shipped without consent of the consignee; or

(D) Merchandise sold at retail and returned to the importer or the person who received the merchandise from the importer;

(xii) For eligible merchandise that was exported, the unique export identifier (the number used to associate the export transaction with the appropriate documentary evidence of exportation), export destination, name of exporter, the applicable comparative value pursuant to §190.11(b) (*see* §190.22(a)(1)(ii), §190.22(a)(2)(ii), or §190.32(b)) for substitution claims, and a certification from the claimant that provides as follows: ''I declare, to the best of my knowledge and belief, that all of the statements in this document are correct and that the exported article is not to be relanded in the United States or any of its possessions without paying duty.'';

(xiii) For eligible merchandise that was destroyed, the name of the destroyer and, if substituted, the applicable comparative value pursuant to §190.11(c) (*see* §190.22(a)(1)(ii), §190.22(a)(2)(ii), or §190.32(b)), and a certification from the claimant, if applicable, that provides as follows: ''The undersigned hereby certifies that, for the destroyed merchandise herein described, the value of recovered materials (including the value of any tax benefit or royalty payment) that accrues to the drawback claimant has been deducted from the value of the imported (or substituted) merchandise designated by the claimant, in accordance with 19 U.S.C. 1313(x).'';

(xiv) For substitution unused merchandise drawback claims under 19 U.S.C. 1313(j)(2), a certification from the claimant that provides as follows: ''The undersigned hereby certifies that the substituted merchandise is unused in the United States and that the substituted merchandise was in our possession prior to exportation or destruction.'';

(xv) For NAFTA and USMCA drawback claims provided for in subpart E of parts 181 and 182, the foreign entry number and date of entry, the HTSUS classification for the foreign entry, the amount of duties paid for the foreign entry and the applicable exchange rate, and, if applicable, a certification from the claimant that provides as follows: ''Same condition—The undersigned certifies that the merchandise herein described is in the same condition as when it was imported under the above import entry(s) and further certifies that this merchandise was not subjected to any process of manufacture or other operation except the allowable operations as provided for by regulation.''; and

(xvi) All certifications required in this part and as otherwise deemed necessary by CBP to establish compliance with the applicable laws and regulations, as well as the following declaration: ''The undersigned acknowledges statutory requirements that all records supporting the information on this document are to be retained by the issuing party for a period of 3 years from the date of liquidation of the drawback claim. All required documentation that must be uploaded in accordance with 19 CFR 190.51 will be provided to CBP within 24 hours of the filing of the drawback claim. The undersigned acknowledges that a false certification of the foregoing renders the drawback claim incomplete and subject to denial. The undersigned is fully aware of the sanctions provided in 18 U.S.C. 1001, and 18 U.S.C. 550, and 19 U.S.C. 1593a.''

(3) *Election of line item designation for imported merchandise.* Merchandise on a specific line on an entry summary may

be designated for either direct identification or substitution claims but a single line on an entry summary may not be split for purposes of claiming drawback under both direct identification and substitution claims. The first complete drawback claim accepted by CBP which designates merchandise on a line on an entry summary establishes this designation for any remaining merchandise on that same line.

(4) *Limitation on line item eligibility for imported merchandise.* Claimants filing substitution drawback claims under part 190 for imported merchandise associated with a line item on an entry summary if any other merchandise covered on that entry summary has been designated as the basis of a claim under part 191 must provide additional information enabling CBP to verify the availability of drawback for the indicated merchandise and associated line item within 30 days of claim submission. The information to be provided will include, but is not limited to: summary document specifying the lines used and unused on the import entry; the import entry summary, corresponding commercial invoices, and copies of all drawback claims that previously designated the import entry summary; and post summary/liquidation changes (for imports or drawback claims, if applicable).

(b) *Drawback due*—(1) *Claimant required to calculate drawback.* Drawback claimants are required to correctly calculate the amount of drawback due. The amount of drawback requested on the drawback entry is generally to be 99 percent of the duties, taxes, and fees eligible for drawback. (For example, if $1,000 in import duties are eligible for drawback less 1 percent ($10), the amount claimed on the drawback entry should be for $990.) Claims exceeding 99 percent (or 100% when 100% of the duty is available for drawback) will not be paid until the calculations have been corrected by the claimant. Claims for less than 99 percent (or 100% when 100% of the duty is available for drawback) will be paid as filed, unless the claimant amends the claim in accordance with §190.52(c). The amount of duties, taxes, and fees eligible for drawback is determined by whether a claim is based upon direct identification or substitution, as provided for below:

(i) *Direct identification.* The amounts eligible for drawback for a unit of merchandise consists of those duties, taxes, and fees that were paid for that unit of the designated imported merchandise. This may be the amount of duties, taxes, and fees actually tendered on that unit or those attributable to that unit, if identified pursuant to an approved accounting method (*see* 19 CFR 190.14).

(ii) *Substitution.* The amount of duties, taxes, and fees eligible for drawback pursuant to 19 U.S.C. 1313(b) or 19 U.S.C. 1313(j)(2) is determined by per unit averaging, as defined in §190.2. The amount that may be refunded is also subject to the limitations set forth in §190.22(a)(1)(ii) (manufacturing claims) and §190.32(b) (unused merchandise claims), as applicable.

(2) *Merchandise processing fee apportionment calculation.* Where a drawback claimant requests a refund of a merchandise processing fee paid pursuant to 19 U.S.C. 58c(a)(9)(A), the claimant is required to correctly apportion the fee to that imported merchandise for which drawback is claimed when calculating the amount of drawback requested on the drawback entry. This is determined as follows:

(i) Relative value ratio for each line item. The value of each line item of entered merchandise subject to a merchandise processing fee is calculated (to four decimal places) by dividing the value of the line item subject to the fee by the total value of entered merchandise subject to the fee. The result is the relative value ratio.

(ii) Merchandise processing fee apportioned to each line item. To apportion the merchandise processing fee to each line item, the relative value ratio for each line item is multiplied by the merchandise processing fee paid.

(iii) Amount of merchandise processing fee eligible for drawback per line item. The amount of merchandise processing fee apportioned to each line item is multiplied by 99 percent to calculate that portion of the fee attributable to each line item that is eligible for drawback.

(iv) Amount of merchandise processing fee eligible for drawback per

unit of merchandise. To calculate the amount of a merchandise processing fee eligible for drawback per unit of merchandise, the line item amount that is eligible for drawback is divided by the number of units covered by that line item (to two decimal places).

(v) Limitation on amount of merchandise processing fee eligible for drawback for substitution claims. The amount of a merchandise processing fee eligible for drawback per unit of merchandise for drawback claims based upon substitution is subject to the limitations set forth in §§190.22(a)(1)(ii) (manufacturing claims) and 190.32(b) (unused merchandise claims), as applicable.

Example 1:

Line item 1—5,000 articles valued at $10 each total $50,000
Line item 2—6,000 articles valued at $15 each total $90,000
Line item 3—10,000 articles valued at $20 each total $200,000
Total units = 21,000
Total value = $340,000
Merchandise processing fee = $485 (for purposes of this example, the fee cap of $485 is assumed; see 19 CFR 24.23 for the current amount consistent with 19 U.S.C. 58c(a)(9)(B)(i)).

Line item relative value ratios. The relative value ratio for line item 1 is calculated by dividing the value of that line item by the total value ($50,000 ÷ 340,000 = .1471). The relative value ratio for line item 2 is .2647. The relative value ratio for line item 3 is .5882.

Merchandise processing fee apportioned to each line item. The amount of fee attributable to each line item is calculated by multiplying $485 by the applicable relative value ratio. The amount of the $485 fee attributable to line item 1 is $71.3435 (.1471 × $485 = $71.3435). The amount of the fee attributable to line item 2 is $128.3795 (.2647 × $485 = $128.3795). The amount of the fee attributable to line item 3 is $285.2770 (.5882 × $485 = $285.2770).

Amount of merchandise processing fee eligible for drawback per line item. The amount of merchandise processing fee eligible for drawback for line item 1 is $70.6301 (.99 × $71.3435). The amount of fee eligible for drawback for line item 2 is $127.0957 (.99 × $128.3795). The amount of fee eligible for drawback for line item 3 is $282.4242 (.99 × $285.2770).

Amount of merchandise processing fee eligible for drawback per unit of merchandise. The amount of merchandise processing fee eligible for drawback per unit of merchandise is calculated by dividing the amount of fee eligible for drawback for the line item by the number of units in the line item. For line item 1, the amount of merchandise processing fee eligible for drawback per unit is $.0141 ($70.6301 ÷ 5,000 = $.0141). If 1,000 widgets form the basis of a claim for drawback under 19 U.S.C. 1313(j), the total amount of drawback attributable to the merchandise processing fee is $14.10 (1,000 × .0141 = $14.10). For line item 2, the amount of fee eligible for drawback per unit is $.0212 ($127.0957 ÷ 6,000 = $.0212). For line item 3, the amount of fee eligible for drawback per unit is $.0282 ($282.4242 ÷ 10,000 = $.0282).

Example 2. This example illustrates the treatment of dutiable merchandise that is exempt from the merchandise processing fee and duty-free merchandise that is subject to the merchandise processing fee.

Line item 1—700 meters of printed cloth valued at $10 per meter (total value $7,000) that is exempt from the merchandise processing fee under 19 U.S.C. 58c(b)(8)(B)(iii)
Line item 2—15,000 articles valued at $100 each (total value $1,500,000)
Line item 3—10,000 duty-free articles valued at $50 each (total value $500,000)

The relative value ratios are calculated using line items 2 and 3 only, as there is no merchandise processing fee imposed by reason of importation on line item 1.

Line item 2—1,500,000 ÷ 2,000,000 = .75 (line items 2 and 3 form the total value of the merchandise subject to the merchandise processing fee).
Line item 3—500,000 ÷ 2,000,000 = .25.

If the total merchandise processing fee paid was $485, the amount of the fee attributable to line item 2 is $363.75 (.75 × $485 = $363.75). The amount of the fee attributable to line item 3 is $121.25 (.25 × $485 = $121.25).

The amount of merchandise processing fee eligible for drawback for line item 2 is $360.1125 (.99 × $363.75). The amount of fee eligible for line item 3 is $120.0375 (.99 × $121.25).

The amount of drawback on the merchandise processing fee attributable to each unit of line item 2 is $.0240 ($360.1125 ÷ 15,000 = $.0240). The amount of drawback on the merchandise processing fee attributable to each unit of line item 3 is $.0120 ($120.0375 ÷ 10,000 = $.0120).

If 1,000 units of line item 2 were exported, the drawback attributable to the merchandise processing fee is $24.00 ($.0240 × 1,000 = $24.00).

(3) *Calculations for all other duties, taxes, and fees*—(i) *General.* Where a drawback claimant requests a refund of any other duties, taxes, and fees allowable in accordance with §190.3, the claimant is required to accurately calculate (including apportionment using

per unit averaging or inventory management methods, as appropriate) the duties, taxes, and fees attributable to the designated imported merchandise for which drawback is being claimed when calculating the amount of drawback requested on the drawback entry (generally 99% of the duties, taxes, and fees paid on the imported merchandise).

(ii) *Examples.* As illustrated in the examples in this paragraph, in the case of customs duties, the type of calculation required to determine the amount of duties available for refund (generally 99% of the duties paid on the imported merchandise) will vary depending on whether the duty involved is ad valorem, specific, or compound.

Example 1: Ad valorem duty rate. Apportionment of the duties paid (and available for refund) will be based on the application of the duty rates to the per unit values of the imported merchandise. The per unit values are based on the invoice values unless the method of refund calculation is per unit averaging, which would require equal apportionment of the duties paid over the quantity of imported merchandise covered by the line item upon which the imported merchandise was reported on the import entry summary. As a result, the amount of duties available for refund will vary depending on the method used to calculate refunds.

Example 2: Specific duty rate. No apportionment of the duties paid is required to determine the amount available for refund. A fixed duty rate is applicable to each unit of the imported merchandise based on quantity. This fixed rate will not vary based on the per unit values of the imported merchandise and, as a result, there is no impact on the amount of duties available for refunds (regardless of whether the refunds are calculated based on invoice values or per unit averaging).

Example 3: Compound duty rate. A compound duty rate is a combination of an ad valorem duty rate and a specific duty rate, with both rates applied to the same imported merchandise. As a result, a combination of the calculations discussed in paragraphs (a) and (b) of this section will apply when calculating the amount of duties paid that are available for refund.

(4) *Limitation.* The amount of duties, taxes, and fees eligible for drawback per unit of merchandise for drawback claims based upon substituted merchandise is subject to the limitations set forth in §190.22(a)(1)(ii) (manufacturing claims) and §190.32(b) (unused merchandise claims), as applicable.

(c) *HTSUS classification or Schedule B commodity number(s)*—(1) *General.* Drawback claimants are required to provide, on all drawback claims they submit, the 10-digit HTSUS classification or the Schedule B commodity number(s), for the following:

(i) *Designated imported merchandise.* For imported merchandise designated on drawback claims, the HTSUS classification applicable at the time of entry (e.g., as required to be reported on the applicable entry summary(s) and other entry documentation).

(ii) *Substituted merchandise on manufacturing claims.* For merchandise substituted on manufacturing drawback claims, and consistent with the applicable general manufacturing drawback ruling or the specific manufacturing drawback ruling, the applicable HTSUS classification numbers must be the same as either—

(A) If the substituted merchandise was imported, the HTSUS classification applicable at the time of entry (e.g., as required to be reported on the applicable entry summary(s) and other entry documentation); or,

(B) If the substituted merchandise was not imported, the HTSUS classification that would have been reported to CBP for the applicable entry summary(s) and other entry documentation, for the domestically produced substituted merchandise, at the time of entry of the designated imported merchandise.

(iii) *Exported merchandise or articles.* For exported merchandise or articles, the HTSUS classification or Schedule B commodity number(s) must be from the Electronic Export Information (EEI), when required. If no EEI is required (*see*, 15 CFR part 30 subpart D for a complete list of exemptions), then the claimant must provide the Schedule B commodity number(s) or HTSUS number(s) that the exporter would have set forth on the EEI when the exportation took place, but for the exemption from the requirement for an EEI.

(iv) *Destroyed merchandise or articles.* For destroyed merchandise or articles, the HTSUS classification or Schedule B commodity number(s) must be reported, subject to the following:

(A) if the HTSUS classification is reported, then it must be the HTSUS classification that would have been applicable to the destroyed merchandise or articles if they had been entered for consumption at the time of destruction; or

(B) if the Schedule B commodity number is reported, then it must be the Schedule B commodity number that would have been reported for the destroyed merchandise or articles if the EEI had been required for an exportation at the time of destruction.

(2) *Changes to classification.* If the 10-digit HTSUS classification or the Schedule B commodity number(s) reported to CBP for the drawback claim are determined to be incorrect or otherwise in controversy after the filing of the drawback entry, then the claimant must notify the drawback office where the drawback claim was filed of the correct HTSUS classification or Schedule B commodity number or the nature of the controversy before the liquidation of the drawback entry.

(d) *Method of filing.* All drawback claims must be submitted through a CBP-authorized system.

(e) *Time of filing*—(1) *General.* A complete drawback claim is timely filed if it is successfully transmitted not later than 5 years after the date on which the merchandise designated as the basis for the drawback claim was imported and in compliance with all other applicable deadlines under this part.

(i) *Official date of filing.* The official date of filing is the date upon which CBP receives a complete claim, as provided in paragraph (a) of this section, via transmission through a CBP-authorized system, including the uploading of all required supporting documentation.

(ii) *Abandonment.* Claims not completed within the 5-year period after the date on which the merchandise designated as the basis for the drawback claim was imported will be considered abandoned. Except as provided in paragraph (e)(2) of this section, no extension will be granted unless it is established that CBP was responsible for the untimely filing.

(iii) *Special timeframes.* For substitution claims, the exportation or destruction of merchandise shall not have preceded the date of importation of the designated imported merchandise, and/or the exportation or destruction of merchandise shall not otherwise be outside of the timeframes specified in 19 U.S.C. 1313(c)(2)(C) and 19 U.S.C. 1313(p)(2), if applicable.

(2) *Major disaster.* The 5-year period for filing a complete drawback claim provided for in paragraph (e)(1) of this section may be extended for a period not to exceed 18 months if:

(i) The claimant establishes to the satisfaction of CBP that the claimant was unable to file the drawback claim because of an event declared by the President to be a major disaster, within the meaning given to that term in 42 U.S.C. 5122(2), on or after January 1, 1994; and

(ii) The claimant files a request for such extension with CBP no later than 1 year from the last day of the 5-year period referred to in paragraph (e)(1) of this section.

(3) *Record retention.* If an extension is granted with respect to a request filed under paragraph (e)(2)(ii) of this section, the periods of time for retaining records under 19 U.S.C. 1508(c)(3) will be extended for an additional 18 months.

[83 FR 64997, Dec. 18, 2018, as amended by CBP Dec. 21–10, 86 FR 35594, July 6, 2021]

§ 190.52 Rejecting, perfecting or amending claims.

(a) *Rejecting the claim.* Upon review of a drawback claim when transmitted in ACE, if the claim is determined to be incomplete (*see* § 190.51(a)(1)) or untimely (*see* § 190.51(e)), the claim will be rejected and CBP will notify the filer. The filer will then have the opportunity to complete the claim subject to the requirement for filing a complete claim within 5 years of the date of importation of the merchandise designated as the basis for the drawback claim (or within 3 years after the date of exportation of the articles upon which drawback is claimed for drawback pursuant to 19 U.S.C. 1313(d)). If it is later determined by CBP, subsequent to acceptance of the claim and upon further review, that the claim was incomplete or untimely, then it may be denied.

(b) *Perfecting the claim; additional evidence required.* If CBP determines that

the claim is complete according to the requirements of §190.51(a)(1), but that additional evidence or information is required, CBP will notify the filer. The claimant must furnish, or have the appropriate party furnish, the evidence or information requested within 30 days of the date of notification by CBP. CBP may extend this 30-day period if the claimant files a written request for such extension within the 30-day period and provides good cause. The evidence or information required under this paragraph may be filed more than 5 years after the date of importation of the merchandise designated as the basis for the drawback claim (or within 3 years after the date of exportation of the articles upon which drawback is claimed for drawback pursuant to 19 U.S.C. 1313(d)). Such additional evidence or information may include, but is not limited to:

(1) Records or other documentary evidence of exportation, as provided for in §190.72, which shows that the articles were shipped by the person filing the drawback entry, or a letter of endorsement from the exporter which must be attached to such records or other documentary evidence, showing that the party filing the entry is authorized to claim drawback and receive payment (the claimant must have on file and make available to CBP upon request, the endorsement from the exporter assigning the right to claim drawback);

(2) A copy of the import entry and invoice annotated for the merchandise identified or designated;

(3) A copy of the export invoice annotated to indicate the items on which drawback is being claimed; and

(4) Records documenting the transfer of the merchandise including records kept in the normal course of business upon which the claim is based (*see* §190.10).

(c) *Amending the claim; supplemental filing*. Amendments to claims for which the drawback entries have not been liquidated must be made within 5 years of the date of importation of the merchandise designated as the basis for the drawback claim. Liquidated drawback entries may not be amended; however, they may be protested as provided for in §190.84 and part 174 of this chapter.

§190.53 Restructuring of claims.

(a) *General*. CBP may require claimants to restructure their drawback claims in such a manner as to foster administrative efficiency. In making this determination, CBP will consider the following factors:

(1) The number of transactions of the claimant (imports and exports);

(2) The value of the claims;

(3) The frequency of claims;

(4) The product or products being claimed; and

(5) For 19 U.S.C. 1313(a) and 1313(b) claims, the provisions, as applicable, of the general manufacturing drawback ruling or the specific manufacturing drawback ruling.

(b) *Exemption from restructuring; criteria*. In order to be exempt from a restructuring, a claimant must demonstrate an inability or impracticability in restructuring its claims as required by CBP and must provide a mutually acceptable alternative. Criteria used in such determination will include a demonstration by the claimant of one or more of the following:

(1) Complexities caused by multiple commodities or the applicable general manufacturing drawback ruling or the specific manufacturing drawback ruling;

(2) Variable and conflicting manufacturing and inventory periods (for example, financial, accounting and manufacturing records maintained are significantly different);

(3) Complexities caused by multiple manufacturing locations;

(4) Complexities caused by difficulty in adjusting accounting and inventory records (for example, records maintained—financial or accounting—are significantly different); and/or

(5) Complexities caused by significantly different methods of operation.

Subpart F—Verification of Claims

§190.61 Verification of drawback claims.

(a) *Authority*. All claims are subject to verification by CBP.

(b) *Method*. CBP personnel will verify compliance with the law and this part, the accuracy of the related general manufacturing drawback ruling or specific manufacturing drawback ruling

(as applicable), and the selected drawback claims. Verification may include an examination of all records relating to the transaction(s).

(c) *Liquidation.* When a claim has been selected for verification, liquidation will be postponed only on the drawback entry for the claim selected for verification. Postponement will continue in effect until the verification has been completed and a report is issued, subject to the limitation in 19 CFR 159.12(f). In the event that a substantial error is revealed during the verification, CBP may postpone liquidation of all related product line claims, or, in CBP's discretion, all claims made by that claimant.

(d) *Errors in specific or general manufacturing drawback rulings*—(1) *Specific manufacturing drawback ruling; action by CBP.* If verification of a drawback claim filed under a specific manufacturing drawback ruling (*see* §190.8) reveals errors or deficiencies in the drawback ruling or application therefor, the verifying CBP official will promptly inform CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade).

(2) *General manufacturing drawback ruling.* If verification of a drawback claim filed under a general manufacturing drawback ruling (*see* §190.7) reveals errors or deficiencies in a general manufacturing drawback ruling, the letter of notification of intent to operate under the general manufacturing drawback ruling, or the acknowledgment of the letter of notification of intent, the verifying CBP official will promptly inform CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade).

(3) *Action by CBP Headquarters.* CBP Headquarters will review the stated errors or deficiencies and take appropriate action (*see* 19 U.S.C. 1625; 19 CFR part 177).

§ 190.62 Penalties.

(a) *Criminal penalty.* Any person who knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback upon the exportation or destruction of merchandise or knowingly or willfully makes or files any false document for the purpose of securing the payment to himself or others of any drawback on the exportation or destruction of merchandise greater than that legally due, will be subject to the criminal provisions of 18 U.S.C. 550, 1001, or any other appropriate criminal sanctions.

(b) *Civil penalty.* Any person who seeks, induces or affects the payment of drawback, by fraud or negligence, or attempts to do so, is subject to civil penalties, as provided under 19 U.S.C. 1593a. A fraudulent violation is subject to a maximum administrative penalty of 3 times the total actual or potential loss of revenue. Repetitive negligent violations are subject to a maximum penalty equal to the actual or potential loss of revenue.

§ 190.63 Liability for drawback claims.

(a) *Liability of claimants.* Any person making a claim for drawback will be liable for the full amount of the drawback claimed.

(b) *Liability of importers.* An importer will be liable for any drawback claim made by another person with respect to merchandise imported by the importer in an amount equal to the lesser of:

(1) The amount of duties, taxes, and fees that the person claimed with respect to the imported merchandise; or

(2) The amount of duties, taxes, and fees that the importer authorized the other person to claim with respect to the imported merchandise.

(c) *Joint and several liability.* Persons described in paragraphs (a) and (b) of this section will be jointly and severally liable for the amount described in paragraph (b).

Subpart G—Exportation and Destruction

§ 190.71 Drawback on articles destroyed under CBP supervision.

(a) *Procedure.* At least 7 working days before the intended date of destruction of merchandise or articles upon which drawback is intended to be claimed, a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on CBP Form 7553 must be filed by the claimant with the CBP port where the destruction is to take place, giving notification of the date

and specific location where the destruction is to occur. Within 4 working days after receipt of the CBP Form 7553, CBP will advise the filer in writing of its determination to witness or not to witness the destruction. If the filer of the notice is not so notified within 4 working days, the merchandise may be destroyed without delay and will be deemed to have been destroyed under CBP supervision. Unless CBP determines to witness the destruction, the destruction of the articles following timely notification on CBP Form 7553 will be deemed to have occurred under CBP supervision. If CBP attends the destruction, CBP will certify on CBP Form 7553.

(b) *Evidence of destruction.* When CBP does not attend the destruction, the claimant must submit evidence that destruction took place in accordance with the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on CBP Form 7553. The evidence must be issued by a disinterested third party (for example, a landfill operator). The type of evidence depends on the method and place of destruction, but must establish that the merchandise was, in fact, destroyed within the meaning of ''destruction'' in §190.2.

(c) *Completion of drawback entry.* After destruction, the claimant must provide CBP Form 7553, certified by the CBP official witnessing the destruction in accordance with paragraph (a) of this section, to CBP as part of the complete drawback claim based on the destruction (*see* §190.51(a)). If CBP has not attended the destruction, the claimant must provide the evidence that destruction took place in accordance with the approved CBP Form 7553, as provided for in paragraph (b) of this section, as part of the complete drawback claim based on the destruction (*see* §190.51(a)).

(d) *Deduction for value of recovered materials.* Under 19 U.S.C. 1313(x), a destruction may include a process by which materials are recovered from imported merchandise or from an article manufactured from imported merchandise for drawback claims made pursuant to 19 U.S.C. 1313(a), (b), (c), and (j). In determining the amount of duties to be refunded as drawback to a claimant, the value of recovered materials (including the value of any tax benefit or royalty payment) that accrues to the drawback claimant must be deducted from the value of the imported merchandise that is destroyed, or from the value of the merchandise used, or designated as used, in the manufacture of the article.

§190.72 Proof of exportation.

(a) *Required export data.* Proof of exportation of articles for drawback purposes must establish fully the date and fact of exportation and the identity of the exporter by providing the following summary data as part of a complete claim (*see* §190.51) (in addition to providing prior notice of intent to export if applicable):

(1) Date of export;
(2) Name of exporter;
(3) Description of the goods;
(4) Quantity and unit of measure;
(5) Schedule B number or HTSUS number; and
(6) Country of ultimate destination.

(b) *Supporting documentary evidence.* The documents for establishing exportation (which may be records kept in the normal course of business) include, but are not limited to:

(1) Records or other documentary evidence of exportation (originals or copies) issued by the exporting carrier, such as a bill of lading, air waybill, freight waybill, Canadian Customs manifest, and/or cargo manifest;

(2) Records from a CBP-approved electronic export system of the United States Government (§190.73);

(3) Official postal records (originals or copies) which evidence exportation by mail (§190.74);

(4) Notice of lading for supplies on certain vessels or aircraft (§190.112); or

(5) Notice of transfer for articles manufactured or produced in the United States which are transferred to a foreign trade zone (§190.183).

§190.73 Electronic proof of exportation.

Records kept through an electronic export system of the United States Government may be presented as actual proof of exportation only if CBP has officially approved the use of that electronic export system as proof of

compliance for drawback claims. Official approval will be published as a general notice in the Customs Bulletin.

§ 190.74 Exportation by mail.

If the merchandise on which drawback is to be claimed is exported by mail or parcel post, the official postal records (original or copies) which describe the mail shipment will be sufficient to prove exportation. The postal record must be identified on the drawback entry, and must be retained by the claimant in their records and made available to CBP upon request (*see* § 190.51(a)).

§ 190.75 Exportation by the Government.

(a) *Claim by U.S. Government.* When a department, branch, agency, or instrumentality of the U.S. Government exports products with the intention of claiming drawback, it may establish the exportation in the manner provided in § 190.72 (*see* § 190.4).

(b) *Claim by supplier.* When a supplier of merchandise to the Government or any of the parties specified in § 190.82 claims drawback, exportation must be established under § 190.72.

§ 190.76 [Reserved]

Subpart H—Liquidation and Protest of Drawback Entries

§ 190.81 Liquidation.

(a) *Time of liquidation.* Drawback entries may be liquidated after:

(1) Liquidation of the designated import entry or entries becomes final pursuant to paragraph (e) of this section; or

(2) Deposit of estimated duties on the imported merchandise and before liquidation of the designated import entry or entries.

(b) *Claims based on estimated duties.* (1) Drawback may be paid upon liquidation of a claim based on estimated duties if one or more of the designated import entries have not been liquidated, or the liquidation has not become final (because of a protest being filed) (*see* also § 173.4(c) of this chapter), only if the drawback claimant and any other party responsible for the payment of liquidated import duties each files a written request for payment of each drawback claim, waiving any right to payment or refund under other provisions of law, to the extent that the estimated duties on the unliquidated import entry are included in the drawback claim for which drawback on estimated duties is requested under this paragraph. The drawback claimant must, to the best of its knowledge, identify each import entry that has been protested and that is included in the drawback claim. A drawback entry, once finally liquidated on the basis of estimated duties pursuant to paragraph (e)(2) of this section, will not be adjusted by reason of a subsequent final liquidation of the import entry.

(2) However, if final liquidation of the import entry discloses that the total amount of import duty is different from the total estimated duties deposited, except in those cases when drawback is 100% of the duty, the party responsible for the payment of liquidated duties, as applicable, will:

(i) Be liable for 1 percent of all increased duties found to be due on that portion of merchandise recorded on the drawback entry; or

(ii) Be entitled to a refund of 1 percent of all excess duties found to have been paid as estimated duties on that portion of the merchandise recorded on the drawback entry.

(c) *Claims based on voluntary tenders or other payments of duties*—(1) *General.* Subject to the requirements in paragraph (2) of this section, drawback may be paid upon liquidation of a claim based on voluntary tenders of the unpaid amount of lawful ordinary customs duties or any other payment of lawful ordinary customs duties for an entry, or withdrawal from warehouse, for consumption (*see* § 190.3(a)(1)(iii)), provided that:

(i) The tender or payment is specifically identified as duty on a specifically identified entry, or withdrawal from warehouse, for consumption;

(ii) Liquidation of the specifically identified entry, or withdrawal from warehouse, for consumption became final prior to such tender or payment; and

(iii) Liquidation of the drawback entry in which that specifically identified import entry, or withdrawal from

warehouse, for consumption is designated has not become final.

(2) *Written request and waiver.* Drawback may be paid on claims based on voluntary tenders or other payments of duties under this subsection only if the drawback claimant and any other party responsible for the payment of the voluntary tenders or other payments of duties each files a written request for payment of each drawback claim based on such voluntary tenders or other payments of duties, waiving any claim to payment or refund under other provisions of law, to the extent that the voluntary tenders or other payment of duties under this paragraph are included in the drawback claim for which drawback on the voluntary tenders or other payment of duties is requested under this paragraph.

(d) *Claims based on liquidated duties.* Drawback will be based on the final liquidated duties paid that have been made final by operation of law (except in the case of the written request for payment of drawback on the basis of estimated duties, voluntary tender of duties, and other payments of duty, and waiver, provided for in paragraphs (b) and (c) of this section).

(e) *Liquidation procedure.* (1) *General.* When the drawback claim has been completed by the filing of the entry and other required documents, and exportation (or destruction) of the merchandise or articles has been established, CBP will determine drawback due on the basis of the complete drawback claim, the applicable general manufacturing drawback ruling or specific manufacturing drawback ruling, and any other relevant evidence or information. Notice of liquidation will be given electronically as provided in §§ 159.9 and 159.10(c)(3) of this chapter.

(2) *Liquidation by operation of law.* (i) *Liquidated import entries.* A drawback claim that satisfies the requirements of paragraph (d) that is not liquidated within 1 year from the date of the drawback claim (*see* § 190.51(e)(1)(i)) will be deemed liquidated for the purpose of the drawback claim at the drawback amount asserted by the claimant or claim, unless the time for liquidation is extended in accordance with § 159.12 or if liquidation is suspended as required by statute or court order.

(ii) *Unliquidated import entries.* A drawback claim that satisfies the requirements of paragraphs (b) or (c) of this section will be deemed liquidated upon the deposit of estimated duties on the unliquidated imported merchandise (*see* § 190.81(b)).

(f) *Relative value; multiple products*—(1) *Distribution.* Where two or more products result from the manufacture or production of merchandise, drawback will be distributed to the several products in accordance with their relative values at the time of separation.

(2) *Values.* The values to be used in computing the distribution of drawback where two or more products result from the manufacture or production of merchandise under drawback conditions must be the market value (as provided for in the definition of relative value in § 190.2), unless other values are approved by CBP.

(g) *Payment.* CBP will authorize the amount of the refund due as drawback to the claimant.

§ 190.82 Person entitled to claim drawback.

Unless otherwise provided in this part (*see* §§ 190.42(b), 190.162, 190.175(a), 190.186), the exporter (or destroyer) will be entitled to claim drawback, unless the exporter (or destroyer), by means of a certification, waives the right to claim drawback and assigns such right to the manufacturer, producer, importer, or intermediate party (in the case of drawback under 19 U.S.C. 1313(j)(1) and (2), see § 190.33(a) and (b)). Such certification must also affirm that the exporter (or destroyer) has not assigned and will not assign the right to claim drawback on the particular exportation or destruction to any other party. The certification provided for in this section may be a blanket certification for a stated period.

§ 190.83 Person entitled to receive payment.

Drawback is paid to the claimant (*see* § 190.82).

§ 190.84 Protests.

Procedures to protest the denial, in whole or in part, of a drawback entry must be in accordance with part 174 of this chapter (19 CFR part 174).

Subpart I—Waiver of Prior Notice of Intent To Export or Destroy; Accelerated Payment of Drawback

§ 190.91 Waiver of prior notice of intent to export or destroy.

(a) *General*—(1) *Scope.* The requirement in §190.35 for prior notice of intent to export or destroy merchandise which may be the subject of an unused merchandise drawback claim under section 313(j) of the Act, as amended (19 U.S.C. 1313(j)), or a rejected merchandise drawback claim under section 313(c), as amended (19 U.S.C. 1313(c)), may be waived under the provisions of this section.

(2) *Effective date for claimants with existing approval.* For claimants approved for waiver of prior notice before February 24, 2019, and under 19 CFR part 191, such approval of waiver of prior notice will remain in effect, but only if the claimant provides the following certification as part of each complete claim filed on or after that date, pursuant to §190.51(a)(2)(xvi): ''The undersigned acknowledges the current statutory requirements under 19 U.S.C. 1313 and the regulatory requirements in 19 CFR part 190, and hereby certifies continuing eligibility for the waiver of prior notice (granted prior to February 24, 2019) in compliance therewith.'' This certification may only be made for waiver of prior notice for the specific type of drawback claim for which the application was previously approved under 19 CFR 191, except that applications approved under 19 U.S.C. 1313(j)(1) will also be applicable to claims for the same type of merchandise if made under 19 U.S.C. 1313(j)(2).

(3) *Limited successorship for waiver of prior notice.* When a claimant (predecessor) is approved for waiver of prior notice under this section and all of the rights, privileges, immunities, powers, duties and liabilities of the claimant are transferred by written agreement, merger, or corporate resolution to a successor, such approval of waiver of prior notice will remain in effect for a period of 1 year after such transfer. The approval of waiver of prior notice will terminate at the end of such 1-year period unless the successor applies for waiver of prior notice under this section. If such successor applies for waiver of prior notice under this section within such 1-year period, the successor may continue to operate under the predecessor's waiver of prior notice until CBP approves or denies the successor's application for waiver of prior notice under this section, subject to the provisions in this section (*see*, in particular, paragraphs (d) and (e) of this section).

(b) *Application*—(1) *Who may apply.* A claimant for unused merchandise drawback under 19 U.S.C. 1313(j) or rejected merchandise drawback under 19 U.S.C. 1313(c) may apply for a waiver of prior notice of intent to export or destroy merchandise under this section.

(2) *Contents of application.* An applicant for a waiver of prior notice under this section must file a written application (which may be physically delivered or delivered via email) with the drawback office where the claims will be filed. Such application must include the following:

(i) Required information:

(A) Name, address, and Internal Revenue Service (IRS) number (with suffix) of applicant;

(B) Name, address, and Internal Revenue Service (IRS) number (with suffix) of current exporter(s) or destroyer(s) (if more than 3 exporters or destroyers, such information is required only for the 3 most frequently used exporters or destroyers), if applicant is not the exporter or destroyer;

(C) Export or destruction period covered by this application;

(D) Commodity/product lines of imported and exported or destroyed merchandise covered by this application;

(E) Origin of merchandise covered by this application;

(F) Estimated number of export transactions or destructions during the next calendar year covered by this application;

(G) Port(s) of exportation or location of destruction facilities to be used during the next calendar year covered by this application;

(H) Estimated dollar value of potential drawback during the next calendar year covered by this application;

(I) The relationship between the parties involved in the import and export transactions or destructions; and

(J) Provision(s) of drawback covered by the application.

(ii) A written declaration whether or not the applicant has previously been denied a waiver request, or had an approval of a waiver revoked, by any other drawback office, and whether the applicant has previously requested a 1-time waiver of prior notice under §190.36, and whether such request was approved or denied; and

(iii) A certification that the following documentary evidence will be made available for CBP review upon request:

(A) For the purpose of establishing that the imported merchandise was not used in the United States (for purposes of drawback under 19 U.S.C. 1313(j)(1)) or that the exported or destroyed merchandise was not used in the United States and satisfies the requirements for substitution with the imported merchandise (for purposes of drawback under 19 U.S.C. 1313(j)(2)) or that the rejected merchandise that was exported or destroyed satisfies the relevant requirements (for purposes of drawback under 19 U.S.C. 1313(c)), and, as applicable:

(1) Records;

(2) Laboratory records prepared in the ordinary course of business; and/or

(3) Inventory records prepared in the ordinary course of business tracing all relevant movements and storage of the imported merchandise, substituted merchandise, and/or exported or destroyed merchandise; and

(B) Any other evidence establishing compliance with other applicable drawback requirements, upon CBP's request under paragraph (b)(2)(iii) of this section.

(3) *Samples of records to accompany application.* To expedite the processing of applications under this section, the application should contain at least one sample of each of the records to be used to establish compliance with the applicable requirements (that is, sample of import document (for example, CBP Form 7501, or its electronic equivalent), sample of export document (for example, bill of lading) or sample of evidence of destruction, and samples of business, laboratory, and inventory records certified, under paragraph (b)(2)(iii)(A)(1) through (3) of this section, to be available to CBP upon request).

(c) *Action on application*—(1) *CBP review.* The drawback office will review and verify the information submitted on and with the application. CBP will notify the applicant in writing within 90 days of receipt of the application of its decision to approve or deny the application, or of CBP's inability to approve, deny, or act on the application and the reason therefor. In order for CBP to evaluate the application, CBP may request any of the information listed in paragraph (b)(2)(iii)(A)(*1*) through (*3*) of this section. Based on the information submitted on and with the application and any information so requested, and based on the applicant's record of transactions with CBP, the drawback office will approve or deny the application. The criteria to be considered in reviewing the applicant's record with CBP include, but are not limited to:

(i) The presence or absence of unresolved CBP charges (duties, taxes, or other debts owed CBP);

(ii) The accuracy of the claimant's past drawback claims;

(iii) Whether waiver of prior notice was previously revoked or suspended; and

(iv) The presence or absence of any failure to present merchandise to CBP for examination after CBP had timely notified the party filing a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on CBP Form 7553 of CBP's intent to examine the merchandise (*see* §190.35).

(2) *Approval.* The approval of an application for waiver of prior notice of intent to export or destroy, under this section, will operate prospectively, applying only to those export shipments or destructions occurring after the date of the waiver. It will be subject to a stay, as provided in paragraph (d) of this section.

(3) *Denial.* If an application for waiver of prior notice of intent to export or destroy, under this section, is denied, the applicant will be given written notice, specifying the grounds therefor, together with what corrective action may be taken, and informing the applicant that the denial may be appealed in the manner prescribed in paragraph

(g) of this section. The applicant may not reapply for a waiver until the reason for the denial is resolved.

(d) *Stay.* An approval of waiver of prior notice may be stayed, for a specified reasonable period, should CBP desire for any reason to examine the merchandise being exported or destroyed with drawback prior to its exportation or destruction for purposes of verification. CBP will provide written notice, by registered or certified mail, of such a stay to the person for whom waiver of prior notice was approved. CBP will specify the reason(s) for the stay in such written notice. The stay will take effect 2 working days after the date the person signs the return post office receipt for the registered or certified mail. The stay will remain in effect for the period specified in the written notice, or until such earlier date as CBP notifies the person for whom waiver of prior notice was approved in writing that the reason for the stay has been satisfied. After the stay is lifted, operation under the waiver of prior notice procedure may resume for exports on or after the date the stay is lifted.

(e) *Proposed revocation.* CBP may propose to revoke the approval of an application for waiver of prior notice of intent to export or destroy, under this section, for good cause (such as, noncompliance with the drawback law and/or regulations). CBP will give written notice of the proposed revocation of a waiver of prior notice of intent to export or destroy. The notice will specify the reasons for CBP's proposed action and provide information regarding the procedures for challenging CBP's proposed revocation action as prescribed in paragraph (g) of this section. The written notice of proposed revocation may be included with a notice of stay of approval of waiver of prior notice as provided under paragraph (d) of this section. The revocation of the approval of waiver of prior notice will take effect 30 days after the date of the proposed revocation if not timely challenged under paragraph (g) of this section. If timely challenged, the revocation will take effect after completion of the challenge procedures in paragraph (g) of this section unless the challenge is successful.

(f) *Action by drawback office controlling.* Action by the drawback office to approve, deny, stay, or revoke waiver of prior notice of intent to export or destroy, unless reversed by CBP Headquarters, will govern the applicant's eligibility for this procedure in all CBP drawback offices. If the application for waiver of prior notice of intent to export or destroy is approved, the claimant must refer to such approval in the first drawback claim filed after such approval in the drawback office approving waiver of prior notice and must submit a copy of the approval letter with the first drawback claim filed in any drawback office other than the approving office, when the export or destruction upon which the claim is based was without prior notice, under this section.

(g) *Appeal of denial or challenge to proposed revocation.* An appeal of a denial of an application under this section, or challenge to the proposed revocation of an approved application under this section, may be made by letter to the drawback office issuing the denial or proposed revocation and must be filed within 30 days of the date of denial or proposed revocation. A denial of an appeal or challenge made to the drawback office may itself be appealed to CBP Headquarters, Office of Trade, Trade Policy and Programs, and must be filed within 30 days of the denial date of the initial appeal or challenge. The 30-day period for appeal or challenge to the drawback office or to CBP Headquarters may be extended for good cause, upon written request by the applicant or holder for such extension filed with the appropriate office within the 30-day period.

§ 190.92 Accelerated payment.

(a) *General*—(1) *Scope.* Accelerated payment of drawback is available under this section on drawback claims under this part, unless specifically excepted from such accelerated payment. Accelerated payment of drawback consists of the payment of estimated drawback before liquidation of the drawback entry. Accelerated payment of drawback is only available when CBP's review of the request for accelerated payment of drawback does not find omissions from, or inconsistencies with

the requirements of the drawback law and part 190 (*see*, especially, subpart E of this part). Accelerated payment of a drawback claim does not constitute liquidation of the drawback entry.

(2) *Effective date for claimants with existing approval.* For claimants approved for accelerated payment of drawback before February 24, 2019, and under 19 CFR part 191, such approval of accelerated payment will remain in effect, but only if the claimant provides the following certification as part of each complete claim filed after that date, pursuant to §190.51(a)(2)(xvi): ''The undersigned acknowledges the current statutory requirements under 19 U.S.C. 1313 and the regulatory requirements in 19 CFR part 190, and hereby certifies continuing eligibility for accelerated payment (granted prior to February 24, 2019) in compliance therewith.'' This certification may only be made for accelerated payment for the specific type of drawback claim for which the application was previously approved under 19 CFR 191, except that applications approved under 19 U.S.C. 1313(j)(1) will also be applicable to claims for the same type of merchandise if made under 19 U.S.C. 1313(j)(2).

(3) *Limited successorship for approval of accelerated payment.* When a claimant (predecessor) is approved for accelerated payment of drawback under this section and all of the rights, privileges, immunities, powers, duties and liabilities of the claimant are transferred by written agreement, merger, or corporate resolution to a successor, such approval of accelerated payment will remain in effect for a period of 1 year after such transfer. The approval of accelerated payment of drawback will terminate at the end of such 1-year period unless the successor applies for accelerated payment of drawback under this section. If such successor applies for accelerated payment of drawback under this section within such 1-year period, the successor may continue to operate under the predecessor's approval of accelerated payment until CBP approves or denies the successor's application for accelerated payment under this section, subject to the provisions in this section (*see*, in particular, paragraph (f) of this section).

(b) *Application for approval; contents.* A person who wishes to apply for accelerated payment of drawback must file a written application (which may be physically delivered or delivered via email) with the drawback office where claims will be filed.

(1) *Required information.* The application must contain:

(i) Company name and address;

(ii) Internal Revenue Service (IRS) number (with suffix);

(iii) Identity (by name and title) of the person in claimant's organization who will be responsible for the drawback program;

(iv) Description of the bond coverage the applicant intends to use to cover accelerated payments of drawback (*see* paragraph (d) of this section), including:

(A) Identity of the surety to be used;

(B) Dollar amount of bond coverage for the first year under the accelerated payment procedure; and

(C) Procedures to ensure that bond coverage remains adequate (that is, procedures to alert the applicant when and if its accelerated payment potential liability exceeds its bond coverage);

(v) Description of merchandise and/or articles covered by the application;

(vi) Provision(s) of drawback covered by the application; and

(vii) Estimated dollar value of potential drawback during the next 12-month period covered by the application.

(2) *Previous applications.* In the application, the applicant must state whether or not the applicant has previously been denied an application for accelerated payment of drawback, or had an approval of such an application revoked by any drawback office.

(3) *Certification of compliance.* In or with the application, the applicant must also submit a certification, signed by the applicant, that all applicable statutory and regulatory requirements for drawback will be met.

(4) *Description of claimant's drawback program.* With the application, the applicant must submit a description (with sample documents) of how the applicant will ensure compliance with its certification that the statutory and regulatory drawback requirements will

be met. This description may be in the form of a booklet. The detail contained in this description should vary depending on the size and complexity of the applicant's accelerated drawback program (for example, if the dollar amount is great and there are several kinds of drawback involved, with differing inventory, manufacturing, and shipping methods, greater detail in the description will be required). The description must include at least:

(i) The name of the official in the claimant's organization who is responsible for oversight of the claimant's drawback program;

(ii) The procedures and controls demonstrating compliance with the statutory and regulatory drawback requirements;

(iii) The parameters of claimant's drawback recordkeeping program, including the retention period and method (for example, paper, electronic, etc.);

(iv) A list of the records that will be maintained, including at least sample import documents, sample export documents or evidence of destruction, sample inventory and transportation documents (if applicable), sample laboratory or other documents establishing the qualification of merchandise or articles for substitution under the drawback law (if applicable), and sample manufacturing documents (if applicable);

(v) The procedures that will be used to notify CBP of changes to the claimant's drawback program, variances from the procedures described in this application, and violations of the statutory and regulatory drawback requirements; and

(vi) The procedures for an annual review by the claimant to ensure that its drawback program complies with the statutory and regulatory drawback requirements and that CBP is notified of any modifications from the procedures described in this application.

(c) *Sample application.* The drawback office, upon request, will provide applicants for accelerated payment with a sample letter format to assist them in preparing their submissions.

(d) *Bond required.* If approved for accelerated payment, the claimant must furnish a properly executed bond in an amount sufficient to cover the estimated amount of drawback to be claimed during the term of the bond. If outstanding accelerated drawback claims exceed the amount of the bond, the drawback office will require additional bond coverage as necessary before additional accelerated payments are made.

(e) *Action on application*—(1) *CBP review.* The drawback office will review and verify the information submitted in and with the application. In order for CBP to evaluate the application, CBP may request additional information (including additional sample documents) and/or explanations of any of the information provided for in paragraph (b)(4) of this section. Based on the information submitted on and with the application and any information so requested, and based on the applicant's record of transactions with CBP, the drawback office will approve or deny the application. The criteria to be considered in reviewing the applicant's record with CBP include, but are not limited to (as applicable):

(i) The presence or absence of unresolved CBP charges (duties, taxes, fees, or other debts owed CBP);

(ii) The accuracy of the claimant's past drawback claims; and

(iii) Whether accelerated payment of drawback or waiver of prior notice of intent to export was previously revoked or suspended.

(2) *Notification to applicant.* CBP will notify the applicant in writing within 90 days of receipt of the application of its decision to approve or deny the application, or of CBP's inability to approve, deny, or act on the application and the reason therefor.

(3) *Approval.* The approval of an application for accelerated payment, under this section, will be effective as of the date of CBP's written notification of approval under paragraph (e)(2) of this section. Accelerated payment of drawback will be available under this section to unliquidated drawback claims filed before and after such date. For claims filed before such date, accelerated payment of drawback will be paid only if the claimant furnishes a properly executed bond covering the claim, in an amount sufficient to cover

the amount of accelerated drawback to be paid on the claim.

(4) *Denial.* If an application for accelerated payment of drawback under this section is denied, the applicant will be given written notice, specifying the grounds therefor, together with what corrective action may be taken, and informing the applicant that the denial may be appealed in the manner prescribed in paragraph (i) of this section. The applicant may not reapply for accelerated payment of drawback until the reason for the denial is resolved.

(f) *Revocation.* CBP may propose to revoke the approval of an application for accelerated payment of drawback under this section, for good cause (such as, noncompliance with the drawback law and/or regulations). In case of such proposed revocation, CBP will give written notice, by registered or certified mail, of the proposed revocation of the approval of accelerated payment. The notice will specify the reasons for CBP's proposed action and the procedures for challenging CBP's proposed revocation action as prescribed in paragraph (h) of this section. The revocation will take effect 30 days after the date of the proposed revocation if not timely challenged under paragraph (h) of this section. If timely challenged, the revocation will take effect after completion of the challenge procedures in paragraph (h) of this section unless the challenge is successful.

(g) *Action by drawback office controlling.* Action by the drawback office to approve, deny, or revoke accelerated payment of drawback will govern the applicant's eligibility for this procedure in all CBP drawback offices. If the application for accelerated payment of drawback is approved, the claimant must refer to such approval in the first drawback claim filed after such approval in the drawback office approving accelerated payment of drawback and must submit a copy of the approval letter with the first drawback claim filed in a drawback office other than the approving office.

(h) *Appeal of denial or challenge to proposed revocation.* An appeal of a denial of an application under this section, or challenge to the proposed revocation of an approved application under this section, may be made in writing to the drawback office issuing the denial or proposed revocation and must be filed within 30 days of the date of denial or proposed revocation. A denial of an appeal or challenge made to the drawback office may itself be appealed to CBP Headquarters, Office of Trade, Trade Policy and Programs, and must be filed within 30 days. The 30-day period for appeal or challenge to the drawback office or to CBP Headquarters may be extended for good cause, upon written request by the applicant or holder for such extension filed with the appropriate office within the 30-day period.

(i) *Payment.* The drawback office approving a drawback claim in which accelerated payment of drawback was requested will certify the drawback claim for payment. After liquidation, the drawback office will certify the claim for payment of any amount due or demand a refund of any excess amount paid. Any excess amount of duty the subject of accelerated payment that is not repaid to CBP within 30 days after the date of liquidation of the related drawback entry will be considered delinquent (*see* §§ 24.3a and 113.65(b) of this chapter).

§ 190.93 Combined applications.

An applicant for the procedures provided for in §§ 190.91 and 190.92 may apply for only one procedure, both procedures separately, or both procedures in one application package (*see* also § 190.195 regarding combined applications for certification in the drawback compliance program and waiver of prior notice and/or approval of accelerated payment of drawback). In the latter instance, the intent to apply for both procedures must be clearly stated. In all instances, all of the requirements for the procedure(s) applied for must be met (for example, in a combined application for both procedures, all of the information required for each procedure, all required sample documents for each procedure, and all required certifications must be included in and with the application).

Subpart J—Internal Revenue Tax on Flavoring Extracts and Medicinal or Toilet Preparations (Including Perfumery) Manufactured From Domestic Tax-Paid Alcohol

§ 190.101 Drawback allowance.

(a) *Drawback.* Section 313(d) of the Act, as amended (19 U.S.C. 1313(d)), provides for drawback of internal revenue tax upon the exportation of flavoring extracts and medicinal or toilet preparations (including perfumery) manufactured or produced in the United States in part from domestic tax-paid alcohol.

(b) *Shipment to Puerto Rico, the Virgin Islands, Guam, and American Samoa.* Drawback of internal revenue tax on articles manufactured or produced under this subpart and shipped to Puerto Rico, the Virgin Islands, Guam, or American Samoa will be allowed in accordance with section 7653(c) of the Internal Revenue Code (26 U.S.C. 7653(c)). However, there is no authority of law for the allowance of drawback of internal revenue tax on flavoring extracts or medicinal or toilet preparations (including perfumery) manufactured or produced in the United States and shipped to Wake Island, Midway Islands, Kingman Reef, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island.

§ 190.102 Procedure.

(a) *General.* Other provisions of this part relating to direct identification drawback (*see* subpart B of this part) will apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

(b) *Manufacturing record.* The manufacturer of flavoring extracts or medicinal or toilet preparations on which drawback is claimed will record the products manufactured, the quantity of waste, if any, and a full description of the alcohol. These records must be available at all times for inspection by CBP officers.

(c) *Additional information required on the manufacturer's application for a specific manufacturing drawback ruling.* The manufacturer's application for a specific manufacturing drawback ruling, under § 190.8, must state the quantity of domestic tax-paid alcohol contained in each product on which drawback is claimed.

(d) *Variance in alcohol content*—(1) *Variance of more than 5 percent.* If the percentage of alcohol contained in an exported medicinal preparation, flavoring extract or toilet preparation varies by more than 5 percent from the percentage of alcohol in the total volume of the product as stated in a previously approved application for a specific manufacturing drawback ruling, the manufacturer must apply for a new specific manufacturing drawback ruling pursuant to § 190.8. If the variation differs from a previously filed schedule, the manufacturer must file a new schedule incorporating the change.

(2) *Variance of 5 percent or less.* Variances of 5 percent or less of the volume of the product must be reported to the drawback office where the drawback entries are liquidated. In such cases, the drawback office may allow drawback without specific authorization from CBP Headquarters.

(e) *Time period for completing claims.* Drawback claims under this subpart must be completed within 3 years after the date of exportation of the articles upon which drawback is claimed.

(f) *Filing of drawback entries on duty-paid imported merchandise and tax-paid alcohol.* When the drawback claim covers duty-paid imported merchandise in addition to tax-paid alcohol, the claimant must file one set of entries for drawback of customs duty and another set for drawback of internal revenue tax.

(g) *Description of the alcohol.* The description of the alcohol that is the subject of the drawback entry may be obtained from the description on the package containing the tax-paid alcohol.

§ 190.103 Additional requirements.

(a) *Manufacturer claims domestic drawback.* In the case of medicinal preparations and flavoring extracts, the claimant must file with the drawback entry, a declaration of the manufacturer stating whether a claim has been or will be

filed by the manufacturer with the Alcohol and Tobacco Tax and Trade Bureau (TTB) for domestic drawback on alcohol under sections 5111, 5112, 5113, and 5114, Internal Revenue Code, as amended (26 U.S.C. 5111, 5112, 5113, and 5114).

(b) *Manufacturer does not claim domestic drawback*—(1) *Submission of statement.* If no claim has been or will be filed with TTB for domestic drawback on medicinal preparations or flavoring extracts, the manufacturer must submit a statement, in duplicate, setting forth that fact to the Director, National Revenue Center, TTB.

(2) *Contents of the statement.* The statement must show the:

(i) Quantity and description of the exported products;

(ii) Identity of the alcohol used by serial number of package or tank car;

(iii) Name and registry number of the distilled spirits plant from which the alcohol was withdrawn;

(iv) Date of withdrawal;

(v) Serial number of the applicable record of tax determination (*see* 27 CFR 17.163(a) and 27 CFR 19.626(c)(7)); and

(vi) Drawback office where the claim will be filed.

(3) *Verification of receipt of the statement.* The Director, National Revenue Center, TTB, will verify receipt of this statement, and transmit a verification of receipt of the statement with a copy of that document to the drawback office designated.

§ 190.104 Alcohol and Tobacco Tax and Trade Bureau (TTB) certificates.

(a) *Request.* The drawback claimant or manufacturer must request that the Director, National Revenue Center, TTB, provide the CBP office where the drawback claim will be processed with a tax-paid certificate on TTB Form 5100.4 (Certificate of Tax-Paid Alcohol).

(b) *Contents.* The request must state the:

(1) Quantity of alcohol in proof gallons;

(2) Serial number of each package;

(3) Amount of tax paid on the alcohol;

(4) Name, registry number, and location of the distilled spirits plant;

(5) Date of withdrawal;

(6) Name of the manufacturer using the alcohol in producing the exported articles;

(7) Address of the manufacturer and its manufacturing plant; and

(8) Customs drawback office where the drawback claim will be processed.

(c) *Extract of TTB certificate.* If a certification of any portion of the alcohol described in the TTB Form 5100.4 is required for liquidation of drawback entries processed in another drawback office, the drawback office, on written application of the person who requested its issuance, will transmit a copy of the extract from the certificate for use at that drawback office. The drawback office will note that the copy of the extract was prepared and transmitted.

§ 190.105 Liquidation.

The drawback office will ascertain the final amount of drawback due by reference to the specific manufacturing drawback ruling under which the drawback claimed is allowable.

§ 190.106 Amount of drawback.

(a) *Claim filed with TTB.* If the declaration required by § 190.103(a) shows that a claim has been or will be filed with TTB for domestic drawback, drawback under § 313(d) of the Act, as amended (19 U.S.C. 1313(d)), will be limited to the difference between the amount of tax paid and the amount of domestic drawback claimed.

(b) *Claim not filed with TTB.* If the declaration and statement required by § 190.103(a) and (b) show that no claim has been or will be filed by the manufacturer with TTB for domestic drawback, the drawback will be the full amount of the tax on the alcohol used. Drawback under this provision may not be granted absent receipt from TTB of a copy of TTB Form 5100.4 (Certificate of Tax-Paid Alcohol) indicating that taxes have been paid on the exported product for which drawback is claimed.

(c) *No deduction of 1 percent.* No deduction of 1 percent may be made in drawback claims under § 313(d) of the Act, as amended (19 U.S.C. 1313(d)).

(d) *Payment.* The drawback due will be paid in accordance with § 190.81(f).

Subpart K—Supplies for Certain Vessels and Aircraft

§ 190.111 Drawback allowance.

Section 309 of the Act, as amended (19 U.S.C. 1309), provides for drawback on articles laden as supplies on certain vessels or aircraft of the United States or as supplies including equipment upon, or used in the maintenance or repair of, certain foreign vessels or aircraft.

§ 190.112 Procedure.

(a) *General.* The provisions of this subpart will override conflicting provisions of this part, such as the export procedures in § 190.72.

(b) *Notice of lading.* The drawback claimant must file with the drawback office a notice of lading.

(c) *Notice of lading.* In the case of drawback in connection with 19 U.S.C. 1309(b), the notice of lading must be filed within 5 years after the date of importation of the imported merchandise.

(d) *Contents of notice.* The notice of lading must show:

(1) The name of the vessel or identity of the aircraft on which articles were or are to be laden;

(2) The number and kind of packages and their marks and numbers;

(3) A description of the articles and their weight (net), gauge, measure, or number; and

(4) The name of the exporter.

(e) *Declaration of Master or other officer*—(1) *Requirement.* The master or an authorized representative of the vessel or aircraft having knowledge of the facts must provide the following declaration on the notice of lading ''I declare that the information given above is true and correct to the best of my knowledge and belief; that I have knowledge of the facts set forth herein; that the articles described in this notice of lading were received in the quantities stated, from the person, and on the date, indicated above; that said articles were laden on the vessel (or aircraft) named above for use on said vessel (or aircraft) as supplies (or equipment), except as noted below; and that at the time of lading of the articles, the said vessel (or aircraft) was engaged in the business or trade checked below: (It is not necessary for a foreign vessel to show its class of trade.).''

(2) *Filing.* The drawback claimant must file with the drawback office both the drawback entry and the notice of lading or separate document containing the declaration of the master or other officer or representative.

(f) *Information concerning class or trade.* Information about the class of business or trade of a vessel or aircraft is required to be furnished in support of the drawback entry if the vessel or aircraft is American.

(g) *Articles laden or installed on aircraft as equipment or used in the maintenance or repair of aircraft.* The drawback office where the drawback claim is filed will require a declaration or other evidence showing to its satisfaction that articles have been laden or installed on aircraft as equipment or used in the maintenance or repair of aircraft.

(h) *Fuel laden on vessels or aircraft as supplies*—(1) *Composite notice of lading.* In the case of fuel laden on vessels or aircraft as supplies, the drawback claimant may file with the drawback office a composite notice of lading for each calendar month. The composite notice of lading must describe all of the drawback claimant's deliveries of fuel supplies during the one calendar month at a single port or airport to all vessels or airplanes of one vessel owner or operator or airline. This includes fuel laden for flights or voyages between the contiguous United States and Hawaii, Alaska, or any U.S. possessions (*see* § 10.59 of this chapter).

(2) *Contents of composite notice.* Composite notice must show for each voyage or flight:

(i) The identity of the vessel or aircraft;

(ii) A description of the fuel supplies laden;

(iii) The quantity laden; and

(iv) The date of lading.

(3) *Declaration of owner or operator.* An authorized vessel or airline representative having knowledge of the facts must complete the ''Declaration of Master or other officer'' (see paragraph (e) of this section).

(i) *Desire to land articles covered by notice of lading.* The master of the vessel

or commander of the aircraft desiring to land in the United States articles covered by a notice of lading must apply for a permit to land those articles under CBP supervision. All articles landed, except those transferred under the original notice of lading to another vessel or aircraft entitled to drawback, will be considered imported merchandise for the purpose of §309(c) of the Act, as amended (19 U.S.C. 1309(c)).

Subpart L—Meats Cured With Imported Salt

§ 190.121 Drawback allowance.

Section 313(f) of the Act, as amended (19 U.S.C. 1313(f)), provides for the allowance of drawback upon the exportation of meats cured with imported salt.

§ 190.122 Procedure.

Other provisions of this part relating to direct identification manufacturing drawback will apply to claims for drawback under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

§ 190.123 Refund of duties.

Drawback allowed under this subpart will be refunded in aggregate amounts of not less than $100 and will not be subject to the retention of 1 percent of duties paid.

Subpart M—Materials for Construction and Equipment of Vessels and Aircraft Built for Foreign Account and Ownership

§ 190.131 Drawback allowance.

Section 313(g) of the Act, as amended (19 U.S.C. 1313(g)), provides for drawback on imported materials used in the construction and equipment of vessels and aircraft built for foreign account and ownership, or for the government of any foreign country, notwithstanding that these vessels or aircraft may not be exported within the strict meaning of the term.

§ 190.132 Procedure.

Other provisions of this part relating to direct identification manufacturing drawback will apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

§ 190.133 Explanation of terms.

(a) *Materials.* Section 313(g) of the Act, as amended (19 U.S.C. 1313(g)), applies only to materials used in the original construction and equipment of vessels and aircraft, or to materials used in a ''major conversion,'' as defined in this section, of a vessel or aircraft. Section 313(g) does not apply to materials used for alteration or repair, or to materials not required for safe operation of the vessel or aircraft.

(b) *Foreign account and ownership.* Foreign account and ownership, as used in section 313(g) of the Act, as amended (19 U.S.C. 1313(g)), means only vessels or aircraft built or equipped for the account of an owner or owners residing in a foreign country and having a bona fide intention that the vessel or aircraft, when completed, will be owned and operated under the flag of a foreign country.

(c) *Major conversion.* For purposes of this subpart, a ''major conversion'' means a conversion that substantially changes the dimensions or carrying capacity of the vessel or aircraft, changes the type of the vessel or aircraft, substantially prolongs the life of the vessel or aircraft, or otherwise so changes the vessel or aircraft that it is essentially a new vessel or aircraft, as determined by CBP (*see* 46 U.S.C. 2101(14a)).

Subpart N—Foreign-Built Jet Aircraft Engines Processed in the United States

§ 190.141 Drawback allowance.

Section 313(h) of the Act, as amended (19 U.S.C. 1313(h)), provides for drawback on the exportation of jet aircraft engines manufactured or produced abroad that have been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts.

§ 190.142 Procedure.

Other provisions of this part will apply to claims for drawback filed

under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

§ 190.143 Drawback entry.

(a) *Filing of entry.* Drawback entries covering these foreign-built jet aircraft engines must show that the entry covers jet aircraft engines processed under section 313(h) of the Act, as amended (19 U.S.C. 1313(h)).

(b) *Contents of entry.* The drawback entry must indicate the country in which each engine was manufactured and describe the processing performed thereon in the United States.

§ 190.144 Refund of duties.

Drawback allowed under this subpart will be refunded in aggregate amounts of not less than $100, and will not be subject to the deduction of 1 percent of duties paid.

Subpart O—Merchandise Exported From Continuous CBP Custody

§ 190.151 Drawback allowance.

(a) *Eligibility of entered or withdrawn merchandise*—(1) *Under 19 U.S.C. 1557(a).* Section 557(a) of the Act, as amended (19 U.S.C. 1557(a)), provides for drawback on the exportation to a foreign country, or the shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam, of merchandise upon which duties have been paid which has remained continuously in bonded warehouse or otherwise in CBP custody for a period not to exceed 5 years from the date of importation.

(2) *Under 19 U.S.C. 1313.* Imported merchandise that has not been regularly entered or withdrawn for consumption, will not satisfy any requirement for use, importation, exportation or destruction, and will not be available for drawback, under section 313 of the Act, as amended (19 U.S.C. 1313) (*see* 19 U.S.C. 1313(u)).

(b) *Guantanamo Bay.* Guantanamo Bay Naval Station will be considered foreign territory for drawback purposes under this subpart and merchandise shipped there is eligible for drawback. Imported merchandise which has remained continuously in bonded warehouse or otherwise in CBP custody since importation is not entitled to drawback of duty when shipped to Puerto Rico, Canton Island, Enderbury Island, or Palmyra Island.

§ 190.152 Merchandise released from CBP custody.

No remission, refund, abatement, or drawback of duty will be allowed under this subpart because of the exportation or destruction of any merchandise after its release from Government custody, except in the following cases:

(a) When articles are exported or destroyed on which drawback is expressly provided for by law;

(b) When prohibited articles have been regularly entered in good faith and are subsequently exported or destroyed pursuant to statute and regulations prescribed by the Secretary of the Treasury; or

(c) When articles entered under bond are destroyed within the bonded period, as provided in 19 U.S.C. 1557(c), or destroyed within the bonded period by death, accidental fire, or other casualty, and satisfactory evidence of destruction is furnished to CBP (*see* § 190.71), in which case any accrued duties will be remitted or refunded and any condition in the bond that the articles must be exported will be deemed satisfied (*see* 19 U.S.C. 1558).

§ 190.153 Continuous CBP custody.

(a) *Merchandise released under an importer's bond and returned.* Merchandise released to an importer under a bond prescribed by § 142.4 of this chapter and later returned to the public stores upon requisition of the appropriate CBP office will not be deemed to be in the continuous custody of CBP officers.

(b) *Merchandise released under Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States (HTSUS).* Merchandise released as provided for in Chapter 98, Subchapter XIII, HTSUS (19 U.S.C. 1202), will not be deemed to be in the continuous custody of CBP officers.

(c) *Merchandise released from warehouse.* For the purpose of this subpart, in the case of merchandise entered for warehouse, CBP custody will be deemed to cease when estimated duty

has been deposited and the appropriate CBP office has authorized the withdrawal of the merchandise.

(d) *Merchandise not warehoused, examined elsewhere than in public stores*—(1) *General rule.* Except as stated in paragraph (d)(2) of this section, merchandise examined elsewhere than at the public stores, in accordance with the provisions of § 151.7 of this chapter, will be considered released from CBP custody upon completion of final examination for appraisement.

(2) *Merchandise upon the wharf.* Merchandise which remains on the wharf by permission of the appropriate CBP office will be considered to be in CBP custody, but this custody will be deemed to cease when the CBP officer in charge accepts the permit and has no other duties to perform relating to the merchandise, such as measuring, weighing, or gauging.

§ 190.154 Filing the entry.

(a) *Direct export.* At least 6 working hours before lading the merchandise on which drawback is claimed under this subpart, the importer or the agent designated by him or her in writing must file a direct export drawback entry.

(b) *Merchandise transported to another port for exportation.* The importer of merchandise to be transported to another port for exportation must file an entry naming the transporting conveyance, route, and port of exit. The drawback office will certify one copy and forward it to the CBP office at the port of exit. A bonded carrier must transport the merchandise in accordance with the applicable regulations. Manifests must be prepared and filed in the manner prescribed in § 144.37 of this chapter.

§ 190.155 Merchandise withdrawn from warehouse for exportation.

The regulations in part 18 of this chapter concerning the supervision of lading and certification of exportation of merchandise withdrawn from warehouse for exportation without payment of duty will be followed to the extent applicable.

§ 190.156 Bill of lading.

(a) *Filing.* In order to complete the claim for drawback under this subpart, a bill of lading covering the merchandise described in the drawback entry must be filed within 2 years after the merchandise is exported.

(b) *Contents.* The bill of lading must either show that the merchandise was shipped by the person making the claim or bear an endorsement of the person in whose name the merchandise was shipped showing that the person making the claim is authorized to do so.

(c) *Limitation of the bill of lading.* The terms of the bill of lading may limit and define its use by stating that it is for customs purposes only and not negotiable.

(d) *Inability to produce bill of lading.* When a required bill of lading cannot be produced, the person making the drawback entry may request the drawback office, within the time required for the filing of the bill of lading, to accept a statement setting forth the cause of failure to produce the bill of lading and such evidence of exportation and of that person's right to make the drawback entry as may be available. The request will be granted if the drawback office is satisfied by the evidence submitted that the failure to produce the bill of lading is justified, that the merchandise has been exported, and that the person making the drawback entry has the right to do so. If the drawback office is not so satisfied, such office will transmit the request and its accompanying evidence to the Office of Trade, CBP Headquarters, for final determination.

(e) *Extracts of bills of lading.* Drawback offices may issue extracts of bills of lading filed with drawback claims.

§ 190.157 [Reserved]

§ 190.158 Procedures.

When the drawback claim has been completed and the bill of lading filed, the reports of inspection and lading made, and the clearance of the exporting conveyance established by the record of clearance in the case of direct exportation or by certificate in the case of transportation and exportation, the drawback office will verify the importation by referring to the import records to ascertain the amount of duty paid on the merchandise exported.

To the extent appropriate and not inconsistent with the provisions of this subpart, drawback entries will be liquidated in accordance with the provisions of §190.81.

§ 190.159 Amount of drawback.

Drawback due under this subpart will not be subject to the deduction of 1 percent.

Subpart P—Distilled Spirits, Wines, or Beer Which Are Unmerchantable or Do Not Conform to Sample or Specifications

§ 190.161 Refund of taxes.

Section 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)), provides for the refund, remission, abatement or credit to the importer of internal revenue taxes paid or determined incident to importation, upon the exportation, or destruction under CBP supervision, of imported distilled spirits, wines, or beer found after entry to be unmerchantable or not to conform to sample or specifications and which are returned to CBP custody.

§ 190.162 Procedure.

The export procedure will be the same as that provided in §190.42 for rejected merchandise, except that the claimant must be the importer and must comply with all other provisions in this subpart.

§ 190.163 Documentation.

(a) *Entry*. A drawback entry must be filed to claim drawback under this subpart.

(b) *Documentation*. The drawback entry for unmerchantable merchandise must be accompanied by a certificate of the importer setting forth in detail the facts which cause the merchandise to be unmerchantable and any additional evidence that the drawback office requires to establish that the merchandise is unmerchantable.

§ 190.164 Return to CBP custody.

There is no time limit for the return to CBP custody of distilled spirits, wine, or beer subject to refund of taxes under the provisions of this subpart. The claimant must return the merchandise to CBP custody prior to exportation or destruction and claims are subject to the filing deadline set forth in 19 U.S.C. 1313(r)(1).

§ 190.165 No exportation by mail.

Merchandise covered by this subpart must not be exported by mail.

§ 190.166 Destruction of merchandise.

(a) *Action by the importer*. A drawback claimant who proposes to destroy rather than export the distilled spirits, wine, or beer must state that fact on the drawback entry.

(b) *Action by CBP*. Distilled spirits, wine, or beer returned to CBP custody at the place approved by the drawback office where the drawback entry was filed must be destroyed under the supervision of the CBP officer who will certify the destruction on CBP Form 7553.

§ 190.167 Liquidation.

No deduction of 1 percent of the internal revenue taxes paid or determined will be made in allowing entries under section 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)).

§ 190.168 [Reserved]

Subpart Q—Substitution of Finished Petroleum Derivatives

§ 190.171 General; drawback allowance.

(a) *General*. Section 313(p) of the Act, as amended (19 U.S.C. 1313(p)), provides for drawback for duties, taxes, and fees paid on qualified articles (see definition below) which consist of either petroleum derivatives that are imported, duty-paid, and qualified for drawback under the unused merchandise drawback law (19 U.S.C. 1313(j)(1)), or petroleum derivatives that are manufactured or produced in the United States, and qualified for drawback under the manufacturing drawback law (19 U.S.C. 1313(a) or (b)).

(b) *Allowance of drawback*. Drawback may be granted under 19 U.S.C. 1313(p):

(1) In cases where there is no manufacture, upon exportation of the imported article, an article of the same

kind and quality, or any combination thereof; or

(2) In cases where there is a manufacture or production, upon exportation of the manufactured or produced article, an article of the same kind and quality, or any combination thereof.

(c) *Calculation of drawback.* For drawback of finished petroleum derivatives pursuant to section 1313(p), the claimant is required to calculate the total amount of drawback due, for purposes of §190.51(b), which will not exceed 99 percent of the allowable duties, taxes, and fees, subject to the following:

(1) *Per unit averaging calculation.* The amount of duties, taxes, and fees eligible for drawback is determined by per unit averaging, as defined in §190.2, for any drawback claim based on 19 U.S.C. 1313(p) pursuant to the standards set forth in §190.172(b) and without respect to the limitations set forth in subparagraphs (B) and (C) of 19 U.S.C. 1313(l).

(2) *Limitations.* The amount of duties, taxes, and fees eligible for drawback is not subject to the limitations set out in 19 U.S.C. 1313(p)(4) for unused merchandise claims (no manufacture) and manufacturing claims (see 190.173(e) and 190.174(f)).

(3) *Federal excise tax.* For purposes of drawback of internal revenue tax imposed under Chapters 32 and 38 (with the exception of Subchapter A of Chapter 38) of the Internal Revenue Code of 1986, as amended (IRC), drawback granted on the export of substituted merchandise will be limited to the amount of taxes paid (and not returned by refund, credit, or drawback) on the substituted merchandise.

§190.172 Definitions.

The following are definitions for purposes of this subpart only:

(a) *Qualified article. Qualified article* means an article described in headings 2707, 2708, 2709.00, 2710, 2711, 2712, 2713, 2714, 2715, 2901, and 2902, and subheadings 2903.21.00, 2909.19.14, 2917.36, 2917.39.04, 2917.39.15, 2926.10.00, 3811.21.00, and 3811.90.00, or 3901 through 3914 of the Harmonized Tariff Schedule of the United States (HTSUS). In the case of an article described in headings 3901 through 3914, the definition covers the article in its primary forms as provided in Note 6 to chapter 39 of the HTSUS.

(b) *Same kind and quality article. Same kind and quality article* means an article which is referred to under the same 8-digit classification of the HTSUS as the article to which it is compared.

(c) *Exported article. Exported article* means an article which has been exported and is a qualified article, an article of the same kind and quality as the qualified article, or any combination thereof.

§190.173 Imported duty-paid derivatives (no manufacture).

When the basis for drawback under 19 U.S.C. 1313(p) is imported duty-paid petroleum derivatives (that is, not articles manufactured under 19 U.S.C. 1313(a) or (b)), the requirements for drawback are as follows:

(a) *Imported duty-paid merchandise.* The imported duty-paid merchandise designated for drawback must be a ''qualified article'' as defined in §190.172(a);

(b) *Exported article.* The exported article on which drawback is claimed must be an ''exported article'' as defined in §190.172(c);

(c) *Exporter.* The exporter of the exported article must have either:

(1) Imported the qualified article in at least the quantity of the exported article; or

(2) Purchased or exchanged (directly or indirectly) from an importer an imported qualified article in at least the quantity of the exported article;

(d) *Time of export.* The exported article must be exported within 180 days after the date of entry of the designated imported duty-paid merchandise; and

(e) *Amount of drawback.* The amount of drawback payable may not exceed the amount of drawback which would be attributable to the imported qualified article under 19 U.S.C. 1313(j)(1) which serves as the basis for drawback.

§190.174 Derivatives manufactured under 19 U.S.C. 1313(a) or (b).

When the exported article which is the basis for a drawback claim under 19 U.S.C. 1313(p) is petroleum derivatives which were manufactured or produced in the United States and qualify for drawback under the manufacturing drawback law (19 U.S.C. 1313(a) or (b)),

the requirements for drawback are as follows:

(a) *Merchandise.* The merchandise which is the basis for drawback under 19 U.S.C. 1313(p) must:

(1) Have been manufactured or produced as described in 19 U.S.C. 1313(a) or (b) from crude petroleum or a petroleum derivative; and

(2) Be a ''qualified article'' as defined in § 190.172(a);

(b) *Exported article.* The exported article on which drawback is claimed must be an ''exported article'' as defined in § 190.172(c);

(c) *Exporter.* The exporter of the exported article must have either:

(1) Manufactured or produced the qualified article in at least the quantity of the exported article; or

(2) Purchased or exchanged (directly or indirectly) from a manufacturer or producer described in 19 U.S.C. 1313(a) or (b) the qualified article in at least the quantity of the exported article;

(d) *Manufacture in specific facility.* The qualified article must have been manufactured or produced in a specific petroleum refinery or production facility which must be identified;

(e) *Time of export.* The exported article must be exported either:

(1) During the period provided for in the manufacturer's or producer's specific manufacturing drawback ruling (*see* § 190.8) in which the qualified article is manufactured or produced; or

(2) Within 180 days after the close of the period in which the qualified article is manufactured or produced; and

(f) *Amount of drawback.* The amount of drawback payable may not exceed the amount of drawback which would be attributable to the article manufactured or produced under 19 U.S.C. 1313(a) or (b) which serves as the basis for drawback.

§ 190.175 Drawback claimant; maintenance of records.

(a) *Drawback claimant.* A drawback claimant under 19 U.S.C. 1313(p) must be the exporter of the exported article, or the refiner, producer, or importer of either the qualified article or the exported article. Any of these persons may designate another person to file the drawback claim.

(b) *Transfer of merchandise*—(1) *General.* A drawback claimant under 19 U.S.C. 1313(p) must maintain records (which may be records kept in the normal cause of business) to support the receipt of transferred merchandise and the party transferring the merchandise must maintain records to demonstrate the transfer.

(2) *Article substituted for the qualified article.* (i) Subject to paragraph (b)(2)(iii) of this section, the manufacturer, producer, or importer of a qualified article may transfer to the exporter an article of the same kind and quality as the qualified article in a quantity not greater than the quantity of the qualified article.

(ii) Subject to paragraph (b)(2)(iii) of this section, any intermediate party in the chain of commerce leading to the exporter from the manufacturer, producer, or importer of a qualified article may also transfer to the exporter or to another intermediate party an article of the same kind and quality as the article purchased or exchanged from the prior transferor (whether the manufacturer, producer, importer, or another intermediate transferor) in a quantity not greater than the quantity of the article purchased or exchanged.

(iii) Under either paragraph (b)(2)(i) or (b)(2)(ii) of this section, the article transferred, regardless of its origin (imported, manufactured, substituted, or any combination thereof), will be the qualified article eligible for drawback for purposes of section 1313(p).

(c) *Maintenance of records.* The manufacturer, producer, importer, transferor, exporter and drawback claimant of the qualified article and the exported article must all maintain their appropriate records required by this part.

§ 190.176 Procedures for claims filed under 19 U.S.C. 1313(p).

(a) *Applicability.* The general procedures for filing drawback claims will be applicable to claims filed under 19 U.S.C. 1313(p) unless otherwise specifically provided for in this section.

(b) *Administrative efficiency, frequency of claims, and restructuring of claims.* The procedures regarding administrative efficiency, frequency of claims,

and restructuring of claims (as applicable, see §190.53) will apply to claims filed under this subpart.

(c) *Imported duty-paid derivatives (no manufacture).* When the basis for drawback under 19 U.S.C. 1313(p) is imported duty-paid petroleum (not articles manufactured under 19 U.S.C. 1313(a) or (b)), claims under this subpart may be paid and liquidated if:

(1) The claim is filed on the drawback entry; and

(2) The claimant provides a certification stating the basis (such as company records, or customer's written certification), for the information contained therein and certifying that:

(i) The exported merchandise was exported within 180 days of entry of the designated, imported merchandise;

(ii) The qualified article and the exported article are commercially interchangeable or both articles are subject to the same 8-digit HTSUS subheading number;

(iii) To the best of the claimant's knowledge, the designated imported merchandise, the qualified article and the exported article have not served and will not serve as the basis of any other drawback claim;

(iv) Evidence in support of the certification will be retained by the person providing the certification for 3 years after liquidation of the claim; and

(v) Such evidence will be available for verification by CBP.

(d) *Derivatives manufactured under 19 U.S.C. 1313(a) or (b).* When the basis for a claim for drawback under 19 U.S.C. 1313(p) is articles manufactured under 19 U.S.C. 1313(a) or (b), claims under this section may be paid and liquidated if:

(1) The claim is filed on the drawback entry;

(2) All documents required to be filed with a manufacturing claim under 19 U.S.C. 1313(a) or (b) are filed with the claim;

(3) The claim identifies the specific refinery or production facility at which the derivatives were manufactured or produced;

(4) The claim states the period of manufacture for the derivatives; and

(5) The claimant provides a certification stating the basis (such as company records or a customer's written certification), for the information contained therein and certifying that:

(i) The exported merchandise was exported during the manufacturing period for the qualified article or within 180 days after the close of that period;

(ii) The qualified article and the exported article are commercially interchangeable or both articles are classifiable under the same 8-digit HTSUS subheading number;

(iii) To the best of the claimant's knowledge, the designated imported merchandise, the qualified article and the exported article have not served and will not serve as the basis of any other drawback claim;

(iv) Evidence in support of the certification will be retained by the person providing the certification for 3 years after liquidation of the claim; and

(v) Such evidence will be available for verification by CBP.

Subpart R—Merchandise Transferred to a Foreign Trade Zone From Customs Territory

§ 190.181 Drawback allowance.

The fourth proviso of section 3 of the Foreign Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81c), provides that merchandise transferred to a foreign trade zone for the sole purpose of exportation, storage or destruction (except destruction of distilled spirits, wines, and fermented malt liquors), will be considered to be exported for the purpose of drawback, provided there is compliance with the regulations of this subpart.

§ 190.182 Zone-restricted merchandise.

Merchandise in a foreign trade zone for the purposes specified in §190.181 will be given status as zone-restricted merchandise on proper application (*see* §146.44 of this chapter).

§ 190.183 Articles manufactured or produced in the United States.

(a) *Procedure for filing documents.* Except as otherwise provided, the drawback procedures prescribed in this part must be followed when claiming drawback under this subpart on articles manufactured or produced in the

United States with the use of imported or substituted merchandise, and on flavoring extracts or medicinal or toilet preparations (including perfumery) manufactured or produced with the use of domestic tax-paid alcohol.

(b) *Notice of transfer*—(1) *Evidence of export.* The notice of zone transfer on CBP Form 214 (Application for Foreign-Trade Zone Admission and/or Status Designation) or its electronic equivalent will be in place of the documents under subpart G of this part to establish the exportation.

(2) *Filing procedures.* The notice of transfer (CBP Form 214) will be filed not later than 3 years after the transfer of the articles to the zone. A notice filed after the transfer will state the foreign trade zone lot number.

(3) *Contents of notice.* Each notice of transfer must show the:

(i) Number and location of the foreign trade zone;

(ii) Number and kind of packages and their marks and numbers;

(iii) Description of the articles, including weight (gross and net), gauge, measure, or number; and

(iv) Name of the transferor.

(c) *Action of foreign trade zone operator.* After articles have been received in the zone, the zone operator must certify on a copy of the notice of transfer (CBP Form 214) the receipt of the articles (*see* §190.184(d)(2)) and forward the notice to the transferor or the person designated by the transferor. The transferor must verify that the notice has been certified before filing it with the drawback claim.

(d) *Drawback entries.* Drawback entries must indicate that the merchandise was transferred to a foreign trade zone. The ''Declaration of Exportation'' must be modified as follows:

Declaration of Transfer to a Foreign Trade Zone

I,_____ _____(member of firm, officer representing corporation, agent, or attorney), of _____, declare that, to the best of my knowledge and belief, the particulars of transfer stated in this entry, the notices of transfer, and receipts are correct, and that the merchandise was transferred to a foreign trade zone for the sole purpose of exportation, destruction, or storage, not to be removed from the foreign trade zone for domestic consumption.

Dated: _____

Transferor or agent

§190.184 Merchandise transferred from continuous CBP custody.

(a) *Procedure for filing claims.* The procedure described in subpart O of this part will be followed as applicable, for drawback on merchandise transferred to a foreign trade zone from continuous CBP custody.

(b) *Drawback entry.* Before the transfer of merchandise from continuous CBP custody to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose must file with the drawback office a direct export drawback entry. CBP will notify the zone operator at the zone.

(c) *Certification by zone operator.* After the merchandise has been received in the zone, the zone operator must certify the receipt of the merchandise (*see* paragraph (d)(2) of this section) and notify the transferor or the person designated by the transferor. After executing the declaration provided for in paragraph (d)(3) of this section, the transferor must resubmit the drawback entry to the drawback office in place of the bill of lading required by §190.156.

(d) *Modification of drawback entry*—(1) *Indication of transfer.* The drawback entry must include a certification to indicate that the merchandise is to be transferred to a foreign trade zone.

(2) *Endorsement.* The transferor or person designated by the transferor and the foreign trade zone operator must certify transfer to the foreign trade zone, with respect to the drawback entry, as follows:

Certification by Foreign Trade Zone Operator

The merchandise described in the entry was received from _____ on _____, 20____ in Foreign Trade Zone No. ____, (City and State)

Exceptions _____

(Name and title)

By _____

(Name of operator)

(3) *Transferor's declaration.* The transferor must declare, with respect to the drawback entry, as follows:

Transferor's Declaration

I, _____ _____, of the firm of _____, declare that the merchandise described in this entry was duly entered at the customhouse on arrival at this port; that the duties thereon have been paid as specified in this entry; and that it was transferred to Foreign Trade Zone No. ____, located at ____, (City and State) for the sole purpose of exportation, destruction, or storage, not to be removed from the foreign trade zone for domestic consumption. I further declare that to the best of my knowledge and belief, this merchandise is in the same quantity, quality, value, and package, unavoidable wastage and damage excepted, as it was at the time of importation; that no allowance nor reduction of duties has been made for damage or other cause except as specified in this entry; and that no part of the duties paid has been refunded by drawback or otherwise.

Dated: _____

Transferor

§ 190.185 Unused merchandise drawback and merchandise not conforming to sample or specification, shipped without consent of the consignee, found to be defective as of the time of importation, or returned after retail sale.

(a) *Procedure for filing claims.* The procedures described in subpart C of this part relating to unused merchandise drawback, and in subpart D of this part relating to rejected merchandise, must be followed with respect to drawback under this subpart for unused merchandise drawback and merchandise that does not conform to sample or specification, is shipped without consent of the consignee, or is found to be defective as of the time of importation.

(b) *Drawback entry.* Before transfer of the merchandise to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose must file the drawback entry. CBP will notify the zone operator at the zone.

(c) *Certification by zone operator.* After the merchandise has been received in the zone, the zone operator at the zone must certify, with respect to the drawback entry, the receipt of the merchandise and notify the transferor or the person designated by the transferor. After executing the declaration provided for in paragraph (d)(3) of this section, the transferor must resubmit the drawback entry in place of the bill of lading required by § 190.156.

(d) *Modification of drawback entry*—(1) *Indication of transfer.* The drawback entry must indicate that the merchandise is to be transferred to a foreign trade zone.

(2) *Endorsement.* The transferor or person designated by the transferor and the foreign trade zone operator must certify transfer to the foreign trade zone, with respect to the drawback entry, as follows:

Certification by Foreign Trade Zone Operator

The merchandise described in this entry was received from _____ on _____, 20 ____, in Foreign Trade Zone No. ____, ____ (City and State).

Exceptions: _____

_____

(Name of operator)

By _____

(Name and title)

(3) *Transferor's declaration.* The transferor must certify, with respect to the drawback entry, as follows:

Transferor's Declaration

I, _____ of the firm of _____, declare that the merchandise described in the within entry was duly entered at the customhouse on arrival at this port; that the duties thereon have been paid as specified in this entry; and that it was transferred to Foreign Trade Zone No. ____, located at _____ (City and State) for the sole purpose of exportation, destruction, or storage, not to be removed from the foreign trade zone for domestic consumption. I further declare that to the best of my knowledge and belief, said merchandise is the same in quantity, quality, value, and package as specified in this entry; that no allowance nor reduction in duties has been made; and that no part of the duties paid has been refunded by drawback or otherwise.

Dated: _____

Transferor

§ 190.186 Person entitled to claim drawback.

The person named in the foreign trade zone operator's certification on the notice of transfer or the drawback entry, as applicable, will be considered to be the transferor. Drawback may be claimed by, and paid to, the transferor.

Subpart S—Drawback Compliance Program

§ 190.191 Purpose.

This subpart sets forth the requirements for the drawback compliance program in which claimants and other parties in interest, including customs brokers, may participate after being certified by CBP. Participation in the program is voluntary. Under the program, CBP is required to inform potential drawback claimants and related parties clearly about their rights and obligations under the drawback law and regulations. Reduced penalties and/or warning letters may be issued once a party has been certified for the program, and is in general compliance with the appropriate procedures and requirements thereof.

§ 190.192 Certification for compliance program.

(a) *General.* A party may be certified as a participant in the drawback compliance program after meeting the core requirements established under the program, or after negotiating an alternative drawback compliance program suited to the needs of both the party and CBP. Certification requirements will take into account the size and nature of the party's drawback program, the type of drawback claims filed, and the volume of claims filed. Whether the party is a drawback claimant, a broker, or one that provides data and documentation on which a drawback claim is based, will also be considered.

(b) *Core requirements of program.* In order to be certified as a participant in the drawback compliance program or negotiated alternative drawback compliance program, the party must demonstrate that it:

(1) Understands the legal requirements for filing claims, including the nature of the records that are required to be maintained and produced and the time periods involved;

(2) Has in place procedures that explain the CBP requirements to those employees involved in the preparation of claims, and the maintenance and production of required records;

(3) Has in place procedures regarding the preparation of claims and maintenance of required records, and the production of such records to CBP;

(4) Has designated a dependable individual or individuals who will be responsible for compliance under the program, and maintenance and production of required records;

(5) Has in place a record maintenance program approved by CBP regarding original records, or if approved by CBP, alternative records or recordkeeping formats for other than the original records; and

(6) Has procedures for notifying CBP of variances in, or violations of, the drawback compliance program or other alternative negotiated drawback compliance program, and for taking corrective action when notified by CBP of violations and problems regarding such program.

(c) *Broker certification.* A customs broker may be certified as a participant in the drawback compliance program only on behalf of a given claimant (*see* § 190.194(b)). To do so, a customs broker who assists a claimant in filing for drawback must be able to demonstrate, for and on behalf of such claimant, conformity with the core requirements of the drawback compliance program as set forth in paragraph (b) of this section. The broker must ensure that the claimant has the necessary documentation and records to support the drawback compliance program established on its behalf, and that claims to be filed under the program are reviewed by the broker for accuracy and completeness.

§ 190.193 Application procedure for compliance program.

(a) *Who may apply.* Claimants and other parties in interest may apply for participation in the drawback compliance program. This includes any person, corporation or business entity that provides supporting information or documentation to one who files drawback claims, as well as customs brokers who assist claimants in filing for drawback. Program participants may further consist of importers, manufacturers or producers, agent-manufacturers, complementary recordkeepers, subcontractors, intermediate parties, and exporters.

(b) *Place of filing.* An application in letter format containing the information as prescribed in paragraphs (c) and (d) of this section may be submitted to any drawback office.

(c) *Letter of application; contents.* A party requesting certification to become a participant in the drawback compliance program must file with the drawback office a written application, signed by an authorized individual (*see* § 190.6(c)). The detail required in the application must take into account the size and nature of the applicant's drawback program, the type of drawback claims filed, and the dollar value and volume of claims filed. However, the application must contain at least the following information:

(1) Name of applicant, address, IRS number (with suffix), and the type of business in which engaged, as well as the name(s) of the individual(s) designated by the applicant to be responsible for compliance under the program;

(2) A description of the nature of the applicant's drawback program, including the type of drawback in which involved (such as, manufacturing, or unused or rejected merchandise), and the applicant's particular role(s) in the drawback claims process (such as claimant and/or importer, manufacturer or producer, agent-manufacturer, complementary recordkeeper, subcontractor, intermediate party (possessor or purchaser), or exporter (or destroyer)); and

(3) Size of applicant's drawback program. For example, if the applicant is a claimant, the number of claims filed over the previous 12-month period should be included, along with the number estimated to be filed over the next 12-month period, and the estimated amount of drawback to be claimed annually. Other parties should describe the extent to which they are involved in drawback activity, based upon their particular role(s) in the drawback process; for example, manufacturers should explain how much manufacturing they are engaged in for drawback, such as the quantity of drawback product produced on an annual basis.

(d) *Application package.* Along with the letter of application as prescribed in paragraph (c) of this section, the application package must include a description of how the applicant will ensure compliance with statutory and regulatory drawback requirements. This description may be in the form of a booklet or set forth otherwise. The description must include at least the following:

(1) The name and title of the official in the applicant's organization who is responsible for oversight of the applicant's drawback program, and the name and title, with mailing address and, if available, fax number and email address, of the person(s) in the applicant's organization responsible for the actual maintenance of the applicant's drawback program;

(2) If the applicant is a manufacturer and the drawback involved is manufacturing drawback, a copy of the letter of notification of intent to operate under a general manufacturing drawback ruling or the application for a specific manufacturing drawback ruling (*see* §§ 190.7 and 190.8), as appropriate;

(3) A description of the applicant's drawback recordkeeping program, including the retention period and method (for example, paper, and electronic);

(4) A list of the records that will be maintained, including at least sample import documents, sample export or destruction documents, sample inventory and transportation documents (if applicable), sample laboratory or other documents establishing the qualification of merchandise or articles for substitution under the drawback law (if applicable), and sample manufacturing documents (if applicable);

(5) A description of the applicant's specific procedures for:

(i) How drawback claims are prepared (if the applicant is a claimant); and

(ii) How the applicant will fulfill any requirements under the drawback law and regulations applicable to its role in the drawback program;

(6) A description of the applicant's procedures for notifying CBP of variances in, or violations of, its drawback compliance program or negotiated alternative drawback compliance program, and procedures for taking corrective action when notified by CBP of violations or other problems in such program; and

(7) A description of the applicant's procedures for annual review to ensure that its drawback compliance program meets the statutory and regulatory drawback requirements and that CBP is notified of any modifications from the procedures described in this application.

§ 190.194 Action on application to participate in compliance program.

(a) *Review by drawback office*—(1) *General.* It is the responsibility of the drawback office to coordinate its decision making on the package with CBP Headquarters and other CBP offices as appropriate. CBP processing of the package will consist of the review of the information contained therein as well as any additional information requested (*see* paragraph (a)(2) of this section).

(2) *Criteria for CBP review.* The drawback office will review and verify the information submitted in and with the application. In order for CBP to evaluate the application, CBP may request additional information (including additional sample documents) and/or explanations of any of the information provided for in § 190.193(c) and (d). Based on the information submitted on and with the application and any information so requested, and based on the applicant's record of transactions with CBP, the drawback office will approve or deny the application. The criteria to be considered in reviewing the applicant's record with CBP will include (as applicable):

(i) The presence or absence of unresolved customs charges (duties, taxes, fees, or other debts owed CBP);

(ii) The accuracy of the claimant's past drawback claims; and

(iii) Whether accelerated payment of drawback or waiver of prior notice of intent to export was previously revoked or suspended.

(b) *Approval.* Certification as a participant in the drawback compliance program will be given to applicants whose applications are approved under the criteria in paragraph (a)(2) of this section. The drawback office will give written notification to an applicant of its certification as a participant in the drawback compliance program. A customs broker obtaining certification for a drawback claimant will be sent written notification on behalf of such claimant, with a copy of the notification also being sent to the claimant.

(c) *Benefits of participation in program.* When a party that has been certified as a participant in the drawback compliance program and is generally in compliance with the appropriate procedures and requirements of the program commits a violation of 19 U.S.C. 1593a(a) (*see* § 190.62(b)), CBP will, in the absence of fraud or repeated violations, and in lieu of a monetary penalty as otherwise provided under section 1593a, issue a written notice of the violation to the party. Repeated violations by a participant, including a customs broker, may result in the issuance of penalties and the removal of certification under the program until corrective action, satisfactory to CBP, is taken.

(d) *Denial.* If certification as a participant in the drawback compliance program is denied, the applicant will be given written notice by the drawback office, specifying the grounds for such denial, together with any action that may be taken to correct the perceived deficiencies, and informing the applicant that such denial may be appealed to the drawback office that issued the notice of denial and then appealed to CBP Headquarters.

(e) *Certification removal*—(1) *Grounds for removal.* The certification for participation in the drawback compliance program by a party may be removed when any of the following conditions are discovered:

(i) The certification privilege was obtained through fraud or mistake of fact;

(ii) The program participant is no longer in compliance with the customs laws and CBP regulations, including the requirements set forth in § 190.192;

(iii) The program participant has repeatedly filed false drawback claims or false or misleading documentation or other information relating to such claims; or

(iv) The program participant is convicted of any felony or has committed acts which would constitute a misdemeanor or felony involving theft, smuggling, or any theft-connected crime.

(2) *Removal procedure.* If CBP determines that the certification of a program participant should be removed, the drawback office will send the program participant a written notice of the removal. Such notice will inform the program participant of the grounds for the removal and will advise the program participant of its right to file an appeal of the removal in accordance with paragraph (f) of this section.

(3) *Effect of removal.* The removal of certification will be effective immediately in cases of willfulness on the part of the program participant or when required by public health, interest, or safety. In all other cases, the removal of certification will be effective when the program participant has received notice under paragraph (e)(2) of this section and either no appeal has been filed within the time limit prescribed in paragraph (f)(2) of this section or all appeal procedures have been concluded by a decision that upholds the removal action. Removal of certification may subject the affected person to penalties.

(f) *Appeal of certification denial or removal*—(1) *Appeal of certification denial.* A party may challenge a denial of an application for certification as a participant in the drawback compliance program by filing a written appeal, within 30 days of issuance of the notice of denial, with the drawback office. A denial of an appeal may itself be appealed to CBP Headquarters, Trade Policy and Programs, Office of Trade, within 30 days after issuance of the drawback office's appeal decision. This office will review the appeal and will respond with a written decision within 30 days after receipt of the appeal unless circumstances require a delay in issuance of the decision. If the decision cannot be issued within the 30-day period, the office will advise the appellant of the reasons for the delay and of any further actions which will be carried out to complete the appeal review and of the anticipated date for issuance of the appeal decision.

(2) *Appeal of certification removal.* A party who has received a CBP notice of removal of certification for participation in the drawback compliance program may challenge the removal by filing a written appeal, within 30 days after issuance of the notice of removal, with the drawback office. A denial of an appeal may itself be appealed to CBP Headquarters, Trade Policy and Programs, Office of Trade, within 30 days after issuance of the drawback office's appeal decision. This office will consider the allegations upon which the removal was based and the responses made to those allegations by the appellant and will render a written decision on the appeal within 30 days after receipt of the appeal.

§ 190.195 Combined application for certification in drawback compliance program and waiver of prior notice and/or approval of accelerated payment of drawback.

An applicant for certification in the drawback compliance program may also, in the same application, apply for waiver of prior notice of intent to export or destroy and accelerated payment of drawback, under subpart I of this part. Alternatively, an applicant may separately apply for certification in the drawback compliance program and either or both waiver of prior notice and accelerated payment of drawback. In the former instance, the intent to apply for certification and waiver of prior notice and/or approval of accelerated payment of drawback must be clearly stated. In all instances, all of the requirements for certification and the procedure applied for must be met (for example, in a combined application for certification in the drawback compliance program and both procedures, all of the information required for certification and each procedure, all required sample documents for certification and each procedure, and all required certifications must be included with the application).

APPENDIX A TO PART 190—GENERAL MANUFACTURING DRAWBACK RULINGS

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I. General Instructions

A. There follow various general manufacturing drawback rulings which have been designed to simplify drawback procedures. Any person that can comply with the conditions of any one of these rulings may notify a CBP drawback office of its intention to operate under the ruling (*see* §190.7). The letter of notification must be sent, electronically, to the drawback offices at the below listed email accounts:

NewYorkDrawback@cbp.dhs.gov
SanFranciscoDrawback@cbp.dhs.gov
HoustonDrawback@cbp.dhs.gov
ChicagoDrawback@cbp.dhs.gov.

Such letter of notification must include the following information:

1. Name and address of manufacturer or producer;
2. IRS (Internal Revenue Service) number (with suffix) of manufacturer or producer;
3. Location[s] of factory[ies] which will operate under the general ruling;
4. If a business entity, names of persons who will sign drawback documents (*see* §190.6);
5. Identity (by T.D. number and title, as stated in this Appendix) of general manufacturing drawback ruling under which the manufacturer or producer intends to operate;
6. Description of the merchandise and articles, unless specifically described in the general manufacturing drawback ruling, and 8-digit HTSUS subheading number, and the quantity of the merchandise;
7. Only for General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Petroleum or Petroleum Derivatives, the name of each article to be exported or, if the identity of the product is not clearly evident by its name, what the product is, and the abstract period to be used for each refinery (monthly or other specified period (not to exceed 1 year)), subject to the conditions in the General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Petroleum or Petroleum Derivatives, I. Procedures and Records Maintained, 4(a) or (b);
8. Basis of claim used for calculating drawback; and
9. Description of the manufacturing or production process, unless specifically described in the general manufacturing drawback ruling.

For the General Manufacturing Drawback Ruling under §1313(a), the General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Component Parts, and the General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) or 1313(b) for Agents, if the drawback office has doubts as to whether there is a manufacture or production, as defined in §190.2, the manufacturer or producer will be asked to provide details of the operation purported to be a manufacture or production.

10. For the General Manufacturing Drawback Ruling where substituted merchandise will be used, include the bill of materials, and/or formulas annotated with the 8-digit HTSUS classifications.

B. These general manufacturing drawback rulings supersede general ''contracts'' previously published under the following Treasury Decisions (T.D.s): 81–74, 81–92, 81–181, 81–234, 81–300, 83–53, 83–59, 83–73, 83–77, 83–80, 83–84, 83–123, 84–49, and 85–110.

Anyone currently operating under any of the above-listed Treasury Decisions will automatically be covered by the superseding general ruling, including all privileges of the previous ''contract''.

II. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) (T.D. 81–234; T.D. 83–123)

A. Imported Merchandise or Drawback Products[1] Used

Imported merchandise or drawback products are used in the manufacture of the exported articles upon which drawback claims will be based.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations.

B. Exported Articles on Which Drawback Will Be Claimed

Exported articles on which drawback will be claimed must be manufactured in the United States using imported merchandise or drawback products.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* §190.9).

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with §190.2.

E. Multiple Products

1. Relative Values

Drawback law mandates the assignment of relative values when two or more products necessarily are produced concurrently in the same operation. If multiple products are produced records, which may include records kept in the normal course of business, will be maintained of the market value of each product at the time it is first separated in the manufacturing process.

2. Appearing-In Method

The appearing-in basis may not be used if multiple products are produced.

F. Loss or Gain

Records, which may include records kept in the normal course of business, will be maintained showing the extent of any loss or gain in net weight or measurement of the imported merchandise, caused by atmospheric conditions, chemical reactions, or other factors.

G. [Reserved]

H. Stock in Process

Stock in process does not result; or if it does result, details will be given in claims as filed, and it will not be included in the computation of the merchandise used to manufacture the finished articles on which drawback is claimed.

I. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, records will be maintained to establish the value, quantity, and disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

J. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise, and

2. The quantity of imported merchandise[2] used in producing the exported articles.

(To obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements must be available for audit by CBP during business hours. Drawback is not payable without proof of compliance).

K. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 190 of the CBP Regulations will be met, as discussed under the heading Procedures and Records Maintained. If those records do not establish satisfaction of all legal requirements, drawback cannot be paid.

L. Basis of Claim for Drawback

Drawback will be claimed on the full quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. A drawback claim may be based on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles less the amount of that merchandise which the value of the waste would replace.

M. General Requirements

The manufacturer or producer must:

1. Comply fully with the terms of this general ruling when claiming drawback;

[2] If claims are to be made on an ''appearing in'' basis, the remainder of the sentence should read ''appearing in the exported articles.''

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix (I. General Instructions, 1 through 10), the corporate name, or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this general ruling.

III. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(A) OR 1313(B) FOR AGENTS (T.D. 81–181)

Manufacturers or producers operating under this general manufacturing drawback ruling must comply with T.D.s 55027(2) and 55207(1), and 19 U.S.C. 1313(b), if applicable, as well as 19 CFR part 190 (*see* particularly, §190.9).

A. Name and Address of Principal

B. Process of Manufacture or Production

The imported merchandise or drawback products or other substituted merchandise will be used to manufacture or produce articles in accordance with §190.2.

C. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. Quantity, identity, and 8-digit HTSUS subheading number of merchandise transferred from the principal to the agent;

2. Date of transfer of the merchandise from the principal to the agent;

3. Date of manufacturing or production operations performed by the agent;

4. Total quantity and description of merchandise (including 8-digit HTSUS subheading number) appearing in or used in manufacturing or production operations performed by the agent;

5. Total quantity and description of articles (including 8-digit HTSUS subheading number) produced in manufacturing or production operations performed by the agent;

6. Quantity, identity, and 8-digit HTSUS subheading number of articles transferred from the agent to the principal; and

7. Date of transfer of the articles from the agent to the principal.

D. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when manufacturing or producing articles for account of the principal under the principal's general manufacturing drawback ruling or specific manufacturing drawback ruling, as appropriate;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates the claims any changes in the information required by the General Instructions of this Appendix (I. General Instructions, 1 through 10), the corporate name, or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to help ensure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this general ruling.

IV. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(A) FOR BURLAP OR OTHER TEXTILE MATERIAL (T.D. 83–53)

Drawback may be allowed under 19 U.S.C. 1313(a) upon the exportation of bags or meat wrappers manufactured with the use of imported burlap or other textile material, subject to the following special requirements:

A. Imported Merchandise or Drawback Products[1] Used

Imported merchandise or drawback products (burlap or other textile material) are used in the manufacture of the exported articles upon which drawback claims will be based.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations.

B. Exported Articles on Which Drawback Will Be Claimed

Exported articles on which drawback will be claimed must be manufactured in the United States using imported merchandise or drawback products.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another, or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* §190.9).

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with §190.2.

E. Multiple Products

Not applicable.

F. Loss or Gain

Not applicable.

G. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, records will be maintained to establish the value, quantity, and disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

H. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise; and

2. The quantity of imported merchandise[2] used in producing the exported articles.

To obtain drawback, the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by CBP during business hours. Drawback is not payable without proof of compliance.

[2]If claims are to be made on an ''appearing in'' basis, the remainder of the sentence should read ''appearing in the exported articles.''

I. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 190 of the CBP Regulations will be met, as discussed under the heading ''Procedures and Records Maintained''. If those records do not establish compliance with all legal requirements, drawback cannot be paid. Each lot of imported material received by a manufacturer or producer must be given a lot number and kept separate from other lots until used. The records of the manufacturer or producer must show, as to each manufacturing lot or period of manufacture, the 8-digit HTSUS classification, the quantity of material used from each imported lot, and the number of each kind and size of bags or meat wrappers obtained.

All bags or meat wrappers manufactured or produced for the account of the same exporter during a specified period may be designated as one manufacturing lot. All exported bags or meat wrappers must be identified by the exporter.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation, and records are kept which establish the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles, less the amount of that merchandise which the value of the waste would replace.

K. General Requirements

The manufacturer or producer must:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix (I. General Instructions, 1 through 10), the corporate

name, or corporate organization by succession or reincorporation.

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to help ensure proper compliance with 19, United States Code, §1313, part 190 of the CBP Regulations and this general ruling.

V. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(B) FOR COMPONENT PARTS (T.D. 81–300)

A. Same 8-Digit HTSUS Classification (Parallel Columns)

Imported merchandise or drawback products[1] to be designated as the basis for drawback on the exported products.	Duty-paid, duty-free, or domestic merchandise classifiable under the same 8-digit HTSUS subheading number as that designated which will be used in the production of the exported products.
Component parts identified by individual part numbers and 8-digit HTSUS subheading number.	Component parts classifiable under the same 8-digit HTSUS subheading number and identified with the same individual part numbers as those in the column immediately to the left.

The designated components must be manufactured in accordance with the same specifications and from the same materials, and must be identified by the same 8-digit HTSUS classification and part number as the substituted components. Further, the designated and substituted components are used interchangeably in the manufacture of the exported articles upon which drawback will be claimed. Specifications or drawings will be maintained and made available for review by CBP Officials.

B. Exported Articles on Which Drawback Will Be Claimed

The exported articles will have been manufactured in the United States using components described in the Parallel Columns above.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* §190.9).

D. Process of Manufacture or Production

The components described in the Parallel Columns will be used to manufacture or produce articles in accordance with §190.2.

E. Multiple Products

Not applicable.

F. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of components appearing in the exported articles, records will be maintained to establish the value (or the lack of value), quantity, and disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

G. [Reserved]

H. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. The identity and 8-digit HTSUS classification of the designated merchandise;

2. The quantity of merchandise classifiable under the same 8-digit HTSUS classification as the designated merchandise[2] used to produce the exported articles;

3. That, within 5 years after the date of importation of the designated merchandise, the

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

manufacturer or producer used the merchandise to produce articles. During the same 5-year period, the manufacturer or producer produced[3] the exported articles. To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by CBP during business hours. Drawback is not payable without proof of compliance.

I. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 190 of the CBP Regulations will be met, as discussed under the heading ''Procedures and Records Maintained''. If those records do not establish satisfaction of all legal requirements, drawback cannot be paid.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of eligible components used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible components that appear in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible components used to produce the exported articles less the amount of those components which the value of the waste would replace.

K. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;
4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix (I. General Instructions, 1 through 10), the corporate name, or corporate organization by succession or reincorporation;
5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and
6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this general ruling.

VI. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(A) FOR FLAXSEED (T.D. 83–80)

Drawback may be allowed under the provision of 19 U.S.C. 1313(a) upon the exportation of linseed oil, linseed oil cake, and linseed oil meal, manufactured or produced with the use of imported flaxseed, subject to the following special requirements:

A. Imported Merchandise or Drawback Products[1] Used

Imported merchandise or drawback products (flaxseed) are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on Which Drawback Will Be Claimed

Exported articles on which drawback will be claimed must be manufactured in the United States using imported merchandise or drawback products.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* §190.9).

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with §190.2.

E. Multiple Products

Drawback law mandates the assignment of relative values when two or more products necessarily are produced concurrently in the same operation. If multiple products are produced records will be maintained of the market value of each product at the time it is first separated in the manufacturing process

[3] The date of production is the date an article is completed.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations.

(when a claim covers a manufacturing period, the entire period covered by the claim is the time of separation of the products and the value per unit of product is the market value for the period (*see* §§190.2, 190.22(e)). The ''appearing in'' basis may not be used if multiple products are produced.

F. Loss or Gain

Records will be maintained showing the extent of any loss or gain in net weight or measurement of the imported merchandise, caused by atmospheric conditions, chemical reactions, or other factors.

G. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, records will be maintained to establish the value, quantity, and disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

H. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise; and
2. The quantity of imported merchandise[2] used in producing the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by CBP during business hours. Drawback is not payable without proof of compliance.

I. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 190 of the CBP Regulations will be met, as discussed under the heading ''Procedures and Records Maintained''. If those records do not establish satisfaction of all legal requirements, drawback cannot be paid.

The inventory records of the manufacturer or producer will show: The inclusive dates of manufacture; the quantity, identity, value, and 8-digit HTSUS classification of the imported flaxseed or screenings, scalpings, chaff, or scourings used; the quantity by actual weight and value, if any, of the material removed from the foregoing by screening prior to crushing; the quantity and kind of domestic merchandise added, if any; the quantity by actual weight or gauge and value of the oil, cake, and meal obtained; and the quantity and value, if any, of the waste incurred. The quantity of imported flaxseed, screenings, scalpings, chaff, or scourings used or of material removed will not be estimated nor computed on the basis of the quantity of finished products obtained, but will be determined by actually weighing the said flaxseed, screenings, scalpings, chaff, scourings, or other material; or, at the option of the crusher, the quantities of imported materials used may be determined from CBP weights, as shown by the import entry covering such imported materials, and the Government weight certificate of analysis issued at the time of entry. The entire period covered by an abstract will be deemed the time of separation of the oil and cake covered thereby.

If the records of the manufacturer or producer do not show the quantity of oil cake used in the manufacture or production of the exported oil meal, and the quantity of oil meal obtained, the net weight of the oil meal exported will be regarded as the weight of the oil cake used in the manufacture thereof.

If various tanks are used for the storage of imported flaxseed, the mill records must establish the tank or tanks in which each lot or cargo is stored. If raw or processed oil manufactured or produced during different periods of manufacture is intermixed in storage, a record must be maintained showing the quantity, identity, and 8-digit HTSUS classification of oil so intermixed. The identity of the merchandise or articles in either instance must be in accordance with §190.14.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles, less the amount of that merchandise which the value of the waste would replace.

K. General Requirements

The manufacturer or producer will:

[2] If claims are to be made on an ''appearing in'' basis, the remainder of the sentence should read ''appearing in the exported articles.''

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix (I. General Instructions, 1 through 10), the corporate name, or corporate organization by succession or reincorporation.

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with 19, United States Code, §1313, part 190 of the CBP Regulations and this general ruling.

VII. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) for Fur Skins or Fur Skin Articles (T.D. 83–77)

Drawback may be allowed under 19 U.S.C. 1313(a) upon the exportation of dressed, redressed, dyed, redyed, bleached, blended, or striped fur skins or fur skin articles manufactured or produced by any one, or a combination, of the foregoing processes, with the use of fur skins or fur skin articles, such as plates, mats, sacs, strips, and crosses, imported in a raw, dressed, or dyed condition, subject to the following special requirements:

A. Imported Merchandise or Drawback Products[1] Used

Imported merchandise or drawback products (fur skins or fur skin articles) are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on Which Drawback Will Be Claimed

Exported articles on which drawback will be claimed must be manufactured in the United States using imported merchandise or drawback products.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* §190.9).

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with §190.2.

Drawback will not be allowed under this general manufacturing drawback ruling when the process performed results only in the restoration of the merchandise to its condition at the time of importation.

E. Multiple Products

Not applicable.

F. Loss or Gain

Records will be maintained showing the extent of any loss or gain in net weight or measurement of the imported merchandise, caused by atmospheric conditions, chemical reactions, or other factors.

G. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, records will be maintained to establish the value, quantity, and disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

H. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise; and

2. The quantity of imported merchandise[2] used in producing the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by CBP during business hours. Drawback is not payable without proof of compliance.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations.

[2] If claims are to be made on an ''appearing in'' basis, the remainder of the sentence should read ''appearing in the exported articles.''

I. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 190 of the CBP Regulations will be met, as discussed under the heading ''Procedures and Records Maintained''. If those records do not establish satisfaction of all legal requirements, drawback cannot be paid.

The records of the manufacturer or producer must show, as to each lot of fur skins and/or fur skin articles used in the manufacture or production of articles for exportation with benefit of drawback, the lot number and date or inclusive dates of manufacture or production, the quantity, identity, description, and 8-digit HTSUS classification of the imported merchandise used, the condition in which imported, the process or processes applied thereto, the quantity, description, and 8-digit HTSUS classification of the finished articles obtained, and the quantity of imported pieces rejected, if any, or spoiled in manufacture or production.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles, less the amount of that merchandise which the value of the waste would replace. (If rejects and/or spoilage are incurred, the quantity of imported merchandise used will be determined by deducting from the quantity of fur skins or fur skin articles put into manufacture or production the quantity of such rejects and/or spoilage.)

K. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix (I. General Instructions, 1 through 10), the corporate name, or corporate organization by succession or reincorporation.

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with 19, United States Code, §1313, part 190 of the CBP Regulations and this general ruling.

VIII. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(B) FOR ORANGE JUICE (T.D. 85–110)

A. Same 8-Digit HTSUS Classification (Parallel Columns)

Imported merchandise or drawback products[1] to be designated as the basis for drawback on the exported products.	Duty-paid, duty-free, or domestic merchandise, classifiable under the same 8-digit HTSUS subheading number as that designated which will be used in the production of the exported products.
Concentrated orange juice for manufacturing (of not less than 55° Brix), as defined in the standard of identity of the Food and Drug Administration (21 CFR 146.53), which meets the Grade A standard of the U.S. Dept. of Agriculture (7 CFR 52.1557, Table IV).	Concentrated orange juice for manufacturing as described in the left-hand parallel column.

The imported merchandise designated on drawback claims must be classifiable under the same 8-digit HTSUS classification as the merchandise used in producing the exported articles on which drawback is claimed.

B. Exported Articles on Which Drawback Will Be Claimed

1. Orange juice from concentrate (reconstituted juice).
2. Frozen concentrated orange juice.
3. Bulk concentrated orange juice.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* §190.9).

D. Process of Manufacture or Production

1. Orange juice from concentrate (reconstituted juice). Concentrated orange juice for manufacturing is reduced to a desired 11.8° Brix by a blending process to produce orange juice from concentrate. The following optional blending processes may be used:
i. The concentrate is blended with fresh orange juice (single strength juice); or
ii. The concentrate is blended with essential oils, flavoring components, and water; or
iii. The concentrate is blended with water and is heat treated to reduce the enzymatic activity and the number of viable microorganisms.
2. Frozen concentrated orange juice. Concentrated orange juice for manufacturing is reduced to a desired degree Brix of not less than 41.8° Brix by the following optional blending processes:
i. The concentrate is blended with fresh orange juice (single strength juice); or
ii. The concentrate is blended with essential oils and flavoring components and water.
3. Bulk concentrated orange juice. Concentrated orange juice for manufacturing is blended with essential oils and flavoring components which would enable another processor such as a dairy to prepare finished frozen concentrated orange juice or orange juice from concentrate by merely adding water to the (intermediate) bulk concentrated orange juice.

E. Multiple Products, Waste, Loss or Gain

Not applicable.

F. [Reserved]

G. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:
1. The 8-digit HTSUS classification and identity of the designated merchandise;
2. The quantity of merchandise classifiable under the same 8-digit HTSUS classification as the designated merchandise[2] used to produce the exported articles;
3. That, within 5 years after the date of importation of the designated merchandise, the manufacturer or producer used the designated merchandise to produce articles. During the same 5-year period, the manufacturer or producer produced[3] the exported articles.

To obtain drawback it must be established that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements must be available for audit by CBP during business hours. No drawback is payable without proof of compliance.

H. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 190 of the CBP Regulations will be met, as discussed under the heading ''Procedures and Records Maintained'', and will show what components were blended with the concentrated orange juice for manufacturing. If those records do not establish satisfaction of all legal requirements drawback cannot be paid.

I. Basis of Claim for Drawback

The basis of claim for drawback will be the quantity of concentrated orange juice for manufacturing used in the production of the exported articles. It is understood that when fresh orange juice is used as ''cutback'', it will not be included in the ''pound solids'' when computing the drawback due.

J. General Requirements

The manufacturer or producer will:

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[3] The date of production is the date an article is completed.

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix (I. General Instructions, 1 through 10), the corporate name, or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this general ruling.

IX. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(B) FOR PETROLEUM OR PETROLEUM DERIVATIVES (T.D. 84–49)

A. Same 8-Digit HTSUS Classification (Parallel Columns)

Imported merchandise or drawback products[1] to be designated as the basis for drawback on the exported products.	Duty-paid, duty-free, or domestic merchandise, classifiable under the same 8-digit HTSUS subheading number as that designated which will be used in the production of the exported products.

B. Exported Articles Produced From Fractionation

1. Motor Gasoline
2. Aviation Gasoline
3. Special Naphthas
4. Jet Fuel
5. Kerosene & Range Oils
6. Distillate Oils
7. Residual Oils
8. Lubricating Oils
9. Paraffin Wax
10. Petroleum Coke
11. Asphalt
12. Road Oil
13. Still Gas
14. Liquified Petroleum Gas
15. Petrochemical Synthetic Rubber
16. Petrochemical Plastics & Resins
17. All Other Petrochemical Products

C. Exported Articles on Which Drawback Will Be Claimed

See the General Instructions, I.A.7., for this general drawback ruling. Each article to be exported must be named. When the identity of the product is not clearly evident by its name, there must be a statement as to what the product is, e.g., a herbicide.

D. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* §190.9).

E. Process of Manufacture or Production

Heated crude oil is charged to an atmospheric distillation tower where it is subjected to fractionation. The charge to the distillation tower consists of a single crude oil, or of commingled crudes which are fed to the tower simultaneously or after blending in a tank. During fractionation, components of different boiling ranges are separated.

F. Multiple Products

1. Relative Values

Fractionation results in 17 products. In order to insure proper distribution of drawback to each of these products, the manufacturer or producer agrees to record the relative values at the time of separation. The entire period covered by an abstract is to be treated as the time of separation. The value per unit of each product will be the average market value for the abstract period.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

2. Producibility

The manufacturer or producer can vary the proportionate quantity of each product. The manufacturer or producer understands that drawback is payable on exported products only to the extent that these products could have been produced from the designated merchandise. The records of the manufacturer or producer must show that all of the products exported, for which drawback will be claimed under this general manufacturing drawback ruling could, have been produced concurrently on a practical operating basis from the designated merchandise.

The manufacturer or producer agrees to establish the amount to be designated by reference to the Industry Standards of Potential Production published in T.D. 66–16.[2]

There are no valuable wastes as a result of the processing.

G. Loss or Gain

Because the manufacturer or producer keeps records on a volume basis rather than a weight basis, it is anticipated that the material balance will show a volume gain. For the same reason, it is possible that occasionally the material balance will show a volume loss. Fluctuations in type of crude used, together with the type of finished product desired make an estimate of an average volume gain meaningless. However, records will be kept to show the amount of loss or gain with respect to the production of export products.

H. Exchange

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the Parallel Columns of this general ruling shall be treated as use of the imported merchandise.

I. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. The identity, and 8-digit HTSUS classification of the merchandise designated;

2. The quantity of merchandise classifiable under the same 8-digit HTSUS classification as the designated merchandise used to produce the exported articles.

3. That, within 5 years after importation, the manufacturer or producer used the designated merchandise to produce articles. During the same 5-year period, the manufacturer or producer produced the exported articles.

4(a). The manufacturer or producer agrees to use a 28–31 day period (monthly) abstract period for each refinery covered by this general manufacturing drawback ruling, or

(b). The manufacturer or producer agrees to use an abstract period (not to exceed 1 year) for each refinery covered by this general manufacturing drawback ruling. The manufacturer or producer certifies that if it were to file abstracts covering each manufacturing period, of not less than 28 days and not more than 31 days (monthly) within the longer period, in no such monthly abstract would the quantity of designated merchandise exceed the material introduced into the manufacturing process during that monthly period. (Select (a) or (b), and state which is selected in the application, and, if (b) is selected, specify the length of the particular abstract period chosen (not to exceed 1 year (*see* General Instruction I.A.7.)).)

5. On each abstract of production the manufacturer or producer agrees to show the value per barrel to five decimal places.

6. The manufacturer or producer agrees to file claims in the format set forth in exhibits A through F which are attached to this general manufacturing drawback ruling. The manufacturer or producer realizes that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by CBP during business hours. It is understood that drawback is not payable without proof of compliance. Records will be kept in accordance with T.D. 84–49, as amended by T.D. 95–61.

J. Residual Rights

It is understood that the refiner can reserve as the basis for future payment the right to drawback only on the number of barrels of raw material computed by subtracting from Line E the larger of Lines A or B, of a given Exhibit E. It is further understood that this right to future payment can be claimed only against products concurrently producible with the products listed in Column 21, in the quantities shown in Column 22 of such Exhibit E. Such residual right can be transferred to another refinery of the same refiner only when Line B of Exhibit E is larger than Line A. Unless the number of residual barrels is specifically computed, and rights thereto are expressly reserved on Exhibit E, such residual rights will be deemed waived. The procedure the manufacturer or producer must follow in preparing drawback entries claiming this residual right is illustrated in the attached sample Exhibit E–1. It is understood that claims involving residual rights must be

[2] A manufacturer who proposes to use standards other than those in T.D. 66–16 must state the proposed standards and provide sufficient information to CBP in order for those proposed standards to be verified in accordance with T.D. 84–49.

filed only at the port where the Exhibit E reserving such right was filed.

K. Inventory Procedures

The manufacturer or producer realizes that inventory control is of major importance. In accordance with the normal accounting procedures of the manufacturer or producer, each refinery prepares a monthly stock and yield report, which accounts for inventories, production, and disposals, from time of receipt to time of disposition. This provides an audit trail of all products.

The above-noted records will provide the required audit trail from the initial source documents to the drawback claims of the manufacturer or producer and will support adherence with the requirements discussed under the heading Procedures and Records Maintained.

L. Basis of Claim for Drawback

The amount of raw material on which drawback may be based will be computed by multiplying the quantity of each product exported by the drawback factor for that product. The amount of raw material which may be designated as the basis for drawback on the exported products produced at a given refinery and covered by a drawback entry must not exceed the quantity of such raw material used at the refinery during the abstract period or periods from which the exported products were produced. The quantity of raw material to be designated as the basis for drawback on exported products must be at least as great as the quantity of raw material which would be required to produce the exported products in the quantities exported.

M. Agreements

The manufacturer or producer specifically agrees that it will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its refinery and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix (I. General Instructions, 1 through 10), the corporate name, or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this general ruling.

Exhibit A

ABSTRACT OF MANUFACTURING RECORDS
ABC OIL CO. – BEAUMONT, TEXAS REFINERY
PERIOD FROM JANUARY 1, 2019 TO JANUARY 31, 2019

Material Used (in Bbls. At 60°)

		CRUDES				DERIVATIVES	
	TOTALS	CLASS I	CLASS II	CLASS III	CLASS IV	CRUDE TOPS CLASS IV	UNFINISHED NAPHTHA CLASS IV
1) Opening Inventory	4,007,438						
2) Material Introduced*	7,450,732	- 0 -	619,473	6,367,991	- 0 -	101,224	362,044
3) Closing Inventory	3,671,005						
4) Total Consumption	7,787,165						

Line (1) – Stock in process at beginning of manufacturing period.

Line (2) – Raw material introduced into manufacturing process during the period. The amount, by type and class, shown hereon, shall be the maximum that may be designated under T.D. 84-49.

Line (3) - Stock in process at end of period.

Line (4) - Total Consumed, namely, line 1 plus line 2 less line 3.

*All raw materials of a type and class not to be designated may be shown as a total.

EXHIBIT B
ABSTRACT OF PRODUCTION
ABC OIL CO., INC. – BEAUMONT, TEXAS REFINERY
PERIOD FROM JANUARY 1, 2019 TO JANUARY 31, 2019

(5)	(6)	(7)	(8)	(9)
Product	Quantity in Bbls.	Value per Bbl.	Value of Product	Drawback Factor per Bbl.
1. Motor Gasoline	2,699,934	$6.14333	$16,586,586	1.06678
2. Aviation Gasoline	108,269	5.83363	631,601	1.01300
3. Special Naphthas	372,676	8.06356	3,005,095	1.40023
4. Jet Fuel	249,386	3.95698	986,815	0.68712
5. Kerosine and Range Oil	321,263	4.69857	1,509,477	0.81590
6. Distillate Oils	2,567,975	4.45713	11,445,798	0.77398
7. Residual Oils	308,002	2.51322	774,077	0.43642
8. Lubricating Oils	292,492	26.72296	7,816,252	4.64041
9. Paraffin Wax	19,063	10.49642	200,093	1.82269
10. Petroleum Coke	122,353	1.24291	152,074	0.21583
11. Asphalt	75,231	3.59105	270,158	0.62358
12. Road Oil	- 0 -	- 0 -	- 0 -	- 0 -
13. Still Gas	245,784	1.00530	247,087	0.17457
14. Liquified Refinery Gas	524,423	2.23013	1,169,531	0.38726
15. Petrochemical Synthetic Rubber	- 0 -	- 0 -	- 0 -	- 0 -
16. Petrochemical Plastics & Resins	- 0 -	- 0 -	- 0 -	- 0 -
17. All Other Petrochemical Products	7,996	6.21343	49,683	1.07895
Loss (or Gain)	(127,682)			
Total	7,787,165		$44,844,327	

Col. (6) Products are shown in the net quantities realized in the refining process and do not include non-petroleum additives.
Col. (7) Weighted average realization for the period covered.
Col. (8) Column 6 multiplied by column 7.
Col. (9) Quantity of raw materials allowable per barrel of products. (Formula for obtaining drawback factors: $44,844,327 ÷ 7,787,165 bbls. = $5.75875 divided into product values per barrel equals drawback factor.)

EXHIBIT C—INVENTORY CONTROL SHEET: ABC OIL CO., INC.; BEAUMONT, TEXAS REFINERY,
PERIOD FROM JANUARY 1, 2019 TO JANUARY 31, 2019

[All quantities exclude non-petroleum additives]

	Aviation gasoline		Residual oils		Lubricating oils		Petrochemicals, all other	
	Bbls.	Drawback factor	Bbls.	Drawback factor	Bbls.	Drawback factor	Bbls.	Drawback factor
(10) Opening Inventory	11,218	1.00126	21,221	.45962	9,242	4.52178	891	1.00244
(11) Production	108,269	1.01300	308,002	.43642	292,492	4.64041	7,996	1.07895
(11–A) Receipts.								
(12) Exports	11,218	1.00126	21,221	.45962	8,774	4.52178	195	1.00244
	176	1.01300	104,397	.43642				
(13) Drawback Deliveries							696	1.00244
							319	1.07895
(14) Domestic Shipments	97,863	1.01300	180,957	.43642	468	4.52178	6,867	1.07895
					278,286	4.64041		
(15) Closing Inventory	10,230	1.01300	22,648	.43642	14,206	4.64041	810	1.07895

Line (10)—Opening inventory from previous period's closing inventory.
Line (11)—From production period under consideration.
Line (11–A)—Product received from other sources.
Line (12)—From earliest on hand (inventory or production). Totals from drawback entry or entries recapitulated (*see* column 18).
Line (13)—Deliveries for export or for designation against further manufacture—earliest on hand after exports are deducted.
Line (14)—From earliest on hand after lines (12) and (13) are deducted.
Line (15)—Balance on hand.

EXHIBIT D
RECAPITULATION OF DRAWBACK ENTRY
ABC OIL CO., INC - BEAUMONT, TEXAS REFINERY
PERIOD FROM JANUARY 1, 2019 TO JANUARY 31, 2019

(16)	(17)	(18)	(19)	(20)	(20a)
Product	Quantity in Bbls. Exported	Quantity in Bbls. In the Terms of the Abstract	Drawback Factor per Bbl.	Crude Allowed for Drawback in Bbls.	Crude to be Allowed for Drawback Deliveries in Bbls.
Aviation Gasoline	11,410	11,216 176	1.00126 1.01300	11,232 176	
Residual Oils	125,618	21,221 104,397	0.45962 0.43642	9,754 45,561	
Lubricating Oils	8,875	8,774	4.52178	36,674	
Petrochemicals – Other	195	696 319 195	1.00244 1.07895 1.00244	195	698 344
Total	146,098	146,996		106,594	1,042

Duty paid on raw material selected for designation - $.1050 per bbl. (class III crude)
Amount of drawback claimed - gross - 106,594 x .1050 = $11,192
Less 1% - 112
Amount of drawback claimed - net $11,080

Col. (16) Lists only products exported.
Col. (17) Quantities in condition as shown on the notices of exportation and notices of lading.
Col. (18) Quantities in condition as shown on the abstract (i.e., less additives if any). These quantities will appear in line 12.
Col. (19) The drawback factor(s) shown on line 12.
Col (20) Raw material (crude or derivatives) allowable, determined by multiplying column 18 by 19.
Col (20a) Raw material (crude or derivatives) allowable, for drawback deliveries determined by multiplying column 18 by column 19.

EXHIBIT E
PRODUCIBILITY TEST FOR PRODUCTS EXPORTED
(INCLUDING DRAWBACK DELIVERIES)
ABC OIL CO., INC - BEAUMONT, TEXAS REFINERY
PERIOD FROM JANUARY 1, 2019 TO JANUARY 31, 2019

Type and Class of Raw Material Designated - Crude, Class III

(21)	(22)	(23)	(24)
Product	Quantity in Barrels	Industry Standard	Quantity of Raw Material of Type and Class Designated Needed to Produce Product
Aviation Gasoline	11,394	40%	28,485
Residual Oils	125,618	83%	151,347
Lubricating Oils	8,774	50%	17,548
Petrochemicals, other	(195)		
Petrochemicals, other (drawback deliveries)	(1,015)		
Petrochemicals, other (Total)	1,210	29%	4,172
Total	146,996		

A - Crude allowed (column 20: 106,594 plus column 20a: 1,042	107,636 bbls.
B - Total Quantity exported (including drawback deliveries (column 22):	146,996 "
C - Largest quantity of raw material needed to produce an individual exported product (see column 24):	151,347 "
D - The excess of raw material over the largest of lines A, B, or C, required to produce concurrently on a practical operating basis, using the most efficient processing equipment existing within the domestic industry, the exported articles (including drawback deliveries) in the quantities exported (or delivered).	NONE
E - Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is largest, plus D, if applicable):	151,347 "

I hereby certify that all the above drawback deliveries and products exported by the Beaumont Refinery of ABC Oil Co., Inc. during the period from January 1, 2019 to January 31, 2019 could have been produced concurrently on a practical operating basis from 151,347 barrels of imported Class III crude against which drawback is claimed.

Signature

EXHIBIT E-1
PRODUCIBILITY TEST FOR PRODUCTS ON WHICH RESIDUAL RIGHT TO DRAWBACK IS NOW CLAIMED AND PRODUCTS COVERED BY ABSTRACTS ON WHICH RAW MATERIALS COVERED WERE PREVIOUSLY DESIGNATED
ABC OIL CO., INC - TULSA, OKLAHOMA REFINERY
PERIOD FROM JANUARY 1, 2019 TO JANUARY 31, 2019

Type and Class of Raw Material Designated - Crude, Class III

(21)	(22)	(23)	(24)			(19)	(20)
Product	Quantity in Barrels	Industry Standard	Quantity of Raw Material of Type & Class Designated Needed to Produce Product		Covered by: 1. Period 2. Refinery	Drawback Factor per Barrel	Crude allowed for drawback
			Separate	Combined			
Aviation Gasoline	11,394	40%	28,485	29,125		1.00126	11,232
						1.01300	178
Residual Oils	125,618	83%	151,347	151,347	1. Jan. 2019	0.45962	9,754
						0.43642	45,561
Lubricating Oils	8,774	50%	17,548	17,932	2. Beaumont	4.52178	39,674
Petrochemicals, other	(195)					1.00244	195
Petrochemicals, other (drawback deliveries)	(1,015)						
Petrochemicals, other (Total)	1,210	29%	4,172	4,503			
(Residual Rights)							
Aviation Gasoline	256	40%	640	29,125		1.01265	259
Lubricating Oils	192	50%	384	17,932	1. Jan. 2019	4.59006	881
Petrochemicals, other	96	29%	331	4,503	2. Tulsa	1.12412108	108
Distillate Oils	3,807	89%	4,278	4,278		0.76624	2917
	151,347					Subtotal	4165
						Total	110759

A - Crude allowed (column 20: 110,759; plus crude allowed for drawback deliveries: 1,042)	111,801 bbls.	Drawback Computation
B - Total quantity exported (including drawback deliveries (column 22):	151,347 "	4,165* bbls. @ 10½ = $437.33
C - Largest quantity of raw material needed to produce an individual exported product (see col. 24):	151,347	Less 1% 4.37
D - The excess of raw material over the largest of line A, B, or C, required to produce concurrently on a practical operating basis, using the most efficient processing equipment existing within		Amount of Drawback
$432.96		
the domestic industry, the exported articles (including drawback deliveries) in the quantities exported or delivered):		Claim - Net
E - Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is largest, plus D, if applicable):		See subtotal, col. 20, for Residual Rights above 151,347

Certificate

I hereby certify that all the above drawback deliveries and products exported by the Tulsa, Oklahoma refinery of ABC Oil Co., Inc. during the period from January 1, 2019 to January 31, 2019 could have been produced concurrently on a practical operating basis together with all drawback deliveries and products exported covered by Exhibit E of the abstract for the period January 1, 2019 to January 31, 2019, filed by the Beaumont, Texas refinery from 151,347 barrels of imported Class III crude against which drawback is claimed.

Signature

EXHIBIT E (COMBINATION)—PRODUCIBILITY TEST FOR PRODUCTS EXPORTED (INCLUDING DRAWBACK DELIVERIES) ABC OIL CO., INC.; BEAUMONT, TEXAS REFINERY, PERIOD FROM JANUARY 1, 2019 TO JANUARY 31, 2019

[Type and class of raw material designated—Crude, Class III]

Product	Quantity in barrels	Industry standard (%)	Quantity of raw material of type and class designated needed to produce product per barrel	Drawback factor	Crude allowed for drawback
(21)	(22)	(23)	(24)	(19)	(20)
Aviation Gasoline [1]	[1] 11,218	40	28,045	1.00126	11,232
	[1]176	40	440	1.01300	178

EXHIBIT E (COMBINATION)—PRODUCIBILITY TEST FOR PRODUCTS EXPORTED (INCLUDING DRAWBACK DELIVERIES) ABC OIL CO., INC.; BEAUMONT, TEXAS REFINERY, PERIOD FROM JANUARY 1, 2019 TO JANUARY 31, 2019—Continued

[Type and class of raw material designated—Crude, Class III]

Product	Quantity in barrels	Industry standard (%)	Quantity of raw material of type and class designated needed to produce product per barrel	Drawback factor	Crude allowed for drawback
(21)	(22)	(23)	(24)	(19)	(20)
Residual Oils [1]	[1] 21,221	83	25,567	.45962	9,754
	[1] 104,397	83	125,780	.43642	45,561
Lubricating Oils [1]	[1] 8,774	50	17,548	4.52178	39,674
Petrochemicals, Other [1]	[1] 195	29	672	1.00244	195
Petrochemicals, Other [2]	[2] 696	29	2,400	1.00244	698
Petrochemicals, Other [2]	[2] *319*	29	1,100	1.07895	344
Total	146,996				107,636

[1] Exports.

[2] Drawback deliveries.

A—Crude allowed (column 20: 107,636 bbls. (106,594 for export, plus 1,042 for drawback deliveries)).

B—Total quantity exported (including drawback deliveries) (column 22): 146,996.

C—Largest quantity of raw material needed to produce an individual exported product (*see* column 24): 151,347.

D—The excess of raw material over the largest of lines A, B, or C, required to produce concurrently on a practical operating basis, using the most efficient processing equipment existing within the domestic industry, the exported articles (including drawback deliveries) in the quantities exported (or delivered): None.

E—Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is largest, plus D, if applicable): 151,347 bbs.

I hereby certify that all the above drawback deliveries and products exported by the Beaumont refinery of ABC Oil Co., Inc. during the period from January 1, 2019 to January 31, 2019, could have been produced concurrently on a practical operating basis from 151,347 barrels of imported Class III crude against which drawback is claimed.

The attached sample, **EXHIBIT E (COMBINATION)**, illustrates the procedures to be followed when two classes or types of raw material are designated on a given abstract. For purposes of illustration it is assumed that the refiner has only 100,000 barrels of Class III crude to designate, but adequate supplies of Class II to designate.

In addition, please note that the computation of drawback on **EXHIBIT D** will be as follows:

Duty paid on raw material selected for designation:

$.1050 per barrel (Class III crude)
$.0525 per barrel (Class II crude)

Amount of drawback claimed- gross: 81,638 x .1050=$8,571.99
24,956 x .0525= $1,310.19
$9,882.18
(Rounded off) 9,882
Less 1% -99
Amount of drawback claimed- net: $9,783

EXHIBIT F—DESIGNATIONS FOR DRAWBACK CLAIM, ABC OIL CO., INC.; BEAUMONT, TEXAS REFINERY

[Period from January 1, 2019 to January 31, 2019]

Entry No.	Date of importation	Kind of materials	Quantity of materials in barrels	Date received	Date consumed	Rate of duty
26192	04/13/17	Class III Crude	75,125	04/13/17	May 2017	$.1050
23990	08/04/18	do	37,240	08/04/18	Oct. 2018	.1050
22517	10/05/18	do	38,982	10/05/18	Nov. 2018	.1050

X. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(B) FOR PIECE GOODS (T.D. 83–73)

A. Same 8-Digit HTSUS Classification (Parallel Columns)

Imported merchandise or drawback products[1] to be designated as the basis for drawback on the exported products.	Duty-paid, duty-free or domestic merchandise classifiable under the same 8-digit HTSUS subheading number as that designated which will be used in the production of the exported products.
Piece goods.	Piece goods.

The piece goods used in manufacture will be classifiable under the same 8-digit HTSUS classification as the piece goods designated as the basis of claim for drawback, and are used interchangeably without change in manufacturing processes or resultant products (including, if applicable, multiple products), or wastes. Some tolerances between imported-designated piece goods and the used-exported piece goods will be permitted to accommodate variations which are normally found in piece goods. These tolerances are no greater than the tolerances generally allowed in the industry for piece goods classifiable under the same 8-digit HTSUS classification as follows:

1. A 4% weight tolerance so that the piece goods used in manufacture will be not more than 4% lighter or heavier than the imported piece goods which will be designated;

2. A tolerance of 4% in the aggregate thread count per square inch so that the piece goods used in manufacture will have an aggregate thread count within 4%, more or less of the aggregate thread count of the imported piece goods which will be designated. In each case, the average yarn number of the domestic piece goods will be the same or greater than the average yarn number of the imported piece goods designated, and in each case, the substitution and tolerance will be employed only within the same family of fabrics, *i.e.,* print cloth for print cloth, gingham for gingham, greige for greige, dyed for dyed, bleached for bleached, etc. The piece goods used in manufacture of the exported articles will be designated as containing the identical percentage of identical fibers as the piece goods designated as the basis for allowance of drawback; for example, piece goods containing 65% cotton and 35% dacron will be designated against the use of piece goods shown to contain 65% cotton and 35% dacron. The actual fiber composition may vary slightly from that described on the invoice or other acceptance of the fabric as having the composition described on documents in accordance with trade practices.

B. Exported Articles on Which Drawback Will Be Claimed

Finished piece goods.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s. 55027(2) and 55207(1) (*see* §190.9).

D. Process of Manufacture or Production

Piece goods are subject to any one of the following finishing productions:

1. Bleaching,
2. Mercerizing,
3. Dyeing,
4. Printing,
5. A combination of the above, or
6. Any additional finishing processes.

E. Multiple Products

Not applicable.

F. Waste

Rag waste may be incurred. No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, the records of the manufacturer or producer must show the quantity of rag waste, if any, and its value. In instances where rag waste occurs and it is impractical

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under 19 U.S.C. 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

to account for the actual quantity of rag waste incurred, it may be assumed that such rag waste constituted 2% of the piece goods put into the finishing processes. If necessary to establish the quantity of merchandise (eligible piece goods) appearing in the exported articles, such waste records must also be kept.

G. Shrinkage, Gain, and Spoilage

Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, the records of the manufacturer or producer must show the yardage lost by shrinkage or gained by stretching during manufacture or production, and the quantity of remnants resulting and of spoilage incurred, if any. If necessary to establish the quantity of merchandise (eligible piece goods) appearing in the exported articles, such records for shrinkage, gain and spoilage will also be kept.

H. [Reserved]

I. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. The identity and 8-digit HTSUS classification of the designated merchandise;

2. The quantity of merchandise classifiable under the same 8-digit HTSUS classification as the designated merchandise[2] used to produce the exported articles;

3. That, within 5 years after the date of importation of the designated merchandise, the manufacturer or producer used the merchandise to produce articles. During the same 5-year period, the manufacturer or producer produced[3] the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by CBP during business hours. Drawback is not payable without proof of compliance.

J. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 190 of the CBP Regulations will be met, as discussed under the heading ''Procedures and Records Maintained''. If those records do not establish satisfaction of all legal requirements, drawback cannot be paid.

K. Basis of Claim for Drawback

Drawback will be claimed on the quantity of eligible piece goods used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible piece goods that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste from each lot of piece goods, drawback may be claimed on the quantity of eligible piece goods used to produce the exported articles less the amount of piece goods which the value of the waste would replace.

L. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix (I. General Instructions, 1 through 10), the corporate name, or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this general ruling.

XI. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(B) FOR RAW SUGAR (T.D. 83–59)

Drawback may be allowed under 19 U.S.C. 1313(b) upon the exportation of hard or soft refined sugars and sirups manufactured from raw sugar, subject to the following special requirements:

A. The drawback allowance must not exceed an amount calculated pursuant to regulations prescribed by the Secretary of the Treasury, of the duties, taxes, and fees paid on a quantity of raw sugar designated by the

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[3] The date of production is the date an article is completed.

refiner which contains a quantity of sucrose not in excess of the quantity required to manufacture the exported sugar or sirup, ascertained as provided in this general rule.

B. The refined sugars and sirups must have been manufactured with the use of duty-paid, duty-free, or domestic sugar, or combinations thereof, within 5 years after the date of importation, and must have been exported within 5 years from the date of importation of the designated sugar.

C. All granulated sugar testing by the polariscope 99.5 [degrees] and over will be deemed hard refined sugar. All refined sugar testing by the polariscope less than 99.5 [degrees] will be deemed soft refined sugar. All ''blackstrap,'' ''unfiltered sirup,'' and ''final molasses'' will be deemed sirup.

D. The imported duty-paid sugar selected by the refiner as the basis for the drawback claim (designated sugar) must be classifiable under the same 8-digit HTSUS classification as that used in the manufacture of the exported refined sugar or sirup and must have been used within 5 years after the date of importation. Duty-paid sugar which has been used at a plant of a refiner within 5 years after the date on which it was imported by such refiner may be designated as the basis for the allowance of drawback on refined sugars or sirups manufactured at another plant of the same refiner.

E. For the purpose of distributing the drawback, relative values must be established between hard refined (granulated) sugar, soft refined (various grades) sugar, and sirups at the time of separation. The entire period covered by an abstract will be deemed the time of separation of the sugars and sirups covered by such abstract.

F. The sucrose allowance per pound on hard refined (granulated) sugar established by an abstract, as provided for in this general ruling, will be applied to hard refined sugar commercially known as loaf, cut loaf, cube, pressed, crushed, or powdered sugar manufactured from the granulated sugar covered by the abstract.

G. The sucrose allowance per gallon on sirup established by an abstract, as provided for in this general ruling, will be applied to sirup further advanced in value by filtration or otherwise, unless such sirup is the subject of a special manufacturing drawback ruling.

H. As to each lot of imported or domestic sugar used in the manufacture of refined sugar or sirup on which drawback is to be claimed, the raw stock records must show the refiner's raw lot number, the number and character of the packages, the settlement weight in pounds, the settlement polarization, and the 8-digit HTSUS classification. Such records covering imported sugar must show, in addition to the foregoing, the import entry number, date of importation, name of importing carrier, country of origin, the Government weight, and the Government polarization.

I. The melt records must show the date of melting, the number of pounds of each lot of raw sugar melted, and the full analysis at melting.

J. There must be kept a daily record of final products boiled showing the date of the melt, the date of boiling, the magma filling serial number, the number of the vacuum pan or crystallizer filling, the date worked off, and the sirup filling serial number.

K. The sirup manufacture records must show the date of boiling, the period of the melt, the sirup filling serial number, the number of barrels in the filling, the magma filling serial number, the quantity of sirup, its disposition in tanks or barrels and the refinery serial manufacture number.

L. The refined sugar stock records must show the refinery serial manufacture number, the period of the melt, the date of manufacture, the grade of sugar produced, its polarization, the number and kind of packages, and the net weight. When soft sugars are manufactured, the commercial grade number and quantity of each must be shown.

M. Each lot of hard or soft refined sugar and each lot of sirup manufactured, regardless of the character of the containers or vessels in which it is packed or stored, must be marked immediately with the date of manufacture and the refinery manufacture number applied to it in the refinery records provided for and shown in the abstract, as provided for in this general ruling, from such records. If all the sugar or sirup contained in any lot manufactured is not intended for exportation, only such of the packages as are intended for exportation need be marked as prescribed above, provided there is filed with the drawback office immediately after such marking a statement showing the date of manufacture, the refinery manufacture number, the number of packages marked, and the quantity of sugar or sirup contained therein. No drawback will be allowed in such case on any sugar or sirup in excess of the quantity shown on the statement as having been marked. If any packages of sugar or sirup so marked are repacked into other containers, the new containers must be marked with the marks which appeared on the original containers and a revised statement covering such repacking and remarking must be filed with the drawback office. If sirups from more than one lot are stored in the same tank, the refinery records must show the refinery manufacture number and the quantity of sirup from each lot contained in such tank.

N. An abstract from the foregoing records covering manufacturing periods of not less than 1 month nor more than 3 months, unless a different period will have been authorized, must be filed when drawback is to be claimed on any part of the refined sugar or sirup manufactured during such period. Such

abstract must be filed by each refiner with the drawback office where drawback claims are filed on the basis of this general ruling. Such abstract must consist of: (1) A raw stock record (accounting for Refiner's raw lot No., Import entry No., Packages No. and kind, Pounds, Polarization, By whom imported or withdrawn, Date of importation, Date of receipt by refiner, Date of melt, Importing carrier, Country of origin); (2) A melt record [number of pounds in each lot melted] (accounting for Lot No. Pounds, and Polarization degrees and pounds sucrose); (3) Sirup stock records (accounting for Date of boiling, Refinery serial manufacture No., Quantity of sirup in gallons, and Pounds sucrose contained therein); (4) Refined sugar stock record (accounting for Refinery serial production No., Date of manufacture, Hard or soft refined, Polarization and No., Net weight in pounds); (5) Recapitulation (consisting of (in pounds): (a) Sucrose in process at beginning of period, (b) sucrose melted during period, (c) sucrose in process at end of period, (d) sucrose used in manufacture, and (e) sucrose contained in manufacture, in which item (a) plus item (b), minus item (c), should equal item (d)); and (6) A statement as follows:

I, _____, the _____ refiner at the _____ refinery of _____, located at _____, do solemnly and truly declare that each of the statements contained in the foregoing abstract is true to the best of my knowledge and belief and can be verified by the refinery records, which have been kept in accordance with Treasury Decision 83–59 and Appendix A of 19 CFR part 190 and which are at all times open to the inspection of CBP.

Date _____

Signature _____

O. The refiner must file with each abstract a statement, showing the average market values of the products specified in the abstract and including a statement as follows: I, _____, (Official capacity) of the _____ (Refinery), do solemnly and truly declare that the values shown above are true to the best of my knowledge and belief, and can be verified by our records.

Date _____

Signature _____

P. At the end of each calendar month the refiner must furnish to the drawback office a statement showing the actual sales of sirup and the average market values of refined sugars for the calendar month.

Q. The sucrose allowance to be applied to the various products based on the abstract and statement provided for in this general ruling will be in accordance with the example set forth in Treasury Decision 83–59.

R. [Reserved]

S. Drawback entries under this general ruling must state the polarization in degrees and the sucrose in pounds for the designated imported sugar. Drawback claims under this general ruling must include a statement as follows:

I, _____, the _____ of _____, located at _____ declare that the sugar (or sirup) described in this entry, was manufactured by said company at its refinery at _____ and is part of the sugar (or sirup) covered by abstract No. ____, filed at the port of _____; that, subject to 19 U.S.C. 1508 and 1313(t), the refinery and other records of the company verifying the statements contained in said abstract are now and at all times hereafter will be open to inspection by CBP. I further declare that the above-designated imported sugar (upon which the duties have been paid) was received by said company on _____ and was used in the manufacture of sugar and sirup during the period covered by abstract No. ____, CBP No. ____, on file with the port director at _____. I further declare that the sugar or sirup specified therein was exported as stated in the entry.

Date _____

Signature _____

T. General Statement. The refiner manufactures or produces for its own account. The refiner may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the refiner's account under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* §190.9).

U. Waste. No drawback is payable on any waste which results from the manufacturing operation. Unless drawback claims are based on the ''appearing in'' method, records will be maintained to establish the value (or the lack of value), quantity, and disposition of any waste that results from manufacturing the exported articles. If no waste results, records to establish that fact will be maintained.

V. Loss or Gain. The refiner will maintain records showing the extent of any loss or gain in net weight or measurement of the sugar caused by atmospheric conditions, chemical reactions, or other factors.

W. [Reserved]

X. Procedures and Records Maintained.

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. The identity and 8-digit HTSUS classification of the designated merchandise;

2. The quantity of merchandise classifiable under the same 8-digit HTSUS classification as the designated merchandise[1] used to produce the exported articles; and

[1] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence

Continued

3. That, within 5 years of the date of importation of the designated merchandise, the refiner used the designated merchandise to produce articles. During the same 5-year period, the refiner produced[2] the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by CBP during business hours. Drawback is not payable without proof of compliance.

Y. General requirements. The refiner will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix (I. General Instructions, 1 through 10), the corporate name, or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this general ruling.

XII. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(B) FOR STEEL (T.D. 81–74)

A. Same 8-Digit HTSUS Classification (Parallel Columns)

Imported merchandise or drawback products[1] to be designated as the basis for drawback on the exported products.	Duty-paid, duty-free or domestic merchandise classifiable under the same 8-digit HTSUS subheading number as that designated which will be used in the production of the exported products.
Steel of one general class, e.g., an ingot, falling within on SAE, AISI, or ASTM[2] specification and, if the specification contains one or more grades, falling within one grade of the specification.	Steel of the same general class, specification, and grade as the steel in the column immediately to the left hereof.

1. The duty-paid, duty-free, or domestic steel used instead of the imported, duty-paid steel (or drawback products) will be interchangeable for manufacturing purposes with the duty-paid steel. To be interchangeable a steel must be able to be used in place of the substituted steel without any additional processing step in the manufacture of the article on which drawback is to be claimed.

2. Because the duty-paid steel (or drawback products) that is to be designated as the basis for drawback is dutiable according to its value, the amount of duty can vary with its size (gauge, width, or length) or composition (e.g., chrome content). If such variances occur, designation will be by ''price extra,'' and in no case will drawback be claimed in a greater amount than that which would have accrued to that steel used in manufacture of or appearing in the exported articles. Price extra is not available for coated or plated steel, covered in paragraph 4, infra, insofar as the coating or plating is concerned.

3. If the steel is coated or plated with a base metal, in addition to meeting the requirements for uncoated or unplated steel set forth in the Parallel Columns, the base-metal coating or plating on the duty-paid,

should read ''appearing in the exported articles produced.''

[2]The date of production is the date an article is completed.

[1]Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

[2]Standards set by the Society of Automotive Engineers (SAE), the American Iron and Steel Institute (AISI), or the American Society for Testing and Materials (ASTM).

duty-free, or domestic steel used in place of the duty-paid steel (or drawback products) will have the same composition and thickness as the coating or plating on the duty-paid steel. If the coated or plated duty-paid steel is within an SAE, AISI, ASTM specification, then any duty-paid, duty-free, or domestic coated or plated steel must be covered by the same specification and grade (if two or more grades are in the specification).

B. Exported Articles on Which Drawback Will Be Claimed

The exported articles will have been manufactured in the United States using steels described in the Parallel Columns above.

C. General Statement

The manufacturer or producer manufactures or produces for its own account.

The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* §190.9).

D. Process of Manufacture or Production

The steel described in the Parallel Columns will be used to manufacture or produce articles in accordance with §190.2.

E. Multiple Products

Not applicable.

F. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of steel appearing in the exported articles, records will be maintained to establish the value (or the lack of value), quantity, and disposition of any waste that results from manufacturing the exported articles. If no waste results, records to establish that fact will be maintained.

G. Loss or Gain

The manufacturer or producer will maintain records showing the extent of any loss or gain in net weight or measurement of the steel caused by atmospheric conditions, chemical reactions, or other factors.

H. [Reserved]

I. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. The identity and 8-digit HTSUS classification of the designated merchandise;

2. The quantity of merchandise of the designated merchandise[3] used to produce the exported articles;

3. That, within 5 years of the date of importation of the designated merchandise, the manufacturer or producer used the merchandise to produce articles. During the same 5-year period, the manufacturer or producer produced[4] the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by CBP during business hours. Drawback is not payable without proof of compliance.

J. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 190 of the CBP Regulations will be met, as discussed under the heading ''Procedures and Records Maintained.'' If those records do not establish satisfaction of all legal requirements, drawback cannot be paid.

K. Basis of Claim for Drawback

Drawback will be claimed on the quantity of steel used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible steel that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste from each lot of steel, drawback may be claimed on the quantity of eligible steel used to produce the exported articles less the amount of that steel which the value of the waste would replace.

L. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;

[3] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[4] The date of production is the date an article is completed.

4. Keep its letter of notification to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix (I. General Instructions, 1 through 10), the corporate name, or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this general ruling.

XIII. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(B) FOR SUGAR (T.D. 81–92)

A. Same 8-Digit HTSUS Classification (Parallel Columns)

Imported merchandise or drawback products[1] to be designated as the basis for drawback on the exported products.	Duty-paid, duty-free or domestic merchandise classifiable under the same 8-digit HTSUS subheading number as that designated which will be used in the production of the exported products.
1. Granulated or liquid sugar for manufacturing, containing sugar solids of not less than 99.5 sugar degrees.	1. Granulated or liquid sugar for manufacturing, containing sugar solids of less than 99.5 sugar degrees.
2. Granulated or liquid sugar for manufacturing, containing sugar solids of not less than 99.5 sugar degrees.	2. Granulated or liquid sugar for manufacturing, containing sugar solids of less than 99.5 sugar degrees.

The sugars listed above test within three-tenths of a degree on the polariscope. Sugars in each column are completely interchangeable with the sugars directly opposite and designation will be made on this basis only. The designated sugar on which claims for drawback will be based will be classifiable under the same 8-digit HTSUS classification.

B. Exported Articles on Which Drawback Will Be Claimed

Edible substances (including confectionery) and/or beverages and/or ingredients therefor.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* §190.9).

D. Process of Manufacture or Production

The sugars are subjected to one or more of the following operations to form the desired product(s):

1. Mixing with other substances,
2. Cooking with other substances,
3. Boiling with other substances,
4. Baking with other substances,
5. Additional similar processes.

E. Multiple Products

Not applicable.

F. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of sugar appearing in the exported articles, records will be maintained to establish the value (or the lack of value), quantity, disposition of any waste that results from manufacturing the exported articles. If no waste results, records to establish that fact will be maintained.

G. Loss or Gain

The manufacturer or producer will maintain records showing the extent of any loss or gain in net weight or measurement of the sugar caused by atmospheric conditions, chemical reactions, or other factors.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

H. [Reserved]

I. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. The identity and 8-digit HTSUS classification of the designated merchandise;
2. The quantity of merchandise classifiable under the same 8-digit HTSUS classification as the designated merchandise[2] used to produce the exported articles;
3. That, within 5 years of the date of importation of the designated merchandise, the manufacturer or producer used the merchandise to produce articles. During the same 5-year period, the manufacturer or producer produced[3] the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by CBP during business hours. Drawback is not payable without proof of compliance.

J. Inventory Procedures

The inventory records of the manufacturer or producer, will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 190 of the CBP Regulations will be met, as discussed under the heading ''Procedures and Records Maintained.'' If those records do not establish satisfaction of all legal requirements, drawback cannot be paid.

K. Basis of Claim for Drawback

Drawback will be claimed on the quantity of sugar used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible sugar that appears in the exported articles regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles less the amount of that sugar which the value of the waste would replace.

L. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;
4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix (I. General Instructions, 1 through 10), the corporate name, or corporate organization by succession or reincorporation;
5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and
6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this general ruling.

XIV. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(A) FOR WOVEN PIECE GOODS (T.D. 83–84)

Drawback may be allowed under 19 U.S.C. 1313(a) upon the exportation of bleached, mercerized, printed, dyed, or redyed piece goods manufactured or produced by any one or a combination of the foregoing processes with the use of imported woven piece goods, subject to the following special requirements:

A. Imported Merchandise or Drawback Products[1] Used

Imported merchandise or drawback products (woven piece goods) are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on Which Drawback Will Be Claimed

Exported articles on which drawback will be claimed must be manufactured in the United States using imported merchandise or drawback products.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[3] The date of production is the date an article is completed.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations.

may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (*see* §190.9).

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with §190.2.

The piece goods used in manufacture or production under this general manufacturing drawback ruling may also be subjected to one or more finishing processes. Drawback will not be allowed under this general manufacturing drawback ruling when the process performed results only in the restoration of the merchandise to its condition at the time of importation.

E. Multiple Products

Not applicable.

F. Waste

Rag waste may be incurred. No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, the records of the manufacturer or producer must show the quantity of rag waste, if any, its value, and its disposition. If no waste results, records will be maintained to establish that fact. In instances where rag waste occurs and it is impractical to account for the actual quantity of rag waste incurred, it may be assumed that such rag waste constituted 2% of the woven piece goods put into process. If necessary to establish the quantity of merchandise (eligible piece goods) appearing in the exported articles, such waste records will also be kept.

G. Shrinkage, Gain, and Spoilage

Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, the records of the manufacturer or producer must show the yardage lost by shrinkage or gained by stretching during manufacture, and the quantity of remnants resulting and of spoilage incurred, if any. If necessary to establish the quantity of merchandise (eligible piece goods) appearing in the exported articles, such records for shrinkage, gain, and spoilage will also be kept.

H. Procedures and Records Maintained

Records, which may include records kept in the normal course of business, will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise; and

2. The quantity of imported merchandise[2] used in producing the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by CBP during business hours. Drawback is not payable without proof of compliance.

I. Inventory Procedures

The inventory records of the manufacturer or producer must show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 190 of the CBP Regulations will be met, as discussed under the heading ''Procedures and Records Maintained''. If those records do not establish satisfaction of all legal requirements, drawback cannot be paid.

The records of the manufacturer or producer must show, as to each lot of piece goods manufactured or produced for exportation with benefit of drawback, the lot number and the date or inclusive dates of manufacture or production, the quantity, identity, value, and 8-digit HTSUS classification of the imported (or drawback product) piece goods used, the condition in which imported or received (whether in the gray, bleached, dyed, or mercerized), the working allowance specified in the contract under which they are received, the process or processes applied thereto, and the quantity and description of the piece goods obtained. The records must also show the yardage lost by shrinkage or gained by stretching during manufacture or production, and the quantity of remnants resulting and of spoilage incurred.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles, less the amount of that merchandise which the value of the waste would replace. (If remnants and/or

[2] If claims are to be made on an ''appearing in'' basis, the remainder of the sentence should read ''appearing in the exported articles.''

spoilage occur during manufacture or production, the quantity of imported merchandise used will be determined by deducting from the quantity of piece goods received and put into manufacture or production the quantity of such remnants and/or spoilage. The remaining quantity will be reduced by the quantity thereof which the value of the rag waste, if any, would replace.)

K. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this general ruling;
4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix (I. General Instructions, 1 through 10), the corporate name, or corporate organization by succession or reincorporation.
5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and
6. Issue instructions to insure proper compliance with 19 U.S.C. 1313, part 190 of the CBP Regulations and this general ruling.

APPENDIX B TO PART 190—SAMPLE FORMATS FOR APPLICATIONS FOR SPECIFIC MANUFACTURING DRAWBACK RULINGS

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I. GENERAL

Applications for specific manufacturing drawback rulings using these sample formats must be submitted to, reviewed, and approved by CBP Headquarters. *See* 19 CFR 190.8(d). Applications must be submitted electronically to *HQDrawback@cbp.dhs.gov*. In these application formats, remarks in parentheses and footnotes are for explanatory purposes only and should not be copied. Other material should be quoted directly in the applications.

II. FORMAT FOR APPLICATION FOR SPECIFIC MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(A) AND 1313(B) (COMBINATION).

COMPANY LETTERHEAD (Optional)

U.S. Customs and Border Protection, Entry Process and Duty Refunds, Regulations and Rulings, Office of Trade, 90 K Street NE—10th Floor (Mail Stop 1177), Washington, DC 20229–1177.

Dear Sir or Madam: We, (Applicant's Name), a (State, e.g., Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, §§1313(a) & (b), and part 190 of the CBP Regulations. We request that CBP authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT

(Section 190.8(a) of the CBP Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback must apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under §190.7 of the CBP Regulations. CBP will not approve an application which shows an unincorporated division or company as the applicant (*see* §190.8(a)).)

LOCATION OF FACTORY

(Provide the address of the factory(s) where the process of manufacture or production will take place. Indicate if the factory is a different legal entity from the applicant, and indicate if operating under an Agent's general manufacturing drawback ruling.)

PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS

(List persons legally authorized to bind the corporation who will sign drawback documents. Section 190.6 of the CBP Regulations permits only the president, vice president, secretary, treasurer, and any employee legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a customs power of attorney for the company may sign. A customs power of attorney may also be given to a licensed customs broker. This heading should be changed to Names of Partners or Proprietor in the case of a partnership or sole proprietorship, respectively (*see*

footnote at end of this sample format for persons who may sign applications for specific manufacturing drawback rulings).)

GENERAL STATEMENT

(The following questions must be answered:)

1. Who will be the importer of the designated merchandise?

(If the applicant will not always be the importer of the designated merchandise, specify that the applicant understand its obligations to maintain records to support the transfer under §190.10, and its liability under §190.63.)

2. Will an agent be used to process the designated or the substituted merchandise into articles?

(If an agent is to be used, the applicant must state it will comply with T.D.s 55027(2) and 55207(1) and §190.9, as applicable, and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (*see* §190.7 and Appendix A) or an application for a specific manufacturing drawback ruling (*see* §190.8 and this Appendix B).)

3. Will the applicant be the exporter? (If the applicant will not be the exporter in every case, but will be the claimant, the manufacturer must state that it will reserve the right to claim drawback with the knowledge and written consent of the exporter (19 CFR 190.82).)

PROCEDURES UNDER SECTION 1313(b) (PARALLEL COLUMNS—SAME 8-DIGIT CLASSIFICATION)

Imported merchandise or drawback products[1] to be designated as the basis for drawback on the exported products.	Duty-paid, duty-free, or domestic merchandise, of the same 8-digit HTSUS subheading number as that designated which will be used in the production of the exported products.
1.	1.
2.	2.
3.	3.

(Following the items listed in the Parallel Columns, the applicant must make a statement affirming the same 8-digit HTSUS classification of the merchandise. This statement should be included in the application exactly as it is stated below:)

The imported merchandise designated in our claims will be classifiable under the same 8-digit HTSUS classification as the merchandise used in producing the exported articles on which we claim drawback.

(In order to successfully claim drawback it is necessary to prove that the duty-paid, duty-free, or domestic merchandise, which is to be substituted for the imported merchandise, is classifiable under the same 8-digit HTSUS classification. To enable CBP to rule on the same 8-digit HTSUS classification, the application must include a detailed description of the designated imported merchandise and of the substituted duty-paid, duty-free, or domestic merchandise to be used to produce the exported articles. The application must also include the Bill of Materials and/or formulas annotated with the HTSUS classifications.)

(It is essential that all the characteristics which determine the identity of the merchandise are specified in the application in order to substantiate that the merchandise meets the the same 8-digit HTSUS classification statutory requirement. These characteristics should clearly distinguish merchandise of different identities.)

(The descriptions should be sufficient to classify the merchandise in the same 8-digit HTSUS subheading number included in the Parallel Columns. The left-hand column will consist of the name and the 8-digit HTSUS subheading number of the imported merchandise. The right-hand column will consist of the name and the 8-digit HTSUS subheading number for the duty-paid, duty-free, or domestic designated merchandise. Amendments to rulings will be required if any changes to the HTSUS classifications occur.)

EXPORTED ARTICLES ON WHICH DRAWBACK WILL BE CLAIMED

(Name each article to be exported. When the identity of the product is not clearly evident by its name, state what the product is (e.g., a herbicide). There must be a match between each article described under the

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

PROCESS OF MANUFACTURE OR PRODUCTION section below and each article listed here.)

PROCESS OF MANUFACTURE OR PRODUCTION

(Drawback under §1313(b) is not allowable except where a manufacture or production exists. Manufacture or production is defined, for drawback purposes, in §190.2. In order to obtain drawback under §1313(b), it is essential for the applicant to show use in manufacture or production by providing a thorough description of the manufacturing process. This description should include the name and exact condition of the merchandise listed in the Parallel Columns, a complete explanation of the processes to which it is subjected in this country, the effect of such processes, the name and exact description of the finished article, and the use for which the finished article is intended. When applicable, include equations of any chemical reactions. Including a flow chart in the description of the manufacturing process is an excellent means of illustrating how a manufacture or production occurs. Flow charts can clearly illustrate if and at what point during the manufacturing process by-products and wastes are generated.)

(This section should contain a description of the process by which each item of merchandise listed in the Parallel Columns above is used to make or produce every article that is to be exported.)

MULTIPLE PRODUCTS

1. Relative Values

(Some processes result in the separation of the merchandise into two or more products. If applicable, list all of the products. State that you will record the market value of each product at the time it is first separated in the manufacturing process. If this section is not applicable to you, then state so.)

(Drawback law mandates the assignment of relative values when two or more products are necessarily produced in the same operation. For instance, the refining of flaxseed necessarily produces linseed oil and linseed husks (animal feed), and drawback must be distributed to each product in accordance with its relative value. However, the voluntary election of a steel fabricator, for instance, to use part of a lot of imported steel to produce automobile doors, and part of the lot to produce automobile fenders, does not call for relative value distribution.)

(The relative value of a product is its value divided by the total value of all products, whether or not exported. For example, 100 gallons of drawback merchandise are used to produce 100 gallons of products, including 60 gallons of product A, 20 gallons of product B, and 20 gallons of product C. At the time of separation, the unit values of products A, B, and C are $5, $10, and $50 respectively. The relative value of product A is $300 divided by $1,500 or 1/5. The relative value of B is 3/15 and of product C is 2/3, calculated in the same manner. This means that 1/5 of the drawback product payments will be distributed to product A, 3/15 to product B, and 2/3 to product C.)

(Drawback is allowable on exports of any of multiple products, but is not permitted on exports of valuable waste. In making this distinction between a product and valuable waste, the applicant should address the following significant elements: (1) The nature of the material of which the residue is composed; (2) the value of the residue as compared to the value of the principal manufactured product and the raw material; (3) the use to which it is put; (4) its status under the tariff laws, if imported; (5) whether it is a commodity recognized in commerce; (6) whether it must be subjected to some process to make it saleable.)

2. Producibility

(Some processes result in the separation of fixed proportions of each product, while other processes afford the opportunity to increase or decrease the proportion of each product. An example of the latter is petroleum refining, where the refiner has the option to increase or decrease the production of one or more products relative to the others. State under this heading whether you can or cannot vary the proportionate quantity of each product.)

(The MULTIPLE PRODUCTS section consists of two sub-sections: Relative Values and Producibility. If multiple products do not result from your operation state ''Not Applicable'' for the entire section. If multiple products do result from your operation Relative Values will always apply. However, Producibility may or may not apply. If Producibility does not apply to your multiple product operation state ''Not Applicable'' for this sub-section.)

WASTE

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a statement to that effect.)

(If waste occurs, state: (1) Whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a ''used in'' or ''appearing in'' basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based

on the quantity of imported material used in manufacturing. If the claim is based upon the quantity of imported merchandise appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what basis you are using.)

(If you recover valuable waste and you choose to claim on the basis of the quantity of merchandise used in producing the exported articles (less any valuable waste), state that you will keep records to establish the quantity and value of the waste recovered. *See* ''Basis of Claim for Drawback'' section below.)

STOCK IN PROCESS

(Some processes result in another type of residual material, namely, stock in process, which affects the allowance of drawback. Stock in process may exist when residual material resulting from a manufacturing or processing operation is reintroduced into a subsequent manufacturing or processing operation; e.g., trim pieces from a cast article. The effect of stock in process on a drawback claim is that the amount of drawback for the period in which the stock in process was withdrawn from the manufacturing or processing operation (or the manufactured article, if manufacturing or processing periods are not used) is reduced by the quantity of merchandise or drawback products used to produce the stock in process if the ''used in'' or ''used in less valuable waste'' methods are used (if the ''appearing in'' method is used, there will be no effect on the amount of drawback), and the quantity of merchandise or drawback products used to produce the stock in process is added to the merchandise or drawback products used in the subsequent manufacturing or production period (or the subsequently produced article)).

(If stock in process occurs and claims are to be based on stock in process, the application must include a statement to that effect. The application must also include a statement that merchandise is considered to be used in manufacture at the time it was originally processed, so that the stock in process will not be included twice in the computation of the merchandise used to manufacture the finished articles on which drawback is claimed.)

LOSS OR GAIN (Separate and distinct from WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. If applicable, state the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured by weight unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state ''Not Applicable.'')

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. The identity and 8-digit HTSUS subheading number of the merchandise we designate;

2. The quantity of merchandise classifiable under the same 8-digit HTSUS subheading number as the designated merchandise[2] we used to produce the exported articles;

3. That, within 5 years after the date of importation, we used the designated merchandise to produce articles. During the same 5-year period, we produced[3] the exported articles.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Our records establishing our compliance with these requirements will be available for audit by CBP during business hours. We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 190 of the CBP Regulations as discussed under the heading ''PROCEDURES AND RECORDS MAINTAINED''. To insure compliance the following areas, as applicable, should be included in your discussion:)

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles we produce.''

[3] The date of production is the date an article is completed.

RECEIPT AND STORAGE OF DESIGNATED MERCHANDISE

RECORDS OF USE OF DESIGNATED MERCHANDISE

BILLS OF MATERIALS

MANUFACTURING RECORDS

WASTE RECORDS

RECORDS OF USE OF DUTY-PAID, DUTY-FREE OR DOMESTIC MERCHANDISE OF THE REQUIRED SAME 8-DIGIT HTSUS SUBHEADING NUMBER WITHIN 5 YEARS AFTER THE DATE OF IMPORTATION

FINISHED STOCK STORAGE RECORDS

SHIPPING RECORDS

(Proof of time frames may be specific or inclusive, e.g., within 120 days, but specific proof is preferable. Separate storage and identification of each article or lot of merchandise usually will permit specific proof of exact dates. Proof of inclusive dates of use, production or export may be acceptable, but in such cases it is best to describe very specifically the data you intend to use to establish each legal requirement, thereby avoiding misunderstandings at the time of audit.) (If you do not describe the inventory records that you will use, you must state: ''All legal requirements will be met by our inventory procedures.'' However, it should be noted that without a detailed description of the inventory procedures set forth in the application, a judgment as to the adequacy of such a statement cannot be made until a drawback claim is verified. Approval of this application for a specific manufacturing drawback ruling merely constitutes approval of the ruling application as submitted; it does not constitute approval of the applicant's recordkeeping procedures if those procedures are solely described as meeting the legal requirements, without specifically stating how the requirements will be met. Drawback is not payable without proof of compliance.)

BASIS OF CLAIM FOR DRAWBACK

(There are three different bases that may be used to claim drawback: (1) Used in; (2) appearing in; and (3) used in less valuable waste.)

(The ''used in'' basis may be employed only if there is either no waste, or the waste is valueless or unrecovered. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the ''used in'' basis. Drawback is payable in the amount of 99 percent of the duties, taxes, and fees, paid on the quantity of imported material designated as the basis for the allowance of drawback on the exported articles. The designated quantity may not exceed the quantity of material actually used in the manufacture of the exported articles.) (For example, if 100 pounds of material, valued at $1.00 per pound, were used in manufacture resulting in 10 pounds of irrecoverable or valueless waste, the 10 pounds of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 99% of the duties, taxes, and fees paid on the 100 pounds of designated material used to produce the exported articles.)

(The ''appearing in'' basis may be used regardless of whether there is waste. If the ''appearing in'' basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the ''appearing in'' basis. Drawback is payable on 99 percent of the duties, taxes, and fees paid on the quantity of material designated, which may not exceed the quantity of eligible material that appears in the exported articles. ''Appearing in'' may not be used if multiple products are involved.)

(Based on the previous example, drawback would be payable on the 90 pounds of merchandise which actually went into the exported product (appearing in) rather than the 100 pounds used in as set forth previously.)

(The ''used in less valuable waste'' basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of merchandise. The value of the waste reduces the amount of drawback when claims are based on the ''used in less valuable waste'' basis. When valuable waste is incurred, the drawback allowance on the exported article is based on the duties, taxes, and fees, paid on the quantity of merchandise used in the manufacture, as reduced by the quantity of such merchandise which the value of the waste would replace. In such a case, drawback is claimed on the quantity of eligible material actually used to produce the exported product, less the amount of such material which the value of the waste would replace. Note section 190.26(c) of the CBP Regulations.)

(Based on the previous examples, if the 10 pounds of waste had a value of $.50 per pound, then the 10 pounds of waste, having a total value of $5.00, would be equivalent in value to 5 pounds of the designated material. Thus the value of the waste would replace 5 pounds of the merchandise used, and drawback is payable on 99 percent of the duties, taxes, and fees paid on the 95 pounds of imported material designated as the basis for the allowance of drawback on the exported article rather than on the 100 pounds ''used in'' or the 90 pounds ''appearing in'' as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A ''schedule'' shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount of material that is needed to produce a unit of product before the material is actually used in production.)

(An ''abstract'' is the summary of the records which shows the total quantity of merchandise used in producing all articles during the period covered by the abstract. The abstract looks at a period of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back at how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate a ''schedule'' choice must base its claims on the ''abstract'' method. State which Basis and Method you will use. An example of Used In by Schedule follows:)

We will claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 190.8(f) of the CBP Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Neither the ''appearing in'' basis nor the ''schedule'' method for claiming drawback may be used where the relative value procedure is required.)

PROCEDURES UNDER SECTION 1313(a)

IMPORTED MERCHANDISE OR DRAWBACK PRODUCTS USED UNDER 1313(a)

(List the imported merchandise or drawback products.)

EXPORTED ARTICLES ON WHICH DRAWBACK WILL BE CLAIMED

(Name each article to be exported. When the identity of the product is not clearly evident by its name state what the product is, e.g., a herbicide. There must be a match between each article described under the PROCESS OF MANUFACTURE AND PRODUCTION section below and each article listed here.)

(If the merchandise used under §1313(a) is not also used under §1313(b), the sections entitled PROCESS OF MANUFACTURE OR PRODUCTION, BY-PRODUCTS, LOSS OR GAIN, and STOCK IN PROCESS should be included here to cover merchandise used under §1313(a). However, if the merchandise used under §1313(a) is also used under §1313(b) these sections need not be repeated unless they differ in some way from the §1313(b) descriptions.)

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise, and

2. The quantity of imported merchandise[4] we used in producing the exported articles.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(This section must be completed separately from that set forth under the §1313(b) portion of your application. The legal requirements under §1313(a) differ from those under §1313(b).) (Describe your inventory procedures and state how you will identify the imported merchandise from date of importation until it is incorporated in the articles to be exported. Also describe how you will identify the finished articles from the time of manufacture until shipment.)

BASIS OF CLAIM FOR DRAWBACK

(*See* section with this title for procedures under §1313(b). Either repeat the same basis of claim or use a different basis of claim, as described above, specifically for drawback claimed under §1313(a).)

AGREEMENTS

The Applicant specifically agrees that it will:

[4] If claims are to be made on an ''appearing in'' basis, the remainder of the sentence should read ''appearing in the exported articles we produce.''

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, the persons who will sign drawback documents, the basis of claim used for calculating drawback, the decision to use or not to use an agent under §190.9 or the identity of an agent under that section, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to CBP Headquarters all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by CBP Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this application and letter of approval.

DECLARATION OF OFFICIAL

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this ____ day of _____ 20____, makes this application binding on

_____

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By[5] _____

(Signature and Title)

_____

(Print Name)

III. FORMAT FOR APPLICATION FOR SPECIFIC MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(B)

COMPANY LETTERHEAD (Optional)

U.S. Customs and Border Protection, Entry Process and Duty Refunds Branch, Commercial and Trade Facilitation Division, Regulations and Rulings, Office of Trade, 90 K Street NE—10th Floor (Mail Stop 1177), Washington, DC 20229–1177.

Dear Sir or Madam: We, (Applicant's Name), a (State, e.g., Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, section 1313(b), and part 190 of the CBP Regulations. We request that CBP authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT

(Section 190.8(a) of the CBP Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback will apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under §190.7 of the CBP Regulations. CBP will not approve an application which shows an unincorporated division or company as the applicant (*see* §190.8(a)).)

LOCATION OF FACTORY

(Provide the address of the factory(s) where the process of manufacture or production will take place. Indicate if the factory is a different legal entity from the applicant, and indicate if the applicant is operating under an Agent's general manufacturing drawback ruling.)

PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS

(List persons legally authorized to bind the corporation who will sign drawback documents. Section 190.6 of the CBP Regulations permits only the president, vice president, secretary, treasurer, and any employee legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a customs power of attorney for the company may sign. A customs power of attorney may also be given to a licensed customs broker. This heading should be changed to NAMES OF

[5] Section 190.6(a) requires that applications for specific manufacturing drawback rulings be signed or electronically certified by any individual legally authorized to bind the person (or entity) for whom the application is signed or the owner of a sole proprietorship, a full partner in a partnership, an individual acting on his or her own behalf, or, if a corporation, the president, a vice president, secretary, treasurer or employee legally authorized to bind the corporation. In addition, any employee of a business entity with a customs power of attorney may sign such an application, as may a licensed customs broker with a customs power of attorney.

PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively (*see* footnote at end of this sample format for persons who may sign applications for specific manufacturing drawback rulings).)

GENERAL STATEMENT

(The following questions must be answered:)

1. Who will be the importer of the designated merchandise?

(If the applicant will not always be the importer of the designated merchandise, specify that the applicant understand its obligations to maintain records to support the transfer under §190.10, and its liability under §190.63.)

2. Will an agent be used to process the designated or the substituted merchandise into articles?

(If an agent is to be used, the applicant must state it will comply with T.D.s 55027(2) and 55207(1), and §190.9, as applicable, and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (*see* §190.7 and Appendix A), or an application for a specific manufacturing drawback ruling (*see* §190.8 and this Appendix B).)

3. Will the applicant be the exporter?

(If the applicant will not be the exporter in every case, but will be the claimant, the manufacturer must state that it will reserve the right to claim drawback with the knowledge and written consent of the exporter (19 CFR 190.82).)

PARALLEL COLUMNS—''SAME 8-DIGIT HTSUS CLASSIFICATION''

Imported merchandise or drawback products[1] to be designated as the basis for drawback on the exported products.	Duty-paid, duty-free or domestic merchandise of the Same 8-digit HTSUS subheading number as that designated which will be used in the production of the exported products.
1.	1.
2.	2.
3.	3.

(Following the items listed in the Parallel Columns, the applicant must make a statement affirming the same 8-digit HTSUS subheading numberof the merchandise. This statement should be included in the application exactly as it is stated below:)

The imported merchandise designated in our claims will be classifiable under the same 8-digit HTSUS subheading number as the merchandise used in producing the exported articles on which we claim drawback, such that the merchandise used would, if imported, be subject to the same rate of duty as the designated merchandise.

(In order to successfully claim drawback it is necessary to prove that the duty-paid, duty-free, or domestic merchandise, which is to be substituted for the imported merchandise, is ''classifiable under the same 8-digit HTSUS subheading number.'' To enable CBP to rule on the proper ''same 8-digit HTSUS subheading number,'' the application must include a detailed description of the designated imported merchandise, and of the substituted duty-paid, duty-free, or domestic merchandise used to produce the exported articles. The application must also include the Bill of Materials and/or formulas annotated with the HTSUS classification.)

(It is essential that all the characteristics which determine the identity of the merchandise are provided in the application in order to substantiate that the merchandise meets the ''same 8-digit HTSUS subheading number'' statutory requirement. These characteristics should clearly distinguish merchandise of different identities.

(The descriptions of the ''same 8-digit HTSUS subheading number'' merchandise should be included in the Parallel Columns. The left-hand column will consist of the name and 8-digit HTSUS subheading number of the imported merchandise. The right-hand column will consist of the name and 8-digit HTSUS subheading number for the duty-paid, duty-free, or domestic designated merchandise. Amendments to the ruling will be required if any changes to the HTSUS classifications occur.)

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

EXPORTED ARTICLES ON WHICH DRAWBACK WILL BE CLAIMED

(Name each article to be exported. When the identity of the product is not clearly evident by its name state what the product is, e.g., a herbicide. There must be a match between each article described under the PROCESS OF MANUFACTURE AND PRODUCTION section below and each article listed here.)

PROCESS OF MANUFACTURE OR PRODUCTION

(Drawback under §1313(b) is not allowable except where a manufacture or production exists. Manufacture or production is defined, for drawback purposes, in §190.2. In order to obtain drawback under §1313(b), it is essential for the applicant to show use in manufacture or production by providing a thorough description of the manufacturing process. This description should include the name and exact condition of the merchandise listed in the Parallel Columns, a complete explanation of the processes to which it is subjected in this country, the effect of such processes, the name and exact description of the finished article, and the use for which the finished article is intended. When applicable, include equations of any chemical reactions. Including a flow chart in the description of the manufacturing process is an excellent means of illustrating how manufacture or production occurs. Flow charts can clearly illustrate if and at what point during the manufacturing process by-products and wastes are generated.)

(This section should contain a description of the process by which each item of merchandise listed in the Parallel Columns above is used to make or produce every article that is to be exported.)

MULTIPLE PRODUCTS

1. Relative Values

(Some processes result in the separation of the merchandise into two or more products. If applicable, list all of the products. State that you will record the market value of each product or by-product at the time it is first separated in the manufacturing process. If this section is not applicable to you, then state so.)

(Drawback law mandates the assignment of relative values when two or more products are necessarily produced in the same operation. For instance, the refining of flaxseed necessarily produces linseed oil and linseed husks (animal feed), and drawback must be distributed to each product in accordance with its relative value. However, the voluntary election of a steel fabricator, for instance, to use part of a lot of imported steel to produce automobile doors, and part of the lot to produce automobile fenders, does not call for relative value distribution.)

(The relative value of a product is its value divided by the total value of all products, whether or not exported. For example, 100 gallons of drawback merchandise are used to produce 100 gallons of products, including 60 gallons of product A, 20 gallons of product B, and 20 gallons of product C. At the time of separation, the unit values of products A, B, and C are $5, $10, and $50 respectively. The relative value of product A is $300 divided by $1,500 or 1/5. The relative value of B is 3/15 and of product C is 2/3, calculated in the same manner. This means that 1/5 of the drawback product payments will be distributed to product A, 3/15 to product B, and 2/3 to product C.)

(Drawback is allowable on exports of any of multiple products, but is not permitted on exports of valuable waste. In making this distinction between a product and valuable waste, the applicant should address the following significant elements: (1) The nature of the material of which the residue is composed; (2) the value of the residue as compared to the value of the principal manufactured product and the raw material; (3) the use to which it is put; (4) its status under the tariff laws, if imported; (5) whether it is a commodity recognized in commerce; (6) whether it must be subjected to some process to make it saleable.)

2. Producibility

(Some processes result in the separation of fixed proportions of each product, while other processes afford the opportunity to increase or decrease the proportion of each product. An example of the latter is petroleum refining, where the refiner has the option to increase or decrease the production of one or more products relative to the others. State under this heading whether you can or cannot vary the proportionate quantity of each product.)

(The MULTIPLE PRODUCTS section consists of two sub-sections: Relative Values and Producibility. If multiple products do not result from your operation state ''Not Applicable'' for the entire section. If multiple products do result from your operation Relative Values will always apply. However, Producibility may or may not apply. If Producibility does not apply to your multiple product operation, then state ''Not Applicable'' for this sub-section.)

WASTE

(Many processes result in residue materials which, for drawback purposes, are treated as waste. Describe any residue materials which you believe should be so treated. If no waste results, include a statement to that effect.)

(If waste occurs, state: (1) Whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a ''used in'' or ''appearing in'' basis, and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered, but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of imported material used in manufacturing. If the claim is based upon the quantity of imported merchandise appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what basis you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of merchandise used in producing the exported articles less any valuable waste, state that you will keep records to establish the quantity and value of the waste recovered. *See* ''Basis of Claim for Drawback'' section below.)

STOCK IN PROCESS

(Some processes result in another type of residual material, namely, stock in process, which affects the allowance of drawback. Stock in process may exist when residual material resulting from a manufacturing or processing operation is reintroduced into a subsequent manufacturing or processing operation; e.g., trim pieces from a cast article. The effect of stock in process on a drawback claim is that the amount of drawback for the period in which the stock in process was withdrawn from the manufacturing or processing operation (or the manufactured article, if manufacturing or processing periods are not used) is reduced by the quantity of merchandise or drawback products used to produce the stock in process if the ''used in'' or ''used in less valuable waste'' methods are used (if the ''appearing in'' method is used, there will be no effect on the amount of drawback), and the quantity of merchandise or drawback products used to produce the stock in process is added to the merchandise or drawback products used in the subsequent manufacturing or production period (or the subsequently produced article)).

(If stock in process occurs and claims are to be based on stock in process, the application must include a statement to that effect. The application must also include a statement that merchandise is considered to be used in manufacture at the time it was originally processed, so that the stock in process will not be included twice in the computation of the merchandise used to manufacture the finished articles on which drawback is claimed.)

LOSS OR GAIN (Separate and distinct from WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. If applicable, state the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured ''by weight'' unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state ''Not Applicable.'')

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. The identity and 8-digit HTSUS subheading number of the merchandise we designate;

2. The quantity of merchandise classifiable under the same 8-digit HTSUS subheading number as the designated merchandise[2] we used to produce the exported articles;

3. That, within 5 years after the date of importation, we used the designated merchandise to produce articles. During the same 5-year period, we produced[3] the exported articles;

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Our records establishing our compliance with these requirements will be available for audit by CBP during business hours. We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(Describe your inventory records and state how those records will meet the drawback

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles we produce.''

[3] The date of production is the date an article is completed.

recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 190 of the CBP Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To help ensure compliance the following areas, as applicable, should be included in your discussion:)

RECEIPT AND STORAGE OF DESIGNATED MERCHANDISE

RECORDS OF USE OF DESIGNATED MERCHANDISE

BILLS OF MATERIALS

MANUFACTURING RECORDS

WASTE RECORDS

RECORDS OF USE OF DUTY-PAID, DUTY-FREE OR DOMESTIC MERCHANDISE OF THE REQUIRED SAME 8-DIGIT HTSUS SUBHEADING WITHIN 5 YEARS AFTER IMPORTATION OF THE DESIGNATED MERCHANDISE

FINISHED STOCK STORAGE RECORDS

SHIPPING RECORDS

(Proof of time frames may be specific or inclusive, e.g., within 120 days, but specific proof is preferable. Separate storage and identification of each article or lot of merchandise usually will permit specific proof of exact dates. Proof of inclusive dates of use, production or export may be acceptable, but in such cases it is better to describe very specifically the data you intend to use to establish each legal requirement, thereby avoiding misunderstandings at the time of audit.)

(If you do not describe the inventory records that you will use, you must state: ''All legal requirements will be met by our inventory procedures.'' However, it should be noted that without a detailed description of the inventory procedures set forth in the application, a judgment as to the adequacy of such a statement cannot be made until a drawback claim is verified. Approval of this application for a specific manufacturing drawback ruling merely constitutes approval of the ruling application as submitted; it does not constitute approval of the applicant's recordkeeping procedures if those procedures are solely described as meeting the legal requirements, without specifically stating how the requirements will be met. Drawback is not payable without proof of compliance.)

BASIS OF CLAIM FOR DRAWBACK

(There are three different bases that may be used to claim drawback: (1) Used in; (2) appearing in; and (3) used in less valuable waste.)

(The ''used in'' basis may be employed only if there is either no waste, or the waste is valueless or unrecovered. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the ''used in'' basis. Drawback is payable in the amount of 99 percent of the duties, taxes, and fees, paid on the quantity of imported material designated as the basis for the allowance of drawback on the exported articles. The designated quantity may not exceed the quantity of material actually used in the manufacture of the exported articles.)

(For example, if 100 pounds of material, valued at $1.00 per pound, were used in manufacture resulting in 10 pounds of irrecoverable or valueless waste, the 10 pounds of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 99% of the duties, taxes, and fees, paid on the 100 pounds of designated material used to produce the exported articles.)

(The ''appearing in'' basis may be used regardless of whether there is waste. If the ''appearing in'' basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the ''appearing in'' basis. Drawback is payable on 99 percent of the duties, taxes, and fees paid on the quantity of material designated, which may not exceed the quantity of eligible material that appears in the exported articles. ''Appearing in'' may not be used if multiple products are involved.)

(Based on the previous example, drawback would be payable on the 90 pounds of merchandise which actually went into the exported product (appearing in) rather than the 100 pounds used in as set forth previously.)

(The ''used in less valuable waste'' basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of merchandise. The value of the waste reduces the amount of drawback when claims are based on the ''used in less valuable waste'' basis. When valuable waste is incurred, the drawback allowance on the exported article is based on the duties, taxes, and fees paid on the quantity of merchandise used in the manufacture, as reduced by the quantity of such merchandise which the value of the waste would replace. In such a case, drawback is claimed on the quantity of eligible material actually used to produce the exported product, less the amount of such material which the value of the waste would replace. Note section 190.26(c) of the CBP Regulations.)

(Based on the previous examples, if the 10 pounds of waste had a value of $.50 per pound, then the 10 pounds of waste, having a total value of $5.00, would be equivalent in value to 5 pounds of the designated material. Thus the value of the waste would replace 5 pounds of the merchandise used, and drawback is payable on 99 percent of the duties, taxes, and fees paid on the 95 pounds of imported material designated as the basis for the allowance of drawback on the exported article rather than on the 100 pounds ''used in'' or the 90 pounds ''appearing in'' as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A ''schedule'' shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages, or by actual weights and measurements. A schedule determines the amount of material that is needed to produce a unit of product, before the material is actually used in production.)

(An ''abstract'' is the summary of the records which shows the total quantity of merchandise used in producing all articles during the period covered by the abstract. The abstract looks at a period of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back at how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the ''schedule'' choice must base its claims on the ''abstract'' method. State which Basis and Method you will use. An example of Used In by Schedule would read:)

We will claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 190.8(f) of the CBP Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Neither the ''appearing in'' basis nor the ''schedule'' method for claiming drawback may be used where the relative value procedure is required.)

AGREEMENTS

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, the persons who will sign drawback documents, the basis of claim used for calculating drawback, the decision to use or not to use an agent under §190.9 or the identity of an agent under that section, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to CBP Headquarters, all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by CBP Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this application and letter of approval.

Declaration of Official

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this ____ day of _____ 20 ___, makes this application binding on

_____

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By [4] _____

[4] Section 190.6(a) requires that applications for specific manufacturing drawback rulings be signed or electronically certified by any individual legally authorized to bind the person (or entity) for whom the application is signed or the owner of a sole proprietorship,

(Signature and Title)

(Print Name)

IV. FORMAT FOR APPLICATION FOR SPECIFIC MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(D)

COMPANY LETTERHEAD (Optional)

U.S. Customs and Border Protection, Entry Process and Duty Refunds Branch, Commercial and Trade Facilitation Division, Regulations and Rulings, Office of Trade, 90 K Street NE—10th Floor (Mail Stop 1177), Washington, DC 20229–1177.

Dear Sir or Madam: We, (Applicant's Name), a (State, e.g., Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, section 1313(d), and part 190 of the CBP Regulations. We request that CBP authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT

(Section 190.8(a) of the CBP Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback must apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under §190.7 of the CBP Regulations. CBP will not approve an application which shows an unincorporated division or company as the applicant (*see* §190.8(a)).)

LOCATION OF FACTORY

(Provide the address of the factory(s) where the process of manufacture or production will take place. Indicate if the factory is a different legal entity from the applicant, and indicate if the applicant is operating under an Agent's general manufacturing drawback ruling.)

PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS

(List persons legally authorized to bind the corporation who will sign drawback documents. Section 190.6 of the CBP Regulations permits only the president, vice president, secretary, treasurer, and any employee legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a customs power of attorney for the company may sign. A customs power of attorney may also be given to a licensed customs broker. This heading should be changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively (*see* footnote at end of this sample format for persons who may sign applications for specific manufacturing drawback rulings).)

GENERAL STATEMENT

(The exact material placed under this heading in individual cases will vary, but it should include such information as the type of business in which the manufacturer is engaged, whether the manufacturer is manufacturing for its own account or is performing the operation on a toll basis (including commission or conversion basis) for the account of others, whether the manufacturer is a direct exporter of its products or sells or delivers them to others for export, and whether drawback will be claimed by the manufacturer or by others.)

(If an agent is to be used, the applicant must state it will comply with T.D.s 55027(2) and 55207(1), and §190.9, as applicable, and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (*see* §190.7 and Appendix A), or an application for a specific manufacturing drawback ruling (*see* §190.8 and this Appendix B).)

(Regarding drawback operations conducted under §1313(d), the data may describe the flavoring extracts, medicinal, or toilet preparations (including perfumery) manufactured with the use of domestic tax-paid alcohol; and where such alcohol is obtained or purchased.)

TAX-PAID MATERIAL USED UNDER SECTION 1313(d)

(Describe or list the tax-paid material)

EXPORTED ARTICLES ON WHICH DRAWBACK WILL BE CLAIMED

(Name each article to be exported)

PROCESS OF MANUFACTURE OR PRODUCTION

(Drawback under §1313(d) is not allowable except where a manufacture or production exists. ''Manufacture or production'' is defined, for drawback purposes, in §190.2. In order to obtain drawback under §1313(d), it is essential for the applicant to show use in manufacture or production by providing a thorough description of the manufacturing process. Describe how the tax-paid material is processed into the export article.)

a full partner in a partnership, an individual acting on his or her own behalf, or, if a corporation, the president, a vice president, secretary, treasurer or employee legally authorized to bind the corporation. In addition, any employee of a business entity with a customs power of attorney filed may sign such an application, as may a licensed customs broker with a customs power of attorney.

WASTE

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a statement to that effect.)

(If waste occurs, state: (1) Whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a ''used in'' or ''appearing in'' basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered, but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of domestic tax-paid alcohol used in manufacturing. If the claim is based upon the quantity of domestic tax-paid alcohol appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation, does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what basis you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of domestic tax-paid alcohol used in producing the exported articles (less any valuable waste), state that you will keep records to establish the quantity and value of the waste recovered. *See* ''Basis of Claim for Drawback'' section below.)

STOCK IN PROCESS

(Some processes result in another type of residual material, namely, stock in process, which affects the allowance of drawback. Stock in process may exist when residual material resulting from a manufacturing or processing operation is reintroduced into a subsequent manufacturing or processing operation; e.g., trim pieces from a cast article. The effect of stock in process on a drawback claim is that the amount of drawback for the period in which the stock in process was withdrawn from the manufacturing or processing operation (or the manufactured article, if manufacturing or processing periods are not used) is reduced by the quantity of merchandise or drawback products used to produce the stock in process if the ''used in'' or ''used in less valuable waste'' methods are used (if the ''appearing in'' method is used, there will be no effect on the amount of drawback), and the quantity of merchandise or drawback products used to produce the stock in process is added to the merchandise or drawback products used in the subsequent manufacturing or production period (or the subsequently produced article)).

(If stock in process occurs and claims are to be based on stock in process, the application must include a statement to that effect. The application must also include a statement that the domestic tax-paid alcohol is considered to be used in manufacture at the time it was originally processed, so that the stock in process will not be included twice in the computation of the domestic tax-paid alcohol used to manufacture the finished articles on which drawback is claimed.)

LOSS OR GAIN (Separate and distinct from WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. If applicable, state the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured ''by weight'' unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state ''Not Applicable.'')

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. That the exported articles on which drawback is claimed were produced with the use of a particular lot (or lots) of domestic tax-paid alcohol, and

2. The quantity of domestic tax-paid alcohol[1] we used in producing the exported articles.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the tax has been paid on the domestic alcohol. Our records establishing our compliance with these requirements will be available for audit by CBP during business hours. We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19

[1] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles we produce.''

U.S.C. 1313(d) and part 190 of the CBP Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To help ensure compliance the following areas should be included in your discussion:)

RECEIPT AND RAW STOCK STORAGE RECORDS

MANUFACTURING RECORDS

FINISHED STOCK STORAGE RECORDS

BASIS OF CLAIM FOR DRAWBACK

(There are three different bases that may be used to claim drawback: (1) Used in; (2) appearing in; and (3) used in less valuable waste.)

(The ''used in'' basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the ''used in'' basis. Drawback is payable in the amount of 100% of the tax paid on the quantity of domestic alcohol used in the manufacture of flavoring extracts and medicinal or toilet preparation (including perfumery).)

(For example, if 100 gallons of alcohol, valued at $1.00 per gallon, were used in manufacture resulting in 10 gallons of irrecoverable or valueless waste, the 10 gallons of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 100% of the tax paid on the 100 gallons of domestic alcohol used to produce the exported articles.)

The ''appearing in'' basis may be used regardless of whether there is waste. If the ''appearing in'' basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the ''appearing in'' basis. Drawback is payable on 100% of the tax paid on the quantity of domestic alcohol which appears in the exported articles.

(Based on the previous example, drawback would be payable on the 90 gallons of domestic alcohol which actually went into the exported product (appearing in) rather than the 100 gallons used in as set forth previously.)

(The ''used in less valuable waste'' basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of domestic tax-paid alcohol. The value of the waste reduces the amount of drawback when claims are based on the ''used in less valuable waste'' basis. When valuable waste is incurred, the drawback allowance on the exported article is based on the quantity of tax-paid alcohol used to manufacture the exported articles, as reduced by the quantity of such alcohol which the value of the waste would replace.)

(Based on the previous examples, if the 10 gallons of waste had a value of $.50 per gallon, then the 10 gallons of waste, having a total value of $5.00, would be equivalent in value to 5 gallons of the tax-paid alcohol. Thus the value of the waste would replace 5 gallons of the alcohol used, and drawback is payable on 100% of the tax paid on 95 gallons of alcohol rather than on the 100 gallons ''used in'' or the 90 gallons ''appearing in'' as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A ''schedule'' shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount that will be needed to produce a unit of product before the material is actually used in production.)

(An ''abstract'' is the summary of the records which shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a period of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back at how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the ''schedule'' choice must base its claims on the ''abstract'' method. State which Basis and Method you will use. An example of Used In by schedule follows:)

We will claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 190.8(f) of the CBP Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Neither the ''appearing in'' basis nor the ''schedule'' method for claiming drawback

may be used where the relative value procedure is required.)

AGREEMENTS

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, the persons who will sign drawback documents, the basis of claim used for calculating drawback, the decision to use or not to use an agent under §190.9 or the identity of an agent under that section, the drawback office where claims will be filed under the ruling, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to CBP Headquarters, all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by CBP Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this application and letter of approval.

DECLARATION OF OFFICIAL

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this ____ day of _____ 20 ____, makes this application binding on

_____

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By[2] _____

(Signature and Title)

_____

(Print Name)

V. FORMAT FOR APPLICATION FOR SPECIFIC MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(G).

COMPANY LETTERHEAD (Optional)

U.S. Customs and Border Protection, Entry Process and Duty Refunds Branch, Commercial and Trade Facilitation Division, Regulations and Rulings, Office of Trade, 90 K Street NE—10th Floor (Mail Stop 1177), Washington, DC 20229–1177.

Dear Sir or Madam: We, (Applicant's Name), a (State, e.g., Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, section 1313(g), and part 190 of the CBP Regulations. We request that CBP authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT

(Section 190.8(a) of the CBP Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback must apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under §190.7 of the CBP Regulations. CBP will not approve an application which shows an unincorporated division or company as the applicant (*see* §190.8(a)).)

LOCATION OF FACTORY OR SHIPYARD

(Provide the address of the factory(s) or shipyard(s) at which the construction and equipment will take place. Indicate if the factory or shipyard is a different legal entity from the applicant, and indicate if the applicant is operating under an Agent's general manufacturing drawback ruling.)

PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS

(List persons legally authorized to bind the corporation who will sign drawback documents. Section 190.6 of the CBP Regulations permits only the president, vice president,

[2] Section 190.6(a) requires that applications for specific manufacturing drawback rulings be signed or electronically certified by any individual legally authorized to bind the person (or entity) for whom the application is signed or the owner of a sole proprietorship, a full partner in a partnership, an individual acting on his or her own behalf, or, if a corporation, the president, a vice president, secretary, treasurer or employee legally authorized to bind the corporation. In addition, any employee of a business entity with a customs power of attorney may sign such an application, as may a licensed customs broker with a customs power of attorney.

secretary, treasurer, and any employee legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a customs power of attorney for the company may sign. A customs power of attorney may also be given to a licensed customs broker. This heading should be changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively (*see* footnote at end of this sample format for persons who may sign applications for specific manufacturing drawback rulings).)

GENERAL STATEMENT

(The following questions must be answered:)

1. Who will be the importer of the merchandise? (If the applicant will not always be the importer, specify that the applicant understands its obligations to maintain records to support the transfer under 19 CFR 190.10, and its liability under 19 CFR 190.63.)

2. Who is the manufacturer?

(Is the applicant constructing and equipping for his own account or merely performing the operation on a toll basis for others?)

(If an agent is to be used, the applicant must state it will comply with T.D.s 55027(2) and 55207(1), and §190.9, as applicable, and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (*see* §190.7 and Appendix A), or an application for a specific manufacturing drawback ruling (*see* §190.8 and this Appendix B).)

3. Will the applicant be the drawback claimant? (State how the vessel will qualify for drawback under 19 U.S.C. 1313(g). Who is the foreign person or government for whom the vessel is being made or equipped?) (There must be included under this heading the following statement:

We are particularly aware of the terms of §190.76(a)(1), and subpart M of part 190 of the CBP Regulations, and will comply with these sections where appropriate.)

IMPORTED MERCHANDISE OR DRAWBACK PRODUCTS USED

(Describe the imported merchandise or drawback products.)

ARTICLES CONSTRUCTED AND EQUIPPED FOR EXPORT

(Name the vessel or vessels to be made with imported merchandise or drawback products.)

PROCESS OF CONSTRUCTION AND EQUIPMENT

(Provide a clear and concise description of the process of construction and equipment involved. The description should trace the flow of materials through the manufacturing process for the purpose of establishing physical identification of the imported merchandise or drawback products and of the articles resulting from the processing.)

WASTE

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a statement to that effect.)

(If waste occurs, state: (1) Whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a ''used in'' or ''appearing in'' basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered, but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of imported material used in manufacturing. If the claim is based upon the quantity of imported merchandise appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what basis you are using.)

(If you recover valuable waste, and you choose to claim on the basis of the quantity of merchandise used in producing the exported articles (less any valuable waste), state that you will keep records to establish the quantity and value of the waste recovered. *See* ''Basis of Claim for Drawback'' section below.)

LOSS OR GAIN (Separate and distinct from WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. If applicable, state the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured ''by weight'' unless otherwise specified. Loss or gain does

not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state ''Not Applicable.'')

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. That the exported article on which drawback is claimed was constructed and equipped with the use of a particular lot (or lots) of imported material; and

2. The quantity of imported merchandise[1] we used in producing the exported article.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Our records establishing our compliance with these requirements will be available for audit by CBP during business hours. We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313 and part 190 of the CBP Regulations as discussed under the heading ''PROCEDURES AND RECORDS MAINTAINED''. To help ensure compliance the following should be included in your discussion:)

RECEIPT AND RAW STOCK STORAGE RECORDS

CONSTRUCTION AND EQUIPMENT RECORDS

FINISHED STOCK STORAGE RECORDS

SHIPPING RECORDS

BASIS OF CLAIM FOR DRAWBACK

(There are three different bases that may be used to claim drawback: (1) Used in; (2) appearing in; and (3) used in less valuable waste.)

(The ''used in'' basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the ''used in'' basis. Drawback is payable in the amount of 99 percent of the duties, taxes, and fees, paid on the quantity of imported material used to construct and equip the exported article.)

(For example, if 100 pounds of material, valued at $1.00 per pound, were used in manufacture resulting in 10 pounds of irrecoverable or valueless waste, the 10 pounds of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 99% of the duties, taxes, and fees, paid on the 100 pounds of imported material used in constructing and equipping the exported articles.)

(The ''appearing in'' basis may be used regardless of whether there is waste. If the ''appearing in'' basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the ''appearing in'' basis. Drawback is payable on 99 percent of the duties, taxes, and fees, paid on the quantity of imported material which appears in the exported articles. ''Appearing in'' may not be used if multiple products are involved.)

(Based on the previous example, drawback would be payable on the 90 pounds of imported material which actually went into the exported product (appearing in) rather than the 100 pounds used in as set forth previously.)

(The ''used in less valuable waste'' basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of merchandise. The value of the waste reduces the amount of drawback when claims are based on the ''used in less valuable waste'' basis. When valuable waste is incurred, the drawback allowance on the exported article is based on the duties, taxes, and fees, paid on the quantity of imported material used to construct and equip the exported product, as reduced by the quantity of such material which the value of the waste would replace. In such a case, drawback is claimed on the quantity of eligible material actually used to produce the exported product, less the amount of such material which the value of the waste would replace. Note section 190.26(c) of the CBP Regulations.)

(Based on the previous examples, if the 10 pounds of waste had a value of $.50 per pound, then the 10 pounds of waste, having a total value of $5.00, would be equivalent in value to 5 pounds of the imported material. Thus the value of the waste would replace 5 pounds of the merchandise used, and drawback is payable on 99 percent of the duties, taxes, and fees, paid on the 95 pounds of imported material rather than on the 100 pounds ''used in'' or the 90 pounds ''appearing in'' as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A ''schedule'' shows the quantity of material used in producing each unit of product. The schedule method is usually employed

[1] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles we produce.''

when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount of material that is needed to produce a unit of product before the material is actually used in production.)

(An ''abstract' is the summary of the records which shows the total quantity of merchandise used in producing all articles during the period covered by the abstract. The abstract looks at a period of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back at how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the ''schedule'' choice must base its claims on the ''abstract' method. State which Basis and Method you will use. An example of Used In by Schedule would read:)

We will claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 190.8(f) of the CBP Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Neither the ''appearing in'' basis nor the ''schedule method for claiming drawback may be used where the relative value procedure is required.)

AGREEMENTS

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of liquidation of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, the persons who will sign drawback documents, the basis of claim used for calculating drawback, the decision to use or not to use an agent under §190.9 or the identity of an agent under that section, the drawback office where claims will be filed under the ruling, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to CBP Headquarters, all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by CBP Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to help ensure proper compliance with title 19, United States Code, section 1313, part 190 of the CBP Regulations and this application and letter of approval.

DECLARATION OF OFFICIAL

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this _____ day of _____ 20 ____, makes this application binding on

_____

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By [2]

(Signature and Title)

PART 191—DRAWBACK

Sec.

[2] Section 190.6(a) requires that applications for specific manufacturing drawback rulings be signed or electronically certified by any individual legally authorized to bind the person (or entity) for whom the application is signed or the owner of a sole proprietorship, a full partner in a partnership, an individual acting on his or her own behalf, or, if a corporation, the president, a vice president, secretary, treasurer or employee legally authorized to bind the corporation. In addition, any employee of a business entity with a customs power of attorney may sign such an application, as may a licensed customs broker with a customs power of attorney.

Subpart A—General Provisions

Subpart B—Manufacturing Drawback

Subpart C—Unused Merchandise Drawback

Subpart D—Rejected Merchandise

Subpart E—Completion of Drawback Claims

Subpart F—Verification of Claims

Subpart G—Exportation and Destruction

Subpart H—Liquidation and Protest of Drawback Entries

Subpart I—Waiver of Prior Notice of Intent To Export; Accelerated Payment of Drawback

Subpart J—Internal Revenue Tax on Flavoring Extracts and Medicinal or Toilet Preparations (Including Perfumery) Manufactured From Domestic Tax-Paid Alcohol

Subpart K—Supplies for Certain Vessels and Aircraft

Subpart L—Meats Cured With Imported Salt

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1313, 1624;
§ 191.84 also issued under 19 U.S.C. 1514;
§§ 191.111, 191.112 also issued under 19 U.S.C. 1309;
§§ 191.151(a)(1), 191.153, 191.157, 191.159 also issued under 19 U.S.C. 1557;
§§ 191.182–191.186 also issued under 19 U.S.C. 81c;
§§ 191.191–191.195 also issued under 19 U.S.C. 1593a.

SOURCE: T.D. 98–16, 63 FR 11006, Mar. 5, 1998, unless otherwise noted.

§ 191.0 Scope.

This part sets forth general provisions applicable to drawback claims and specialized provisions applicable to specific types of drawback claims filed under 19 U.S.C. 1313, prior to the February 24, 2016, amendments to the U.S. drawback law. Drawback claims may not be filed under this part after February 23, 2019. For drawback claims filed under 19 U.S.C. 1313, as amended, see part 190. Additional drawback provisions relating to the North American Free Trade Agreement (NAFTA) are contained in subpart E of part 181 of this chapter.

[USCBP–2018–0029, 83 FR 65064, Dec. 18, 2018]

§ 191.0a Claims filed under NAFTA.

Claims for drawback filed under the provisions of part 181 of this chapter shall be filed separately from claims filed under the provisions of this part.

Subpart A—General Provisions

§ 191.1 Authority of the Commissioner of CBP.

Pursuant to DHS Delegation number 7010.3, the Commissioner of CBP has the authority to prescribe, and pursuant to Treasury Department Order No. 100–16 (set forth in the appendix to part 0 of this chapter), the Secretary of the Treasury has the sole authority to approve, rules and regulations regarding drawback.

[USCBP–2018–0029, 83 FR 65064, Dec. 18, 2018]

§ 191.2 Definitions.

For the purposes of this part:

(a) *Abstract*. *Abstract* means the summary of the actual production records of the manufacturer.

(b) *Act*. *Act,* unless indicated otherwise, means the Tariff Act of 1930, as amended.

(c) *Certificate of delivery*. *Certificate of delivery* (see §191.10 of this part) means Customs Form 7552, or its electronic equivalent, Delivery Certificate for Purposes of Drawback, summarizing information contained in original documents, establishing:

(1) The transfer from one party (transferor) to another (transferee) of:

(i) Imported merchandise;

(ii) Substituted merchandise under 19 U.S.C. 1313(j)(2);

(iii) A qualified article under 19 U.S.C. 1313(p)(2)(A)(ii) from the manufacturer or producer to the exporter or under 1313(p)(2)(A)(iv) from the importer to the exporter; or

(iv) Drawback product;

(2) The identity of such merchandise or article as being that to which a potential right to drawback exists; and

(3) The assignment of drawback rights for the merchandise or article transferred from the transferor to the transferee.

(d) *Certificate of manufacture and delivery*. *Certificate of manufacture and delivery* (see §191.24 of this part) means Customs Form 7552, or its electronic equivalent, Delivery Certificate for Purposes of Drawback, summarizing information contained in original documents, establishing:

(1) The transfer of an article manufactured or processed under 19 U.S.C. 1313(a) or 1313(b) from one party (transferor) to another (transferee);

(2) The identity of such article as being that to which a potential right to drawback exists; and

(3) The assignment of drawback rights for the article transferred from the transferor to the transferee.

(e) *Commercially interchangeable merchandise*. *Commercially interchangeable merchandise* means merchandise which may be substituted under the substitution unused merchandise drawback law, §313(j)(2) of the Act, as amended (19 U.S.C. 1313(j)(2)) (see §191.32(b)(2) and (c) of this part), or under the provision for the substitution of finished petroleum derivatives, §313(p), as amended (19 U.S.C. 1313(p)).

(f) *Designated merchandise*. *Designated merchandise* means either eligible imported duty-paid merchandise or drawback products selected by the drawback claimant as the basis for a drawback claim under 19 U.S.C. 1313(b) or (j)(2), as applicable, or qualified articles selected by the claimant as the basis for drawback under 19 U.S.C. 1313(p).

(g) *Destruction*. *Destruction* means the complete destruction of articles or merchandise to the extent that they have no commercial value.

(h) *Direct identification drawback*. *Direct identification drawback* means drawback authorized either under §313(a) of the Act, as amended (19 U.S.C. 1313(a)), on imported merchandise used to manufacture or produce an article which is either exported or destroyed, or under §313(j)(1) of the Act, as amended (19 U.S.C. 1313(j)(1)), on imported merchandise exported, or destroyed under Customs supervision, without having been used in the United States (see also §§313(c), (e), (f), (g), (h), and (q)). Merchandise or articles may be identified for purposes of direct identification drawback by use of the accounting methods provided for in §191.14 of this subpart.

(i) *Drawback*. *Drawback* means the refund or remission, in whole or in part,

of a customs duty, fee or internal revenue tax which was imposed on imported merchandise under Federal law because of its importation, and the refund of internal revenue taxes paid on domestic alcohol as prescribed in 19 U.S.C. 1313(d) (see also §191.3 of this subpart).

(j) *Drawback claim. Drawback claim* means the drawback entry and related documents required by regulation which together constitute the request for drawback payment.

(k) *Drawback entry. Drawback entry* means the document containing a description of, and other required information concerning, the exported or destroyed article on which drawback is claimed. Drawback entries are filed on Customs Form 7551.

(l) *Drawback product.* A *drawback product* means a finished or partially finished product manufactured in the United States under the procedures in this part for manufacturing drawback. A drawback product may be exported, or destroyed under Customs supervision with a claim for drawback, or it may be used in the further manufacture of other drawback products by manufacturers or producers operating under the procedures in this part for manufacturing drawback, in which case drawback would be claimed upon exportation or destruction of the ultimate product. Products manufactured or produced from substituted merchandise (imported or domestic) also become ''drawback products'' when applicable substitution provisions of the Act are met. For purposes of §313(b) of the Act, as amended (19 U.S.C. 1313(b)), drawback products may be designated as the basis for drawback or deemed to be substituted merchandise (see §1313(b)). For a drawback product to be designated as the basis for drawback, the product must be associated with a certificate of manufacture and delivery (see §191.24 of this part).

(m) *Exportation; exporter*—(1) *Exportation. Exportation* means the severance of goods from the mass of goods belonging to this country, with the intention of uniting them with the mass of goods belonging to some foreign country. An exportation may be deemed to have occurred when goods subject to drawback are admitted into a foreign trade zone in zone-restricted status, or are laden upon qualifying aircraft or vessels as aircraft or vessel supplies in accordance with §309(b) of the Act, as amended (19 U.S.C. 1309(b)) (see §§10.59 through 10.65 of this chapter).

(2) *Exporter. Exporter* means that person who, as the principal party in interest in the export transaction, has the power and responsibility for determining and controlling the sending of the items out of the United States. In the case of ''deemed exportations'' (see paragraph (m)(1) of this section), the exporter means that person who, as the principal party in interest in the transaction deemed to be an exportation, has the power and responsibility for determining and controlling the transaction (in the case of aircraft or vessel supplies under 19 U.S.C. 1309(b), the party who has the power and responsibility for lading the vessel supplies on the qualifying aircraft or vessel).

(n) *Filing. Filing* means the delivery to Customs of any document or documentation, as provided for in this part, and includes electronic delivery of any such document or documentation.

(o) *Fungible merchandise or articles. Fungible merchandise or articles* means merchandise or articles which for commercial purposes are identical and interchangeable in all situations.

(p) *General manufacturing drawback ruling.* A *general manufacturing drawback ruling* means a description of a manufacturing or production operation for drawback and the regulatory requirements and interpretations applicable to that operation (see §191.7 of this subpart).

(q) *Manufacture or production. Manufacture or production* means:

(1) A process, including, but not limited to, an assembly, by which merchandise is made into a new and different article having a distinctive ''name, character or use''; or

(2) A process, including, but not limited to, an assembly, by which merchandise is made fit for a particular use even though it does not meet the requirements of paragraph (q)(1) of this section.

(r) *Multiple products. Multiple products* mean two or more products produced concurrently by a manufacture or production operation or operations.

(s) *Possession. Possession,* for purposes of substitution unused merchandise drawback (19 U.S.C. 1313(j)(2)), means physical or operational control of the merchandise, including ownership while in bailment, in leased facilities, in transit to, or in any other manner under the operational control of, the party claiming drawback.

(t) *Records. Records* include, but are not limited to, statements, declarations, documents and electronically generated or machine readable data which pertain to the filing of a drawback claim or to the information contained in the records required by Chapter 4 of Title 19, United States Code, in connection with the filing of a drawback claim and which are normally kept in the ordinary course of business (see 19 U.S.C. 1508).

(u) *Relative value. Relative value* means, except for purposes of §191.51(b), the value of a product divided by the total value of all products which are necessarily manufactured or produced concurrently in the same operation. Relative value is based on the market value, or other value approved by Customs, of each such product determined as of the time it is first separated in the manufacturing or production process. Market value is generally measured by the selling price, not including any packaging, transportation, or other identifiable costs, which accrue after the product itself is processed. Drawback law requires the apportionment of drawback to each such product based on its relative value at the time of separation.

(v) *Schedule.* A *schedule* means a document filed by a drawback claimant, under §313(a) or (b), as amended (19 U.S.C. 1313(a) or (b)), showing the quantity of imported or substituted merchandise used in or appearing in each article exported or destroyed for drawback.

(w) *Specific manufacturing drawback ruling.* A *specific manufacturing drawback ruling* means a letter of approval issued by Customs Headquarters in response to an application, by a manufacturer or producer for a ruling on a specific manufacturing or production operation for drawback, as described in the format used. Synopses of approved specific manufacturing drawback rulings are published in the Customs Bulletin with each synopsis being published under an identifying Treasury Decision. Specific manufacturing drawback rulings are subject to the provisions in part 177 of this chapter.

(x) *Substituted merchandise or articles. Substituted merchandise or articles* means merchandise or articles that may be substituted under 19 U.S.C. 1313(b), 1313(j)(2), or 1313(p) as follows:

(1) Under §1313(b), substituted merchandise must be of the same kind and quality as the imported designated merchandise or drawback product, that is, the imported designated merchandise or drawback products and the substituted merchandise must be capable of being used interchangeably in the manufacture or production of the exported or destroyed articles with no substantial change in the manufacturing or production process;

(2) Under §1313(j)(2), substituted merchandise must be commercially interchangeable with the imported designated merchandise; and

(3) Under §1313(p), a substituted article must be of the same kind and quality as the qualified article for which it is substituted, that is, the articles must be commercially interchangeable or described in the same 8-digit HTSUS tariff classification.

(y) *Verification. Verification* means the examination of any and all records, maintained by the claimant, or any party involved in the drawback process, which are required by the appropriate Customs officer to render a meaningful recommendation concerning the drawback claimant's conformity to the law and regulations and the determination of supportability, correctness, and validity of the specific claim or groups of claims being verified.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15288, Mar. 31, 1998, as amended by T.D. 01–18, 66 FR 9649, Feb. 9, 2001; CBP Dec. 15–14, 80 FR 61292, Oct. 13, 2015]]

§191.3 Duties, taxes, and fees subject or not subject to drawback.

(a) Duties and fees subject to drawback include:

(1) All ordinary Customs duties, including:

(i) Duties paid on an entry, or withdrawal from warehouse, for consumption for which liquidation has become final;

(ii) Estimated duties paid on an entry, or withdrawal from warehouse, for consumption, for which liquidation has not become final, subject to the conditions and requirements of § 191.81(b) of this subpart; and

(iii) Tenders of duties after liquidation of the entry, or withdrawal from warehouse, for consumption for which the duties are paid, subject to the conditions and requirements of § 191.81(c) of this part, including:

(A) Voluntary tenders (for purposes of this section, a ''voluntary tender'' is a payment of duties on imported merchandise in excess of duties included in the liquidation of the entry, or withdrawal from warehouse, for consumption, provided that the liquidation has become final and that the other conditions of this section and § 191.81 of this part are met);

(B) Tenders of duties in connection with notices of prior disclosure under 19 U.S.C. 1592(c)(4); and

(C) Duties restored under 19 U.S.C. 1592(d).

(2) Marking duties assessed under § 304(c), Tariff Act of 1930, as amended (19 U.S.C. 1304(c));

(3) Internal revenue taxes which attach upon importation (see § 101.1 of this chapter);

(4) Merchandise processing fees (see § 24.23 of this chapter) for unused merchandise drawback pursuant to 19 U.S.C. 1313(j), and drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv); and

(5) Harbor maintenance taxes (*see* § 24.24 of this chapter) for unused merchandise drawback pursuant to 19 U.S.C. 1313(j), and drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv).

(b) Duties and fees not subject to drawback include:

(1) Harbor maintenance taxes (*see* § 24.24 of this chapter) except where unused merchandise drawback pursuant to 19 U.S.C. 1313(j) or drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv) is claimed;

(2) Merchandise processing fees (*see* § 24.23 of this chapter), except where unused merchandise drawback pursuant to 19 U.S.C. 1313(j) or drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv) is claimed; and

(3) Antidumping and countervailing duties on merchandise entered, or withdrawn from warehouse, for consumption on or after August 23, 1988.

(c) No drawback shall be allowed when the identified merchandise, the designated imported merchandise, or the substituted other merchandise (when applicable), consists of an agricultural product which is duty-paid at the over-quota rate of duty established under a tariff-rate quota, except that:

(1) Agricultural products as described in this paragraph are eligible for drawback under 19 U.S.C. 1313(j)(1); and

(2) Tobacco otherwise meeting the description of agricultural products in this paragraph is eligible for drawback under 19 U.S.C. 1313(j)(1) or 19 U.S.C. 1313(a).

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 27489, May 19, 1998, as amended by T.D. 01–18, 66 FR 9649, Feb. 9, 2001; CBP Dec. 04–33, 69 FR 60083, Oct. 7, 2004; USCBP–2018–0029, 83 FR 65064, Dec. 18, 2018]

§ 191.4 Merchandise in which a U.S. Government interest exists.

(a) *Restricted meaning of Government.* A U.S. Government instrumentality operating with nonappropriated funds is considered a Government entity within the meaning of this section.

(b) *Allowance of drawback.* If the merchandise is sold to the U.S. Government, drawback shall be available only to the:

(1) Department, branch, agency, or instrumentality of the U.S. Government which purchased it; or

(2) Supplier, or any of the parties specified in § 191.82 of this part, provided the claim is supported by documentation signed by a proper officer of the department, branch, agency, or instrumentality concerned certifying that the right to drawback was reserved by the supplier or other parties with the knowledge and consent of the

department, branch, agency, or instrumentality.

(c) *Bond.* No bond shall be required when a United States Government entity claims drawback.

§ 191.5 Guantanamo Bay, insular possessions, trust territories.

Guantanamo Bay Naval Station is considered foreign territory for drawback purposes and, accordingly, drawback may be permitted on articles shipped there. Drawback is not allowed, except on claims made under 19 U.S.C. 1313(j)(1), on articles shipped to the U.S. Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Guam, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island. Puerto Rico is not considered foreign territory for drawback purposes and, accordingly, drawback may not be permitted on articles shipped there from elsewhere in the customs territory of the United States.

[USCBP–2018–0029, 83 FR 65064, Dec. 18, 2018]

§ 191.6 Authority to sign drawback documents.

(a) Documents listed in paragraph (b) of this section shall be signed only by one of the following:

(1) The president, a vice-president, secretary, treasurer, or any other employee legally authorized to bind the corporation;

(2) A full partner of a partnership;

(3) The owner of a sole proprietorship;

(4) Any employee of the business entity with a power of attorney;

(5) An individual acting on his or her own behalf; or

(6) A licensed Customs broker with a power of attorney.

(b) The following documents require execution in accordance with paragraph (a) of this section:

(1) Drawback entries;

(2) Certificates of delivery;

(3) Certificates of manufacture and delivery;

(4) Notices of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback;

(5) Certifications of exporters on bills of lading or evidence of exportation (see §§ 191.28 and 191.82 of this part); and

(6) Abstracts, schedules and extracts from monthly abstracts if not included as part of a drawback claim.

(c) The following documents (see also part 177 of this chapter) may be executed by one of the persons described in paragraph (a) of this section or by any other individual legally authorized to bind the person (or entity) for whom the document is executed:

(1) A letter of notification of intent to operate under a general manufacturing drawback ruling under § 191.7 of this part;

(2) An application for a specific manufacturing drawback ruling under § 191.8 of this part;

(3) A request for a nonbinding predetermination of commercial interchangeability under § 191.32(c) of this part;

(4) An application for waiver of prior notice under § 191.91 of this part;

(5) An application for approval of accelerated payment of drawback under § 191.92 of this part; and

(6) An application for certification in the Drawback Compliance Program under § 191.193 of this part.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15288, Mar. 31, 1998; 63 FR 27489, May 19, 1998]

§ 191.7 General manufacturing drawback ruling.

(a) *Purpose; eligibility.* General manufacturing drawback rulings are designed to simplify drawback for certain common manufacturing operations but do not preclude or limit the use of applications for specific manufacturing drawback rulings (see § 191.8). A manufacturer or producer engaged in an operation that falls within a published general manufacturing drawback ruling may submit a letter of notification of intent to operate under that general ruling. Where a separately-incorporated subsidiary of a parent corporation is engaged in manufacture or production for drawback, the subsidiary is the proper party to submit the letter of notification, and cannot operate under a letter of notification submitted by the parent corporation.

(b) *Procedures*—(1) *Publication.* General manufacturing drawback rulings are contained in appendix A to this part. As deemed necessary by Customs, new general manufacturing drawback

rulings will be issued as Treasury Decisions and added to the appendix thereafter.

(2) *Submission*—(i) *Where filed.* Letters of notification of intent to operate under a general manufacturing drawback ruling shall be submitted to any drawback office where drawback entries will be filed and liquidated, provided that the general manufacturing drawback ruling will be followed without variation. If there is any variation in the general manufacturing drawback ruling, the manufacturer or producer shall apply for a specific manufacturing drawback ruling under § 191.8 of this subpart.

(ii) *Copies.* Letters of notification of intent shall be submitted in duplicate unless claims are to be filed at more than one drawback office, in which case one additional copy of the letter of notification shall be filed for each additional office. Upon issuance of a letter of acknowledgment (paragraph (c)(1) of this section), the drawback office with which the letter of notification is submitted shall forward the additional copy to such additional office(s), with a copy of the letter of acknowledgment.

(3) *Information required.* Each manufacturer or producer submitting a letter of notification of intent to operate under a general manufacturing drawback ruling under this section must provide the following specific detailed information:

(i) Name and address of manufacturer or producer (if the manufacturer or producer is a separately-incorporated subsidiary of a corporation, the subsidiary corporation must submit a letter of notification in its own name);

(ii) In the case of a business entity, the names of the persons listed in § 191.6(a)(1) through (6) who will sign drawback documents;

(iii) Locations of the factories which will operate under the letter of notification;

(iv) Identity (by T.D. number and title) of the general manufacturing drawback ruling under which the manufacturer or producer will operate;

(v) Description of the merchandise and articles, unless specifically described in the general manufacturing drawback ruling;

(vi) Description of the manufacturing or production process, unless specifically described in the general manufacturing drawback ruling;

(vii) Basis of claim used for calculating drawback; and

(viii) IRS (Internal Revenue Service) number (with suffix) of the manufacturer or producer.

(c) *Review and action by CBP.* The drawback office to which the letter of notification of intent to operate under a general manufacturing drawback ruling was submitted shall review the letter of notification of intent.

(1) *Acknowledgment.* The drawback office shall promptly issue a letter of acknowledgment, acknowledging receipt of the letter of intent and authorizing the person to operate under the identified general manufacturing drawback ruling, subject to the requirements and conditions of that general manufacturing drawback ruling and the law and regulations, to the person who submitted the letter of notification if:

(i) The letter of notification is complete (*i.e.*, containing the information required in paragraph (b)(3) of this section);

(ii) The general manufacturing drawback ruling identified by the manufacturer or producer is applicable to the manufacturing or production process;

(iii) The general manufacturing drawback ruling identified by the manufacturer or producer is followed without variation; and

(iv) The described manufacturing or production process is a manufacture or production under § 191.2(q) of this subpart.

(2) *Computer-generated number.* With the letter of acknowledgment the drawback office shall include the unique computer-generated number assigned to the acknowledgment of the letter of notification of intent to operate. This number must be stated when the person files manufacturing drawback claims with Customs under the general manufacturing drawback ruling.

(3) *Non-conforming letters of notification of intent.* If the letter of notification of intent to operate does not meet the requirements of paragraph (c)(1) of

this section in any respect, the drawback office shall promptly and in writing specifically advise the person of this fact and why this is so. A letter of notification of intent to operate which is not acknowledged may be resubmitted to the drawback office with which it was initially submitted with modifications and/or explanations addressing the reasons given for non-acknowledgment, or the matter may be referred (by letter from the manufacturer or producer) to CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of International Trade).

(d) *Duration.* Acknowledged letters of notification under this section shall remain in effect under the same terms as provided for in §191.8(h) for specific manufacturing drawback rulings.

§ 191.8 Specific manufacturing drawback ruling.

(a) *Applicant.* Unless operating under a general manufacturing drawback ruling (see §191.7), each manufacturer or producer of articles intended to be claimed for drawback shall apply for a specific manufacturing drawback ruling. Where a separately-incorporated subsidiary of a parent corporation is engaged in manufacture or production for drawback, the subsidiary is the proper party to apply for a specific manufacturing drawback ruling, and cannot operate under any specific manufacturing drawback ruling approved in favor of the parent corporation.

(b) *Sample application.* Sample formats for applications for specific manufacturing drawback rulings are contained in appendix B to this part.

(c) *Content of application.* The application of each manufacturer or producer shall include the following information as applicable:

(1) Name and address of the applicant;

(2) Internal Revenue Service (IRS) number (with suffix) of the applicant;

(3) Description of the type of business in which engaged;

(4) Description of the manufacturing or production process, which shows how the designated and substituted merchandise are used to make the article that is to be exported or destroyed;

(5) In the case of a business entity, the names of persons listed in §191.6(a)(1) through (6) who will sign drawback documents;

(6) Description of the imported merchandise including specifications;

(7) Description of the exported article;

(8) Basis of claim for calculating manufacturing drawback;

(9) Summary of the records kept to support claims for drawback; and

(10) Identity and address of the recordkeeper if other than the claimant.

(d) *Submission.* An application for a specific manufacturing drawback ruling shall be submitted, in triplicate, to CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of International Trade). If drawback claims are to be filed under the ruling at more than one drawback office, one additional copy of the application shall be filed with CBP Headquarters for each additional office.

(e) *Review and action by CBP.* CBP Headquarters shall review the application for a specific manufacturing drawback ruling.

(1) *Approval.* If consistent with the drawback law and regulations, Customs Headquarters shall issue a letter of approval to the applicant and shall forward 1 copy of the application for the specific manufacturing drawback ruling to the appropriate drawback office(s) with a copy of the letter of approval. Synopses of approved specific manufacturing drawback rulings shall be published in the weekly Customs Bulletin with each synopsis being published under an identifying Treasury Decision (T.D.). Each specific manufacturing drawback ruling shall be assigned a unique computer-generated manufacturing number which shall be included in the letter of approval to the applicant from Customs Headquarters, shall appear in the published synopsis, and must be used when filing manufacturing drawback claims with Customs.

(2) *Disapproval.* If not consistent with the drawback law and regulations, CBP Headquarters shall promptly and in writing inform the applicant that the application cannot be approved and shall specifically advise the applicant

why this is so. A disapproved application may be resubmitted with modifications and/or explanations addressing the reasons given for disapproval, or the disapproval may be appealed to CBP Headquarters (Attention: Director, Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of International Trade).

(f) *Schedules and supplemental schedules.* When an application for a specific manufacturing drawback ruling states that drawback is to be based upon a schedule filed by the manufacturer or producer, the schedule will be reviewed by Customs Headquarters. The application may include a request for authorization for the filing of supplemental schedules with the drawback office where claims are filed.

(g) *Procedure to modify a specific manufacturing drawback ruling*—(1) *Supplemental application.* Except as provided for limited modifications in paragraph (g)(2) of this section, a manufacturer or producer desiring to modify an existing specific manufacturing drawback ruling shall submit a supplemental application for such a ruling to CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of International Trade). Such a supplemental application may, at the discretion of the manufacturer or producer, be in the form of the original application, or it may identify the specific manufacturing drawback ruling to be modified (by T.D. number and unique computer-generated number) and include only those paragraphs of the application to be modified, with a statement that all other paragraphs are unchanged and are incorporated by reference in the supplemental application.

(2) *Limited modifications.* (i) A supplemental application for a specific manufacturing drawback ruling shall be submitted to the drawback office(s) where claims are filed if the modifications are limited to:

(A) The location of a factory, or the addition of one or more factories where the methods followed and records maintained are the same as those at another factory operating under the existing specific manufacturing drawback ruling of the manufacturer or producer;

(B) The succession of a sole proprietorship, partnership or corporation to the operations of a manufacturer or producer;

(C) A change in name of the manufacturer or producer;

(D) A change in the persons who will sign drawback documents in the case of a business entity;

(E) A change in the basis of claim used for calculating drawback;

(F) A change in the decision to use or not to use an agent under §191.9 of this chapter, or a change in the identity of an agent under that section;

(G) A change in the drawback office where claims will be filed under the ruling (see paragraph (g)(2)(iii) of this section); or

(H) Any combination of the foregoing changes.

(ii) A limited modification, as provided for in this paragraph, shall contain only the modifications to be made, in addition to identifying the specific manufacturing drawback ruling and being signed by an authorized person. To effect a limited modification, the manufacturer or producer shall file with the drawback office(s) where claims are filed (with a copy to CBP Headquarters, Attention, Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of International Trade) a letter stating the modifications to be made. The drawback office shall promptly acknowledge, in writing, acceptance of the limited modifications, with a copy to CBP Headquarters, Attention, Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of International Trade.

(iii) To effect a change in the drawback office where claims will be filed, the manufacturer or producer shall file with the new drawback office where claims will be filed, a written application to file claims at that office, with a copy of the application and approval letter under which claims are currently filed. The manufacturer or producer shall provide a copy of the written application to file claims at the new drawback office to the drawback office where claims are currently filed.

(h) *Duration.* Subject to 19 U.S.C. 1625 and part 177 of this chapter, a specific manufacturing drawback ruling under

this section shall remain in effect indefinitely unless:

(1) No drawback claim or certificate of manufacture and delivery is filed under the ruling for a period of 5 years and notice of termination is published in the Customs Bulletin; or

(2) The manufacturer or producer to whom approval of the ruling was issued files a request to terminate the ruling, in writing, with Customs Headquarters.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15288, Mar. 31, 1998]

§ 191.9 Agency.

(a) *General.* An owner of the identified merchandise, the designated imported merchandise and/or the substituted other merchandise that is used to produce the exported articles may employ another person to do part, or all, of the manufacture or production under 19 U.S.C. 1313(a) or (b) and §191.2(q) of this subpart. For purposes of this section, such owner is the principal and such other person is the agent. Under 19 U.S.C. 1313(b), the principal shall be treated as the manufacturer or producer of merchandise used in manufacture or production by the agent. The principal must be able to establish by its manufacturing records, the manufacturing records of its agent(s), or the manufacturing records of both (or all) parties, compliance with all requirements of this part (see, in particular, §191.26 of this part).

(b) *Requirements*—(1) *Contract.* The manufacturer must establish that it is the principal in a contract between it and its agent who actually does the work on either the designated or substituted merchandise, or both, for the principal. The contract must include:

(i) Terms of compensation to show that the relationship is an agency rather than a sale;

(ii) How transfers of merchandise and articles will be recorded by the principal and its agent;

(iii) The work to be performed on the merchandise by the agent for the principal;

(iv) The degree of control that is to be exercised by the principal over the agent's performance of work;

(v) The party who is to bear the risk of loss on the merchandise while it is in the agent's custody; and

(vi) The period that the contract is in effect.

(2) *Ownership of the merchandise by the principal.* The records of the principal and/or the agent must establish that the principal had legal and equitable title to the merchandise before receipt by the agent. The right of the agent to assert a lien on the merchandise for work performed does not derogate the principal's ownership interest under this section.

(3) *Sales prohibited.* The relationship between the principal and agent must not be that of a seller and buyer. If the parties' records show that, with respect to the merchandise that is the subject of the principal-agent contract, the merchandise is sold to the agent by the principal, or the articles manufactured by the agent are sold to the principal by the agent, those records are inadequate to establish existence of a principal-agency relationship under this section.

(c) *Specific manufacturing drawback rulings; general manufacturing drawback rulings*—(1) *Owner.* An owner who intends to operate under the principal-agent procedures of this section must state that intent in any letter of notification of intent to operate under a general manufacturing drawback ruling filed under §191.7 of this subpart or in any application for a specific manufacturing drawback ruling filed under §191.8 of this subpart.

(2) *Agent.* Each agent operating under this section must have filed a letter of notification of intent to operate under a general manufacturing drawback ruling (see §191.7), for an agent, covering the articles manufactured or produced, or have obtained a specific manufacturing drawback ruling (see §191.8), as appropriate.

(d) *Certificate; Drawback entry; Certificate of manufacture and delivery*—(1) *Contents of certificate; when filing not required.* Principals and agents operating under this section are not required to file a certificate of delivery (for the merchandise transferred from the principal to the agent) or a certificate of manufacture and delivery (for the articles transferred from the agent to the principal). The principal for whom processing is conducted under this section shall file, with any drawback

claim or certificate of manufacture and delivery based on an article manufactured or produced under the principal-agent procedures in this section, a certificate, subject to the recordkeeping requirements of §§ 191.15 of this subpart and 191.26 of this part, certifying that upon request by Customs it can establish the following:

(i) Quantity, kind and quality of merchandise transferred from the principal to the agent;

(ii) Date of transfer of the merchandise from the principal to the agent;

(iii) Date of manufacturing or production operations performed by the agent;

(iv) Total quantity and description of merchandise appearing in or used in manufacturing or production operations performed by the agent;

(v) Total quantity and description of articles produced in manufacturing or production operations performed by the agent;

(vi) Quantity, kind and quality of articles transferred from the agent to the principal; and

(vii) Date of transfer of the articles from the agent to the principal.

(2) *Blanket certificate.* The certificate required under paragraph (d)(1) of this section may be a blanket certificate for a particular kind and quality of merchandise for a stated period.

§ 191.10 Certificate of delivery.

(a) *Purpose; when required.* A party who: imports and pays duty on imported merchandise; receives imported merchandise; in the case of 19 U.S.C. 1313(j)(2), receives imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise; or receives an article manufactured or produced under 19 U.S.C. 1313(a) and/or (b): may transfer such merchandise or manufactured article to another party. The party shall record this transfer by preparing and issuing in favor of such other party a certificate of delivery, certified by the importer or other party through whose possession the merchandise or manufactured article passed (see paragraph (c) of this section). A certificate of delivery issued with respect to the delivered merchandise or article:

(1) Documents the transfer of that merchandise or article;

(2) Identifies such merchandise or article as being that to which a potential right to drawback exists; and

(3) Assigns such right to the transferee (see § 191.82 of this part).

(b) *Required information.* The certificate of delivery must include the following information:

(1) The party to whom the merchandise or articles are delivered;

(2) Date of delivery;

(3) Import entry number;

(4) Quantity delivered;

(5) Total duty paid on, or attributable to, the delivered merchandise;

(6) Date certificate was issued;

(7) Date of importation;

(8) Port where import entry filed;

(9) Person from whom received;

(10) Description of the merchandise delivered;

(11) The HTSUS number with a minimum of 6 digits, for the designated imported merchandise (such HTSUS number shall be from the entry summary and other entry documentation for the merchandise unless the issuer of the certificate of delivery received the merchandise under another certificate of delivery, or a certificate of manufacture and delivery, in which case such HTSUS number shall be from the other certificate); and

(12) If the merchandise transferred is substituted for the designated imported merchandise under 19 U.S.C. 1313(j)(2), the HTSUS or Schedule B commodity number, with a minimum of 6 digits.

(c) *Intermediate transfer*—(1) *Imported merchandise.* If the imported merchandise was not delivered directly from the importer to the manufacturer, or from the importer to the exporter (or destroyer), each intermediate transfer of the imported merchandise shall be documented by means of a certificate of delivery issued in favor of the receiving party, and certified by the person through whose possession the merchandise passed.

(2) *Manufactured article.* If the article manufactured or produced under 19 U.S.C. 1313 (a) or (b) is not delivered directly from the manufacturer to the

exporter (or destroyer), each transfer after the transfer from the manufacturer (which shall be documented by means of a certificate of manufacture and delivery) shall be documented by means of a certificate of delivery, issued in favor of the receiving party, and certified by the person through whose possession the article passed.

(d) *Retention period; supporting records.* Records supporting the information required on the certificate(s) of delivery, as listed in paragraph (b) of this section, must be retained by the issuing party for 3 years from the date of payment of the related claim or longer period if required by law (see 19 U.S.C. 1508(c)(3)).

(e) *Retention; submission to Customs.* The certificate of delivery shall be retained by the party to whom the merchandise or article covered by the certificate was delivered. Customs may request the certificate from the claimant for the drawback claim based upon the certificate (see §§ 191.51, 191.52). If the certificate is requested by Customs, but is not provided by the claimant, the part of the drawback claim dependent on that certificate will be denied.

(f) *Warehouse transfer and withdrawals.* The person in whose name merchandise is withdrawn from a bonded warehouse shall be considered the importer for drawback purposes. No certificate of delivery is required covering prior transfers of merchandise while in a bonded warehouse.

§ 191.11 Tradeoff.

(a) *Exchanged merchandise.* To comply with §§ 191.21 and 191.22 of this part, the use of domestic merchandise taken in exchange for imported merchandise of the same kind and quality (as defined in § 191.2(x)(1) of this part for purposes of 19 U.S.C. 1313(b)) shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the transfer of the imported merchandise. This provision shall be known as tradeoff and is authorized by § 313(k) of the Act, as amended (19 U.S.C. 1313(k)).

(b) *Requirements.* Tradeoff must occur between two separate legal entities but it is not necessary that the entity exchanging the imported merchandise be the importer thereof. In addition, tradeoff must consist of an exchange of same kind and quality merchandise and nothing else (the exchange may be of different quantities of same kind and quality merchandise, but may not involve the payment or receipt of cash payments or other than same kind and quality merchandise). If the quantities of merchandise exchanged are different, the lesser quantity shall be the quantity available for drawback. If the quantity of domestic merchandise received is greater than the quantity of imported merchandise exchanged, the merchandise identified for drawback shall be the portion of the domestic merchandise equal to the quantity of imported merchandise which is first received.

(c) *Application.* Each would-be user of tradeoff, except those operating under an approved specific manufacturing drawback ruling covering substitution, must apply to the Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of International Trade, CBP Headquarters, for a determination of whether the imported and domestic merchandise are of the same kind and quality. For those users manufacturing under substitution drawback, this request should be contained in the application for a specific manufacturing drawback ruling (§ 191.8). For those users manufacturing under a general manufacturing drawback ruling (§ 191.7), the request should be made by a separate letter.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15288, Mar. 31, 1998]

§ 191.12 Claim filed under incorrect provision.

A drawback claim filed pursuant to any provision of § 313 of the Act, as amended (19 U.S.C. 1313) may be deemed filed pursuant to any other provision thereof should the drawback office determine that drawback is not allowable under the provision as originally filed, but that it is allowable under such other provision. To be allowable under such other provision, the claim must meet each of the requirements of such provision. The claimant may raise alternative provisions prior to liquidation or by protest.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15288, Mar. 31, 1998]

§ 191.13 Packaging materials.

(a) *Imported packaging material.* Drawback of duties is provided in § 313(q)(1) of the Act, as amended (19 U.S.C. 1313(q)(1)), on imported packaging material when used to package or repackage merchandise or articles exported or destroyed pursuant to § 313(a), (b), (c), or (j) of the Act, as amended (19 U.S.C. 1313(a), (b), (c), or (j)). Drawback is payable on the packaging material pursuant to the particular drawback provision to which the packaged goods themselves are subject. The drawback will be based on the duty, tax or fee paid on the importation of the packaging material. The packaging material must be separately identified on the claim, and all other information and documents required for the particular drawback provision under which the claim is made shall be provided for the packaging material.

(b) *Packaging material manufactured in United States from imported materials.* Drawback of duties is provided in § 313(q)(2) of the Act, as amended (19 U.S.C. 1313(q)(2)), on packaging material that is manufactured or produced in the United States from imported materials and used to package or repackage articles that are exported or destroyed under § 313(a) or (b) of the Act, as amended (19 U.S.C. 1313(a) or (b)). Drawback is payable on the packaging material under the particular manufacturing drawback provision to which the packaged articles themselves are subject, either 19 U.S.C. 1313(a) or (b), as applicable. The drawback will be based on the duty, tax, or fee that is paid on the imported merchandise used to manufacture or produce the packaging material. The packaging material and the imported merchandise used in its manufacture or production must be separately identified on the claim, and all other information and documents required for the particular drawback provision under which the claim is made must be provided for the packaging material as well as the imported merchandise used in its manufacture or production, for purposes of determining the applicable drawback payable.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998, as amended by T.D. 02–16, 67 FR 16637, Apr. 8, 2002]

§ 191.14 Identification of merchandise or articles by accounting method.

(a) *General.* This section provides for the identification of merchandise or articles for drawback purposes by the use of accounting methods. This section applies to identification of merchandise or articles in inventory or storage, as well as identification of merchandise used in manufacture or production (see § 191.2(h) of this subpart). This section is not applicable to situations in which the drawback law authorizes substitution (substitution is allowed in specified situations under 19 U.S.C. 1313(b), 1313(j)(2), 1313(k), and 1313(p); this section does apply to situations in these subsections in which substitution is not allowed, as well as to the subsections of the drawback law under which no substitution is allowed). When substitution is authorized, merchandise or articles may be substituted without reference to this section, under the criteria and conditions specifically authorized in the statutory and regulatory provisions providing for the substitution.

(b) *Conditions and criteria for identification by accounting method.* Manufacturers, producers, claimants, or other appropriate persons may identify for drawback purposes lots of merchandise or articles under this section, subject to each of the following conditions and criteria:

(1) The lots of merchandise or articles to be so identified must be fungible (see § 191.2(o) of this part);

(2) The person using the identification method must be able to establish that inventory records (for example, material control records), prepared and used in the ordinary course of business, account for the lots of merchandise or articles to be identified as being received into and withdrawn from the same inventory. Even if merchandise or articles are received or withdrawn at different geographical locations, if such inventory records treat receipts or withdrawals as being from the same inventory, those inventory records may be used to identify the merchandise or articles under this section, subject to the conditions of this section. If any such inventory records (that is, inventory records prepared and used in the ordinary course of business) treat

receipts and withdrawals as being from different inventories, those inventory records must be used and receipts into or withdrawals from the different inventories may not be accounted for together. If units of merchandise or articles can be specifically identified (for example, by serial number), the merchandise or articles must be specifically identified and may not be identified by accounting method, unless it is established that inventory records, prepared and used in the ordinary course of business, treat the merchandise or articles to be identified as being received into and withdrawn from the same inventory (subject to the above conditions);

(3) Unless otherwise provided in this section or specifically approved by Customs (by a binding ruling under part 177 of this chapter), all receipts (or inputs) into and all withdrawals from the inventory must be recorded in the accounting record;

(4) The records which support any identification method under this section are subject to verification by Customs (see § 191.61 of this part). If Customs requests such verification, the person using the identification method must be able to demonstrate how, under generally accepted accounting procedures, the records which support the identification method used account for all merchandise or articles in, and all receipts into and withdrawals from, the inventory, and the drawback per unit for each receipt and withdrawal; and

(5) Any accounting method which is used by a person for drawback purposes under this section must be used without variation with other methods for a period of at least one year, unless approval is given by Customs for a shorter period.

(c) *Approved accounting methods.* The following accounting methods are approved for use in the identification of merchandise or articles for drawback purposes under this section.

(1) *First-in, first-out (FIFO)*—(i) *General.* The FIFO method is the method by which fungible merchandise or articles are identified by recordkeeping on the basis of the first merchandise or articles received into the inventory. Under this method, withdrawals are from the oldest (first-in) merchandise or articles in the inventory at the time of withdrawal.

(ii) *Example.* If the beginning inventory is zero, 100 units with $1 drawback attributable per unit are received in inventory on the 2nd of the month, 50 units with no drawback attributable per unit are received into inventory on the 5th of the month, 75 units are withdrawn for domestic (non-export) shipment on the 10th of the month, 75 units with $2 drawback attributable per unit are received in inventory on the 15th of the month, 100 units are withdrawn for export on the 20th of the month, and no other receipts or withdrawals occurred in the month, the drawback attributable to the 100 units withdrawn for export on the 20th is a total of $75 (25 units from the receipt on the 2nd with $1 drawback attributable per unit, 50 units from the receipt on the 5th with no drawback attributable per unit, and 25 units from the receipt on the 15th with $2 drawback attributable per unit). The basis of the foregoing and the effects on the inventory of the receipts and withdrawals, and balance in the inventory thereafter are as follows: On the 2nd of the month the receipt of 100 units ($1 drawback/unit) results in a balance of that amount; the receipt of 50 units ($0 drawback/unit) on the 5th results in a balance of 150 units (100 with $1 drawback/unit and 50 with $0 drawback/unit); the withdrawal on the 10th of 75 units ($1 drawback/unit) results in a balance of 75 units (25 with $1 drawback/unit and 50 with $0 drawback/unit); the receipt of 75 units ($2 drawback/unit) on the 15th results in a balance of 150 units (25 with $1 drawback/unit, 50 with $0 drawback/unit, and 75 with $2 drawback/unit); the withdrawal on the 20th of 100 units (25 with $1 drawback/unit, 50 with $0 drawback/unit, and 25 with $2 drawback unit) results in a balance of 50 units (all 50 with $2 drawback/unit).

(2) *Last-in, first out (LIFO)*—(i) *General.* The LIFO method is the method by which fungible merchandise or articles are identified by recordkeeping on the basis of the last merchandise or articles received into the inventory. Under this method, withdrawals are from the newest (last-in) merchandise

or articles in the inventory at the time of withdrawal.

(ii) *Example.* In the example in paragraph (c)(1)(ii) of this section, the drawback attributable to the 100 units withdrawn for export on the 20th is a total of $175 (75 units from the receipt on the 15th with $2 drawback attributable per unit and 25 units from the receipt on the 2nd with $1 drawback attributable per unit). The basis of the foregoing and the effects on the inventory of the receipts and withdrawals, and balance in the inventory thereafter are as follows: On the 2nd of the month the receipt of 100 units ($1 drawback/unit) results in a balance of that amount; the receipt of 50 units ($0 drawback/unit) on the 5th results in a balance of 150 units (100 with $1 drawback/unit and 50 with $0 drawback/unit); the withdrawal on the 10th of 75 units (50 with $0 drawback/unit and 25 with $1 drawback/unit) results in a balance of 75 units (all with $1 drawback/unit); the receipt of 75 units ($2 drawback/unit) on the 15th results in a balance of 150 units (75 with $1 drawback/unit and 75 with $2 drawback/unit); the withdrawal on the 20th of 100 units (75 with $2 drawback/unit and 25 with $1 drawback/unit) results in a balance of 50 units (all 50 with $1 drawback/unit).

(3) *Low-to-high*—(i) *General.* The low-to-high method is the method by which fungible merchandise or articles are identified by recordkeeping on the basis of the lowest drawback amount per unit of the merchandise or articles in inventory. Merchandise or articles with no drawback attributable to them (for example, domestic merchandise or duty-free merchandise) must be accounted for and are treated as having the lowest drawback attributable to them. Under this method, withdrawals are from the merchandise or articles with the least amount of drawback attributable to them, then those with the next higher amount, and so forth. If the same amount of drawback is attributable to more than one lot of merchandise or articles, withdrawals are from the oldest (first-in) merchandise or articles among those lots with the same amount of drawback attributable. Drawback requirements are applicable to withdrawn merchandise or articles as identified (for example, if the merchandise or articles identified were attributable to an import more than 5 years (more than 3 years for unused merchandise drawback) before the claimed export, no drawback could be granted).

(ii) *Ordinary*—(A) *Method.* Under the ordinary low-to-high method, all receipts into and all withdrawals from the inventory are recorded in the accounting record and accounted for so that each withdrawal, whether for export or domestic shipment, is identified by recordkeeping on the basis of the lowest drawback amount per unit of the merchandise or articles available in the inventory.

(B) *Example.* In this example, the beginning inventory is zero, and receipts into and withdrawals from the inventory are as follows:

Date	Receipt ($ per unit)	Withdrawals
Jan. 2	100 (zero).	
Jan. 5	50 ($1.00).	
Jan. 15		50 (export).
Jan. 20	50 ($1.01).	
Jan. 25	50 ($1.02).	
Jan. 28		50 (domestic).
Jan. 31	50 ($1.03).	
Feb. 5		100 (export).
Feb. 10	50 ($.95).	
Feb. 15		50 (export).
Feb. 20	50 (zero).	
Feb. 23		50 (domestic).
Feb. 25	50 ($1.05).	
Feb. 28		100 (export).
Mar. 5	50 ($1.06).	
Mar. 10	50 ($.85).	
Mar. 15		50 (export).
Mar. 21		50 (domestic).
Mar. 20	50 ($1.08).	
Mar. 25	50 ($.90).	
Mar. 31		100 (export).

The drawback attributable to the January 15 withdrawal for export is zero (the available receipt with the lowest drawback amount per unit is the January 2 receipt), the drawback attributable to the January 28 withdrawal for domestic shipment (no drawback) is zero (the remainder of the January 2 receipt), the drawback attributable to the February 5 withdrawal for export is $100.50 (the January 5 and January 20 receipts), the drawback attributable to the February 15 withdrawal for export is $47.50 (the February 10 receipt), the drawback attributable to the February 23 withdrawal for domestic shipment (no

drawback) is zero (the February 20 receipt), the drawback attributable to the February 28 withdrawal for export is $102.50 (the January 25 and January 31 receipts), the drawback attributable to the March 15 withdrawal for export is $42.50 (the March 10 receipt), the drawback attributable to the March 21 withdrawal for domestic shipment (no drawback) is $52.50 (the February 25 receipt), and the drawback attributable to the March 31 withdrawal for export is $98.00 (the March 25 and March 5 receipts). Remaining in inventory is the March 20 receipt of 50 units ($1.08 drawback/unit). Total drawback attributable to withdrawals for export in this example would be $391.00.

(iii) *Low-to-high method with established average inventory turn-over period*—(A) *Method.* Under the low-to-high method with established average inventory turn-over period, all receipts into and all withdrawals for export are recorded in the accounting record and accounted for so that each withdrawal is identified by recordkeeping on the basis of the lowest drawback amount per available unit of the merchandise or articles received into the inventory in the established average inventory turn-over period preceding the withdrawal.

(B) *Accounting for withdrawals (for domestic shipments and for export).* Under this method, domestic withdrawals (withdrawals for domestic shipment) are not accounted for and do not affect the available units of merchandise or articles. All withdrawals for export must be accounted for whether or not drawback is available or claimed on the withdrawals. Once a withdrawal for export is made and accounted for under this method, the merchandise or articles withdrawn are no longer available for identification.

(C) *Establishment of inventory turn-over period.* For purposes of this section, average inventory turn-over period is based on the rate of withdrawal from inventory and represents the time in which all of the merchandise or articles in the inventory at a given time must have been withdrawn. To establish an average of this time, at least 1 year, or three (3) turn-over periods (if inventory turns over less than 3 times per year), must be averaged. The inventory turn-over period must be that for the merchandise or articles to be identified, except that if the person using the method has more than one kind of merchandise or articles with different inventory turn-over periods, the longest average turn-over period established under this section may be used (instead of using a different inventory turn-over period for each kind of merchandise or article).

(D) *Example.* In the example in paragraph (c)(3)(ii)(B) of this section (but, as required for this method, without accounting for domestic withdrawals, and with an established average inventory turn-over period of 30 days), the drawback attributable to the January 15 withdrawal for export is zero (the available receipt in the preceding 30 days with the lowest amount of drawback is the January 2 receipt, of which 50 units will remain after the withdrawal), the drawback attributable to the February 5 withdrawal for export is $101.50 (the January 20 and January 25 receipts), the drawback attributable to the February 15 withdrawal for export is $47.50 (the February 10 receipt), the drawback attributable to the February 28 withdrawal for export is $51.50 (the February 20 and January 31 receipts), the drawback attributable to the March 15 withdrawal for export is $42.50 (the March 10 receipt), and the drawback attributable to the March 31 withdrawal for export is $98.00 (the March 25 and March 5 receipts). No drawback may be claimed on the basis of the January 5 receipt or the February 25 receipt because in the case of each, there were insufficient withdrawals for export within the established average inventory turn-over period; the 50 units remaining from the January 2 receipt after the January 15 withdrawal are not identified for a withdrawal for export because there is no other withdrawal for export (other than the January 15 withdrawal) within the established average inventory turn-over period; the March 20 receipt (50 units at $1.08) is not yet attributed to withdrawals for export. Total drawback attributable to withdrawals for export in this example would be $341.00.

(iv) *Low-to-high blanket method*—(A) *Method.* Under the low-to-high blanket

method, all receipts into and all withdrawals for export are recorded in the accounting record and accounted for so that each withdrawal is identified by recordkeeping on the basis of the lowest drawback amount per available unit of the merchandise or articles received into inventory in the period preceding the withdrawal equal to the statutory period for export under the kind of drawback involved (e.g., 180 days under 19 U.S.C. 1313(p), 3 years under 19 U.S.C. 1313(c) and 1313(j), and 5 years otherwise under 19 U.S.C. 1313(i)). Drawback requirements are applicable to withdrawn merchandise or articles as identified (for example, if the merchandise or articles identified were attributable to an import more than 5 years (more than 3 years for 19 U.S.C. 1313(j); more than 180 days after the date of import or after the close of the manufacturing period for 19 U.S.C. 1313(p)) before the claimed export, no drawback could be granted).

(B) *Accounting for withdrawals (for domestic shipments and for export).* Under this method, domestic withdrawals (withdrawals for domestic shipment) are not accounted for and do not affect the available units of merchandise or articles. All withdrawals for export must be accounted for whether or not drawback is available or claimed on the withdrawals. Once a withdrawal for export is made and accounted for under this method, the merchandise or articles withdrawn are no longer available for identification.

(C) *Example.* In the example in paragraph (c)(3)(ii)(B) of this section (but, as required for this method, without accounting for domestic withdrawals), the drawback attributable to the January 15 withdrawal for export is zero (the available receipt in the inventory with the lowest amount of drawback is the January 2 receipt, of which 50 units will remain after the withdrawal), the drawback attributable to the February 5 withdrawal for export is $50.00 (the remainder of the January 2 receipt and the January 5 receipt), the drawback attributable to the February 15 withdrawal for export is $47.50 (the February 10 receipt), the drawback attributable to the February 28 withdrawal for export is $50.50 (the February 20 and January 20 receipts), the drawback attributable to the March 15 withdrawal for export is $42.50 (the March 10 receipt), and the drawback attributable to the March 31 withdrawal for export is $96.00 (the March 25 and January 25 receipts). Receipts not attributed to withdrawals for export are the January 31 (50 units at $1.03), February 25 (50 units at $1.05), March 5 (50 units at $1.06), and March 20 (50 units at $1.08) receipts. Total drawback attributable to withdrawals for export in this example would be $286.50.

(4) *Average*—(i) *General.* The average method is the method by which fungible merchandise or articles are identified on the basis of the calculation by recordkeeping of the amount of drawback that may be attributed to each unit of merchandise or articles in the inventory. In this method, the ratio of:

(A) The total units of a particular receipt of the fungible merchandise in the inventory at the time of a withdrawal to;

(B) The total units of all receipts of the fungible merchandise (including each receipt into inventory) at the time of the withdrawal;

(C) Is applied to the withdrawal, so that the withdrawal consists of a proportionate quantity of units from each particular receipt and each receipt is correspondingly decreased. Withdrawals and corresponding decreases to receipts are rounded to the nearest whole number.

(ii) *Example.* In the example in paragraph (c)(1)(ii) of this section, the drawback attributable to the 100 units withdrawn for export on the 20th is a total of $133 (50 units from the receipt on the 15th with $2 drawback attributable per unit, 33 units from the receipt on the 2nd with $1 drawback attributable per unit, and 17 units from the receipt on the 5th with $0 drawback attributable per unit). The basis of the foregoing and the effects on the inventory of the receipts and withdrawals, and balance in the inventory thereafter are as follows: On the 2nd of the month the receipt of 100 units ($1 drawback/unit) results in a balance of that amount; the receipt of 50 units ($0 drawback/unit) on the 5th results in a balance of 150 units (100 with $1 drawback/unit and 50 with $0 drawback/unit); the withdrawal on the 10th of 75

units (50 with $1 drawback/unit (applying the ratio of 100 units from the receipt on the 2nd to the total of 150 units at the time of withdrawal) and 25 with $0 drawback/unit (applying the ratio of 50 units from the receipt on the 5th to the total of 150 units at the time of withdrawal)) results in a balance of 75 units (with 50 with $1 drawback/unit and 25 with $0 drawback/unit, on the basis of the same ratios); the receipt of 75 units ($2 drawback/unit) on the 15th results in a balance of 150 units (50 with $1 drawback/unit, 25 with $0 drawback/unit, and 75 with $2 drawback/unit); the withdrawal on the 20th of 100 units (50 with $2 drawback/unit (applying the ratio of the 75 units from the receipt on the 15th to the total of 150 units at the time of withdrawal), 33 with $1 drawback/unit (applying the ratio of the 50 units remaining from the receipt on the 2nd to the total of 150 units at the time of withdrawal, and 17 with $0 drawback/unit (applying the ratio of the 25 units remaining from the receipt on the 5th to the total of 150 units at the time of withdrawal)) results in a balance of 50 units (25 with $2 drawback/unit, 17 with $1 drawback/unit, and 8 with $0 drawback/unit, on the basis of the same ratios).

(5) *Inventory turn-over for limited purposes.* A properly established average inventory turn-over period, as provided for in paragraph (c)(3)(iii)(C) of this section, may be used to determine:

(i) The fact and date(s) of use in manufacture or production of the imported designated merchandise and other (substituted) merchandise (see 19 U.S.C. 1313(b)); or

(ii) The fact and date(s) of manufacture or production of the finished articles (see 19 U.S.C. 1313(a) and (b)).

(d) *Approval of other accounting methods.* (1) Persons proposing to use an accounting method for identification of merchandise or articles for drawback purposes which has not been previously approved for such use (see paragraph (c) of this section), or which includes modifications from the methods listed in paragraph (c) of this section, may seek approval by Customs of the proposed accounting method under the provisions for obtaining an administrative ruling (see part 177 of this chapter). The conditions applied and the criteria used by Customs in approving such an alternative accounting method, or a modification of one of the approved accounting methods, will be the criteria in paragraph (b) of this section, as well as those in paragraph (d)(2) of this section.

(2) In order for a proposed accounting method to be approved by Customs for purposes of this section, it shall meet the following criteria:

(i) For purposes of calculations of drawback, the proposed accounting method must be either revenue neutral or favorable to the Government; and

(ii) The proposed accounting method should be:

(A) Generally consistent with commercial accounting procedures, as applicable for purposes of drawback;

(B) Consistent with inventory or material control records used in the ordinary course of business by the person proposing the method; and

(C) Easily administered by both Customs and the person proposing the method.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15288, Mar. 31, 1998; 63 FR 27489, May 19, 1998]

§ 191.15 Recordkeeping.

Pursuant to 19 U.S.C. 1508(c)(3), all records which pertain to the filing of a drawback claim or to the information contained in the records required by 19 U.S.C. 1313 in connection with the filing of a drawback claim shall be retained for 3 years after payment of such claims or longer period if required by law (under 19 U.S.C. 1508, the same records may be subject to a different period for different purposes).

Subpart B—Manufacturing Drawback

§ 191.21 Direct identification drawback.

Section 313(a) of the Act, as amended (19 U.S.C. 1313(a)), provides for drawback upon the exportation, or destruction under Customs supervision, of articles which are not used in the United States prior to their exportation or destruction, and which are manufactured or produced in the United States wholly or in part with the use of particular imported, duty-paid merchandise and/

or drawback product(s). Where two or more products result, drawback shall be distributed among the products in accordance with their relative value (see §191.2(u)) at the time of separation. Merchandise may be identified for drawback purposes under 19 U.S.C. 1313(a) in the manner provided for and prescribed in §191.14 of this part.

§191.22 Substitution drawback.

(a) *General.* If imported, duty-paid, merchandise and any other merchandise (whether imported or domestic) of the same kind and quality are used in the manufacture or production of articles within a period not to exceed 3 years from the receipt of the imported merchandise by the manufacturer or producer of the articles, then upon the exportation, or destruction under Customs supervision, of any such articles, without their having been used in the United States prior to such exportation or destruction, drawback is provided for in §313(b) of the Act, as amended (19 U.S.C. 1313(b)), even though none of the imported, duty-paid merchandise may have been used in the manufacture or production of the exported or destroyed articles. The amount of drawback allowable cannot exceed that which would have been allowable had the merchandise used therein been the imported, duty-paid merchandise. For purposes of drawback of internal revenue tax imposed under Chapters 32, 38, 51, and 52 of the Internal Revenue Code of 1986, as amended (IRC), drawback granted on the export or destruction of substituted merchandise will be limited to the amount of taxes paid (and not returned by refund, credit, or drawback) on the substituted merchandise.

(b) *Use by same manufacturer or producer at different factory.* Duty-paid merchandise or drawback products used at one factory of a manufacturer or producer within 3 years after the date on which the material was received by the manufacturer or producer may be designated as the basis for drawback on articles manufactured or produced in accordance with these regulations at other factories of the same manufacturer or producer.

(c) *Designation.* A manufacturer or producer may designate any eligible imported merchandise or drawback product which it has used in manufacture or production.

(d) *Designation by successor; 19 U.S.C. 1313(s)*—(1) *General rule.* Upon compliance with the requirements in this section and under 19 U.S.C. 1313(s), a drawback successor as defined in paragraph (d)(2) of this section may designate merchandise or drawback product used by a predecessor before the date of succession as the basis for drawback on articles manufactured or produced by the successor after the date of succession.

(2) *Drawback successor.* A ''drawback successor'' is a manufacturer or producer to whom another entity (predecessor) has transferred, by written agreement, merger, or corporate resolution:

(i) All or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor; or

(ii) The assets and other business interests of a division, plant, or other business unit of such predecessor, provided that the value of the transferred assets and interests (realty, personalty, and intangibles, exclusive of the drawback rights) exceeds the value of such drawback rights, whether vested or contingent.

(3) *Certifications and required evidence*—(i) *Records of predecessor.* The predecessor or successor must certify that the successor is in possession of the predecessor's records which are necessary to establish the right to drawback under the law and regulations with respect to the merchandise or drawback product.

(ii) *Merchandise not otherwise designated.* The predecessor or successor must certify in an attachment to the claim, that the predecessor has not designated and will not designate, nor enable any other person to designate, such merchandise or product as the basis for drawback.

(iii) *Value of transferred property.* In instances in which assets and other business interests of a division, plant, or other business unit of a predecessor are transferred, the predecessor or successor must specify, and maintain supporting records to establish, the value of the drawback rights and the value of all other transferred property.

(iv) *Review by Customs.* The written agreement, merger, or corporate resolution, provided for in paragraph (d)(2) of this section, and the records and evidence provided for in paragraph (d)(3)(i) through (iii) of this section, must be retained by the appropriate party(s) for 3 years from the date of payment of the related claim and are subject to review by Customs upon request.

(e) *Multiple products*—(1) *General.* Where two or more products are produced concurrently in a substitution manufacturing operation, drawback shall be distributed to each product in accordance with its relative value (see §191.2(u)) at the time of separation.

(2) *Claims covering a manufacturing period.* Where the claim covers a manufacturing period rather than a manufacturing lot, the entire period covered by the claim is the time of separation of the products and the value per unit of product is the market value for the period (see §191.2(u) of this part). Manufacturing periods in excess of one month may not be used without specific approval of Customs.

(3) *Recordkeeping.* Records shall be maintained showing the relative value of each product at the time of separation.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998, as amended by USCBP–2018–0029, 83 FR 65064, Dec. 18, 2018]

§191.23 Methods of claiming drawback.

(a) *Used in.* Drawback may be paid based on the amount of the imported or substituted merchandise used in the manufacture of the exported article, where there is no waste or the waste is valueless or unrecoverable. This method must be used when multiple products also necessarily and concurrently result from the manufacturing process, and there is no valuable waste (see paragraph (c) of this section).

(b) *Appearing in.* Drawback is allowable under this method based only on the amount of imported or substituted merchandise that appears in (is contained in) the exported articles. This method may not be used if there are multiple products also necessarily and concurrently resulting from the manufacturing process.

(c) *Used in less valuable waste.* Drawback is allowable under this method based on the quantity of merchandise or drawback products used to manufacture the exported or destroyed article, reduced by an amount equal to the quantity of this merchandise that the value of the waste would replace. This method must be used when multiple products also necessarily and concurrently result from the manufacturing process, and there is valuable waste.

(d) *Abstract or schedule.* A drawback claimant may use either the abstract or schedule method to show the quantity of material used or appearing in the exported or destroyed article. An abstract is the summary of records which shows the total quantity used in or appearing in all articles produced during the period covered by the abstract. A schedule shows the quantity of material used in producing, or appearing in, each unit of product. Manufacturers or producers submitting letters of notification of intent to operate under a general manufacturing drawback ruling (see §191.7) and applicants for approval of specific manufacturing drawback rulings (see §191.8) shall state whether the abstract or schedule method is used; if no such statement is made, drawback claims must be based upon the abstract method.

(e) *Recordkeeping*—(1) *Valuable waste.* When the waste has a value and the drawback claim is not limited to the quantity of imported or substituted merchandise or drawback products appearing in the exported or destroyed articles claimed for drawback, the manufacturer or producer shall keep records to show the market value of the merchandise or drawback products used to manufacture or produce the exported or destroyed articles, as well as the market value of the resulting waste, under the used in less valuable waste method (see §191.2(u) of this part).

(2) *If claim for waste is waived.* If claim for waste is waived, only the ''appearing in'' basis may be used (see paragraph (b) of this section). Waste

records need not be kept unless required to establish the quantity of imported duty-paid merchandise or drawback products appearing in the exported or destroyed articles claimed for drawback.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15288, Mar. 31, 1998]

§ 191.24 Certificate of manufacture and delivery.

(a) *When required.* When an article or drawback product manufactured or produced under a general manufacturing drawback ruling or a specific manufacturing drawback ruling is transferred from the manufacturer or producer to another party, a certificate of manufacture and delivery shall be prepared and certified by the manufacturer.

(b) *Information required on certificate.* The following information shall be required on the certificate of manufacture and delivery executed by the manufacturer or producer:

(1) The person to whom the article or drawback product is delivered;

(2) If the article or drawback product was manufactured or produced under a general manufacturing drawback ruling, the unique computer-generated number assigned to the letter of acknowledgment for that ruling, and if the article or drawback product was manufactured or produced under a specific manufacturing drawback ruling, either the unique computer number or the T.D. number for that ruling;

(3) The quantity, kind and quality of imported, duty-paid merchandise or drawback product designated;

(4) Import entry numbers, HTSUS number for the imported merchandise to at least the 6th digit (such HTSUS number shall be from the entry summary and other entry documentation for the imported, duty-paid merchandise unless the issuer of the certificate of manufacture and delivery received the merchandise under another certificate (either of delivery or of manufacture and delivery), in which case such HTSUS number shall be from the other certificate), and applicable duty amounts;

(5) Date received at factory;

(6) Date used in manufacture;

(7) Value at factory, if applicable;

(8) Quantity of waste, if any, if applicable;

(9) Market value of any waste, if applicable;

(10) Total quantity and description of merchandise appearing in or used;

(11) Total quantity and description of articles produced;

(12) Date of manufacture or production of the articles;

(13) The quantity of articles transferred; and

(14) The person from whom the article or drawback product is delivered.

(c) *Filing of certificate.* The certificate of manufacture and delivery shall be filed with the drawback claim it supports (unless previously filed) (see § 191.51 of this part).

(d) *Effect of certificate.* A certificate of manufacture and delivery documents the delivery of articles from the manufacturer or producer to another party, identifies such articles as being those to which a potential right to drawback exists, and assigns such potential rights to the transferee (see also § 191.82 of this part).

§ 191.25 Destruction under Customs supervision.

A claimant may destroy merchandise and obtain manufacturing drawback by complying with the procedures set forth in § 191.71 of this part relating to destruction.

§ 191.26 Recordkeeping for manufacturing drawback.

(a) *Direct identification manufacturing*—(1) *Records required.* Each manufacturer or producer under 19 U.S.C. 1313(a) shall keep records to allow the verifying Customs official to trace all articles manufactured or produced for exportation or destruction with drawback, from importation, through production, to exportation or destruction. To this end, these records shall specifically establish:

(i) The date or inclusive dates of manufacture or production;

(ii) The quantity and identity of the imported duty-paid merchandise or drawback products used in or appearing in (see § 191.23) the articles manufactured or produced;

(iii) The quantity, if any, of the non-drawback merchandise used, when

these records are necessary to determine the quantity of imported duty-paid merchandise or drawback product used in the manufacture or production of the exported or destroyed articles or appearing in them;

(iv) The quantity and description of the articles manufactured or produced;

(v) The quantity of waste incurred, if applicable; and

(vi) That the finished articles on which drawback is claimed were exported or destroyed within 5 years after the importation of the duty-paid merchandise, without having been used in the United States prior to such exportation or destruction. (If the completed articles were commingled after manufacture, their identity may be maintained in the manner prescribed in §191.14 of this part.)

(2) *Accounting.* The merchandise and articles to be exported or destroyed shall be accounted for in a manner which will enable the manufacturer, producer, or claimant:

(i) To determine, and the Customs official to verify, the applicable import entry, certificate of delivery, and/or certificate of manufacture and delivery associated with the claim; and

(ii) To identify with respect to that import entry, certificate of delivery, and/or certificate of manufacture and delivery, the imported duty-paid merchandise or drawback products used in manufacture or production.

(b) *Substitution manufacturing.* The records of the manufacturer or producer of articles manufactured or produced in accordance with 19 U.S.C. 1313(b) shall establish the facts in paragraph (a)(1)(i), (iv) through (vi) of this section, and:

(1) The quantity, identity, and specifications of the merchandise designated (imported duty-paid, or drawback product);

(2) The quantity, identity, and specifications of merchandise of the same kind and quality as the designated merchandise before its use to manufacture or produce (or appearing in) the exported or destroyed articles;

(3) That, within 3 years after receiving the designated merchandise at its plant, the manufacturer or producer used it in manufacturing or production and that during the same 3-year period it manufactured or produced the exported or destroyed articles; and

(4) If the designated merchandise is a chemical element that was contained in imported material that was subject to an *ad valorem* rate of duty, and a substitution drawback claim is made based on that chemical element:

(i) The duty paid on the imported material must be apportioned among its constituent components. The claim on the chemical element that is the designated merchandise must be limited to the duty apportioned to that element on a unit-for-unit attribution using the unit of measure set forth in the Harmonized Tariff Schedule of the United States (HTSUS) that is applicable to the imported material. If the material is a compound with other constituents, including impurities, and the purity of the compound in the imported material is shown by satisfactory analysis, that purity, converted to a decimal equivalent of the percentage, is multiplied against the entered amount of the material to establish the amount of pure compound. The amount of the element in the pure compound is to be determined by use of the atomic weights of the constituent elements and converting to the decimal equivalent of their respective percentages and multiplying that decimal equivalent against the above-determined amount of pure compound.

(ii) The amount claimed as drawback based on the chemical element must be deducted from the duty paid on the imported material that may be claimed on any other drawback claim.

Example to paragraph (b)(4): Synthetic rutile that is shown by appropriate analysis in the entry papers to be 91.7% pure titanium dioxide is imported and dutiable at a 5% *ad valorem* duty rate. The amount of imported synthetic rutile is 30,000 pounds with an entered value of $12,000. The total duty paid is $600. Titanium in the synthetic rutile is designated as the basis for a drawback claim under 19 U.S.C. 1313(b). The amount of titanium dioxide in the synthetic rutile is determined by converting the purity percentage (91.7%) to its decimal equivalent (.917) and multiplying the entered amount of synthetic rutile (30,000 pounds) by that decimal equivalent (.917 × 30,000 = 27,510 pounds of titanium dioxide contained in the 30,000 pounds of imported synthetic rutile). The titanium, based on atomic weight, represents 59.93% of the

constituents in titanium dioxide. Multiplying that percentage, converted to its decimal equivalent, by the amount of titanium dioxide determines the titanium content of the imported synthetic rutile (.5993 × 27,510 pounds of titanium dioxide = 16,486.7 pounds of titanium contained in the imported synthetic rutile). Therefore, up to 16,486.7 pounds of titanium is available to be designated as the basis for drawback. As the per-unit duty paid on the synthetic rutile is calculated by dividing the duty paid ($600) by the amount of imported synthetic rutile (30,000 pounds), the per-unit duty is two cents of duty per pound of the imported synthetic rutile ($600 ÷ 30,000 = $0.02). The duty on the titanium is calculated by multiplying the amount of titanium contained in the imported synthetic rutile by two cents of duty per pound (16,486.7 × $0.02 = $329.73 duty apportioned to the titanium). The product is then multiplied by 99% to determine the maximum amount of drawback available ($329.73 × .99 = $326.44). If an exported titanium alloy ingot weighs 17,000 pounds, in which 16,000 pounds of titanium was used to make the ingot, drawback is determined by multiplying the duty per pound ($0.02) by the weight of the titanium contained in the ingot (16,000 pounds) to calculate the duty available for drawback ($0.02 × 16,000 = $320.00). Because only 99% of the duty can be claimed, drawback is determined by multiplying this available duty amount by 99% (.99 × $320.00 = $316.80). As the oxygen content of the titanium dioxide is 45% of the synthetic rutile, if oxygen is the designated merchandise on another drawback claim, 45% of the duty claimed on the synthetic rutile would be available for drawback based on the substitution of oxygen.

(c) *Valuable waste records.* When waste has a value and the manufacturer, producer, or claimant, has not limited the claims based on the quantity of imported or substituted merchandise appearing in the articles exported or destroyed, the manufacturer or producer shall keep records to show the market value of the merchandise used to manufacture or produce the exported or destroyed article, as well as the quantity and market value of the waste incurred (see §191.2(u) of this part). In such records, the quantity of merchandise identified or designated for drawback, under 19 U.S.C. 1313(a) or 1313(b), respectively, shall be based on the quantity of merchandise actually used to manufacture or produce the exported or destroyed articles. The waste replacement reduction will be determined by reducing from the quantity of merchandise actually used the amount of merchandise which the value of the waste would replace.

(d) *Purchase of manufactured articles for exportation.* Where the claimant purchases articles from the manufacturer and exports them, the claimant shall file the related certificate of manufacture and delivery as part of the claim (see §191.51(a)(1) of this part).

(e) *Multiple claimants*—(1) *General.* Multiple claimants may file for drawback with respect to the same export (for example, if an automobile is exported, where different parts of the automobile have been produced by different manufacturers under drawback conditions and the exporter waives the right to claim drawback and assigns such right to the manufacturers under §191.82 of this part).

(2) *Procedures*—(i) *Submission of letter.* Each drawback claimant shall file a separate letter, as part of the claim, describing the component article on the export bill of lading to which each claim will relate. Each letter shall show the name of the claimant and bear a statement that the claim shall be limited to its respective component article. The exporter shall endorse the letters, as required, to show the respective interests of the claimants.

(ii) *Blanket waivers and assignments of drawback rights.* Exporters may waive and assign their drawback rights for all, or any portion, of their exportations with respect to a particular commodity for a given period to a drawback claimant.

(iii) *Use of export summary procedure.* If the parties elect to use the export summary procedure (§191.73 of this part) each drawback claimant shall complete a chronological summary of exports for the respective component product to which each claim will relate. Each claimant shall identify in the chronological summary the name of the other claimant(s) and the component product for which each will independently claim drawback, if known at the time the drawback claim is filed. The exporter shall endorse the summaries, as required, to show the respective interests of the claimants. Each claimant shall have on file and

make available to Customs upon request, the endorsement from the exporter assigning the right to claim drawback.

(f) *Retention of records.* Pursuant to 19 U.S.C. 1508(c)(3), all records required to be kept by the manufacturer, producer, or claimant with respect to drawback claims, and records kept by others to complement the records of the manufacturer, producer, or claimant with respect to drawback claims shall be retained for 3 years after the date of payment of the related claims (under 19 U.S.C. 1508, the same records may be subject to a different retention period for different purposes).

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998, as amended by T.D. 02–38, 67 FR 48370, July 24, 2002; CBP Dec. 03–23, 68 FR 50703, Aug. 22, 2003]

§ 191.27 Time limitations.

(a) *Direct identification manufacturing.* Drawback shall be allowed on imported merchandise used to manufacture or produce articles that are exported or destroyed under Customs supervision within 5 years after importation of the merchandise identified to support the claim.

(b) *Substitution manufacturing.* Drawback shall be allowed on the imported merchandise if the following conditions are met:

(1) The designated merchandise is used in manufacture or production within 3 years after receipt by the manufacturer or producer at its factory;

(2) Within the 3-year period described in paragraph (b)(1) of this section, the exported or destroyed articles, or drawback products, were manufactured or produced; and

(3) The completed articles must be exported or destroyed under Customs supervision within 5 years of the date of importation of the designated merchandise, or within 5 years of the earliest date of importation associated with a drawback product.

(c) *Drawback claims filed before specific or general manufacturing drawback ruling approved or acknowledged.* Drawback claims may be filed before the letter of notification of intent to operate under a general manufacturing drawback ruling covering the claims is acknowledged (§ 191.7), or before the specific manufacturing drawback ruling covering the claims is approved (§ 191.8), but no drawback shall be paid until such acknowledgement or approval, as appropriate.

§ 191.28 Person entitled to claim drawback.

The exporter (or destroyer) shall be entitled to claim drawback, unless the exporter (or destroyer), by means of a certification, assigns the right to claim drawback to the manufacturer, producer, importer, or intermediate party. Such certification shall also affirm that the exporter (or destroyer) has not and will not itself claim drawback or assign the right to claim drawback on the particular exportation or destruction to any other party. The certification provided for under this section may be a blanket certification for a stated period. Drawback is paid to the claimant, who may be the manufacturer, producer, intermediate party, importer, or exporter (destroyer).

Subpart C—Unused Merchandise Drawback

§ 191.31 Direct identification.

(a) *General.* Section 313(j)(1) of the Act, as amended (19 U.S.C. 1313(j)(1)), provides for drawback upon the exportation or destruction under Customs supervision of imported merchandise upon which was paid any duty, tax, or fee imposed under Federal law because of its importation, if the merchandise has not been used within the United States before such exportation or destruction.

(b) *Time of exportation or destruction.* Drawback shall be allowed on imported merchandise if, before the close of the 3-year period beginning on the date of importation, the merchandise is exported from the United States or destroyed under Customs supervision.

(c) *Operations performed on imported merchandise.* In cases in which an operation or operations is or are performed on the imported merchandise, the performing of any operation or combination of operations, not amounting to manufacture or production under the provisions of the manufacturing drawback law, on the imported merchandise

is not a use of that merchandise for purposes of this section.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15288, Mar. 31, 1998]

§ 191.32 Substitution drawback.

(a) *General.* Section 313(j)(2) of the Act, as amended (19 U.S.C. 1313(j)(2)), provides for drawback on merchandise which is commercially interchangeable with imported merchandise if the commercially interchangeable merchandise is exported, or destroyed under Customs supervision, before the close of the 3-year period beginning on the date of importation of the imported merchandise, and before such exportation or destruction, the commercially interchangeable merchandise is not used in the United States (see paragraph (e) of this section) and is in the possession of the party claiming drawback.

(b) *Requirements.* (1) The claimant must have possessed the substituted merchandise that was exported or destroyed, as provided in paragraph (d)(1) of this section;

(2) The substituted merchandise must be commercially interchangeable with the imported merchandise that is designated for drawback;

(3) The substituted merchandise exported or destroyed must not have been used in the United States before its exportation or destruction (see paragraph (e) of this section); and

(4) For purposes of drawback of internal revenue tax imposed under Chapters 32, 38 (with the exception of Subchapter A of Chapter 38), 51, and 52 of the Internal Revenue Code of 1986, as amended (IRC), drawback granted on the export or destruction of substituted merchandise will be limited to the amount of taxes paid (and not returned by refund, credit, or drawback) on the substituted merchandise.

(c) *Determination of commercial interchangeability.* In determining commercial interchangeability, Customs shall evaluate the critical properties of the substituted merchandise and in that evaluation factors to be considered include, but are not limited to, Governmental and recognized industrial standards, part numbers, tariff classification and value. A party may seek a nonbinding predetermination of commercial interchangeability directly from the appropriate drawback office. A determination of commercial interchangeability can be obtained in one of two ways:

(1) A formal ruling from the Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of International Trade; or

(2) A submission of all the required documentation necessary to make a commercial interchangeability determination with each individual drawback claim filed.

(d) *Time limitations.* For substitution unused merchandise drawback:

(1) The claimant must have had possession of the exported or destroyed merchandise at some time during the 3-year period following the date of importation of the imported designated merchandise; and

(2) The merchandise to be exported or destroyed to qualify for drawback must be exported, or destroyed under Customs supervision, before the close of the 3-year period beginning on the date of importation of the imported designated merchandise.

(e) *Operations performed on substituted merchandise.* In cases in which an operation or operations is or are performed on the substituted merchandise, the performing of any operation or combination of operations, not amounting to manufacture or production under the provisions of the manufacturing drawback law, on the commercially interchangeable substituted merchandise is not a use of that merchandise for purposes of this section.

(f) *Designation by successor; 19 U.S.C. 1313(s)*—(1) *General rule.* Upon compliance with the requirements of this section and under 19 U.S.C. 1313(s), a drawback successor as defined in paragraph (f)(2) of this section may designate either of the following as the basis for drawback on merchandise possessed by the successor after the date of succession:

(i) Imported merchandise which the predecessor, before the date of succession, imported; or

(ii) Imported and/or commercially interchangeable merchandise which was transferred to the predecessor and for which the predecessor received, before the date of succession, a certificate of delivery from the person who

imported and paid duty on the imported merchandise.

(2) *Drawback successor*. A ''drawback successor'' is an entity to which another entity (predecessor) has transferred, by written agreement, merger, or corporate resolution:

(i) All or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor; or

(ii) The assets and other business interests of a division, plant, or other business unit of such predecessor, provided that the value of the transferred assets and interests (realty, personality, and intangibles, exclusive of the drawback rights) exceeds the value of such drawback rights, whether vested or contingent.

(3) *Certifications and required evidence*—(i) *Records of predecessor*. The predecessor or successor must certify in an attachment to the drawback claim that the successor is in possession of the predecessor's records which are necessary to establish the right to drawback under the law and regulations with respect to the imported and/or commercially interchangeable merchandise.

(ii) *Merchandise not otherwise designated*. The predecessor or successor must certify in an attachment to the drawback claim, that the predecessor has not and will not designate, nor enable any other person to designate, the imported and/or commercially interchangeable merchandise as the basis for drawback.

(iii) *Value of transferred property*. In instances in which assets and other business interests of a division, plant, or other business unit of a predecessor are transferred, the predecessor or successor must specify, and maintain supporting records to establish, the value of the drawback rights and the value of all other transferred property.

(iv) *Review by Customs*. The written agreement, merger, or corporate resolution, provided for in paragraph (f)(2) of this section, and the records and evidence provided for in paragraph (f)(3)(i) through (iii) of this section, must be retained by the appropriate party(ies) for 3 years from the date of payment of the related claim and are subject to review by Customs upon request.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15288, Mar. 31, 1998, as amended by USCBP–2018–0029, 83 FR 65064, Dec. 18, 2018]

§ 191.33 Person entitled to claim drawback.

(a) *Direct identification*. (1) Under 19 U.S.C. 1313(j)(1), the exporter (or destroyer) shall be entitled to claim drawback.

(2) The exporter or destroyer may waive the right to claim drawback and assign such right to the importer or any intermediate party. A drawback claimant under 19 U.S.C. 1313(j)(1) other than the exporter or destroyer shall secure and retain a certification signed by the exporter or destroyer that such party waived the right to claim drawback, and did not and will not authorize any other party to claim the exportation or destruction for drawback (see §191.82 of this part). The certification provided for under this section may be a blanket certification for a stated period. The claimant shall file such certification at the time of, or prior to, the filing of the claim(s) covered by the certification.

(b) *Substitution*. (1) Under 19 U.S.C. 1313(j)(2), the following parties may claim drawback:

(i) In situations where the exporter or destroyer of the substituted merchandise is also the importer of the imported merchandise, that party shall be entitled to claim drawback.

(ii) In situations where the exporter or destroyer receives from the person who imported and paid the duty on the imported merchandise a certificate of delivery documenting the transfer of imported merchandise, commercially interchangeable merchandise, or any combination of imported and commercially interchangeable merchandise, and exports or destroys such transferred merchandise, that exporter or destroyer shall be entitled to claim drawback. (Any such transferred merchandise, regardless of its origin, will be treated as imported merchandise for purposes of drawback under §1313(j)(2), and any retained merchandise will be treated as domestic merchandise.)

(iii) In situations where the transferred merchandise described in paragraph (b)(1)(ii) of this section is the subject of further transfer(s), such transfer(s) shall be documented by certificate(s) of delivery, and the exporter or destroyer shall be entitled to claim drawback (multiple substitutions are not permitted).

(2) The exporter or destroyer may waive the right to claim drawback and assign such right to the importer or to any intermediate party, provided that the claimant had possession of the substituted merchandise prior to its exportation or destruction. A drawback claimant under 19 U.S.C. 1313(j)(2) other than the exporter or destroyer shall secure and retain a certification signed by the exporter or destroyer that such party waived the right to claim drawback, and did not and will not authorize any other party to claim the exportation or destruction for drawback (see §191.82 of this part). The certification provided for under this section may be a blanket certification for a stated period. The claimant shall file such certification at the time of, or prior to, the filing of the claim(s) covered by the certification.

§191.34 Certificate of delivery required.

(a) *Direct identification; purpose; when required.* If the exported or destroyed merchandise claimed for drawback under 19 U.S.C. 1313(j)(1) was not imported by the exporter or destroyer, a properly executed certificate of delivery must be prepared by the importer and each intermediate party. Each such transfer of the merchandise must be documented by its own certificate of delivery.

(1) *Completion.* The certificate of delivery shall be completed as provided in §191.10 of this part. Each party must also certify on the certificate of delivery that the party did not use the transferred merchandise (see §191.31(c) of this part).

(2) *Retention; submission to Customs.* The certificate of delivery shall be retained by the party to whom the merchandise or article covered by the certificate was delivered. Customs may request the certificate from the claimant for the drawback claim based upon the certificate (see §§191.51, 191.52). If the certificate is requested by Customs, but is not provided by the claimant, the part of the drawback claim dependent on that certificate will be denied.

(b) *Substitution.* For purposes of substitution unused merchandise drawback, 19 U.S.C. 1313(j)(2), if the importer, or a party who received imported merchandise and a certificate of delivery for that imported merchandise, directly or indirectly, from the importer, transfers to another party imported merchandise, duty-paid merchandise, commercially interchangeable merchandise, or any combination thereof, the transferor shall prepare and issue in favor of such party a certificate of delivery covering the transferred merchandise. The certificate of delivery must expressly state that it is prepared pursuant to 19 U.S.C. 1313(j)(2). Merchandise so transferred for which drawback is allowed under 19 U.S.C. 1313(j)(2) may not be designated for any other drawback purposes. Each transfer, whether of the imported merchandise or of imported merchandise, duty-paid merchandise, commercially interchangeable merchandise, or any combination thereof, must be documented by its own certificate of delivery. Certificates of delivery under this paragraph are subject to the provisions for completion and retention of certificates of delivery in paragraphs (a)(1) and (a)(2) of this section.

(c) *Warehouse transfer and withdrawals.* The person in whose name merchandise is withdrawn from a bonded warehouse shall be considered the importer for drawback purposes. No certificate of delivery need be prepared covering prior transfers of merchandise while in a bonded warehouse, because such transfers will be recorded in the warehouse entry (see §144.22 of this chapter).

§191.35 Notice of intent to export; examination of merchandise.

(a) *Notice.* A notice of intent to export merchandise which may be the subject of an unused merchandise drawback claim (19 U.S.C. 1313(j)) must be provided to the Customs Service to give Customs the opportunity to examine the merchandise. The claimant, or the exporter, must file at the port of

intended examination a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on Customs Form 7553 at least 2 working days prior to the date of intended exportation unless Customs approves another filing period or the claimant has been granted a waiver of prior notice (see §191.91 of this part).

(b) *Required Information.* The notice shall certify that the merchandise has not been used in the United States before exportation. In addition, the notice shall provide the bill of lading number, if known, the name and telephone number, mailing address, and, if available, fax number and e-mail address of a contact person, and the location of the merchandise.

(c) *Decision to examine or to waive examination.* Within two (2) working days after receipt of the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback (see paragraph (a) of this section), Customs will notify the party designated on the Notice in writing of Customs decision to either examine the merchandise to be exported, or to waive examination. If Customs timely notifies the designated party, in writing, of its decision to examine the merchandise (see paragraph (d) of this section), but the merchandise is exported without having been presented to Customs for examination, any drawback claim, or part thereof, based on the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback shall be denied. If Customs notifies the designated party, in writing, of its decision to waive examination of the merchandise, or, if timely notification of a decision by Customs to examine or to waive examination is absent, the merchandise may be exported without delay.

(d) *Time and place of examination.* If Customs gives timely notice of its decision to examine the export merchandise, the merchandise to be examined shall be promptly presented to Customs. Customs shall examine the merchandise within five (5) working days after presentation of the merchandise. The merchandise may be exported without examination if Customs fails to timely examine the merchandise after presentation to Customs. If the examination is completed at a port other than the port of actual exportation, the merchandise shall be transported in-bond to the port of exportation.

(e) *Extent of examination.* The appropriate Customs office may permit release of merchandise without examination, or may examine routinely (to the extent determined to be necessary) the items exported.

§191.36 Failure to file Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback.

(a) *General; application.* Merchandise which has been exported without complying with the requirements of §191.35(a) or §191.91 of this part may be eligible for unused merchandise drawback under 19 U.S.C. 1313(j) subject to the following conditions:

(1) *Application.* The claimant must file a written application with the drawback office where the drawback claims will be filed. Such application shall include the following:

(i) Required information.

(A) Name, address, and Internal Revenue Service (IRS) number (with suffix) of applicant;

(B) Name, address, and Internal Revenue Service (IRS) number(s) (with suffix) of exporter(s), if applicant is not the exporter;

(C) Export period covered by this application;

(D) Commodity/product lines of imported and exported merchandise covered in this application;

(E) The origin of the above merchandise;

(F) Estimated number of export transactions covered in this application;

(G) Estimated number of drawback claims and estimated time of filing those claims to be covered in this application;

(H) The port(s) of exportation;

(I) Estimated dollar value of potential drawback to be covered in this application; and

(J) The relationship between the parties involved in the import and export transactions;

(ii) Written declarations regarding:

(A) The reason(s) that Customs was not notified of the intent to export; and

(B) Whether the applicant, to the best of its knowledge, will have future exportations on which unused merchandise drawback might be claimed; and

(iii) A certification that the following documentary evidence will be made available for Customs review upon request:

(A) For the purpose of establishing that the imported merchandise was not used in the United States (for purposes of drawback under 19 U.S.C. 1313(j)(1)) or that the exported merchandise was not used in the United States and was commercially interchangeable with the imported merchandise (for purposes of drawback under 19 U.S.C. 1313(j)(2)), and, as applicable:

(*1*) Business records prepared in the ordinary course of business;

(*2*) Laboratory records prepared in the ordinary course of business; and/or

(*3*) Inventory records prepared in the ordinary course of business tracing all relevant movements and storage of the imported merchandise, substituted merchandise, and/or exported merchandise; and

(B) Evidence establishing compliance with all other applicable drawback requirements.

(2) *One-Time Use.* The procedure provided for in this section may be used by a claimant only once, unless good cause is shown (for example, successorship).

(3) *Claims filed pending disposition of application.* Drawback claims may be filed under this section pending disposition of the application. However, those drawback claims will not be processed or paid until the application is approved by Customs.

(b) *Customs action.* In order for Customs to evaluate the application under this section, Customs may request, and the applicant shall provide, any of the information listed in paragraph (a)(1)(iii)(A)(*1*) through (*3*) of this section. In making its decision to approve or deny the application under this section, Customs will consider factors such as, but not limited to, the following:

(1) Information provided by the claimant in the written application;

(2) Any of the information listed in paragraph (a)(1)(iii)(A)(*1*) through (*3*) of this section and requested by Customs under this paragraph; and

(3) The applicant's prior record with Customs.

(c) *Time for Customs action.* Customs will notify the applicant in writing within 90 days after receipt of the application of its decision to approve or deny the application, or of Customs inability to approve, deny or act on the application and the reason therefor.

(d) *Appeal of denial of application.* If CBP denies the application, the applicant may file a written appeal with the drawback office which issued the denial, provided that the applicant files this appeal within 30 days of the date of denial. If CBP denies this initial appeal, the applicant may file a further written appeal with CBP Headquarters, Office of International Trade, Trade Policy and Programs, provided that the applicant files this further appeal within 30 days of the denial date of the initial appeal. CBP may extend the 30 day period for appeal to the drawback office or to CBP Headquarters, for good cause, if the applicant applies in writing for such extension within the appropriate 30 day period above.

(e) *Future intent to export unused merchandise.* If an applicant states it will have future exportations on which unused merchandise drawback may be claimed (see paragraph (a)(1)(ii)(B) of this section), the applicant will be informed of the procedures for waiver of prior notice (see § 191.91 of this part). If the applicant seeks waiver of prior notice under § 191.91, any documentation submitted to Customs to comply with this section will be included in the request under § 191.91. An applicant which states that it will have future exportations on which unused merchandise drawback may be claimed (see paragraph (a)(1)(ii)(B) of this section) and which does not obtain waiver of prior notice shall notify Customs of its intent to export prior to each such exportation, in accordance with § 191.35.

§ 191.37 Destruction under Customs supervision.

A claimant may destroy merchandise and obtain unused merchandise drawback by complying with the procedures set forth in § 191.71 of this part relating to destruction.

§ 191.38 Records.

(a) *Maintained by claimant; by others.* Pursuant to 19 U.S.C. 1508(c)(3), all records which are necessary to be maintained by the claimant under this part with respect to drawback claims, and records kept by others to complement the records of the claimant, which are essential to establish compliance with the legal requirements of 19 U.S.C. 1313(j)(1) or (j)(2), as applicable, and this part with respect to drawback claims, shall be retained for 3 years after payment of such claims (under 19 U.S.C. 1508, the same records may be subject to a different retention period for different purposes).

(b) *Accounting for the merchandise.* Merchandise subject to drawback under 19 U.S.C. 1313(j)(1) and (j)(2) shall be accounted for in a manner which will enable the claimant:

(1) To determine, and Customs to verify, the applicable import entry or certificate of delivery;

(2) To determine, and Customs to verify, the applicable exportation or destruction; and

(3) To identify with respect to the import entry or certificate of delivery, the imported duty-paid merchandise.

Subpart D—Rejected Merchandise

§ 191.41 Rejected merchandise drawback.

Section 313(c) of the Act, as amended (19 U.S.C. 1313(c)), provides for drawback upon the exportation or destruction under Customs supervision of imported merchandise which has been entered, or withdrawn from warehouse, for consumption, duty-paid; and which does not conform to sample or specifications; has been shipped without the consent of the consignee; or has been determined to be defective as of the time of importation. The claimant must show by evidence satisfactory to Customs that the exported or destroyed merchandise was defective at the time of importation, or was not in accordance with sample or specifications, or was shipped without the consent of the consignee (see subpart P for drawback of internal-revenue taxes for unmerchantable or nonconforming distilled spirits, wines, or beer).

§ 191.42 Procedures and supporting documentation.

(a) *Time limit for exportation or destruction.* Drawback will be denied on merchandise that is exported or destroyed after the statutory 3-year time period.

(b) *Required documentation.* The claimant must submit documentation to CBP as part of the complete drawback claim (*see* § 191.51) to establish that the merchandise did not conform to sample or specification, was shipped without the consent of the consignee, or was defective as of the time of importation (*see* § 191.45 for additional requirements for claims made with respect to rejected retail merchandise under 19 U.S.C. 1313(c)(1)(C)(ii)). If the claimant was not the importer, the claimant must also:

(1) Submit a statement signed by the importer and every other person, other than the ultimate purchaser, that owned the goods that no other claim for drawback was made on the goods by any other person; and

(2) Certify that records are available to support the statement required in paragraph (b)(1) of this section.

(c) *Notice.* A notice of intent to export or destroy merchandise which may be the subject of a rejected merchandise drawback claim (19 U.S.C. 1313(c)) must be provided to CBP to give CBP the opportunity to examine the merchandise. The claimant, or the exporter (for destruction under CBP supervision, see § 191.71), must file at the port of intended redelivery to CBP custody a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on CBP Form 7553 at least 5 working days prior to the date of intended return to CBP custody.

(d) *Required information.* The notice must provide the bill of lading number, if known, the name and telephone number, mailing address, and, if available,

fax number and email address of a contact person, and the location of the merchandise.

(e) *Decision to waive examination.* Within 2 working days after receipt of the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback (*see* paragraph (c) of this section), CBP will notify, in writing, the party designated on the Notice of CBP's decision to either examine the merchandise to be exported or destroyed, or to waive examination. If CBP timely notifies the designated party, in writing, of its decision to examine the merchandise (*see* paragraph (f) of this section), but the merchandise is exported or destroyed without having been presented to CBP for such examination, any drawback claim, or part thereof, based on the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback, must be denied. If CBP notifies the designated party, in writing, of its decision to waive examination of the merchandise, or, if timely notification of a decision by CBP to examine or to waive examination is absent, the merchandise may be exported or destroyed without delay and will be deemed to have been returned to CBP custody.

(f) *Time and place of examination.* If CBP gives timely notice of its decision to examine the merchandise to be exported or destroyed, the merchandise to be examined must be promptly presented to CBP. CBP must examine the merchandise within 5 working days after presentation of the merchandise. The merchandise may be exported or destroyed without examination if CBP fails to timely examine the merchandise after presentation to CBP, and in such case the merchandise will be deemed to have been returned to CBP custody. If the examination is to be completed at a port other than the port of actual exportation or destruction, the merchandise must be transported in-bond to the port of exportation or destruction.

(g) *Extent of examination.* The appropriate CBP office may permit release of merchandise without examination, or may examine, to the extent determined to be necessary, the items exported or destroyed.

(h) *Drawback claim.* When filing the drawback claim, the drawback claimant must correctly calculate the amount of drawback due (*see* § 191.51(b)). The procedures for restructuring a claim (*see* § 191.53) apply to rejected merchandise drawback if the claimant has an ongoing export program which qualifies for this type of drawback.

(i) *Exportation.* Claimants must provide documentary evidence of exportation (*see* subpart G of this part). The claimant may establish exportation by mail as set out in § 191.74.

[USCBP–2018–0029, 83 FR 65064, Dec. 18, 2018]

§ 191.43 Unused merchandise claim.

Rejected merchandise may be the subject of an unused merchandise drawback claim under 19 U.S.C. 1313(j)(1), in accordance with subpart C of this part, to the extent that the merchandise qualifies therefor.

§ 191.44 Destruction under Customs supervision.

A claimant may destroy merchandise and obtain rejected merchandise drawback by complying with the procedures set forth in § 191.71 of this part relating to destruction.

§ 191.45 Returned retail merchandise.

(a) *Special rule for substitution.* Section 313(c)(1)(C)(ii) of the Tariff Act of 1930, as amended (19 U.S.C. 1313(c)(1)(C)(ii)), provides for drawback upon the exportation or destruction under CBP supervision of imported merchandise which has been entered, or withdrawn from warehouse, for consumption, duty-paid and ultimately sold at retail by the importer, or the person who received the merchandise from the importer, and for any reason returned to and accepted by the importer, or the person who received the merchandise from the importer.

(b) *Eligibility requirements.* (1) Drawback is allowable, subject to compliance with all requirements set forth in this subpart; and

(2) The claimant must also show by evidence satisfactory to CBP that drawback may be claimed by—

(i) Designating an entry of merchandise that was imported within 1 year

before the date of exportation or destruction of the merchandise described in paragraph (a) of this section under CBP supervision.

(ii) Certifying that the same 8-digit HTSUS subheading number and specific product identifier (such as part number, SKU, or product code) apply to both the merchandise designated for drawback (in the import documentation) and the returned merchandise.

(c) *Allowable refund.* The amount of drawback allowable will not exceed 99 percent of the amount of duties, taxes, and fees paid with respect to the imported merchandise.

(d) *Denial of claims.* No drawback will be refunded if CBP is not satisfied that the claimant has provided, upon request, the documentation necessary to support the certification required in paragraph (b)(2)(ii) of this section.

[USCBP–2018–0029, 83 FR 65065, Dec. 18, 2018]

Subpart E—Completion of Drawback Claims

§ 191.51 Completion of drawback claims.

(a) *General*—(1) *Complete claim.* Unless otherwise specified, a complete drawback claim under this part shall consist of the drawback entry on Customs Form 7551, applicable certificate(s) of manufacture and delivery, applicable Notice(s) of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback, applicable import entry number(s), coding sheet unless the data is filed electronically, and evidence of exportation or destruction under subpart G of this part.

(2) *Certificates.* Additionally, at the time of the filing of the claim, the associated certificate(s) of delivery must be in the possession of the party to whom the merchandise or article covered by the certificate was delivered. Any required certificate(s) of manufacture and delivery, if not previously filed with Customs, must be filed with the claim. Previously filed certificates of manufacture and delivery, if required, shall be referenced in the claim.

(3) *Limitation on eligibility for imported merchandise.* Claimants filing any drawback claims under this part for imported merchandise associated with an entry summary if any other merchandise covered on that entry summary has been designated as the basis of a drawback substitution claim under part 190 of this chapter must provide additional information enabling CBP to verify the availability of drawback for the indicated merchandise and associated line item within 30 days of claim submission. The information to be provided will include, but is not limited to: Summary document specifying the lines used and unused on the import entry; the import entry summary, corresponding commercial invoices, and copies of all drawback claims that previously designated the import entry summary; and post summary/liquidation changes (for imports or drawback claims, if applicable).

(b) *Drawback due*—(1) *Claimant required to calculate drawback.* Drawback claimants are required to correctly calculate the amount of drawback due. The amount of drawback requested on the drawback entry is generally to be 99 percent of the import duties eligible for drawback. (For example, if $1,000 in import duties are eligible for drawback less 1 percent ($10), the amount claimed on the drawback entry should be for $990.) Claims exceeding 99 percent (or 100% when 100% of the duty is available for drawback) will not be paid until the calculations have been corrected by the claimant. Claims for less than 99 percent (or 100% when 100% of the duty is available for drawback) will be paid as filed, unless the claimant amends the claim in accordance with § 191.52(c).

(2) *Merchandise processing fee apportionment calculation.* Where a drawback claimant seeks unused merchandise drawback pursuant to 19 U.S.C. 1313(j), or drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv), for a merchandise processing fee paid pursuant to 19 U.S.C. 58c(a)(9)(A), the claimant is required to correctly apportion the fee to that merchandise that provides the basis for drawback when calculating the amount of drawback requested on the drawback entry. This is determined as follows:

(i) *Relative value ratio for each line item.* The value of each line item of entered merchandise subject to a merchandise processing fee is calculated (to four decimal places) by dividing the value of the line item subject to the fee by the total value of entered merchandise subject to the fee. The resulting value forms the relative value ratio.

(ii) *Merchandise processing fee apportioned to each line item.* To apportion the merchandise processing fee to each line item, the relative value ratio for each line item is multiplied by the merchandise processing fee paid.

(iii) *Amount of merchandise processing fee eligible for drawback per line item.* The amount of merchandise processing fee apportioned to each line item is multiplied by 99 percent to calculate that portion of the fee attributable to each line item that is eligible for drawback.

(iv) *Amount of merchandise processing fee eligible for drawback per unit of merchandise.* To calculate the amount of a merchandise processing fee eligible for drawback per unit of merchandise, the line item amount that is eligible for drawback is divided by the number of units covered by that line item (to two decimal places).

Example 1:

Line item 1—5,000 articles valued at $10 each total $50,000

Line item 2—6,000 articles valued at $15 each total $90,000

Line item 3—10,000 articles valued at $20 each total $200,000

Total units = 21,000

Total value = $340,000

Merchandise processing fee = $485 (for purposes of this example, the fee cap of $485, as per 19 U.S.C. 58c(a)(9)(B)(i), is applicable)

Line item relative value ratios. The relative value ratio for line item 1 is calculated by dividing the value of that line item by the total value ($50,000 ÷ 340,000 = .1470). The relative value ratio for line item 2 is .2647. The relative value ratio for line item 3 is .5882.

Merchandise processing fee apportioned to each line item. The amount of fee attributable to each line item is calculated by multiplying $485 by the applicable relative value ratio. The amount of the $485 fee attributable to line item 1 is $71.295 (.1470 × $485 = $71.295). The amount of the fee attributable to line item 2 is $128.3795 (.2647 × $485 = $128.3795). The amount of the fee attributable to line item 3 is $285.277 (.5882 × $485 = $285.277).

Amount of merchandise processing fee eligible for drawback per line item. The amount of merchandise processing fee eligible for drawback for line item 1 is $70.5821 ÷ (.99 × $71.295). The amount of fee eligible for drawback for line item 2 is $127.0957 (.99 × $128.3795). The amount of fee eligible for drawback for line item 3 is $282.4242 (.99 × $285.277).

Amount of merchandise processing fee eligible for drawback per unit of merchandise. The amount of merchandise processing fee eligible for drawback per unit of merchandise is calculated by dividing the amount of fee eligible for drawback for the line item by the number of units in the line item. For line item 1, the amount of merchandise processing fee eligible for drawback per unit is $.0141 ($70.5821 ÷ 5,000 = $.0141). If 1,000 widgets form the basis of a claim for drawback under 19 U.S.C. 1313(j), the total amount of drawback attributable to the merchandise processing fee is $14.10 (1,000 × .0141 = $14.10). For line item 2, the amount of fee eligible for drawback per unit is $.0212 ($127.0957 ÷ 6,000 = $.0212). For line item 3, the amount of fee eligible for drawback per unit is $.0282 ($282.4242 ÷ 10,000 = $.0282).

Example 2: This example illustrates the treatment of dutiable merchandise that is exempt from the merchandise processing fee and duty-free merchandise that is subject to the merchandise processing fee.

Line item 1—700 meters of printed cloth valued at $10 per meter (total value $7,000) that is exempt from the merchandise processing fee under 19 U.S.C. 58c(b)(8)(B)(iii)

Line item 2—15,000 articles valued at $100 each (total value $1,500,000)

Line item 3—10,000 duty-free articles valued at $50 each (total value $500,000)

The relative value ratios are calculated using line items 2 and 3 only, as there is no merchandise processing fee imposed by reason of importation on line item 1.

Line item 2—1,500,000 ÷ 2,000,000 = .75 (line items 2 and 3 form the total value of the merchandise subject to the merchandise processing fee).

Line item 3—500,000 ÷ 2,000,000 = .25.

If the total merchandise processing fee paid was $485, the amount of the fee attributable to line item 2 is $363.75 (.75 × $485 = $363.75). The amount of the fee attributable to line item 3 is $121.25 (.25 × $485 = $121.25).

The amount of merchandise processing fee eligible for drawback for line item 2 is $360.1125 (.99 × $363.75). The amount of fee eligible for line item 3 is $120.0375 (.99 × $121.25).

The amount of drawback on the merchandise processing fee attributable to each unit of line item 2 is $.0240 ($360.1125 ÷ 15,000 = $.0240). The amount of drawback on the merchandise processing fee attributable to each unit of line item 3 is $.0120 ($120.0375 ÷ 10,000 = $.0120).

If 1,000 units of line item 2 were exported, the drawback attributable to the merchandise processing fee is $24.00 ($.0240 × 1,000 = $24.00).

(c) *HTSUS number(s) or Schedule B commodity number(s) of imports and exports*—(1) *General.* Drawback claimants are required to provide, on all drawback claims they submit, the Harmonized Tariff Schedule of the United States (HTSUS) number(s) for the designated imported merchandise and the HTSUS number(s) or the Schedule B commodity number(s) for the exported article or articles.

(2) *Imports.* For imports, HTSUS numbers shall be provided from the entry summary(s) and other entry documentation, when the claimant is the importer of record, or from the certificate of delivery and/or the certificate of manufacture and delivery, otherwise. Manufacturing drawback claimants filing drawback claims based on certificate(s) of manufacture and delivery filed with the claims or previously filed with Customs (see paragraph (a) of this section), may meet this requirement with the HTSUS number(s) for the designated imported merchandise on such certificate(s).

(3) *Exports.* For exports, the HTSUSA number(s) or Schedule B commodity classification number(s) must be from the Electronic Export Information (EEI), when required. If no EEI is required (see, e.g., 15 CFR 30.58), the claimant must provide the Schedule B commodity classification number(s) or HTSUSA number(s) that the exporter would have set forth in the EEI, but for the exemption from the requirement to file EEI.

(4) *6-digit level for HTSUS and Schedule B commodity numbers.* The HTSUS numbers and Schedule B commodity numbers shall be stated to at least 6 digits.

(5) *Effective date.* For imports, HTSUS numbers are required for merchandise entered, or withdrawn from warehouse, for consumption on or after April 6, 1998. For exports, HTSUS numbers or Schedule B commodity numbers are required for exported merchandise or articles exported on or after the date 1 year after April 6, 1998.

(d) *Place of filing.* For manufacturing drawback, the claimant shall file the drawback claim with the drawback office listed, as appropriate, in the general manufacturing drawback ruling or the specific manufacturing drawback ruling (see §§191.7 and 191.8 of this part). For other kinds of drawback, the claimant shall file the claim with any drawback office.

(e) *Time of filing*—(1) *General.* A completed drawback claim, with all required documents, shall be filed within 3 years after the date of exportation or destruction of the merchandise or articles which are the subject of the claim. Except for landing certificates (see §191.76 of this part), or unless this time is extended as provided in paragraph (e)(2) of this section, claims not completed within the 3-year period shall be considered abandoned. Except as provided in paragraph (e)(2) of this section, no extension will be granted unless it is established that Customs was responsible for the untimely filing.

(2) *Major disaster.* The 3-year period for filing a completed drawback claim provided for in paragraph (e)(1) of this section may be extended for a period not to exceed 18 months if:

(i) The claimant establishes to the satisfaction of Customs that the claimant was unable to file the drawback claim because of an event declared by the President to be a major disaster, within the meaning given to that term in 42 U.S.C. 5122(2), on or after January 1, 1994; and

(ii) The claimant files a request for such extension with Customs within 1 year from the last day of the 3-year period referred to in paragraph (e)(1) of this section.

(3) *Record retention.* If an extension is granted with respect to a request filed under paragraph (e)(2)(ii) of this section, the periods of time for retaining records under 19 U.S.C. 1508(c)(3) shall be extended for an additional 18 months.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998, as amended by T.D. 01–14, 66 FR 8767, Feb. 2, 2001; T.D. 01–18, 66 FR 9649, Feb. 9, 2001; T.D. 02–39, 67 FR 48548, July 25, 2002; CBP Dec. 04–33, 69 FR 60083, Oct. 7, 2004; CBP Dec. 17–06, 82 FR 32239, July 13, 2017; USCBP–2018–0029, 83 FR 65065, Dec. 18, 2018]

§ 191.52 Rejecting, perfecting or amending claims.

(a) *Rejecting the claim.* Upon review of a drawback claim, if the claim is determined to be incomplete (see § 191.51(a)(1)), the claim will be rejected and Customs will notify the filer in writing. The filer shall then have the opportunity to complete the claim subject to the requirement for filing a complete claim within 3 years.

(b) *Perfecting the claim; additional evidence required.* If Customs determines that the claim is complete according to the requirements of § 191.51(a)(1), but that additional evidence or information is required, Customs will notify the filer in writing. The claimant shall furnish, or have the appropriate party furnish, the evidence or information requested within 30 days of the date of notification by Customs. Customs may extend this 30 day period for good cause if the claimant files a written request for such extension within the 30 day period. The evidence or information required under this paragraph may be filed more than 3 years after the date of exportation or destruction of the articles which are the subject of the claim. Such additional evidence or information may include, but is not limited to:

(1) The export bill of lading or other actual evidence of exportation, as provided for in § 191.72(a) of this part, which shall show that the articles were shipped by the person filing the drawback entry, or a letter of endorsement from the party in whose name the articles were shipped which shall be attached to such bill of lading, showing that the party filing the entry is authorized to claim drawback and receive payment (the claimant shall have on file and make available to Customs upon request, the endorsement from the exporter assigning the right to claim drawback);

(2) A copy of the import entry and invoice annotated for the merchandise identified or designated;

(3) A copy of the export invoice annotated to indicate the items on which drawback is being claimed; and

(4) Certificate(s) of delivery upon which the claim is based (see § 191.10(e) of this part).

(c) *Amending the claim; supplemental filing.* Amendments to claims for which the drawback entries have not been liquidated must be made within three (3) years after the date of exportation or destruction of the articles which are the subject of the original drawback claim. Liquidated drawback entries may not be amended; however, they may be protested as provided for in § 191.84 of this part and part 174 of this chapter.

§ 191.53 Restructuring of claims.

(a) *General.* Customs may require claimants to restructure their drawback claims in such a manner as to foster Customs administrative efficiency. In making this determination, Customs will consider the following factors:

(1) The number of transactions of the claimant (imports and exports);

(2) The value of the claims;

(3) The frequency of claims;

(4) The product or products being claimed; and

(5) For 19 U.S.C. 1313(a) and 1313(b) claims, the provisions, as applicable, of the general manufacturing drawback ruling or the specific manufacturing drawback ruling.

(b) *Exemption from restructuring; criteria.* In order to be exempt from a restructuring, a claimant must demonstrate an inability or impracticability in restructuring its claims as required by Customs and must provide a mutually acceptable alternative. Criteria used in such determination will include a demonstration by the claimant of one or more of the following:

(1) Complexities caused by multiple commodities or the applicable general manufacturing drawback ruling or the specific manufacturing drawback ruling;

(2) Variable and conflicting manufacturing and inventory periods (for example, financial, accounting and manufacturing records maintained are significantly different);

(3) Complexities caused by multiple manufacturing locations;

(4) Complexities caused by difficulty in adjusting accounting and inventory records (for example, records maintained—financial or accounting—are significantly different); and/or

(5) Complexities caused by significantly different methods of operation.

Subpart F—Verification of Claims

§ 191.61 Verification of drawback claims.

(a) *Authority*—(1) *Drawback office.* All claims shall be subject to verification by the port director where the claim is filed.

(2) *Two or more locations.* The port director selecting the claim for verification may forward copies of the claim and, as applicable, letters of notification and acknowledgement for the general manufacturing drawback ruling or application and letter of approval for a specific manufacturing drawback ruling, and request for verification, to other drawback offices when deemed necessary.

(b) *Method.* The verifying office shall verify compliance with the law and this part, the accuracy of the related general manufacturing drawback ruling or specific manufacturing drawback ruling (as applicable), and the selected drawback claims. Verification may include an examination of all records relating to the transaction(s).

(c) *Liquidation.* When a claim has been selected for verification, liquidation will be postponed only on the drawback entries for those claims selected for verification. Postponement will continue in effect until the verification has been completed and the appropriate port director issues a report. In the event that a substantial error is revealed during the verification, Customs may postpone liquidation of all related product line claims, or, in Customs discretion, all claims for that claimant.

(d) *Errors in specific or general manufacturing drawback rulings*—(1) *Specific manufacturing drawback ruling; action by port director.* If verification of a drawback claim filed under a specific manufacturing drawback ruling (see §191.8 of this part) reveals errors of deficiencies in the drawback ruling or application therefor, the port director shall promptly inform CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of International Trade).

(2) *General manufacturing drawback ruling.* If verification of a drawback claim filed under a general manufacturing drawback ruling (see §191.7 of this part) reveals errors or deficiencies in a general manufacturing drawback ruling, the letter of notification of intent to operate under the general manufacturing drawback ruling, or the acknowledgment of the letter of notification of intent, the port director shall promptly inform CBP Headquarters (Attention: Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of International Trade).

(3) *Action by CBP Headquarters.* CBP Headquarters shall review the stated errors or deficiencies and take appropriate action (see 19 U.S.C. 1625; 19 CFR part 177).

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15288, Mar. 31, 1998]

§ 191.62 Penalties.

(a) *Criminal penalty.* Any person who knowingly and willfully files any false or fraudulent entry or claim for the payment of drawback upon the exportation of merchandise or knowingly or willfully makes or files any false document for the purpose of securing the payment to himself or others of any drawback on the exportation of merchandise greater than that legally due, shall be subject to the criminal provisions of 18 U.S.C. 550, 1001 or any other appropriate criminal sanctions.

(b) *Civil penalty.* Any person who seeks, induces or affects the payment of drawback, by fraud or negligence, or attempts to do so, is subject to civil penalties, as provided under 19 U.S.C. 1593a. A fraudulent violation is subject to a maximum administrative penalty of 3 times the total actual or potential loss of revenue. Repetitive negligent violations are subject to a maximum penalty equal to the actual or potential loss of revenue.

Subpart G—Exportation and Destruction

§ 191.71 Drawback on articles destroyed under Customs supervision.

(a) *Procedure.* At least 7 working days before the intended date of destruction of merchandise or articles upon which

drawback is intended to be claimed, a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback on Customs Form 7553 shall be filed by the claimant with the Customs port where the destruction is to take place, giving notification of the date and specific location where the destruction is to occur. Within 4 working days after receipt of the Customs Form 7553, Customs shall advise the filer in writing of its determination to witness or not to witness the destruction. If the filer of the notice is not so notified within 4 working days, the merchandise may be destroyed without delay and will be deemed to have been destroyed under Customs supervision. Unless Customs determines to witness the destruction, the destruction of the articles following timely notification on Customs Form 7553 shall be deemed to have occurred under Customs supervision. If Customs attends the destruction, it must certify the Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback.

(b) *Evidence of destruction.* When Customs does not attend the destruction, the claimant must submit evidence that destruction took place in accordance with the approved Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback. The evidence must be issued by a disinterested third party (for example, a landfill operator). The type of evidence depends on the method and place of destruction, but must establish that the merchandise was, in fact, destroyed within the meaning of ''destruction'' in §191.2(g) (*i.e.*, that no articles of commercial value remained after destruction).

(c) *Completion of drawback entry.* After destruction, the claimant must provide the Customs Form 7553, certified by the Customs official witnessing the destruction in accordance with paragraph (a) of this section, to Customs as part of the completed drawback claim based on the destruction (see §191.51(a) of this part). If Customs has not attended the destruction, the claimant must provide the evidence that destruction took place in accordance with the approved Customs Form 7553, as provided for in paragraph (b) of this section, as part of the completed drawback claim based on the destruction (see §191.51(a) of this part).

§191.72 Exportation procedures.

Exportation of articles for drawback purposes must be established by complying with one of the procedures provided for in this section (in addition to providing prior notice of intent to export if applicable (see §§191.35, 191.36, 191.42, and 191.91 of this part)). Supporting documentary evidence must establish fully the date and fact of exportation and the identity of the exporter. The procedures for establishing exportation outlined by this section include, but are not limited to:

(a) Documentary evidence of exportation (originals or copies) issued by the exporting carrier, such as a bill of lading, air waybill, freight waybill, Canadian Customs manifest, and/or cargo manifest;''.

(b) Export summary (§191.73);

(c) Official postal records (originals or copies) which evidence exportation by mail (§191.74);

(d) Notice of lading for supplies on certain vessels or aircraft (§191.112); or

(e) Notice of transfer for articles manufactured or produced in the U.S. which are transferred to a foreign trade zone (§191.183).

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998, as amended by CBP Dec. 15–11, 80 FR 47407, Aug. 7, 2015]

§191.73 Export summary procedure.

(a) *General.* The export summary procedure consists of a Chronological Summary of Exports used to support a drawback claim. It may be submitted as part of the claim in lieu of actual documentary evidence of exportation. It may be used by any claimant for manufacturing drawback, and for unused or rejected merchandise drawback, as well as for drawback involving the substitution of finished petroleum derivatives (19 U.S.C. 1313(a), (b), (c), (j), or (p)). It is intended to improve administrative efficiency.

(b) *Format of Chronological Summary of Exports.* The Chronological Summary of Exports shall contain the data provided for in the following sample:

CHRONOLOGICAL SUMMARY OF EXPORTS

Drawback entry No. _____.

Claimant _____; Exporter _____ (if different from claimant) Period from _____ to _____.

Date of export	Exporter if not claimant	Unique export identifier [1]	Description	Net quantity	Sched. B com. # or HTSUS #	Destination
(1)	(2)	(3)	(4)	(5)	(6)	(7)

[1] This number is to be used to associate the export transaction presented on the Chronological Summary of Exports to the appropriate documentary evidence of exportation (for example, Bill of Lading, Manifest no., invoice, identification of vessel or aircraft and voyage or aircraft number (see subpart K), etc.).

(c) *Documentary evidence*—(1) *Records.* The claimant, whether or not the exporter, shall maintain the Chronological Summary of Exports and such additional evidence of exportation required by Customs to establish fully the identity of the exported articles and the fact of exportation. Actual evidence of exportation, as described in §191.72(a) of this subpart, is the primary evidence of export for drawback purposes.

(2) *Maintenance of records.* The claimant shall submit as part of the claim the Chronological Summary of Exports (see §191.51). The claimant shall retain records supporting the Chronological Summary of Exports for 3 years after payment of the related claim, and such records are subject to review by Customs.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15289, Mar. 31, 1998]

§191.74 Exportation by mail.

If the merchandise on which drawback is to be claimed is exported by mail or parcel post, the official postal records (original or copies) which describe the mail shipment shall be sufficient to prove exportation. The postal record shall be identified on the drawback entry, and shall be retained by the claimant and submitted as part of the drawback claim (see §191.51(a)).

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15289, Mar. 31, 1998, as amended by CBP Dec. 15–11, 80 FR 47407, Aug. 7, 2015]

§191.75 Exportation by the Government.

(a) *Claim by U.S. Government.* When a department, branch, agency, or instrumentality of the United States Government exports products with the intention of claiming drawback, it may establish the exportation in the manner provided in §§191.72 and 191.73 of this subpart (see §191.4 of this part).

(b) *Claim by supplier.* When a supplier of merchandise to the Government or any of the parties specified in §191.82 of this part claims drawback, exportation shall be established under §§191.72 and 191.73 of this subpart.

§191.76 Landing certificate.

(a) *Requirement.* Prior to the liquidation of the drawback entry, Customs may require a landing certificate for every aircraft departing from the United States under its own power if drawback is claimed on the aircraft or a part thereof, except for the exportation of supplies under §309 of the Act, as amended (19 U.S.C. 1309). The certificate shall show the exact time of landing in the foreign destination and describe the aircraft or parts subject to drawback in sufficient detail to enable Customs officers to identify them with the documentation of exportation.

(b) *Written notice of requirement and time for filing.* A landing certificate shall be filed within one year from the written Customs request, unless Customs Headquarters grants an extension.

(c) *Signature.* A landing certificate shall be signed by a revenue officer of the foreign country of the export's destination, unless the embassy of that country certifies in writing that there is no Customs administration in that country, in which case the landing certificate may be signed by the consignee or the carrier's agent at the place of unlading.

(d) *Inability to produce landing certificates.* A landing certificate shall be waived by the requiring Customs authority if the claimant demonstrates inability to obtain a certificate and offers other satisfactory evidence of export.

Subpart H—Liquidation and Protest of Drawback Entries

§ 191.81 Liquidation.

(a) *Time of liquidation.* Drawback entries may be liquidated after:

(1) Liquidation of the designated import entry or entries becomes final pursuant to paragraph (e) of this section; or

(2) Deposit of estimated duties on the imported merchandise and before liquidation of the designated import entry or entries.

(b) *Claims based on estimated duties.* (1) Drawback may be paid upon liquidation of a claim based on estimated duties if one or more of the designated import entries have not been liquidated, or the liquidation has not become final (because of a protest being filed) (*see* also § 173.4(c) of this chapter), only if the drawback claimant and any other party responsible for the payment of liquidated import duties each files a written request for payment of each drawback claim, waiving any right to payment or refund under other provisions of law, to the extent that the estimated duties on the unliquidated import entry are included in the drawback claim for which drawback on estimated duties is requested under this paragraph. The drawback claimant must, to the best of its knowledge, identify each import entry that has been protested and that is included in the drawback claim. A drawback entry, once finally liquidated on the basis of estimated duties pursuant to paragraph (e)(2) of this section, will not be adjusted by reason of a subsequent final liquidation of the import entry.

(2) However, if final liquidation of the import entry discloses that the total amount of import duty is different from the total estimated duties deposited, except in those cases when drawback is 100% of the duty, the party responsible for the payment of liquidated duties, as applicable, will:

(i) Be liable for 1 percent of all increased duties found to be due on that portion of merchandise recorded on the drawback entry; or

(ii) Be entitled to a refund of 1 percent of all excess duties found to have been paid as estimated duties on that portion of the merchandise recorded on the drawback entry.

(c) *Claims based on voluntary tenders or other payments of duties*—(1) *General.* Subject to the requirements in paragraph (c)(2) of this section, drawback may be paid upon liquidation of a claim based on voluntary tenders of the unpaid amount of lawful ordinary customs duties or any other payment of lawful ordinary customs duties for an entry, or withdrawal from warehouse, for consumption (*see* § 191.3(a)(1)(iii)), provided that:

(i) The tender or payment is specifically identified as duty on a specifically identified entry, or withdrawal from warehouse, for consumption;

(ii) Liquidation of the specifically identified entry, or withdrawal from warehouse, for consumption became final prior to such tender or payment; and

(iii) Liquidation of the drawback entry in which that specifically identified import entry, or withdrawal from warehouse, for consumption is designated has not become final.

(2) *Written request and waiver.* Drawback may be paid on claims based on voluntary tenders or other payments of duties under this subsection only if the drawback claimant and any other party responsible for the payment of the voluntary tenders or other payments of duties each files a written request for payment of each drawback claim based on such voluntary tenders or other payments of duties, waiving any claim to payment or refund under other provisions of law, to the extent that the voluntary tenders or other payment of duties under this paragraph are included in the drawback claim for which drawback on the voluntary tenders or other payment of duties is requested under this paragraph.

(d) *Claims based on liquidated duties.* Drawback will be based on the final liquidated duties paid that have been made final by operation of law (except in the case of the written request for payment of drawback on the basis of estimated duties, voluntary tender of duties, and other payments of duty, and waiver, provided for in paragraphs (b) and (c) of this section).

(e) *Liquidation procedure.* (1) *General.* When the drawback claim has been

completed by the filing of the entry and other required documents, and exportation (or destruction) of the merchandise or articles has been established, CBP will determine drawback due on the basis of the complete drawback claim, the applicable general manufacturing drawback ruling or specific manufacturing drawback ruling, and any other relevant evidence or information. Notice of liquidation will be given electronically as provided in §§ 159.9 and 159.10(c)(3) of this chapter.

(2) *Liquidation by operation of law.* (i) *Liquidated import entries.* A drawback claim that satisfies the requirements of paragraph (d) that is not liquidated within 1 year from the date of the drawback claim (*see* § 190.51(e)(1)(i) of this chapter) will be deemed liquidated for the purposes of the drawback claim at the drawback amount asserted by the claimant or claim, unless the time for liquidation is extended in accordance with § 159.12 of this chapter or if liquidation is suspended as required by statute or court order.

(ii) *Unliquidated import entries.* A drawback claim that satisfies the requirements of paragraphs (b) or (c) of this section will be deemed liquidated upon the deposit of estimated duties on the unliquidated imported merchandise (*see* paragraph (b) of this section).

(iii) *Applicability.* The provisions of paragraphs (e)(2)(i) of this section will apply to drawback entries made on or after December 3, 2004. An entry or claim for drawback filed before December 3, 2004, the liquidation of which was not final as of December 3, 2004, will be deemed liquidated on the date that is 1 year after December 3, 2004, at the drawback amount asserted by the claimant at the time of the entry or claim.

(f) *Relative value; multiple products*—(1) *Distribution.* Where two or more products result from the manufacture or production of merchandise, drawback will be distributed to the several products in accordance with their relative values at the time of separation.

(2) *Values.* The values to be used in computing the distribution of drawback where two or more products result from the manufacture or production of merchandise under drawback conditions must be the market value (as provided for in the definition of relative value in § 191.2(u)), unless other values are approved by CBP.

(g) *Payment.* CBP will authorize payment of the amount of the refund due as drawback to the claimant.

[USCBP–2018–0029, 83 FR 65065, Dec. 18, 2018]]

§ 191.82 Person entitled to claim drawback.

Unless otherwise provided in this part (see §§ 191.42(b), 191.162, 191.175(a), 191.186), the exporter (or destroyer) shall be entitled to claim drawback, unless the exporter (or destroyer), by means of a certification, waives the right to claim drawback and assigns such right to the manufacturer, producer, importer, or intermediate party (in the case of drawback under 19 U.S.C. 1313(j)(1) and (2), see § 191.33(a) and (b)). Such certification shall also affirm that the exporter (or destroyer) has not and will not assign the right to claim drawback on the particular exportation or destruction to any other party. The certification provided for in this section may be a blanket certification for a stated period.

§ 191.83 Person entitled to receive payment.

Drawback is paid to the claimant (see § 191.82).

§ 191.84 Protests.

Procedures to protest the denial, in whole or in part, of a drawback entry shall be in accordance with part 174 of this chapter (19 CFR part 174).

Subpart I—Waiver of Prior Notice of Intent To Export; Accelerated Payment of Drawback

§ 191.91 Waiver of prior notice of intent to export.

(a) *General*—(1) *Scope.* The requirement in § 191.35 of this part for prior notice of intent to export merchandise which may be the subject of an unused merchandise drawback claim under § 313(j) of the Act, as amended (19 U.S.C. 1313(j)), may be waived under the provisions of this section.

(2) *Effective date for claimants with existing approval.* For claimants approved for waiver of prior notice as of April 6,

1998, such approval of waiver of prior notice shall remain in effect, under the Customs Regulations in effect as of the time of the approval of waiver of prior notice, for a period of 1 year after April 6, 1998. The previously approved waiver of prior notice shall terminate at the end of such 1-year period unless the claimant applies for waiver of prior notice under this section. If a claimant approved for waiver of prior notice as of April 6, 1998 applies for waiver of prior notice under this section within such 1-year period, the claimant may continue to operate under its existing waiver of prior notice until Customs approves or denies the application for waiver of prior notice under this section, subject to the provisions in this section (see, in particular, paragraphs (d) and (e) of this section).

(3) *Limited successorship for waiver of prior notice.* When a claimant (predecessor) is approved for waiver of prior notice under this section and all of the rights, privileges, immunities, powers, duties and liabilities of the claimant are transferred by written agreement, merger, or corporate resolution to a successor, such approval of waiver of prior notice shall remain in effect for a period of 1 year after such transfer. The approval of waiver of prior notice shall terminate at the end of such 1-year period unless the successor applies for waiver of prior notice under this section. If such successor applies for waiver of prior notice under this section within such 1-year period, the successor may continue to operate under the predecessor's waiver of prior notice until Customs approves or denies the successor's application for waiver of prior notice under this section, subject to the provisions in this section (see, in particular, paragraphs (d) and (e) of this section).

(b) *Application*—(1) *Who may apply.* A claimant for unused merchandise drawback under 19 U.S.C. 1313(j) may apply for a waiver of prior notice of intent to export merchandise under this section.

(2) *Contents of application.* An applicant for a waiver of prior notice under this section must file a written application with the drawback office where the claims will be filed. Such application shall include the following:

(i) Required information:

(A) Name, address, and Internal Revenue Service (IRS) number (with suffix) of applicant;

(B) Name, address, and Internal Revenue Service (IRS) number (with suffix) of current exporter(s) (if more than 3 exporters, such information is required only for the 3 most frequently used exporters), if applicant is not the exporter;

(C) Export period covered by this application;

(D) Commodity/product lines of imported and exported merchandise covered by this application;

(E) Origin of merchandise covered by this application;

(F) Estimated number of export transactions during the next calendar year covered by this application;

(G) Port(s) of exportation to be used during the next calendar year covered by this application;

(H) Estimated dollar value of potential drawback during the next calendar year covered by this application; and

(I) The relationship between the parties involved in the import and export transactions;

(ii) A written declaration whether or not the applicant has previously been denied a waiver request, or had an approval of a waiver revoked, by any other drawback office, and whether the applicant has previously requested a 1-time waiver of prior notice under §191.36, and whether such request was approved or denied; and

(iii) A certification that the following documentary evidence will be made available for Customs review upon request:

(A) For the purpose of establishing that the imported merchandise was not used in the United States (for purposes of drawback under 19 U.S.C. 1313(j)(1)) or that the exported merchandise was not used in the United States and was commercially interchangeable with the imported merchandise (for purposes of drawback under 19 U.S.C. 1313(j)(2)), and, as applicable:

(*1*) Business records prepared in the ordinary course of business;

(*2*) Laboratory records prepared in the ordinary course of business; and/or

(*3*) Inventory records prepared in the ordinary course of business tracing all relevant movements and storage of the

imported merchandise, substituted merchandise, and/or exported merchandise; and

(B) Any other evidence establishing compliance with other applicable drawback requirements, upon Customs request under paragraph (b)(2)(iii) of this section.

(3) *Samples of records to accompany application.* To expedite the processing of applications under this section, the application should contain at least one sample of each of the records to be used to establish compliance with the applicable requirements (that is, sample of import document (for example, Customs Form 7501, or its electronic equivalent), sample of export document (for example, bill of lading), and samples of business, laboratory, and inventory records certified, under paragraph (b)(2)(iii)(A)(*1*) through (*3*) of this section, to be available to Customs upon request).

(c) *Action on application*—(1) *Customs review.* The drawback office shall review and verify the information submitted on and with the application. Customs will notify the applicant in writing within 90 days of receipt of the application of its decision to approve or deny the application, or of Customs inability to approve, deny, or act on the application and the reason therefor. In order for Customs to evaluate the application, Customs may request any of the information listed in paragraph (b)(2)(iii)(A)(*1*) through (*3*) of this section. Based on the information submitted on and with the application and any information so requested, and based on the applicant's record of transactions with Customs, the drawback office will approve or deny the application. The criteria to be considered in reviewing the applicant's record with Customs include, but are not limited to (as applicable):

(i) The presence or absence of unresolved Customs charges (duties, taxes, or other debts owed Customs);

(ii) The accuracy of the claimant's past drawback claims;

(iii) Whether waiver of prior notice was previously revoked or suspended; and

(iv) The presence or absence of any failure to present merchandise to Customs for examination after Customs had timely notified the party filing a Notice of Intent to Export, Destroy, or Return Merchandise for Purposes of Drawback of Customs intent to examine the merchandise (see § 191.35 of this part).

(2) *Approval.* The approval of an application for waiver of prior notice of intent to export, under this section, shall operate prospectively, applying only to those export shipments occurring after the date of the waiver. It shall be subject to a stay, as provided in paragraph (d) of this section.

(3) *Denial.* If an application for waiver of prior notice of intent to export, under this section, is denied, the applicant shall be given written notice, specifying the grounds therefor, together with what corrective action may be taken, and informing the applicant that the denial may be appealed in the manner prescribed in paragraph (g) of this section. The applicant may not reapply for a waiver until the reason for the denial is resolved.

(d) *Stay.* An approval of waiver of prior notice may be stayed, for a specified reasonable period, should Customs desire for any reason to examine the merchandise being exported with drawback prior to its exportation for purposes of verification. Customs shall provide written notice, by registered or certified mail, of such a stay to the person for whom waiver of prior notice was approved. Customs shall specify the reason(s) for the stay in such written notice. The stay shall take effect 2 working days after the date the person signs the return post office receipt for the registered or certified mail. The stay shall remain in effect for the period specified in the written notice, or until such earlier date as Customs notifies the person for whom waiver of prior notice was approved in writing that the reason for the stay has been satisfied. After the stay is lifted, operation under the waiver of prior notice procedure may resume for exports on or after the date the stay is lifted.

(e) *Proposed revocation.* Customs may propose to revoke the approval of an application for waiver of prior notice of intent to export, under this section, for good cause (noncompliance with the drawback law and/or regulations). Customs shall give written notice of the

proposed revocation of a waiver of prior notice of intent to export. The notice shall specify the reasons for Customs proposed action and provide information regarding the procedures for challenging Customs proposed revocation action as prescribed in paragraph (g) of this section. The written notice of proposed revocation may be included with a notice of stay of approval of waiver of prior notice as provided under paragraph (d) of this section. The revocation of the approval of waiver of prior notice shall take effect 30 days after the date of the proposed revocation if not timely challenged under paragraph (g) of this section. If timely challenged, the revocation will take effect after completion of the challenge procedures in paragraph (g) of this section unless the challenge is successful.

(f) *Action by drawback office controlling.* Action by the appropriate drawback office to approve, deny, stay, or revoke waiver of prior notice of intent to export, unless reversed by Customs Headquarters, will govern the applicant's eligibility for this procedure in all Customs drawback offices. If the application for waiver of prior notice of intent to export is approved, the claimant shall refer to such approval in the first drawback claim filed after such approval in the drawback office approving waiver of prior notice and shall submit a copy of the approval letter with the first drawback claim filed in any drawback office other than the approving office, when the export upon which the claim is based was without prior notice, under this section.

(g) *Appeal of denial or challenge to proposed revocation.* An appeal of a denial of an application under this section, or challenge to the proposed revocation of an approved application under this section, may be made by letter to the drawback office issuing the denial or proposed revocation and must be filed within 30 days of the date of denial or proposed revocation. A denial of an appeal or challenge made to the drawback office may itself be appealed to CBP Headquarters, Office of International Trade, Trade Policy and Programs, and must be filed within 30 days of the denial date of the initial appeal or challenge. The 30-day period for appeal or challenge to the drawback office or to CBP Headquarters may be extended for good cause, upon written request by the applicant or holder for such extension filed with the appropriate office within the 30-day period.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998, as amended by CBP Dec. 15–14, 80 FR 61292, Oct. 13, 2015]

§ 191.92 Accelerated payment.

(a) *General*—(1) *Scope.* Accelerated payment of drawback is available under this section on drawback claims under this part, unless specifically excepted from such accelerated payment. Accelerated payment of drawback consists of the payment of estimated drawback before liquidation of the drawback entry. Accelerated payment of drawback is only available when Customs review of the request for accelerated payment of drawback does not find omissions from, or inconsistencies with the requirements of the drawback law and part 191 (see, especially, subpart E of this part). Accelerated payment of a drawback claim does not constitute liquidation of the drawback entry.

(2) *Effective date for claimants with existing approval.* For claimants approved for accelerated payment of drawback as of April 6, 1998, such approval of accelerated payment shall remain in effect, under the Customs Regulations in effect as of the time of the approval of accelerated payment, for a period of 1 year after April 6, 1998. The previously approved accelerated payment of drawback shall terminate at the end of such 1-year period unless the claimant applies for accelerated payment under this section. If a claimant approved for accelerated payment of drawback as of April 6, 1998 applies for accelerated payment under this section within such 1-year period, the claimant may continue to operate under its existing approval of accelerated payment until Customs approves or denies the application for accelerated payment under this section, subject to the provisions in this section (see, in particular, paragraph (f) of this section).

(3) *Limited successorship for approval of accelerated payment.* When a claimant (predecessor) is approved for accelerated payment of drawback under this

section and all of the rights, privileges, immunities, powers, duties and liabilities of the claimant are transferred by written agreement, merger, or corporate resolution to a successor, such approval of accelerated payment shall remain in effect for a period of 1 year after such transfer. The approval of accelerated payment of drawback shall terminate at the end of such 1-year period unless the successor applies for accelerated payment of drawback under this section. If such successor applies for accelerated payment of drawback under this section within such 1-year period, the successor may continue to operate under the predecessor's approval of accelerated payment until Customs approves or denies the successor's application for accelerated payment under this section, subject to the provisions in this section (see, in particular, paragraph (f) of this section).

(b) *Application for approval; contents.* A person who wishes to apply for accelerated payment of drawback must file a written application with the drawback office where claims will be filed.

(1) *Required information.* The application must contain:

(i) Company name and address;

(ii) Internal Revenue Service (IRS) number (with suffix);

(iii) Identity (by name and title) of the person in claimant's organization who will be responsible for the drawback program;

(iv) Description of the bond coverage the applicant intends to use to cover accelerated payments of drawback (see paragraph (d) of this section), including:

(A) Identity of the surety to be used;

(B) Dollar amount of bond coverage for the first year under the accelerated payment procedure; and

(C) Procedures to ensure that bond coverage remains adequate (that is, procedures to alert the applicant when and if its accelerated payment potential liability exceeds its bond coverage);

(v) Description of merchandise and/or articles covered by the application;

(vi) Type(s) of drawback covered by the application; and

(vii) Estimated dollar value of potential drawback during the next 12-month period covered by the application.

(2) *Previous applications.* In the application, the applicant must state whether or not the applicant has previously been denied an application for accelerated payment of drawback, or had an approval of such an application revoked by any drawback office.

(3) *Certification of compliance.* In or with the application, the applicant must also submit a certification, signed by the applicant, that all applicable statutory and regulatory requirements for drawback will be met.

(4) *Description of claimant's drawback program.* With the application, the applicant must submit a description (with sample documents) of how the applicant will ensure compliance with its certification that the statutory and regulatory drawback requirements will be met. This description may be in the form of a booklet. The detail contained in this description should vary depending on the size and complexity of the applicant's accelerated drawback program (for example, if the dollar amount is great and there are several kinds of drawback involved, with differing inventory, manufacturing, and shipping methods, greater detail in the description will be required). The description must include at least:

(i) The name of the official in the claimant's organization who is responsible for oversight of the claimant's drawback program;

(ii) The procedures and controls demonstrating compliance with the statutory and regulatory drawback requirements;

(iii) The parameters of claimant's drawback record-keeping program, including the retention period and method (for example, paper, electronic, etc.);

(iv) A list of the records that will be maintained, including at least sample import documents, sample export documents, sample inventory and transportation documents (if applicable), sample laboratory or other documents establishing the qualification of merchandise or articles for substitution under the drawback law (if applicable), and sample manufacturing documents (if applicable);

(v) The procedures that will be used to notify Customs of changes to the claimant's drawback program, variances from the procedures described in this application, and violations of the statutory and regulatory drawback requirements; and

(vi) The procedures for an annual review by the claimant to ensure that its drawback program complies with the statutory and regulatory drawback requirements and that Customs is notified of any modifications from the procedures described in this application.

(c) *Sample application.* The drawback office, upon request, shall provide applicants for accelerated payment with a sample letter format to assist them in preparing their submissions.

(d) *Bond required.* If approved for accelerated payment, the claimant must furnish a properly executed bond in an amount sufficient to cover the estimated amount of drawback to be claimed during the term of the bond. If outstanding accelerated drawback claims exceed the amount of the bond, the drawback office will require additional bond coverage as necessary before additional accelerated payments are made.

(e) *Action on application*—(1) *Customs review.* The drawback office shall review and verify the information submitted in and with the application. In order for Customs to evaluate the application, Customs may request additional information (including additional sample documents) and/or explanations of any of the information provided for in paragraph (b)(4) of this section. Based on the information submitted on and with the application and any information so requested, and based on the applicant's record of transactions with Customs, the drawback office will approve or deny the application. The criteria to be considered in reviewing the applicant's record with Customs include, but are not limited to (as applicable):

(i) The presence or absence of unresolved Customs charges (duties, taxes, or other debts owed Customs);

(ii) The accuracy of the claimant's past drawback claims; and

(iii) Whether accelerated payment of drawback or waiver of prior notice of intent to export was previously revoked or suspended.

(2) *Notification to applicant.* Customs will notify the applicant in writing within 90 days of receipt of the application of its decision to approve or deny the application, or of Customs inability to approve, deny, or act on the application and the reason therefor.

(3) *Approval.* The approval of an application for accelerated payment, under this section, shall be effective as of the date of Customs written notification of approval under paragraph (e)(2) of this section. Accelerated payment of drawback shall be available under this section to unliquidated drawback claims filed before and after such date. For claims filed before such date, accelerated payment of drawback shall be paid only if the claimant furnishes a properly executed single transaction bond covering the claim, in an amount sufficient to cover the amount of accelerated drawback to be paid on the claim.

(4) *Denial.* If an application for accelerated payment of drawback under this section is denied, the applicant shall be given written notice, specifying the grounds therefor, together with what corrective action may be taken, and informing the applicant that the denial may be appealed in the manner prescribed in paragraph (i) of this section. The applicant may not reapply for accelerated payment of drawback until the reason for the denial is resolved.

(f) *Revocation.* Customs may propose to revoke the approval of an application for accelerated payment of drawback under this section, for good cause (that is, noncompliance with the drawback law and/or regulations). In case of such proposed revocation, Customs shall give written notice, by registered or certified mail, of the proposed revocation of the approval of accelerated payment. The notice shall specify the reasons for Customs proposed action and the procedures for challenging Customs proposed revocation action as prescribed in paragraph (h) of this section. The revocation shall take effect 30 days after the date of the proposed revocation if not timely challenged under paragraph (h) of this section. If timely challenged, the revocation will take effect after completion of the

challenge procedures in paragraph (h) of this section unless the challenge is successful.

(g) *Action by drawback office controlling.* Action by the appropriate drawback office to approve, deny, or revoke accelerated payment of drawback will govern the applicant's eligibility for this procedure in all Customs drawback offices. If the application for accelerated payment of drawback is approved, the claimant shall refer to such approval in the first drawback claim filed after such approval in the drawback office approving accelerated payment of drawback and shall submit a copy of the approval letter with the first drawback claim filed in a drawback office other than the approving office.

(h) *Appeal of denial or challenge to proposed revocation.* An appeal of a denial of an application under this section, or challenge to the proposed revocation of an approved application under this section, may be made in writing to the drawback office issuing the denial or proposed revocation and must be filed within 30 days of the date of denial or proposed revocation. A denial of an appeal or challenge made to the drawback office may itself be appealed to CBP Headquarters, Office of International Trade, Trade Policy and Programs, and must be filed within 30 days. The 30-day period for appeal or challenge to the drawback office or to CBP Headquarters may be extended for good cause, upon written request by the applicant or holder for such extension filed with the appropriate office within the 30-day period.

(i) *Payment.* The drawback office approving a drawback claim in which accelerated payment of drawback was requested shall certify the drawback claim for payment within 3 weeks after filing, if a component for electronic filing of drawback claims, records, or entries which has been implemented under the National Customs Automation Program (NCAP) (19 U.S.C. 1411–1414) is used, and within 3 months after filing, if the claim is filed manually. After liquidation, the drawback office shall certify payment of any amount due or demand a refund of any excess amount paid. Any excess amount of duty the subject of accelerated payment that is not refunded within 30 days after the date of liquidation of the related drawback entry shall be considered delinquent (see §§ 24.3a and 113.65(b) of this chapter.)

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 27489, May 19, 1998]

§ 191.93 Combined applications.

An applicant for the procedures provided for in §§ 191.91 and 191.92 of this subpart may apply for only one procedure, both procedures separately, or both procedures in one application package (see also § 191.195 of this part regarding combined applications for certification in the drawback compliance program and waiver of prior notice and/or approval of accelerated payment of drawback). In the latter instance, the intent to apply for both procedures must be clearly stated. In all instances, all of the requirements for the procedure(s) applied for must be met (for example, in a combined application for both procedures, all of the information required for each procedure, all required sample documents for each procedure, and all required certifications must be included in and with the application).

Subpart J—Internal Revenue Tax on Flavoring Extracts and Medicinal or Toilet Preparations (Including Perfumery) Manufactured From Domestic Tax-Paid Alcohol

§ 191.101 Drawback allowance.

(a) *Drawback.* Section 313(d) of the Act, as amended (19 U.S.C. 1313(d)), provides for drawback of internal revenue tax upon the exportation of flavoring extracts and medicinal or toilet preparations (including perfumery) manufactured or produced in the United States in part from the domestic tax-paid alcohol.

(b) *Shipment to Puerto Rico, the Virgin Islands, Guam, and American Samoa.* Drawback of internal revenue tax on articles manufactured or produced under this subpart and shipped to Puerto Rico, the Virgin Islands, Guam, or American Samoa shall be allowed in accordance with § 7653(c) of the Internal Revenue Code (26 U.S.C. 7653(c)). However, there is no authority of law for

the allowance of drawback of internal-revenue tax on flavoring extracts or medicinal or toilet preparations (including perfumery) manufactured or produced in the United States and shipped to Wake Island, Midway Islands, Kingman Reef, Canton Island, Enderbury Island, Johnston Island, or Palmyra Island.

§ 191.102 Procedure.

(a) *General.* Other provisions of this part relating to direct identification drawback (see subpart B of this part) shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

(b) *Manufacturing record.* The manufacturer of flavoring extracts or medicinal or toilet preparations on which drawback is claimed shall record the products manufactured, the quantity of waste, if any, and a full description of the alcohol. These records shall be available at all times for inspection by Customs officers.

(c) *Additional information required on the manufacturer's application for a specific manufacturing drawback ruling.* The manufacturer's application for a specific manufacturing drawback ruling, under § 191.8 of this part, shall state the quantity of domestic tax-paid alcohol contained in each product on which drawback is claimed.

(d) *Variance in alcohol content*—(1) *Variance of more than 5 percent.* If the percentage of alcohol contained in a medicinal preparation, flavoring extract or toilet preparation varies by more than 5 percent from the percentage of alcohol in the total volume of the exported product as stated in a previously approved application for a specific manufacturing drawback ruling, the manufacturer shall apply for a new specific manufacturing drawback ruling pursuant to § 191.8 of this part. If the variation differs from a previously filed schedule, the manufacturer shall file a new schedule incorporating the change.

(2) *Variance of 5 percent or less.* Variances of 5 percent or less of the volume of the product shall be reported to the appropriate drawback office where the drawback entries are liquidated. In such cases, the drawback office may allow drawback without specific authorization from Customs Headquarters.

(e) *Time period for completing claims.* The 3-year period for the completion of drawback claims prescribed in 19 U.S.C. 1313(r)(1) shall be applicable to claims for drawback under this subpart.

(f) *Filing of drawback entries on duty-paid imported merchandise and tax-paid alcohol.* When the drawback claim covers duty-paid imported merchandise in addition to tax-paid alcohol, the claimant shall file one set of entries for drawback of Customs duty and another set for drawback of internal revenue tax.

(g) *Description of the alcohol.* The description of the alcohol stated in the drawback entry may be obtained from the description on the package containing the tax-paid alcohol.

§ 191.103 Additional requirements.

(a) *Manufacturer claims domestic drawback.* In the case of medicinal preparations and flavoring extracts, the claimant must file with the drawback entry, a declaration of the manufacturer showing whether a claim has been or will be filed by the manufacturer with the Alcohol and Tobacco Tax and Trade Bureau (TTB) for domestic drawback on alcohol under sections 5111, 5112, 5113, and 5114, Internal Revenue Code, as amended (26 U.S.C. 5111, 5112, 5113, and 5114).

(b) *Manufacturer does not claim domestic drawback*—(1) *Submission of statement.* If no claim has been or will be filed with TTB for domestic drawback on medicinal preparations or flavoring extracts, the manufacturer must submit a statement setting forth that fact to the Director, National Revenue Center, TTB.

(2) *Contents of the statement.* The statement must show the:

(i) Quantity and description of the exported products;

(ii) Identity of the alcohol used by serial number of package or tank car;

(iii) Name and registry number of the distilled spirits plant from which the alcohol was withdrawn;

(iv) Date of withdrawal;

(v) Serial number of the applicable record of tax determination (*see* 27 CFR 17.163(a) and 27 CFR 19.626(c)(7)); and

(vi) CBP office where the claim will be filed.

(3) *Verification of the statement.* The Director, National Revenue Center, TTB, will verify receipt of this statement, forward the original of the document to the drawback office designated, and retain the copy.

[USCBP–2018–0029, 83 FR 65066, Dec. 18, 2018]]

§ 191.104 Alcohol and Tobacco Tax and Trade Bureau (TTB) certificates.

(a) *Request.* The drawback claimant or manufacturer must request that the Director, National Revenue Center, TTB, provide the CBP office where the drawback claim will be processed with a tax-paid certificate on TTB Form 5100.4 (Certificate of Tax-Paid Alcohol).

(b) *Contents.* The request must state the:

(1) Quantity of alcohol in proof gallons;

(2) Serial number of each package;

(3) Amount of tax paid on the alcohol;

(4) Name, registry number, and location of the distilled spirits plant;

(5) Date of withdrawal;

(6) Name of the manufacturer using the alcohol in producing the exported articles;

(7) Address of the manufacturer and its manufacturing plant; and

(8) CBP drawback office where the drawback claim will be processed.

(c) *Extract of TTB certificate.* If a certification of any portion of the alcohol described in the TTB Form 5100.4 is required for liquidation of drawback entries processed in another drawback office, the drawback office, on written application of the person who requested its issuance, will transmit a copy of the extract from the certificate for use at that drawback office. The drawback office will note that the copy of the extract was prepared and transmitted.

[USCBP–2018–0029, 83 FR 65066, Dec. 18, 2018]]

§ 191.105 Liquidation.

The drawback office shall ascertain the final amount of drawback due by reference to the certificate of manufacture and delivery and the specific manufacturing drawback ruling under which the drawback claimed is allowable.

§ 191.106 Amount of drawback.

(a) *Claim filed with TTB.* If the declaration required by § 191.103 shows that a claim has been or will be filed with TTB for domestic drawback, drawback under section 313(d) of the Act, as amended (19 U.S.C. 1313(d)), will be limited to the difference between the amount of tax paid and the amount of domestic drawback claimed.

(b) *Claim not filed with TTB.* If the declaration and verified statement required by § 191.103 show that no claim has been or will be filed by the manufacturer with TTB for domestic drawback, the drawback will be the full amount of the tax on the alcohol used. Drawback under this provision may not be granted absent receipt from TTB of a copy of TTB Form 5100.4 (Certificate of Tax-Paid Alcohol) indicating that taxes have been paid on the exported product for which drawback is claimed.

(c) *No deduction of 1 percent.* No deduction of 1 percent will be made in drawback claims under section 313(d) of the Act, as amended (19 U.S.C. 1313(d)).

(d) *Payment.* The drawback due will be paid in accordance with § 191.81(f).

[USCBP–2018–0029, 83 FR 65067, Dec. 18, 2018]

Subpart K—Supplies for Certain Vessels and Aircraft

§ 191.111 Drawback allowance.

Section 309 of the Act, as amended (19 U.S.C. 1309), provides for drawback on articles laden as supplies on certain vessels or aircraft of the United States or as supplies including equipment upon, or used in the maintenance or repair of, certain foreign vessels or aircraft.

§ 191.112 Procedure.

(a) *General.* The provisions of this subpart shall override other conflicting provisions of this part.

(b) *Customs forms.* The drawback claimant shall file with the drawback office the drawback entry on Customs Form 7551 annotated for 19 U.S.C. 1309, and attach thereto a notice of lading

on Customs Form 7514, in quadruplicate, unless the export summary procedure, provided for in §191.73, is used. If the export summary procedure is used, the requirements in §191.73 shall be complied with, as applicable, and the requirements in paragraphs (d)(1) and (f)(1) of this section shall also be complied with.

(c) *Time of filing notice of lading.* In the case of drawback in connection with 19 U.S.C. 1309(b), the drawback notice of lading on Customs Form 7514 may be filed either before or after the lading of the articles. If filed after lading, the notice shall be filed within 3 years after exportation of the articles.

(d) *Contents of notice.* The notice of lading shall show:

(1) The name of the vessel or identity of the aircraft on which articles were or are to be laden;

(2) The number and kind of packages and their marks and numbers;

(3) A description of the articles and their weight (net), gauge, measure, or number; and

(4) The name of the exporter.

(e) *Assignment of numbers and return of one copy.* The drawback office shall assign a number to each notice of lading and return one copy to the exporter for delivery to the master or authorized officer of the vessel or aircraft.

(f) *Declaration*—(1) *Requirement.* The master or an authorized representative of the vessel or aircraft having knowledge of the facts shall complete the section of the notice entitled ''Declaration of Master or Other Officer''.

(2) *Procedure if notice filed before lading.* If the notice is filed before lading of the articles, the declaration must be completed on the copy of the numbered drawback notice that was filed with the drawback office and returned to the exporter for this purpose.

(3) *Procedure if notice filed after lading.* If the drawback notice is filed after lading of the articles, the drawback claimant may file a separate document containing the declaration required on the Drawback Notice, Customs Form 7514.

(4) *Filing.* The drawback claimant shall file with the drawback office both the drawback entry and the drawback notice or separate document containing the declaration of the master or other officer or representative.

(g) *Information concerning class or trade.* Information about the class of business or trade of a vessel or aircraft is required to be furnished in support of the drawback entry if the vessel or aircraft is American.

(h) *Vessel or aircraft not required to clear or obtain a permit to proceed.* If the vessel or aircraft is not required to clear or obtain a permit to proceed to another port, the drawback office shall return to the exporter or the person designated by the exporter two copies of the notice, noting the absence of a requirement for clearance or permit to proceed, for subsequent filing with the drawback claim. The claimant shall file with the claim an itinerary of the vessel or aircraft for the immediate voyage or flight showing that the vessel or aircraft is engaged in a class of business or trade which makes it eligible for drawback.

(i) *Articles laden or installed on aircraft as equipment or used in the maintenance or repair of aircraft.* The drawback office where the drawback claim is filed shall require a declaration or other evidence showing to its satisfaction that articles have been laden or installed on aircraft as equipment or used in the maintenance or repair of aircraft.

(j) *Fuel laden on vessels or aircraft as supplies*—(1) *Composite notice of lading.* In the case of fuel laden on vessels or aircraft as supplies, the drawback claimant may file with the drawback office a composite notice of lading on the reverse side of Customs Form 7514, for each calendar month. The composite notice of lading shall describe all of the drawback claimant's deliveries of fuel supplies during the one calendar month at a single port or airport to all vessels or airplanes of one vessel owner or operator or airline. This includes fuel laden for flights or voyages between the contiguous U.S. and Hawaii, Alaska, or any U.S. possessions (see §10.59 of this chapter).

(2) *Contents of composite notice.*omposite notice shall show for each voyage or flight, either on the reverse side of Customs Form 7514 or on a continuation sheet:

(i) The identity of the vessel or aircraft;

(ii) A description of the fuel supplies laden;

(iii) The quantity laden; and

(iv) The date of lading.

(3) *Declaration of owner or operator.* An authorized vessel or airline representative having knowledge of the facts shall complete the section ''Declaration of Master or Other Officer'' on Customs Form 7514.

(k) *Desire to land articles covered by notice of lading.* The master of the vessel or commander of the aircraft desiring to land in the United States articles covered by a notice of lading shall apply for a permit to land those articles under Customs supervision. All articles landed, except those transferred under the original notice of lading to another vessel or aircraft entitled to drawback, shall be considered imported merchandise for the purpose of §309(c) of the Act, as amended (19 U.S.C. 1309(c)).

Subpart L—Meats Cured With Imported Salt

§ 191.121 Drawback allowance.

Section 313(f) of the Act, as amended (19 U.S.C. 1313(f)), provides for the allowance of drawback upon the exportation of meats cured with imported salt.

§ 191.122 Procedure.

(a) *General.* Other provisions of this part relating to direct identification manufacturing drawback shall apply to claims for drawback under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

(b) *Customs form.* The forms used for other drawback claims shall be used and modified to show that the claim is being made for refund of duties paid on salt used in curing meats.

§ 191.123 Refund of duties.

Drawback shall be refunded in aggregate amounts of not less than $100 and shall not be subject to the retention of 1 percent of duties paid.

Subpart M—Materials for Construction and Equipment of Vessels and Aircraft Built for Foreign Ownership and Account

§ 191.131 Drawback allowance.

Section 313(g) of the Act, as amended (19 U.S.C. 1313(g)), provides for drawback on imported materials used in the construction and equipment of vessels and aircraft built for foreign account and ownership, or for the government of any foreign country, notwithstanding that these vessels or aircraft may not be exported within the strict meaning of the term.

§ 191.132 Procedure.

Other provisions of this part relating to direct identification manufacturing drawback shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

§ 191.133 Explanation of terms.

(a) *Materials.* Section 313(g) of the Act, as amended (19 U.S.C. 1313(g)), applies only to materials used in the original construction and equipment of vessels and aircraft, or to materials used in a ''major conversion'', as defined in this section, of a vessel or aircraft. Section 313(g) does not apply to materials used for alteration or repair, or to materials not required for safe operation of the vessel or aircraft.

(b) *Foreign account and ownership.* Foreign account and ownership, as used in §313(g) of the Act, as amended (19 U.S.C. 1313(g)), means only vessels or aircraft built or equipped for the account of an owner or owners residing in a foreign country and having a bona fide intention that the vessel or aircraft, when completed, shall be owned and operated under the flag of a foreign country.

(c) *Major conversion.* For purposes of this subpart, a ''major conversion'' means a conversion that substantially changes the dimensions or carrying capacity of the vessel or aircraft, changes the type of the vessel or aircraft, substantially prolongs the life of the vessel or aircraft, or otherwise so changes

the vessel or aircraft that it is essentially a new vessel or aircraft, as determined by Customs (see 46 U.S.C. 2101(14a)).

Subpart N—Foreign-Built Jet Aircraft Engines Processed in the United States

§ 191.141 Drawback allowance.

Section 313(h) of the Act, as amended (19 U.S.C. 1313(h)), provides for drawback on the exportation of jet aircraft engines manufactured or produced abroad that have been overhauled, repaired, rebuilt, or reconditioned in the United States with the use of imported merchandise, including parts.

§ 191.142 Procedure.

Other provisions of this part shall apply to claims for drawback filed under this subpart insofar as applicable to and not inconsistent with the provisions of this subpart.

§ 191.143 Drawback entry.

(a) *Filing of entry*. Drawback entries covering these foreign-built jet aircraft engines shall be filed on Customs Form 7551, modified to show that the entry covers jet aircraft engines processed under §313(h) of the Act, as amended (19 U.S.C. 1313(h)).

(b) *Contents of entry*. The entry shall show the country in which each engine was manufactured and describe the processing performed thereon in the United States.

§ 191.144 Refund of duties.

Drawback shall be refunded in aggregate amounts of not less than $100, and shall not be subject to the deduction of 1 percent of duties paid.

Subpart O—Merchandise Exported From Continuous Customs Custody

§ 191.151 Drawback allowance.

(a) *Eligibility of entered or withdrawn merchandise*—(1) *Under 19 U.S.C. 1557(a)*. Section 557(a) of the Act, as amended (19 U.S.C. 1557(a)), provides for drawback on the exportation to a foreign country, or the shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or Guam, of merchandise upon which duties have been paid which has remained continuously in bonded warehouse or otherwise in Customs custody for a period not to exceed 5 years from the date of importation.

(2) *Under 19 U.S.C. 1313*. Imported merchandise that has not been regularly entered or withdrawn for consumption, shall not satisfy any requirement for use, importation, exportation or destruction, and shall not be available for drawback, under §313 of the Act, as amended (19 U.S.C. 1313) (see 19 U.S.C. 1313(u)).

(b) *Guantanamo Bay*. Guantanamo Bay Naval Station shall be considered foreign territory for drawback purposes under this subpart and merchandise shipped there is eligible for drawback. Imported merchandise which has remained continuously in bonded warehouse or otherwise in Customs custody since importation is not entitled to drawback of duty when shipped to Puerto Rico, Canton Island, Enderbury Island, or Palmyra Island.

§ 191.152 Merchandise released from Customs custody.

No remission, refund, abatement, or drawback of duty shall be allowed under this subpart because of the exportation or destruction of any merchandise after its release from Government custody, except in the following cases:

(a) When articles are exported or destroyed on which drawback is expressly provided for by law;

(b) When prohibited articles have been regularly entered in good faith and are subsequently exported or destroyed pursuant to statute and regulations prescribed by the Secretary of the Treasury; or

(c) When articles entered under bond are destroyed within the bonded period, as provided in §557(c) of the Act, as amended (19 U.S.C. 1557(c)), or destroyed within the bonded period by death, accidental fire, or other casualty, and satisfactory evidence of destruction is furnished to Customs (see §191.71), in which case any accrued duties shall be remitted or refunded and any condition in the bond that the articles shall be exported shall be deemed

to have been satisfied (see 19 U.S.C. 1558).

§ 191.153 Continuous Customs custody.

(a) *Merchandise released under an importer's bond and returned.* Merchandise released to an importer under a bond prescribed by § 142.4 of this chapter and later returned to the public stores upon requisition of the appropriate Customs office shall not be deemed to be in the continuous custody of Customs officers.

(b) *Merchandise released under Chapter 98, Subchapter XIII, Harmonized Tariff Schedule of the United States (HTSUS).* Merchandise released as provided for in Chapter 98, Subchapter XIII, HTSUS (19 U.S.C. 1202), shall not be deemed to be in the continuous custody of Customs officers.

(c) *Merchandise released from warehouse.* For the purpose of this subpart, in the case of merchandise entered for warehouse, Customs custody shall be deemed to cease when estimated duty has been deposited and the appropriate Customs office has authorized the withdrawal of the merchandise.

(d) *Merchandise not warehoused, examined elsewhere than in public stores*—(1) *General rule.* Except as stated in paragraph (d)(2) of this section, merchandise examined elsewhere than at the public stores, in accordance with the provisions of § 151.7 of this chapter, shall be considered released from Customs custody upon completion of final examination for appraisement.

(2) *Merchandise upon the wharf.* Merchandise which remains on the wharf by permission of the appropriate Customs office shall be considered to be in Customs custody, but this custody shall be deemed to cease when the Customs officer in charge accepts the permit and has no other duties to perform relating to the merchandise, such as measuring, weighing, or gauging.

§ 191.154 Filing the entry.

(a) *Direct export.* At least 6 working hours before lading the merchandise on which drawback is claimed under this subpart, the importer or the agent designated by him in writing shall file with the drawback office a direct export drawback entry on Customs Form 7551 in duplicate.

(b) *Merchandise transported to another port for exportation.* The importer of merchandise to be transported to another port for exportation shall file in triplicate with the drawback office an entry naming the transporting conveyance, route, and port of exit. The drawback office shall certify one copy and forward it to the Customs office at the port of exit. A bonded carrier shall transport the merchandise in accordance with the applicable regulations. Manifests shall be prepared and filed in the manner prescribed in § 144.37 of this chapter.

§ 191.155 Merchandise withdrawn from warehouse for exportation.

The regulations in part 18 of this chapter concerning the supervision of lading and certification of exportation of merchandise withdrawn from warehouse for exportation without payment of duty shall be followed to the extent applicable.

§ 191.156 Bill of lading.

(a) *Filing.* In order to complete the claim for drawback under this subpart, a bill of lading covering the merchandise described in the drawback entry (Customs Form 7551) shall be filed within 2 years after the merchandise is exported.

(b) *Contents.* The bill of lading shall either show that the merchandise was shipped by the person making the claim or bear an endorsement of the person in whose name the merchandise was shipped showing that the person making the claim is authorized to do so.

(c) *Limitation of the bill of lading.* The terms of the bill of lading may limit and define its use by stating that it is for Customs purposes only and not negotiable.

(d) *Inability to produce bill of lading.* When a required bill of lading cannot be produced, the person making the drawback entry may request the drawback office, within the time required for the filing of the bill of lading, to accept a statement setting forth the cause of failure to produce the bill of lading and such evidence of exportation and of his right to make the drawback entry as may be available. The request shall be granted if the drawback office

is satisfied by the evidence submitted that the failure to produce the bill of lading is justified, that the merchandise has been exported, and that the person making the drawback entry has the right to do so. If the drawback office is not so satisfied, such office shall transmit the request and its accompanying evidence to the Office of International Trade, CBP Headquarters, for final determination.

(e) *Extracts of bills of lading.* Drawback offices may issue extracts of bills of lading filed with drawback claims.

§ 191.157 Landing certificates.

When required, a landing certificate shall be filed within the time prescribed in § 191.76 of this part.

§ 191.158 Procedures.

When the drawback claim has been completed and the bill of lading filed, together with the landing certificate, if required, the reports of inspection and lading made, and the clearance of the exporting conveyance established by the record of clearance in the case of direct exportation or by certificate in the case of transportation and exportation, the drawback office shall verify the importation by referring to the import records to ascertain the amount of duty paid on the merchandise exported. To the extent appropriate and not inconsistent with the provisions of this subpart, drawback entries shall be liquidated in accordance with the provisions of § 191.81 of this part.

§ 191.159 Amount of drawback.

Drawback due under this subpart shall not be subject to the deduction of 1 percent.

Subpart P—Distilled Spirits, Wines, or Beer Which Are Unmerchantable or Do Not Conform to Sample or Specifications

§ 191.161 Refund of taxes.

Section 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)), provides for the refund, remission, abatement or credit to the importer of internal-revenue taxes paid or determined incident to importation, upon the exportation, or destruction under Customs supervision, of imported distilled spirits, wines, or beer found after entry to be unmerchantable or not to conform to sample or specifications and which are returned to Customs custody.

§ 191.162 Procedure.

The export procedure shall be the same as that provided in § 191.42 except that the claimant must be the importer and as otherwise provided in this subpart.

§ 191.163 Documentation.

(a) *Entry.* Customs Form 7551 shall be used to claim drawback under this subpart.

(b) *Documentation.* The drawback entry for unmerchantable merchandise shall be accompanied by a certificate of the importer setting forth in detail the facts which cause the merchandise to be unmerchantable and any additional evidence that the drawback office requires to establish that the merchandise is unmerchantable.

§ 191.164 Return to Customs custody.

There is no time limit for the return to Customs custody of distilled spirits, wine, or beer subject to refund of taxes under the provisions of this subpart.

§ 191.165 No exportation by mail.

Merchandise covered by this subpart shall not be exported by mail.

§ 191.166 Destruction of merchandise.

(a) *Action by the importer.* A drawback claimant who proposes to destroy rather than export the distilled spirits, wine, or beer shall state that fact on Customs Form 7551.

(b) *Action by Customs.* Distilled spirits, wine, or beer returned to Customs custody at the place approved by the drawback office where the drawback entry was filed shall be destroyed under the supervision of the Customs officer who shall certify the destruction on Customs Form 7553.

§ 191.167 Liquidation.

No deduction of 1 percent of the internal revenue taxes paid or determined shall be made in allowing entries under § 5062(c), Internal Revenue Code, as amended (26 U.S.C. 5062(c)).

§ 191.168 Time limit for exportation or destruction.

Merchandise not exported or destroyed within 90 days from the date of notification of acceptance of the drawback entry shall be considered unclaimed, unless upon written request by the importer, prior to the expiration of the 90-day period, the drawback office grants an extension of not more than 90 days.

Subpart Q—Substitution of Finished Petroleum Derivatives

§ 191.171 General; drawback allowance.

(a) *General.* Section 313(p) of the Act, as amended (19 U.S.C. 1313(p)), provides for drawback on the basis of qualified articles which consist of either petroleum derivatives that are imported, duty-paid, and qualified for drawback under the unused merchandise drawback law (19 U.S.C. 1313(j)(1)), or petroleum derivatives that are manufactured or produced in the United States, and qualified for drawback under the manufacturing drawback law (19 U.S.C. 1313(a) or (b)).

(b) *Allowance of drawback.* Drawback may be granted under 19 U.S.C. 1313(p):

(1) In cases where there is no manufacture, upon exportation of the imported article, an article of the same kind and quality, or any combination thereof; or

(2) In cases where there is a manufacture or production, upon exportation of the manufactured or produced article, an article of the same kind and quality, or any combination thereof.

(c) *Merchandise processing fees.* In cases where the requirements of paragraph (b)(1) of this section have been met, merchandise processing fees will be eligible for drawback.

(d) *Federal excise tax.* For purposes of drawback of internal revenue tax imposed under Chapters 32 and 38 (with the exception of Subchapter A of Chapter 38) of the Internal Revenue Code of 1986, as amended (IRC), drawback granted on the export of substituted merchandise will be limited to the amount of taxes paid (and not returned by refund, credit, or drawback) on the substituted merchandise.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998, as amended by T.D. 02–16, 67 FR 16637, Apr. 8, 2002; CBP Dec. 04–33, 69 FR 60083, Oct. 7, 2004; USCBP–2018–0029, 83 FR 65067, Dec. 18, 2018]

§ 191.172 Definitions.

The following are definitions for purposes of this subpart only:

(a) *Qualified article.* ''Qualified article'' means an article described in headings 2707, 2708, 2710 through 2715, 2901, 2902, 2909.19.14, or 3901 through 3914 of the Harmonized Tariff Schedule of the United States (HTSUS). In the case of an article described in headings 3901 through 3914, the definition covers the article in its primary forms as provided in Note 6 to chapter 39 of the HTSUS.

(b) *Same kind and quality article.* ''Same kind and quality article'' means an article which is commercially interchangeable with, or which is referred to under the same 8-digit classification of the HTSUS as, the article to which it is compared. (For example, unleaded gasoline and jet fuel (naphtha or kerosene-type), both falling under the same HTSUS classification (2710.00.15) would be considered same kind and quality articles because they fall under the same 8 digit HTSUS classification, even though they are not ''commercially interchangeable''.)

(c) *Exported article.* ''Exported article'' means an article which has been exported and is the qualified article, an article of the same kind and quality as the qualified article, or any combination thereof.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998, as amended by T.D. 02–16, 67 FR 16637, Apr. 8, 2002]

§ 191.173 Imported duty-paid derivatives (no manufacture).

When the basis for drawback under 19 U.S.C. 1313(p) is imported duty-paid petroleum derivatives (that is, not articles manufactured under 19 U.S.C. 1313(a) or (b)), the requirements for drawback are as follows:

(a) *Imported duty-paid merchandise.* The imported duty-paid merchandise designated for drawback must be a ''qualified article'' as defined in § 191.172(a) of this subpart;

(b) *Exported article.* The exported article on which drawback is claimed must be an ''exported article'' as defined in § 191.172(c) of this subpart;

(c) *Exporter.* The exporter of the exported article must have either:

(1) Imported the qualified article in at least the quantity of the exported article; or

(2) Purchased or exchanged (directly or indirectly) from an importer an imported qualified article in at least the quantity of the exported article;

(d) *Time of export.* The exported article must be exported within 180 days after the date of entry of the designated imported duty-paid merchandise; and

(e) *Amount of drawback.* The amount of drawback payable may not exceed the amount of drawback which would be attributable to the imported qualified article under 19 U.S.C. 1313(j)(1) which serves as the basis for drawback.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998, as amended by T.D. 02–16, 67 FR 16637, Apr. 8, 2002]

§ 191.174 Derivatives manufactured under 19 U.S.C. 1313(a) or (b).

When the basis for drawback under 19 U.S.C. 1313(p) is petroleum derivatives which were manufactured or produced in the United States and qualify for drawback under the manufacturing drawback law (19 U.S.C. 1313(a) or (b)), the requirements for drawback are as follows:

(a) *Merchandise.* The merchandise which is the basis for drawback under 19 U.S.C. 1313(p) must:

(1) Have been manufactured or produced as described in 19 U.S.C. 1313(a) or (b) from crude petroleum or a petroleum derivative; and

(2) Be a ''qualified article'' as defined in § 191.172(a) of this subpart;

(b) *Exported article.* The exported article on which drawback is claimed must be an ''exported article'' as defined in § 191.172(c) of this subpart;

(c) *Exporter.* The exporter of the exported article must have either:

(1) Manufactured or produced the qualified article in at least the quantity of the exported article; or

(2) Purchased or exchanged (directly or indirectly) from a manufacturer or producer described in 19 U.S.C. 1313(a) or (b) the qualified article in at least the quantity of the exported article;

(d) *Manufacture in specific facility.* The qualified article must have been manufactured or produced in a specific petroleum refinery or production facility which must be identified;

(e) *Time of export.* The exported article must be exported either:

(1) During the period provided for in the manufacturer's or producer's specific manufacturing drawback ruling (see § 191.8 of this part) in which the qualified article is manufactured or produced; or

(2) Within 180 days after the close of the period in which the qualified article is manufactured or produced; and

(f) *Amount of drawback.* The amount of drawback payable may not exceed the amount of drawback which would be attributable to the article manufactured or produced under 19 U.S.C. 1313(a) or (b) which serves as the basis for drawback.

§ 191.175 Drawback claimant; maintenance of records.

(a) *Drawback claimant.* A drawback claimant under 19 U.S.C. 1313(p) must be the exporter of the exported article, or the refiner, producer, or importer of either the qualified article or the exported article. Any of these persons may designate another person to file the drawback claim.

(b) *Certificate of manufacture and delivery or delivery*—(1) *General.* A drawback claimant under 19 U.S.C. 1313(p) must provide a certificate of manufacture and delivery or a certificate of delivery, as applicable, establishing the drawback eligibility of the articles for which drawback is claimed.

(2) *Article substituted for the qualified article.* (i) Subject to paragraph (b)(2)(iii) of this section, the manufacturer, producer, or importer of a qualified article may transfer to the exporter an article of the same kind and quality as the qualified article, as so certified, respectively, in a certificate

of manufacture and delivery or a certificate of delivery, in a quantity not greater than the quantity of the qualified article.

(ii) Subject to paragraph (b)(2)(iii) of this section, any intermediate party in the chain of commerce leading to the exporter from the manufacturer, producer, or importer of a qualified article may also transfer to the exporter or to another intermediate party an article of the same kind and quality as the article purchased or exchanged from the prior transferor (whether the manufacturer, producer, importer, or another intermediate transferor), as so certified in a certificate of delivery, in a quantity not greater than the quantity of the article purchased or exchanged.

(iii) Under either paragraph (b)(2)(i) or (b)(2)(ii) of this section, the article transferred, regardless of its origin (imported, manufactured, substituted, or any combination thereof), so designated on a certificate of delivery or, in the case of the manufacturer or producer of a qualified article under 19 U.S.C. 1313(a) or (b), on a certificate of manufacture and delivery, will be the qualified article eligible for drawback for purposes of section 1313(p), provided that the following conditions are met:

(A) The party who issues the applicable certificate for the transferred article must expressly state on the certificate that the certificate is prepared pursuant to 19 U.S.C. 1313(p) (the article may not be designated for any other drawback purposes);

(B) The party must certify to the Commissioner of Customs on the certificate or an attachment that it has not, and will not, designate on that certificate and on any other such certificates issued a quantity of the article greater than the amount eligible for drawback; and

(C) The party must certify to the Commissioner of Customs on the applicable certificate or on an attachment that it will maintain appropriate records which establish that it has not designated on any such certificates issued a greater quantity than the amount eligible for drawback.

(c) *Maintenance of records.* The manufacturer, producer, importer, transferor, exporter and drawback claimant of the qualified article and the exported article must all maintain their appropriate records required by this part.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998, as amended by T.D. 02–16, 67 FR 16637, Apr. 8, 2002]

§ 191.176 Procedures for claims filed under 19 U.S.C. 1313(p).

(a) *Applicability.* The general procedures for filing drawback claims shall be applicable to claims filed under 19 U.S.C. 1313(p) unless otherwise specifically provided for in this section.

(b) *Administrative efficiency, frequency of claims, and restructuring of claims.* The procedures regarding administrative efficiency, frequency of claims, and restructuring of claims (as applicable, see § 191.53 of this part) shall apply to claims filed under this subpart.

(c) *Imported duty-paid derivatives (no manufacture).* When the basis for drawback under 19 U.S.C. 1313(p) is imported duty-paid petroleum (not articles manufactured under 19 U.S.C. 1313(a) or (b)), claims under this subpart may be paid and liquidated if:

(1) The claim is filed on Customs Form 7551; and

(2) The claimant provides a certification stating the basis (such as company records, or customer's written certification), for the information contained therein and certifying that:

(i) The exported merchandise was exported within 180 days of entry of the designated, imported merchandise;

(ii) The qualified article and the exported article are commercially interchangeable or both articles are subject to the same 8-digit HTSUS tariff classification;

(iii) To the best of the claimant's knowledge, the designated imported merchandise, the qualified article and the exported article have not and will not serve as the basis of any other drawback claim;

(iv) Evidence in support of the certification will be retained by the person providing the certification for 3 years after payment of the claim; and

(v) Such evidence will be available for verification by Customs.

(d) *Derivatives manufactured under 19 U.S.C. 1313(a) or (b).* When the basis for drawback under 19 U.S.C. 1313(p) is articles manufactured under 19 U.S.C.

1313(a) or (b), claims under this section may be paid and liquidated if:

(1) The claim is filed on Customs Form 7551;

(2) All documents required to be filed with a manufacturing claim under 19 U.S.C. 1313(a) or (b) are filed with the claim;

(3) The claim identifies the specific refinery or production facility at which the derivatives were manufactured or produced;

(4) The claim states the period of manufacture for the derivatives; and

(5) The claimant provides a certification stating the basis (such as company records or a customer's written certification), for the information contained therein and certifying that:

(i) The exported merchandise was exported during the manufacturing period for the qualified article or within 180 days after the close of that period;

(ii) The qualified article and the exported article are commercially interchangeable or both articles are subject to the same 8-digit HTSUS tariff classification;

(iii) To the best of the claimant's knowledge, the designated imported merchandise, the qualified article and the exported article have not and will not serve as the basis of any other drawback claim;

(iv) Evidence in support of the certification will be retained by the person providing the certification for 3 years after payment of the claim; and

(v) Such evidence will be available for verification by Customs.

Subpart R—Merchandise Transferred to a Foreign Trade Zone From Customs Territory

§ 191.181 Drawback allowance.

The fourth proviso of § 3 of the Foreign Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81c), provides for drawback on merchandise transferred to a foreign trade zone for the sole purpose of exportation, storage or destruction (except destruction of distilled spirits, wines, and fermented malt liquors), provided there is compliance with the regulations of this subpart.

§ 191.182 Zone-restricted merchandise.

Merchandise in a foreign trade zone for the purposes specified in § 191.181 shall be given status as zone-restricted merchandise on proper application (see § 146.44 of this chapter).

§ 191.183 Articles manufactured or produced in the United States.

(a) *Procedure for filing documents.* Except as otherwise provided, the drawback procedures prescribed in this part shall be followed as applicable to drawback under this subpart on articles manufactured or produced in the United States with the use of imported or substituted merchandise, and on flavoring extracts or medicinal or toilet preparations (including perfumery) manufactured or produced with the use of domestic tax-paid alcohol.

(b) *Notice of transfer*—(1) *Evidence of export.* The notice of zone transfer on Customs Form 214 shall be in place of the documents under subpart G of this part to establish the exportation.

(2) *Filing procedures.* The notice of transfer, in triplicate, shall be filed with the drawback office where the foreign trade zone is located prior to the transfer of the articles to the zone, or within 3 years after the transfer of the articles to the zone. A notice filed after the transfer shall state the foreign trade zone lot number.

(3) *Contents of notice.* Each notice of transfer shall show the:

(i) Number and location of the foreign trade zone;

(ii) Number and kind of packages and their marks and numbers;

(iii) Description of the articles, including weight (gross and net), gauge, measure, or number; and

(iv) Name of the transferor.

(c) *Action of foreign trade zone operator.* After articles have been received in the zone, the zone operator shall certify on a copy of the notice of transfer the receipt of the articles (see § 191.184(d)(2)) and forward the notice to the transferor or the person designated by the transferor, unless the export summary procedure, provided for in § 191.73, is used. If the export summary procedure is used, the requirements in § 191.73 shall be complied with, as applicable. The transferor shall verify that

the notice has been certified before filing it with the drawback claim.

(d) *Drawback entries.* Drawback entries shall be filed on Customs Form 7551 to indicate that the merchandise was transferred to a foreign trade zone. The ''Declaration of Exportation'' shall be modified as follows:

Declaration of Transfer to a Foreign Trade Zone

I,_____ _____
(member of firm, officer representing corporation, agent, or attorney), of _____, declare that, to the best of my knowledge and belief, the particulars of transfer stated in this entry, the notices of transfer, and receipts are correct, and that the merchandise was transferred to a foreign trade zone for the sole purpose of exportation, destruction, or storage, not to be removed from the foreign trade zone for domestic consumption.

Dated: _____

_____
Transferor or agent

§ 191.184 Merchandise transferred from continuous Customs custody.

(a) *Procedure for filing claims.* The procedure described in subpart O of this part shall be followed as applicable, for drawback on merchandise transferred to a foreign trade zone from continuous Customs custody.

(b) *Drawback entry.* Before the transfer of merchandise from continuous Customs custody to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose shall file with the drawback office a direct export drawback entry on Customs Form 7551 in duplicate. The drawback office shall forward one copy of Customs Form 7551 to the zone operator at the zone.

(c) *Certification by zone operator.* After the merchandise has been received in the zone, the zone operator shall certify on the copy of Customs Form 7551 the receipt of the merchandise (see paragraph (d)(2) of this section) and forward the form to the transferor or the person designated by the transferor, unless the export summary procedure, provided for in §191.73, is used. If the export summary procedure is used, the requirements in §191.73 shall be complied with, as applicable. After executing the declaration provided for in paragraph (d)(3) of this section, the transferor shall resubmit Customs Form 7551 to the drawback office in place of the bill of lading required by §191.156.

(d) *Modification of drawback entry*—(1) *Indication of transfer.* Customs Form 7551 shall indicate that the merchandise is to be transferred to a foreign trade zone.

(2) *Endorsement.* The transferor or person designated by the transferor shall endorse Customs Form 7551 as follows, for execution by the foreign trade zone operator:

Certification of Foreign Trade Zone Operator

The merchandise described in the entry was received from _____ on _____, 19___; in Foreign Trade Zone No._____,
(City and State)
Exceptions _____ _____
(Name and title)
By _____ _____
(Name of operator)

(3) *Transferor's declaration.* The transferor shall declare on Customs Form 7551 as follows:

Transferor's Declaration

I, _____ _____
of the firm of_____, declare that the merchandise described in this entry was duly entered at the customhouse on arrival at this port; that the duties thereon have been paid as specified in this entry; and that it was transferred to Foreign Trade Zone No. _____, located at _____, (City and State) for the sole purpose of exportation, destruction, or storage, not to be removed from the foreign trade zone for domestic consumption. I further declare that to the best of my knowledge and belief, this merchandise is in the same quantity, quality, value, and package, unavoidable wastage and damage excepted, as it was at the time of importation; that no allowance nor reduction of duties has been made for damage or other cause except as specified in this entry; and that no part of the duties paid has been refunded by drawback or otherwise.

Dated: _____
(Transferor)

§ 191.185 Unused merchandise drawback and merchandise not conforming to sample or specification, shipped without consent of the consignee, or found to be defective as of the time of importation.

(a) *Procedure for filing claims.* The procedures described in subpart C of this

part relating to unused merchandise drawback, and in subpart D of this part relating to rejected merchandise, shall be followed as applicable to drawback under this subpart for unused merchandise drawback and merchandise that does not conform to sample or specification, is shipped without consent of the consignee, or is found to be defective as of the time of importation.

(b) *Drawback entry*. Before transfer of the merchandise to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose shall file with the drawback office an entry on Customs Form 7551 in duplicate. The drawback office shall forward one copy of Customs Form 7551 to the zone operator at the zone.

(c) *Certification by zone operator*. After the merchandise has been received in the zone, the zone operator at the zone shall certify on the copy of Customs Form 7551 the receipt of the merchandise and forward the form to the transferor or the person designated by the transferor, unless the export summary procedure, provided for in §191.73, is used. If the export summary procedure is used, the requirements in §191.73 shall be complied with, as applicable. After executing the declaration provided for in paragraph (d)(3) of this section, the transferor shall resubmit Customs Form 7551 to the drawback office in place of the bill of lading required by §191.156.

(d) *Modification of drawback entry*—(1) *Indication of transfer*. Customs Form 7551 shall indicate that the merchandise is to be transferred to a foreign trade zone.

(2) *Endorsement*. The transferor or person designated by the transferor shall endorse Customs Form 7551 as follows, for execution by the foreign trade zone operator:

Certification of Foreign Trade Zone Operator

The merchandise described in this entry was received from _____ on _____, 19 ___, in Foreign Trade Zone No. _____, _____ (City and State).
Exceptions: _____

_____

_____

(Name of operator)
By _____
(Name and title)

(3) *Transferor's declaration*. The transferor shall declare on Customs Form 7551 as follows:

Transferor's Declaration

I, _____ _____
of the firm of _____, declare that the merchandise described in the within entry was duly entered at the customhouse on arrival at this port; that the duties thereon have been paid as specified in this entry; and that it was transferred to Foreign Trade Zone No. _____, located at_____ (City and State) for the sole purpose of exportation, destruction, or storage, not to be removed from the foreign trade zone for domestic consumption. I further declare that to the best of my knowledge and belief, said merchandise is the same in quantity, quality, value, and package as specified in this entry; that no allowance nor reduction in duties has been made; and that no part of the duties paid has been refunded by drawback or otherwise.
Dated: _____
Transferor

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15289, Mar. 31, 1998]

§191.186 Person entitled to claim drawback.

The person named in the foreign trade zone operator's certification on the notice of transfer or the drawback entry, as applicable, shall be considered to be the transferor. Drawback may be claimed by, and paid to, the transferor.

Subpart S—Drawback Compliance Program

§191.191 Purpose.

This subpart sets forth the requirements for the Customs drawback compliance program in which claimants and other parties in interest, including Customs brokers, may participate after being certified by Customs. Participation in the program is voluntary. Under the program, Customs is required to inform potential drawback claimants and related parties clearly about their rights and obligations under the drawback law and regulations. Reduced penalties and/or warning letters may be issued once a party has been certified for the program, and is in general compliance with the appropriate procedures and requirements thereof.

§ 191.192 Certification for compliance program.

(a) *General.* A party may be certified as a participant in the drawback compliance program after meeting the core requirements established under the program, or after negotiating an alternative drawback compliance program suited to the needs of both the party and Customs. Certification requirements shall take into account the size and nature of the party's drawback program, the type of drawback claims filed, and the volume of claims filed. Whether the party is a drawback claimant, a broker, or one that provides data and documentation on which a drawback claim is based, will also be considered.

(b) *Core requirements of program.* In order to be certified as a participant in the drawback compliance program or negotiated alternative drawback compliance program, the party must be able to demonstrate that it:

(1) Understands the legal requirements for filing claims, including the nature of the records that are required to be maintained and produced and the time periods involved;

(2) Has in place procedures that explain the Customs requirements to those employees involved in the preparation of claims, and the maintenance and production of required records;

(3) Has in place procedures regarding the preparation of claims and maintenance of required records, and the production of such records to Customs;

(4) Has designated a dependable individual or individuals who will be responsible for compliance under the program, and maintenance and production of required records;

(5) Has in place a record maintenance program approved by Customs regarding original records, or if approved by Customs, alternative records or recordkeeping formats for other than the original records; and

(6) Has procedures for notifying Customs of variances in, or violations of, the drawback compliance or other alternative negotiated drawback compliance program, and for taking corrective action when notified by Customs of violations and problems regarding such program.

(c) *Broker certification.* A Customs broker may be certified as a participant in the drawback compliance program only on behalf of a given claimant (see § 191.194(b)). To do so, a Customs broker who is employed to assist a claimant in filing for drawback must be able to demonstrate, for and on behalf of such claimant, conformity with the core requirements of the drawback compliance program as set forth in paragraph (b) of this section. The broker shall ensure that the claimant has the necessary documentation and records to support the drawback compliance program established on its behalf, and that claims to be filed under the program are reviewed by the broker for accuracy and completeness.

§ 191.193 Application procedure for compliance program.

(a) *Who may apply.* Claimants and other parties in interest may apply for participation in the drawback compliance program. This includes any person, corporation or business entity that provides supporting information or documentation to one who files drawback claims, as well as Customs brokers who assist claimants in filing for drawback. Program participants may further consist of importers, manufacturers or producers, agent-manufacturers, complementary recordkeepers, subcontractors, intermediate parties, and exporters.

(b) *Place of filing.* An application in letter format containing the information as prescribed in paragraphs (c) and (d) of this section shall be submitted to any drawback office. However, in the event the applicant is a claimant for drawback, the application shall be submitted to the drawback office where the claims will be filed.

(c) *Letter of application; contents.* A party requesting certification to become a participant in the drawback compliance program shall file with the applicable drawback office a written application in letter format, signed by an authorized individual (see § 191.6(c) of this part). The detail required in the application shall take into account the size and nature of the applicant's drawback program, the type of drawback claims filed, and the dollar value and volume of claims filed. However, the

application shall contain at least the following information:

(1) Name of applicant, address, IRS number (with suffix), and the type of business in which engaged, as well as the name(s) of the individual(s) designated by the applicant to be responsible for compliance under the program;

(2) A description of the nature of the applicant's drawback program, including the type of drawback in which involved (such as, manufacturing, or unused or rejected merchandise), and the applicant's particular role(s) in the drawback claims process (such as claimant and/or importer, manufacturer or producer, agent-manufacturer, complementary recordkeeper, subcontractor, intermediate party (possessor or purchaser), or exporter (destroyer)); and

(3) Size of applicant's drawback program. (For example, if the applicant is a claimant, the number of claims filed over the previous 12-month period should be included, along with the number estimated to be filed over the next 12-month period, and the estimated amount of drawback to be claimed annually. Other parties should describe the extent to which they are involved in drawback activity, based upon their particular role(s) in the drawback process; for example, manufacturers should explain how much manufacturing they are engaged in for drawback, such as the quantity of drawback product produced on an annual basis, as established by the certificates of manufacture and delivery they have executed.)

(d) *Application package.* Along with the letter of application as prescribed in paragraph (c) of this section, the application package must include a description of how the applicant will ensure compliance with statutory and regulatory drawback requirements. This description may be in the form of a booklet or set forth otherwise. The description must include at least the following:

(1) The name and title of the official in the applicant's organization who is responsible for oversight of the applicant's drawback program, and the name and title, with mailing address and, if available, fax number and e-mail address, of the person[s] in the applicant's organization responsible for the actual maintenance of the applicant's drawback program;

(2) If the applicant is a manufacturer and the drawback involved is manufacturing drawback, a copy of the letter of notification of intent to operate under a general manufacturing drawback ruling or the application for a specific manufacturing drawback ruling (see §§ 191.7 and 191.8 of this part), as appropriate;

(3) A description of the applicant's drawback record-keeping program, including the retention period and method (for example, paper, electronic, etc.);

(4) A list of the records that will be maintained, including at least sample import documents, sample export documents, sample inventory and transportation documents (if applicable), sample laboratory or other documents establishing the qualification of merchandise or articles for substitution under the drawback law (if applicable), and sample manufacturing documents (if applicable);

(5) A description of the applicant's specific procedures for:

(i) How drawback claims are prepared (if the applicant is a claimant); and

(ii) How the applicant will fulfill any requirements under the drawback law and regulations applicable to its role in the drawback program;

(6) A description of the applicant's procedures for notifying Customs of variances in, or violations of, its drawback compliance program or negotiated alternative drawback compliance program, and procedures for taking corrective action when notified by Customs of violations or other problems in such program; and

(7) A description of the applicant's procedures for annual review to ensure that its drawback compliance program meets the statutory and regulatory drawback requirements and that Customs is notified of any modifications from the procedures described in this application.

§ 191.194 Action on application to participate in compliance program.

(a) *Review by applicable drawback office*—(1) *General.* It is the responsibility

of the drawback office where the drawback compliance application package is filed to coordinate its decision making on the package both with CBP Headquarters and with the other field drawback offices as appropriate. CBP processing of the package will consist of the review of the information contained therein as well as any additional information requested (see paragraph (a)(2) of this section).

(2) *Criteria for CBP review.* The drawback office shall review and verify the information submitted in and with the application. In order for CBP to evaluate the application, CBP may request additional information (including additional sample documents) and/or explanations of any of the information provided for in §191.193(c) and (d) of this subpart. Based on the information submitted on and with the application and any information so requested, and based on the applicant's record of transactions with CBP, the drawback office will approve or deny the application. The criteria to be considered in reviewing the applicant's record with CBP shall include (as applicable):

(i) The presence or absence of unresolved customs charges (duties, taxes, or other debts owed CBP);

(ii) The accuracy of the claimant's past drawback claims; and

(iii) Whether accelerated payment of drawback or waiver of prior notice of intent to export was previously revoked or suspended.

(b) *Approval.* Certification as a participant in the drawback compliance program will be given to applicants whose applications are approved under the criteria in paragraph (a)(2) of this section. The applicable drawback office will give written notification to an applicant of its certification as a participant in the drawback compliance program. A Customs broker obtaining certification for a drawback claimant will be sent written notification on behalf of such claimant, with a copy of the notification also being sent to the claimant.

(c) *Benefits of participation in program.* When a party that has been certified as a participant in the drawback compliance program and is generally in compliance with the appropriate procedures and requirements of the program commits a violation of 19 U.S.C. 1593a(a) (see §191.62(b) of this part), CBP shall, in the absence of fraud or repeated violations, and in lieu of a monetary penalty as otherwise provided under §1593a, issue a written notice of the violation to the party. Repeated violations by a participant, including a CBP broker, may result in the issuance of penalties and the removal of certification under the program until corrective action, satisfactory to CBP, is taken.

(d) *Denial.* If certification as a participant in the drawback compliance program is denied to an applicant, the applicant shall be given written notice by the applicable drawback office, specifying the grounds for such denial, together with any action that may be taken to correct the perceived deficiencies, and informing the applicant that such denial may be appealed to the appropriate drawback office and then appealed to CBP Headquarters.

(e) *Certification removal*—(1) *Grounds for removal.* The certification for participation in the drawback compliance program by a party may be removed when any of the following conditions are discovered:

(i) The certification privilege was obtained through fraud or mistake of fact;

(ii) The program participant is no longer in compliance with the customs laws and CBP regulations, including the requirements set forth in §191.192;

(iii) The program participant repeatedly files false drawback claims or false or misleading documentation or other information relating to such claims; or

(iv) The program participant is convicted of any felony or has committed acts which would constitute a misdemeanor or felony involving theft, smuggling, or any theft-connected crime.

(2) *Removal procedure.* If CBP determines that the certification of a program participant should be removed, the applicable drawback office will serve the program participant with written notice of the removal. Such notice will inform the program participant of the grounds for the removal and will advise the program participant of its right to file an appeal of the

removal in accordance with paragraph (f) of this section.

(3) *Effect of removal.* The removal of certification will be effective immediately in cases of willfulness on the part of the program participant or when required by public health, interest, or safety. In all other cases, the removal of certification will be effective when the program participant has received notice under paragraph (e)(2) of this section and either no appeal has been filed within the time limit prescribed in paragraph (f)(2) of this section or all appeal procedures have been concluded by a decision that upholds the removal action. Removal of certification may subject the affected person to penalties.

(f) *Appeal of certification denial or removal*—(1) *Appeal of certification denial.* A party may challenge a denial of an application for certification as a participant in the drawback compliance program by filing a written appeal, within 30 days of issuance of the notice of denial, with the applicable drawback office. A denial of an appeal may itself be appealed to CBP Headquarters, Trade Policy and Programs, Office of International Trade, within 30 days after issuance of the applicable drawback office's appeal decision. CBP Headquarters will review the appeal and will respond with a written decision within 30 days after receipt of the appeal unless circumstances require a delay in issuance of the decision. If the decision cannot be issued within the 30-day period, CBP Headquarters will advise the appellant of the reasons for the delay and of any further actions which will be carried out to complete the appeal review and of the anticipated date for issuance of the appeal decision.

(2) *Appeal of certification removal.* A party who has received a CBP notice of removal of certification for participation in the drawback compliance program may challenge the removal by filing a written appeal, within 30 days after issuance of the notice of removal, with the applicable drawback office. A denial of an appeal may itself be appealed to CBP Headquarters, Trade Policy and Programs, Office of International Trade, within 30 days after issuance of the applicable drawback office's appeal decision. CBP Headquarters will consider the allegations upon which the removal was based and the responses made to those allegations by the appellant and will render a written decision on the appeal within 30 days after receipt of the appeal.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998, as amended by T.D. 00–5, 65 FR 3812, Jan. 25, 2000]

§ 191.195 Combined application for certification in drawback compliance program and waiver of prior notice and/or approval of accelerated payment of drawback.

An applicant for certification in the drawback compliance program may also, in the same application, apply for waiver of prior notice of intent to export and accelerated payment of drawback, under subpart I of this part. Alternatively, an applicant may separately apply for certification in the drawback compliance program and either or both waiver of prior notice and accelerated payment of drawback. In the former instance, the intent to apply for certification and waiver of prior notice and/or approval of accelerated payment of drawback must be clearly stated. In all instances, all of the requirements for certification and the procedure applied for must be met (for example, in a combined application for certification in the drawback compliance program and both procedures, all of the information required for certification and each procedure, all required sample documents for certification and each procedure, and all required certifications must be included in and with the application).

APPENDIX A TO PART 191—GENERAL MANUFACTURING DRAWBACK RULINGS

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I. General Instructions

A. There follow various general manufacturing drawback rulings which have been designed to simplify drawback procedures. Any person who can comply with the conditions of any one of these rulings may notify a Customs drawback office in writing of its intention to operate under the ruling (see §191.7 of this part). Such a letter of notification shall include the following information:

1. Name and address of manufacturer or producer;
2. IRS (Internal Revenue Service) number (with suffix) of manufacturer or producer;
3. Location[s] of factory[ies] which will operate under the general ruling;
4. If a business entity, names of persons who will sign drawback documents (see §191.6 of this part);
5. Identity (by T.D. number and title, as stated in this Appendix) of general manufacturing drawback ruling under which the manufacturer or producer intends to operate;
6. Description of the merchandise and articles, unless specifically described in the general manufacturing drawback ruling;
7. Only for General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Petroleum or Petroleum Derivatives, the name of each article to be exported or, if the identity of the product is not clearly evident by its name, what the product is, and the abstract period to be used for each refinery (monthly or other specified period (not to exceed 1 year)), subject to the conditions in the General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Petroleum or Petroleum Derivatives, I. Procedures and Records Maintained, 4(a) or (b);
8. Basis of claim used for calculating drawback; and
9. Description of the manufacturing or production process, unless specifically described in the general manufacturing drawback ruling.

For the General Manufacturing Drawback Ruling under §1313(a), the General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(b) for Component Parts, and the General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) or 1313(b) for Agents, if the drawback office has doubts as to whether there is a manufacture or production, as defined in §191.2(q) of this part, the manufacturer or producer will be asked to provide details of the operation purported to be a manufacture or production.

B. These general manufacturing drawback rulings supersede general ''contracts'' previously published under the following Treasury Decisions (T.D.'s): 81–74, 81–92, 81–181, 81–234, 81–300, 83–53, 83–59, 83–73, 83–77, 83–80, 83–84, 83–123, 84–49, and 85–110.

Anyone currently operating under any of the above-listed Treasury Decisions will automatically be covered by the superseding general ruling, including all privileges of the previous ''contract''.

II. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) (T.D. 81–234; T.D. 83–123)

A. Imported Merchandise or Drawback Products[1] Used

Imported merchandise or drawback products are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on which Drawback will be Claimed

Exported articles on which drawback will be claimed will be manufactured in the United States using imported merchandise or drawback products.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (see §191.9 of this part).

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations.

D. Process Of Manufacture Or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with §191.2(q) of this part.

E. Multiple Products

1. Relative Values

Drawback law mandates the assignment of relative values when two or more products necessarily are produced concurrently in the same operation. If multiple products are produced records will be maintained of the market value of each product at the time it is first separated in the manufacturing process.

2. Appearing-in method

The appearing in basis may not be used if multiple products are produced.

F. Loss or Gain

Records will be maintained showing the extent of any loss or gain in net weight or measurement of the imported merchandise, caused by atmospheric conditions, chemical reactions, or other factors.

G. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that is of the same kind and quality as the imported merchandise, meeting specifications set forth in the application by the manufacturer or producer for a determination of same kind and quality (see §191.11(c)), shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings (see 19 CFR 191.11).

H. Stock In Process

Stock in process does not result; or if it does result, details will be given in claims as filed, and it will not be included in the computation of the merchandise used to manufacture the finished articles on which drawback is claimed.

I. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, records will be maintained to establish the value, the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

J. Procedures And Records Maintained

Records will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise, and

2. The quantity of imported merchandise[2] used in producing the exported articles.

(To obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance).

K. Inventory Procedures

The inventory records of the manufacturer or producer will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 191 of the CBP Regulations will be met, as discussed under the heading ''Procedures And Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

L. Basis of Claim for Drawback

Drawback will be claimed on the quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles less the amount of that merchandise which the value of the waste would replace.

M. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in

[2] If claims are to be made on an ''appearing in'' basis, the remainder of the sentence should read ''appearing in the exported articles.''

the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the CBP Regulations and this general ruling.

III. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(a) OR 1313(b) FOR AGENTS (T.D. 81–181)

Manufacturers or producers operating under this general manufacturing drawback ruling must comply with T.D.s 55027(2), 55207(1), and 19 U.S.C. 1313(b), if applicable, as well as 19 CFR part 191 (see particularly, §191.9).

A. Name and Address of Principal

B. Process of Manufacture or Production

The imported merchandise or drawback products or other substituted merchandise will be used to manufacture or produce articles in accordance with §191.2(q) of this part.

C. Procedures and Records Maintained

Records will be maintained to establish:

1. Quantity, kind and quality of merchandise transferred from the principal to the agent;

2. Date of transfer of the merchandise from the principal to the agent;

3. Date of manufacturing or production operations performed by the agent;

4. Total quantity and description of merchandise appearing in or used in manufacturing or production operations performed by the agent;

5. Total quantity and description of articles produced in manufacturing or production operations performed by the agent;

6. Quantity, kind and quality of articles transferred from the agent to the principal; and

7. Date of transfer of the articles from the agent to the principal.

D. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when manufacturing or producing articles for account of the principal under the principal's general manufacturing drawback ruling or specific manufacturing drawback ruling, as appropriate;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates the claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the CBP Regulations and this general ruling.

IV. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(a) FOR BURLAP OR OTHER TEXTILE MATERIAL (T.D. 83–53)

Drawback may be allowed under 19 U.S.C. 1313(a) upon the exportation of bags or meat wrappers manufactured with the use of imported burlap or other textile material, subject to the following special requirements:

A. Imported Merchandise or Drawback Products[1] Used

Imported merchandise or drawback products (burlap or other textile material) are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on Which Drawback Will Be Claimed

Exported articles on which drawback will be claimed will be manufactured in the United States using imported merchandise or drawback products.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (see §191.9 of this part).

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations.

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with §191.2(q) of this part.

E. Multiple Products

Not applicable.

F. Loss or Gain

Not applicable.

G. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, records will be maintained to establish the value, the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

H. Procedures and Records Maintained

Records will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise; and

2. The quantity of imported merchandise[2] used in producing the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

I. Inventory Procedures

The inventory records of the manufacturer or producer will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 191 of the CBP Regulations will be met, as discussed under the heading ''Procedures and Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

Each lot of imported material received by a manufacturer or producer shall be given a lot number and kept separate from other lots until used. The records of the manufacturer or producer shall show, as to each manufacturing lot or period of manufacture, the quantity of material used from each import lot and the number of each kind and size of bags or meat wrappers obtained. If applicable, a certificate of manufacture and delivery shall be filed covering each manufacturing lot or period of manufacture.

All bags or meat wrappers manufactured or produced for the account of the same exporter during a specified period may be designated as one manufacturing lot and, as applicable, covered by one certificate of manufacture and delivery. All exported bags or meat wrappers shall be identified by the exporter with the certificate of manufacture and delivery covering their manufacture, if applicable.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles, less the amount of that merchandise which the value of the waste would replace.

K. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation.

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with 19, United States Code, §1313, part 191 of the CBP Regulations and this general ruling.

V. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(b) FOR COMPONENT PARTS (T.D. 81–300)

A. SAME KIND AND QUALITY (PARALLEL COLUMNS)

Imported Merchandise or Drawback Products[1] to be Designated as the Basis for Drawback on the Exported Products.	Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as that Designated which will be Used in the Production of the Exported Products.
Component parts identified by individual part numbers.	Component parts identified with the same individual part numbers as those in the column immediately to the left hereof.

[1]Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

The designated[2] components will have been manufactured in accordance with the same specifications and from the same materials, and identified by the same part number as the substituted components. Further, the designated and substituted components are used interchangeably in the manufacture of the exported articles upon which drawback will be claimed. Specifications or drawings will be maintained and made available for Customs officers. The imported merchandise designated on drawback claims will be so similar to the merchandise used in producing the exported articles on which drawback is claimed that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise. Fluctuations in market value resulting from factors other than quality will not affect the drawback.

B. Exported Articles on Which Drawback Will Be Claimed

The exported articles will have been manufactured in the United States using components described in the parallel columns above.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.'s 55027(2) and 55207(1) (see §191.9 of this part).

D. Process of Manufacture or Production

The components described in the parallel columns will be used to manufacture or produce articles in accordance with §191.2(q) of this part.

[2]If claims are to be made on an ''appearing in'' basis, the remainder of the sentence should read ''appearing in the exported articles.''

E. Multiple Products

Not applicable.

F. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of components appearing in the exported articles, records will be maintained to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

G. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

H. Procedures and Records Maintained

Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;

2. The quantity of merchandise of the same kind and quality as the designated merchandise[2] used to produce the exported articles;

3. That, within 3 years after receiving the designated merchandise at its factory, the manufacturer or producer used the merchandise to produce articles. During the same 3-year period, the manufacturer or producer produced[3] the exported articles. To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported

[2]If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[3]The date of production is the date an article is completed.

merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

I. Inventory Procedures

The inventory records of the manufacturer or producer will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the CBP Regulations will be met, as discussed under the heading ''Procedures And Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of eligible components used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible components that appear in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible components used to produce the exported articles less the amount of those components which the value of the waste would replace.

K. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;
4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation;
5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and
6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the CBP Regulations and this general ruling.

VI. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) for Flaxseed (T.D. 83–80)

Drawback may be allowed under the provision of 19 U.S.C. 1313(a) upon the exportation of linseed oil, linseed oil cake, and linseed oil meal, manufactured or produced with the use of imported flaxseed, subject to the following special requirements:

A. Imported Merchandise or Drawback Products[1] Used

Imported merchandise or drawback products (flaxseed) are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on Which Drawback Will Be Claimed

Exported articles on which drawback will be claimed will be manufactured in the United States using imported merchandise or drawback products.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.'s 55027(2) and 55207(1) (see §191.9 of this part).

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with §191.2(q) of this part.

E. Multiple Products

Drawback law mandates the assignment of relative values when two or more products necessarily are produced concurrently in the same operation. If multiple products are produced records will be maintained of the market value of each product at the time it is first separated in the manufacturing process (when a claim covers a manufacturing period, the entire period covered by the claim is the time of separation of the products and the value per unit of product is the market value for the period (see §§191.2(u), 191.22(e)). The ''appearing in'' basis may not be used if multiple products are produced.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations.

F. Loss or Gain

Records will be maintained showing the extent of any loss or gain in net weight or measurement of the imported merchandise, caused by atmospheric conditions, chemical reactions, or other factors.

G. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, records will be maintained to establish the value, the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

H. Procedures and Records Maintained

Records will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise; and

2. The quantity of imported merchandise[2] used in producing the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

I. Inventory Procedures

The inventory records of the manufacturer or producer will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 191 of the CBP Regulations will be met, as discussed under the heading ''Procedures and Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

The inventory records of the manufacturer or producer shall show the inclusive dates of manufacture; the quantity, identity, and value of the imported flaxseed or screenings, scalpings, chaff, or scourings used; the quantity by actual weight and value, if any, of the material removed from the foregoing by screening prior to crushing; the quantity and kind of domestic merchandise added, if any; the quantity by actual weight or gauge and value of the oil, cake, and meal obtained; and the quantity and value, if any, of the waste incurred. The quantity of imported flaxseed, screenings, scalpings, chaff, or scourings used or of material removed shall not be estimated nor computed on the basis of the quantity of finished products obtained, but shall be determined by actually weighing the said flaxseed, screenings, scalpings, chaff, scourings, or other material; or, at the option of the crusher, the quantities of imported materials used may be determined from Customs weights, as shown by the import entry covering such imported materials, and the Government weight certificate of analysis issued at the time of entry. The entire period covered by an abstract shall be deemed the time of separation of the oil and cake covered thereby.

If the records of the manufacturer or producer do not show the quantity of oil cake used in the manufacture or production of the exported oil meal and the quantity of oil meal obtained, the net weight of the oil meal exported shall be regarded as the weight of the oil cake used in the manufacture thereof.

If various tanks are used for the storage of imported flaxseed, the mill records shall establish the tank or tanks in which each lot or cargo is stored. If raw or processed oil manufactured or produced during different periods of manufacture is intermixed in storage, a record shall be maintained showing the quantity, identity, and kind of oil so intermixed. Identity of merchandise or articles in either instance shall be in accordance with §191.14 of this part.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles, less the amount of that merchandise which the value of the waste would replace.

K. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current

[2] If claims are to be made on an ''appearing in'' basis, the remainder of the sentence should read ''appearing in the exported articles.''

by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation.

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with 19, United States Code, §1313, part 191 of the CBP Regulations and this general ruling.

VII. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(a) FOR FUR SKINS OR FUR SKIN ARTICLES (T.D. 83–77)

Drawback may be allowed under 19 U.S.C. 1313(a) upon the exportation of dressed, redressed, dyed, redyed, bleached, blended, or striped fur skins or fur skin articles manufactured or produced by any one or a combination of the foregoing processes with the use of fur skins or fur skin articles, such as plates, mats, sacs, strips, and crosses, imported in a raw, dressed, or dyed condition, subject to the following special requirements:

A. Imported Merchandise or Drawback Products[1] Used

Imported merchandise or drawback products (fur skins or fur skin articles) are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on Which Drawback Will Be Claimed

Exported articles on which drawback will be claimed will be manufactured in the United States using imported merchandise or drawback products.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (see §191.9 of this part).

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with §191.2(q) of this part.

Drawback shall not be allowed under this general manufacturing drawback ruling when the process performed results only in the restoration of the merchandise to its condition at the time of importation.

E. Multiple Products

Not applicable.

F. Loss or Gain

Records will be maintained showing the extent of any loss or gain in net weight or measurement of the imported merchandise, caused by atmospheric conditions, chemical reactions, or other factors.

G. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, records will be maintained to establish the value, the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records will be maintained to establish that fact.

H. Procedures and Records Maintained

Records will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise; and

2. The quantity of imported merchandise[2] used in producing the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

I. Inventory Procedures

The inventory records of the manufacturer or producer will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 191 of the CBP Regulations will be met, as discussed under the heading ''Procedures and Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

The records of the manufacturer or producer shall show, as to each lot of fur skins and/or fur skin articles used in the manufacture or production of articles for exportation

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations.

[2] If claims are to be made on an ''appearing in'' basis, the remainder of the sentence should read ''appearing in the exported articles.''

with benefit of drawback, the lot number and date or inclusive dates of manufacture or production, the quantity, identity, and description of the imported merchandise used, the condition in which imported, the process or processes applied thereto, the quantity and description of the finished articles obtained, and the quantity of imported pieces rejected, if any, or spoiled in manufacture or production.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles, less the amount of that merchandise which the value of the waste would replace. (If rejects and/or spoilage are incurred, the quantity of imported merchandise used shall be determined by deducting from the quantity of fur skins or fur skin articles put into manufacture or production the quantity of such rejects and/or spoilage.)

K. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation.

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with 19, United States Code, §1313, part 191 of the CBP Regulations and this general ruling.

VIII. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(b) FOR ORANGE JUICE (T.D. 85–110)

A. SAME KIND AND QUALITY (PARALLEL COLUMNS)

Imported Merchandise or Drawback Products[1] To Be Designated as the Basis for Drawback on the Exported Products.	Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as That Designated Which Will Be Used in the Production of the Exported Products
Concentrated orange juice for manufacturing (of not less than 55° Brix) as defined in the standard of identity of the Food and Drug Administration (21 CFR 146.53) which meets the Grade A standard of the U.S. Dept. of Agriculture (7 CFR 52.1557, Table IV).	Concentrated orange juice for manufacturing as described in the left-hand parallel column.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

The imported merchandise designated on drawback claims will be so similar in quality to the merchandise used in producing the exported articles on which drawback is claimed that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise. Fluctuations in the market value resulting from factors other than quality will not affect the drawback.

B. Exported Articles on Which Drawback Will Be Claimed

1. Orange juice from concentrate (reconstituted juice).

2. Frozen concentrated orange juice.

3. Bulk concentrated orange juice.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account

of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.'s 55027(2) and 55207(1) (see §191.9 of this part).

D. Process of Manufacture or Production

1. Orange juice from concentrate (reconstituted juice). Concentrated orange juice for manufacturing is reduced to a desired 11.8° Brix by a blending process to produce orange juice from concentrate. The following optional blending processes may be used:

i. The concentrate is blended with fresh orange juice (single strength juice); or

ii. The concentrate is blended with essential oils, flavoring components, and water; or

iii. The concentrate is blended with water and is heat treated to reduce the enzymatic activity and the number of viable microorganisms.

2. Frozen concentrated orange juice. Concentrated orange juice for manufacturing is reduced to a desired degree Brix of not less than 41.8° Brix by the following optional blending processes:

i. The concentrate is blended with fresh orange juice (single strength juice); or

ii. The concentrate is blended with essential oils and flavoring components and water.

3. Bulk concentrated orange juice. Concentrated orange juice for manufacturing is blended with essential oils and flavoring components which would enable another processor such as a dairy to prepare finished frozen concentrated orange juice or orange juice from concentrate by merely adding water to the (intermediate) bulk concentrated orange juice.

E. Multiple Products, Waste, Loss or Gain

Not applicable.

F. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

G. Procedures and Records Maintained

Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;

2. The quantity of merchandise of the same kind and quality as the designated merchandise[2] used to produce the exported articles;

3. That, within 3 years after receiving the designated merchandise at its factory, the manufacturer or producer used the designated merchandise to produce articles. During the same 3-year period, the manufacturer or producer produced[3] the exported articles.

To obtain drawback it must be established that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. No drawback is payable without proof of compliance.

H. Inventory Procedures

The inventory records of the manufacturer or producer will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the CBP Regulations will be met, as discussed under the heading ''Procedures And Records Maintained'', and will show what components were blended with the concentrated orange juice for manufacturing. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

I. Basis of Claim for Drawback

The basis of claim for drawback will be the quantity of concentrated orange juice for manufacturing used in the production of the exported articles. It is understood that when fresh orange juice is used as ''cutback'', it will not be included in the ''pound solids'' when computing the drawback due.

J. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[3] The date of production is the date an article is completed.

all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the CBP Regulations and this general ruling.

IX. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(b) FOR PETROLEUM OR PETROLEUM DERIVATIVES (T.D. 84–49)

A. PARALLEL COLUMNS—"SAME KIND AND QUALITY"

Imported Merchandise or Drawback Products[1] To Be Designated as the Basis for Drawback on the Exported Products.	Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as That Designated Which Will Be Used in the Production of the Exported Products.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have "dual status" under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

The manufacturer or producer will substitute crude petroleum for crude petroleum and a petroleum derivative for the same petroleum derivative on a class-for-class basis only.

Class Designations:

Class I—API Gravity 0—11.9
Class II—API Gravity 12.0—24.9
Class III—API Gravity 25.0—44.9
Class IV—API Gravity 45—up

The imported merchandise which the manufacturer or producer will designate on its claims will be so similar in quality to the merchandise used in producing the exported articles on which drawback is claimed that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise.

B. Exported Articles Produced From Fractionation

1. Motor Gasoline
2. Aviation Gasoline
3. Special Naphthas
4. Jet Fuel
5. Kerosene & Range Oils
6. Distillate Oils
7. Residual Oils
8. Lubricating Oils
9. Paraffin Wax
10. Petroleum Coke
11. Asphalt
12. Road Oil
13. Still Gas
14. Liquified Petroleum Gas
15. Petrochemical Synthetic Rubber
16. Petrochemical Plastics & Resins
17. All Other Petrochemical Products

C. Exported Articles on Which Drawback Will Be Claimed

See the General Instructions, I.A.7., for this general drawback ruling. Each article to be exported must be named. When the identity of the product is not clearly evident by its name, there must be a statement as to what the product is, e.g., a herbicide.

D. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (see §191.9 of this part).

E. Process of Manufacture or Production

Heated crude oil is charged to an atmospheric distillation tower where it is subjected to fractionation. The charge to the distillation tower consists of a single crude oil, or of commingled crudes which are fed to the tower simultaneously or after blending in a tank. During fractionation, components of different boiling ranges are separated.

F. Multiple Products

1. Relative Values

Fractionation results in 17 products. In order to insure proper distribution of drawback to each of these products, the manufacturer or producer agrees to record the relative values as the time of separation. The entire period covered by an abstract is to be treated at the time of separation. The value per unit of each product shall be the average market value for the abstract period.

2. Producibility

The manufacturer or producer can vary the proportionate quantity of each product. The manufacturer or producer understands that drawback is payable on exported products only to the extent that these products could have been produced from the designated merchandise. The records of the manufacturer or producer will show that all of the products exported for which drawback will be claimed under this general manufacturing drawback

ruling could have been produced concurrently on a practical operating basis from the designated merchandise.

The manufacturer or producer agrees to establish the amount to be designated by reference to the Industry Standards of Potential Production published in T.D. 66–16.[2]

There are no valuable wastes as a result of the processing.

G. Loss or Gain

Because the manufacturer or producer keeps records on a volume basis rather than a weight basis, it is anticipated that the material balance will show a volume gain. For the same reason, it is possible that occasionally the material balance will show a volume loss. Fluctuations in type of crude used, together with the type of finished product desired make an estimate of an average volume gain meaningless. However, records will be kept to show the amount of loss or gain with respect to the production of export products.

H. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

I. Procedures and Records Maintained

Records will be maintained to establish:

1. The identity and specifications of the merchandise designated;

2. The quantity of merchandise of the same kind and quality as the designated merchandise used to produce the exported articles.

3. That, within 3 years after receiving it at its refinery, the manufacturer or producer used the designated merchandise to produce articles. During the same 3-year period, the manufacturer or producer produced the exported articles.

4(a). The manufacturer or producer agrees to use a 28–31 day period (monthly) abstract period for each refinery covered by this general manufacturing drawback ruling, or

(b). The manufacturer or producer agrees to use an abstract period (not to exceed 1 year) for each refinery covered by this general manufacturing drawback ruling. The manufacturer or producer certifies that if it were to file abstracts covering each manufacturing period of not less than 28 days and not more than 31 days (monthly) within the longer period, in no such monthly abstract would the quantity of designated merchandise exceed, for the same class of designated merchandise, the material introduced into the manufacturing process during that monthly period. (Select (a) or (b), and state which is selected in the application, and, if (b) is selected, specify the length of the particular abstract period chosen (not to exceed 1 year (see General Instruction I.A.7.)).)

5. On each abstract of production the manufacturer or producer agrees to show the value per barrel to five decimal places.

6. The manufacturer or producer agrees to file claims in the format set forth in exhibits A through F which are attached to this general manufacturing drawback ruling. The manufacturer or producer realizes that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. It is understood that drawback is not payable without proof of compliance. Records will be kept in accordance with T.D. 84–49, as amended by T.D. 95–61.

J. Residual Rights

It is understood that the refiner can reserve as the basis for future payment the right to drawback only on the number of barrels of raw material computed by subtracting from Line E the larger of Lines A or B, of a given Exhibit E. It is further understood that this right to future payment can be claimed only against products concurrently producible with the products listed in Column 21, in the quantities shown in Column 22 of such Exhibit E. Such residual right can be transferred to another refinery of the same refiner only when Line B of Exhibit E is larger than Line A. Unless the number of residual barrels is specifically computed and rights thereto are expressly reserved on Exhibit E, such residual rights shall be deemed waived. The procedure the manufacturer or producer shall follow in preparing drawback entries claiming this residual right is illustrated in the attached sample Exhibit E–1. It is understood that claims involving residual rights shall be filed only at the port where the Exhibit E reserving such right was filed.

K. Inventory Procedures

The manufacturer or producer realizes that inventory control is of major importance. In accordance with the normal accounting procedures of the manufacturer or producer, each refinery prepares a monthly stock and yield report, which accounts for inventories,

[2] A manufacturer who proposes to use standards other than those in T.D. 66–16 must state the proposed standards and provide sufficient information to the Customs Service in order for those proposed standards to be verified in accordance with T.D. 84–49.

production and disposals from time of receipt to time of disposition. This provides an audit trail of all products.

The above-noted records will provide the required audit trail from the initial source documents to the drawback claims of the manufacturer or producer and will support adherence with the requirements discussed under the heading PROCEDURES AND RECORDS MAINTAINED.

L. Basis of Claim for Drawback

The amount of raw material on which drawback may be based shall be computed by multiplying the quantity of each product exported by the drawback factor for that product. The amount of any one type and class of raw material which may be designated as the basis for drawback on the exported products produced at a given refinery and covered by a drawback entry shall not exceed the quantity of such raw material used at the refinery during the abstract period or periods from which the exported products were produced. The quantity of raw material to be designated as the basis for drawback on exported products must be at least as great as the quantity of raw material of the same type and class which would be required to produce the exported products in the quantities exported.

M. Agreements

The manufacturer or producer specifically agrees that it will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its refinery and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the CBP Regulations and this general ruling.

EXHIBIT A

ABSTRACT OF MANUFACTURING RECORDS
ABC OIL CO. INC. - BEAUMONT, TEXAS REFINERY
PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

Material Used (in Bbls. at 60°)

	TOTALS	CRUDES				DERIVATIVES	
		CLASS I	CLASS II	CLASS III	CLASS IV	CRUDE TOPS CLASS IV	UNFINISHED NAPHTHA CLASS IV
1) Opening Inventory	4,007,438						
2) Material Introduced*	7,450,732	- 0 -	619,473	6,367,991	-0-	101,224	362,044
3) Closing Inventory	3,671,005						
4) Total Consumption	7,787,165						

Line (1) - Stock in process at beginning of manufacturing period.

Line (2) - Raw material introduced into manufacturing process during the period. The amount, by type and class, shown hereon, shall be the maximum that may be designated under T.D. 84-49.

Line (3) - Stock in process at end of period.

Line (4) - Total Consumed, namely, line 1 plus line 2 less line 3.

* All raw materials of a type and class not to be designated may be shown as a total.

EXHIBIT B

ABSTRACT OF PRODUCTION
ABC OIL CO., INC. - BEAUMONT, TEXAS REFINERY
PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

(5) Product	(6) Quantity in Bbls.	(7) Value per Bbl.	(8) Value of Product	(9) Drawback Factor per Bbl.
1. Motor Gasoline	2,699,934	$ 6.14333	$16,586,586	1.06678
2. Aviation Gasoline	108,269	5.83363	631,601	1.01300
3. Special Naphthas	372,676	8.06356	3,005,095	1.40023
4. Jet Fuel	249,386	3.95698	986,815	.68712
5. Kerosine and Range Oil	321,263	4.69857	1,509,477	.81590
6. Distillate Oils	2,567,975	4.45713	11,445,798	.77398
7. Residual Oils	308,002	2.51322	774,077	.43642
8. Lubricating Oils	292,492	26.72296	7,816,252	4.64041
9. Paraffin Wax	19,063	10.49642	200,093	1.82269
10. Petroleum Coke	122,353	1.24291	152,074	.21583
11. Asphalt	75,231	3.59105	270,158	.62358
12. Road Oil	- 0 -	- 0 -	- 0 -	- 0 -
13. Still Gas	245,784	1.00530	247,087	.17457
14. Liquified Refinery Gas	524,423	2.23013	1,169,531	.38726
15. Petrochemical Synthetic Rubber	- 0 -	- 0 -	- 0 -	- 0 -
16. Petrochemical Plastics & Resins	- 0 -	- 0 -	- 0 -	- 0 -
17. All Other Petrochemical Products	7,996	6.21343	49,683	1.07895
Loss (or Gain)	(127,682)			
TOTAL	7,787,165		$ 44,844,327	

Col. (6) Products are shown in the net quantities realized in the refining process and do not include non-petroleum additives.

Col. (7) Weighted average realization for the period covered.

Col. (8) Column 6 multiplied by column 7.

Col. (9) Quantity of raw materials allowable per barrel of product. (Formula for obtaining drawback factors: $44,844,327 ÷ 7,787,165 bbls. = $5.75875 divided into product values per barrel equals drawback factor.)

EXHIBIT C—INVENTORY CONTROL SHEET: ABC OIL CO., INC.; BEAUMONT, TEXAS REFINERY, PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

[All quantities exclude non-petroleum additives]

	Aviation gasoline		Residual oils		Lubricating oils		Petrochemicals, all other	
	Bbls.	Drawback factor	Bbls.	Drawback factor	Bbls.	Drawback factor	Bbls.	Drawback factor
(10) Opening Inventory	11,218	1.00126	21,221	.45962	9,242	4.52178	891	1.00244
(11) Production	108,269	1.01300	308,002	.43642	292,492	4.64041	7,996	1.07895
(11–A) Receipts.								
(12) Exports	11,218	1.00126	21,221	.45962	8,774	4.52178	195	1.00244
	176	1.01300	104,397	.43642				
(13) Drawback Deliveries							696	1.00244
							319	1.07895
(14) Domestic Shipments	97,863	1.01300	180,957	.43642	468	4.52178	6,867	1.07895
					278,286	4.64041		
(15) Closing Inventory	10,230	1.01300	22,648	.43642	14,206	4.64041	810	1.07895

Line (10)—Opening inventory from previous period's closing inventory.
Line (11)—From production period under consideration.
Line (11–A)—Product received from other sources.
Line (12)—From earliest on hand (inventory or production). Totals from drawback entry or entries recapitulated (see column 18).
Line (13)—Deliveries for export or for designation against further manufacture—earliest on hand after exports are deducted.
Line (14)—From earliest on hand after lines (12) and (13) are deducted.
Line (15)—Balance on hand.

EXHIBIT D

RECAPITULATION OF DRAWBACK ENTRY
ABC OIL CO., INC. - BEAUMONT, TEXAS REFINERY
PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

(16)	(17)	(18)	(19)	(20)	(20a)
Product	Quantity in Bbls. Exported	Quantity in Bbls. in the Terms of the Abstract	Drawback Factor per Bbl.	Crude Allowed for Drawback in Bbls.	Crude to be Allowed for Drawback Deliveries in Bbls.
Aviation Gasoline	11,410	11,218 176	1.00126 1.01300	11,232 178	
Residual Oils	125,618	21,221 104,397	.45962 .43642	9,754 45,561	
Lubricating Oils	8,875	8,774	4.52178	39,674	
Petrochemicals - Other	 195	696 319 195	1.00244 1.07895 1.00244	 195	698 344
TOTAL	146,098	146,996		106,594	1,042

Duty paid on raw material selected for designation - $.1050 per bbl. (class III crude)
Amount of drawback claimed - gross - 106,594 x .1050 = $11,192
Less 1% - 112
Amount of drawback claimed - net $11,080

Col. (16) Lists only products exported.
Col. (17) Quantities in condition as shown on the notices of exportation and notices of lading.
Col. (18) Quantities in condition as shown on the abstract (i.e., less additives if any). These quantities will appear in line 12.
Col. (19) The drawback factor(s) shown on line 12.
Col. (20) Raw materials (crude or derivatives) allowable, determined by multiplying column 18 by column 19.
Col. (20a) Raw materials (crude or derivatives) allowable, for drawback deliveries determined by multiplying column 18 by column 19.

EXHIBIT E

PRODUCIBILITY TEST FOR PRODUCTS EXPORTED (INCLUDING DRAWBACK DELIVERIES)
ABC OIL CO., INC. - BEAUMONT, TEXAS REFINERY
PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

Type and Class of Raw Material Designated -- Crude, Class III

(21) Product	(22) Quantity In Barrels	(23) Industry Standard	(24) Quantity of Raw Material Of Type and Class Designated Needed To Produce Product
Aviation Gasoline	11,394	40%	28,485
Residual Oils	125,618	83%	151,347
Lubricating Oils	8,774	50%	17,548
Petrochemicals, other	(195)		
Petrochemicals, other (drawback deliveries)	(1,015)		
Petrochemicals, other (Total)	1,210	29%	4,172
Total	146,996		

A - Crude allowed (column 20: 106,594 plus column 20a: 1,042 — 107,636 bbls.
B - Total quantity exported (including drawback deliveries)(column 22): — 146,996 "
C - Largest quantity of raw material needed to produce an individual exported product (see column 24): — 151,347 "
D - The excess of raw material over the largest of lines A, B, or C, required to produce concurrently on a practical operating basis, using the most efficient processing equipment existing within the domestic industry, the exported articles (including drawback deliveries) in the quantities exported (or delivered). — **NONE**
E - Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is largest, plus D, if applicable): — 151,347 "

I hereby certify that all the above drawback deliveries and products exported by the Beaumont Refinery of ABC Oil Co., Inc. during the period from January 1, 1995 to January 31, 1995 could have been produced concurrently on a practical operating basis from 151,347 barrels of imported Class III crude against which drawback is claimed.

Signature

EXHIBIT E - 1

PRODUCIBILITY TEST FOR PRODUCTS ON WHICH RESIDUAL RIGHT TO DRAWBACK IS NOW CLAIMED AND PRODUCTS COVERED BY ABSTRACTS ON WHICH RAW MATERIALS COVERED WERE PREVIOUSLY DESIGNATED

ABC OIL CO., INC. - TULSA, OKLAHOMA REFINERY

PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

Type and Class of Raw Material Designated - Crude, Class III

(21)	(22)	(23)	(24)			(19)	(20)
Product	Quantity in Barrels	Industry Standard	Quantity of Raw Material Of Type & Class Designated Needed to Produce Product		Covered by: 1. Period 2. Refinery	Drawback Factor per Barrel	Crude allowed for drawback
			Separate	Combined			
Aviation Gasoline	11,394	40%	28,485	29,125		1.00126	11,232
						1.01300	178
Residual Oils	125,618	83%	151,347	151,347	1. Jan. 1995	.45962	9,754
						.43642	45,561
Lubricating Oils	8,774	50%	17,548	17,932	2. Beaumont	4.52178	39,674
Petrochemicals, Other	(195)					1.00244	195
Petrochemicals, Other (Drawback Deliveries)	(1,015)						
Petrochemicals, other (Total)	1,210	29%	4,172	4,503			
[Residual Rights]							
Aviation Gasoline	256	40%	640	29,125		1.01265	259
Lubricating Oils	192	50%	384	17,932	1. Jan. 1995	4.59006	881
Petrochemicals, Other	96	29%	331	4,503	2. Tulsa	1.12412108	108
Distillate Oils	3807	89%	4,278	4,278		.76624	2,917
	151,347					Subtotal	4,165
						Total	110,759

A - Crude allowed (column 20: 110,759; plus crude allowed for drawback deliveries: 1,042) 111,801 bbls.

B - Total quantity exported (including drawback deliveries)(column 22): 151,347 "

C - Largest quantity of raw material needed to produce an individual exported product (see col. 24): 151,347

D - The excess of raw material over the largest of line A, B, or C, required to produce concurrently on a practical operating basis, using the most efficient processing equipment existing within $432.96 the domestic industry, the exported articles (including drawback deliveries) in the quantities exported (or delivered): NONE

E - Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is largest, plus D, if applicable): See subtotal, col.20, for Residual Rights above 151,347

Drawback Computation

4,165*bbls. @10½ = $437.33

Less 1% 4.37

Amount of Drawback Claim - Net

CERTIFICATE

I hereby certify that all the above drawback deliveries and products exported by the Tulsa, Oklahoma refinery of ABC Oil Co., Inc., during the period from January 1, 1995 to January 31, 1995, could have been produced concurrently on a practical operating basis together with all drawback deliveries and products exported covered by Exhibit E of the abstract for the period January 1, 1995 to January 31, 1995, filed by the Beaumont, Texas refinery of the company from 151,347 barrels of imported Class III crude against which drawback is claimed.

Signature

EXHIBIT E (COMBINATION)—PRODUCIBILITY TEST FOR PRODUCTS EXPORTED (INCLUDING DRAWBACK DELIVERIES) ABC OIL CO., INC.; BEAUMONT, TEXAS REFINERY, PERIOD FROM JANUARY 1, 1995 TO JANUARY 31, 1995

[Type and Class of Raw Material Designated—Crude, Class III]

(21) Product	(22) Quantity in barrels	(23) Industry standard (%)	(24) Quantity of raw material of type and class designated needed to produce product per barrel	(19) Drawback factor	(20) Crude allowed for drawback
Aviation Gasoline [1]	[1] 11,218	40	28,045	1.00126	11,232
	[1] 176	40	440	1.01300	178
Residual Oils [1]	[1] 21,221	83	25,567	.45962	9,754
	[1] 104,397	83	125,780	.43642	45,561
Lubricating Oils [1]	[1] 8,774	50	17,548	4.52178	39,674
Petrochemicals, Other [1]	[1] 195	29	672	1.00244	195
Petrochemicals, Other [2]	[2] 696	29	2,400	1.00244	698
Petrochemicals, Other [2]	[2] *319*	29	1,100	1.07895	344
Total	146,996				107,636

[1] Exports.

[2] Drawback deliveries.

A—Crude allowed (column 20: 107,636 bbls. (106,594 for export, plus 1,042 for drawback deliveries)).

B—Total quantity exported (including drawback deliveries) (column 22): 146,996.

C—Largest quantity of raw material needed to produce an individual exported product (see column 24): 151,347.

D—The excess of raw material over the largest of lines A, B, or C, required to produce concurrently on a practical operating basis, using the most efficient processing equipment existing within the domestic industry, the exported articles (including drawback deliveries) in the quantities exported (or delivered): None.

E—Minimum quantity of raw material required to be designated (which is A, B, or C, whichever is largest, plus D, if applicable): 151,347 bbs.

I hereby certify that all the above drawback deliveries and products exported by the Beaumont refinery of ABC Oil Co., Inc. during the period from January 1, 1995 to January 31, 1995, could have been produced concurrently on a practical operating basis from 151,347 barrels of imported Class III crude against which drawback is claimed.

The attached sample, **EXHIBIT E (COMBINATION)**, illustrates the procedures to be followed when two classes or types of raw material are designated on a given abstract. For purposes of illustration it is assumed that the refiner has only 100,000 barrels of Class III crude to designate, but adequate supplies of Class II to designate.

In addition, please note that the computation of drawback on **EXHIBIT D** will be as follows:

Duty paid on raw material selected for designation:

$.1050 per barrel (Class III crude)
$.0525 per barrel (Class II crude)

Amount of drawback claimed-	gross:	81,638 x .1050=	$8,571.99
		24,956 x .0525=	$1,310.19
			$9,882.18
		(Rounded Off)	9,882
		Less 1%	-99
Amount of drawback claimed-	net:		$9,783

EXHIBIT F—DESIGNATIONS FOR DRAWBACK CLAIM, ABC OIL CO., INC.; BEAUMONT, TEXAS REFINERY

[Period From January 1, 1995 to January 31, 1995]

Certificate of delivery No.	Entry No.	Date of importation	Kind of materials	Quantity of materials in barrels	Date received	Date consumed	Rate of duty
	26192	04/13/93	Class III Crude	75,125	04/13/93	May 1993	$.1050
	23990	08/04/94	.....do	37,240	08/04/94	Oct. 1994	.1050
3155	22517	10/05/94	.....do	38,982	10/05/94	Nov. 1994	.1050

X. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(b) FOR PIECE GOODS (T.D. 83–73)

A. SAME KIND AND QUALITY (PARALLEL COLUMNS)

Imported Merchandise or Drawback Products[1] to be Designated as the Basis for Drawback on the Exported Products.	Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as that Designated which will be Used in the Production of the Exported Products.
Piece goods	Piece goods.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under 19 U.S.C. 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

The piece goods used in manufacture will be the same kind and quality as the piece goods designated as the basis of claim for drawback, and are used interchangeably without change in manufacturing processes or resultant products (including, if applicable, multiple products), or wastes. Some tolerances between imported-designated piece goods and the used-exported piece goods will be permitted to accommodate variations which are normally found in piece goods. These tolerances are no greater than the tolerances generally allowed in the industry for piece goods of the same kind and quality as follows:

1. A 4% weight tolerance so that the piece goods used in manufacture will be not more than 4% lighter or heavier than the imported piece goods which will be designated;

2. A tolerance of 4% in the aggregate thread count per square inch so that the piece goods used in manufacture will have an aggregate thread count within 4%, more or less of the aggregate thread count of the imported piece goods which will be designated. In each case, the average yarn number of the domestic piece goods will be the same or greater than the average yarn number of the imported piece goods designated, and in each case, the substitution and tolerance will be employed only within the same family of fabrics, *i.e.,* print cloth for print cloth, gingham for gingham, greige for greige, dyed for dyed, bleached for bleached, etc. The piece goods used in manufacture of the exported articles will be designated as containing the identical percentage of identical fibers as the piece goods designated as the basis for allowance of drawback; for example, piece goods containing 65% cotton and 35% dacron will be designated against the use of piece goods shown to contain 65% cotton and 35% dacron. The actual fiber composition may vary slightly from that described on the invoice or other acceptance of the fabric as having the composition described on documents in accordance with trade practices. The substituted piece goods used in the manufacture of articles for exportation with drawback will be so similar in quality to the imported piece goods designated for the basis of allowance of drawback, that the piece goods used, if imported, would have been subject to the same or greater amount of duty as was paid on the imported designated piece goods. Differences in value resulting from factors other than quality, as for example, price fluctuations, will not preclude an allowance of drawback.

B. Exported Articles on Which Drawback Will Be Claimed

Finished piece goods.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.'s. 55027(2) and 55207(1) (see §191.9 of this part).

D. Process of Manufacture or Production

Piece goods are subject to any one of the following finishing productions:

1. Bleaching,
2. Mercerizing,
3. Dyeing,
4. Printing,

5. A combination of the above, or
6. Any additional finishing processes.

E. Multiple Products

Not applicable.

F. Waste

Rag waste may be incurred. No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, the records of the manufacturer or producer will show the quantity of rag waste, if any, and its value. If necessary to establish the quantity of merchandise (eligible piece goods) appearing in the exported articles, such waste records will also be kept. In instances where rag waste occurs and it is impractical to account for the actual quantity of rag waste incurred, it may be assumed that such rag waste constituted 2% of the piece goods put into the finishing processes.

G. Shrinkage, Gain, and Spoilage

Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, the records of the manufacturer or producer will show the yardage lost by shrinkage or gained by stretching during manufacture or production, and the quantity of remnants resulting and of spoilage incurred, if any. If necessary to establish the quantity of merchandise (eligible piece goods) appearing in the exported articles, such records for shrinkage, gain and spoilage will also be kept.

H. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

I. Procedures and Records Maintained

Records will be maintained to establish:
1. The identity and specifications of the designated merchandise;
2. The quantity of merchandise of the same kind and quality as the designated merchandise[2] used to produce the exported articles;
3. That, within 3 years after receiving the designated merchandise at its factory, the manufacturer or producer used the merchandise to produce articles. During the same 3-year period, the manufacturer or producer produced[3] the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

J. Inventory Procedures

The inventory records of the manufacturer or producer will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the CBP Regulations will be met, as discussed under the heading ''Procedures And Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

K. Basis of Claim for Drawback

Drawback will be claimed on the quantity of eligible piece goods used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible piece goods that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste from each lot of piece goods, drawback may be claimed on the quantity of eligible piece goods used to produce the exported articles less the amount of piece goods which the value of the waste would replace.

L. General Requirements

The manufacturer or producer will:
1. Comply fully with the terms of this general ruling when claiming drawback;
2. Open its factory and records for examination at all reasonable hours by authorized Government officers;
3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;
4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9)

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[3] The date of production is the date an article is completed.

or the corporate name or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the CBP Regulations and this general ruling.

XI. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(b) FOR RAW SUGAR (T.D. 83–59)

Drawback may be allowed under 19 U.S.C. 1313(b) upon the exportation of hard or soft refined sugars and sirups manufactured from raw sugar, subject to the following special requirements:

A. The drawback allowance shall not exceed 99 percent of the duty paid on a quantity of raw sugar designated by the refiner which contains a quantity of sucrose not in excess of the quantity required to manufacture the exported sugar or sirup, ascertained as provided in this general rule.

B. The refined sugars and sirups shall have been manufactured with the use of duty-paid, duty-free, or domestic sugar, or combinations thereof, within 3 years after the date on which designated sugar was received by the refiner, and shall have been exported within 5 years from the date of importation of the designated sugar.

C. All granulated sugar testing by the polariscope 99.5° and over shall be deemed hard refined sugar. All refined sugar testing by the polariscope less than 99.5° shall be deemed soft refined sugar. All ''blackstrap,'' ''unfiltered sirup,'' and ''final molasses'' shall be deemed sirup.

D. The imported duty-paid sugar selected by the refiner as the basis for the drawback claim (designated sugar) shall be of the same kind and quality as that used in the manufacture of the exported refined sugar or sirup and shall have been used within 3 years after the date on which it was received by the refiner. Duty-paid sugar which has been used at a plant of a refiner within 3 years after the date on which it was received by such refiner may be designated as the basis for the allowance of drawback on refined sugars or sirups manufactured at another plant of the same refiner.

E. For the purpose of distributing the drawback, relative values shall be established between hard refined (granulated) sugar, soft refined (various grades) sugar, and sirups at the time of separation. The entire period covered by an abstract shall be deemed the time of separation of the sugars and sirups covered by such abstract.

F. The sucrose allowance per pound on hard refined (granulated) sugar established by an abstract, as provided for in this general ruling, shall be applied to hard refined sugar commercially known as loaf, cut loaf, cube, pressed, crushed, or powdered sugar manufactured from the granulated sugar covered by the abstract.

G. The sucrose allowance per gallon on sirup established by an abstract, as provided for in this general ruling, shall be applied to sirup further advanced in value by filtration or otherwise, unless such sirup is the subject of a special manufacturing drawback ruling.

H. As to each lot of imported or domestic sugar used in the manufacture of refined sugar or sirup on which drawback is to be claimed, the raw stock records shall show the refiner's raw lot number, the number and character of the packages, the settlement weight in pounds, and the settlement polarization. Such records covering imported sugar shall show, in addition to the foregoing, the import entry number, date of importation, name of importing carrier, country of origin, the Government weight, and the Government polarization.

I. The melt records shall show the date of melting, the number of pounds of each lot of raw sugar melted, and the full analysis at melting.

J. There shall be kept a daily record of final products boiled showing the date of the melt, the date of boiling, the magma filling serial number, the number of the vacuum pan or crystallizer filling, the date worked off, and the sirup filling serial number.

K. The sirup manufacture records shall show the date of boiling, the period of the melt, the sirup filling serial number, the number of barrels in the filling, the magma filling serial number, the quantity of sirup, its disposition in tanks or barrels and the refinery serial manufacture number.

L. The refined sugar stock records shall show the refinery serial manufacture number, the period of the melt, the date of manufacture, the grade of sugar produced, its polarization, the number and kind of packages, and the net weight. When soft sugars are manufactured, the commercial grade number and quantity of each shall be shown.

M. Each lot of hard or soft refined sugar and each lot of sirup manufactured, regardless of the character of the containers or vessels in which it is packed or stored, shall be marked immediately with the date of manufacture and the refinery manufacture number applied to it in the refinery records provided for and shown in the abstract, as provided for in this general ruling, from such records. If all the sugar or sirup contained in any lot manufactured is not intended for exportation, only such of the packages as are intended for exportation need be marked as prescribed above, provided there is filed with the drawback office immediately after such marking a statement showing the date of

manufacture, the refinery manufacture number, the number of packages marked, and the quantity of sugar or sirup contained therein. No drawback shall be allowed in such case on any sugar or sirup in excess of the quantity shown on the statement as having been marked. If any packages of sugar or sirup so marked are repacked into other containers, the new containers shall be marked with the marks which appeared on the original containers and a revised statement covering such repacking and remarking shall be filed with the drawback office. If sirups from more than one lot are stored in the same tank, the refinery records shall show the refinery manufacture number and the quantity of sirup from each lot contained in such tank.

N. An abstract from the foregoing records covering manufacturing periods of not less than 1 month nor more than 3 months, unless a different period shall have been authorized, shall be filed when drawback is to be claimed on any part of the refined sugar or sirup manufactured during such period. Such abstract shall be filed by each refiner with the drawback office where drawback claims are filed on the basis of this general ruling. Such abstract shall consist of: (1) A raw stock record (accounting for Refiner's raw lot No., Import entry No., Packages No. and kind, Pounds, Polarization, By whom imported or withdrawn, Date of importation, Date of receipt by refiner, Date of melt, Importing carrier, Country of origin); (2) A melt record [number of pounds in each lot melted] (accounting for Lot No. Pounds, and Polarization degrees and pounds sucrose); (3) Sirup stock records (accounting for Date of boiling, Refinery serial manufacture No., Quantity of sirup in gallons, and Pounds sucrose contained therein); (4) Refined sugar stock record (accounting for Refinery serial production No., Date of manufacture, Hard or soft refined, Polarization and No., Net weight in pounds); (5) Recapitulation (consisting of (in pounds): (a) sucrose in process at beginning of period, (b) sucrose melted during period, (c) sucrose in process at end of period, (d) sucrose used in manufacture, and (e) sucrose contained in manufacture, in which item (a) plus item (b), minus item (c), should equal item (d)); and (6) A statement as follows:

I, _____, the _____ refiner at the _____ refinery of _____, located at _____, do solemnly and truly declare that each of the statements contained in the foregoing abstract is true to the best of my knowledge and belief and can be verified by the refinery records, which have been kept in accordance with Treasury Decision 83–59 and Appendix A of 19 CFR Part 191 and which are at all times open to the inspection of Customs.

. Date _____

. Signature _____

O. The refiner shall file with each abstract a statement, showing the average market values of the products specified in the abstract and including a statement as follows:

I, _____, (Official capacity) of the _____ (Refinery), do solemnly and truly declare that the values shown above are true to the best of my knowledge and belief, and can be verified by our records.

Date _____

Signature _____

P. At the end of each calendar month the refiner shall furnish to the drawback office a statement showing the actual sales of sirup and the average market values of refined sugars for the calendar month.

Q. The sucrose allowance to be applied to the various products based on the abstract and statement provided for in this general ruling shall be in accordance with the example set forth in Treasury Decision 83–59.

R. Certificates of manufacture and delivery under this general ruling shall be in the following form:

Certificate of manufacture and delivery—Sugar and Sirup No. _____

Certificate of manufacture and delivery of _____ manufactured by _____ under abstract No. _____ filed at the port of _____.

Description	Quantity	Polarization

DESIGNATION OF IMPORTED SUGAR

Import entry No.	By whom imported or withdrawn from warehouse	Name of importing carrier	When imported	Where imported	Quantity of raw sugar (pounds)	Polarization	Sucrose (pounds)

I, _____, the _____ of _____, located at _____, declare that the sugar (or sirup) described in the within certificate of manufacture and delivery was manufactured by said company at its refinery at _____ and is part of the sugar (or sirup) covered by abstract No. _____, filed at the port of _____ and was delivered to _____ on or about _____, _____, and that no other certificate of manufacture and delivery has been issued covering the above merchandise; that, subject to 19 U.S.C. 1508 and 1313(t), the refinery and other records of the company verifying the statements contained in said abstract are now and at all times hereafter will be open to inspection by Customs.

I further declare that the above-designated imported sugar (upon which the duties have been paid) was received by said company on _____ and was used in the manufacture of sugar and sirup on _____.

. Date _____

. Signature _____

S. Drawback entries under this general ruling shall be on Customs Form 7551 and, in addition to the information required thereon, shall state the polarization in degrees and the sucrose in pounds for the designated imported sugar. Drawback claims under this general ruling shall include a statement as follows:

I, _____, the _____ of _____, located at _____ declare that the sugar (or sirup) described in this entry, was manufactured by said company at its refinery at _____ [or, if the claim is based on a certificate of manufacture and delivery, was manufactured by _____ at its refinery at _____ for which the accompanying certificate of manufacture and delivery was received by this company] and is part of the sugar (or sirup) covered by abstract No. _____, filed at the port of _____; that, subject to 19 U.S.C. 1508 and 1313(t), the refinery and other records of the company verifying the statements contained in said abstract are now and at all times hereafter will be open to inspection by Customs. I further declare that the above-designated imported sugar (upon which the duties have been paid) was received by said company on _____ and was used in the manufacture of sugar and sirup during the period covered by abstract No. _____, Customs No. _____, on file with the port director at _____.

I further declare that the sugar or sirup specified therein was exported as stated in the entry.

. Date _____

. Signature _____

T. General Statement. The refiner manufactures or produces for its own account. The refiner may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the refiner's account under contract within the principal and agency relationship outlined in T.D.'s 55027(2) and 55207(1) (see §191.9 of this part).

U. Waste. No drawback is payable on any waste which results from the manufacturing operation. Unless drawback claims are based on the ''appearing in'' method, records will be maintained to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records to establish that fact will be maintained.

V. Loss or Gain. The refiner will maintain records showing the extent of any loss or gain in net weight or measurement of the sugar caused by atmospheric conditions, chemical reactions, or other factors.

W. Tradeoff. The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality requirements provided for in this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

X. Procedures And Records Maintained. Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;

2. The quantity of merchandise of the same kind and quality as the designated merchandise[1] used to produce the exported articles; and

3. That, within 3 years after receiving the designated merchandise at its factory, the refiner used the designated merchandise to produce articles. During the same 3-year period, the refiner produced[2] the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

Y. General requirements. The refiner will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

[1] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[2] The date of production is the date an article is completed.

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the CBP Regulations and this general ruling.

XII. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(b) FOR STEEL (T.D. 81–74)

A. SAME KIND AND QUALITY (PARALLEL COLUMNS)

Imported Merchandise or Drawback Products[1] to be Designated as the Basis for Drawback on the Exported Products.	Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as that Designated which will be Used in the Production of the Exported Products.
Steel of one general class, e.g., an ingot, falling within one SAE, AISI, or ASTM[2] specification and, if the specification contains one or more grades, falling within one grade of the specification.	Steel of the same general class, specification, and grade as the steel in the column immediately to the left hereof.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

[2] Standards set by the Society of Automotive Engineers (SAE), the American Iron and Steel Institute (AISI), or the American Society for Testing and Materials (ASTM).

1. The duty-paid, duty-free, or domestic steel used instead of the imported, duty-paid steel (or drawback products) will be interchangeable for manufacturing purposes with the duty-paid steel. To be interchangeable a steel must be able to be used in place of the substituted steel without any additional processing step in the manufacture of the article on which drawback is to be claimed.

2. Because the duty-paid steel (or drawback products) that is to be designated as the basis for drawback is dutiable according to its value, the amount of duty can vary with its size (gauge, width, or length) or composition (e.g., chrome content). If such variances occur, designation will be by ''price extra'', and in no case will drawback be claimed in a greater amount than that which would have accrued to that steel used in manufacture of or appearing in the exported articles. Price extra is not available for coated or plated steel, covered in paragraph 5, *infra*, insofar as the coating or plating is concerned.

3. The duty-paid steel (or drawback products) will be so similar in quality to the steel used to manufacture the articles on which drawback will be claimed that the steel so used, if imported, would be classifiable in the same tariff subheading number and at the same rate of duty as the duty-paid imported steel.

4. Any fluctuation in market value caused by a factor other than quality does not affect drawback.

5. If the steel is coated or plated with a base metal, in addition to meeting the requirements for uncoated or unplated steel set forth in the parallel columns, the base-metal coating or plating on the duty-paid, duty-free, or domestic steel used in place of the duty-paid steel (or drawback products) will have the same composition and thickness as the coating or plating on the duty-paid steel. If the coated or plated duty-paid steel is within a SAE, AISI, ASTM specification, any duty-paid, duty-free, or domestic coated or plated steel covered by the same specification and grade (if two or more grades are in the specification) is considered to meet this criterion for ''same kind and quality.''

B. Exported Articles on Which Drawback Will Be Claimed

The exported articles will have been manufactured in the United States using steels described in the parallel columns above.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.'s 55027(2) and 55207(1) (see §191.9 of this part).

D. Process of Manufacture or Production

The steel described in the parallel columns will be used to manufacture or produce articles in accordance with §191.2(q) of this part.

E. Multiple Products

Not applicable.

F. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of steel appearing in the exported articles, records will be maintained to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records to establish that fact will be maintained.

G. Loss or Gain

The manufacturer or producer will maintain records showing the extent of any loss or gain in net weight or measurement of the steel caused by atmospheric conditions, chemical reactions, or other factors.

H. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

I. Procedures and Records Maintained

Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;

2. The quantity of merchandise of the same kind and quality as the designated merchandise[3] used to produce the exported articles;

3. That, within 3 years after receiving the designated merchandise at its factory, the manufacturer or producer used the merchandise to produce articles. During the same 3-year period, the manufacturer or producer produced[4] the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

J. Inventory Procedures

The inventory records of the manufacturer or producer will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the CBP Regulations will be met, as discussed under the heading ''Procedures And Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

K. Basis of Claim for Drawback

Drawback will be claimed on the quantity of steel used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible steel that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste from each lot of steel, drawback may be claimed on the quantity of eligible steel used to produce the exported articles less the amount of that steel which the value of the waste would replace.

L. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code,

[3] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles produced.''

[4] The date of production is the date an article is completed.

section 1313, part 191 of the CBP Regulations and this general ruling.

XIII. GENERAL MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(b) FOR SUGAR (T.D. 81–92)

A. SAME KIND AND QUALITY (PARALLEL COLUMNS)

Imported Merchandise or Drawback Products[1] to be Designated as the Basis for Drawback on the Exported Products.	Duty-Paid, Duty-Free or Domestic Merchandise of the Same Kind and Quality as that Designated which will be Used in the Production of the Exported Products.
1. Granulated or liquid sugar for manufacturing, containing sugar solids of not less than 99.5 sugar degrees.	1. Granulated or liquid sugar for manufacturing, containing sugar solids of not less than 99.5 sugar degrees.
2. Granulated or liquid sugar for manufacturing, containing sugar solids of less than 99.5 sugar degrees.	2. Granulated or liquid sugar for manufacturing, containing sugar solids of less than 99.5 sugar degrees.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

The sugars listed above test within three-tenths of a degree on the polariscope. Sugars in each column are completely interchangeable with the sugars directly opposite and designation will be made on this basis only. The designated sugar on which claims for drawback will be based will be so similar in quality to the sugar used in manufacture of the products exported with drawback that the sugar used in manufacture would, if imported, be subject to the same amount of duty paid on a like quantity of designated sugar. Differences in value resulting from factors other than quality, such as market fluctuation, will not affect the allowance of drawback.

B. Exported Articles on Which Drawback Will Be Claimed

Edible substances (including confectionery) and/or beverages and/or ingredients therefor.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.'s 55027(2) and 55207(1) (see §191.9 of this part).

D. Process of Manufacture or Production

The sugars are subjected to one or more of the following operations to form the desired product(s):

1. Mixing with other substances,
2. Cooking with other substances
3. Boiling with other substances,
4. Baking with other substances,
5. Additional similar processes

E. Multiple Products

Not applicable.

F. Waste

No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of sugar appearing in the exported articles, records will be maintained to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, records to establish that fact will be maintained.

G. Loss or Gain

The manufacturer or producer will maintain records showing the extent of any loss or gain in net weight or measurement of the sugar caused by atmospheric conditions, chemical reactions, or other factors.

H. Tradeoff

The use of any domestic merchandise acquired in exchange for imported merchandise that meets the same kind and quality specifications contained in the parallel columns of this general ruling shall be treated as use of the imported merchandise if no certificate of delivery is issued covering the imported merchandise (19 U.S.C. 1313(k)) upon compliance with the applicable regulations and rulings.

I. Procedures And Records Maintained

Records will be maintained to establish:

1. The identity and specifications of the designated merchandise;

2. The quantity of merchandise of the same kind and quality as the designated merchandise[2] used to produce the exported articles;

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence

3. That, within 3 years after receiving the designated merchandise at its factory, the manufacturer or producer used the merchandise to produce articles. During the same 3-year period, the manufacturer or producer produced[3] the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

J. Inventory Procedures

The inventory records of the manufacturer or producer will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the CBP Regulations will be met, as discussed under the heading ''Procedures And Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

K. Basis of Claim for Drawback

Drawback will be claimed on the quantity of sugar used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible sugar that appears in the exported articles regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles less the amount of that sugar which the value of the waste would replace.

L. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation;

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the CBP Regulations and this general ruling.

XIV. General Manufacturing Drawback Ruling Under 19 U.S.C. 1313(a) for Woven Piece Goods (T.D. 83–84)

Drawback may be allowed under 19 U.S.C. 1313(a) upon the exportation of bleached, mercerized, printed, dyed, or redyed piece goods manufactured or produced by any one or a combination of the foregoing processes with the use of imported woven piece goods, subject to the following special requirements:

A. Imported Merchandise or Drawback Products[1] Used

Imported merchandise or drawback products (woven piece goods) are used in the manufacture of the exported articles upon which drawback claims will be based.

B. Exported Articles on Which Drawback Will Be Claimed

Exported articles on which drawback will be claimed will be manufactured in the United States using imported merchandise or drawback products.

C. General Statement

The manufacturer or producer manufactures or produces for its own account. The manufacturer or producer may manufacture or produce articles for the account of another or another manufacturer or producer may manufacture or produce for the account of the manufacturer or producer under contract within the principal and agency relationship outlined in T.D.s 55027(2) and 55207(1) (see §191.9 of this part).

D. Process of Manufacture or Production

The imported merchandise or drawback products will be used to manufacture or produce articles in accordance with §191.2(q) of this part.

The piece goods used in manufacture or production under this general manufacturing drawback ruling may also be subjected to one or more finishing processes. Drawback

should read ''appearing in the exported articles produced.''

[3] The date of production is the date an article is completed.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations.

shall not be allowed under this general manufacturing drawback ruling when the process performed results only in the restoration of the merchandise to its condition at the time of importation.

E. Multiple Products

Not applicable.

F. Waste

Rag waste may be incurred. No drawback is payable on any waste which results from the manufacturing operation. Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, the records of the manufacturer or producer will show the quantity of rag waste, if any, its value, and its disposition. If necessary to establish the quantity of merchandise (eligible piece goods) appearing in the exported articles, such waste records will also be kept. If no waste results, records will be maintained to establish that fact. In instances where rag waste occurs and it is impractical to account for the actual quantity of rag waste incurred, it may be assumed that such rag waste constituted 2% of the woven piece goods put into process.

G. Shrinkage, Gain, and Spoilage

Unless the claim for drawback is based on the quantity of merchandise appearing in the exported articles, the records of the manufacturer or producer will show the yardage lost by shrinkage or gained by stretching during manufacture, and the quantity of remnants resulting and of spoilage incurred, if any. If necessary to establish the quantity of merchandise (eligible piece goods) appearing in the exported articles, such records for shrinkage, gain, and spoilage will also be kept.

H. Procedures and Records Maintained

Records will be maintained to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise; and

2. The quantity of imported merchandise[2] used in producing the exported articles.

To obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. Records establishing compliance with these requirements will be available for audit by Customs during business hours. Drawback is not payable without proof of compliance.

[2]If claims are to be made on an ''appearing in'' basis, the remainder of the sentence should read ''appearing in the exported articles.''

I. Inventory Procedures

The inventory records of the manufacturer or producer will show how the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(a) and part 191 of the CBP Regulations will be met, as discussed under the heading ''Procedures and Records Maintained''. If those records do not establish satisfaction of those legal requirements, drawback cannot be paid.

The records of the manufacturer or producer shall show, as to each lot of piece goods manufactured or produced for exportation with benefit of drawback, the lot number and the date or inclusive dates of manufacture or production, the quantity, identity, and value of the imported (or drawback product) piece goods used, the condition in which imported or received (whether in the gray, bleached, dyed, or mercerized), the working allowance specified in the contract under which they are received, the process or processes applied thereto, and the quantity and description of the piece goods obtained. The records shall also show the yardage lost by shrinkage or gained by stretching during manufacture or production, and the quantity of remnants resulting and of spoilage incurred.

J. Basis of Claim for Drawback

Drawback will be claimed on the quantity of merchandise used in producing the exported articles only if there is no waste or valueless or unrecovered waste in the manufacturing operation. Drawback may be claimed on the quantity of eligible merchandise that appears in the exported articles, regardless of whether there is waste, and no records of waste need be maintained. If there is valuable waste recovered from the manufacturing operation and records are kept which show the quantity and value of the waste, drawback may be claimed on the quantity of eligible material used to produce the exported articles, less the amount of that merchandise which the value of the waste would replace. (If remnants and/or spoilage occur during manufacture or production, the quantity of imported merchandise used shall be determined by deducting from the quantity of piece goods received and put into manufacture or production the quantity of such remnants and/or spoilage. The remaining quantity shall be reduced by the quantity thereof which the value of the rag waste, if any, would replace.)

K. General Requirements

The manufacturer or producer will:

1. Comply fully with the terms of this general ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this general ruling;

4. Keep its letter of notification of intent to operate under this general ruling current by reporting promptly to the drawback office which liquidates its claims any changes in the information required by the General Instructions of this Appendix to be included therein (I. General Instructions, 1 through 9) or the corporate name or corporate organization by succession or reincorporation.

5. Keep a copy of this general ruling on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this general ruling; and

6. Issue instructions to insure proper compliance with 19, United States Code, §1313, part 191 of the CBP Regulations and this general ruling.

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 13105, Mar. 17, 1998; 63 FR 15291, Mar. 31, 1998; 63 FR 65060, Nov. 25, 1998; T.D. 02–16, 67 FR 16638, Apr. 8, 2002]

APPENDIX B TO PART 191—SAMPLE FORMATS FOR APPLICATIONS FOR SPECIFIC MANUFACTURING DRAWBACK RULINGS

TABLE OF CONTENTS

I. GENERAL

These sample formats for applications for specific manufacturing drawback rulings must be submitted to and reviewed and approved by CBP Headquarters. A specific manufacturing drawback ruling consists of the letter of approval that CBP issues to the applicant, a synopsis of which is published in the Customs Bulletin, as provided in 19 CFR 191.8. In these application formats, remarks in parentheses and footnotes are for explanatory purposes only and should not be copied. Other material should be quoted directly in the applications.

II. FORMAT FOR APPLICATION FOR SPECIFIC MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(a) AND 1313(b) (COMBINATION)

COMPANY LETTERHEAD (Optional)

U.S. Customs and Border Protection, Entry Process and Duty Refunds, Regulations and Rulings, Office of International Trade, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

Dear Sir: We, (Applicant's Name), a (State, e.g., Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, §§1313 (a) & (b), and part 191 of the CBP Regulations. We request that the Customs Service authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT

(Section 191.8(a) of the CBP Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback shall apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under §191.7 of the CBP Regulations. Customs will not approve an application which shows an unincorporated division or company as the applicant (see §191.8(a)).)

LOCATION OF FACTORY

(Give the address of the factory(s) where the process of manufacture or production will take place. If the factory is a different legal entity from the applicant, so state and indicate if operating under an Agent's general manufacturing drawback ruling.)

PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS

(List persons legally authorized to bind the corporation who will sign drawback documents. Section 191.6 of the CBP Regulations permits only the president, vice-president, secretary, treasurer, or any employee legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a Customs power of attorney for the company may sign. A Customs power of attorney may also be given to a licensed Customs broker. This heading should be changed to Names of Partners or Proprietor in the case of a partnership or sole proprietorship, respectively (see footnote at end of this sample format for persons who may sign applications for specific manufacturing drawback rulings).)

CBP OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED

(The four offices where drawback claims can be filed are located at: New York, NY; Houston, TX; Chicago, IL; San Francisco, CA)

(An original application and two copies must be filed. If the applicant intends to file drawback claims at more than one drawback office, one additional copy of the application must be furnished for each additional office indicated.)

GENERAL STATEMENT

(The following questions must be answered:)

1. Who will be the importer of the designated merchandise?

(If the applicant will not always be the importer of the designated merchandise, does the applicant understand its obligations to obtain the appropriate certificates of delivery (19 CFR 191.10), certificates of manufacture and delivery (19 CFR 191.24), or both?)

2. Will an agent be used to process the designated or the substituted merchandise into articles?

(If an agent is to be used, the applicant must state it will comply with T.D.'s 55027(2) and 55207(1) and §191.9, as applicable, and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (see §191.7 and Appendix A) or an application for a specific manufacturing drawback ruling (see §191.8 and this Appendix B).)

3. Will the applicant be the exporter?

(If the applicant will not be the exporter in every case but will be the claimant, the manufacturer must state that it will reserve the right to claim drawback with the knowledge and written consent of the exporter (19 CFR 191.82).)

(Since the permission to grant use of the accelerated payment procedure rests with the Customs office with which claims will be filed, do not include any reference to that procedure in this application.)

PROCEDURES UNDER SECTION 1313(b) (PARALLEL COLUMNS—"SAME KIND AND QUALITY")

IMPORTED MERCHANDISE OR DRAWBACK PRODUCTS[1] TO BE DESIGNATED AS THE BASIS FOR DRAWBACK ON THE EXPORTED PRODUCTS	DUTY-PAID, DUTY-FREE OR DOMESTIC MERCHANDISE OF THE SAME KIND AND QUALITY AS THAT DESIGNATED WHICH WILL BE USED IN THE PRODUCTION OF THE EXPORTED PRODUCTS.
1.	1.
2.	2.
3.	3.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have "dual status" under section 1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.)

(Following the items listed in the parallel columns, a statement will be made, by the applicant, that affirms the "same kind and quality" of the merchandise. This statement should be included in the application exactly as it is stated below:)

The imported merchandise which we will designate on our claims will be so similar in quality to the merchandise used in producing the exported articles on which we claim drawback that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise.

Fluctuations in the market value resulting from factors other than quality will not affect the drawback.

(In order to successfully claim drawback it is necessary to prove that the duty-paid, duty-free or domestic merchandise which is to be substituted for the imported merchandise is the "same kind and quality". "Same kind and quality" does not necessarily mean that the merchandise is identical. It does mean that the merchandise is of the same nature or character ("same kind") and that the merchandise to be substituted is interchangeable with the imported merchandise with little or no change in the manufacturing process to produce the same exported article ("same quality"). In order to enable Customs to rule on "same kind and quality", the application must include a detailed description of the designated imported merchandise and of the substituted duty-paid, duty-free or domestic merchandise to be used to produce the exported articles.)

(It is essential that all the characteristics which determine the quality of the merchandise are provided in the application in order to substantiate that the merchandise meets the "same kind and quality" statutory requirement. These characteristics should clearly distinguish merchandise of different qualities. For example, USDA standards; FDA standards; industry standards, e.g., ASTM; concentration; specific gravity; purity; luster; melting point, boiling point; odor; color; grade; type; hardness; brittleness; etc. Note that these are only a few examples of characteristics and that each kind

of merchandise has its own set of specifications that characterizes its quality. If specifications are given with a minimum value, be sure to include a maximum value. The converse is also true. Often characteristics are given to Customs on attached specification sheets. These specifications should not include Material Safety Data sheets or other descriptions of the merchandise that do not contribute to the ''same kind and quality'' determination. When the merchandise is a chemical, state the chemical's generic name as well as its trade name plus any generally recognized identifying number, e.g., CAS number; Color Index Number, etc.)

(In order to expedite the specific manufacturing drawback ruling process, it will be helpful if you provide copies of technical standards/specifications (particularly industry standards such as ASTM standards) referred to in your application.)

(The descriptions of the ''same kind and quality'' merchandise should be formatted in the parallel columns. The left-hand column will consist of the name and specifications of the designated imported merchandise under the heading set forth above. The right-hand column will consist of the name and specifications for the duty-paid, duty-free or domestic merchandise under the heading set forth above.)

EXPORTED ARTICLES ON WHICH DRAWBACK WILL BE CLAIMED

(Name each article to be exported. When the identity of the product is not clearly evident by its name state what the product is, e.g., a herbicide. There must be a match between each article described under the PROCESS OF MANUFACTURE OR PRODUCTION section below and each article listed here.)

PROCESS OF MANUFACTURE OR PRODUCTION

(Drawback under §1313(b) is not allowable except where a manufacture or production exists. Manufacture or production is defined, for drawback purposes, in §191.2(q). In order to obtain drawback under §1313(b), it is essential for the applicant to show use in manufacture or production by giving a thorough description of the manufacturing process. This description should include the name and exact condition of the merchandise listed in the Parallel Columns, a complete explanation of the processes to which it is subjected in this country, the effect of such processes, the name and exact description of the finished article, and the use for which the finished article is intended. When applicable, give equations of the chemical reactions. The attachment of a flow chart in addition to the description showing the manufacturing process is an excellent means of illustrating whether or not a manufacture or production has occurred. Flow charts can clearly illustrate if and at what point during the manufacturing process by-products and wastes are generated.)

(This section should contain a description of the process by which each item of merchandise listed in the parallel columns above is used to make or produce every article that is to be exported.)

MULTIPLE PRODUCTS

1. Relative Values

(Some processes result in the separation of the merchandise used in the same operation into two or more products. List all of the products. State that you will record the market value of each product at the time it is first separated in the manufacturing process. If this section is not applicable to you, then state so.)

Drawback law mandates the assignment of relative values when two or more products necessarily are produced concurrently in the same operation. For instance, the refining of flaxseed necessarily produces linseed oil and linseed husks (animal feed), and drawback must be distributed to each product in accordance with its relative value. However, the voluntary election of a steel fabricator, for instance, to use part of a lot of imported steel to produce automobile doors and part of the lot to produce automobile fenders does not call for relative value distribution.)

(The relative value of a product is its value divided by the total value of all products, whether or not exported. For example, 100 gallons of drawback merchandise are used to produce 100 gallons of products, including 60 gallons of product A, 20 gallons of product B, and 20 gallons of product C. At the time of separation, the unit values of products A, B, and C are $5, $10, and $50 respectively. The relative value of product A is $300 divided by $1500 or 1/5. The relative value of B is 2/15 and of product C is 2/3, calculated in the same manner. This means that 1/5 of the drawback product payments will be distributed to product A, 2/15 to product B, and 2/3 to product C.)

(Drawback is allowable on exports of any of multiple products, but is not allowable on exports of valuable waste. In making this distinction between a product and valuable waste, the applicant should address the following significant elements: (1) the nature of the material of which the residue is composed; (2) the value of the residue as compared to the value of the principal manufactured product and the raw material; (3) the use to which it is put; (4) its status under the tariff laws, if imported; (5) whether it is a commodity recognized in commerce; (6) whether it must be subjected to some process to make it saleable.)

2. Producibility

(Some processes result in the separation of fixed proportions of each product, while other processes afford the opportunity to increase or decrease the proportion of each product. An example of the latter is petroleum refining, where the refiner has the option to increase or decrease the production of one or more products relative to the others. State under this heading whether you can or cannot vary the proportionate quantity of each product.)

(The MULTIPLE PRODUCTS section consists of two sub-sections: Relative Values and Producibility. If multiple products do not result from your operation state ''Not Applicable'' for the entire section. If multiple products do result from your operation Relative Values will always apply. However, Producibility may or may not apply. If Producibility does not apply to your multiple product operation state ''Not Applicable'' for this sub-section.)

WASTE

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a positive statement to that effect under this heading.)

(If waste occurs, state: (1) whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a ''used in'' or ''appearing in'' basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of imported material used in manufacturing. If the claim is based upon the quantity of imported merchandise appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what ''Basis'' you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of imported or substituted merchandise used in producing the exported articles (less valuable waste), state that you will keep records to establish the quantity and value of the waste recovered. See ''Basis of Claim for Drawback'' section below.)

STOCK IN PROCESS

(Some processes result in another type of residual material, namely, stock in process, which affects the allowance of drawback. Stock in process may exist when residual material resulting from a manufacturing or processing operation is reintroduced into a subsequent manufacturing or processing operation; e.g., trim pieces from a cast article. The effect of stock in process on a drawback claim is that the amount of drawback for the period in which the stock in process was withdrawn from the manufacturing or processing operation (or the manufactured article, if manufacturing or processing periods are not used) is reduced by the quantity of merchandise or drawback products used to produce the stock in process if the ''used in'' or ''used in less valuable waste'' methods are used (if the ''appearing in'' method is used, there will be no effect on the amount of drawback), and the quantity of merchandise or drawback products used to produce the stock in process is added to the merchandise or drawback products used in the subsequent manufacturing or production period (or the subsequently produced article)).

(If stock in process occurs and claims are to be based on stock in process, the application must include a statement to that effect. The application must also include a statement that merchandise is considered to be used in manufacture at the time it was originally processed so that the stock in process will not be included twice in the computation of the merchandise used to manufacture the finished articles on which drawback is claimed.)

TRADEOFF

(If an applicant proposes to use tradeoff (19 CFR 191.11), the applicant should so state and the applicant should describe the contractual arrangement between the applicant and its partner for tradeoff. The person claiming drawback under the tradeoff provision has the burden of establishing compliance with the law and regulations. In this regard, the terms of a written contract are always easier to establish than those of an oral contract.)

LOSS OR GAIN (Separate and distinct from WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. State the approximate usual percentage or

quantity of such loss or gain. Note that percentage values will be considered to be measured ''by weight'' unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state ''Not Applicable.'')

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. The identity and specifications of the merchandise we designate;

2. The quantity of merchandise of the same kind and quality as the designated merchandise[2] we used to produce the exported articles;

3. That, within 3 years after receiving it at our factory, we used the designated merchandise to produce articles. During the same 3-year period, we produced[3] the exported articles.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Our records establishing our compliance with these requirements will be available for audit by Customs during business hours. We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the CBP Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To insure compliance the following areas, as applicable, should be included in your discussion:)

RECEIPT AND STORAGE OF DESIGNATED MERCHANDISE

RECORDS OF USE OF DESIGNATED MERCHANDISE

BILLS OF MATERIALS

MANUFACTURING RECORDS

WASTE RECORDS

RECORDS OF USE OF DUTY-PAID, DUTY-FREE OR DOMESTIC MERCHANDISE OF THE REQUIRED SAME KIND AND QUALITY WITHIN 3 YEARS AFTER THE RECEIPT OF THE DESIGNATED MERCHANDISE

FINISHED STOCK STORAGE RECORDS

SHIPPING RECORDS

(Proof of time frames may be specific or inclusive, e.g. within 120 days, but specific proof is preferable. Separate storage and identification of each article or lot of merchandise usually will permit specific proof of exact dates. Proof of inclusive dates of use, production or export may be acceptable, but in such cases it is well to describe very specifically the data you intend to use to establish each legal requirement, thereby avoiding misunderstandings at the time of audit.)

(If you do not describe the inventory records that you will use, a statement that the legal requirements will be met by your inventory procedures is acceptable. However, it should be noted that without a detailed description of the inventory procedures set forth in the application a judgement as to the adequacy of such a statement cannot be made until a drawback claim is verified. Approval of this application for a specific manufacturing drawback ruling merely constitutes approval of the ruling application as submitted; it does not constitute approval of the applicant's record keeping procedures if, for example, those procedures are merely described as meeting the legal requirements, without specifically stating how the requirements will be met. Drawback is not payable without proof of compliance.)

BASIS OF CLAIM FOR DRAWBACK

(There are three different bases that may be used to claim drawback: (1) Used in; (2) Appearing In; and (3) Used less Valuable Waste.)

(The ''Used In'' basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the ''Used In'' basis. Drawback is payable in the amount of 99 percent of the duty paid on the quantity of imported material designated as the basis for the allowance of drawback on the exported articles. The designated quantity may not exceed the quantity of material actually used in the manufacture of the exported articles.)

(For example, if 100 pounds of material, valued at $1.00 per pound, were used in manufacture resulting in 10 pounds of irrecoverable or valueless waste, the 10 pounds of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 99% of the duty paid on the 100 pounds of designated material used to produce the exported articles.)

(The ''Appearing In'' basis may be used regardless of whether there is waste. If the ''Appearing in'' basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the ''Appearing In'' basis. Drawback is payable on 99 percent of the duty paid on the quantity of material designated,

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles we produce.''

[3] The date of production is the date an article is completed.

which may not exceed the quantity of eligible material that appears in the exported articles. ''Appearing In'' may not be used if multiple products are involved.)

(Based on the previous example, drawback would be payable on the 90 pounds of merchandise which actually went into the exported product (appearing in) rather than the 100 pounds used in as set forth previously.)

(The ''Used Less Valuable Waste'' basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of merchandise. The value of the waste reduces the amount of drawback when claims are based on the ''Used Less Valuable Waste'' basis. When valuable waste is incurred, the drawback allowance on the exported article is based on the duty paid on the quantity of merchandise used in the manufacture, reduced by the quantity of such merchandise which the value of the waste would replace. Thus in this case, drawback is claimed on the quantity of eligible material actually used to produce the exported product, less the amount of such material which the value of the waste would replace. Note section 191.26(c) of the CBP Regulations.)

(Based on the previous examples, if the 10 pounds of waste had a value of $.50 per pound, then the 10 pounds of waste, having a total value of $5.00, would be equivalent in value to 5 pounds of the designated material. Thus the value of the waste would replace 5 pounds of the merchandise used, and drawback is payable on 99 percent of the duty paid on the 95 pounds of imported material designated as the basis for the allowance of drawback on the exported article rather than on the 100 pounds ''Used In'' or the 90 pounds ''Appearing In'' as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A ''schedule'' shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount that will be needed to produce a unit of product before the material is actually used in production;)

(An ''abstract'' is the summary of the records (which may be set forth on Customs Form 7551) which shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a duration of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back on how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the ''schedule'' choice must base his claims on the ''abstract'' method. State which Basis and Method you will use. An example of Used In by Schedule follows:)

We shall claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 191.8(f) of the CBP Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Neither the ''Appearing In'' basis nor the ''schedule'' method for claiming drawback may be used where the relative value procedure is required.)

PROCEDURES UNDER SECTION 1313(a)

IMPORTED MERCHANDISE OR DRAWBACK PRODUCTS USED UNDER 1313(a)

(List the imported merchandise or drawback products)

EXPORTED ARTICLES ON WHICH DRAWBACK WILL BE CLAIMED

(Name each article to be exported. When the identity of the product is not clearly evident by its name state what the product is, e.g., a herbicide. There must be a match between each article described under the PROCESS OF MANUFACTURE AND PRODUCTION section below and each article listed here.)

(If the merchandise used under §1313(a) is not also used under §1313(b), the sections entitled PROCESS OF MANUFACTURE OR PRODUCTION, BY-PRODUCTS, LOSS OR GAIN, and STOCK IN PROCESS should be included here to cover merchandise used under §1313(a). However, if the merchandise used under §1313(a) is also used under §1313(b) these sections need not be repeated unless they differ in some way from the §1313(b) descriptions.)

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. That the exported articles on which drawback is claimed were produced with the use of the imported merchandise, and

2. The quantity of imported merchandise[4] we used in producing the exported articles

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after importation of the imported merchandise. We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(This section must be completed separately from that set forth under the §1313(b) portion of your application. The legal requirements under §1313(a) differ from those under §1313(b).) (Describe your inventory procedures and state how you will identify the imported merchandise from the time it is received at your factory until it is incorporated in the articles to be exported. Also describe how you will identify the finished articles from the time of manufacture until shipment.)

BASIS OF CLAIM FOR DRAWBACK

(See section with this title for procedures under §1313(b). Either repeat the same basis of claim or use a different basis of claim, as described above, specifically for drawback claimed under §1313(a).)

AGREEMENTS

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, the persons who will sign drawback documents, the basis of claim used for calculating drawback, the decision to use or not to use an agent under §191.9 or the identity of an agent under that section, the drawback office where claims will be filed under the ruling, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to the Headquarters, U.S. Customs Service all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by Customs Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the CBP Regulations and this application and letter of approval.

DECLARATION OF OFFICIAL

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this _____ day of _____ 19____, makes this application binding on

_____

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By[5] _____

(Signature and Title)

_____

(Print Name)

III. FORMAT FOR APPLICATION FOR SPECIFIC MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(b)

COMPANY LETTERHEAD (Optional)

U.S. Customs and Border Protection, Commercial and Trade Facilitation Division, Regulations and Rulings, Office of International Trade, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

Dear Sir: We, (Applicant's Name), a (State, e.g., Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, section 1313(b), and part 191 of the Customs

[4] If claims are to be made on an ''appearing In'' basis, the remainder of the sentence should read ''appearing in the exported articles we produce.''

[5] Section 191.6(a) requires that applications for specific manufacturing drawback rulings be signed by any individual legally authorized to bind the person (or entity) for whom the application is signed or the owner of a sole proprietorship, a full partner in a partnership, or, if a corporation, the president, a vice president, secretary, treasurer or employee legally authorized to bind the corporation. In addition, any employee of a business entity with a customs power of attorney filed with the Customs port for the drawback office which will liquidate your drawback claims may sign such an application, as may a licensed Customs broker with a Customs power of attorney. You should state in which Customs port your Customs power(s) of attorney is/are filed.

Regulations. We request that the Customs Service authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT

(Section 191.8(a) of the CBP Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback shall apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under §191.7 of the CBP Regulations. Customs will not approve an application which shows an unincorporated division or company as the applicant (see §191.8(a)).)

LOCATION OF FACTORY

(Give the address of the factory(ies) where the process of manufacture or production will take place. If the factory is a different legal entity from the applicant, so state and indicate if operating under an Agent's general manufacturing drawback ruling.)

PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS

(List persons legally authorized to bind the corporation who will sign drawback documents. Section 191.6 of the CBP Regulations permits only the president, vice-president, secretary, treasurer, or any employee legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a Customs power of attorney for the company may sign. A Customs power of attorney may also be given to a licensed Customs broker. This heading should be changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively (see footnote at end of this sample format for persons who may sign applications for specific manufacturing drawback rulings).)

CBP OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED

(The four offices where drawback claims can be filed are located at: New York, NY; Houston, TX; Chicago, IL; San Francisco, CA)
(An original application and two copies must be filed. If the applicant intends to file drawback claims at more than one drawback office, one additional copy of the application must be furnished for each additional office indicated.)

GENERAL STATEMENT

(The following questions must be answered:
1. Who will be the importer of the designated merchandise?
(If the applicant will not always be the importer of the designated merchandise, does the applicant understand its obligations to obtain the appropriate certificates of delivery (19 CFR 191.10), certificates of manufacture and delivery (19 CFR 191.24), or both?)
2. Will an agent be used to process the designated or the substituted merchandise into articles?
(If an agent is to be used, the applicant must state it will comply with T.D.'s 55027(2) and 55207(1), and §191.9, as applicable, and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (see §191.7 and Appendix A), or an application for a specific manufacturing drawback ruling (see §191.8 and this Appendix B).)
3. Will the applicant be the exporter?
(If the applicant will not be the exporter in every case but will be the claimant, the manufacturer must state that it will reserve the right to claim drawback with the knowledge and written consent of the exporter (19 CFR 191.82).)
(Since the permission to grant use of the accelerated payment procedure rests with the Drawback office with which claims will be filed, do not include any reference to that procedure in this application.)

(PARALLEL COLUMNS—"SAME KIND AND QUALITY")

IMPORTED MERCHANDISE OR DRAWBACK PRODUCTS[1] TO BE DESIGNATED AS THE BASIS FOR DRAWBACK ON THE EXPORTED PRODUCTS.	DUTY-PAID, DUTY-FREE OR DOMESTIC MERCHANDISE OF THE SAME KIND AND QUALITY AS THAT DESIGNATED WHICH WILL BE USED IN THE PRODUCTION OF THE EXPORTED PRODUCTS.
1.	1.
2.	2.
3.	3.

[1] Drawback products are those produced in the United States in accordance with the drawback law and regulations. Such products have ''dual status'' under §1313(b). They may be designated as the basis for drawback and also may be deemed to be domestic merchandise.

(Following the items listed in the parallel columns, a statement will be made, by the applicant, that affirms the ''same kind and quality'' of the merchandise. This statement should be included in the application exactly as it is stated below:)

The imported merchandise which we will designate on our claims will be so similar in

quality to the merchandise used in producing the exported articles on which we claim drawback that the merchandise used would, if imported, be subject to the same rate of duty as the imported designated merchandise.

Fluctuations in the market value resulting from factors other than quality will not affect the drawback.

(In order to successfully claim drawback it is necessary to prove that the duty-paid, duty-free or domestic merchandise which is to be substituted for the imported merchandise is the ''same kind and quality''. ''Same kind and quality'' does not necessarily mean that the merchandise is identical. It does mean that the merchandise is of the same nature or character (''same kind'') and that the merchandise to be substituted is interchangeable with the imported merchandise with little or no change in the manufacturing process to produce the same exported article (''same quality''). In order to enable Customs to rule on ''same kind and quality'', the application must include a detailed description of the designated imported merchandise and of the substituted duty-paid, duty-free or domestic merchandise to be used to produce the exported articles.)

(It is essential that all the characteristics which determine the quality of the merchandise are provided in the application in order to substantiate that the merchandise meets the ''same kind and quality'' statutory requirement. These characteristics should clearly distinguish merchandise of different qualities. For example, USDA standards; FDA standards; industry standards, e.g., ASTM; concentration; specific gravity; purity; luster; melting point, boiling point; odor; color; grade; type; hardness; brittleness; etc. Note that these are only a few examples of characteristics and that each kind of merchandise has its own set of specifications that characterizes its quality. If specifications are given with a minimum value, be sure to include a maximum value. The converse is also true. Often characteristics are given to Customs on attached specification sheets. These specifications should not include Material Safety Data sheets or other descriptions of the merchandise that do not contribute to the ''same kind and quality'' determination. When the merchandise is a chemical, state the chemical's generic name as well as its trade name plus any generally recognized identifying number, e.g., CAS number; Color Index Number, etc.)

(In order to expedite the specific manufacturing drawback ruling review process, it will be helpful if you provide copies of technical standards/specifications (particularly industry standards such as ASTM standards) referred to in your application.)

(The descriptions of the ''same kind and quality'' merchandise should be formatted in the parallel columns. The left-hand column will consist of the name and specifications of the designated imported merchandise under the heading set forth above. The right-hand column will consist of the name and specifications for the duty-paid, duty-free or domestic merchandise under the heading set forth above.)

EXPORTED ARTICLES ON WHICH DRAWBACK WILL BE CLAIMED

(Name each article to be exported. When the identity of the product is not clearly evident by its name state what the product is, e.g., a herbicide. There must be a match between each article described under the PROCESS OF MANUFACTURE AND PRODUCTION section below and each article listed here.)

PROCESS OF MANUFACTURE OR PRODUCTION

(Drawback under §1313(b) is not allowable except where a manufacture or production exists. Manufacture or production is defined, for drawback purposes, in §191.2(q). In order to obtain drawback under §1313(b), it is essential for the applicant to show use in manufacture or production by giving a thorough description of the manufacturing process. This description should include the name and exact condition of the merchandise listed in the Parallel Columns, a complete explanation of the processes to which it is subjected in this country, the effect of such processes, the name and exact description of the finished article, and the use for which the finished article is intended. When applicable, give equations of the chemical reactions. The attachment of a flow chart in addition to the description showing the manufacturing process is an excellent means of illustrating whether or not a manufacture or production has occurred. Flow charts can clearly illustrate if and at what point during the manufacturing process by-products and wastes are generated.)

(This section should contain a description of the process by which each item of merchandise listed in the parallel columns above is used to make or produce every article that is to be exported.)

MULTIPLE PRODUCTS

1. Relative Values

(Some processes result in the separation of the merchandise used in the same operation into two or more products. List all of the products. State that you will record the market value of each product or by-product at the time it is first separated in the manufacturing process. If this section is not applicable to you, then state so.)

(Drawback law mandates the assignment of relative values when two or more products necessarily are produced concurrently in the same operation. For instance, the refining of

flaxseed necessarily produces linseed oil and linseed husks (animal feed), and drawback must be distributed to each product in accordance with its relative value. However, the voluntary election of a steel fabricator, for instance, to use part of a lot of imported steel to produce automobile doors and part of the lot to produce automobile fenders does not call for relative value distribution.)

(The relative value of a product is its value divided by the total value of all products, whether or not exported. For example, 100 gallons of drawback merchandise are used to produce 100 gallons of products, including 60 gallons of product A, 20 gallons of product B, and 20 gallons of product C. At the time of separation, the unit values of products A, B, and C are $5, $10, and $50 respectively. The relative value of product A is $300 divided by $1500 or 1/5. The relative value of B is 2/15 and of product C is 2/3, calculated in the same manner. This means that 1/5 of the drawback product payments will be distributed to product A, 2/15 to product B, and 2/3 to product C.)

(Drawback is allowable on exports of any of multiple products, but is not allowable on exports of valuable waste. In making this distinction between a product and valuable waste, the applicant should address the following significant elements: (1) the nature of the material of which the residue is composed; (2) the value of the residue as compared to the value of the principal manufactured product and the raw material; (3) the use to which it is put; (4) its status under the tariff laws, if imported; (5) whether it is a commodity recognized in commerce; (6) whether it must be subjected to some process to make it saleable.)

2. Producibility

(Some processes result in the separation of fixed proportions of each product, while other processes afford the opportunity to increase or decrease the proportion of each product. An example of the latter is petroleum refining, where the refiner has the option to increase or decrease the production of one or more products relative to the others. State under this heading whether you can or cannot vary the proportionate quantity of each product.)

(The MULTIPLE PRODUCTS section consists of two sub-sections: Relative Values and Producibility. If multiple products do not result from your operation state ''Not Applicable'' for the entire section. If multiple products do result from your operation Relative Values will always apply. However, Producibility may or may not apply. If Producibility does not apply to your multiple product operation state ''Not Applicable'' for this sub-section.)

WASTE

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a positive statement to that effect under this heading.)

(If waste occurs, state: (1) whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a ''used in'' or ''appearing in'' basis and regardless of the amount of waste incurred.)

(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of imported material used in manufacturing. If the claim is based upon the quantity of imported merchandise appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)

(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what ''Basis'' you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of imported or substituted merchandise used in producing the exported articles less valuable waste, state that you will keep records to establish the quantity and value of the waste recovered. See ''Basis of Claim for Drawback'' section below.)

STOCK IN PROCESS

(Some processes result in another type of residual material, namely, stock in process, which affects the allowance of drawback. Stock in process may exist when residual material resulting from a manufacturing or processing operation is reintroduced into a subsequent manufacturing or processing operation; e.g., trim pieces from a cast article. The effect of stock in process on a drawback claim is that the amount of drawback for the period in which the stock in process was withdrawn from the manufacturing or processing operation (or the manufactured article, if manufacturing or processing periods are not used) is reduced by the quantity of merchandise or drawback products used to produce the stock in process if the ''used in''

or ''used in less valuable waste'' methods are used (if the ''appearing in'' method is used, there will be no effect on the amount of drawback), and the quantity of merchandise or drawback products used to produce the stock in process is added to the merchandise or drawback products used in the subsequent manufacturing or production period (or the subsequently produced article)).

(If stock in process occurs and claims are to be based on stock in process, the application must include a statement to that effect. The application must also include a statement that merchandise is considered to be used in manufacture at the time it was originally processed so that the stock in process will not be included twice in the computation of the merchandise used to manufacture the finished articles on which drawback is claimed.)

TRADEOFF

(If an applicant proposes to use tradeoff (19 CFR 191.11), the applicant should so state and the applicant should describe the contractual arrangement between the applicant and its partner for tradeoff. The person claiming drawback under the tradeoff provisions has the burden of establishing compliance with the law and regulations. In this regard, the terms of a written contract are always easier to establish than those of an oral contract.)

LOSS OR GAIN (Separate and distinct from WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. State the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured ''by weight'' unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state ''Not Applicable.'')

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. The identity and specifications of the merchandise we designate;

2. The quantity of merchandise of the same kind and quality as the designated merchandise[2] we used to produce the exported articles;

3. That, within 3 years after receiving it at our factory, we used the designated merchandise to produce articles. During the same 3-year period, we produced[3] the exported articles;

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Our records establishing our compliance with these requirements will be available for audit by Customs during business hours. We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(b) and part 191 of the CBP Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To insure compliance the following areas, as applicable, should be included in your discussion:)

RECEIPT AND STORAGE OF DESIGNATED MERCHANDISE

RECORDS OF USE OF DESIGNATED MERCHANDISE

BILLS OF MATERIALS

MANUFACTURING RECORDS

WASTE RECORDS

RECORDS OF USE OF DUTY-PAID, DUTY-FREE OR DOMESTIC

MERCHANDISE OF THE REQUIRED SAME KIND AND QUALITY

WITHIN 3 YEARS AFTER THE RECEIPT OF THE DESIGNATED MERCHANDISE

FINISHED STOCK STORAGE RECORDS

SHIPPING RECORDS

(Proof of time frames may be specific or inclusive, e.g., within 120 days, but specific proof is preferable. Separate storage and identification of each article or lot of merchandise usually will permit specific proof of exact dates. Proof of inclusive dates of use, production or export may be acceptable, but in such cases it is well to describe very specifically the data you intend to use to establish each legal requirement, thereby avoiding misunderstandings at the time of audit.)

(If you do not describe the inventory records that you will use, a statement that the legal requirements will be met by your inventory procedures is acceptable. However, it should be noted that without a detailed description of the inventory procedures set forth in the application a judgement as to the adequacy of such a statement cannot be made until a drawback claim is verified. Approval of this application for a specific manufacturing drawback ruling merely constitutes approval of the ruling application as submitted; it

[2] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles we produce.''

[3] The date of production is the date an article is completed.

does not constitute approval of the applicant's record keeping procedures if, for example, those procedures are merely described as meeting the legal requirements, without specifically stating how the requirements will be met. Drawback is not payable without proof of compliance.)

BASIS OF CLAIM FOR DRAWBACK

(There are three different bases that may be used to claim drawback: (1) Used in; (2) Appearing In; and (3) Used less Valuable Waste.)

(The ''Used In'' basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the ''Used In'' basis. Drawback is payable in the amount of 99 percent of the duty paid on the quantity of imported material designated as the basis for the allowance of drawback on the exported articles. The designated quantity may not exceed the quantity of material actually used in the manufacture of the exported articles.)

(For example, if 100 pounds of material, valued at $1.00 per pound, were used in manufacture resulting in 10 pounds of irrecoverable or valueless waste, the 10 pounds of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 99% of the duty paid on the 100 pounds of designated material used to produce the exported articles.)

(The ''Appearing In'' basis may be used regardless of whether there is waste. If the ''Appearing In'' basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the ''Appearing In'' basis. Drawback is payable on 99 percent of the duty paid on the quantity of material designated, which may not exceed the quantity of eligible material that appears in the exported articles. ''Appearing In'' may not be used if multiple products are involved.)

(Based on the previous example, drawback would be payable on the 90 pounds of merchandise which actually went into the exported product (appearing in) rather than the 100 pounds used in as set forth previously.)

(The ''Used Less Valuable Waste'' basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of merchandise. The value of the waste reduces the amount of drawback when claims are based on the ''Used Less Valuable Waste'' basis. When valuable waste is incurred, the drawback allowance on the exported article is based on the duty paid on the quantity of merchandise used in the manufacture, reduced by the quantity of such merchandise which the value of the waste would replace. Thus in this case, drawback is claimed on the quantity of eligible material actually used to produce the exported product, less the amount of such material which the value of the waste would replace. Note section 191.26(c) of the CBP Regulations.)

(Based on the previous examples, if the 10 pounds of waste had a value of $.50 per pound, then the 10 pounds of waste, having a total value of $5.00, would be equivalent in value to 5 pounds of the designated material. Thus the value of the waste would replace 5 pounds of the merchandise used, and drawback is payable on 99 percent of the duty paid on the 95 pounds of imported material designated as the basis for the allowance of drawback on the exported article rather than on the 100 pounds ''Used In'' or the 90 pounds ''Appearing In'' as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A ''schedule'' shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount that will be needed to produce a unit of product before the material is actually used in production;)

(An ''abstract'' is the summary of the records (which may be set forth on Customs Form 7551) which shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a duration of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back on how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the ''schedule'' choice must base his claims on the ''abstract'' method. State which Basis and Method you will use. An example of Used In by Schedule would read:)

We shall claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 191.8(f) of the CBP Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to

file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Neither the ''Appearing In'' basis nor the ''schedule'' method for claiming drawback may be used where the relative value procedure is required.)

AGREEMENTS

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, the persons who will sign drawback documents, the basis of claim used for calculating drawback, the decision to use or not to use an agent under §191.9 or the identity of an agent under that section, the drawback office where claims will be filed under the ruling, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to the Headquarters, U.S. Customs Service all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by Customs Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the CBP Regulations and this application and letter of approval.

Declaration of Official

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this _____ day of _____ 19____, makes this application binding on

_____

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By[4] _____

(Signature and Title)

_____

(Print Name)

IV. FORMAT FOR APPLICATION FOR SPECIFIC MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(d)

COMPANY LETTERHEAD (Optional)

U.S. Customs and Border Protection, Commercial and Trade Facilitation Division, Regulations and Rulings, Office of International Trade, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

Dear Sir: We, (Applicant's Name), a (State, e.g., Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, section 1313(d), and part 191 of the Customs Regulations. We request that the Customs Service authorize drawback on the basis of this application.

NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT

(Section 191.8(a) of the CBP Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback shall apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under §191.7 of the CBP Regulations. Customs will not approve an application which shows an unincorporated division or company as the applicant (see §191.8(a)).)

LOCATION OF FACTORY

(Give the address of the factory(s) where the process of manufacture or production will take place. If the factory is a different legal

[4] Section 191.6(a) requires that applications for specific manufacturing drawback rulings be signed by any individual legally authorized to bind the person (or entity) for whom the application is signed or the owner of a sole proprietorship, a full partner in a partnership, or, if a corporation, the president, a vice president, secretary, treasurer or employee legally authorized to bind the corporation. In addition, any employee of a business entity with a customs power of attorney filed with the Customs port for the drawback office which will liquidate your drawback claims may sign such an application, as may a licensed Customs broker with a Customs power of attorney. You should state in which Customs port your Customs power(s) of attorney is/are filed.

entity from the applicant, so state and indicate if operating under an Agent's general manufacturing drawback ruling.)

PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS

(List persons legally authorized to bind the corporation who will sign drawback documents. Section 191.6 of the CBP Regulations permits only the president, vice-president, secretary, treasurer, or any employee legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a Customs power of attorney for the company may sign. A Customs power of attorney may also be given to a licensed Customs broker. This heading should be changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively (see footnote at end of this sample format for persons who may sign applications for specific manufacturing drawback rulings).

CBP OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED

(The four offices where drawback claims can be filed are located at: New York, NY; Houston, TX; Chicago, IL; San Francisco, CA)
(An original application and two copies must be filed. If the applicant intends to file drawback claims at more than one drawback office, one additional copy of the application must be furnished for each additional office indicated.)

GENERAL STATEMENT

(The exact material placed under this heading in individual cases will vary, but it should include such information as the type of business in which the manufacturer is engaged, whether the manufacturer is manufacturing for his own account or is performing the operation on a toll basis (including commission or conversion basis) for the account of others, whether the manufacturer is a direct exporter of his products or sells or delivers them to others for export, and whether drawback will be claimed by the manufacturer or by others.)
(If an agent is to be used, the applicant must state it will comply with T.D.'s 55027(2) and 55207(1), and §191.9, as applicable, and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (see §191.7 and Appendix A), or an application for a specific manufacturing drawback ruling (see §191.8 and this Appendix B).)
(Regarding drawback operations conducted under §1313(d), the data may describe the flavoring extracts, medicinal, or toilet preparations (including perfumery) manufactured with the use of domestic tax-paid alcohol; and where such alcohol is obtained or purchased.)
(Since the permission to grant use of the accelerated payment procedure rests with the Drawback office with which claims will be filed, do not include any reference to that procedure in this application.)

TAX-PAID MATERIAL USED UNDER SECTION 1313(d)

(Describe or list the tax-paid material)

EXPORTED ARTICLES ON WHICH DRAWBACK WILL BE CLAIMED

(Name each article to be exported)

PROCESS OF MANUFACTURE OR PRODUCTION

(Drawback under §1313(d) is not allowable except where a manufacture or production exists. ''Manufacture or production'' is defined, for drawback purposes, in §191.2(q). In order to obtain drawback under §1313(d), it is essential for the applicant to show use in manufacture or production by giving a thorough description of the manufacturing process. Describe how the tax-paid material is processed into the export article.)

WASTE

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a positive statement to that effect under this heading.) (If waste occurs, state: (1) whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a ''used in'' or ''appearing in'' basis and regardless of the amount of waste incurred.)
(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of domestic tax-paid alcohol used in manufacturing. If the claim is based upon the quantity of domestic tax-paid alcohol appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)
(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation, does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what ''Basis'' you are using.)

(If you recover valuable waste and if you choose to claim on the basis of the quantity of domestic tax-paid alcohol used in producing the exported articles (less valuable waste), state that you will keep records to establish the quantity and value of the waste recovered. See ''Basis of Claim for Drawback'' section below.)

STOCK IN PROCESS

(Some processes result in another type of residual material, namely, stock in process, which affects the allowance of drawback. Stock in process may exist when residual material resulting from a manufacturing or processing operation is reintroduced into a subsequent manufacturing or processing operation; e.g., trim pieces from a cast article. The effect of stock in process on a drawback claim is that the amount of drawback for the period in which the stock in process was withdrawn from the manufacturing or processing operation (or the manufactured article, if manufacturing or processing periods are not used) is reduced by the quantity of merchandise or drawback products used to produce the stock in process if the ''used in'' or ''used in less valuable waste'' methods are used (if the ''appearing in'' method is used, there will be no effect on the amount of drawback), and the quantity of merchandise or drawback products used to produce the stock in process is added to the merchandise or drawback products used in the subsequent manufacturing or production period (or the subsequently produced article)).

(If stock in process occurs and claims are to be based on stock in process, the application must include a statement to that effect. The application must also include a statement that the domestic tax-paid alcohol is considered to be used in manufacture at the time it was originally processed so that the stock in process will not be included twice in the computation of the domestic tax-paid alcohol used to manufacture the finished articles on which drawback is claimed.)

LOSS OR GAIN (Separate and distinct from WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. State the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured ''by weight'' unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state ''Not Applicable.'')

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. That the exported articles on which drawback is claimed were produced with the use of a particular lot (or lots) of domestic tax-paid alcohol, and

2. The quantity of domestic tax-paid alcohol[1] we used in producing the exported articles.

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the tax has been paid on the domestic alcohol. Our records establishing our compliance with these requirements will be available for audit by Customs during business hours. We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313(d) and part 191 of the CBP Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To insure compliance the following areas should be included in your discussion:)

RECEIPT AND RAW STOCK STORAGE RECORDS

MANUFACTURING RECORDS

FINISHED STOCK STORAGE RECORDS

BASIS OF CLAIM FOR DRAWBACK

(There are three different bases that may be used to claim drawback: (1) Used in; (2) Appearing In; and (3) Used less Valuable Waste.)

(The ''Used In'' basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the ''Used In'' basis. Drawback is payable in the amount of 100% of the tax paid on the quantity of domestic alcohol used in the manufacture of flavoring extracts and medicinal or toilet preparation (including perfumery).)

(For example, if 100 gallons of alcohol, valued at $1.00 per gallon, were used in manufacture resulting in 10 gallons of irrecoverable or valueless waste, the 10 gallons of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 100% of the tax paid on the 100 gallons of domestic alcohol used to produce the exported articles.)

The ''Appearing In'' basis may be used regardless of whether there is waste. If the

[1] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles we produce.''

''Appearing In'' basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the ''Appearing In'' basis. Drawback is payable on 100% of the tax paid on the quantity of domestic alcohol which appears in the exported articles.

(Based on the previous example, drawback would be payable on the 90 gallons of domestic alcohol which actually went into the exported product (appearing in) rather than the 100 gallons used in as set forth previously.)

(The ''Used Less Valuable Waste'' basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of domestic tax-paid alcohol. The value of the waste reduces the amount of drawback when claims are based on the ''Used Less Valuable Waste'' basis. When valuable waste is incurred, the drawback allowance on the exported article is based on the quantity of tax-paid alcohol used to manufacture the exported articles, reduced by the quantity of such alcohol which the value of the waste would replace.)

(Based on the previous examples, if the 10 gallons of waste had a value of $.50 per gallon, then the 10 gallons of waste, having a total value of $5.00, would be equivalent in value to 5 gallons of the tax-paid alcohol. Thus the value of the waste would replace 5 gallons of the alcohol used, and drawback is payable on 100% of the tax paid on 95 gallons of alcohol rather than on the 100 gallons ''Used In'' or the 90 gallons ''Appearing In'' as set forth in the above examples.)

(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)

(A ''schedule'' shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount that will be needed to produce a unit of product before the material is actually used in production;)

(An ''abstract'' is the summary of the records (which may be set forth on Customs Form 7551) which shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a duration of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back on how much material was actually used after a production period has been completed.)

(An applicant who fails to indicate the ''schedule'' choice must base his claims on the ''abstract'' method. State which Basis and Method you will use. An example of Used In by schedule follows:)

We shall claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 191.8(f) of the CBP Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Neither the ''Appearing In'' basis nor the ''schedule'' method for claiming drawback may be used where the relative value procedure is required.)

AGREEMENTS

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, the persons who will sign drawback documents, the basis of claim used for calculating drawback, the decision to use or not to use an agent under §191.9 or the identity of an agent under that section, the drawback office where claims will be filed under the ruling, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to the Headquarters, U.S. Customs Service all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by Customs Headquarters on file for ready reference by employees and

require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the CBP Regulations and this application and letter of approval.

DECLARATION OF OFFICIAL

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this _____ day of _____ 19___, makes this application binding on

_____

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By[2] _____

(Signature and Title)

_____

(Print Name)

V. FORMAT FOR APPLICATION FOR SPECIFIC MANUFACTURING DRAWBACK RULING UNDER 19 U.S.C. 1313(g)

COMPANY LETTERHEAD (Optional)

U.S. Customs and Border Protection, Commercial and Trade Facilitation Division, Regulations and Rulings, Office of International Trade, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

Dear Sir: We, (Applicant's Name), a (State, e.g., Delaware) corporation (or other described entity) submit this application for a specific manufacturing drawback ruling that our manufacturing operations qualify for drawback under title 19, United States Code, section 1313(g), and part 191 of the Customs Regulations. We request that the Customs Service authorize drawback on the basis of this application.

[2]Section 191.6(a) requires that applications for specific manufacturing drawback rulings be signed by any individual legally authorized to bind the person (or entity) for whom the application is signed or the owner of a sole proprietorship, a full partner in a partnership, or, if a corporation, the president, a vice president, secretary, treasurer or employee legally authorized to bind the corporation. In addition, any employee of a business entity with a customs power of attorney filed with the Customs port for the drawback office which will liquidate your drawback claims may sign such an application, as may a licensed Customs broker with a Customs power of attorney. You should state in which Customs port your Customs power(s) of attorney is/are filed.

NAME AND ADDRESS AND IRS NUMBER (WITH SUFFIX) OF APPLICANT

(Section 191.8(a) of the CBP Regulations provides that each manufacturer or producer of articles intended for exportation with the benefit of drawback shall apply for a specific manufacturing drawback ruling, unless operating under a general manufacturing drawback ruling under §191.7 of the CBP Regulations. Customs will not approve an application which shows an unincorporated division or company as the applicant (see §191.8(a).)

LOCATION OF FACTORY OR SHIPYARD

(Give the address of the factory(s) or shipyard(s) at which the construction and equipment will take place. If the factory or shipyard is a different legal entity from the applicant, so state and indicate if operating under an Agent's general manufacturing drawback ruling.)

PERSONS WHO WILL SIGN DRAWBACK DOCUMENTS

(List persons legally authorized to bind the corporation who will sign drawback documents. Section 191.6 of the CBP Regulations permits only the president, vice-president, secretary, treasurer, or any employee legally authorized to bind the corporation to sign for a corporation. In addition, a person within a business entity with a Customs power of attorney for the company may sign. A Customs power of attorney may also be given to a licensed Customs broker. This heading should be changed to NAMES OF PARTNERS or PROPRIETOR in the case of a partnership or sole proprietorship, respectively (see footnote at end of this sample format for persons who may sign applications for specific manufacturing drawback rulings).)

CBP OFFICE WHERE DRAWBACK CLAIMS WILL BE FILED

(The four offices where drawback claims can be filed are located at: New York, NY; Houston, TX; Chicago, IL; San Francisco, CA)
(An original application and two copies must be filed. If the applicant intends to file drawback claims at more than one drawback office, one additional copy of the application must be furnished for each additional office indicated.)

GENERAL STATEMENT

(The following questions must be answered:
1. Who will be the importer of the merchandise?
(If the applicant will not always be the importer, does the applicant understand its obligations to obtain the appropriate certificates of delivery (19 CFR 191.10), certificates of manufacture and delivery (19 CFR 191.24), or both?)
2. Who is the manufacturer?

(Is the applicant constructing and equipping for his own account or merely performing the operation on a toll basis for others?)
(If an agent is to be used, the applicant must state it will comply with T.D.s 55027(2) and 55207(1), and §191.9, as applicable, and that its agent will submit a letter of notification of intent to operate under the general manufacturing drawback ruling for agents (see §191.7 and Appendix A), or an application for a specific manufacturing drawback ruling (see §191.8 and this Appendix B).)

3. Will the applicant be the drawback claimant?
(State how the vessel will qualify for drawback under 19 U.S.C. 1313(g). Who is the foreign person or government for whom the vessel is being made or equipped?)
(There shall be included under this heading the following statement:

We are particularly aware of the terms of §191.76(a)(1) of and subpart M of part 191 of the Customs Regulations, and shall comply with these sections where appropriate.)
(Since the permission to grant use of the accelerated payment procedure rests with the Drawback office with which claims will be filed, do not include any reference to that procedure in this application.)

IMPORTED MERCHANDISE OR DRAWBACK PRODUCTS USED

(Describe the imported merchandise or drawback products)

ARTICLES CONSTRUCTED AND EQUIPPED FOR EXPORT

(Name the vessel or vessels to be made with imported merchandise or drawback products)

PROCESS OF CONSTRUCTION AND EQUIPMENT

(What is required here is a clear, concise description of the process of construction and equipment involved. The description should also trace the flow of materials through the manufacturing process for the purpose of establishing physical identification of the imported merchandise or drawback products and of the articles resulting from the processing.)

WASTE

(Many processes result in residue materials which, for drawback purposes, are treated as wastes. Describe any residue materials which you believe should be so treated. If no waste results, include a positive statement to that effect under this heading.)
(If waste occurs, state: (1) whether or not it is recovered, (2) whether or not it is valueless, and (3) what you do with it. This information is required whether claims are made on a ''used in'' or ''appearing in'' basis and regardless of the amount of waste incurred.)
(Irrecoverable wastes are those consisting of materials which are lost in the process. Valueless wastes are those which may be recovered but have no value. These irrecoverable and valueless wastes do not reduce the drawback claim provided the claim is based on the quantity of imported material used in manufacturing. If the claim is based upon the quantity of imported merchandise appearing in the exported article, irrecoverable and valueless waste will cause a reduction in the amount of drawback.)
(Valuable wastes are those recovered wastes which have a value either for sale or for use in a different manufacturing process. However, it should be noted that this standard applies to the entire industry and is not a selection on your part. An option by you not to choose to sell or use the waste in some different operation does not make it valueless if another manufacturer can use the waste. State what you do with the waste. If you have to pay someone to get rid of it, or if you have buyers for the waste, you must state so in your application regardless of what ''Basis'' you are using.)
(If you recover valuable waste and if you choose to claim on the basis of the quantity of imported or substituted merchandise used in producing the exported articles (less valuable waste), state that you will keep records to establish the quantity and value of the waste recovered. See ''Basis of Claim for Drawback'' section below.)

LOSS OR GAIN (Separate and distinct from WASTE)

(Some manufacturing processes result in an intangible loss or gain of the net weight or measurement of the merchandise used. This loss or gain is caused by atmospheric conditions, chemical reactions, or other factors. State the approximate usual percentage or quantity of such loss or gain. Note that percentage values will be considered to be measured ''by weight'' unless otherwise specified. Loss or gain does not occur during all manufacturing processes. If loss or gain does not apply to your manufacturing process, state ''Not Applicable.'')

PROCEDURES AND RECORDS MAINTAINED

We will maintain records to establish:

1. That the exported article on which drawback is claimed was constructed and equipped with the use of a particular lot (or lots) of imported material; and

2. The quantity of imported merchandise[1] we used in producing the exported article.

[1] If claims are to be made on an ''appearing in'' basis, the remainder of this sentence should read ''appearing in the exported articles we produce.''

We realize that to obtain drawback the claimant must establish that the completed articles were exported within 5 years after the importation of the imported merchandise. Our records establishing our compliance with these requirements will be available for audit by Customs during business hours. We understand that drawback is not payable without proof of compliance.

INVENTORY PROCEDURES

(Describe your inventory records and state how those records will meet the drawback recordkeeping requirements set forth in 19 U.S.C. 1313 and part 191 of the CBP Regulations as discussed under the heading PROCEDURES AND RECORDS MAINTAINED. To insure compliance the following should be included in your discussion:)

RECEIPT AND RAW STOCK STORAGE RECORDS
CONSTRUCTION AND EQUIPMENT RECORDS
FINISHED STOCK STORAGE RECORDS
SHIPPING RECORDS

BASIS OF CLAIM FOR DRAWBACK

(There are three different bases that may be used to claim drawback: (1) Used in; (2) Appearing In; and (3) Used less Valuable Waste.)
(The ''Used In'' basis may be employed only if there is either no waste or valueless or unrecovered waste in the operation. Irrecoverable or valueless waste does not reduce the amount of drawback when claims are based on the ''Used In'' basis. Drawback is payable in the amount of 99 percent of the duty paid on the quantity of imported material used to construct and equip the exported article.)
(For example, if 100 pounds of material, valued at $1.00 per pound, were used in manufacture resulting in 10 pounds of irrecoverable or valueless waste, the 10 pounds of irrecoverable or valueless waste would not reduce the drawback. In this case drawback would be payable on 99% of the duty paid on the 100 pounds of imported material used in constructing and equipping the exported articles.)
(The ''Appearing In'' basis may be used regardless of whether there is waste. If the ''Appearing In'' basis is used, the claimant does not need to keep records of waste and its value. However, the manufacturer must establish the identity and quantity of the merchandise appearing in the exported product and provide this information. Waste reduces the amount of drawback when claims are made on the ''Appearing In'' basis. Drawback is payable on 99 percent of the duty paid on the quantity of imported material which appears in the exported articles. ''Appearing In'' may not be used if multiple products are involved.)
(Based on the previous example, drawback would be payable on the 90 pounds of imported material which actually went into the exported product (appearing in) rather than the 100 pounds used in as set forth previously.)
(The ''Used Less Valuable Waste'' basis may be employed when the manufacturer recovers valuable waste, and keeps records of the quantity and value of waste from each lot of merchandise. The value of the waste reduces the amount of drawback when claims are based on the ''Used Less Valuable Waste'' basis. When valuable waste is incurred, the drawback allowance on the exported article is based on the duty paid on the quantity of imported material used to construct and equip the exported product, reduced by the quantity of such material which the value of the waste would replace. Thus in this case, drawback is claimed on the quantity of eligible material actually used to produce the exported product, less the amount of such material which the value of the waste would replace. Note section 191.26(c) of the CBP Regulations.)
(Based on the previous examples, if the 10 pounds of waste had a value of $.50 per pound, then the 10 pounds of waste, having a total value of $5.00, would be equivalent in value to 5 pounds of the imported material. Thus the value of the waste would replace 5 pounds of the merchandise used, and drawback is payable on 99 percent of the duty paid on the 95 pounds of imported material rather than on the 100 pounds ''Used In'' or the 90 pounds ''Appearing In'' as set forth in the above examples.)
(Two methods exist for the manufacturer to show the quantity of material used or appearing in the exported article: (1) Schedule or (2) Abstract.)
(A ''schedule'' shows the quantity of material used in producing each unit of product. The schedule method is usually employed when a standard line of merchandise is being produced according to fixed formulas. Some schedules will show the quantity of merchandise used to manufacture or produce each article and others will show the quantity appearing in each finished article. Schedules may be prepared to show the quantity of merchandise either on the basis of percentages or by actual weights and measurements. A schedule determines the amount that will be needed to produce a unit of product before the material is actually used in production;)
(An ''abstract'' is the summary of the records (which may be set forth on Customs Form 7551) which shows the total quantity used in producing all products during the period covered by the abstract. The abstract looks at a duration of time, for instance 3 months, in which the quantity of material has been used. An abstract looks back on how much material was actually used after a production period has been completed.)
(An applicant who fails to indicate the ''schedule'' choice must base his claims on

the ''abstract'' method. State which Basis and Method you will use. An example of Used In by Schedule would read:)

We shall claim drawback on the quantity of (specify material) used in manufacturing (exported article) according to the schedule set forth below.

(Section 191.8(f) of the CBP Regulations requires submission of the schedule with the application for a specific manufacturing drawback ruling. An applicant who desires to file supplemental schedules with the drawback office whenever there is a change in the quantity or material used should state:)

We request permission to file supplemental schedules with the drawback office covering changes in the quantities of material used to produce the exported articles, or different styles or capacities of containers of such exported merchandise.

(Neither the ''Appearing In'' basis nor the ''schedule'' method for claiming drawback may be used where the relative value procedure is required.)

AGREEMENTS

The Applicant specifically agrees that it will:

1. Operate in full conformance with the terms of this application for a specific manufacturing drawback ruling when claiming drawback;

2. Open its factory and records for examination at all reasonable hours by authorized Government officers;

3. Keep its drawback related records and supporting data for at least 3 years from the date of payment of any drawback claim predicated in whole or in part upon this application;

4. Keep this application current by reporting promptly to the drawback office which liquidates its claims any changes in the number or locations of its offices or factories, the corporate name, the persons who will sign drawback documents, the basis of claim used for calculating drawback, the decision to use or not to use an agent under §191.9 or the identity of an agent under that section, the drawback office where claims will be filed under the ruling, or the corporate organization by succession or reincorporation;

5. Keep this application current by reporting promptly to the Headquarters, U.S. Customs Service all other changes affecting information contained in this application;

6. Keep a copy of this application and the letter of approval by Customs Headquarters on file for ready reference by employees and require all officials and employees concerned to familiarize themselves with the provisions of this application and that letter of approval; and

7. Issue instructions to insure proper compliance with title 19, United States Code, section 1313, part 191 of the CBP Regulations and this application and letter of approval.

DECLARATION OF OFFICIAL

I declare that I have read this application for a specific manufacturing drawback ruling; that I know the averments and agreements contained herein are true and correct; and that my signature on this _____ day of _____ 19____, makes this application binding on

_____

(Name of Applicant Corporation, Partnership, or Sole Proprietorship)

By[2] _____

(Signature and Title)

[T.D. 98–16, 63 FR 11006, Mar. 5, 1998; 63 FR 15291, Mar. 31, 1998; 63 FR 65060, Nov. 25, 1998; CBP Dec. 15–11, 80 FR 47407, Aug. 7, 2015]

PART 192—EXPORT CONTROL

Sec.

[2] Section 191.6(a) requires that applications for specific manufacturing drawback rulings be signed by any individual legally authorized to bind the person (or entity) for whom the application is signed or the owner of a sole proprietorship, a full partner in a partnership, or, if a corporation, the president, a vice president, secretary, treasurer or employee legally authorized to bind the corporation. In addition, any employee of a business entity with a Customs power of attorney filed with the Customs port for the drawback office which will liquidate your drawback claims may sign such an application, as may a licensed Customs broker with a Customs power of attorney. You should state in which Customs port your Customs power(s) of attorney is/are filed.

AUTHORITY: 19 U.S.C. 66, 1624, 1646c. Subpart A also issued under 19 U.S.C. 1627a, 1646a, 1646b; subpart B also issued under 13 U.S.C. 303; 19 U.S.C. 2071 note; 46 U.S.C. 91.

SOURCE: T.D. 89–46, 54 FR 15403, Apr. 18, 1989, unless otherwise noted.

§ 192.0 Scope.

This part sets forth regulations pertaining to procedures for the lawful exportation of used self-propelled vehicles, vessels and aircraft, and the penalties and liabilities incurred for failure to comply with any of the procedures. This part also sets forth regulations concerning controls exercised by CBP with respect to the exportation of certain merchandise. This part also makes provision for the Automated Export System (AES), implemented by the Foreign Trade Regulations (FTR) of the Census Bureau, U.S. Department of Commerce, at part 30, subpart A (15 CFR part 30, subpart A), and provides the grounds under which CBP, as one of the reviewing agencies of the government's export partnership, may deny an application for post-departure filing status or revoke a participant's privilege to use such filing option, and provides for the appeal procedures to challenge such action by CBP.

[T.D. 89–46, 54 FR 15403, Apr. 18, 1989, as amended by T.D. 99–57, 64 FR 40987, July 28, 1999; CBP Dec. 17–06, 82 FR 32240, July 13, 2017]

Subpart A—Exportation of Used Self-Propelled Vehicles, Vessels, and Aircraft

§ 192.1 Definitions.

The following are general definitions for the purposes of this subpart A.

Certified. ''Certified'' when used with reference to a copy means a document issued by a government authority that includes on it a signed statement by the authority that the copy is an authentic copy of the original.

Copy. ''Copy'' refers to a duplicate or photocopy of an original document. Where there is any writing on the backside of an original document, a ''complete copy'' means that both sides of the document are copied.

Export. ''Export'' refers to the transportation of merchandise out of the U.S. for the purpose of being entered into the commerce of a foreign country.

Self-propelled vehicle. ''Self-propelled vehicle'' includes any automobile, truck, tractor, bus, motorcycle, motor home, self-propelled agricultural machinery, self-propelled construction equipment, self-propelled special use equipment, and any other self-propelled vehicle used or designed for running on land but not on rail.

Ultimate purchaser. ''Ultimate purchaser'' means the first person, other than a dealer purchasing in his capacity as a dealer, who in good faith purchases a self-propelled vehicle for purposes other than resale.

Used. ''Used'' refers to any self-propelled vehicle the equitable or legal title to which has been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.

[T.D. 89–46, 54 FR 15403, Apr. 18, 1989, as amended by T.D. 99–34, 64 FR 16639, Apr. 6, 1999]

§ 192.2 Requirements for exportation.

(a) *Basic requirements*. A person attempting to export a used self-propelled vehicle shall present to Customs, at the port of exportation, both the vehicle and the required documentation describing the vehicle, which includes the Vehicle Identification Number or, if the vehicle does not have a Vehicle Identification Number, the product identification number. Exportation of a vehicle will be permitted only upon compliance with these requirements, unless the vehicle was entered into the United States under an in-bond procedure, or under a carnet or Temporary Importation Bond; a vehicle entered under an in-bond procedure, or under a carnet or Temporary Importation Bond is exempt from these requirements. The person attempting to export the vehicle may employ an agent for the exportation of the vehicle.

(b) *Documentation required*—(1) *For U.S.-titled vehicles*—(i) *Vehicles issued an original certificate of title*. For used, self-propelled vehicles issued, by any jurisdiction in the United States, a Certificate of Title or a Salvage Title that remains in force, the owner must provide

to Customs, at the time and place specified in this section, the original Certificate of Title or a certified copy of the Certificate of Title and two complete copies of the original Certificate of Title or certified copy of the original.

(ii) *Where title evidences third-party ownership/claims.* If the used, self-propelled vehicle is leased or a recorded lien exists in the U.S., in addition to complying with paragraph (b)(1)(i) of this section, the provisional owner must provide to Customs a separate writing from the third-party-in-interest which expressly provides that the subject vehicle may be exported. This writing must be on the third-party's letterhead paper, and contain a complete description of the vehicle including the Vehicle Identification Number (VIN), the name of the owner or lienholder of the leased vehicle, and the telephone numbers at which that owner or lienholder may be contacted. The writing must bear an original signature of the third-party and state the date it was signed.

(iii) *Where U.S. Government employees are involved.* If the used, self-propelled vehicle is owned by a U.S. government employee and is being exported in conjunction with that employee's reassignment abroad pursuant to official travel orders, then, in lieu of complying with paragraph (b)(1)(i) of this section, the employee may be required to establish that he has complied with the sponsoring agency's internal travel department procedures for vehicle export.

(2) *For foreign-titled vehicles.* For used, self-propelled vehicles that are registered or titled abroad, the owner must provide to Customs, at the time and place specified in this section, the original document that provides satisfactory proof of ownership (with an English translation of the text if the original language is not in English), and two complete copies of that document (and translation, if necessary).

(3) *For untitled vehicles*—(i) *Newly-manufactured vehicles issued an MSO.* For newly-manufactured, self-propelled vehicles that are purchased from a U.S. manufacturer, distributor, or dealer that become used, as defined in this subpart, and are issued a Manufacturer's Statement of Origin (MSO), but not issued a Certificate of Title by any jurisdiction of the United States, the owner must provide to Customs, at the time and place specified in this section, the original MSO and two complete copies of the original MSO.

(ii) *Newly-manufactured vehicles not issued an MSO.* For newly-manufactured, self-propelled vehicles purchased from a U.S. manufacturer, distributor, or dealer that become used, as defined in this subpart, and not issued an MSO or a Certificate of Title by any jurisdiction of the United States, the owner must establish that the jurisdiction from where the vehicle comes does not have any ownership documentation requirements regarding such vehicles and provide to Customs, at the time and place specified in this section, an original document that proves ownership, such as a dealer's invoice, and two complete copies of such original documentation.

(iii) *Vehicles issued a junk or scrap certificate.* For used, self-propelled vehicles for which a junk or scrap certificate issued, by any jurisdiction of the United States, remains in force, the owner must provide to Customs, at the time and place specified in this section, the original certificate or a certified copy of the original document and two complete copies of the original document or certified copy of the original.

(iv) *Vehicles issued a title or certificate that is not in force or are otherwise not registered.* For used, self-propelled vehicles that were issued, by any jurisdiction of the United States, a title or certificate that is no longer in force, or that are not required to be titled or registered, and for which an MSO was not issued, the owner must establish that the jurisdiction from where the vehicle comes does not have any ownership documentation requirements regarding such vehicles and provide to Customs, at the time and place specified in this section, the original document that shows his basis for ownership or right of possession, such as a bill of sale, and two complete copies of that original document. Further, the owner must certify in writing to Customs that the procurement of the vehicle was a bona fide transaction, and

that the vehicle presented for export is not stolen.

(c) *When presented*—(1) *Exportation by vessel or aircraft.* For those vehicles exported by vessel or aircraft, the required documentation and the vehicle must be presented to Customs at least 72 hours prior to export.

(2) *Exportation at land border crossing points.* For those vehicles exported by rail, highway, or under their own power:

(i) The required documentation must be submitted to Customs at least 72 hours prior to export; and

(ii) The vehicle must be presented to Customs at the time of exportation.

(d) *Where presented.* Port directors will establish locations at which exporters must present the required documentation and the vehicles for inspection. Port directors will publicize these locations, including their hours of operation.

(e) *Authentication of documentation.* Customs will determine the authenticity of the documents submitted. Once the authenticity of the documents is established, Customs will mark the documents. In most cases the original document(s) will be returned to the exporter. In those cases where the original title document was presented to and retained by Customs and cannot be found prior to the vehicle's export, the exporter's authenticated copy of the original documentation serves as evidence of compliance with the reporting requirements.

[T.D. 89–46, 54 FR 15403, Apr. 18, 1989, as amended by T.D. 90–71, 55 FR 37708, Sept. 13, 1990; T.D. 99–34, 64 FR 16639, Apr. 6, 1999]

§ 192.3 Penalties.

(a) A $500 penalty shall be assessed against an exporter attempting to export a vehicle without complying with the requirements set forth in this part of the regulations.

(b) A $500 penalty shall be assessed against an exporter who has exported a vehicle without complying with the requirements set forth in this part of the regulations.

(c) A penalty not to exceed $10,000 may be assessed against an importer or exporter who knowingly imports, exports or attempts to import or export:

(1) Any stolen self-propelled vehicle, vessel, aircraft or part of a self-propelled vehicle, vessel or aircraft; or

(2) Any self-propelled vehicle or part of a self-propelled vehicle from which the identification number has been removed, obliterated, tampered with, or altered.

(d) Any stolen self-propelled vehicle, vessel or aircraft or part thereof or any self-propelled vehicle or part of a self-propelled vehicle from which the identification number has been removed, obliterated, tampered with or altered may be subject to seizure and foreiture pursuant to 19 U.S.C. 1627a.

§ 192.4 Liability of carriers.

Under the provisions of 19 U.S.C. 1436, the vessel master is charged with the responsibility for presenting a true manifest. If used vehicles are not included on the manifest or are inaccurately described thereon, a liability for penalties may be incurred.

[T.D. 89–46, 54 FR 15403, Apr. 18, 1989, as amended by T.D. 98–74, 63 FR 51290, Sept. 25, 1998]

Subpart B—Filing of Export Information Through the Automated Export System (AES)

SOURCE: T.D. 99–57, 64 FR 40987, July 28, 1999, unless otherwise noted.

§ 192.11 Description of the AES.

The Automated Export System (AES) is the information system for collecting Electronic Export Information (EEI) from persons exporting goods from the United States, Puerto Rico, or the U.S. Virgin Islands; between Puerto Rico and the United States; and to the U.S. Virgin Islands from the United States or Puerto Rico. Pursuant to the Census Bureau's Foreign Trade Regulations (FTR), all commodity export information for which EEI is required must be filed through the AES. This system is the CBP-approved electronic data interchange system used for purposes of filing EEI as required by § 192.14. AES is also the system by which certain sea carriers may report required outbound vessel information electronically (*see*, §§ 4.63, 4.75, and 4.76

of this chapter). Eligibility and application procedures are found in the General Requirements section of the FTR, codified at 15 CFR part 30, subpart A. The Census Bureau's FTR (15 CFR part 30, subpart A) provides that exporters may choose to submit export information through AES by any one of three electronic filing options available. Only Option 4, the complete post-departure submission of export information, requires prior approval by participating agencies before it can be used by AES participants.

[CBP Dec. 17–06, 82 FR 32240, July 13, 2017]

§ 192.12 Criteria for denial of applications requesting AES post-departure (Option 4) filing status; appeal procedures.

(a) *Approval process.* Applications for the option of filing export commodity information electronically through AES after the vessel has departed (Option 4 filing status) must be unanimously approved by Customs, Census and other participating government agencies. Disapproval by one of the participating agencies will cause rejection of the application.

(b) *Grounds for denial.* Customs may deny a participant's application for any of the following reasons:

(1) The applicant is not an exporter, as defined in the Census Regulations (15 CFR 30.7(d));

(2) The applicant has a history of non-compliance with export regulations (e.g., exporter has a history of late electronic submission of commodity records or a record of non-submission of required export documentation);

(3) The applicant has been indicted, convicted, or is currently under an investigation, wherein Customs has developed probable cause, for a felony involving any Customs law or any export law administered by another government agency; or

(4) The applicant has made or caused to be made in the ''Letter of Intent'', a false or misleading statement or omission with respect to any material fact.

(c) *Notice of denial; appeal procedures.* Applicants will be notified of approval or denial in writing by Census. (Applicants whose applications are denied by other agencies must contact those agencies for their specific appeal procedures.) Applicants whose applications are denied by Customs will be provided with the specific reason(s) for non-selection. Applicants may challenge Customs decision by following the appeal procedure provided at § 192.13(b).

§ 192.13 Revocation of participants' AES post-departure (Option 4) filing privileges; appeal procedures.

(a) *Reasons for revocation.* Customs may revoke Option 4 privileges of participants for the following reasons:

(1) The exporter has made or caused to be made in the ''Letter of Intent'', a false or misleading statement or omission with respect to any material fact;

(2) The exporter submitting the ''Letter of Intent'' is indicted, convicted, or is currently under an investigation, wherein Customs has developed probable cause, for a felony involving any Customs law or any export law administered by another government agency;

(3) The exporter fails to substantially comply with export regulations; or

(4) Continued participation in AES as an Option 4 filer would pose a threat to national security, such that continued participation in Option 4 should be terminated.

(b) *Notice of revocation; appeal procedures.* When Customs has decided to revoke a participant's Option 4 filing privileges, the participant will be notified in writing of the reason(s) for the decision. The participant may challenge Customs decision by filing an appeal within thirty (30) calendar days of receipt of the notice of decision. Except as stated elsewhere in this paragraph, the revocation will become effective when the participant has either exhausted all appeal proceedings or thirty (30) calendar days after receipt of the notice of revocation if no appeal is filed. However, in cases of intentional violations of any Customs law on the part of the program participant or when required by the national security, revocations will become effective immediately upon notification. Appeals should be addressed to the Director, Outbound Programs, U.S. Customs, Ronald Reagan Building, 1300 Pennsylvania Ave, NW, Room 5.4c, Washington, DC 20229. Customs will issue a written

decision or notice of extension to the participant within thirty (30) calendar days of receipt of the appeal. If a notice of extension is forwarded, the applicant will be provided with the reason(s) for extension of this time period and an expected date of decision. Participants who have had their Option 4 filing privileges revoked and applicants not selected to participate in Option 4 of AES may not reapply for this filing status for one year following written notification of rejection or revocation.

§ 192.14 Electronic information for outward cargo required in advance of departure.

(a) *General requirement.* Pursuant to section 343(a), Trade Act of 2002, as amended (19 U.S.C. 2071 note), for any commercial cargo that is to be exported from the United States by vessel, aircraft, rail, or truck, unless exempted under paragraph (d) of this section, the U.S. Principal Party in Interest (USPPI), the USPPI's authorized agent, or the authorized filing agent of the Foreign Principal Party in Interest (FPPI) must electronically transmit for receipt by CBP, no later than the time period specified in paragraph (b) of this section, certain Electronic Export Information (EEI), as enumerated in paragraph (c) of this section. Specifically, to effect the advance electronic transmission of the required cargo information to CBP, the USPPI, the USPPI's authorized agent, or the FPPI's authorized filing agent must use a CBP-approved electronic data interchange system (currently, the Automated Export System (AES)).

(b) *Transmission of data*—(1) *Time for transmission of EEI.* The USPPI, the USPPI's authorized agent, or the FPPI's authorized filing agent must electronically transmit the EEI required by §30.6 of the Census Bureau's FTR (15 CFR 30.6) and have received the AES Internal Transaction Number (ITN) (see paragraph (b)(3) of this section) for outbound cargo no later than the time period specified as follows:

(i) For vessel cargo, the USPPI, the USPPI's authorized agent, or the FPPI's authorized filing agent must provide the EEI filing citation (the ITN), exclusion, and/or exemption legend to the exporting carrier no later than 24 hours prior to loading cargo on the vessel at the U.S. port of lading;

(ii) For air cargo, including cargo being transported by air express couriers, the USPPI, the USPPI's authorized agent, or the FPPI's authorized filing agent must provide the EEI filing citation (the ITN), exclusion, and/or exemption legend to the exporting carrier no later than 2 hours prior to the scheduled departure time of the aircraft from the U.S. port of export;

(iii) For truck cargo, including cargo departing by express consignment courier, the USPPI, the USPPI's authorized agent, or the FPPI's authorized filing agent must provide the EEI filing citation (the ITN), exclusion, and/or exemption legend to the exporting carrier no later than 1 hour prior to the arrival of the truck at the border;

(iv) For rail cargo, the USPPI, the USPPI's authorized agent, or the FPPI's authorized filing agent must provide the EEI filing citation (the ITN), exclusion, and/or exemption legend to the exporting carrier no later than 2 hours prior to the arrival of the train at the border;

(v) For shipments of used self-propelled vehicles as defined in §192.1, the USPPI's authorized agent, or the FPPI's authorized filing agent must provide the EEI filing citation (the ITN), exclusion, and/or exemption legend to the exporting carrier at least 72 hours prior to export; and

(vi) For cargo shipped by pipeline, the USPPI, the USPPI's authorized agent, or the FPPI's authorized filing agent should refer to §30.4 of the Census Bureau's FTR (15 CFR 30.4, 30.46) for applicable time frames for the transmission of EEI.

(2) *Applicability of time frames.* The time periods in paragraph (b)(1) of this section for reporting required EEI to CBP for outward vessel, air, truck, or rail cargo only apply to shipments without an export license, license exemption, or license exception that require full predeparture reporting of shipment data, in order to comply with the advance cargo information filing requirements under section 343(a), Trade Act of 2002, as amended. Requirements placed on exports controlled by other government agencies will remain in force unless changed by the agency

having the regulatory authority to do so. CBP will also continue to require 72-hour advance notice for used vehicle exports pursuant to §192.2(c)(1) and (c)(2)(i). The USPPI, the USPPI's authorized agent, or the FPPI's authorized filing agent should refer to the relevant titles of the Code of Federal Regulations (CFR) for pre-filing requirements of other government agencies. In particular, for the advance reporting requirements for exports of U.S. Munitions List items, see the U.S. Department of State's International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130).

(3) *System verification of data acceptance or rejection*. Once the USPPI, the USPPI's authorized agent, or the FPPI's authorized filing agent has transmitted the EEI required under paragraphs (c)(1) and (c)(2) of this section, and AES has received and accepted this data, AES will generate and transmit to the party that filed the EEI a confirmation number, the Internal Transaction Number (ITN), assigned to that shipment confirming acceptance of the EEI transmission. When the submission is not accepted, a rejection message will be transmitted to the filer.

(c) *EEI required*—(1) *Commodity data*. The commodity data elements that are required to be reported electronically through the approved system are found in §30.6 of the Census Bureau's FTR (15 CFR 30.6).

(2) *Transportation data*. The following transportation data elements are also required to be reported electronically through the approved system. These data elements are also found in §30.6 of the Census Bureau's FTR (30 CFR 30.6):

(i) Method of transportation (the method of transportation is defined as that by which the goods are exported or shipped (vessel, air, rail, or truck));

(ii) Carrier identification (for vessel, rail and truck shipments, the unique carrier identifier is the 4-character Standard Carrier Alpha Code (SCAC); for aircraft, the carrier identifier is the 2- or 3-character International Air Transport Association (IATA) code);

(iii) Conveyance name (the conveyance name is the name of the carrier; for sea carriers, this is the name of the vessel; for others, the carrier name);

(iv) Country of ultimate destination (this is the country as known to the USPPI, the USPPI's authorized agent, or the FPPI's authorized filing agent at the time of exportation, where the cargo is to be consumed or further processed or manufactured; this country would be identified by the 2-character International Standards Organization (ISO) code for the country of ultimate destination);

(v) Date of export (the USPPI, the USPPI's authorized agent, or the FPPI's authorized filing agent must report the date the cargo is scheduled to leave the United States for all modes of transportation; if the actual date is not known, the USPPI, the USPPI's authorized agent, or the FPPI's authorized filing agent must report the best estimate as to the time of departure); and

(vi) Port of export (the port where the outbound cargo departs from the United States is designated by its unique code, as set forth in Annex C, Harmonized Tariff Schedule of the United States (HTSUS); the USPPI, the USPPI's authorized agent, or the FPPI's authorized filing agent must report the port of exportation as known when the USPPI, USPPI's authorized agent, or the FPPI's authorized filing agent tenders the cargo to the outbound carrier; should the carrier export the cargo from a different port and the carrier so informs the USPPI, the USPPI's authorized agent, or the FPPI's authorized filing agent, the port of exportation must be corrected by the filer in AES.).

(3) *Proof of electronic filing; exemption from filing*. The USPPI, the USPPI's authorized agent, or the FPPI's authorized filing agent must furnish to the exporting carrier a proof of EEI filing citation (the ITN), post-departure filing citation, AES downtime filing citation (when allowed), and the exclusion, and/or exemption legends (see paragraph (d) of this section) for annotation on the carrier's outward manifest, waybill, or other export documentation covering the cargo to be shipped. The proof of EEI filing citation (the ITN), post-departure filing citation, AES downtime filing citation, exclusion, and/or exemption legend must conform

to the approved EEI filing citation, exclusion, and/or exemption legend formats in Appendix B to the Census Bureau's FTR (15 CFR part 30, Appendix B).

(4) *Carrier responsibility*—(i) *Loading of cargo*. The carrier may not load cargo without first receiving from the USPPI, the USPPI's authorized agent, or the FPPI's authorized filing agent either the related electronic filing citation as prescribed under paragraph (c)(3) of this section, or an appropriate exemption legend for the cargo as specified in paragraph (d) of this section.

(ii) *High-risk cargo*. For cargo that CBP has identified as potentially high-risk, the carrier, after being duly notified by CBP, will be responsible for delivering the cargo for inspection/examination. When cargo identified as high risk has already been exported, CBP may demand that the export carrier redeliver the cargo in accordance with the terms of its international carrier bond (see §113.64(m)(2) of this chapter).

(5) *USPPI receipt of information believed to be accurate*. When the USPPI, the USPPI's authorized agent, or the FPPI's authorized filing agent electronically presenting the cargo information required in paragraphs (c)(1) and (c)(2) of this section receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the USPPI, the USPPI's authorized agent, or the FPPI's authorized filing agent acquired this information, and whether and how the USPPI, the USPPI's authorized agent, or the FPPI's authorized filing agent is able to verify this information. When the USPPI, the USPPI's authorized agent, or the FPPI's authorized filing agent is not reasonably able to verify any information received, CBP will permit this party to electronically present the information on the basis of what it reasonably believes to be true.

(d) *Exemptions from reporting; Census exemptions or exclusions applicable*. The USPPI, the USPPI's authorized agent, or the FPPI's authorized filing agent must furnish to the outbound carrier an appropriate exemption or exclusion legend for any export shipment laden that is not subject to predeparture electronic information filing under this section. The exemption or exclusion legend must conform to the proper format approved by the Census Bureau (see 15 CFR part 30, Appendix B). Any exemptions or exclusions from reporting requirements for export cargo are enumerated in §§30.2 and 30.35 through 30.40 of the Census Bureau's FTR (15 CFR 30.2 and 30.35 through 30.40). These exemptions or exclusions under §§30.2 and 30.35 through 30.40 of the Census Bureau's FTR are equally applicable under this section.

[CBP Dec. 17–06, 82 FR 32240, July 13, 2017, as amended by CBP Dec. 18–05, 83 FR 27407, June 12, 2018]

PARTS 193–199 [RESERVED]

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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EDITORIAL NOTE: This listing is provided for information purposes only. It is compiled and kept up-to-date by the U.S. Customs and Border Protection, Department of Homeland Security, Department of the Treasury. This index is updated as of April 1, 2022.

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List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations (CFR) that were made by documents published in the FEDERAL REGISTER since January 1, 2017 are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters, parts and subparts as well as sections for revisions.

For changes to this volume of the CFR prior to this listing, consult the annual edition of the monthly List of CFR Sections Affected (LSA). The LSA is available at *www.govinfo.gov*. For changes to this volume of the CFR prior to 2001, see the ''List of CFR Sections Affected, 1949–1963, 1964–1972, 1973–1985, and 1986–2000'' published in 11 separate volumes. The ''List of CFR Sections Affected 1986–2000'' is available at *www.govinfo.gov*.

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Title 19
Customs Duties

Part 200 to End

Revised as of April 1, 2023

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of general applicability and future effect

As of April 1, 2023

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OLIVER A. POTTS,
Director,
Office of the Federal Register
April 1, 2023

THIS TITLE

Title 19—CUSTOMS DUTIES is composed of three volumes. The first two volumes, parts 0—140 and parts 141—199 contain the regulations in Chapter I—U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury. The third volume, part 200 to end, contains the regulations in Chapter II—United States International Trade Commission; Chapter III—International Trade Administration, Department of Commerce; and Chapter IV—U.S. Immigration and Customs Enforcement, Department of Homeland Security. The contents of these volumes represent all current regulations issued under this title of the CFR as of April 1, 2023.

A Subject Index to Chapter I—U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury appears in the Finding Aids section of the first two volumes.

For this volume, Robert J. Sheehan, III was Chief Editor. The Code of Federal Regulations publication program is under the direction of John Hyrum Martinez, assisted by Stephen J. Frattini.

Title 19—Customs Duties

(This book contains part 200 to end)

CHAPTER II—UNITED STATES INTERNATIONAL TRADE COMMISSION

PART 200—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—General Provisions

Subpart B—Provisions Governing Ethical and Other Conduct and Responsibilities of Employees

Subpart C—Provisions Governing Statements of Employment and Financial Interests

Subpart D—Provisions for Administrative Enforcement of Postemployment Conflict of Interest Restrictions

AUTHORITY: E.O. 11222, 30 FR 6469, 3 CFR, 1965 Supp.; 5 CFR 735.101 *et seq.*, 5 CFR 2638.101 *et seq.*, unless otherwise noted.

SOURCE: 31 FR 2593, Feb. 10, 1966, unless otherwise noted.

Subpart A—General Provisions

§ 200.735–101 Purpose.

The purpose of the regulations in this part is to maintain the highest standards of honesty, integrity, impartiality, and conduct on the part of all employees of the U.S. International Trade Commission and to maintain public confidence that the business of the Commission is being conducted in accordance with such standards.

[31 FR 2593, Feb. 10, 1966, as amended at 46 FR 17542, Mar. 19, 1981]

§ 200.735–102 Definitions.

In this part:

(a) *Commission* means the U.S. International Trade Commission.

(b) *Commissioner* means a Commissioner of the U.S. International Trade Commission.

(c) *Employee* means a Commissioner, employee, or special Government employee of the Commission.

(d) *Executive order* means Executive Order 11222 of May 8, 1965.

(e) *Person* means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

(f) *Special Government employee* means a ''special Government employee'' as defined in section 202 of Title 18 of the United States Code who is employed by the Commission.

[31 FR 2593, Feb. 10, 1966, as amended at 44 FR 23823, Apr. 23, 1979; 46 FR 17542, Mar. 19, 1981; 56 FR 36726, Aug. 1, 1991]

§ 200.735–103 Counseling service.

(a) The Chairman shall appoint a Designated Agency Ethics Official (DAEO) who serves as liaison to the Office of Government Ethics and who is responsible for carrying out the Commission's ethics program. The program shall be designed to implement titles II, IV, and V of the Ethics in Government Act of 1978, Executive Order No. 11222, the regulations in this part, and

other statutes and regulations applicable to agency ethics matters. The DAEO will be a senior Commission employee with experience demonstrating the ability to review financial disclosure reports and counsel employees with regard to resolving conflicts of interest, review the financial disclosures of Presidential nominees to the Commission prior to confirmation hearings, counsel employees with regard to ethics standards, assist supervisors in implementing the Commission's ethics program, and periodically evaluate the ethics program.

(b) The Chairman shall select an Alternate Agency Ethics Official who will serve as Deputy DAEO to whom any of the DAEO's statutory and regulatory duties may be delegated.

(c) The DAEO shall coordinate and manage the agency's ethics program. The DAEO duties shall consist of:

(1) Liaison with the Office of Government Ethics;

(2) Review of financial disclosure reports, including reports filed by Presidential nominees to the Commission;

(3) Initiation and maintenance of ethics education and training programs;

(4) Monitoring administrative actions and sanctions; and

(5) Implementation of the specific program elements listed in Office of Government Ethics regulations, 5 CFR 738.203(b).

[46 FR 17542, Mar. 19, 1981, as amended at 56 FR 36726, Aug. 1, 1991]

§ 200.735–104 Disciplinary and other remedial action.

(a) An employee who violates any of the regulations in this part may be disciplined. The disciplinary action may be in addition to any other penalty prescribed by law for the violation. In addition to, or in lieu of, disciplinary action, remedial action to end conflicts or appearance of conflicts of interest may include, but is not limited to:

(1) Changes in assigned duties;

(2) Divestment by the employee of his conflicting interest; or

(3) Disqualification for a particular assignment.

(b) Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws, Executive orders, and regulations.

Subpart B—Provisions Governing Ethical and Other Conduct and Responsibilities of Employees

§ 200.735–104a Proscribed actions.

An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding Government efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making a Government decision outside official channels; or

(f) Affecting adversely the confidence of the public in the integrity of the Government.

[32 FR 16210, Nov. 28, 1967]

§ 200.735–105 Gifts, entertainment, and favors.

(a) Except as provided in paragraph (b) of this section, no employee may solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from any person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with the Commission;

(2) Conducts operations or activities that are being investigated by the Commission; or

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

(b) The prohibitions set forth under paragraph (a) of this section shall not apply to:

(1) Solicitations or acceptances based on obvious family or personal relationships (such as those between parents, children, or spouse of the employee and the employee) when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors;

(2) The acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course

of a luncheon or dinner meeting or other meeting or on a field trip, and of ground transportation of nominal value in the course of a field trip, where an employee may properly be in attendance.

(3) The acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans; and

(4) The acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal value.

(c) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(d) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342.

(e) Neither this section nor § 200.735–106 precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under agency orders when reimbursement is proscribed by Decision B–128527 of the Comptroller General dated March 7, 1967.

[32 FR 16210, Nov. 28, 1967, as amended at 46 FR 41036, Aug. 14, 1981]

§ 200.735–106 Outside employment and other activities.

(a) An employee may engage in outside employment or other outside activity not incompatible with the full and proper discharge of the duties and responsibilities of his Government employment: *Provided,* That no Commissioner shall actively engage in any other business, vocation, or employment than that of serving as a Commissioner (19 U.S.C. 1330(c)). Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, conflicts of interest; or

(2) Outside employment tending to impair the employee's capacity to perform his Government duties and responsibilities in an acceptable manner.

(b) An employee (except a special Government employee) shall not receive any salary or anything of monetary value from a private source as compensation for his services to the Government (18 U.S.C. 209).

(c) Employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, the Executive order, or this part. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing, including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Civil Service Commission or Board of Examiners for the Foreign Service, that is dependent on information obtained as a result of his Government employment, except when that information has been made available to the general public or will be made available on request, or when the Commission gives authorization for the use of nonpublic information (other than information received in confidence) on the basis that the use is in the public interest and would not be in violation of law. In addition, Commissioners shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Commission, or which draws substantially on official data or

ideas which have not become part of the body of public information.

(d) This section does not preclude an employee from:

(1) Participation in the activities of national or State political parties not proscribed by law.

(2) Participation in the affairs of, or acceptance of, an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

[33 FR 8447, June 7, 1968]

§ 200.735–107 Financial interests.

(a) An employee shall not:

(1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his Government duties or responsibilities; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his Government employment.

(b) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law, the Executive order, or this part.

(c) Pursuant to the authority contained in 18 U.S.C. 208(b), the following types of financial interests are considered too remote or inconsequential to affect a Commission employee's integrity or services and do not constitute a conflict of interest under 18 U.S.C. 208(a):

(1) In widely-held, diversified mutual funds or regulated investment companies, regardless of their value; and

(2) In state or local government bonds, or other noncorporate bonds, regardless of their value.

[31 FR 2593, Feb. 10, 1966, as amended at 44 FR 23823, Apr. 23, 1979]

§ 200.735–108 Use of Government property.

An employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property issued to him.

§ 200.735–109 Misuse of information.

For the purpose of furthering a private interest, an employee shall not, except as provided in § 200.735–106(c), directly or indirectly use, or allow the use of, official information obtained through or in connection with his Government employment which has not been made available to the general public.

§ 200.735–110 Indebtedness.

An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State or local taxes. For the purpose of this section a *just financial obligation* means one acknowledged by the employee or reduced to judgment by a court, and *in a proper and timely manner* means in a manner which the Commission determines does not, under the circumstances, reflect adversely on the Government as his employer. In the event of a dispute between an employee and an alleged creditor, the Commission shall make no determination of the validity or amount of the disputed debt.

§ 200.735–111 Gambling, betting, and lotteries.

An employee shall not participate, while on Government-owned or leased property or while on duty for the Government, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket. However, this section does not preclude activities:

(a) Necessitated by an employee's law enforcement duties; or

(b) Under section 3 of Executive Order 10927 and similar Commission-approved activities.

§ 200.735–112 General conduct prejudicial to the Government.

An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

§ 200.735–113 Miscellaneous statutory provisions.

Each employee shall familiarize himself with each statute that relates to his ethical and other conduct as a Government employee, including the following statutes:

(a) House Concurrent Resolution 175, 85th Congress, 2d Session, 72 Stat. B12, the ''Code of Ethics for Government Service.''

(b) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest.

(c) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(d) The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

(e) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(f) The prohibitions against (1) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (2) the disclosure of confidential information (18 U.S.C. 1905).

(g) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(h) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(i) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(j) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(k) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(l) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(m) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(n) The prohibitions against—

(1) Embezzlement of Government money or property (18 U.S.C. 641);

(2) Failing to account for public money (18 U.S.C. 643); and

(3) Embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(o) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(p) The prohibitions against political activities in subchapter III of chapter 73 of title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608.

(q) The prohibition against an employee acting as an agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

[31 FR 2593, Feb. 10, 1966, as amended at 32 FR 16210, Nov. 28, 1967]

Subpart C—Provisions Governing Statements of Employment and Financial Interests

§ 200.735–114 Employees required to submit statements.

Except as provided in § 200.735–114a, the following employees shall submit confidential statements of employment and financial interests:

(a)(1) Employees in grade GS–13 or above under section 5332 of title 5, United States Code, or in comparable or higher positions not subject to that section, other than those employees who are required to file public financial disclosure reports by title II of the Ethics in Government Act of 1978.

(2) The Director of Personnel shall list all such positions, shall include the listing in the chapter of the Commission's Policy Manual pertaining to the filing of confidential statements of employment and financial interests, and shall furnish copies thereof to the Deputy DAEO and to affected employees.

(3) The Director of Personnel shall update the listing required by paragraph (a)(2) of this section and shall take all other steps required by paragraph (a)(2) as of January 1 and July 1 of each year.

(b)(1) Employees classified below GS–13 under section 5332 of title 5, United States Code, or at a comparable pay

level under other authority, other than those employees who are required to file public financial disclosure reports by title II of the Ethics in Government Act of 1978, who are: (i) Responsible for making a decision or taking an action in regard to Commission contracting or procurement, (ii) responsible for conducting investigative and research activities where the decision to be made or action to be taken could have an economic impact on any non-Federal enterprise, or (iii) responsible for exercising the authority of any supervisory or investigative employee in the absence of such employee.

(2) The Director of Personnel, upon obtaining the advice of the General Counsel, shall be responsible for determining which positions below GS–13 meet the criteria of paragraph (b)(1) of this section. The Director of Personnel shall justify his or her determination in writing and shall submit it to the Office of Personnel Management for its approval. Upon obtaining the approval of the Office of Personnel Management, the Director of Personnel shall include the listing of these positions in the chapter of the Commission's Policy Manual pertaining to the filing of confidential statements of employment and financial interests and shall furnish copies thereof to the Deputy DAEO and to affected employees.

(3) The Director of Personnel shall evaluate the determination under paragraph (b)(2) of this section as of January 1 and July 1 of each year. When organizational changes or personnel actions indicate that positions should be either added to or taken from the list of positions which the Director of Personnel has determined meet the criteria of paragraph (b)(1) of this section, the Director of Personnel shall make a new determination under paragraph (b)(2) of this section and shall take all other steps required by paragraph (b)(2) immediately upon the implementation of said organizational changes or personnel actions.

[46 FR 17543, Mar. 19, 1981, as amended at 56 FR 36726, Aug. 1, 1991]

§ 200.735–114a Employees not required to submit statements.

(a) Employees in positions that meet the criteria in paragraphs (b)(1) or (c)(1) of § 200.735–114 of this subpart may be exempted from the reporting requirement of § 200.735–114 if the Director of Personnel, upon obtaining the advice of the General Counsel, determines that:

(1) The duties of a position are such that the likelihood of the incumbent's involvement in a conflict-of-interest situation is remote;

(2) The duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over the incumbent or the inconsequential effect on the integrity of the Government.

(b) All determinations made pursuant to paragraph (a) shall be documented in a writing which shall be annexed to the listings required by paragraphs (b)(2) and (c)(2) of § 200.735–114 of this subpart. The factual bases and reasons for determinations under paragraphs (a)(1) and (a)(2) of this section shall be specified by the Director of Personnel in said writing. Said writing shall refer to the *position* only and shall not include the name, or other identifying particular, of the incumbent occupying the position.

(c) A statement of employment and financial interests from commissioners is not required by this subpart. Such employees are subject to separate reporting requirements under section 401 of Executive Order 11222 (3 CFR 306 (1964–1965 Comp.)).

[42 FR 59958, Nov. 23, 1977]

§ 200.735–114b Employee complaints on filing requirements.

Any employee who believes that his position has been improperly included under the reporting requirements of § 200.735–114 may obtain a review thereof through the Commission's grievance procedures.

[42 FR 59958, Nov. 23, 1977]

§ 200.735–114c Voluntary submission by employees.

Any employee not required to submit a statement of employment and financial interests under the criteria established by § 200.735–114 may submit such a statement to the Deputy Counselor

in the manner specified in § 200.735–116 if he or she so desires.

[42 FR 59958, Nov. 23, 1977]

§ 200.735–115 Forms—Interests not to be reported.

(a) Statements required to be submitted by the provisions of this subpart shall be prepared on forms (the format of which is prescribed by the Office of Government Ethics, Office of Personnel Management) available from the Deputy DAEO.

(b) Employees, GS–15 and below, who are required to file a statement of employment and financial interests under § 200.735–114 of this part, need not report to the Deputy DAEO those financial interests specified in § 200.735–107(c) (1) and (2) of this part. Commissioners and Commission employees, GS–16 and above, are required to report the financial interests specified in § 200.735–107(c) (1) and (2) of this part under section 202(a) of the Ethics in Government Act of 1978.

[44 FR 23823, Apr. 23, 1979, as amended at 56 FR 36726, Aug. 1, 1991]

§ 200.735–116 Time and place for submission of employees' statements.

(a) An employee required to submit such a statement shall submit it not later than:

(1) Ninety days after the effective date of the regulations in this part, if employed on or before that effective date; or

(2) Thirty days after his entrance on duty, but not earlier than ninety days after the effective date, if appointed after the effective date.

(b) Each such statement shall be submitted to the Office of the General Counsel of the Commission and shall be marked ''Submitted in Confidence to the Deputy DAEO.'': *Provided*, That the statement of the Deputy DAEO shall be submitted directly to the DAEO.

[31 FR 2593, Feb. 10, 1966, as amended at 56 FR 36726, Aug. 1, 1991]

§ 200.735–117 Supplementary statements.

Changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of June 30 each year. If no changes or additions occur, a negative report is required. Notwithstanding the filing of the annual report under this section, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflicts of interest provisions of section 208 of title 18, United States Code, or the regulations in this part.

[32 FR 16211, Nov. 28, 1967]

§ 200.735–118 Interests of employees' relatives.

The interest of a spouse, minor child or other member of an employee's immediate household is considered to be an interest of the employee. For the purpose of this section, *member of an employee's immediate household* means those blood relations who are residents of the employee's household.

§ 200.735–119 Information not known by employees.

If any information required to be included in a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information on his behalf.

§ 200.735–120 Information prohibited.

An employee is not required to submit in a statement of employment and financial interests or supplementary statement any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or similar organization not conducted as a business enterprise. For the purpose of this section, educational and other institutions doing research and development or related work involving grants of money from, or contracts with, the Government are deemed *business enterprises* and are required to be included in an employee's statement of employment and financial interests.

§ 200.735–121 Confidentiality of employees' statements.

Each statement of employment and financial interests, and each supplementary statement, shall be held in confidence. To ensure this confidentiality, the Deputy DAEO is authorized to review and retain the statements. He shall be responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this part. The Deputy DAEO may not disclose information from the statement except as the Civil Service Commission or the Chairman of the Tariff Commission may determine for good cause shown.

[32 FR 16211, Nov. 28, 1967, as amended at 56 FR 36726, Aug. 1, 1991]

§ 200.735–122 Special Government employees.

(a) Except as provided in paragraph (b) of this section, each special Government employee shall submit a statement of employment and financial interests which reports:

(1) All of his employment; and

(2) The financial interests of the special Government employee which the Commission determines are relevant in the light of the duties he is to perform.

(b) The Commission may waive the requirement in paragraph (a) of this section for the submission of a statement of employment and financial interests in the case of a special Government employee who is not a consultant or an expert when the Commission finds that the duties of the position held by that special Government employee are of a nature and at such a level of responsibility that the submission of the statement by the incumbent is not necessary to protect the integrity of the Government. For the purpose of this paragraph, *consultant* and *expert* have the meanings given those terms by Chapter 304 of the Federal Personnel Manual.

(c) A statement of employment and financial interests required to be submitted under this section shall be submitted as provided for employees in § 200.735–116. Each special Government employee shall keep his statement current throughout his employment with the Commission by the submission of supplementary statements.

[31 FR 2593, Feb. 10, 1966, as amended at 32 FR 16211, Nov. 28, 1967]

§ 200.735–123 Effect of employees' and special Government employees' statements on other requirements.

The statements of employment and financial interests and supplementary statements required of employees and special Government employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee or special Government employee does not permit him or any other person to participate in a matter which his or the other person's participation in is prohibited by law, order, or regulation.

Subpart D—Provisions for Administrative Enforcement of Postemployment Conflict of Interest Restrictions

AUTHORITY: Ethics in Government Act of 1978, Pub. L. 95–521, 92 Stat. 1864 (18 U.S.C. 207), as amended by Pub. L. 96–28, 93 Stat. 76 (1979); 45 FR 7402, (1979) (5 CFR part 737).

SOURCE: 45 FR 31988, May 15, 1980, unless otherwise noted.

§ 200.735–124 General.

The procedures in this subpart are established pursuant to subsection 207(j) of title 18, United States Code, for the administrative enforcement of the restrictions on postemployment activities in Title V of the Ethics in Government Act of 1978 (18 U.S.C. 207 (a), (b), and (c)) and implementing regulations published by the Office of Government Ethics (5 CFR part 737). Subsections 207 (a), (b), and (c) of Title 18, United States Code, prohibit certain forms of representational activity or communications by former Commission employees.

§ 200.735–125 Exemption from restrictions.

(a) *Scientific and technological information solicited by the Commission.* Communications of a former Commission employee solely for the purpose of furnishing scientific or technological information solicited by the Commission in the course of its statutory investigations are exempted from the restrictions on postemployment practices.

(b) *Exemption for persons with special qualifications in a technical discipline*—(1) *Applicability.* A former Commission employee may be exempted from the restrictions on postemployment practices if the Chairman, in consultation with the Director, Office of Government Ethics (the Director), executes a certification published in the FEDERAL REGISTER that the former Commission employee has outstanding qualifications in a scientific, technological, or other technical discipline; that the former Commission employee is acting with respect to a particular matter which requires such qualifications; and that the national interest would be served by the former Commission employee's participation.

(2) *Certification authority.* Certification shall be by the Chairman, or in the absence thereof, by the acting head of the Commission. Consultation with the Director shall precede any certification. The exemption is effective upon the execution of the certification. The Secretary shall immediately transmit the certification to the FEDERAL REGISTER for publication.

(c) *Testimony and statement under oath are subject to penalty of perjury*—(1) *Applicability.* A former Commission employee may testify before any court, board, commission, or legislative body with respect to matters of fact within the personal knowledge of the former Commission employee. This provision does not, however, allow a former Commission employee, otherwise barred under 18 U.S.C. 207 (a), (b), or (c), to testify on behalf of another as an expert witness except (i) to the extent that the former employee may testify from personal knowledge as to occurrences which are relevant to the issues in the proceeding, including those in which the Commission employee participated, utilizing his or her expertise, or (ii) in any proceeding where it is determined that another expert in the field cannot practically be obtained, that it is impracticable for the facts or opinions on the same subject to be obtained by other means, and that the former Commission employee's testimony is required in the interest of justice.

(2) *Statements under penalty of perjury.* A former Commission employee may make any statements required to be made under penalty of perjury, such as those required in registration statements for securities, tax returns, or security clearances. The exception does not, however, permit a former employee to submit pleadings, applications, or other documents in a representational capacity on behalf of another merely because the attorney or other representative must sign the documents under oath or penalty of perjury.

§ 200.735–126 Administrative enforcement proceedings.

The following are basic guidelines for administrative enforcement of restrictions on postemployment activities:

(a) *Initiation of administrative disciplinary hearing.* (1) On receipt of information regarding a possible violation of 18 U.S.C. 207, and after determining that such information does not appear to be frivolous, the Chairman shall expeditiously provide such information, along with any comments or agency regulations, to the Director and to the Criminal Division, Department of Justice. Any investigation or administrative action will be coordinated with the Department of Justice to avoid prejudicing criminal proceedings, unless the Department of Justice informs the Commission that it does not intend to initiate criminal prosecution.

(2) Whenever the Chairman has determined after appropriate review that there is reasonable cause to believe that a former Commission employee has violated 18 U.S.C. 207 (a), (b), or (c) or implementing regulations of the Office of Government Ethics (5 CFR part 737), he or she shall initiate an administrative disciplinary proceeding by providing the former Commission employee with notice as defined in paragraph (b).

(3) The Chairman shall take all necessary steps to protect the privacy of former employees prior to a determination of sufficient cause to initiate an administrative disciplinary hearing.

(b) *Notice.* (1) The Chairman shall provide the former Commission employee with notice of an administrative disciplinary proceeding and an opportunity for a hearing.

(2) Notice to the former Commission employee must include—

(i) A statement of allegations and the basis thereof in detail sufficient to enable the former Commission employee to prepare an adequate defense;

(ii) Notification of the right to a hearing;

(iii) An explanation of the method by which a hearing may be requested; and

(iv) A copy of this subpart.

(c) *Examiner.* (1) The presiding official at proceedings under this subpart shall be an individual to whom the Chairman has delegated authority to make a recommended determination (hereinafter referred to as examiner).

(2) An examiner shall be an experienced government attorney of high moral character and sound judgment.

(3) An examiner shall be impartial. No individual who has participated in any manner in the decision to initiate the proceedings may serve as an examiner in those proceedings.

(d) *Scheduling of hearing.* In setting a hearing date, the examiner shall give due regard to the former Commission employee's need for—

(1) Adequate time to prepare a defense properly, and

(2) An expeditious resolution of allegations that may be damaging to his or her reputation.

(e) *Hearing rights.* A hearing shall include, at a minimum, the following rights:

(1) To be represented by counsel,

(2) To introduce and examine witnesses and to submit physical evidence,

(3) To confront and cross-examine adverse witnesses,

(4) To present oral argument; and

(5) To obtain a transcript or recording of the proceeding on request.

(f) *Burden of proof.* In any hearing under this subpart the Commission has the burden of proof and must establish a violation by clear and convincing evidence. The case of the Commission shall be presented by the Office of the General Counsel.

(g) *Recommended determination.* (1) The examiner shall make a recommended determination exclusively on matters of record in the proceeding and shall set forth therein all findings of fact and conclusions of law relevant to the matters at issue. The recommended determination shall be delivered to the parties.

(2) Within ten (10) days of the date of receipt of the recommended determination either party may submit to the Chairman exceptions to the recommended determination and alternative findings of fact and conclusions of law.

(h) *Final administrative decision.* (1) Within forty (40) days of the date of the recommended determination, the Chairman shall make a final administrative decision based solely on the record of the proceedings.

(2) In the event that no hearing is requested, the Chairman shall make a final administrative decision within forty (40) days of the date notice is provided to the former employee and the record of the proceedings shall consist of the statement of allegations as defined in paragraph (b)(2)(i) and whatever written response the former employee shall provide.

(3) The Chairman shall specify in the final administrative decision the findings of fact and conclusions of law that differ from the recommended determination of the hearing examiner.

(i) *Administrative sanctions.* The Chairman may take appropriate action in the case of any individual who is found in violation of 18 U.S.C. 207(a), (b), or (c) or implementing regulations of the Office of Government Ethics (5 CFR part 737) after a final administrative decision by—

(1) Prohibiting the individual from making, on behalf of any other person (except the United States), any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, the Commission on any matter of business for a period not to exceed five (5) years. This prohibition may be enforced by directing Commission employees to refuse to

participate in any such appearance or to accept any such communication;

(2) Taking other appropriate disciplinary action.

(j) *Judicial review.* Any person found to have participated in a violation of 18 U.S.C. 207(a), (b), or (c) or these regulations may seek judicial review of the administrative determination. Review shall be before the appropriate United States district court.

SUBCHAPTER A—GENERAL

PART 201—RULES OF GENERAL APPLICATION

Subpart H—Debt Collection

AUTHORITY: 19 U.S.C. 1335; 19 U.S.C. 2482, unless otherwise noted.

SOURCE: 27 FR 12118, Dec. 7, 1962, unless otherwise noted.

§ 201.0 Seal.

(a) Pursuant to section 331(g) of the Tariff Act of 1930, as amended (19 U.S.C. 1331(g)), the United States International Trade Commission has adopted an official seal, the depiction of which follows:

(b) Custody and certification obligations. The Secretary shall have custody of the seal of the United States International Trade Commission and he, or the Acting Secretary, may execute under seal any certification required to authenticate any books, records, papers, or other documents as true copies of official records of the United States International Trade Commission.

(Sec. 331(g), Tariff Act of 1930, as amended (19 U.S.C. 1331(g)))

[40 FR 53384, Nov. 18, 1975; 40 FR 55838, Dec. 2, 1975]

§ 201.1 Applicability of part.

This part relates generally to functions and activities of the Commission under various statutes and other legal authority. Rules having special application appear separately in parts 202 through 207, inclusive, and parts 210, 212 and 213, of this chapter. In case of inconsistency between a rule of general application and a rule of special application, the latter is controlling.

[68 FR 32973, June 3, 2003]

Subpart A—Miscellaneous

§ 201.2 Definitions.

As used in this chapter—

(a) *Commission* means the United States International Trade Commission;

(b) *Inspector General* means the Inspector General of the Commission;

(c) *Tariff Act* means the Tariff Act of 1930, 19 U.S.C. 1202–1677j, 1677m–n;

(d) *Trade Expansion Act* means the Trade Expansion Act of 1962, 19 U.S.C. 1801–1991;

(e) *Trade Act* means the Trade Act of 1974, 19 U.S.C. 2101–2487;

(f) *Trade Agreements Act* means the Trade Agreements Act of 1979, Public Law 96–39, 93 Stat. 144;

(g) *Rule* means a section of the Commission Rules of Practice and Procedure (19 CFR chapter II);

(h) *Secretary* means the Secretary of the Commission.

(i) Except for adjudicative investigations under subchapter C of this chapter, *party* means any person who has filed a complaint or petition on the basis of which an investigation has been instituted, or any person whose entry of appearance has been accepted pursuant to § 201.11 (a) or (c). Mere participation in an investigation without an accepted entry of appearance does not confer party status.

(j) *Person* means an individual, partnership, corporation, association, or public or private organization.

[56 FR 11922, Mar. 21, 1991, as amended at 60 FR 37336, July 20, 1995; 68 FR 32973, June 3, 2003]

§ 201.3 Commission offices, mailing address, and hours.

(a) *Offices.* The Commission's offices are located in the United States International Trade Commission Building on 500 E Street SW., Washington, DC.

(b) *Mailing address.* All communications to the Commission should be addressed to the ''Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.''

(c) *Hours.* The business hours of the Commission are from 8:45 a.m. to 5:15 p.m., eastern standard or daylight savings time, whichever is in effect in Washington, DC. Any document filed with the Secretary of the Commission after 5:15 p.m. will be considered filed the next business day. If filing on that day would be untimely, the filing may not be accepted unless a request is made for acceptance of a late filing for good cause shown pursuant to 201.14(b)(2).

[45 FR 80276, Dec. 4, 1980, as amended at 68 FR 32973, June 3, 2003]

§ 201.3a Missing children information.

(a) Pursuant to 39 U.S.C. 3220, penalty mail sent by the Commission may be used to assist in the location and recovery of missing children. This section establishes procedures for such use and is applicable on a Commission-wide basis. The Commission's Office of Facilities Management, telephone 202–205–2741, shall be the point of contact for matters related to the implementation of this section.

(b) Missing children information shall be inserted in or affixed to such mailings of Commission monthly calendars, notices, press releases, and other documents as the Commission may direct. Such missing children information shall be obtained exclusively from the National Center for Missing and Exploited Children.

(c) The procedure established in subsection (b) above will result in missing childern information being inserted in an estimated 25 percent of the Commission's penalty mail and will cost an estimated $1,500 for the first year of implementation. The Director of Administration shall make such changes in the procedure as he deems appropriate to maximize the use of missing children information in the Commission's mail.

[51 FR 25195, July 11, 1986, as amended at 68 FR 32974, June 3, 2003]

§ 201.4 Performance of functions.

(a) *Conduct of business.* A majority of the members of the Commission constitutes a quorum. The Commission may meet and exercise its powers at any place, and may, by one or more of its members, or by such agents as it may designate, prosecute any inquiry necessary to its duties in any part of the United States or in any foreign country.

(b) *Alteration or waiver of rules.* Rules in this chapter may be amended, waived, suspended, or revoked by the Commission only. A rule may be waived or suspended only when in the judgment of the Commission there is good and sufficient reason therefor, provided the rule is not a matter of procedure required by law.

(c) *Authority to make decisions.* Authority to interpret the Commission's rules and the laws applying to the Commission, and to make findings, determinations, or other decisions not relating to matters of internal management, is retained in the Commission itself and is not delegated.

(d) Presentation of matter that may come within the purview of other laws. Whenever any party or person, including the Commission staff, has reason to believe that (1) a matter under investigation pursuant to section 337 of the Tariff Act of 1930, or (2) a matter under an investigation pursuant to section 202 of the Trade Act of 1974 (19 U.S.C. 2252), which is causing increased imports may come within the purview of another remedial provision of law not the basis of such investigation, including but not limited to the antidumping provisions (19 U.S.C. 1673 *et seq.*) or the countervailing duty provisions (19 U.S.C. 1671 *et seq.*) of the Tariff Act of 1930, then the party or person may file a suggestion of notification with the Commission that the appropriate agency be notified of such matter or circumstances, together with such information as the party or person has available. The Secretary shall promptly thereafter publish notice of the filing of such suggestion and information, and make them available for inspection and copying to the extent permitted by law. Any person may comment on the suggestion within 10 days after the publication of said notice.

Thereafter, the Commission shall determine whether notification is appropriate under the law and, if so, shall notify the appropriate agency of such matters or circumstances. The Commission may at any time make such notification in the absence of a suggestion under this rule when the Commission has reason to believe, on the basis of information before it, that notification is appropriate under law.

[27 FR 12118, Dec. 7, 1962, as amended at 45 FR 80276, Dec. 4, 1980; 68 FR 32974, June 3, 2003]

§ 201.5 Attendance fees and mileage.

(a) *Deponents and witnesses.* Any person compelled to appear in person to depose or testify in response to a subpoena shall be paid the same fees and mileage as are paid witnesses in the courts of the United States: Provided, that salaried employees of the United States summoned to depose or testify as to matters related to their public employment, irrespective of at whose instance they are summoned, shall be paid in accordance with applicable Government regulations.

(b) *Responsibility.* The fees and mileage referred to in this section shall be paid by the party at whose instance deponents or witnesses appear: Provided, that when it is the Commission, one or more Commissioners, or one of its employees at whose instance deponents or witnesses appear, such fees and mileage shall be paid by the Commission.

[41 FR 17710, Apr. 27, 1976]

§ 201.6 Confidential business information.

(a) *Definitions*—(1) *Confidential business information* is information which concerns or relates to the trade secrets, processes, operations, style of works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, or other information of commercial value, the disclosure of which is likely to have the effect of either impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions, or causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such information. The term ''confidential business information'' includes ''proprietary information'' within the meaning of section 777(b) of the Tariff Act of 1930 (19 U.S.C. 1677f(b)). Nonnumerical characterizations of numerical confidential business information (e.g., discussion of trends) will be treated as confidential business information only at the request of the submitter for good cause shown.

(2) *Nondisclosable confidential business information* is privileged information, classified information, or specific information (*e.g.,* trade secrets) of a type for which there is a clear and compelling need to withhold from disclosure. Special rules for the handling of such information are set out in § 206.17 and § 207.7 of this chapter.

(b) *Procedure for submitting business information in confidence.* (1) A request for confidential treatment of business information shall be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, and shall indicate clearly on the envelope that it is a request for confidential treatment.

(2) In the absence of good cause shown, any request relating to material to be submitted during the course of a hearing shall be submitted at least three (3) working days prior to the commencement of such hearing.

(3) With each submission of, or offer to submit, business information which a submitter desires to be treated as confidential business information, under paragraph (a) of this section, the submitter shall provide the following, which may be disclosed to the public:

(i) A written description of the nature of the subject information;

(ii) A justification for the request for its confidential treatment;

(iii) A certification in writing under oath that substantially identical information is not available to the public;

(iv) A copy of the document

(A) Clearly marked on its cover as to the pages on which confidential information can be found;

(B) With information for which confidential treatment is requested clearly identified by means of brackets; and

(C) With information for which nondisclosable confidential treatment is requested clearly identified by means of triple brackets (except when submission of such document is withheld in accord with paragraph (b)(4) of this section); and

(v) A nonconfidential copy of the documents as required by § 201.8(d).

(4) The submission of the documents itemized in paragraph (b)(3) of this section will provide the basis for rulings on the confidentiality of submissions, including rulings on the confidentiality of submissions offered to the Commission which have not yet been placed under the possession, control, or custody of the Commission. The submitter has the option of providing the business information for which confidential treatment is sought at the time the documents itemized in paragraph (b)(3) of this section are provided or of withholding them until a ruling on their confidentiality has been issued.

(c) *Identification of business information submitted in confidence.* Business information which a submitter desires to be treated as confidential shall be clearly labeled ''confidential business information'' when submitted, and shall be segregated from other material being submitted.

(d) *Approval or denial of requests for confidential treatment.* Approval or denial of requests shall be made only by the Secretary or Acting Secretary. An approval or a denial of a request for confidential treatment shall be in writing. A denial shall specify the reason therefor, and shall advise the submitter of the right to appeal to the Commission.

(e) *Appeals from denial of confidential treatment.* (1) For good cause shown, the Commission may grant an appeal from a denial by the Secretary of a request for confidential treatment of a submission. Any appeal filed shall be addressed to the Chairman, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, and shall clearly indicate that it is a confidential submission appeal. An appeal may be made within twenty (20) days of a denial or whenever the approval or denial has not been forthcoming within ten (10) days (excepting Saturdays, Sundays, and Federal legal holidays) of the receipt of a confidential treatment request, unless an extension notice in writing with the reasons therefor has been provided the person requesting confidential treatment.

(2) An appeal will be decided within twenty (20) days of its receipt (excepting Saturdays, Sundays, and Federal legal holidays) unless an extension notice in writing with the reasons therefor, has been provided the person making the appeal.

(3) The justification submitted to the Commission in connection with an appeal shall be limited to that presented to the Secretary with the original or amended request. When the Secretary or Acting Secretary has denied a request on the ground that the submitter failed to provide adequate justification, any such additional justification shall be submitted to the Secretary for consideration as part of an amended request. For purposes of paragraph (e)(1) of this section, the twenty (20) day period for filing an appeal shall be tolled on the filing of an amended request and a new twenty (20) day period shall begin once the Secretary or Acting Secretary has denied the amended request, or the approval or denial has not been forthcoming within ten (10) days of the filing of the amended request. A denial of a request by the Secretary on the ground of inadequate justification shall not obligate a requester to furnish additional justification and shall not preclude a requester from filing an appeal with the Commission based on the justification earlier submitted to the Secretary.

(f) *Appeals from approval of confidential treatment.* (1) For good cause shown, the Commission may grant an appeal from an approval by the Secretary of a request for confidential treatment of a submission. Any appeal filed shall be addressed to the Chairman, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, shall show that a copy thereof has been served upon the submitter, and shall clearly indicate that it is a

confidential submission appeal. An appeal may be made within twenty (20) days of the approval by the Secretary of a request for confidential treatment or whenever the approval or denial has not been forthcoming within ten (10) days (excepting Saturdays, Sundays, and Federal legal holidays) of the receipt of a confidential treatment request, unless an extension notice in writing with the reasons therefor has been provided the person requesting confidential treatment.

(2) An appeal will be decided within twenty (20) days of its receipt (excepting Saturdays, Sundays, and Federal legal holidays) unless an extension notice, in writing with the reasons therefor, has been provided the person making the appeal.

(g) *Granting confidential status to business information*. Any business information submitted in confidence and determined to be entitled to confidential treatment shall be maintained in confidence by the Commission and not disclosed except as required by law. In the event that any business information submitted to the Commission is not entitled to confidential treatment, the submitter will be permitted to withdraw the tender within five days of its denial of confidential treatment unless it is the subject of a request under the Freedom of Information Act or of judicial discovery proceedings. After such five day period, the business information deemed not entitled to confidential treatment, and not withdrawn, will be treated as public information.

(h) *Scope of provisions*. The provisions of §§ 201.6(b) and 201.6 (d) through (g) shall not apply to adjudicative investigations under subchapter C, part 210, of the Commission's rules of practice and procedure.

[41 FR 28951, July 14, 1976, as amended at 49 FR 32571, Aug. 15, 1984; 54 FR 13678, Apr. 5, 1989; 61 FR 37827, July 22, 1996; 68 FR 32974, June 3, 2003]

Subpart B—Initiation and Conduct of Investigations

§ 201.7 Investigative authority and initiation of investigations.

(a) *Investigative authority*. In order to expedite the performance of its functions, the Commission may engage in investigative activities preliminary to and in aid of any authorized investigation, consolidate proceedings before it, and determine the scope and manner of its proceedings;

(b) *Initiation of investigations*. Investigations may be initiated by the Commission on the Commission's own motion, upon request of the President or the United States Trade Representative, upon resolution of the Committee on Ways and Means of the House of Representatives or the Committee of Finance of the Senate, upon resolution of either branch of Congress, or upon application, petition, complaint, or request of private parties, as required or provided for in the pertinent statute, Presidential proclamation, Executive Order, or in this chapter.

[44 FR 76476, Dec. 26, 1979, as amended at 63 FR 29351, May 29, 1998]

§ 201.8 Filing of documents.

(a) *Applicability; where to file; date of filing*. This section applies to all Commission proceedings except, notwithstanding any other section of this chapter, those conducted under 19 U.S.C. 1337, which are covered by requirements set out in part 210 of this chapter. Documents shall be filed at the office of the Secretary of the Commission in Washington, DC. Such documents, if properly filed within the hours of operation specified in § 201.3(c), will be deemed to be filed on the date on which they are actually received in the Commission.

(b) *Conformity with rules*. Each document filed with the Commission for the purpose of initiating any investigation shall be considered properly filed if it conforms with the pertinent rules prescribed in this chapter. Substantial compliance with the pertinent rules may be accepted by the Commission provided good and sufficient reason is stated in the document for inability to comply fully with the pertinent rules.

(c) *Specifications for documents*. Each document filed under this chapter shall be signed, double-spaced, clear and legible, except that a document of two pages or less in length need not be double-spaced. All submissions shall be in letter-sized format (8.5 × 11 inches), except copies of documents prepared for

another agency or a court (e.g. pleadings papers), and single sided. The name of the person signing the original shall be typewritten or otherwise reproduced on each copy.

(d) *Filing.* (1) Except as provided in paragraphs (d)(2) through (6) and (f) of this section, all documents filed with the Commission shall be filed electronically. Completion of filing requires the submission of paper copies by 12 noon, Eastern time, on the next business day. A paper copy provided for in this section must be a true copy of the electronic version of the document, *i.e.*, a copy that is identical in all possible respects. All paper copies of electronic submissions exceeding fifty (50) pages in length must have a divider page and an identifying tab preceding each exhibit and/or attachment. The divider page and/or tab must be labeled with a letter or number that corresponds to a more fully descriptive index. All filings shall comply with the procedures set forth in the Commission's Electronic Document Information System Web site at *https://edis.usitc.gov*. Failure to comply with the requirements of this chapter and the Handbook on Filing Procedures that apply to the filing of a document may result in the rejection of the document as improperly filed.

(2) Briefs, statements, responses, comments, and requests filed pursuant to § 201.12, § 201.14, § 206.8, § 207.15, § 207.23, § 207.25, § 207.28, § 207.30, § 207.61, § 207.62, § 207.65, § 207.67, or § 207.68 of this chapter shall be filed electronically and the requisite number of true paper copies of these documents shall be submitted to the Commission in accordance with the provisions of the applicable section.

(3) Petitions and requests filed under § 206.2 or § 207.10 of this chapter shall be filed in paper form and exhibits, appendices, and attachments to the documents shall be filed in electronic form on CD–ROM, DVD or other portable electronic media approved by the Secretary in accordance with the provisions of the applicable section. Submitted media will be retained by the Commission, except that media may be returned to the submitter if a document is not accepted for filing.

(4) Supplementary material and witness testimony provided for under § 201.13, § 207.15, or § 207.24 of this chapter shall be filed in paper form in accordance with the provisions of the applicable section.

(5) Certain documents filed under § 201.4 of this chapter and applications for administrative protective orders filed under §§ 206.17 and 207.7 of this chapter shall only be filed electronically; no paper copies will be required.

(6) The Secretary may provide for exceptions and modifications to the filing requirements set out in this chapter. A person seeking an exception should consult the Handbook on Filing Procedures.

(7) During any period in which the Commission is closed, deadlines for filing documents electronically and by other means are extended so that documents are due on the first business day after the end of the closure.

(e) *Identification of party filing document.* Each document filed with the Commission for the purpose of initiating any investigation shall show on the first page thereof the name, address, and telephone number of the party or parties by whom or on whose behalf the document is filed and shall be signed by the party filing the document or by a duly authorized officer, attorney, or agent of such party. (Also, any attorney or agent filing the document shall give his address and telephone number.) The signature of the person signing such a document constitutes a certification that he had read the document, that to the best of his knowledge and belief the statements contained therein are true, and that the person signing the document was duly authorized to sign it.

(f) *Nonconfidential copies.* In the event that confidential treatment of a document is requested under § 201.6(b), a nonconfidential version of the document shall be filed, in which the confidential business information shall have been deleted and which shall have been conspicuously marked ''nonconfidential'' or ''public inspection.''' The nonconfidential version shall be filed electronically, and two (2) true paper copies shall be submitted on the same business day as this electronic filing, except as provided in § 206.8 or § 207.3 of

this chapter. In the event that confidential treatment is not requested for a document under §201.6(b), the document shall be conspicuously marked ''No confidential version filed,'' and the document shall be filed in accordance with paragraph (d) of this section. The name of the person signing the original shall be typewritten or otherwise reproduced on each copy.

(g) *Cover sheet.* When making a paper filing, parties must complete the cover sheet on-line at *http://edis.usitc.gov* and print out the cover sheet for submission to the Office of the Secretary with the paper filing. For documents that are filed electronically, parties must complete the cover sheet for such filing on-line at *http://edis.usitc.gov* at the time of the electronic filing. The party submitting the cover sheet is responsible for the accuracy of all information contained in the cover sheet, including, but not limited to, the security status and the investigation number, and must comply with applicable limitations on disclosure of business proprietary information or confidential information under §201.6 and §§206.8, 206.17, 207.3, and 207.7 of this chapter.

[41 FR 17710, Apr. 27, 1976, as amended at 49 FR 32571, Aug. 15, 1984; 56 FR 11922, Mar. 21, 1991; 67 FR 68037, Nov. 8, 2002; 68 FR 32974, June 3, 2003; 76 FR 61941, Oct. 6, 2011; 79 FR 35924, June 25, 2014]

§201.9 Methods employed in obtaining information.

In obtaining information necessary to carry out its functions and duties, the Commission may employ any means authorized by law. In general, the Commission obtains pertinent information from its own files, from other agencies of the Government, through questionnaires and correspondence, through field work by members of the Commission's staff, and from testimony and other information presented at the hearings.

[27 FR 12118, Dec. 7, 1962, as amended at 44 FR 76476, Dec. 26, 1979]

§201.10 Public notices.

As appropriate, notice of the receipt of documents properly filed, of the institution of investigations, of public hearings, and of other formal actions of the Commission will be given by publication in the FEDERAL REGISTER. In addition to such publication, a copy of each notice will be posted at the Office of the Secretary to the Commission in Washington, DC, and, as appropriate, copies will be sent to press associations, trade and similar organizations of producers and importers, and others known to have an interest in the subject matter.

[63 FR 29347, May 29, 1998]

§201.11 Appearance in an investigation as a party.

(a) *Who may appear as a party.* Any person may apply to appear in an investigation as a party, either in person or by representative, by filing an entry of appearance with the Secretary. Each entry of appearance shall state briefly the nature of the person's reason for participating in the investigation and state the person's intent to file briefs with the Commission regarding the subject matter of the investigation. The Secretary shall promptly determine whether the person submitting the entry of appearance has a proper reason for participating in the investigation. In any investigation conducted under part 207 of this chapter, industrial users, and if the merchandise under investigation is sold at the retail level, representative consumer organizations, will be deemed to have a proper reason for participating in the investigation. If it is found that a person does not have a proper reason for participating in the investigation, that person shall be so notified by the Secretary and shall not be entitled to appear in the investigation as a party. A person found to have a proper reason for participating in the investigation shall be permitted to appear in the investigation as a party, and acceptance of such person's entry of appearance shall be signified by the Secretary's inclusion of such person on the service list established pursuant to paragraph (d) of this section.

(b) *Time for filing.* (1) Except in the case of investigations conducted under part 207 of this chapter, each entry of appearance shall be filed with the Secretary not later than twenty-one (21) days after publication of the Commission's notice of investigation in the FEDERAL REGISTER.

(2) In the case of investigations conducted under subpart B of part 207 of this chapter, each entry of appearance shall be filed with the Secretary not later than seven (7) days after publication of the Commission's notice of investigation in the FEDERAL REGISTER. A party that files a notice of appearance during such time need not file an additional notice of appearance during the portion of the investigation conducted under subpart C of part 207 of this chapter.

(3) Notwithstanding paragraph (b)(2) of this section, a party may file an entry of appearance during the final phase of an investigation conducted under part 207 of this chapter no later than twenty-one (21) days prior to the hearing date listed in the FEDERAL REGISTER notice published pursuant to § 207.24(b) of this chapter.

(4) In the case of reviews conducted under subpart F of part 207 of this chapter, each entry of appearance shall be filed with the Secretary not later than twenty-one (21) days after publication in the FEDERAL REGISTER of the notice of institution described in § 207.60(d) of this chapter.

(5) Notwithstanding paragraph (b)(4) of this section, a party may file an entry of appearance in a review conducted under subpart F of part 207 of this chapter within the period specified in the notice issued under § 207.62(c) of this chapter. This period shall be at least 45 days.

(c) *Late filing.* Any entry of appearance filed with the Secretary after the filing date established in paragraph (b) of this section shall be referred to the Chairman, or other person designated to conduct the investigation, who shall promptly determine whether to accept such entry for good cause shown by the person desiring to file the notice. The Secretary shall promptly notify the submitter of a decision to deny the entry, or if the entry is accepted, include such person on the service list established pursuant to paragraph (d) of this section.

(d) *Service list.* Upon the expiration of the time for filing notices of appearance established in paragraph (b) of this section, the Secretary shall prepare a service list. The service list shall contain the names and addresses of all persons, or their representatives, who are parties to the investigation pursuant to § 201.2(h) and paragraph (a) of this section. Upon the acceptance of a late entry of appearance pursuant to paragraph (c) of this section, the Secretary shall amend the service list to include the name and address of the person whose notice has been accepted and shall promptly forward such notice to all parties to the investigation.

[56 FR 11922, Mar. 21, 1991, as amended at 61 FR 37828, July 22, 1996; 63 FR 30607, June 5, 1998]

§ 201.12 Requests.

Any party to a nonadjudicative investigation may request the Commission to take particular action with respect to that investigation. Such requests shall be made by letter addressed to the Secretary, shall be placed by him in the record, and shall be served on all other parties. Such request shall be filed electronically and two (2) true paper copies shall be submitted on the same business day. The Commission shall take such action or make such response as it deems appropriate.

[76 FR 61941, Oct. 6, 2011]

§ 201.13 Conduct of nonadjudicative hearings.

(a) *In general.* Public hearings are held by the Commission when required by law or, if not required by law, when in the judgment of the Commission there is good and sufficient reason therefor. Public hearings will be held at the time and place specified in notices issued under § 201.10. Public hearings are ordinarily held in the Hearing Room of the International Trade Commission Building, in Washington, DC, but may be held elsewhere at the Commission's discretion.

(b) *Presiding officials*—(1) *Who presides.* Public hearings or conferences in nonadjudicative investigations will be conducted by the Commission or by one or more Commissioners. When the Commission deems it necessary, such hearings will be conducted by one or more designated employees. In all cases the transcript of the testimony at a hearing will be presented for the consideration of the Commission.

(2) *Powers and duties.* The Commission, one or more of the Commissioners, or one or more designated employees shall have all the powers to conduct fair and impartial hearings, to take necessary action to avoid delay in the disposition of proceedings, including the prescription of time allocated to testimony, argument, and questioning, to regulate the course of hearings and the conduct of the parties and their counsel therein, and to maintain order.

(c) *Participation in a hearing*—(1) *Who may participate.* A party may participate in the hearing, either in person or by representative. A nonparty who has testimony or arguments that may aid the Commission's deliberations may also participate, under such conditions as may be established by the presiding officials at the hearing.

(2) *Notices of participation.* Notices of participation in a hearing shall be filed with the Secretary at least three (3) days in advance of the date set for the hearing or two (2) days in advance of the date set in the notice of investigation for a prehearing conference, whichever shall first occur, except that the presiding officials may waive this requirement for good cause. Witnesses on behalf of persons filing notices of participation need not file separate notices.

(d) *Witness list.* Each person who files a notice of participation pursuant to paragraph (c) of this section shall simultaneously file with the Secretary a list of the witnesses he intends to call at the hearing.

(e) *Order of the testimony.* Unless otherwise ordered by the presiding officials, witnesses will give testimony in the order designated by the Secretary to the Commission. Each witness, after being duly sworn, will be permitted to proceed with his or her testimony without interruption except by presiding officials.

(f) *Supplementary material.* A party to the investigation may file with the Secretary supplementary material, other than remarks read into the record, for acceptance into the record. The party shall file any such material with the Secretary at the hearing. Supplementary materials must be marked with the name of the organization submitting it. As used herein, the term *supplementary material* refers to (1) additional graphic material such as charts and diagrams used to illuminate an argument or clarify a position and (2) information not available to a party at the time its prehearing brief was filed.

(g) *Questioning of witnesses.* After completing testimony, a witness may be questioned by any member of the Commission or by its staff. Any participant may, with the permission of the presiding officials, direct questions to the witness, but only for the purpose of assisting the Commission in obtaining relevant and material facts with respect to the subject matter of the investigation.

(h) *Oral argument.* When, in the opinion of the presiding officials, time permits and the nature of the proceedings and the complexity or importance of the questions of fact or law involved warrant, the presiding officials may allow oral argument after conclusion of the testimony in a hearing. The presiding officials will determine in each instance the time to be allowed for argument and the allocation thereof.

(i) *Briefs*—(1) *Parties.* Briefs of the information produced at the hearing and arguments thereon may be presented to the Commission by parties to the investigation. Time to be allowed for submission of briefs will be set after conclusion of testimony and oral argument, if any.

(2) *Nonparties.* Any person who is not a party to an investigation may submit a short statement for the record regarding the subject matter of an investigation.

(j) *Verification of testimony.* Oral or written information submitted at hearings will, upon order of the Commission, be subject to verification from books, papers, and records of the persons submitting the information and from any other available sources.

(k) *Hearing transcripts.* A verbatim transcript of all hearings will be taken. The Commission does not distribute transcripts of the records of such hearings. Any person may inspect the transcript of a hearing at the Commission's office in Washington, DC, or purchase it from the official reporter.

(l) To facilitate the conduct of hearings, parties intending to use easels, audio visual, and similar equipment in the course of hearing presentations should advise the Secretary of their intent to use such equipment at least three (3) working days before the hearing.

(m) *Closed sessions.* (1) Upon a request filed by a party to the investigation no later than seven (7) days prior to the date of the hearing (or three (3) days prior to the date of a conference conducted under § 207.15 of this chapter) that

(i) Identifies the subjects to be discussed;

(ii) Specifies the amount of time requested; and

(iii) Justifies the need for a closed session with respect to each subject to be discussed, the Commission (or the Director, as defined in § 207.2(c) of this chapter, for a conference under § 207.15 of this chapter) may close a portion of a hearing (or conference under § 207.15 of this chapter) held in any investigation in order to allow such party to address confidential business information, as defined in § 201.6, during the course of its presentation.

(2) In addition, during each hearing held in an investigation conducted under section 202 of the Trade Act, as amended, or in an investigation under title VII of the Tariff Act as provided in § 207.24 of this chapter, following the public presentation of the petitioner(s) and that of each panel of respondents, the Commission will, if it deems it appropriate, close the hearing in order to allow Commissioners to question parties and/or their representatives concerning matters involving confidential business information.

[47 FR 6189, Feb. 10, 1982, as amended at 47 FR 33682, Aug. 4, 1982; 54 FR 13678, Apr. 5, 1989; 59 FR 66722, Dec. 28, 1994; 61 FR 37829, July 22, 1996; 68 FR 32975, June 3, 2003]

§ 201.14 Computation of time, additional hearings, postponements, continuances, and extensions of time.

(a) *Computation of time.* Computation of any period of time prescribed or allowed by the rules in this chapter, by order of the Commission, or by order of the presiding officer under part 210 of this chapter shall begin with the first business day following the day on which the act or event initiating such period of time shall have occurred. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or Federal legal holiday, in which event the period runs until the end of the next business day. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computation. As used in this rule, a Federal legal holiday refers to any full calendar day designated as a legal holiday by the President or the Congress of the United States. In the event of an early or all-day closing of the Commission on a business day, the Secretary is authorized to accept on the next full business day filings due the day of the early or all-day closing, without requiring the granting of an extension of time by the Chairman of the Commission, or such other person designated to conduct the investigation.

(b) *Additional hearings, postponements, continuances, and extensions of time.* (1) Prior to its final determination in any investigation, the Commission may in its discretion for good cause shown grant additional hearings, postponements, or continuances of hearings.

(2) The Chairman of the Commission or such other person as is designated to conduct the investigation shall determine whether to grant for good cause shown extensions of time for performing any act required by or pursuant to the rules contained in this chapter.

(3) A request that the Commission take any of the actions described in this section shall be filed with the Secretary and served on all parties to the investigation. Such request shall be filed electronically and two (2) true paper copies shall be submitted on the same business day.

[41 FR 17710, Apr. 27, 1976, as amended at 56 FR 11923, Mar. 21, 1991; 68 FR 32975, June 3, 2003; 76 FR 61941, Oct. 6, 2011]

§ 201.15 Attorneys or agents.

(a) *In general.* No register of attorneys or agents who may practice before the Commission is maintained. No application for admission to practice is

required. Any person desiring to appear as attorney or agent before the Commission may be required to show to the satisfaction of the Commission his acceptability in that capacity. Any attorney or agent practicing before the Commission, or desiring so to practice, may for good cause shown be suspended or barred from practicing before the Commission, or have imposed on him such lesser sanctions as the Commission deems appropriate, but only after he has been accorded an opportunity to present his views in the matter.

(b) *Former officers or employees.* No former officer or employee of the Commission who personally and substantially participated in a matter which was pending in any manner or form in the Commission during his employment shall be eligible to appear before the Commission as attorney or agent in connection with such matter. No former officer or employee of the Commission shall be eligible to appear as attorney or agent before the Commission in connection with any matter which was pending in any manner or form in the Commission during his employment, unless he first obtains written consent from the Commission.

[27 FR 12118, Dec. 7, 1962, as amended at 56 FR 11923, Mar. 21, 1991]

§ 201.16 Service of process and other documents.

(a) *By the Commission.* Except when service by another method shall be specifically ordered by the Commission, the service of a process or other document of the Commission shall be served by anyone duly authorized by the Commission and be effected—

(1) By mailing, delivering, or serving by electronic means a copy of the document to the person to be served, to a member of the partnership to be served, to the president, secretary, other executive officer, or member of the board of directors of the corporation, association, or other organization to be served, or, if an attorney represents any of the above before the Commission, by mailing, delivering, or serving by electronic means a copy to such attorney; or

(2) By leaving a copy thereof at the principal office of such person, partnership, corporation, association, or other organization, or, if an attorney represents any of the above before the Commission, by leaving a copy at the office of such attorney.

(3) By using an express delivery service to send a copy of the document to the principal office of such person, partnership, corporation, association, or other organization, or, if an attorney represents any of the above before the Commission, by serving the attorney by express delivery.

(4) When service is by mail, it is complete upon mailing of the document. When service is by an express service, service is complete upon submitting the document to the express delivery service or depositing it in the appropriate container for pick-up by the express delivery service. When service is by electronic means, service is complete upon transmission of a notification that the document has been placed in an appropriate repository for retrieval by the person, organization, representative, or attorney being served, unless the Commission is notified that the notification was not received by the party served.

(b) *By a party other than the Commission.* Except when service by another method shall be specifically ordered by the Commission, the service of a document of a party shall be effected:

(1) By mailing or delivering a copy of a nonconfidential version of the document to each party, or, if the party is represented by an attorney before the Commission, by mailing or delivering a nonconfidential version thereof to such attorney; or

(2) By leaving a copy thereof at the principal office of each other party, or, if a party is represented by an attorney before the Commission, by leaving a copy at the office of such attorney.

(3) When service is by mail, it is complete upon mailing of the document.

(4) When service is by mail, it shall be by first class mail, postage prepaid. In the event the addressee is outside the United States, service shall be by first class airmail, postage prepaid.

(c) *Proof of service; certificate.* (1) Each document filed with the Secretary to the Commission by a party in the course of an investigation (as provided in § 201.8 of this part) shall be served on each other party to the investigation

(as provided in § 210.4(i) of this chapter for investigations under 19 U.S.C. 1337).

(2) Each document served by a party shall include a certificate of service, setting forth the manner and date of such service. The certificate of service shall be deemed proof of service of the document. In the event a document is not accompanied by a certificate of service, the Secretary shall not accept such document for filing and shall promptly notify the submitter.

(d) *Additional time after service by mail.* Whenever a party or Federal agency or department has the right or is required to perform some act or take some action within a prescribed period after the service of a document upon it and the document is served upon it by mail, three (3) calendar days shall be added to the prescribed period, except that when mailing is to a person located in a foreign country, ten (10) calendar days shall be added to the prescribed period.

(e) *Additional time after service by express delivery.* Whenever a party or Federal agency or department has the right or is required to perform some act or take some action within a prescribed period after the service of a document upon it and the document is served by express delivery, one (1) day shall be added to the prescribed period if the service is to a destination in the United States, and five (5) days shall be added to the prescribed period if the service is to a destination outside the United States. ''Service by express delivery'' refers to a method that would provide delivery by the next business day within the United States and refers to the equivalent express delivery service when the delivery is to a foreign location.

(f) *Electronic service by parties.* Parties may serve documents by electronic means in all matters before the Commission. Parties may effect such service on any party, unless that party has, upon notice to the Secretary and to all parties, stated that it does not consent to electronic service. If electronic service is used, no additional time is added to the prescribed period. However, any dispute that arises among parties regarding electronic service must be resolved by the parties themselves, without the Commission's involvement. When a document served by electronic means contains confidential business information or business proprietary information subject to an administrative protective order, the document must be securely stored and transmitted by the serving party in a manner, including by means ordered by the presiding administrative law judge, that prevents unauthorized access and/or receipt by individuals or organizations not authorized to view the specified confidential business information.

(19 U.S.C. 1335 and the Administrative Procedure Act, 5 U.S.C. 551, *et seq.*)

[41 FR 17711, Apr. 27, 1976, as amended at 47 FR 6190, Feb. 10, 1982; 47 FR 33682, Aug. 4, 1982; 49 FR 32571, Aug. 15, 1984; 67 FR 68037, Nov. 8, 2002; 73 FR 38320, July 7, 2008; 76 FR 61942, Oct. 6, 2011; 78 FR 23840, Apr. 19, 2013; 83 FR 21159, May 8, 2018]

Subpart C—Availability of Information to the Public Pursuant to 5 U.S.C. 552

AUTHORITY: 19 U.S.C. 1335, 5 U.S.C. 552.

SOURCE: 40 FR 8328, Feb. 27, 1975, unless otherwise noted.

§ 201.17 Procedures for requesting access to records.

(a) *Requests for records.* (1) A request for any information or record shall be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436 and shall indicate clearly in the request, and if the request is in paper form on the envelope, that it is a ''Freedom of Information Act Request.'' A written request may be made either (1) in paper form, or (2) electronically by contacting the Commission at *http://www.usitc.gov/foia.htm.*

(2) Any request shall reasonably describe the requested record to facilitate location of the record. If the request pertains to a record that is part of the Commission's file in an investigation, the request should identify the investigation by number and name. A clear description of the requested record(s) should reduce the time required by the Commission to locate and disclose releasable responsive record(s) and minimize any applicable search and copying charges.

(3) Except as provided in paragraph (b) of this section, requests will be processed in the order in which they are filed.

(4) Requests for transcripts of hearings should be addressed to the official hearing reporter, the name and address of which can be obtained from the Secretary. A copy of such request shall at the same time be forwarded to the Secretary.

(5) Copies of public Commission reports and other publications are available online at *http://www.usitc.gov/publications/by_type.htm*, or can be requested by calling or writing the Office of the Secretary. Certain Commission publications are sold by the Superintendent of Documents, U.S. Government Printing Office, and are available from that agency at the price set by that agency.

(6) A day-to-day, composite record will be kept by the Secretary of each request with the disposition thereof.

(b) *Expedited processing.* (1) Requests for records under paragraph (a)(1) of this section will be taken out of order and given expedited treatment whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence.

(2) A request for expedited processing may be made at the time of the initial request for records or at any later time.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within paragraph (b)(1)(ii) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requester within paragraph (b)(1)(ii) of this section also must establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally. The formality of certification may be waived as a matter of administrative discretion.

(4) Within ten calendar days of receipt of a request for expedited processing, the Secretary will decide whether to grant it and will notify the requester of the decision. If a request for expedited treatment is granted, the request will be given priority and will be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

(c) *Public reading room.* The Commission maintains a public reading room in the Office of the Secretary for access to the records that the FOIA requires to be made regularly available for public inspection and copying. Reading room records created by the Commission on or after November 1, 1996, are available electronically. This includes a current subject-matter index of reading room records, which will indicate which records are available electronically.

(d) *Acknowledgment.* The Secretary will provide to a requester an acknowledgment of the receipt of a request and an individualized tracking number for each request. The requester may obtain information about the status of the request and/or contact the Commission's FOIA Public Liaison by telephone (202–205–2595) or email (*foia.se.se@usitc.gov*). The FOIA Public Liaison is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

(e) *First-party requests.* The FOIA applies to third-party requests for documents concerning the general activities of the government and of the Commission in particular. When a U.S. citizen or an alien lawfully admitted for permanent residence requests access to

his or her own records, *i.e.*, makes a first-party request, it is considered a Privacy Act request. Although requests are considered either FOIA requests or Privacy Act requests, the Commission processes first-party requests in accordance with both laws, which provides the greatest degree of lawful access while safeguarding an individual's personal privacy.

(f) *Referrals.* If the Secretary refers a request or a portion thereof to another agency, the Secretary will notify the requester of the referral and the part of the request that has been referred. If feasible, the Secretary will provide the requester with a point of contact within the receiving agency regarding the referral.

(g) *Records management.* (1) The Secretary shall preserve all correspondence pertaining to requests received as well as copies of all requested records, until disposition or destruction is authorized by a General Records Schedule of the National Archives and Records Administration (NARA) or other NARA-approved records schedule.

(2) Materials that are identified as responsive to a FOIA request will not be disposed of or destroyed while the request or a related appeal or lawsuit is pending. This is true even if they would otherwise be authorized for disposition under a General Records Schedule or other NARA-approved records schedule.

[63 FR 29347, May 29, 1998, as amended at 68 FR 32975, June 3, 2003; 80 FR 39379, July 9, 2015]

§ 201.18 Denial of requests, appeals from denial.

(a) Written requests for inspection or copying of records shall be denied only by the Secretary or Acting Secretary, or, for records maintained by the Office of Inspector General, the Inspector General. A denial shall be in writing and shall provide information on the exemptions that justify withholding and the amount of information withheld. The denial also shall advise the person requesting of the right to appeal to the Commission.

(b) An appeal from a denial of a request must be received within ninety days of the date of the letter of denial and shall be made to the Commission and addressed to the Chairman, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. Any such appeal shall be in writing, and shall indicate clearly in the appeal, and if the appeal is in paper form on the envelope, that it is a ''Freedom of Information Act Appeal.'' An appeal may be made either in paper form, or electronically by contacting the Commission at *http://www.usitc.gov/foia.htm.*

(c) Except when expedited treatment is requested and granted, appeals will be decided in the order in which they are filed, but in any case within twenty days (excepting Saturdays, Sundays, and legal holidays) unless an extension, noticed in writing with the reasons therefor, has been provided to the person making the request. Notice of the decision on appeal and the reasons therefor will be made promptly after a decision. Requests for expedited treatment should conform with the requirements in § 201.17(c) of this part.

(d) The extensions of time mentioned in paragraph (c) of this section shall be made only for one or more of the following reasons:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are requested in a single communication; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having a substantial subject-matter interest therein.

(e) The extensions of time mentioned in paragraph (c) of this section shall not exceed ten working days in the aggregate.

(f) A response to an appeal will advise the requester that the Commission's FOIA Public Liaison officer and the Office of Government Information Services both offer mediation services to

resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. The requester may contact the Commission's FOIA Public Liaison officer by telephone (202–205–2595) or email (*foia.se.se@usitc.gov*) or the Office of Government Information Services at National Archives and Records Administration, 8601 Adelphi Road—OGIS, College Park, Maryland 20740–6001.

[40 FR 8328, Feb. 27, 1975, as amended at 54 FR 13678, Apr. 5, 1989; 60 FR 37336, July 20, 1995; 63 FR 29348, May 29, 1998; 68 FR 32975, June 3, 2003; 80 FR 39379, July 9, 2015; 81 FR 86576, Dec. 1, 2016]

§ 201.19 Notification regarding requests for confidential business information.

(a) *In general.* Business information provided to the Commission by a business submitter which the Commission has designated as ''confidential business information'' will not be disclosed pursuant to a Freedom of Information Act (FOIA) request except in accordance with this section.

(b) *Definitions.* The following definitions are to be used in reference to this section:

Confidential business information means commercial or financial information that has been designated as confidential business information by the Commission under § 201.6 of this part.

Submitter means any person or entity who provides confidential business information, directly or indirectly, to the Commission. The term includes, but is not limited to, corporations, producers, importers, and state and federal governments, as well as others who have an administrative relationship with the Commission such as contractors, bidders and vendors.

(c) *Notice to submitters.* Except as provided for in paragraph (e) of this section, the Commission will, to the extent permitted by law, provide a submitter with prompt written notice of a FOIA request or administrative appeal encompassing its confidential business information whenever required under paragraph (d) of this section, in order to afford the submitter an opportunity to object to disclosure pursuant to paragraph (f) of this section. Such written notice will describe the nature of the confidential business information requested. The requester will also be notified that notice and opportunity to object to are being provided to a submitter.

(d) *When notice is required.* Notice will be given to a submitter in writing at submitter's last known address whenever:

(1) The information the subject of the FOIA request or appeal has been designated by the Commission as confidential business information; and

(2) The Commission has reason to believe that the information may not be protected from disclosure under FOIA Exemptions 3 or 4.

(e) *Exceptions to notice requirment.* The notice requirements of paragraph (c) of this section will not apply if:

(1) The Commission determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

(f) *Opportunity to object to disclosure.* Through the notice described in paragraph (c) of this section, the Commission will afford a submitter an opportunity, within the period afforded to the Commission to make its decision in response to the FOIA request, to provide the Commission with a detailed written statement of any objection to disclosure. Such statement shall be filed by a deadline set by the Secretary, and it shall specify all grounds for withholding any of the information under any exemption of FOIA. In the case of FOIA Exemptions 3 or 4, it shall demonstrate why the information should continue to be considered confidential business information within the meaning of § 201.6 of this part and should not be disclosed. The submitter's claim of continued confidentiality should be supported by a certification by an officer or authorized representative of the submitter. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under FOIA.

(g) *Notice of intent to disclose.* The Commission will consider carefully a

submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose the information. Whenever the Commission decides to disclose such information over the objection of a submitter, the Commission will forward to the submitter a written notice which will include:

(1) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date.

Such notice of intent to disclose will be forwarded to the submitter a reasonable number of days prior to the specified disclosure date and the requester will be notified likewise.

(h) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of information that the Commission has designated as confidential business information, the Commission will promptly notify the submitter at its last known address. For the purpose of this paragraph, the Secretary may assume such address to be that given on the submission.

[54 FR 13678, Apr. 5, 1989, as amended at 68 FR 32975, June 3, 2003; 80 FR 39379, July 9, 2015]

§ 201.20 Fees.

(a) *In general.* Fees pursuant to 5 U.S.C. 552 shall be assessed according to the schedule contained in paragraph (b) of this section for services rendered by agency personnel in responding to and processing requests for records under this subpart. All fees so assessed shall be charged to the requester, except where the charging of fees is limited under paragraph (c) of this section or where a waiver or reduction of fees is granted under paragraph (d) of this section. The Secretary will collect all applicable fees. Requesters shall pay fees by check or money order made payable to the Treasury of the United States.

(b) *Charges.* In responding to requests under this subpart, the following fees shall be assessed, unless a waiver or reduction of fees has been granted pursuant to paragraph (d) of this section:

(1) *Search.* (i) No search fee shall be assessed with respect to requests by educational institutions, noncommercial scientific institutions, and representatives of the news media as defined in paragraphs (j) (6), (7), and (8) of this section, respectively. Search fees shall be assessed with respect to all other requests, subject to the limitations of paragraph (c) of this section. The secretary may assess fees for time spent searching even if agency personnel fail to locate any respective record or where records located are subsequently determined to be entirely exempt from disclosure.

(ii) For each quarter hour spent by agency personnel in salary grades GS–2 through GS–10 in searching for and retrieving a requested record, the fee shall be $4.00. When the time of agency personnel in salary grades GS–11 and above is required, the fee shall be $6.50 for each quarter hour of search and retrieval time spent by such personnel.

(iii) For computer searches of records, which may be undertaken through the use of existing programming, requester shall be charged the actual direct costs of conducting the search, although certain requesters (as defined in paragraph (c)(2) of this section) shall be entitled to the cost equivalent of two hours of manual search time without charge. These direct costs shall include the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a request, as well as the costs of operator/programmer salary apportionable to the search (at no more than $6.50 per quarter hour of time so spent).

(2) *Duplication.* Duplication fees shall be assessed with respect to all requesters, subject to the limitations of paragraph (c) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee shall be $0.10 per page. For copies produced by computer, such as tapes or printouts, the Secretary shall charge the actual direct costs, including operator time, of producing the copy. For other methods of duplication, the Secretary shall charge the actual direct costs of duplicating a record.

(3) *Review*. (i) Review fees shall be assessed with respect to only those requesters who seek records for a commercial use, as defined in paragraph (j)(5) of this section. For each quarter hour spent by agency personnel in reviewing a requested record for possible disclosure, the fee shall be $6.50.

(ii) Review fees shall be assessed only for the initial record review, i.e., all of the review undertaken when a component analyzes the applicability of a particular exemption to a particular record or record portion at the initial request level. No charge shall be assessed for review at the administrative appeal level of an exemption already applied. However, records or record portions withheld pursuant to an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs of such a subsequent review are properly assessable, particularly where that review is made necessary by a change of circumstances.

(c) *Limitations on charging fees*. (1) No search or review fee shall be charged for a quarter-hour period unless more than half of that period is required for search or review.

(2) Except for requesters seeking records for a commercial use (as defined in paragraph (j)(5) of this section), the Secretary shall provide without charge—

(i) The first 100 pages of duplication (or its cost equivalent), and

(ii) The first two hours of search (or its cost equivalent).

(3) Whenever a total fee calculated under paragraph (b) of this section is $25.00 or less, no fee shall be charged.

(4) The provisions of paragraphs (c)(2) and (3) of this section work together. For requesters other than those seeking records for a commercial use, no fee shall be charged unless the cost of search is in excess of two hours plus the cost of duplication in excess of 100 pages exceeds $25.00.

(5) The Commission will not charge fees if it fails to comply with any time limit under the FOIA or these regulations, and if it has not timely notified the requester, in writing, that an unusual circumstance exists. If an unusual circumstance exists, and timely written notice is given to the requester, the Commission will have an additional 10 working days to respond to the request before fees are automatically waived under this paragraph.

(6) If the Commission determines that unusual circumstances apply and that more than 5,000 pages are necessary to respond to a request, it may charge fees if it has provided a timely written notice to the requester and discusses with the requester via mail, Email, or telephone how the requester could effectively limit the scope of the request (or make at least three good faith attempts to do so).

(7) If a court has determined that exceptional circumstances exist, a failure to comply with time limits imposed by these regulations or FOIA shall be excused for the length of time provided by court order.

(d) *Waiver or reduction of fees*. (1) Records responsive to a request under 5 U.S.C. 552 shall be furnished without charge or at a charge reduced below that established under paragraph (b) of this section where the Secretary determines, based upon information provided by a requester in support of a fee waiver request or otherwise made known to the Secretary that disclosure of the requested information is in the public interest, because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester. Requests for a waiver or reduction of fees shall be considered on a case-by-case basis.

(2) In order to determine whether the first fee waiver requirement is met—i.e., that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government—the Secretary shall consider the following four factors in sequence:

(i) *The subject of the request: Whether the subject of the requested records concerns ''the operations or activities of the government.''* The subject matter of the requested records, in the context of the request, must specifically concern identifiable operations or activities of

the federal government—with a connection that is direct and clear, not remote or attenuated. Furthermore, the records must be sought for their informative value with respect to those government operations or activities; a request for access to records for their intrinsic informational content alone will not satisfy this threshold consideration.

(ii) *The informative value of the information to be disclosed: Whether the disclosure is ''likely to contribute'' to an understanding of government operations or activities.* The disclosable portions of the requested records must be meaningfully informative on specific government operations or activities in order to hold potential for contributing to increased public understanding of those operations and activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding, as nothing new would be added to the public record.

(iii) *The contribution of an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to ''public understanding.''* The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons. A requester's identity and qualifications—e.g., expertise in the subject area and ability and intention to effectively convey information to the general public—shall be considered. It will be presumed that a representative of the news media (as defined in paragraph (j)(8) of this section) who has access to the means of public dissemination readily will be able to satisfy this consideration. Requests from libraries or other record repositories (or requesters who intend merely to disseminate information to such institutions) shall be analyzed, like those of other requesters, to identify a particular person who represents that he actually will use the requested information in scholarly or other analytic work and then disseminate it to the general public.

(iv) *The significance of the contribution to public understanding: Whether the disclosure is likely to contribute ''significantly'' to public understanding of government operations or activities.* The public's understanding of the subject matter in question, as compared to the level of public understanding existing prior to the disclosure, must be likely to be enhanced by the disclosure to a significant extent. The Secretary shall not make separate judgments as to whether information, even though it in fact would contribute significantly to public understanding of the operations or activities of the government, is ''important'' enough to be made public.

(3) In order to determine whether the second fee waiver requirement is met—i.e., that disclosure of the requested information is not primarily in the commercial interest of the requester—the Secretary shall consider the following two factors in sequence:

(i) *The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.* The Secretary shall consider all commercial interests of the requester (with reference to the definition of *commercial use* in paragraph (j)(5) of this section), or any person on whose behalf the requester may be acting, but shall consider only those interests which would be furthered by the requested disclosure. In assessing the magnitude of identified commercial interests, consideration shall be given to the role that such FOIA-disclosed information plays with respect to those commercial interests, as well as to the extent to which FOIA disclosures serve those interests overall. Requesters shall be given a reasonable opportunity in the administrative process to provide information bearing upon this consideration.

(ii) *The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is ''primarily in the commercial interest of the requester.''* A fee waiver or reduction is warranted only where, once the ''public interest'' standard set out in paragraph (d)(2) of this section is satisfied, that public interest can fairly be regarded as greater in magnitude

than that of the requester's commercial interest in disclosure. The Secretary shall ordinarily presume that, where a news media requester has satisfied the ''public interest'' standard, that will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who compile and market government information for direct economic return shall not be presumed to primarily serve the ''public interest.''

(4) Where only a portion of the requested records satisfies both of the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(5) Requests for the waiver or reduction of fees shall address each of the factors listed in paragraphs (d) (2) and (3) of this section, as they apply to each record request.

(e) *Notice of anticipated fees in excess of $25.00.* Where the Secretary determines or estimates that the fees to be assessed under this section may amount to more than $25.00, he shall notify the requester as soon as practicable of the actual or estimated amount of the fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. (If only a portion of the fee can be estimated readily, the Secretary shall advise the requester that the estimated fee may be only a portion of the total fee.) In cases where a requester has been notified that actual or estimated fees may amount to more than $25.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice of the requester pursuant to this paragraph shall offer him the opportunity to confer with agency personnel in order to reformulate his request to meet his needs at a lower cost.

(f) *Aggregating requests.* Where the Secretary reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, the Secretary may aggregate any such requests and charge accordingly. The Secretary may presume that multiple requests of such type made within a 30-day period have been made in order to evade fees. Where requests are separated by a longer period, the Secretary shall aggregate them only where there exists a reasonable basis for determining that said aggregation is warranted, e.g., where the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated

(g) *Advance payments.* (1) Where the Secretary estimates that a total fee to be assessed under this section is likely to exceed $250.00, the Secretary may require the requester to make an advance payment of an amount up to the entire estimated fee before beginning to process the request, except where the Secretary receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(2) Where a requester has previously failed to pay a records access fee within 30 days of the date of billing, the Secretary may require the requester to pay the full amount owed, plus any applicable interest (as provided for in paragraph (h) of this section), and to make an advance payment of the full amount of any estimated fee before he begins to process a new request or continues to process a pending request from that requester.

(3) For requests other than those described in paragraphs (g) (1) and (2) of this section, the Secretary shall not require the requester to make an advance payment, i.e., a payment made before work is commenced or continued on a request. Payment owed on work already completed is not an advance payment.

(4) Where the Secretary acts under paragraph (g) (1) or (2) of this section, the administrative time limits described in subsection (a)(6) of the FOIA for the processing of an initial request or an appeal, plus permissible extensions of these time limits, shall be deemed not to begin to run until the Secretary has received payment of the assessed fee.

(h) *Charging interest.* The Secretary may assess interest charges on an unpaid bill starting on the 31st day following the day on which the bill was

sent to the requester. Once a fee payment has been received by the Secretary, even if not processed, the accrual of interest shall be stayed. Interest charges shall be assessed at the rate prescribed in section 3717 of title 31 U.S.C. and shall accrue from the date of the billing. The Secretary shall follow the provisions of the Debt Collection Act of 1982, Pub. L. 97–265 (Oct. 25, 1982), and its implementing procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(i) *Other statutes specifically providing for fees.* (1) The fee schedule of this section does not apply with respect to the charging of fees under a statute specifically providing for setting the level of fees for particular types of records—i.e., any statute that specifically requires a government entity such as the Government Printing Office or the National Technical Information Service, to set and collect fees for particular types of records—in order to:

(i) Serve both the general public and private sector organizations by conveniently making available government information;

(ii) Ensure that groups and individuals pay the cost of publications and other services that are for their special use so that these costs are not borne by the general taxpaying public;

(iii) Operate an information-dissemination activity on a self-sustaining basis to the maximum extent possible; or

(iv) Return revenue to the Treasury for defraying, wholly or in part, appropriate funds used to pay the costs of disseminating government information.

(2) Where records responsive to requests are maintained for distribution by agencies operating statutorily based fee schedule programs, the Secretary shall inform requesters of the steps necessary to obtain records from those sources.

(j) *Definitions.* For the purpose of this section:

(1) The term *direct costs* means those expenditures which the agency actually incurs in searching for and duplicating (and, in the case of commercial use requesters, reviewing) records to respond to a FOIA request. Direct costs include, for example the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting of the facility in which the records are stored.

(2) The term *search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. The Secretary shall ensure, however, that searches are undertaken in the most efficient and least expensive manner reasonably possible; thus, for example, the Secretary shall not engage in line-by-line search where merely duplicating an entire document would be quicker and less expensive.

(3) The term *duplication* refers to the process of making a copy of a record necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine-readable documentation (e.g., magnetic tape or disk), among others. The copy provided shall be in a form that is reasonably usable by requesters.

(4) The term *review* refers to the process of examining a record located in response to a request in order to determine whether any portion of it is permitted to be withheld. It also includes processing any record for disclosure, e.g., doing all that is necessary to excise it and otherwise prepare it for release, although review costs shall be recoverable even where there ultimately is no disclosure of a record. Review time does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) The term *commercial use* in the context of a request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made,

which can include furthering those interests through litigation. The Secretary shall determine, as well as reasonably possible, the use to which a requester will put the records requested. Where the circumstances of a request suggest that the requester will put the records sought to a commercial use, either because of the nature of the request itself or because the Secretary otherwise has reasonable cause to doubt a requester's stated use, the Secretary shall provide the requester a reasonable opportunity to submit further clarification.

(6) The term *educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. To be eligible for inclusion in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in furtherance of scholarly research.

(7) The term *noncommercial scientific institution* refers to an institution that is not operated on a ''commercial'' basis as that term is referenced in paragraph (j)(5) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be eligible for inclusion in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in furtherance of scientific research.

(8) The term *representative of the news media* refers to any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term 'news' means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of 'news') who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Government may also consider the past publication record of the requester in making such a determination.

(9) The term *requester category* means one of the three categories that requesters are placed in for the purpose of determining whether a requester will be charged fees for search, review and duplication, including commercial requesters; non-commercial scientific or educational institutions or news media requesters, and all other requesters.

(10) The term *fee waiver* means the waiver or reduction of processing fees if a requester can demonstrate that certain statutory standards are satisfied including that the information is in the public interest and is not requested for a commercial interest.

(k) *Charges for other services and materials.* Apart from the other provisions of this section, where the Secretary elects, as a matter of administrative discretion, to comply with a request for a special service or materials, such as certifying that records are true copies or sending them other than by ordinary mail, the actual direct costs of providing the service or materials shall be charged.

[54 FR 13673, Apr. 5, 1989, as amended at 63 FR 29348, May 29, 1998; 80 FR 39379, July 9, 2015; 81 FR 86577, Dec. 1, 2016]

§ 201.21 Availability of specific records.

(a) *Records available.* The following information, on request to the Secretary of the Commission, is available for public inspection and copying: (1) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases; (2) those statements of policy and interpretations which have been adopted by the agency; and (3) administrative staff manuals and instructions to staff that affect a member of the public. Available information includes, but is not limited to: (i) Applications, petitions, and other formal documents filed with the Commission, (ii) notices to the public concerning Commission matters, (iii) transcripts of testimony taken and exhibits submitted at hearings, (iv) reports to the President, to either or both Houses of Congress, or to Committees of Congress, release of which has been authorized by the President or the legislative body concerned, (v) reports and other documents issued for general distribution. Much of the information described above also is available on the Commission's World Wide Web site. The Commission's home page is at *http://www.usitc.gov*. The Web site also includes information subject to repeated Freedom of Information Act requests. Persons accessing the Web site can find instructions on how to locate Commission information by following the ''Freedom of Information Act'' link on the home page.

(b) *Records not available.* Information specifically exempted from disclosure by 5 U.S.C. 552(b), including reports to the President, to either or both Houses of Congress, or to Committees of Congress, the release of which has not been authorized by the President or the legislative body concerned, and confidential business data as defined in 18 U.S.C. 1905 and 19 CFR 201.06 are not available to the public.

(c) *Information requested in cases or matters to which the Commission is not a party.* (1) The procedure specified in this section will apply to all demands directed to Commission employees for the production of documents or for testimony that relates in any way to the employees' official duties. These procedures will also apply to demands directed to former employees if the demands seek nonpublic materials or information acquired during Commission employment. The provisions of paragraph (c)(2) of this section will also apply to demands directed to the agency. For purposes of this section, the term *demand* means any request, order or subpoena for testimony or production of documents; the term *subpoena* means any compulsory process in a case or matter to which the Commission is not a party; the term *nonpublic* includes any material or information which, under § 201.21(b), is exempt from availability for public inspection and copying; the term *employee* means any current or former officer or employee of the Commission; the term *documents* means all records, papers or official files, including without limitation, official letters, telegrams, memoranda, reports, studies, calendar and diary entries, graphs, notes, charts, tabulations, data analysis, statistical or information accumulations, records of meetings and conversations, film impressions, magnetic tapes, and sound or mechanical reproductions; the term *case or matter* means any civil proceeding before a court of law, administrative board, hearing officer, or other body conducting a legal or administrative proceeding in which the Commission is not a named party.

(2) Prior to or simultaneously with a demand to a Commission employee for the production of documents or for testimony concerning matters relating to official duties, the party seeking such production or testimony must serve upon the General Counsel of the Commission an affidavit, or if that is not feasible, then a statement which sets forth the title of the case, the forum, the party's interest in the case, the reasons for the request, and a showing that the desired testimony or documents are not reasonably available from any other source. Where testimony is sought, the party must also provide a summary of the testimony desired, the intended use of the testimony, and show that Commission records could not be provided and used instead of the requested testimony. A subpoena for testimony from a Commission employee concerning official

matters or for the production of documents shall be served in accordance with Rule 45 of the Federal Rules of Civil Procedure and a copy of the subpoena shall be sent to the General Counsel.

(3) Any employee or former employee who is served with a subpoena or other demand shall promptly advise the General Counsel of the service of the subpoena or other demand, the nature of the documents or information sought, and all relevant facts and circumstances.

(4) Absent written authorization from the Chairman of the Commission (''Chairman''), the employee shall respectfully decline to produce the requested documents, to testify, or to otherwise disclose requested information. If a court rules that the demand must be complied with despite the absence of such written authorization, the employee upon whom the demand is made shall respectfully refuse to comply based upon these regulations and *Touhy* v. *Ragan*, 340 U.S. 462 (1951).

(5) The Chairman will consider and act upon subpoenas under this section with due regard for statutory restrictions, the Commission's rules and the public interest, taking into account such factors as the need to conserve employees' time for conducting official business, the need to prevent the expenditure of the United States government's time and money for private purposes, the need to maintain impartiality between private litigants in cases where no substantial governmental interest is involved, and the relevant legal standards for determining whether justification exists for the disclosure of nonpublic information and documents. If the Chairman determines that the subpoenaed documents or information are protected by a privilege or that the Commission has a duty in law or equity to protect such documents or information from disclosure, the General Counsel shall move the court to quash the subpoena or for other appropriate action.

(6) The General Counsel may consult or negotiate with counsel or the party seeking testimony or documents to refine and limit the demand so that compliance is less burdensome, or obtain information necessary to make the determination described in paragraph (c)(5) of this section. Failure of the counsel or party seeking the testimony or documents to cooperate in good faith to enable the General Counsel to make an informed recommendation to the Chairman under paragraph (c)(5) of this section may serve as the basis for a determination not to comply with the demand.

(7) Permission to testify will, in all cases, be limited to the information set forth in the affidavit as described in paragraph (c)(2) of this section, or to such portions thereof as the Chairman deems proper.

(8) If the Chairman authorizes the testimony of an employee, then the General Counsel shall arrange for the taking of the testimony by methods that are least disruptive of the official duties of the employee. Testimony may, for example, be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or preserved by any other means allowable by law. Costs of providing testimony, including transcripts, will be borne by the party requesting the testimony. Such costs shall also include reimbursing the Commission for the usual and ordinary expenses attendant upon the employee's absence from his or her official duties in connection with the case or matter, including the employee's salary and applicable overhead charges and any necessary travel expenses.

(9) The Secretary in consultation with the General Counsel is further authorized to charge reasonable fees to parties demanding documents or information. Such fees, calculated to reimburse the government for the expense of responding to such demand, may include the costs of time expended by Commission employees to process and respond to the demand, attorney time for reviewing the demand and for related legal work in connection with the demand, and expenses generated by equipment used to search for, produce and copy the responsive information. In general, such fees will be assessed at the rates and in the manner specified in § 201.20 of this part.

(10) This section does not affect the rights and procedures governing the

public access to official documents pursuant to the Freedom of Information Act or the Privacy Act.

(11) This section is intended to provide instructions to Commission employees and does not create any right or benefit, substantive or procedural, enforceable by any party against the Commission.

[40 FR 8328, Feb. 27, 1975, as amended at 54 FR 13676, Apr. 5, 1989; 68 FR 32975, June 3, 2003]

Subpart D—Safeguarding Individual Privacy Pursuant to 5 U.S.C. 552a

SOURCE: 63 FR 29348, May 29, 1998, unless otherwise noted.

§ 201.22 Purpose and scope.

This subpart contains the rules that the Commission follows under the Privacy Act of 1974, 5 U.S.C. 552a. The rules in this subpart apply to all records in systems of records maintained by the Commission that are retrieved by an individual's name or other personal identifier. They describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those records by the Commission.

§ 201.23 Definitions.

For the purpose of these regulations:

(a) The term *individual* means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) The term *maintain* includes maintain, collect, use, or disseminate;

(c) The term *record* means any item, collection, or grouping of information about an individual that is maintained by the Commission, including, but not limited to, his or her education, financial transactions, medical history, and criminal or employment history and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual;

(d) The term *system of records* means a group of any records under the control of the Commission from which information is retrieved by the name of the individual or by some identifying particular assigned to the individual;

(e) The term *Privacy Act Officer* refers to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, or his or her designee.

[63 FR 29348, May 29, 1998, as amended at 80 FR 39380, July 9, 2015]

§ 201.24 Procedures for requests pertaining to individual records in a records system.

(a) A request by an individual to gain access to his or her record(s) or to any information pertaining to him or her which is contained in a system of records maintained by the Commission shall be addressed to the Privacy Act Officer, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, and shall indicate clearly both on the envelope and in the letter that it is a Privacy Act request.

(b) In order to facilitate location of requested records, whenever possible, the request of the individual shall name the system(s) of records maintained by the Commission which he or she believes contain records pertaining to him or her, shall reasonably describe the requested records, and identify the time period in which the records were compiled.

(c) The Privacy Act Officer shall acknowledge receipt of a request within ten days (excluding Saturdays, Sundays, and legal public holidays), and wherever practicable, indicate whether or not access can be granted. If access is not to be granted, the requestor shall be notified of the reason in writing.

(d) The Privacy Act Officer, or, the Inspector General, if such records are maintained by the Inspector General, shall ascertain whether the systems of records maintained by the Commission contain records pertaining to the individual, and whether access will be granted. Thereupon the Privacy Act Officer shall:

(1) Notify the individual whether or not the requested record is contained in any system of records maintained by the Commission; and

(2) Notify the individual of the procedures as prescribed in Secs. 201.25 and 201.26 of this part by which the individual may gain access to those records maintained by the Commission which pertain to him or her. Access to the records will be provided within 30 days (excluding Saturdays, Sundays, and legal public holidays).

§ 201.25 Times, places, and requirements for identification of individuals making requests.

(a) If an individual wishes to examine his or her records in person, it shall be the responsibility of the individual requester to arrange an appointment with the Privacy Act Officer for the purpose of inspecting individual records. The time of inspection shall be during the regular office hours of the Commission, 8:45 a.m. to 5:15 p.m., Monday through Friday. The time arranged should be mutually convenient to the requester and to the Commission.

(b) The place where an individual may gain access to records maintained by the Commission which pertain to him or her shall be at the United States International Trade Commission Building, 500 E Street SW., Washington, DC 20436. The Privacy Act Officer shall inform the individual requester of the specific room wherein inspection will take place.

(c) An individual may also request the Privacy Act Officer to provide the individual with a copy of his or her records by certified mail.

(d) An individual who requests to gain access to those records maintained by the Commission which pertain to him or her shall not be granted access to those records without first presenting adequate identification to the Privacy Act Officer. Adequate identification may include, but is not limited to, a government identification card, a driver's license, Medicare card, a birth certificate, or a passport. If requesting records by mail, an individual must provide full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under 28 U.S.C. 1746, which permits statements to be made under penalty of perjury as a substitute for notarization. In order to help the identification and location of requested records, a requestor may also, at his or her option, include the individual's social security number.

§ 201.26 Disclosure of requested information to individuals.

(a) Once the Privacy Act Officer has made a determination to grant a request for access to individual records, in whole or in part, the Privacy Act Officer shall inform the requesting individual in writing and permit the individual to review the pertinent records and to have a copy made of all or any portion of them. Where redactions due to exemptions pursuant to § 201.32 would render such records or portions thereof incomprehensible, the Privacy Act Officer shall furnish an abstract in addition to an actual copy.

(b) An individual has the right to have a person of his or her own choosing accompany him or her to review his or her records. The Privacy Act Officer shall permit a person of the individual requester's choosing to accompany the individual during inspection.

(c) When the individual requests the Privacy Act Officer to permit a person of the individual's choosing to accompany him or her during the inspection of his or her records, the Privacy Act Officer shall require the individual requester to furnish a written statement authorizing discussion of the records in the accompanying person's presence.

(d) The Privacy Act Officer shall take all necessary steps to insure that individual privacy is protected while the individual requester is inspecting his or her records or while those records are being discussed. Only the Privacy Act Officer shall accompany the individual as representative of the Commission during the inspection of the individual's records. The Privacy Act Officer shall be authorized to discuss the pertinent records with the individual.

§ 201.27 Special procedures: Medical records.

(a) While an individual has an unqualified right of access to the records in systems of records maintained by the Commission which pertain to him or her, medical and psychological records merit special treatment because of the possibility that disclosure

will have an adverse physical or psychological effect upon the requesting individual. Accordingly, in those instances where an individual is requesting the medical and/or psychological records which pertain to him or her, he or she shall, in his or her Privacy Act request to the Privacy Act Officer as called for in §201.24(a) of this part, specify a physician to whom the medical and/or psychological records may be released.

(b) It shall be the responsibility of the individual requesting medical or psychological records to specify a physician to whom the requested records may be released. If an individual refuses to name a physician and insists on inspecting his or her medical or psychological records in the absence of a doctor's discussion and advice, the individual shall so state in his or her Privacy Act request to the Privacy Act Officer as called for in §201.24(a) of this part and the Privacy Act Officer shall provide access to or transmit such records directly to the individual.

§201.28 Requests for correction or amendment of records.

(a) If, upon viewing his or her records, an individual disagrees with a portion thereof or feels sections thereof to be erroneous, the individual may request amendment[s] of the records pertaining to him or her. The individual should request such an amendment in writing and should identify each particular record in question, the system[s] of records wherein the records are located, specify the amendment requested, and specify the reasons why the records are not correct, relevant timely or complete. The individual may submit any documentation that would be helpful. The request for amendment of records shall be addressed to the Privacy Act Officer, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, and shall clearly indicate both on the envelope and in the letter that it is a Privacy Act request for amendment of records.

(b) Not later than 10 days (excluding Saturdays, Sundays and legal public holidays) after the date of receipt of a Privacy Act request for amendment of records, the Privacy Act Officer shall acknowledge such receipt in writing. Such a request for amendment will be granted or denied by the Privacy Act Officer or, for records maintained by the Inspector General. If the request is granted, the Privacy Act Officer, or the Inspector General for records maintained by the Inspector General, shall promptly make any correction of any portion of the record which the individual believes is not accurate, relevant, timely, or complete. If, however, the request is denied, the Privacy Act Officer shall inform the individual of the refusal to amend the record in accordance with the individual's request and give the reason(s) for the refusal. In cases where the Privacy Act Officer or the Inspector General has refused to amend in accordance with an individual's request, he or she also shall advise the individual of the procedures under §201.30 of this part for the individual to request a review of that refusal by the full Commission or by an officer designated by the Commission.

§201.29 Commission disclosure of individual records, accounting of record disclosures, and requests for accounting of record disclosures.

(a) It is the policy of the Commission not to disclose, except as permitted under 5 U.S.C. 552a(b), any record which is contained in any system of records maintained by the Commission to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains.

(b) Except for disclosures either to officers and employees of the Commission, or to contractor employees who, in the Inspector General's or the Privacy Act Officer's judgment, as appropriate, are acting as federal employees, who have a need for the record in the performance of their duties, and any disclosure required by 5 U.S.C. 552, the Privacy Act Officer shall keep an accurate accounting of:

(1) The date, nature, and purpose of each disclosure of a record to any person or to another agency under paragraph (a) of this section; and

(2) The name or address of the person or agency to whom the disclosure is made.

(c) The Privacy Act Officer shall retain the accounting required by paragraph (b) of this section for at least five years or the life of the record, whichever is longer, after such disclosure.

(d) Except for disclosures made to other agencies for civil or criminal law enforcement purposes pursuant to 5 U.S.C. 552a(b)(7), the Privacy Act Officer shall make any accounting made under paragraph (b) of this section available to the individual named in the record at the individual's request.

(e) An individual requesting an accounting of disclosure of his or her records should make the request in writing to the Privacy Act Officer, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The request should identify each particular record in question and, whenever possible, the system[s] of records wherein the requested records are located, and clearly indicate both on the envelope and in the letter that it is a Privacy Act request for an accounting of disclosure of records.

(f) Where the Commission has provided any person or other agency with an individual record and such accounting as required by paragraph (b) of this section has been made, the Privacy Act Officer shall inform all such persons or other agencies of any correction, amendment, or notation of dispute concerning said record.

§ 201.30 Commission review of requests for access to records, for correction or amendment to records, and for accounting of record disclosures.

(a) The individual who disagrees with the refusal of the Privacy Act Officer or the Inspector General for access to a record, to amend a record, or to obtain an accounting of any record disclosure, may request a review of such refusal by the Commission within 60 days of receipt of the denial of his or her request. A request for review of such a refusal should be addressed to the Chairman, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, and shall clearly indicate both on the envelope and in the letter that it is a Privacy Act review request.

(b) Not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the Commission receives a request for review of the Privacy Act Officer's or the Inspector General's refusal to grant access to a record, to amend a record, or to provide an accounting of a record disclosure, the Commission shall complete such a review and make a final determination thereof unless, for good cause shown, the Commission extends the 30-day period.

(c) After the individual's request has been reviewed by the Commission, if the Commission agrees with the Privacy Act Officer's or the Inspector General's refusal to grant access to a record, to amend a record, or to provide an accounting of a record disclosure, in accordance with the individual's request, the Commission shall:

(1) Notify the individual in writing of the Commission's decision;

(2) For requests to amend or correct records, advise the individual that he or she has the right to file a concise statement of disagreement with the Commission which sets forth his or her reasons for disagreement with the refusal of the Commission to grant the individual's request; and

(3) Notify the individual of his or her legal right, if any, to judicial review of the Commission's final determination.

(d) In any disclosure, containing information about which the individual has filed a statement of disagreement regarding an amendment of an individual's record, the Privacy Act Officer, or, for records maintained by the Inspector General, the Inspector General, shall clearly note any portion of the record which is disputed and shall provide copies of the statement and, if the Commission deems it appropriate, copies of a concise statement of the reasons of the Commission for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed.

§ 201.31 Fees and employee conduct.

(a) The Commission shall not charge any fee for the cost of searching for and reviewing an individual's records.

(b) Reproduction, duplication or copying of records by the Commission shall be at the rate of $0.10 per page.

There shall be no charge, however, when the total amount does not exceed $25.00.

(c) The Privacy Act Officer shall establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and periodically instruct each such person with respect to such rules and the requirements of the Privacy Act including the penalties for noncompliance.

[63 FR 29348, May 29, 1998, as amended at 68 FR 32975, June 3, 2003]

§ 201.32 Specific exemptions.

(a) Pursuant to 5 U.S.C. 552a(k)(1), (5) and (6), records contained in the system entitled ''Personnel Security Investigative Files'' have been exempted from subsections (c)(3), (d), (e)(1), (e)(4)(G) through (I) and (f) of the Privacy Act. Pursuant to section 552a(k)(1) of the Privacy Act, the Commission exempts records that contain properly classified information that pertains to national defense or foreign policy and is obtained from other systems of records or another Federal agency. Application of exemption (k)(1) may be necessary to preclude the data subject's access to and amendment of such classified information under 5 U.S.C. 552a(d). All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is also exempted because this system contains investigatory material compiled solely for determining suitability, eligibility, and qualifications for Federal civilian employment, Federal contracts or access to classified information. To the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, the application of exemption (k)(5) will be required to honor such a promise should an individual request access to the accounting of disclosure, or access to or amendment of the record, that would reveal the identity of a confidential source. All information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is also exempt because portions of a case file record may relate to testing and examining material used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examining process.

(b) Pursuant to 5 U.S.C. 552a(k)(1) and (k)(2), records contained in the system entitled ''Freedom of Information Act and Privacy Act Records'' have been exempted from subsections (c)(3), (d), (e)(1), (e)(4)(G) through (I) and (f) of the Privacy Act. Pursuant to section 552a(k)(1) of the Privacy Act, the Commission exempts records that contain properly classified information pertaining to national defense or foreign policy. Application of exemption (k)(1) may be necessary to preclude individuals' access to or amendment of such classified information under the Privacy Act. Pursuant to section 552a(k)(2) of the Privacy Act, and in order to protect the effectiveness of Inspector General investigations by preventing individuals who may be the subject of an investigation from obtaining access to the records and thus obtaining the opportunity to conceal or destroy evidence or to intimidate witnesses, the Commission exempts records insofar as they include investigatory material compiled for law enforcement purposes. However, if any individual is denied any right, privilege, or benefit to which he is otherwise entitled under Federal law due to the maintenance of this material, such material shall be provided to such individual except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

[63 FR 29348, May 29, 1998, as amended at 82 FR 60865, Dec. 26, 2017]

Subpart E—Opening Commission Meetings to Public Observation Pursuant to 5 U.S.C. 552b

AUTHORITY: 5 U.S.C. 552b; 19 U.S.C. 1335.

SOURCE: 42 FR 11243, Feb. 28, 1977, unless otherwise noted.

§ 201.33 Purpose and scope.

(a) Consistent with the principle that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government, it is the purpose of this subpart to open the meetings of the United States International Trade Commission to public observation while protecting the rights of individuals and the ability of the Commission to carry out its statutory functions and responsibilities. These regulations are promulgated pursuant to the directive of section (g) of the Government in the Sunshine Act (5 U.S.C. 552b(g)), and specifically implement sections (b) through (f) of said act (5 U.S.C. 552(b) through (f)).

(b) Public access to documents being considered at Commission meetings may be obtained by access to the public files of the Commission or, where documents are not in said public files, shall be obtained in the manner set forth in subpart C of this part (§§ 201.17 through 201.21).

(c) Unless otherwise provided by the public notices as described in § 201.35 of this subpart, public observation of Commission meetings does not encompass public participation in the deliberations at such meetings.

§ 201.34 Definitions.

For the purpose of this subpart:

(a)(1) Except as hereinafter provided, the term *meeting* means the deliberations of at least the number of individual Commissioners required to take action on behalf of the Commission where such deliberations determine or result in the joint conduct or disposition of official Commission business.

(2) The consideration by individual Commissioners of business which is circulated sequentially in writing (circulation by ''action jacket'') is not considered a meeting under paragraph (a)(1) of this section because circulation by action jacket does not determine or result in the joint conduct or disposition of Commission business until ratification thereof by formal vote of the Commissioners in a meeting as defined by paragraph (a)(1) of this section, although action proposed by action jacket may be taken before or after formal ratification thereof by vote at a Commission meeting.

(3) Conference telephone calls among the Commissioners are considered meetings as defined by paragraph (a)(1) of this section if they involve the number of Commissioners requisite for Commission action, and where the deliberations of the Commissioners determine or result in the joint conduct or disposition of official Commission business.

(4) Deliberations of a majority of the entire membership of the Commission with the *sole* purpose of determining whether or not to call a meeting at a date earlier than the requisite public notice period as specified in § 201.35 of this subpart are not considered to constitute a meeting or portion of a meeting as defined by paragraph (a)(1) of this section.

(5) Deliberations of a majority of the entire membership of the Commission with the *sole* purpose of determining whether or not to close a portion or portions of a meeting or series of meetings pursuant to § 201.36 of this subpart are not considered to constitute a meeting or portion of a meeting within the meaning of paragraph (a)(1) of this section.

(6) Deliberations of a majority of the entire membership of the Commission with the *sole* purpose of determining whether or not to change the subject matter of a publicly announced meeting, or to change the determination of the Commission to open or close a meeting, or portion thereof, to the public, following a public notice, as permitted under § 201.37(b) of this subpart, are not considered to constitute a meeting or portion of a meeting under paragraph (a)(1) of this section.

(b) The terms *Secretary* and *General Counsel* mean the Secretary and General Counsel of the Commission and

their respective designees within their respective offices.

[63 FR 29348, May 29, 1998, as amended at 80 FR 39380, July 9, 2015]

§ 201.35 Notices to the public.

(a) At least seven (7) days before each Commission meeting the Commission shall issue a public notice which:

(1) States the time and place of the meeting;

(2) Lists the subjects or agenda items to be discussed at the meeting;

(3) States whether the meeting or portion thereof is to be open or closed to public observation; and

(4) Gives the name and business phone number of the Secretary to the Commission.

(b) When the Commission has voted to close any portion of any meeting in accordance with § 201.36 of this subpart, the notice referred to in paragraph (a) of this section shall also include, or be amended to include, if already issued, (1) A list of the persons reasonably expected to be present at such closed portion or portions of the meeting, (2) A corresponding list of the affiliations of those persons reasonably expected to be present, (3) A written copy of the vote of each Commissioner on whether or not the portion or portions of the meeting or series of meetings should be closed to public observation, (4) A full, written explanation of the Commission's action in closing the portion or portions of the meeting or series of meetings, and (5) A copy of the certification of the General Counsel, called for by § 201.39 of this subpart, that such portion or portions of the meeting or series of meetings were properly closed to the public by the Commission. When a vote to close a portion or portions of a meeting in accordance with § 201.36 of this subpart or a vote to change the subject matter of a meeting or to change a determination to open or close a meeting, or portion thereof, to the public in accordance with § 201.37(b) of this subpart fails for lack of a majority of the entire membership of the Commission, the vote shall also be published as part of the notice required by paragraph (a) of this section.

(c)(1) The 7-day period for public notice provided for in paragraph (a) of this section shall not apply when a majority of the entire membership of the Commission determines by recorded vote that Commission business requires that a particular meeting be called with less than 7 days' notice and that no earlier announcement of such meeting was possible.

(2) When the Commission has voted in conformity with paragraph (c)(1) of this section to shorten the 7-day period for public notice provided for by paragraph (a) of this section with respect to a particular meeting, the Commission shall issue the public notice required by paragraph (a) of this section at the earliest practicable time.

(3) When the Commission not only has voted in conformity with paragraph (c)(1) of this section to shorten the 7-day period for public notice provided for in paragraph (a) of this section with respect to a particular meeting, but also has voted to close a portion or portions of such meeting in accordance with § 201.36 of this subpart, the public notice required by paragraph (c)(2) of this section shall also include, or be amended to include, if already issued, those items specified in paragraph (b) of this section.

(d)(1) When the Commission has changed the time or place of a publicly announced meeting by acting under § 201.37(a) of this subpart, the public notice required by paragraph (a) or (c)(2) of this section shall be amended to reflect such changed time or place.

(2) When the Commission has changed the subject matter of a meeting or its determination to open or close a meeting, or portion thereof, to the public following a public notice by acting under § 201.37(b) of this subpart, the public notice required by paragraph (a) or (c)(2) of this section shall be amended to

(i) Include a statement affirming that Commission business required the change in subject matter and that no earlier announcement of such change was possible and

(ii) Indicate the change in subject matter and the vote of each Commissioner upon such change.

(e)(1) The Secretary shall issue the public notices required by this section and such amendments thereto as are appropriate to the specific meeting to which they pertain.

(2) The Secretary

(i) Shall promptly post the public notices referred to in paragraph (e)(1) of this section on bulletin boards outside the Office of the Secretary to the Commission,

(ii) Shall make copies thereof available to interested members of the public, including mailing copies thereof through a mailing list of those persons desiring to receive such notices and distributing copies to the press, whether of specialized or general readership, and

(iii) Shall immediately submit said public notices to the FEDERAL REGISTER for publication.

(3) The Office of the Secretary shall respond to all questions from the public concerning the agendas of Commission meetings. Persons desiring to receive copies of notices of Commission meetings should contact the Office of the Secretary and request to be placed on the mailing list.

[42 FR 11243, Feb. 28, 1977, as amended at 58 FR 64121, Dec. 6, 1993]

§ 201.36 Closing a portion or portions of a meeting or a series of meetings.

(a) Every meeting of the Commission shall be open to public observation except when the Commission properly determines in the manner specified in paragraph (d) of this section that a portion or portions of a Commission meeting shall be closed to the public for the specific reasons enumerated in paragraph (b) of this section.

(b) The Commission may close a portion or portions of a Commission meeting only when it determines that public disclosure of information to be discussed at such meeting is likely to:

(1) Disclose matters that are (i) Specifically authorized under criteria established by Executive order to be kept secret in the interests of national defense or foreign policy and (ii) in fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act), provided that such statute (i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature when disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law-enforcement purposes, or information which, if written, would be contained in such records, but only to the extent that the production of such records or information would: (i) Interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or to an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, or (iv) disclose the identity of a confidential source, and, in the case of a record compiled by a criminal law-enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national-security intelligence investigation, confidential information furnished only by the confidential source;

(8)(i) Disclose information the premature disclosure of which would, in those instances where the Commission regulates commodities, be likely to lead to significant financial speculation in such commodities;

(ii) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed Commission action except (A) When the Commission has already disclosed to the public the content or nature of its proposed action or (B) when the Commission is required by law to make such disclosure on its own initiative prior to taking final Commission action on such proposal; or

(9) Specifically concern:

(i) The Commission's issuance of a subpoena,

(ii) The Commission's participation in a civil action or proceeding, or

(iii) The initiation, conduct, or disposition by the Commission of a particular case of formal Commission adjudication under 19 U.S.C. 1337 pursuant to the procedures of 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(c)(1) When the Commission has determined that one or more of the specific reasons enumerated in paragraph (b) of this section for closing a portion or portions of a Commission meeting is applicable to the subject matter or matters to be discussed, the Commission shall consider whether or not the public interest requires that such portion or portions of the meeting be open to public observation.

(2) In making the public-interest determination under paragraph (c)(1) of this section, the Commission shall consider whether public disclosure would (i) Interfere with the Commission's carrying out its statutory responsibilities, (ii) Conflict with the individual right of privacy under the Privacy Act of 1974 (5 U.S.C. 552a), or (iii) Place the Commission in violation of any other applicable provision of law, in addition to any other factors which it deems to be relevant to the particular meeting in question.

(d)(1) Action by the Commission to close a portion or portions of a meeting for one or more of the specific reasons enumerated in paragraphs (b) (1) through (9) of this section shall be taken only when a majority of the entire membership of the Commission has voted to take such action.

(2) A single recorded vote of the Commission shall be taken with respect to: (i) Each Commission meeting of which the Commission proposes to close a portion or portions to the public for one or more of the specific reasons enumerated in paragraphs (b) (1) through (9) of this section, or (ii) any information which the Commission proposes to withhold from the public for one or more of the specific reasons enumerated in paragraphs (b) (1) through (9) of this section. No proxy votes are permissible.

(e)(1) Action by the Commission to close a series of meetings of which the Commission proposes to close a portion or portions to the public for one or more of the specific reasons enumerated in paragraphs (b) (1) through (9) of this section may be taken by a single recorded vote of the Commission to close such portion or portions of the series. No proxy votes are permissible.

(2) A series of meetings may be closed pursuant to paragraph (e)(1) of this section so long as each meeting in such series: (i) Involves the same particular matters and (ii) is scheduled to be held no more than 30 days after the initial meeting in such series.

(f) When the Commission (i) Has voted to close a portion or portions of a meeting in accordance with paragraph (d) of this section or (ii) has voted to close a portion or portions of a series of meetings in accordance with paragraph (e) of this section, the public notices referred to in paragraph (a) or (c)(2) of § 201.35 shall be issued or amended in accordance with paragraph (b) or (c)(3) of § 201.35 at the earliest practicable time, but no later than one (1) working day following such vote.

§ 201.37 Changing the time, place, subject matter, or determination to open or close a meeting following a public notice.

(a) The time or place of a Commission meeting may be changed following a public announcement required by § 201.35 only if the Commission publicly announces such change or changes at the earliest practicable time by issuing an appropriate amendment to the public notice as required by § 201.35.

(b) The subject matter or matters of a Commission meeting or the determination of the Commission to open or close a meeting, or portion of a meeting, to the public may be changed following a public announcement required by § 201.35 only if:

(i) A majority of the entire membership of the Commission determines by recorded vote that Commission business so requires and that no earlier announcement of the change was possible and

(ii) The Commission publicly announces such change in subject matter or such change in the determination of the Commission to open or close a meeting, or a portion of a meeting, to the public and the vote of each Commissioner upon such change or changes

in a subsequent amendment of the public notice required by § 201.35.

§ 201.38 Requests by interested persons that the Commission close a portion of a Commission meeting.

(a) Whenever any person whose interests may be directly affected by a portion of a Commission meeting requests that the Commission close such portion to the public for any of the specific reasons enumerated in paragraphs (b) (5), (6), or (7) of § 201.36, the Commission, upon the request of any one of the Commissioners, shall take a vote in the manner specified in § 201.36 of this subpart on whether or not to close such portion of the meeting.

(b) When the Commission votes on a request to close a portion of a meeting under paragraph (a) of this section in the manner specified in § 201.36(d), a public notice as required by paragraphs (a) and (b) of § 201.35 shall be issued.

§ 201.39 General Counsel's certification of Commission action in closing a meeting or a series of meetings.

Before a Commission meeting may be closed for the specific reasons enumerated in paragraphs (b) (1) through (9) of § 201.36, the General Counsel (i) Shall, in the related public notice, certify that in his or her opinion the meeting may be closed to the public and (ii) Shall state each applicable exemptive provision of paragraphs (b) (1) through (9) of § 201.36.

§ 201.40 Records-retention requirements.

(a) The Secretary shall maintain a copy of the certification by the General Counsel required by § 201.39 for each Commission meeting of which a portion or portions are closed to the public pursuant to a vote under § 201.36(d).

(b) The Secretary shall also maintain a copy of a statement from the presiding officer of each Commission meeting or portion thereof which was closed to the public for the specific reasons enumerated in paragraphs (b) (1) through (9) of § 201.36(b) setting forth (i) The time and place of the closed meeting, or portion thereof, and (ii) A list of the persons present thereat.

(c) The Secretary shall also maintain a complete transcript or electronic recording of the proceedings of each Commission meeting or portion of a meeting, whether open to public observation or closed to the public. The Secretary shall also maintain a complete transcript or electronic recording of all deliberations conducted under paragraphs (a) (4), (5), and (6) of § 201.34 of this subpart.

(d) Where portions of a Commission meeting are closed for the reasons contained in paragraphs (b) (8)(A) or (9) of § 201.36, the Commission preserves the option to maintain detailed minutes of such portions. Such detailed minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(e) The retention period for the records required by paragraphs (a), (b), (c), and (d) of this section shall be for a period of at least two (2) years after the particular Commission meeting, or until one (1) year after the conclusion of any Commission proceeding with respect to which the meeting or portion thereof was held, whichever occurs later.

(f) The requirements of paragraphs (c) and (d) of this section shall not affect or supplant the existing duty of the Secretary to maintain permanent minutes of each Commission meeting. The Secretary shall also maintain permanent minutes of all deliberations conducted under paragraphs (a) (4), (5), and (6) of § 201.34 of this subpart.

§ 201.41 Public inspection and copying of records; applicable fees.

(a) The Secretary shall promptly make available to interested members of the public the transcript or electronic recording of the discussion of any item on the agenda of a Commission meeting or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the

Secretary determines to contain information which may be withheld for reasons specified in paragraphs (b) (1) through (9) of § 201.36. The determination of the Secretary shall be in conformity with a prior vote of the Commission under § 201.36(d) to close a portion or portions of a meeting.

(b) Public inspection of electronic recordings, transcripts, or minutes of Commission meetings shall take place at the United States International Trade Commission, 500 E Street SW., Washington, DC 20436. A room is designated by the Office of the Secretary and tape recorders with earphones are provided by the Commission for public-inspection purposes when proceedings are recorded on tape.

(c)(1) The Secretary shall provide any person with copies of transcripts, minutes of Commission meetings, or transcriptions of electronic recordings of Commission meetings, which disclose the identity of each speaker, at the actual cost of transcription or duplication.

(2) The Secretary shall not include items of discussion or testimony determined by the Secretary to contain information which may be withheld from the public for the reasons specified in paragraphs (b) (1) through (9) of § 201.36 in the copies furnished to the public in accordance with paragraph (c)(1) of this section. The determination of the Secretary shall be in conformity with a prior vote of the Commission under § 201.36(d) to close a portion or portions of a meeting.

Subpart F—National Security Information

AUTHORITY: 19 U.S.C. 1335; E.O. 13526, 75 FR 707.

SOURCE: 79 FR 46350, Aug. 8, 2014, unless otherwise noted.

§ 201.42 Purpose and scope.

This subpart supplements Executive Order 13526 of December 29, 2009, and its implementing directive (32 CFR part 2001) as it applies to the Commission.

§ 201.43 Mandatory declassification review.

(a) *Requests for mandatory declassification review*—(1) *Definitions.* Mandatory declassification review (''MDR'') means the review for declassification of classified information in response to a request for declassification that meets the requirements under section 3.5 of Executive Order 13526.

(2) *Procedures.* Requests for MDR of information in the custody of the Commission that is classified under Executive Order 13526 or predecessor orders shall be directed to the Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. MDR requests will be processed in accordance with Executive Order 13526, its implementing directive, and this section. An MDR request must describe the document or material containing the requested information with sufficient specificity to enable Commission personnel to locate it with a reasonable amount of effort. Requests for broad types of information, entire file series of records, or similar non-specific requests may be denied processing. The Secretary shall notify a requester who has submitted a non-specific request that no further action will be taken on the request unless the requester provides additional description.

(b) *Freedom of Information Act and Privacy Act requests.* (1) Requests for records submitted under the Freedom of Information Act (''FOIA'') (5 U.S.C. 552), as amended, or the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which include classified information shall be processed in accordance with the provisions of those acts and applicable Commission regulations (subpart C of this part (FOIA regulations); subpart D of this part (Privacy Act regulations)).

(2) If a requester submits a request under FOIA and also requests MDR, the Secretary shall require the requester to select one process or the other. If the requester fails to select one or the other process, the Secretary will treat the request as a FOIA request unless the requested materials are subject only to MDR.

(c) *Referral of MDR requests.* (1) Because the Commission does not have original classification authority and

all U.S. originated classified information in its custody has been originally classified by another Federal agency, the Secretary shall refer all requests for MDR and the pertinent records to the originating agency for review. Following consultations with the originating agency, the Secretary shall notify the requester of the referral unless such association is itself classified under Executive Order 13526 or its predecessor orders. The Secretary shall request that the originating agency, in accordance with 32 CFR 2001.33(a)(2)(ii) and 2001.34(e):

(i) Promptly process the request for declassification,

(ii) Communicate its declassification determination to the Secretary, and

(iii) If the originating agency proposes to withhold any information from public release, notify the Secretary of the specific information at issue and the applicable law that authorizes and warrants withholding such information.

(2) Unless a prior arrangement has been made with the originating agency, the Secretary shall collect the results of that agency's review and inform the requester of any final decision regarding the declassification of the requested information as follows:

(i) If the originating agency denies declassification of the requested information in whole or in part, the Secretary shall ensure that the decision provided to the requester includes notification of the right to file an administrative appeal with the originating agency within 60 days of receipt of the denial and the mailing address for the appellate authority at the originating agency.

(ii) If the originating agency declassifies the requested information in whole or in part, the Secretary shall determine whether the requested declassified information is exempt from disclosure, in whole or in part, under the provisions of a statutory authority, such as the FOIA. The Secretary shall inform the requester that an appeal from a denial of requested declassified information must be received within 60 days of the date of the letter of denial and shall be made to the Commission and addressed to the Chairman, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

(d) *Foreign Government Information*—(1) *Definitions.* ''Foreign government information'' (''FGI'') means information provided to the United States Government by a foreign government or governments, an international organization of governments, or any element thereof, with the expectation that the information, the source of the information, or both, are to be held in confidence; information produced by the United States Government pursuant to or as a result of a joint arrangement with a foreign government or governments, or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence; or information received and treated as FGI under the terms of a predecessor of Executive Order 13526.

(2) *MDR requests for classified records in Commission custody that contain FGI.* The Commission will handle such MDR requests consistent with the requirements of Executive Order 13526 and 32 CFR part 2001. MDR requests for FGI initially received or classified by another Federal agency shall be referred to such agency following the referral procedures in paragraph (c) of this section.

(e) *Appeals of denials of MDR requests.* MDR appeals are for the denial of classified information only. Appeals of denials are handled in accordance with 32 CFR 2001.33(a)(2)(iii), which provides that the agency appellate authority deciding an administrative appeal of the denial of an MDR request shall notify the requester in writing of the reasons for any denial and inform the requester of his or her final appeal rights to the Interagency Security Classification Appeals Panel.

Subpart G—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the U.S. International Trade Commission

AUTHORITY: 29 U.S.C. 794.

SOURCE: 51 FR 4575, 4579, Feb. 5, 1986, unless otherwise noted.

§ 201.101 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 201.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 201.103 Definitions.

For purposes of this part, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Handicapped person means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addition and alcholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition but is treated by the agency as having such an impairment.

Qualified handicapped person means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(3) *Qualified handicapped person* is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 201.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

[51 FR 4575, 4579, Feb. 5, 1986; 51 FR 7543, Mar. 5, 1986]

§§ 201.104–201.109 [Reserved]

§ 201.110 Self-evaluation.

(a) The agency shall, by April 9, 1987, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspections:

(1) A description of areas examined and any problems identified, and

(2) A description of any modifications made.

§ 201.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 201.112–201.129 [Reserved]

§ 201.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 201.131–201.139 [Reserved]

§ 201.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 201.141–201.148 [Reserved]

§ 201.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 201.150, no qualified handicapped person shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 201.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons; or

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally

alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 201.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by June 6, 1986, except that where structural changes in facilities are undertaken, such changes shall be made by April 7, 1989, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by October 7, 1986, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

[51 FR 4575, 4579, Feb. 5, 1986; 51 FR 7543, Mar. 5, 1986]

§ 201.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handicapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 201.152–201.159 [Reserved]

§ 201.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 201.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 201.161–201.169 [Reserved]

§ 201.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director, Office of Equal Employment Opportunity, shall be responsible for coordinating implementation of this section. Complaints may be sent to the Director, Office of Equal Employment Opportunity, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or

facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible to and usable by handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found;

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 201.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[51 FR 4575, 4579, Feb. 5, 1986, as amended at 51 FR 4576, Feb. 5, 1986; 68 FR 32975, June 3, 2003]

§§ 201.171–201.999 [Reserved]

Subpart H—Debt Collection

AUTHORITY: 19 U.S.C. 1335; 5 U.S.C. 5514(b)(1); 31 U.S.C. 3716(b); 31 U.S.C. 3720A(b)(4); 31 CFR chapter IX; 26 CFR 301.6402–6(b).

SOURCE: 62 FR 38019, July 16, 1997, unless otherwise noted.

§ 201.201 Definitions.

Except where the context clearly indicates otherwise or where the term is defined elsewhere in this section, the following definitions shall apply to this subpart.

(a) *Agency* means a department, agency, court, court administrative office, or instrumentality in the executive, judicial, or legislative branch of Government, including government corporations.

(b) *Certification* means a written statement received by a paying agency from a creditor agency that requests the paying agency to offset the salary of an employee and specifies that required procedural protections have been afforded the employee.

(c) *Chairman* means the Chairman of the Commission.

(d) *Compromise* means the settlement or forgiveness of a debt.

(e) *Creditor agency* means an agency of the Federal government to which the debt is owed.

(f) *Director* means the Director, Office of Finance of the Commission or an official designated to act on the Director's behalf.

(g) *Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, and, in the case of an employee not entitled to basic pay, other authorized pay, remaining for each pay period after the deduction of any amount required by law to be withheld. The Commission shall allow the following deductions in determining the amount of disposable pay that is subject to salary offset:

(1) Federal employment taxes;

(2) Amounts mandatorily withheld for the United States Soldiers' and Airmen's Home;

(3) Fines and forfeiture ordered by a court-martial or by a commanding officer;

(4) Amounts deducted for Medicare;

(5) Federal, state, or local income taxes to the extent authorized or required by law, but no greater than would be the case if the employee claimed all dependents to which he or she is entitled and such additional

amounts for which the employee presents evidence of a tax obligation supporting the additional withholding;

(6) Health insurance premiums;

(7) Normal retirement contributions, including employee contributions to the Thrift Savings Plan;

(8) Normal life insurance premiums (e.g., Serviceman's Group Life Insurance and ''Basic Life'' Federal Employee's Group Life Insurance premiums), not including amounts deducted for supplementary coverage.

(h) *Employee* means a current employee of the Commission or other agency, including a current member of the Armed Forces or a Reserve of the Armed Forces of the United States.

(i) *Federal Claims Collection Standards (FCCS)* means standards published at 31 CFR chapter IX.

(j) *Hearing official* means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed and for rendering a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Chairman when the Commission is the creditor agency but may be an administrative law judge.

(k) *Notice of Intent to Offset* or *Notice of Intent* means a written notice from a creditor agency to an employee, organization, or entity stating that the debtor is indebted to the creditor agency and apprising the debtor of certain procedural rights.

(l) *Notice of Salary Offset* means a written notice from the paying agency to an employee after a certification has been issued by a creditor agency, informing the employee that salary offset will begin at the next officially established pay interval.

(m) *Office of Finance* means the Office of Finance of the Commission.

(n) *Paying agency* means the agency of the Federal government that employs the individual who owes a debt to an agency of the Federal government. In some cases, the Commission may be both the creditor agency and the paying agency.

[62 FR 38019, July 16, 1997, as amended at 68 FR 32976, June 3, 2003]

§ 201.202 Purpose and scope of salary and administrative offset rules.

(a) *Purpose.* The purpose of sections 201.201 through 201.207 is to implement 5 U.S.C. 5514, 31 U.S.C. 3716, and 31 U.S.C. 3720A which authorize the collection by salary offset, administrative offset, or tax refund offset of debts owed by persons, organizations, or entities to the Federal government. Generally, however, a debt may not be collected by such means if it has been outstanding for more than ten years after the agency's right to collect the debt first accrued. These proposed regulations are consistent with the Office of Personnel Management regulations on salary offset, codified at 5 CFR Part 550, subpart K, and with regulations on administrative offset codified at 31 CFR part 901.

(b) *Scope.* (1) Sections 201.201 through 201.207 establish agency procedures for the collection of certain debts owed the Government.

(2) Sections 201.201 through 201.207 apply to collections by the Commission from:

(i) Federal employees who are indebted to the Commission;

(ii) Employees of the Commission who are indebted to other agencies; and

(iii) Other persons, organizations, or entities that are indebted to the Commission.

(3) Sections 201.201 through 201.207 do not apply:

(i) To debts or claims arising under the Internal Revenue Code of 1986 (26 U.S.C. *et seq.*), the Social Security Act (42 U.S.C. 301 *et seq.*), or the tariff laws of the United States;

(ii) To a situation to which the Contract Disputes Act (41 U.S.C. 601 *et seq.*) applies; or

(iii) In any case where collection of a debt is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 4108).

(4) Nothing in Sections 201.201 through 201.207 precludes the compromise, suspension, or termination of collection actions where appropriate under the standards implementing the Federal Claims Collection Act (31 U.S.C. 3711 *et seq.*), namely, 31 CFR chapter IX.

[62 FR 38019, July 16, 1997, as amended at 68 FR 32976, June 3, 2003]

§ 201.203 Delegation of authority.

Authority to conduct the following activities is hereby delegated to the Director:

(a) Initiate and effectuate the administrative collection process;

(b) Accept or reject compromise offers and suspend or terminate collection actions where the claim does not exceed $100,000 or such higher amount as the Chairman may from time to time prescribe, exclusive of interest, administrative costs, and penalties as provided herein, as set forth in 31 U.S.C. 3711(a)(2);

(c) Report to consumer reporting agencies certain data pertaining to delinquent debts;

(d) Use offset procedures to effectuate collection; and

(e) Take any other action necessary to facilitate and augment collection in accordance with the policies contained herein and as otherwise provided by law.

§ 201.204 Salary offset.

(a) *Notice requirements before offset where the Commission is the creditor agency*. Deductions under the authority of 5 U.S.C. 5514 will not be made unless the Commission provides the employee with a written Notice of Intent to Offset a minimum of 30 calendar days before salary offset is initiated. The Notice of Intent shall state:

(1) That the Director has reviewed the records relating to the claim and has determined that a debt is owed;

(2) The Director's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest is paid in full;

(3) The amount of the debt and the facts giving rise to the debt;

(4) A repayment schedule that includes the amount, frequency, proposed beginning date, and duration of the intended deductions;

(5) The opportunity for the employee to propose an alternative written schedule for the voluntary repayment of the debt, in lieu of offset, on terms acceptable to the Commission. The employee shall include a justification in the request for the alternative schedule. The schedule shall be agreed to and signed by both the employee and the Director;

(6) An explanation of the Commission's policy concerning interest, penalties, and administrative costs, including a statement that such assessments must be made unless excused in accordance with the Federal Claims Collection Standards;

(7) The employee's right to inspect and copy all records of the Commission not exempt from disclosure pertaining to the debt claimed or to receive copies of such records if the debtor is unable personally to inspect the records, due to geographical or other constraints;

(8) The name, address, and telephone number of the Director to whom requests for access to records relating to the debt must be sent;

(9) The employee's right to a hearing conducted by an impartial hearing official (an administrative law judge or other hearing official not under the supervision or control of the Chairman) with respect to the existence and amount of the debt claimed or the repayment schedule (i.e., the percentage of disposable pay to be deducted each pay period), so long as a request is filed by the employee as prescribed in paragraph (c)(1) of this section;

(10) The name, address, and telephone number of the Director to whom a proposal for voluntary repayment must be sent and who may be contacted concerning procedures for requesting a hearing;

(11) The method and deadline for requesting a hearing;

(12) That the timely filing of a request for a hearing on or before the 15th calendar day following receipt of the Notice of Intent will stay the commencement of collection proceedings;

(13) The name and address of the office to which the request should be sent;

(14) That the Commission will initiate certification procedures to implement a salary offset not less than 30 days from the date of receipt of the Notice of Intent to Offset, unless the employee files a timely request for a hearing;

(15) That a final decision on whether a hearing will be held (if one is requested) will be issued at the earliest practical date;

(16) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under 5 U.S.C. Chapter 75, 5 CFR part 752, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, 31 U.S.C. 3729–3733, or under any other applicable statutory authority; or

(iii) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or under any other applicable statutory authority;

(17) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(18) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted from debts that are later waived or found not to be owed to the United States will be promptly refunded to the employee; and

(19) That proceedings with respect to such debt are governed by 5 U.S.C. 5514.

(b) *Review of Commission records related to the debt.* (1) An employee who desires to inspect or copy Commission records related to a debt owed to the Commission must send a letter to the Director as designated in the Notice of Intent requesting access to the relevant records. The letter must be received in the office of the Director within 15 calendar days after the employee's receipt of the Notice of Intent.

(2) In response to a timely request submitted by the debtor, the Director will notify the employee of the location and time when the employee may inspect and copy records related to the debt.

(3) If the employee is unable personally to inspect the records, due to geographical or other constraints, the Director shall arrange to send copies of such records to the employee.

(c) *Opportunity for a hearing where the Commission is the creditor agency*—(1) *Request for a hearing.* (i) An employee who requests a hearing on the existence or amount of the debt held by the Commission or on the offset schedule proposed by the Commission must send such request to the Director. The request for a hearing must be received by the Director on or before the 15th calendar day following receipt by the employee of the notice.

(ii) The employee must specify whether an oral hearing is requested. If an oral hearing is desired, the request should explain why the matter cannot be resolved by review of the documentary evidence alone. The request must be signed by the employee and must fully identify and explain with reasonable specificity all the facts, evidence, and witnesses, if any, that the employee believes support his or her position.

(2) *Failure to timely submit.* If the employee files a request for hearing after the expiration of the 15-calendar-day period provided for in paragraph (c)(1) of this section, the Director may accept the request if the employee can show that the delay was the result of circumstances beyond his or her control or that he or she failed to receive actual notice of the filing deadline.

(3) *Obtaining the services of a hearing official.* (i) When the debtor is not a Commission employee and the Commission cannot provide a prompt and appropriate hearing before an administrative law judge or other hearing official, the Commission may request a hearing official from an agent of the paying agency, as designated in 5 CFR part 581, appendix A, or as otherwise designated by the paying agency.

(ii) When the debtor is a Commission employee, the Commission may contact any agent of another agency, as designated in 5 CFR part 581, appendix A, or as otherwise designated by the agency, to request a hearing official.

(4) *Procedure*—(i) *Notice.* After the employee requests a hearing, the hearing official shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, the notice shall set forth the date, time, and location of the hearing, which must occur no more than 30 calendar days after the request is received, unless the employee requests that the hearing be delayed. If the hearing will be conducted by examination of documents, the employee shall be notified within 30 calendar days that he or she should submit evidence and arguments in writing to the hearing official.

(ii) *Oral hearing*. An employee who requests an oral hearing shall be provided an oral hearing if the hearing official determines that the matter cannot be resolved by review of documentary evidence alone (e.g., when an issue of credibility or veracity is involved). The hearing need not be an adversarial adjudication, and rules of evidence need not apply. Witnesses who testify in oral hearings shall do so under oath or affirmation. Oral hearings may take the form of, but are not limited to:

(A) Informal conferences with the hearing official in which the employee and agency representative are given full opportunity to present evidence, witnesses, and argument;

(B) Informal meetings in which the hearing examiner interviews the employee; or

(C) Formal written submissions followed by an opportunity for oral presentation.

(iii) *Documentary hearing*. If the hearing official determines that an oral hearing is not necessary, he or she shall make the determination based upon a review of the written record.

(iv) *Record*. The hearing official shall maintain a summary record of any hearing conducted under this section.

(5) *Date of decision*. The hearing official shall issue a written opinion stating his or her decision, based upon all evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than 60 calendar days after the date on which the request was received by the Commission, unless the hearing was delayed at the request of the employee, in which case the 60 day decision period shall be extended by the number of days by which the hearing was postponed. The decision of the hearing official shall be final.

(6) *Content of decision*. The written decision shall include:

(i) A summary of the facts concerning the origin, nature, and amount of the debt;

(ii) The hearing official's findings, analysis, and conclusions; and

(iii) The terms of any repayment schedules, if applicable.

(7) *Failure to appear*. If, in the absence of good cause shown (e.g., illness), the employee or the representative of the Commission fails to appear, the hearing official shall proceed with the hearing as scheduled, and make his or her determination based upon the oral testimony presented and the documentation submitted by both parties. At the request of both parties, the hearing official may schedule a new hearing date. Both parties shall be given reasonable notice of the time and place of this new hearing.

(d) *Certification where the Commission is the creditor agency*. (1) The Director shall issue a certification in all cases where:

(i) The hearing official determines that a debt exists; or

(ii) The employee admits the existence and amount of the debt, for example, by failing to request a hearing.

(2) The certification must be in writing and must state:

(i) That the employee owes the debt;

(ii) The amount and basis of the debt;

(iii) The date the Government's right to collect the debt first accrued;

(iv) That the Commission's regulations have been approved by OPM pursuant to 5 CFR part 550, subpart K;

(v) If the collection is to be made by lump-sum payment, the amount and date such payment will be collected;

(vi) If the collection is to be made in installments, the number of installments to be collected, the amount of each installment, and the date of the first installment, if a date other than the next officially established pay period; and

(vii) The date the employee was notified of the debt, the action(s) taken pursuant to the Commission's regulations, and the dates such actions were taken.

(e) *Voluntary repayment agreements as alternative to salary offset where the Commission is the creditor agency*. (1) In response to a Notice of Intent, an employee may propose to repay the debt in accordance with scheduled installment payments. Any employee who wishes to repay a debt without salary offset shall submit in writing a proposed agreement to repay the debt. The proposal shall set forth a proposed repayment schedule. Any proposal under paragraph (e) of this section must be

received by the Director within 15 calendar days after receipt of the Notice of Intent.

(2) In response to a timely proposal by the debtor, the Director shall notify the employee whether the employee's proposed written agreement for repayment is acceptable. It is within the discretion of the Director to accept, reject, or propose to the debtor a modification of the proposed repayment agreement.

(3) If the Director decides that the proposed repayment agreement is unacceptable, the employee shall have 15 calendar days from the date he or she received notice of the decision in which to file a request for a hearing.

(4) If the Director decides that the proposed repayment agreement is acceptable or the debtor agrees to a modification proposed by the Director, the agreement shall be put in writing and signed by both the employee and the Director.

(f) *Special review where the Commission is the creditor agency*. (1) An employee subject to salary offset or a voluntary repayment agreement may, at any time, request a special review by the Director of the amount of the salary offset or voluntary payment, based on materially changed circumstances, including, but not limited to, catastrophic illness, divorce, death, or disability.

(2) In determining whether, as a result of materially changed circumstances, an offset would prevent the employee from meeting essential subsistence expenses (costs incurred for food, housing, clothing, transportation, and medical care), the employee shall submit to the Director a detailed statement and supporting documents for the employee, his or her spouse, and dependents indicating:

(i) Income from all sources;

(ii) Assets;

(iii) Liabilities;

(iv) Number of dependents;

(v) Expenses for food, housing, clothing, and transportation;

(vi) Medical expenses; and

(vii) Exceptional expenses, if any.

(3) If the employee requests a special review under paragraph (f) of this section, the employee shall file an alternative proposed offset or payment schedule and a statement, with supporting documents, showing why the current salary offset or payments result in extreme financial hardship to the employee.

(4) The Director shall evaluate the statement and supporting documents and determine whether the original offset or repayment schedule imposes extreme financial hardship on the employee. The Director shall notify the employee in writing within 30 calendar days of such determination, including, if appropriate, his or her acceptance of a revised offset or payment schedule.

(5) If the special review results in a revised offset or repayment schedule, the Director shall provide a new certification to the paying agency.

(g) *Notice of salary offset where the Commission is the paying agency*. (1) Upon issuance of a proper certification by the Director (for debts owed to the Commission) or upon receipt of a proper certification from another creditor agency, the Office of Finance shall send the employee a written notice of salary offset. Such notice shall advise the employee:

(i) Of the certification that has been issued by the Director or received from another creditor agency;

(ii) Of the amount of the debt and of the deductions to be made; and

(iii) Of the initiation of salary offset at the next officially established pay interval or as otherwise provided for in the certification.

(2) The Office of Finance shall provide a copy of the notice to the creditor agency and advise such agency of the dollar amount to be offset and the pay period when the offset will begin.

(h) *Procedures for salary offset where the Commission is the paying agency*—(1) *Generally*. (i) The Director shall coordinate salary deductions under this section.

(ii) The Director shall determine the amount of an employee's disposable pay and the amount of the salary offset subject to the requirements in this paragraph.

(iii) Deductions shall begin the pay period following the issuance of the certification by the Director or the receipt by the Office of Finance of the certification from another agency or as soon thereafter as possible.

(2) *Types of collection*—(i) *Lump-sum payment.* If the amount of the debt is equal to or less than 15 percent of the employee's disposable pay, such debt ordinarily will be collected in one lump-sum payment.

(ii) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any pay period will not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount. The installment payment should normally be sufficient in size and frequency to liquidate the debt in no more than three years. Installment payments of less than $50 should be accepted only in the most unusual circumstances.

(iii) *Lump-sum deductions from final check.* In order to liquidate a debt, a lump-sum deduction exceeding 15 percent of disposable pay may be made pursuant to 31 U.S.C. 3716 and 5 U.S.C. 5514(a)(1) from any final salary payment due a former employee, whether the former employee was separated voluntarily or involuntarily.

(iv) *Lump-sum deductions from other sources.* Whenever an employee subject to salary offset is separated from the Commission, and the balance of the debt cannot be liquidated by offset of the final salary check, the Commission, pursuant to 31 U.S.C. 3716, may offset any later payments of any kind to the former employee to collect the balance of the debt.

(3) *Multiple debts.* Where two or more creditor agencies are seeking salary offset, or where two or more debts are owed to a single creditor agency, the Office of Finance may, at its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

(4) *Order of precedence for recovery of debts owed the Government.* (i) For Commission employees, subject to paragraph (h)(3) of this section and (paragraph (h)(4)(ii) of this section, offsets to recover debts owed the United States Government shall be made from disposable pay in the following order of precedence:

(A) Indebtedness due the Commission;

(B) Indebtedness due other agencies.

(ii) In the event that a debt to the Commission is certified while an employee is subject to salary offset to repay another agency, the Office of Finance may, at its discretion, determine whether the debt to the Commission should be repaid before the debt to the other agency, repaid simultaneously, or repaid after the debt to the other agency.

(iii) A levy pursuant to the Internal Revenue Code of 1986 shall take precedence over other deductions under this section, as provided in 5 U.S.C. 5514(d).

(i) *Coordinating salary offset with other agencies*—(1) *Responsibility of the Commission as the creditor agency.* (i) The Director shall be responsible for:

(A) Arranging for a hearing upon proper request by a Federal employee;

(B) Preparing the Notice of Intent to Offset consistent with the requirements of paragraph (a) of this section;

(C) Obtaining hearing officials from other agencies pursuant to paragraph (c)(3) of this section; and

(D) Ensuring that each certification of debt is sent to a paying agency pursuant to paragraph (d)(2) of this section.

(ii) Upon completion of the procedures established in paragraphs (a) through (f) of this section, the Director shall submit a certified debt claim and an installment agreement or other instruction on the payment schedule, if applicable, to the employee's paying agency.

(iii) If the employee is in the process of separating from Government employment, the Commission shall submit its debt claim to the employee's paying agency for collection by lump-sum deduction from the employee's final check. The paying agency shall certify the total amount of its collection and furnish a copy of the certification to the Commission and to the employee.

(iv) If the employee is already separated and all payments due from his or her former paying agency have been paid, the Commission may, unless otherwise prohibited, request that money

due and payable to the employee from the Federal Government be administratively offset to collect the debt.

(v) When an employee transfers to another paying agency, the Commission shall not repeat the procedures described in paragraphs (a) through (f) of this section in order to resume collecting the debt. Instead, the Commission shall review the debt upon receiving the former paying agency's notice of the employee's transfer and shall ensure that collection is resumed by the new paying agency.

(2) *Responsibility of the Commission as the paying agency*—(i) *Complete claim.* When the Commission receives a certified claim from a creditor agency, the employee shall be given written notice of the certification, the date salary offset will begin, and the amount of the periodic deductions. Deductions shall be scheduled to begin at the next officially established pay interval or as otherwise provided for in the certification.

(ii) *Incomplete claim.* When the Commission receives an incomplete certification of debt from a creditor agency, the Commission shall return the debt claim with notice that procedures under 5 U.S.C. 5514 and 5 CFR 550.1104 must be followed and that a properly certified debt claim must be received before action will be taken to collect from the employee's current pay account.

(iii) *Review.* The Commission is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(iv) *Employees who transfer from one paying agency to another agency.* If, after the creditor agency has submitted the debt claim to the Commission, the employee transfers to an agency outside the Commission before the debt is collected in full, the Commission must certify the total amount collected on the debt. One copy of the certification shall be furnished to the employee and one copy shall be sent to the creditor agency along with notice of the employee's transfer. If the Commission is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt (including the amount) and that the requirements set forth herein and in the Office of Personnel Management's regulation (5 CFR part 550) have been fully met.

(j) Interest, Penalties, and Administrative Costs. Where the Commission is the creditor agency, it shall assess interest, penalties, and administrative costs pursuant to 31 U.S.C. 3717 and 31 CFR 901.9.

(k) *Refunds.* (1) Where the Commission is the creditor agency, it shall promptly refund any amount deducted under the authority of 5 U.S.C. 5514 when:

(i) The debt is compromised or otherwise found not to be owing to the United States; or

(ii) An administrative or judicial order directs the Commission to make a refund.

(2) Unless required by law or contract, refunds under this paragraph (k) shall not bear interest.

(l) *Request from a creditor agency for the services of a hearing official.* (1) The Commission may provide a hearing official upon request of the creditor agency when the debtor is employed by the Commission and the creditor agency cannot provide a prompt and appropriate hearing before a hearing official furnished pursuant to another lawful arrangement.

(2) The Commission may provide a hearing official upon request of a creditor agency when the debtor works for the creditor agency and that agency cannot arrange for a hearing official.

(3) The Director shall arrange for qualified personnel to serve as hearing officials.

(4) Services rendered under this paragraph (l) shall be provided on a fully reimbursable basis pursuant to 31 U.S.C. 1535.

(m) *Non-waiver of rights by payments.* A debtor's payment, whether voluntary or involuntary, of all or any portion of a debt being collected pursuant to this section shall not be construed as a waiver of any rights that the debtor

may have under any statute, regulation, or contract except as otherwise provided by law or contract.

(n) Exception to due process procedures. The procedures set forth in this section shall not apply to adjustments described in 5 U.S.C. 5514(a)(3) and 5 CFR 550.1104(c).

[62 FR 38019, July 16, 1997, as amended at 68 FR 32976, June 3, 2003]

§ 201.205 Salary adjustments.

Any negative adjustment to pay arising out of an employee's election of coverage, or a change in coverage, under a Federal benefits program requiring periodic deductions from pay shall not be considered collection of a ''debt'' for the purposes of this section if the amount to be recovered was accumulated over four pay periods or less. In such cases, the Commission need not comply with § 201.204, but it will provide a clear and concise statement in the employee's earnings statement advising the employee of the previous overpayment at the time the adjustment is made.

§ 201.206 Administrative offset.

(a) *Collection.* The Director may collect a claim pursuant to 31 U.S.C. 3716 from a person, organization, or entity other than an agency of the United States Government by administrative offset of monies payable by the Government. Collection by administrative offset shall be undertaken where the claim is certain in amount, where offset is feasible and desirable and not otherwise prohibited, where the applicable statute of limitations has not expired, and where the offset is in the best interest of the United States.

(b) *Offset prior to completion of procedures.* Prior to the completion of the procedures described in paragraph (c) of this section, the Commission may effect offset if:

(1) Failure to offset would substantially prejudice the Commission's ability to collect the debt; and

(2) The time before the payment is to be made does not reasonably permit completion of the procedures described in paragraph (c) of this section. Such prior offsetting shall be followed promptly by the completion of the procedures described in paragraph (c) of this section.

(c) *Debtor's rights.* (1) Unless the procedures described in paragraph (b) of this section are used, prior to collecting any claim by administrative offset or referring such claim to another agency for collection through administrative offset, the Director shall provide the debtor with the following:

(i) Written notification of the nature and amount of the claim, the intention of the Director to collect the claim through administrative offset, and a statement of the rights of the debtor under this paragraph;

(ii) An opportunity to inspect and copy the records of the Commission not exempt from disclosure with respect to the claim;

(iii) An opportunity to have the Commission's determination of indebtedness reviewed by the Director. Any request for review by the debtor shall be in writing and be submitted to the Commission within 30 calendar days of the date of the notice of the offset. The Director may waive the time limit for requesting review for good cause shown by the debtor. The Commission shall provide the debtor with a reasonable opportunity for an oral hearing when:

(A) An applicable statute authorizes or requires the Commission to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or

(B) The debtor requests reconsideration of the debt and the Commission determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although the Commission shall document all significant matters discussed at the hearing. In those cases where an oral hearing is not required by this section, the Commission shall nevertheless accord the debtor a ''paper hearing,'' (i.e., the

Commission will make its determination on the request for waiver or reconsideration based upon a review of the written record); and

(iv) An opportunity to enter into a written agreement for the repayment of the amount of the claim at the discretion of the Commission.

(2) If the procedures described in paragraph (b) of this section are employed, the procedures described in this paragraph shall be effected after offset.

(d) *Interest.* Pursuant to 31 U.S.C. 3717 and 31 CFR 901.9, the Commission shall assess interest, penalties and administrative costs on debts owed to the United States. The Commission is authorized to assess interest and related charges on debts that are not subject to 31 U.S.C. 3717 to the extent authorized under the common law or other applicable statutory authority.

(e) *Refunds.* Amounts recovered by offset but later found not to be owed to the Government shall be promptly refunded.

(f) *Requests for offset to other Federal agencies.* The Director may request that a debt owed to the Commission be administratively offset against funds due and payable to a debtor by another Federal agency. In requesting administrative offset, the Commission, as creditor, will certify in writing to the Federal agency holding funds of the debtor:

(1) That the debtor owes the debt;

(2) The amount and basis of the debt; and

(3) That the Commission has complied with the requirements of its own administrative offset regulations and the applicable provisions of 31 CFR part 901 with respect to providing the debtor with due process.

(g) *Requests for offset from other Federal agencies.* Any Federal agency may request that funds due and payable to its debtor by the Commission be administratively offset in order to collect a debt owed to such Federal agency by the debtor. The Commission shall initiate the requested offset only upon:

(1) Receipt of written certification from the creditor agency:

(i) That the debtor owes the debt;

(ii) The amount and basis of the debt;

(iii) That the agency has prescribed regulations for the exercise of administrative offset; and

(iv) That the agency has complied with its own administrative offset regulations and with the applicable provisions of 31 CFR part 901, including providing any required hearing or review.

(2) A determination by the Commission that collection by offset against funds payable by the Commission would be in the best interest of the United States as determined by the facts and circumstances of the particular case and that such offset would not otherwise be contrary to law.

[62 FR 38019, July 16, 1997, as amended at 68 FR 32976, June 3, 2003]

§ 201.207 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund

(a) Unless otherwise prohibited by law, the Commission may request that moneys which are due and payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset in reasonable amounts in order to collect in one full payment or a minimal number of payments debt owed to the Commission by the debtor. Such requests shall be made to the appropriate officials of the Office of Personnel Management in accordance with such regulations as may be prescribed by the Director of that Office.

(b) When making a request for administrative offset under paragraph (a) of this section, the Commission shall include a written certification that:

(1) The debtor owes the Commission a debt, including the amount of the debt;

(2) The Commission has complied with the applicable statutes, regulations, and procedures of the Office of Personnel Management; and

(3) The Commission has complied with the requirements of 31 CFR 901.3, including any required hearing or review.

(c) Once the Commission decides to request administrative offset under paragraph (a) of this section, it shall make the request as soon as practical after completion of the applicable procedures. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statute of limitations. At such time as the debtor

makes a claim for payments from the Fund, if at least a year has elapsed since the offset request was originally made, the debtor shall be permitted to offer a satisfactory repayment plan in lieu of offset upon establishing that changed financial circumstances would render the offset unjust.

(d) If the Commission collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, the Commission shall act promptly to modify or terminate its request for offset under paragraph (a) of this section.

[62 FR 38019, July 16, 1997, as amended at 68 FR 32976, June 3, 2003]

§ 201.208 Tax refund offset.

(a) *Scope*. The provisions of 26 U.S.C. 6402(d) and 31 U.S.C. 3720A authorize the Secretary of the Treasury to offset a delinquent debt owed to the United States Government from the tax refund due a taxpayer when other collection efforts have failed to recover the amount due.

(b) *Definitions*—(1) *Debt*. Debt means money owed by an individual, organization or entity from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, services, overpayments, civil and criminal penalties, damages, interest, fines, administrative costs, and all other similar sources. A debt becomes eligible for tax refund offset procedures if:

(i) It cannot currently be collected pursuant to the salary offset procedures of 5 U.S.C. 5514(a)(1);

(ii) The debt is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2) or cannot currently be collected by administrative offset under 31 U.S.C. 3716(a); and

(iii) The requirements of this section are otherwise satisfied.

(2) *Dispute*. A dispute is a written statement supported by documentation or other evidence that all or part of an alleged debt is not past due or legally enforceable, that the amount is not the amount currently owed, that the outstanding debt has been satisfied, or, in the case of a debt reduced to judgment, that the judgment has been satisfied or stayed.

(3) *Notice*. Notice means the information sent to the debtor pursuant to § 201.208(d). The date of the notice is the date shown on the notice letter as its date of issuance.

(4) *Past due*. All judgment debts are past due for purposes of this section. Such debts remain past due until paid in full.

(c) The Commission may refer any past due, legally enforceable non-judgment debt of an individual, organization or entity to Treasury for offset if the Commission's or the referring agency's rights of action accrued more than three months but less than ten years before the offset is made. Debts reduced to judgment may be referred at any time. Debts in amounts lower than $25.00 are not subject to referral.

(d) The Commission will provide the debtor with written notice of its intent to offset before initiating the offset. Notice will be mailed to the debtor at the current address of the debtor, as determined from information obtained from the IRS pursuant to 26 U.S.C. 6103(m)(2), (4), (5) or from information regarding the debt maintained by the Commission. The notice sent to the debtor will state the amount of the debt and inform the debtor that:

(1) The debt is past due;

(2) The Commission intends to refer the debt to Treasury for offset from tax refunds that may be due to the taxpayer;

(3) The Commission intends to provide information concerning the delinquent debt exceeding $100 to a consumer reporting bureau unless such debt has already been disclosed; and

(4) The debtor has 65 calendar days from the date of notice in which to present evidence that all or part of the debt is not past due, that the amount is not the amount currently owed, that the outstanding debt has been satisfied, or, if a judgment debt, that the debt has been satisfied, or stayed, before the debt is reported to a consumer reporting agency, if applicable, and referred to Treasury for offset from tax refunds.

(e) If the debtor neither pays the amount due nor presents evidence that the amount is not past due or is satisfied or stayed, the Commission will report the debt to a consumer reporting

agency at the end of the notice period, if applicable, and refer the debt to Treasury for offset from the taxpayer's federal tax refund. The Commission shall certify to Treasury that reasonable efforts have been made by the Commission to obtain payment of such debt.

(f) A debtor may request a review by the Commission if the debtor believes that all or part of the debt is not past due or is not legally enforceable, or, in the case of a judgment debt, that the debt has been stayed or the amount satisfied, as follows:

(1) The debtor must send a written request for review to the Director at the address provided in the notice.

(2) The request must state the amount disputed and the reasons why the debtor believes that the debt is not past due, is not legally enforceable, has been satisfied, or, if a judgment debt, has been satisfied or stayed.

(3) The request must include any documents that the debtor wishes to be considered or state that additional information will be submitted within the time permitted.

(4) If the debtor wishes to inspect records establishing the nature and amount of the debt, the debtor must make a written request to the Director for an opportunity for such an inspection. The office holding the relevant records not exempt from disclosure shall make them available for inspection during normal business hours within one week from the date of receipt of the request.

(5) The request for review and any additional information submitted pursuant to the request must be received by the Director at the address stated in the notice within 65 calendar days of the date of issuance of the notice.

(6) The Commission will review disputes and shall consider its records and any documentation and arguments submitted by the debtor. The Commission's decision to refer to Treasury any disputed portion of the debt shall be made by the Chairman. The Commission shall send a written notice of its decision to the debtor. There is no administrative appeal of this decision.

(7) If the evidence presented by the debtor is considered by a non-Commission agent or other entities or persons acting on the Commission's behalf, the debtor will be accorded at least 30 calendar days from the date the agent or other entity or person determines that all or part of the debt is past-due and legally enforceable to request review by an officer or employee of the Commission of any unresolved dispute.

(8) Any debt that previously has been reviewed pursuant to this section or any other section of this subpart, or that has been reduced to a judgment, may not be disputed except on the grounds of payments made or events occurring subsequent to the previous review or judgment.

(g) The Commission will notify Treasury of any change in the amount due promptly after receipt of payments or notice of other reductions.

(h) In the event that more than one debt is owed, the tax refund offset procedure will be applied in the order in which the debts became past due.

SUBCHAPTER B—NONADJUDICATIVE INVESTIGATIONS

PART 202—INVESTIGATIONS OF COSTS OF PRODUCTION

Sec.

AUTHORITY: Sec. 335, 72 Stat. 680; 19 U.S.C. 1335.

SOURCE: 27 FR 12120, Dec. 7, 1962, unless otherwise noted.

§ 202.1 Applicability of part.

This part 202 applies specifically to investigations under section 366 of the Tariff Act (19 U.S.C. 1336).[1] For other applicable rules see part 201 of this chapter.

§ 202.2 Applications.

(a) *Who may file*. Applications for an investigation to which this part 202 relates may be filed by any firm, association of firms, or corporation engaged in the production of a domestic article, or by any duly authorized representative of the foregoing.

(b) *Requirements for applications*. In addition to conforming with the requirements of § 201.8 of this chapter, applications under this part 202 shall include the following:

(1) A clear statement that they are requests for investigations for the purposes of section 336;

(2) The name or description of the article concerning which an investigation is sought;

(3) A reference to the tariff provision or provisions applicable to such article; and

(4) A statement indicating whether an increase or a decrease in the rate of duty is sought.

(c) *Supporting information*. The applicant must file with his application such supporting information as may be in his possession. As far as practicable, information of the following character should be furnished:

(1) Comparability of the domestic and foreign articles and the degree of competition between them.

(2) Trend in recent years of (i) domestic production, (ii) domestic sales, (iii) imports, (iv) costs of production, and (v) prices.

(3) Evidence of difference between domestic and foreign costs of production of the articles involved.

(4) Areas of greatest competition between the imported and domestic products and the principal market or markets in the United States.

(5) Other relevant factors that constitute, in the opinion of the applicant, an advantage or disadvantage in competition, and any other information which the applicant believes the Commission should consider.

§ 202.3 Preliminary inquiry.

Upon the receipt of an application properly filed, the Commission will make a preliminary inquiry for the purpose of determining whether there is good and sufficient reason for a full investigation. If such determination is in the affirmative, a full investigation will be instituted.

§ 202.4 Public hearing.

A public hearing will be held in connection with each full investigation to which this part 202 relates.

§ 202.5 Type of information to be developed at hearing.

Without excluding other factors, but with a view to assisting parties interested to present information necessary

[1] Section 336(a) of the Tariff Act provides in part that ''(1) upon request of the President, or (2) upon resolution of either or both Houses of Congress, or (3) upon its own motion, or (4) when in the judgment of the Commission there is good and sufficient reason therefor, upon application of any interested party, [the commission] shall investigate the differences in the costs of production of any domestic article and of any like or similar foreign article''. (19 U.S.C. 1336.) The provisions of section 336 of the Tariff Act may not be applied to any article with respect to the importation of which into the United States a foreign trade agreement has been concluded under the Trade Agreements Act of 1934, as amended, or the Trade Expansion Act. (19 U.S.C. 1352(a)).

for the formulation of findings required by the statute, the Commission will expect attention in the hearing to be concentrated upon facts relating to:

(a) The degree of competition between the foreign and domestic articles in the markets of the United States.

(b) The degree of likeness or similarity between grades, classes, and price groups of the American product and the imported article.

(c) Costs of production and importation. Statements of average cost of production, domestic and, so far as known, foreign, may be submitted subject to verification and review in the Commission's investigation. Such statements should include not only the direct costs for materials and labor, commonly termed prime cost, but also indirect costs such as indirect labor, overhead factory expenses, fixed charges, the portion of general and administrative expense chargeable to manufacture, imputed interest on investment equity, and transportation to markets. For the foreign product the expenses (other than duties) incident to importation are also important. Any information which may be available bearing on the general levels of domestic and foreign costs of production, the differentials between particular elements of domestic and foreign costs, and the extent to which invoice or wholesale prices are reliable evidence of foreign costs, will be pertinent.

(d) Other significant advantages or disadvantages in competition.

§ 202.6 Reports.

After the completion of its investigation, the Commission will incorporate its findings in a report, and the report will be transmitted to the President.

PART 204—INVESTIGATIONS OF EFFECTS OF IMPORTS ON AGRICULTURAL PROGRAMS

Sec.

AUTHORITY: 19 U.S.C. 1335.

SOURCE: 27 FR 12121, Dec. 7, 1962, unless otherwise noted.

§ 204.1 Applicability of part.

This part 204 applies specifically to investigations under section 22 of the Agricultural Adjustment Act, as amended (7 U.S.C. 624).[1] For other applicable rules see part 201 of this chapter.

[27 FR 12121, Dec. 7, 1962, as amended at 68 FR 32977, June 3, 2003]

§ 204.2 Investigations.

The Commission will make an investigation for the purposes of section 22(a) of the Agricultural Adjustment

[1] Section 22 provides in part as follows:

''(a) Whenever the Secretary of Agriculture has reason to believe that any article or articles are being or are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with * * * any loan, purchase, or other program or operation undertaken by the Department of Agriculture, or any agency operating under its direction, with respect to any agricultural commodity or product thereof, or to reduce substantially the amount of any product processed in the United States from any agricultural commodity or product thereof with respect to which any such program or operation is being undertaken he shall so advise the President, and, if the President agrees that there is reason for such belief, the President shall cause an immediate investigation to be made by the United States Tariff Commission, which shall give precedence to investigations under this section to determine such facts. Such investigation shall be made after due notice and opportunity for hearing to interested parties, and shall be conducted subject to such regulations as the President shall specify.

* * * * *

''(d) After investigation, report, finding and declaration in the manner provided in the case of a proclamation issued pursuant to subsection (b) of this section, any proclamation or provision of such proclamation may be suspended or terminated by the President whenever he finds and proclaims that the circumstances requiring the proclamation or provision thereof no longer exist or may be modified by the President whenever he finds and proclaims that changed circumstances require such modification to carry out the purposes of this section.'' (7 U.S.C. 624.)

Regulations of the President are set forth in Executive Order 7233 of November 23, 1935.

Act, as amended, only upon request of the President.[2]

[27 FR 12121, Dec. 7, 1962, as amended at 68 FR 32977, June 3, 2003]

§ 204.3 Public hearings.

A public hearing will be held in connection with each investigation to which this part 204 relates. The Foreign Agricultural Service of the U.S. Department of Agriculture may have a representative or representatives at each hearing who shall have the privilege of examining witnesses.

§ 204.4 Supplemental investigations.

An investigation for the purposes of section 22(d) of the Agricultural Adjustment Act, as amended, will be made upon request of the President, or upon the Commission's own motion when in its judgment there is good and sufficient reason therefor. A public hearing will be held in connection with each such supplemental investigation.

§ 204.5 Reports.

After completion of its investigation, the Commission will transmit to the President a report of the results thereof, including its findings and recommendations based thereon, and a statement of the steps taken in the investigation, together with a transcript of the evidence submitted at the hearing. A copy of such report will be transmitted to the Secretary of Agriculture.

[49 FR 32571, Aug. 15, 1984]

[2] Applications for investigations for the purposes of section 22 of this Agricultural Adjustment Act, as amended, must be filed with the Secretary of Agriculture (Executive Order 7233).

PART 205—INVESTIGATIONS TO DETERMINE THE PROBABLE ECONOMIC EFFECT ON THE ECONOMY OF THE UNITED STATES OF PROPOSED MODIFICATIONS OF DUTIES OR OF ANY BARRIER TO (OR OTHER DISTORTION OF) INTERNATIONAL TRADE OR OF TAKING RETALIATORY ACTIONS TO OBTAIN THE ELIMINATION OF UNJUSTIFIABLE OR UNREASONABLE FOREIGN ACTS OR POLICIES WHICH RESTRICT U.S. COMMERCE

Sec.

AUTHORITY: Sec. 335, Tariff Act of 1930 (72 Stat. 680; 19 U.S.C. 1335); sec. 603, Trade Act of 1974 (88 Stat. 2073); (19 U.S.C. 2482).

SOURCE: 42 FR 40426, Aug. 10, 1977, unless otherwise noted.

§ 205.1 Applicability of part.

This part 205 applies to functions and duties of the Commission under sections 131, 301(e)(3), and 503(a) of the Trade Act of 1974. For other applicable rules, see part 201 of this chapter.

Subpart A—Investigations To Determine the Probable Economic Effect of Modifications of United States Duties or of Any Barrier to (or Other Distortion of) International Trade on Domestic Industries and on Consumers

§ 205.2 Applicability of subpart.

This subpart A of part 205 applies to investigations for the purposes of section 131(a)–(b), 131(c), and 503 of the Trade Act of 1974. For other applicable rules, see part 201 of this chapter.

§ 205.3 Investigations under sections 131 and 503 of the Trade Act of 1974.

(a) *Purpose of investigations*—(1) *Sections 131(a)–(b) and 503(a).* Upon the receipt of a list of articles from the President or from the United States Trade Representative as provided in section 131(a) or 503(a), and in Executive Order No. 11846, as amended, which may be considered for modification of United States duties, or as eligible articles for duty-free treatment under the generalized system of preferences, respectively, the Commission shall initiate an investigation to obtain information pertinent to the fomulation of its advice to the President under section 131(b) with respect to such articles to assist him in making an informed judgment as to the impact which might be caused by such duty modifications or duty-free treatment on U.S. manufacturing, agriculture, mining, fishing, labor, and consumers, including whether any reductions in rates of duty should take place over a period longer than the minimum periods provided by section 109(a) of the Trade Act of 1974 (88 Stat. 1985; 19 U.S.C. 2119).

(2) *Section 131(c).* Upon the receipt of a request from the President or from the United States Trade Representative as provided in section 131(c) and in Executive Order No. 11846, as amended, to assist him in his determination of whether to enter into any trade agreement under section 102, the Commission shall institute an investigation to obtain information pertinent to the formulation of its views with respect to the probable economic effects of modifications of any barrier to (or other distortion of) international trade on domestic industries and purchasers and on prices and quantities of articles in the United States.

(b) *Institution and notice of investigation.* An investigation to which this subpart A relates will be instituted promptly after the receipt from the President or the United States Trade Representative of (1) a list of articles which may be considered for duty modifications or duty-free treatment, or (2) a request for an investigation and report concerning the probable economic effects of modifications of any barrier to (or other distortion of) international trade.

(c) *Hearings.* Public hearings will be held in connection with every investigation to which this subpart A relates. For other applicable rules, see § 201.11 of this chapter.

(d) *Report to the President.* After the completion of its investigation, the Commission will incorporate its advice or views in a report which together with hearing transcripts, briefs and other information will be transmitted to the President through the United States Trade Representative.

[42 FR 40426, Aug. 10, 1977, as amended at 63 FR 29351, May 29, 1998]

§ 205.4 [Reserved]

Subpart B—Investigations Concerning the Probable Impact on the Economy of the United States of the President's Taking Retaliatory Action To Obtain the Elimination of Unjustifiable or Unreasonable Foreign Acts or Policies Which Restrict U.S. Commerce

§ 205.5 Applicability of subpart.

This subpart B of part 205 applies to investigations for the purpose of section 301(e)(3) of the Trade Act of 1974. For other applicable rules, see part 201 of this chapter.

§ 205.6 Investigations under section 301(e)(3) of the Trade Act of 1974.

(a) *Purpose of investigation.* The purpose of an investigation by the Commission is to provide the President

with its views pursuant to section 301(e)(3) as to the probable impact on the economy of the United States of imposing retaliatory restrictions on imports into the United States from countries or foreign instrumentalities which maintain restrictions against U.S. exports.

(b) *Institution and notice of investigation.* An investigation to which this subpart B relates will be instituted promptly after the receipt from the President of a request for the views of the Commission with regard to the matters indicated in paragraph (a) of this section.

(c) *Public hearings.* If, in the judgment of the Commission, there is good and sufficient reason therefor, the Commission, in the course of its investigation, will hold a public hearing and afford interested parties opportunity to appear and be heard at such hearing. If no notice of public hearing issues concurrently with a notice of investigation, any interested party who believes that a public hearing should be held may, within thirty (30) days after the date of publication in the FEDERAL REGISTER of the notice of investigation, submit a request in writing to the Secretary of the Commission that a public hearing be held, stating the reasons for such request.

(d) *Written statements.* Any interested party may submit to the Commission a written statement of information pertinent to the subject matter of such investigation not later than thirty (30) days after a notice of investigation under paragraph (b) of this section is published in the FEDERAL REGISTER. If a public hearing is held in the investigation, a statement may be received in lieu of or in addition to appearance at the hearing. Statements shall conform with the requirements for documents set forth in §§ 201.6 and 201.8 of this chapter.

(e) *Report to the President.* After the completion of its investigation, the Commission will incorporate its views in a report which will be transmitted promptly to the President.

PART 206—INVESTIGATIONS RELATING TO GLOBAL AND BILATERAL SAFEGUARD ACTIONS, MARKET DISRUPTION, TRADE DIVERSION, AND REVIEW OF RELIEF ACTIONS

Sec.

AUTHORITY: 19 U.S.C. 1335, 2112 note, 2251–2254, 2436, 2451–2451a, 3351–3382, 3805 note, 4051–4065, and 4101.

EFFECTIVE DATE NOTE: At 88 FR 14890, Mar. 10, 2023, the authority citation for part 206 was revised, effective Apr. 10, 2023. For the convenience of the user, the revised text is set forth as follows:

AUTHORITY: 19 U.S.C. 1335, 2112 note, 2251–2254, 2436, 3805 note, 4051–4065, 4101, and 4551–4552.

SOURCE: 59 FR 5091, Feb. 3, 1994, unless otherwise noted.

§ 206.1 Applicability of part.

Part 206 applies to proceedings of the Commission under sections 201–202, 204, 406, and 421–422 of the Trade Act of 1974, as amended (2251–2252, 2254, 2436, 2451–2451a), sections 301–317 of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3351–3382) (hereinafter NAFTA Implementation Act), and the statutory provisions listed in § 206.31 of this part 206 that implement bilateral safeguard provisions in other free trade agreements into which the United States has entered.

[77 FR 37805, June 25, 2012]

EFFECTIVE DATE NOTE: At 88 FR 14890, Mar. 10, 2023, § 206.1 was revised, effective Apr. 10, 2023. For the convenience of the user, the revised text is set forth as follows:

§ 206.1 Applicability of part.

This part applies to proceedings of the Commission under sections 201–202, 204, and 406 of the Trade Act of 1974, as amended (19 U.S.C. 2251–2252, 2254, and 2436), and sections 301–302 of the United States-Mexico-Canada Implementation Act (19 U.S.C. 4551–4552) (hereinafter USMCA Implementation Act), and the statutory provisions listed in § 206.31 that implement bilateral safeguard provisions in other free trade agreements into which the United States has entered.

Subpart A—General

SOURCE: 60 FR 10, Jan. 3, 1995, unless otherwise noted.

§ 206.2 Identification of type of petition or request.

An investigation under this part may be commenced on the basis of a petition, request, resolution, or motion as provided for in the statutory provisions listed in §§ 206.1 and 206.31. Each petition or request, as the case maybe, filed by an entity representative of a domestic industry under this part shall state clearly on the first page thereof ''This is a [petition or request] under section [citing the statutory provision] and Subpart [B, C, D, E, F, or G] of part 206 of the rules of practice and procedure of the United States International Trade Commission.'' A paper original and eight (8) true paper copies of a petition, request, resolution, or motion shall be filed. One copy of any exhibits, appendices, and attachments to the

document shall be filed in electronic form on CD–ROM, DVD, or other portable electronic format approved by the Secretary.

[80 FR 39380, July 9, 2015]

§ 206.3 Institution of investigations; publication of notice; and availability for public inspection.

(a) *Institution of investigation and publication of notice.* Except as provided in § 206.15(b), the Commission, after receipt of a petition or request under part 206, properly filed, will promptly institute an appropriate investigation and publish notice thereof in the FEDERAL REGISTER. The Commission also will institute an investigation and publish a notice following receipt of a resolution or on the Commission's own motion under part 206.

(b) *Contents of notice.* The notice will identify the petitioner or other requestor, the imported article that is the subject of the investigation and its tariff subheading, the nature and timing of the determination to be made, the time and place of any public hearing, dates of deadlines for filing briefs, statements, and other documents, limits on page lengths for posthearing briefs, the place at which the petition or request and any other documents filed in the course of the investigation may be inspected, and the name, address, and telephone number of the office that may be contacted for more information. The Commission will provide the same sort of information in its notice when the investigation was instituted following receipt of a resolution or on the Commission's own motion.

(c) *Availability for public inspection.* The Commission will promptly make each petition, request, resolution, or Commission motion available for public inspection (with the exception of confidential business information).

[60 FR 10, Jan. 3, 1995, as amended at 67 FR 8190, Feb. 22, 2002; 68 FR 32977, June 3, 2003]

§ 206.4 Notification of other agencies.

For each investigation subject to provisions of part 206, the Commission will transmit copies of the petition, request, resolution, or Commission motion as required by the relevant statute, along with a copy of the notice of investigation.

[67 FR 8190, Feb. 22, 2002]

§ 206.5 Public hearing.

(a) *Investigations under subpart B of this part.* A public hearing on the question of injury and a second public hearing on remedy (if necessary) will be held in connection with each investigation instituted under subpart B of this part after reasonable notice thereof has been caused to be published in the FEDERAL REGISTER. A hearing on remedy is not necessary if the Commission has made a negative determination on the question of injury.

(b) *Investigations under subpart C, D, E, or G of this part.* A public hearing on the subject of injury and remedy will be held in connection with each investigation instituted under subpart C or D of this part or section 406(a) of the Trade Act and subpart E of this part, after reasonable notice thereof has been published in the FEDERAL REGISTER. The Commission also will conduct a public hearing in each investigation instituted under section 421(b) or (o) of the Trade Act and subpart E of this part or section 422(b) of the Act and subpart G. The FEDERAL REGISTER notice announcing the institution of such an investigation will list the date, time, and location of the hearing, the subjects to be addressed, and the procedures to be followed.

(c) *Investigations under subpart F of this part.* A public hearing on the subject of whether an action taken under section 203 of the Trade Act of 1974 should be extended will be held in connection with each investigation instituted under subpart F of this part after reasonable notice thereof has been published in the FEDERAL REGISTER.

(d) *Opportunity to appear and to cross-question.* All interested parties and consumers, including any association representing the interests of consumers, will be afforded an opportunity to be present, to present evidence, to comment on the adjustment plan, if any, submitted in the case of an investigation under section 202(b) of the Trade Act of 1974, and to be heard at such hearings. All interested parties and consumers, including any association

representing the interests of consumers, will be afforded an opportunity to cross-question interested parties making presentations at the hearing.

[60 FR 10, Jan. 3, 1995, as amended at 67 FR 8190, Feb. 22, 2002]

§ 206.6 Report to the President.

(a) *In general.* The Commission will include in its report to the President the following:

(1) The determination made and an explanation of the basis for the determination;

(2) If the determination is affirmative or if the Commission is equally divided in its determination, such remedy recommendation or proposal as may be appropriate under the statute and an explanation of the basis for each recommendation or proposal.

(3) Any dissenting or separate views by members of the Commission regarding the determination and any recommendations;

(b) *Additional findings and information.* (1) In the case of a determination made under section 202(b) of the Trade Act, the Commission will also include in its report the following:

(i) The findings with respect to the results of an examination of the factors other than imports which may be a cause of serious injury or threat thereof to the domestic industry;

(ii) A copy of the adjustment plan, if any, submitted by the petitioner;

(iii) Commitments submitted and information obtained by the Commission regarding steps that firms and workers in the domestic industry are taking, or plan to take, to facilitate positive adjustment to import competition;

(iv) A description of the short- and long-term effects that implementation of the action recommended is likely to have on the petitioning domestic industry, other domestic industries, and consumers; and

(v) A description of the short- and long-term effects of not taking the recommended action on the petitioning domestic industry, its workers and communities where production facilities of such industry are located, and other domestic industries.

(2) In the case of a determination made under section 302(b) of the NAFTA Implementation Act, the Commission will also include in its report the findings with respect to the results of an examination of the factors other than imports which may be a cause of serious injury or threat thereof to the domestic industry.

(3) In the case of a determination made under section 421(b) or 422(b) of the Trade Act, the Commission will also include in its report a description of—

(i) The short- and long-term effects that implementation of the action recommended is likely to have on the petitioning domestic industry, on other domestic industries, and on consumers; and

(ii) The short- and long-term effects of not taking the recommended action on the petitioning domestic industry, its workers, and the communities where production facilities of such industry are located, and on other domestic industries.

[60 FR 10, Jan. 3, 1995, as amended at 67 FR 8190, Feb. 22, 2002; 77 FR 3925, Jan. 26, 2012]

EFFECTIVE DATE NOTE: At 88 FR 14890, Mar. 10, 2023, § 206.6 was amended by revising paragraph (b)(2), effective Apr. 10, 2023. For the convenience of the user, the revised text is set forth as follows:

§ 206.6 Report to the President.

* * * * *

(b) * * *

(2) In the case of a determination made under section 301(b) of the USMCA Implementation Act, the Commission will include in its report the findings with respect to the results of an examination of the factors other than imports which may be a cause of serious injury or threat thereof to the domestic industry.

* * * * *

§ 206.7 Confidential business information; furnishing of nonconfidential summaries thereof.

(a) *Nonrelease of information.* Except as provided for in § 206.17, in the case of an investigation under subpart B, C, D, F, or G of this part or an investigation under section 422 of the Trade Act and subpart E of this part, the Commission will not release information which the Commission considers to be confidential business information within the meaning of § 201.6 of this chapter unless

the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the Commission, or such party subsequently consents to the release of the information. When appropriate, the Commission will include confidential business information in reports transmitted to the President and the Trade Representative; such reports will be marked as containing confidential business information, and a nonconfidential version of such report will be made available to the public.

(b) *Nonconfidential summaries.* Except as the Commission may otherwise provide, a party submitting confidential business information shall also submit to the Commission, at the time it submits such information, a nonconfidential summary of the information. If a party indicates that the confidential business information cannot be summarized, it shall state in writing the reasons why a summary cannot be provided. If the Commission finds that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summarized form, the Commission may disregard the submission.

[60 FR 10, Jan. 3, 1995, as amended at 67 FR 8190, Feb. 22, 2002]

§ 206.8 Service, filing, and certification of documents.

(a) *Certification.* Any person submitting factual information on behalf of the petitioner or any other interested party for the consideration of the Commission in the course of an investigation to which this part pertains, and any person submitting a response to a Commission questionnaire issued in connection with an investigation to which this part pertains, must certify that such information is accurate and complete to the best of the submitter's knowledge.

(b) *Service.* Any party submitting a document for the consideration of the Commission in the course of an investigation to which this part pertains shall, in addition to complying with § 201.8 of this chapter, serve a copy of the public version of such document on all other parties to the investigation in the manner prescribed in § 201.16 of this chapter, and, when appropriate, serve a copy of the confidential version of such document in the manner provided for in § 206.17(f). The Secretary shall promptly notify a petitioner when, before the establishment of a service list under § 206.17(a)(4), an application under § 206.17(a) is approved. When practicable, this notification shall be made by facsimile transmission. A copy of the petition including all confidential business information shall then be served by petitioner on those approved applicants in accordance with this section within two (2) calendar days of the time notification is made by the Secretary. If a document is filed before the Secretary's issuance of the service list provided for in § 201.11 of this chapter or the administrative protective order list provided for in § 206.17, the document need not be accompanied by a certificate of service, but the document shall be served on all appropriate parties within two (2) days of the issuance of the service list or the administrative protective order list and a certificate of service shall then be filed. Notwithstanding § 201.16 of this chapter, petitions, briefs, and testimony filed by parties shall be served by hand or, if served by mail, by overnight mail or its equivalent. Failure to comply with the requirements of this rule may result in removal from status as a party to the investigation. The Commission shall make available, upon request, to all parties to the investigation a copy of each document, except transcripts of hearings, confidential business information, privileged information, and information required to be served under this section, placed in the docket file of the investigation by the Commission.

(c) *Filing.* Documents to be filed with the Commission must comply with applicable rules, including § 201.8 of this chapter. If the Commission establishes a deadline for the filing of a document, and the submitter includes confidential business information in the document, the submitter is to file and, if the submitter is a party, serve the confidential version of the document on the deadline and may file and serve the

nonconfidential version of the document no later than one business day after the deadline for filing the document. The confidential version shall enclose all confidential business information in brackets and have the following warning marked on every page: ''Bracketing of CBI not final for one business day after date of filing.'' The bracketing becomes final one business day after the date of filing of the document, *i.e.*, at the same time as the nonconfidential version of the document is due to be filed. Until the bracketing becomes final, recipients of the document may not divulge any part of the contents of the document to anyone not subject to the administrative protective order issued in the investigation. If the submitter discovers it has failed to bracket correctly, the submitter may file a corrected version or portion of the confidential document at the same time as the nonconfidential version is filed. No changes to the document other than bracketing and deletion of confidential business information are permitted after the deadline. Failure to comply with this paragraph may result in the striking of all or a portion of a submitter's document.

(d) *Briefs.* All briefs filed in proceedings subject to this part shall be filed electronically, and eight (8) true paper copies shall be filed on the same business day.

[59 FR 5091, Feb. 3, 1994, as amended at 68 FR 32977, June 3, 2003; 76 FR 61942, Oct. 6, 2011]

Subpart B—Investigations Relating to Global Safeguard Actions

SOURCE: 60 FR 12, Jan. 3, 1995, unless otherwise noted.

§ 206.11 Applicability of subpart.

This subpart B applies specifically to investigations under section 202(b) of the Trade Act. For other applicable rules, see subpart A of this part and part 201 of this chapter.

§ 206.12 Definitions applicable to subpart B of this part.

For the purposes of this subpart, the following terms have the meanings hereby assigned to them:

(a) *Adjustment plan* means a plan to facilitate positive adjustment to import competition submitted by a petitioner to the Commission and USTR either with the petition or at any time within 120 days after the date of filing of the petition.

(b) *Commitment* means commitments that a firm in the domestic industry, a certified or recognized union or group of workers in the domestic industry, a local community, a trade association representing the domestic industry, or any other person or group of persons submits to the Commission regarding actions such persons and entities intend to take to facilitate positive adjustment to import competition.

§ 206.13 Who may file a petition.

A petition under this subpart B may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of a domestic industry producing an article like or directly competitive with a foreign article that is allegedly being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to such domestic industry.

§ 206.14 Contents of petition.

A petition under this subpart B shall include specific information in support of the claim that an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article. Such petition shall state whether provisional relief is sought because *critical circumstances* exist or because the imported article is a *perishable agricultural product*. In addition, such petition shall include the following information, to the extent that such information is available from governmental or other sources, or best estimates and the basis therefor if such information is not available:

(a) *Product description.* The name and description of the imported article concerned, specifying the United States

tariff provision under which such article is classified and the current tariff treatment thereof, and the name and description of the like or directly competitive domestic article concerned;

(b) *Representativeness.* (1) The names and addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition and the locations of their establishments in which the domestic article is produced;

(2) The percentage of domestic production of the like or directly competitive domestic article that such represented firms and/or workers account for and the basis for claiming that such firms and/or workers are representative of an industry; and

(3) The names and locations of all other producers of the domestic article known to the petitioner;

(c) *Import data.* Import data for at least each of the most recent 5 full years which form the basis of the claim that the article concerned is being imported in increased quantities, either actual or relative to domestic production;

(d) *Domestic production data.* Data on total U.S. production of the domestic article for each full year for which data are provided pursuant to paragraph (c) of this section;

(e) *Data showing injury.* Quantitative data indicating the nature and extent of injury to the domestic industry concerned:

(1) With respect to serious injury, data indicating:

(i) A significant idling of production facilities in the industry, including data indicating plant closings or the underutilization of production capacity;

(ii) The inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit; and

(iii) Significant unemployment or underemployment within the industry; and/or

(2) With respect to the threat of serious injury, data relating to:

(i) A decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, productivity, or employment (or increasing underemployment);

(ii) The extent to which firms in the industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development;

(iii) The extent to which the U.S. market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(3) Changes in the level of prices, production, and productivity.

(f) *Cause of injury.* An enumeration and description of the causes believed to be resulting in the injury, or threat thereof, described under paragraph (e) of this section, and a statement regarding the extent to which increased imports, either actual or relative to domestic production, of the imported article are believed to be such a cause, supported by pertinent data;

(g) *Relief sought and purpose thereof.* A statement describing the import relief sought, including the type, amount, and duration, and the specific purposes therefor, which may include facilitating the orderly transfer of resources to more productive pursuits, enhancing competitiveness, or other means of adjustment to new conditions of competition;

(h) *Efforts to compete.* A statement on the efforts being taken, or planned to be taken, or both, by firms and workers in the industry to make a positive adjustment to import competition.

(i) *Imports from NAFTA countries.* Quantitative data indicating the share of imports accounted for by imports from each NAFTA country (Canada and Mexico), and petitioner's view on the extent to which imports from such NAFTA country or countries are contributing importantly to the serious injury, or threat thereof, caused by total imports of such article.

(j) *Critical circumstances.* If the petition alleges the existence of critical circumstances, a statement setting forth the basis for the belief that there

is clear evidence that increased imports (either actual or relative to domestic production) of the article are a substantial cause of serious injury, or the threat thereof, to the domestic industry, and that delay in taking action would cause damage to that industry that would be difficult to repair, and a statement concerning the provisional relief requested and the basis therefor.

EFFECTIVE DATE NOTE: At 88 FR 14890, Mar. 10, 2023, §206.14 was amended by revising paragraph (i), effective Apr. 10, 2023. For the convenience of the user, the revised text is set forth as follows:

§ 206.14 Contents of petition.

* * * * *

(i) *Imports from USMCA countries.* Quantitative data indicating the share of imports accounted for by imports from each USMCA country (Canada and Mexico), and petitioner's view on the extent to which imports from such USMCA country or countries are contributing importantly to the serious injury, or threat thereof, caused by total imports of such article.

* * * * *

§ 206.15 Institution of investigation.

(a) *In general.* Except as provided in paragraph (b) of this section, the Commission, after receipt of a petition under this subpart B, properly filed, will promptly institute an appropriate investigation and will cause a notice thereof to be published in the FEDERAL REGISTER.

(b) *Exceptions*—(1) *Reinvestigation within one (1) year.* Except for good cause determined by the Commission to exist, no new investigation will be made under section 202 of the Trade Act with respect to the same subject matter as a previous investigation under section 202 unless one (1) year has elapsed since the Commission made its report to the President of the results of such previous investigation.

(2) *Articles subject to prior action.* No new investigation will be made under section 202 of the Trade Act with respect to an article that is or has been the subject of an action under section 203(a) (3)(A), (B), (C), or (E) of the Trade Act if the last day on which the President could take action under section 203 of the Trade Act in the new investigation is a date earlier than that permitted under section 203(e)(7) of the Trade Act.

(3) *Articles subject to the Textiles Agreement.* No investigation will be made under section 202 of the Trade Act with respect to an article that is the subject of the WTO Agreement on Textiles and Clothing unless the United States has integrated the article into GATT 1994 and the Secretary of Commerce has published notice to such effect in the FEDERAL REGISTER.

(4) *Perishable agricultural product.* An entity of the type described in §206.13 that represents a domestic industry producing a perishable agricultural product may petition for provisional relief with respect to such product only if such product has been subject to monitoring by the Commission for not less than 90 days as of the date the allegation of injury is included in the petition.

§ 206.16 Industry adjustment plan and commitments.

(a) *Adjustment plan.* A petitioner may submit to the Commission, either with the petition or at any time within 120 days after the date of filing of the petition, a plan to facilitate positive adjustment to import competition.

(b) *Commitments.* If the Commission makes an affirmative injury determination, any firm in the domestic industry, certified or recognized union or group of workers in the domestic industry, local community, trade association representing the domestic industry, or any other person or group of persons may, individually, submit to the Commission commitments regarding actions such persons and entities intend to take to facilitate positive adjustment to import competition.

§ 206.17 Limited disclosure of certain confidential business information under administrative protective order.

(a)(1) *Disclosure.* Upon receipt of a timely application filed by an authorized applicant, as defined in paragraph (a)(3) of this section, which describes in general terms the information requested, and sets forth the reasons for the request (*e.g.*, all confidential business information properly disclosed

pursuant to this section for the purpose of representing an interested party in investigations pending before the Commission), the Secretary shall make available all confidential business information contained in Commission memoranda and reports and in written submissions filed with the Commission at any time during the investigation (except privileged information, classified information, and specific information of a type which there is a clear and compelling need to withhold from disclosure, *e.g.*, trade secrets) to the authorized applicant under an administrative protective order described in paragraph (b) of this section. The term ''confidential business information'' is defined in § 201.6 of this chapter.

(2) *Application.* An application under paragraph (a)(1) of this section must be made by an authorized applicant on a form adopted by the Secretary or a photocopy thereof. A signed application shall be filed electronically. An application on behalf of an authorized applicant must be made no later than the time that entries of appearance are due pursuant to § 201.11 of this chapter. In the event that two or more authorized applicants represent one interested party who is a party to the investigation, the authorized applicants must select one of their number to be lead authorized applicant. The lead authorized applicant's application must be filed no later than the time that entries of appearance are due. Provided that the application is accepted, the lead authorized applicant shall be served with confidential business information pursuant to paragraph (f) of this section. The other authorized applicants representing the same party may file their applications after the deadline for entries of appearance but at least five days before the deadline for filing posthearing briefs in the investigation, and shall not be served with confidential business information.

(3) *Authorized applicant.* (i) Only an authorized applicant may file an application under this subsection. An authorized applicant is:

(A) An attorney for an interested party which is a party to the investigation;

(B) A consultant or expert under the direction and control of a person under paragraph (a)(3)(i)(A) of this section;

(C) A consultant or expert who appears regularly before the Commission and who represents an interested party which is a party to the investigation; or

(D) A representative of an interested party which is a party to the investigation, if such interested party is not represented by counsel.

(ii) In addition, an authorized applicant must not be involved in competitive decisionmaking for an interested party which is a party to the investigation. Involvement in ''competitive decisionmaking'' includes past, present, or likely future activities, associations, and relationships with an interested party which is a party to the investigation that involve the prospective authorized applicant's advice or participation in any of such party's decisions made in light of similar or corresponding information about a competitor (pricing, product design, etc.).

(iii) For purposes of this § 206.17, the term *interested party* means:

(A) A foreign manufacturer, producer, or exporter, or the United States importer, of an article which is the subject of an investigation under this section or a trade or business association a majority of the members of which are producers, exporters, or importers of such article;

(B) The government of a country in which such article is produced or manufactured;

(C) A manufacturer, producer, or wholesaler in the United States of a like or directly competitive article;

(D) A certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale of a like or directly competitive article in the United States;

(E) A trade or business association a majority of whose members manufacture, produce, or wholesale a like or directly competitive article in the United States; and

(F) An association, a majority of whose members is composed of interested parties described in paragraphs (a)(3)(iii) (C), (D), or (E) of this section

with respect to a like or directly competitive article.

(4) *Forms and determinations.* (i) The Secretary may adopt, from time to time, forms for submitting requests for disclosure pursuant to an administrative protective order incorporating the terms of this rule. The Secretary shall determine whether the requirements for release of information under this rule have been satisfied. This determination shall be made concerning specific confidential business information as expeditiously as possible but in no event later than fourteen (14) days from the filing of the information, except if the submitter of the information objects to its release or the information is unusually voluminous or complex, in which case the determination shall be made within thirty (30) days from the filing of the information. The Secretary shall establish a list of parties whose applications have been granted. The Secretary's determination shall be final.

(ii) Should the Secretary determine pursuant to this section that materials sought to be protected from public disclosure by a person do not constitute confidential business information or were not required to be served under paragraph (f) of this section, then the Secretary shall, upon request, issue an order on behalf of the Commission requiring the return of all copies of such materials served in accordance with paragraph (f) of this section.

(iii) The Secretary shall release confidential business information only to an authorized applicant whose application has been accepted and who presents the application along with adequate personal identification; or a person described in paragraph (b)(1)(iv) of this section who presents a copy of the statement referred to in that paragraph along with adequate personal identification.

(b) *Administrative protective order.* The administrative protective order under which information is made available to the authorized applicant shall require the applicant to submit to the Secretary a personal sworn statement that, in addition to such other conditions as the Secretary may require, the applicant shall:

(1) Not divulge any of the confidential business information obtained under the administrative protective order and not otherwise available to the applicant, to any person other than

(i) Personnel of the Commission concerned with the investigation,

(ii) The person or agency from whom the confidential business information was obtained,

(iii) A person whose application for access to confidential business information under the administrative protective order has been granted by the Secretary, and

(iv) Other persons, such as paralegals and clerical staff, who are employed or supervised by an authorized applicant; who have a need thereof in connection with the investigation; who are not involved in competitive decisionmaking on behalf of an interested party which is a party to the investigation; and who have signed a statement in a form approved by the Secretary that they agree to be bound by the administrative protective order (the authorized applicant shall be responsible for retention and accuracy of such forms and shall be deemed responsible for such persons' compliance with the administrative protective order);

(2) Use such confidential business information solely for the purposes of representing an interested party in the Commission investigation then in progress;

(3) Not consult with any person not described in paragraph (b)(1) of this section concerning such confidential business information without first having received the written consent of the Secretary and the party or the attorney of the party from whom such confidential business information was obtained;

(4) Whenever materials (*e.g.,* documents, computer disks, etc.) containing such confidential business information are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container;

(5) Serve all materials containing confidential business information as directed by the Secretary and pursuant to paragraph (f) of this section;

(6) Transmit all materials containing confidential business information with a cover sheet identifying the materials

as containing confidential business information;

(7) Comply with the provisions of this section;

(8) Make true and accurate representations in the authorized applicant's application and promptly notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (*e.g.*, change in personnel assigned to the investigation);

(9) Report promptly and confirm in writing to the Secretary any breach of the administrative protective order; and

(10) Acknowledge that breach of the administrative protective order may subject the authorized applicant to such sanctions or other actions as the Commission deems appropriate.

(c) *Final disposition of material released under administrative protective order.* At such date as the Secretary may determine appropriate for particular data, each authorized applicant shall return or destroy all copies of materials released to authorized applicants pursuant to this section and all other materials containing confidential business information, such as charts or notes based on any such information received under administrative protective order, and file with the Secretary a certificate attesting to his personal, good faith belief that all copies of such material have been returned or destroyed and no copies of such material have been made available to any person to whom disclosure was not specifically authorized.

(d) *Commission responses to a breach of administrative protective order.* A breach of an administrative protective order may subject an offender to:

(1) Disbarment from practice in any capacity before the Commission along with such person's partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;

(2) Referral to the United States Attorney;

(3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association;

(4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of or striking from the record any information or briefs submitted by, or on behalf of, the offender or the party represented by the offender, denial of further access to confidential business information in the current or any future investigations before the Commission, and issuance of a public or private letter of reprimand; and

(5) Such other actions, including but not limited to, a warning letter, as the Commission determines to be appropriate.

(e) *Breach investigation procedure.* (1) The Commission shall determine whether any person has violated an administrative protective order, and may impose sanctions or other actions in accordance with paragraph (d) of this section. At any time within sixty (60) days of the later of

(i) The date on which the alleged violation occurred or, as determined by the Commission, could have been discovered through the exercise of reasonable and ordinary care; or

(ii) The completion of an investigation conducted under this subpart, the Commission may commence an investigation of any breach of an administrative protective order alleged to have occurred at any time during the pendency of the investigation, including all appeals, remands, and subsequent appeals. Whenever the Commission has reason to believe that a person may have breached an administrative protective order issued pursuant to this section, the Secretary shall issue a letter informing such person that the Commission has reason to believe a breach has occurred and that the person has a reasonable opportunity to present his views on whether a breach has occurred. If subsequently the Commission determines that a breach has occurred and that further investigation is warranted, then the Secretary shall issue a letter informing such person of that determination and that the person has a reasonable opportunity to present his views on whether mitigating circumstances exist and on the appropriate sanction to be imposed, but no longer on whether a breach has

occurred. Once such person has been afforded a reasonable opportunity to present his views, the Commission shall determine what sanction if any to impose.

(2) Where the sanction imposed is a private letter of reprimand, the Secretary shall expunge the sanction from the recipient's record two (2) years from the date of issuance of the sanction, provided that

(i) The recipient has not received another unexpunged sanction pursuant to this section at any time prior to the end of the two year period, and

(ii) The recipient is not the subject of an investigation for possible breach of administrative protective order under this section at the end of the two year period. Upon the completion of such a pending breach investigation without the issuance of a sanction, the original sanction shall be expunged. The Secretary shall notify a sanction recipient in the event that the sanction is expunged.

(f) *Service*. (1) Any party filing written submissions which include confidential business information to the Commission during an investigation shall at the same time serve complete copies of such submissions upon all authorized applicants specified on the list established by the Secretary pursuant to paragraph (a)(4) of this section, and, except as provided in §206.8(c), a nonconfidential version on all other parties. All such submissions must be accompanied by a certificate attesting that complete copies of the submission have been properly served. In the event that a submission is filed before the Secretary's list is established, the document need not be accompanied by a certificate of service, but the submission shall be served within two (2) days of the establishment of the list and a certificate of service shall then be filed.

(2) A party may seek an exemption from the service requirement of paragraph (f)(1) of this section for particular confidential business information by filing a request for exemption from disclosure in accordance with paragraph (g) of this section. The Secretary shall promptly respond to the request. If a request is granted, the Secretary shall accept the information. The party shall file three versions of the submission containing the information in accordance with paragraph (g) of this section, and serve the submission in accordance with the requirements of §206.8(b) and paragraph (f)(1) of this section, with the specific information as to which exemption from disclosure under administrative protective order has been granted redacted from the copies served. If a request is denied, the copy of the information lodged with the Secretary shall promptly be returned to the requester.

(3) The Secretary shall not accept for filing into the record of an investigation submissions filed without a proper certificate of service. Failure to comply with paragraph (f) of this section may result in denial of party status and such sanctions as the Commission deems appropriate. Confidential business information in submissions must be clearly marked as such when submitted, and must be segregated from other material being submitted.

(g) *Exemption from disclosure*—(1) *In general*. Any person may request exemption from the disclosure of confidential business information under administrative protective order, whether the person desires to include such information in a petition filed under this subpart B, or any other submission to the Commission during the course of an investigation. Such a request shall only be granted if the Secretary finds that such information is nondisclosable confidential business information. As defined in §201.6(a)(2) of this chapter, nondisclosable confidential business information is privileged information, classified information, or specific information (*e.g.*, trade secrets) of a type for which there is a clear and compelling need to withhold from disclosure.

(2) *Request for exemption*. A request for exemption from disclosure must be filed with the Secretary in writing with the reasons therefor. At the same time as the request is filed, one copy of the confidential business information in question must be lodged with the Secretary solely for the purpose of obtaining a determination as to the request. The confidential business information for which exemption from disclosure is sought shall remain the

property of the requester, and shall not become or be incorporated into any agency record until such time as the request is granted. A request should, when possible, be filed two business days prior to the deadline, if any, for filing the document in which the information for which exemption from disclosure is sought is proposed to be included. The Secretary shall promptly notify the requester as to whether the request has been approved or denied.

(3) *Procedure if request is approved*. If the request is approved, the person shall file three versions of the submission containing the nondisclosable confidential business information in question. One version shall contain all confidential business information, bracketed in accordance with § 201.6 of this chapter and § 206.8(c), with the specific information as to which exemption from disclosure was granted enclosed in triple brackets. This version shall have the following warning marked on every page: ''CBI exempted from disclosure under APO enclosed in triple brackets.'' The other two versions shall conform to and be filed in accordance with the requirements of § 201.6 of this chapter and § 206.8(c), except that the specific information as to which exemption from disclosure was granted shall be redacted from those versions of the submission.

(4) *Procedure if request is denied*. If the request is denied, the copy of the information lodged with the Secretary shall promptly be returned to the requester.

[60 FR 12, Jan. 3, 1995, as amended at 68 FR 32977, June 3, 2003; 70 FR 8511, Feb. 22, 2005; 76 FR 61942, Oct. 6, 2011]

§ 206.18 Time for determinations, reporting.

(a) *In general*. The Commission will make its determination with respect to injury within 120 days after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be, except that—

(1) If the Commission determines before the 100th day that the investigation is extraordinarily complicated, the Commission will make its determination within 150 days; or

(2) If critical circumstances are alleged, the Commission will make its determination within 120 days after completion of its investigation with respect to critical circumstances. The Commission will make its report to the President at the earliest practicable time, but not later than 180 days (240 days if critical circumstances are alleged) after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be.

(b) *Perishable agricultural product*. In the case of a request in a petition for provisional relief with respect to a perishable agricultural product that has been the subject of monitoring by the Commission, the Commission will report its determination and any finding to the President not later than 21 days after the date on which the request for provisional relief is received.

(c) *Critical circumstances*. If petitioner alleges the existence of critical circumstances in the petition, the Commission will report its determination regarding such allegation and any finding on or before the 60th day after such filing date.

§ 206.19 Public report.

Upon making a report to the President of the results of an investigation to which this subpart B relates, the Commission will make such report public (with the exception of information which the Commission determines to be confidential) and cause a summary thereof to be published in the FEDERAL REGISTER.

Subpart C—Investigations Relating to a Surge in Imports From a NAFTA Country

EFFECTIVE DATE NOTE: At 88 FR 14890, Mar. 10, 2023, Subpart C was revised, effective Apr. 10, 2023. For the convenience of the user, the revised text is set forth as follows:

Subpart C—Investigations Relating to a Surge in Imports From a USMCA Country

§ 206.21 Applicability of subpart.

This subpart C applies specifically to investigations under section 312(c) of the NAFTA Implementation Act. For

other applicable rules, see subpart A of this part and part 201 of this chapter.

EFFECTIVE DATE NOTE: At 88 FR 14890, Mar. 10, 2023, § 206.21 was revised, effective Apr. 10, 2023. For the convenience of the user, the revised text is set forth as follows:

§ 206.21 Applicability of subpart.

This subpart applies specifically to investigations under section 302 of the USMCA Implementation Act (19 U.S.C. 4552). For other applicable rules, see subpart A of this part and part 201 of this chapter.

§ 206.22 Definition applicable to subpart C.

For the purposes of this subpart, the term *surge* means a significant increase in imports over the trend for a recent representative base period.

§ 206.23 Who may file a request.

If the President, under section 312(b) of the NAFTA Implementation Act, has excluded imports from a NAFTA country or countries from an action under chapter 1 of title II of the Trade Act of 1974, any entity that is representative of an industry for which such action is being taken may request the Commission to conduct an investigation to determine whether a surge in such imports undermines the effectiveness of the action.

EFFECTIVE DATE NOTE: At 88 FR 14890, Mar. 10, 2023, § 206.23 was revised, effective Apr. 10, 2023. For the convenience of the user, the revised text is set forth as follows:

§ 206.23 Who may file a request.

If the President, under section 302(b) of the USMCA Implementation Act (19 U.S.C. 4552(b)), has excluded imports from a USMCA country or countries from an action under chapter 1 of title II of the Trade Act of 1974, any entity that is representative of an industry for which such action is being taken may request the Commission to conduct an investigation to determine whether a surge in such imports undermines the effectiveness of the action.

§ 206.24 Contents of request.

The request for an investigation shall include the following information:

(a) The identity of the entity submitting the request; a description of the relief action the effectiveness of which is allegedly being undermined; and a description of the imported article, identifying the United States tariff provision under which it is classified, and the name of the country or countries from which the surge in imports is alleged to be coming;

(b) The information required in § 206.14(b) of this subpart concerning representativeness of the entity filing the request;

(c) Data concerning imports from the NAFTA country or countries that form the basis of requestor's claim that a surge in imports has occurred;

(d) Information supporting the claim that such surge in imports undermines the effectiveness of the relief action.

EFFECTIVE DATE NOTE: At 88 FR 14890, Mar. 10, 2023, § 206.24 was amended by revising paragraph (c), effective Apr. 10, 2023. For the convenience of the user, the revised text is set forth as follows:

§ 206.24 Contents of request.

* * * * *

(c) Data concerning imports from the USMCA country or countries that form the basis of requestor's claim that a surge in imports has occurred;

* * * * *

§ 206.25 Time for reporting.

The Commission will submit the findings of its investigation to the President no later than 30 days after the request is received.

§ 206.26 Public report.

Upon making a report to the President of the results of an investigation to which this subpart C relates, the Commission will make such report public (with the exception of any confidential business information) and cause a summary thereof to be published in the FEDERAL REGISTER.

Subpart D—Investigations Relating to Bilateral Safeguard Actions

§ 206.31 Applicability of subpart.

This subpart D applies specifically to investigations under section 311(b) of the United States-Australia Free Trade Agreement Implementation Act (19 U.S.C. 3805 note), section 311(b) of the United States-Bahrain Free Trade Agreement Implementation Act (19 U.S.C. 3805 note), section 311(b) of the

United States-Chile Free Trade Agreement Implementation Act (19 U.S.C. 3805 note), section 311(b) of the United States-Colombia Trade Promotion Agreement Implementation Act (19 U.S.C. 3805 note), section 311(b) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (19 U.S.C. 4061(b)), section 211(b) of the United States-Jordan Free Trade Area Implementation Act (19 U.S.C. 2112 note), section 311(b) of the United States-Korea Free Trade Agreement Implementation Act (19 U.S.C. 3805 note), section 311(b) of the United States-Morocco Free Trade Agreement Implementation Act (19 U.S.C. 3805 note), section 302(b) of the NAFTA Implementation Act (19 U.S.C. 3352(b)), section 311(b) of the United States-Oman Free Trade Agreement Implementation Act (19 U.S.C. 3805 note), section 311(b) of the United States-Panama Trade Promotion Agreement Implementation Act (19 U.S.C. 3805 note), section 311(b) of the United States-Peru Trade Promotion Agreement Implementation Act (19 U.S.C. 3805 note), and section 311(b) of the United States-Singapore Free Trade Agreement Implementation Act (19 U.S.C. 3805 note). For other applicable rules, see subpart A of this part and part 201 of this chapter.

[77 FR 3926, Jan. 26, 2012]

EFFECTIVE DATE NOTE: At 88 FR 14890, Mar. 10, 2023, § 206.31 was revised, effective Apr. 10, 2023. For the convenience of the user, the revised text is set forth as follows:

§ 206.31 Applicability of subpart.

This subpart applies specifically to investigations under section 311(b) of the United States-Australia Free Trade Agreement Implementation Act (19 U.S.C. 3805 note), section 311(b) of the United States-Bahrain Free Trade Agreement Implementation Act (19 U.S.C. 3805 note), section 311(b) of the United States-Colombia Trade Promotion Agreement Implementation Act (19 U.S.C. 3805 note), section 211(b) of the United States-Jordan Free Trade Area Implementation Act (19 U.S.C. 2112 note), section 311(b) of the United States-Korea Free Trade Agreement Implementation Act (19 U.S.C. 3805 note), section 311(b) of the United States-Morocco Free Trade Agreement Implementation Act (19 U.S.C. 3805 note), section 311(b) of the United States-Oman Free Trade Agreement Implementation Act (19 U.S.C. 3805 note), section 311(b) of the United States-Panama Trade Promotion Agreement Implementation Act (19 U.S.C. 3805 note), and section 311(b) of the United States-Singapore Free Trade Agreement Implementation Act (19 U.S.C. 3805 note). For other applicable rules, see subpart A of this part and part 201 of this chapter.

§ 206.32 Definitions applicable to subpart D.

For the purposes of this subpart, the following terms have the meanings hereby assigned to them:

(a) The term *substantial cause* has the same meaning as in section 202(b)(1)(B) of the Trade Act.

(b) The terms *domestic industry*, *serious injury*, and *threat of serious injury* have the same meanings as in section 202(c)(6) of the Trade Act.

(c) *Critical circumstances* mean such circumstances as are described in section 202(d) of the Trade Act;

(d) *Perishable agricultural product* means any agricultural product or citrus product, including livestock, which is the subject of monitoring pursuant to section 202(d) of the Trade Act.

(e) *Korean motor vehicle article* means a good provided for in heading 8703 or 8704 of the U.S. Harmonized Tariff Schedule that qualifies as an originating good under section 202(b) of the United States-Korea Free Trade Agreement Implementation Act.

[77 FR 3926, Jan. 26, 2012, as amended at 77 FR 37805, June 25, 2012]

§ 206.33 Who may file a petition.

(a) *In general.* A petition under this subpart D may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of a domestic industry producing an article that is like or directly competitive with an article that is allegedly, as a result of the reduction or elimination of a duty provided for under a free trade agreement listed in paragraph (b) of this section, being imported into the United States in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that imports of the article constitute a substantial cause of serious injury, or (except in the case of a Canadian article) threat thereof, to

such domestic industry. Unless the implementation statute provides otherwise, a petition may be filed only during the transition period of the particular free trade agreement.

(b) *List of free trade agreements.* The free trade agreements referred to in paragraph (a) of this section include the United States-Australia Free Trade Agreement, the United States-Bahrain Free Trade Agreement, the United States-Chile Free Trade Agreement, the United States-Colombia Trade Promotion Agreement, the Dominican Republic-Central America-United States Free Trade Agreement, the United States-Jordan Free Trade Area Agreement, the United States-Korea Free Trade Agreement, the United States-Morocco Free Trade Agreement, the North American Free Trade Agreement (NAFTA), the United States-Oman Free Trade Agreement, the United States-Panama Trade Promotion Agreement, the United States-Peru Trade Promotion Agreement, and the United States-Singapore Free Trade Agreement, to the extent that such agreements have entered into force.

(c) *Critical circumstances.* An entity of the type described in paragraph (a) of this section that represents a domestic industry may allege that critical circumstances exist and petition for provisional relief with respect to imports if such product is from Australia, Canada, Jordan, Korea, Mexico, Morocco, or Singapore.

(d) *Perishable agricultural product.* An entity of the type described in paragraph (a) of this section that represents a domestic industry producing a perishable agricultural product may petition for provisional relief with respect to imports of such product from Australia, Canada, Jordan, Korea, Mexico, Morocco, or Singapore, but only if such product has been subject to monitoring by the Commission for not less than 90 days as of the date the allegation of injury is included in the petition.

(e) *Korean motor vehicle article.* An entity of the type described in paragraph (a) of this section that is filing a petition with respect to a product from Korea shall state whether it represents a domestic industry producing an article that is like or directly competitive with a Korean motor vehicle article.

[77 FR 3926, Jan. 26, 2012]

EFFECTIVE DATE NOTE: At 88 FR 14890, Mar. 10, 2023, §206.33 was amended by revising paragraphs (a) through (d), effective Apr. 10, 2023. For the convenience of the user, the revised text is set forth as follows:

§ 206.33 Who may file a petition.

(a) *In general.* A petition under this subpart may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of a domestic industry producing an article that is like or directly competitive with an article that is allegedly, as a result of the reduction or elimination of a duty provided for under a free trade agreement listed in paragraph (b) of this section, being imported into the United States in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that imports of the article constitute a substantial cause of serious injury, or threat thereof, to such domestic industry. Unless the implementation statute provides otherwise, a petition may be filed only during the transition period of the particular free trade agreement.

(b) *List of free trade agreements.* The free trade agreements referred to in paragraph (a) of this section include the United States-Australia Free Trade Agreement, the United States-Bahrain Free Trade Agreement, the United States-Colombia Trade Promotion Agreement, the United States-Jordan Free Trade Area Agreement, the United States-Korea Free Trade Agreement, the United States-Morocco Free Trade Agreement, the United States-Oman Free Trade Agreement, the United States-Panama Trade Promotion Agreement, and the United States-Singapore Free Trade Agreement, to the extent that such agreements have entered into force.

(c) *Critical circumstances.* An entity of the type described in paragraph (a) of this section that represents a domestic industry may allege that critical circumstances exist and petition for provisional relief with respect to imports if such product is from Australia, Jordan, Korea, Morocco, or Singapore.

(d) *Perishable agricultural product.* An entity of the type described in paragraph (a) of this section that represents a domestic industry producing a perishable agricultural product may petition for provisional relief with respect to imports of such product from Australia, Jordan, Korea, Morocco, or Singapore, but only if such product has been subject to monitoring by the Commission for

not less than 90 days as of the date the allegation of injury is included in the petition.

* * * * *

§ 206.34 Contents of petition.

A petition under this subpart D shall include specific information in support of the claim that, as a result of the reduction or elimination of a duty provided for under a free trade agreement listed in § 206.33(b), an article is being imported into the United States in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that imports of the article constitute a substantial cause of serious injury, or (except in the case of a Canadian article) threat thereof, to the domestic industry producing an article that is like or directly competitive with the imported article. If provisional relief is requested in a petition concerning an article from Australia, Canada, Jordan, Korea, Mexico, Morocco, or Singapore, the petition shall state whether provisional relief is sought because *critical circumstances* exist or because the imported article is a *perishable agricultural product*. In addition, a petition filed under this subpart D shall include the following information, to the extent that such information is publicly available from governmental or other sources, or best estimates and the basis therefor if such information is not available:

(a) *Product description*. The name and description of the imported article concerned, specifying the United States tariff provision under which such article is classified and the current tariff treatment thereof, and the name and description of the like or directly competitive domestic article concerned;

(b) *Representativeness*. (1) The names and addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition and the locations of their establishments in which the domestic article is produced;

(2) The percentage of domestic production of the like or directly competitive domestic article that such represented firms and/or workers account for and the basis for claiming that such firms and/or workers are representative of an industry; and

(3) The names and locations of all other producers of the domestic article known to the petitioner;

(c) *Import data*. Import data for at least each of the most recent 5 full years that form the basis of the claim that the article concerned is being imported in increased quantities in absolute terms;

(d) *Domestic production data*. Data on total U.S. production of the domestic article for each full year for which data are provided pursuant to paragraph (c) of this section;

(e) *Data showing injury*. Quantitative data for each of the most recent 5 full years indicating the nature and extent of injury to the domestic industry concerned:

(1) With respect to serious injury, data indicating:

(i) A significant idling of production facilities in the industry, including data indicating plant closings or the underutilization of production capacity;

(ii) The inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit; and

(iii) Significant unemployment or underemployment within the industry; and/or

(2) With respect to the threat of serious injury, data relating to:

(i) A decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, productivity, or employment (or increasing underemployment);

(ii) The extent to which firms in the industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development;

(iii) The extent to which the U.S. market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(3) Changes in the level of prices, production, and productivity.

(f) *Cause of injury.* An enumeration and description of the causes believed to be resulting in the injury, or threat thereof, described under paragraph (e) of this section, and a statement regarding the extent to which increased imports of the subject article are believed to be such a cause, supported by pertinent data;

(g) *Relief sought and purpose thereof.* A statement describing the import relief sought, including the type, amount, and duration, and the specific purposes therefor, which may include facilitating the orderly transfer of resources to more productive pursuits, enhancing competitiveness, or other means of adjustment to new conditions of competition;

(h) *Efforts to compete.* A statement on the efforts being taken, or planned to be taken, or both, by firms and workers in the industry to make a positive adjustment to import competition.

(i) *Critical circumstances.* If the petition alleges the existence of critical circumstances, a statement setting forth the basis for the belief that there is clear evidence that increased imports (either actual or relative to domestic production) of the article are a substantial cause of serious injury, or the threat thereof, to the domestic industry, and that delay in taking action would cause damage to that industry that would be difficult to repair, and a statement concerning the provisional relief requested and the basis therefor.

[77 FR 3926, Jan. 26, 2012]

EFFECTIVE DATE NOTE: At 88 FR 14891, Mar. 10, 2023, § 206.34 was amended by revising the introductory text, effective Apr. 10, 2023. For the convenience of the user, the revised text is set forth as follows:

§ 206.34 Contents of petition.

A petition under this subpart shall include specific information in support of the claim that, as a result of the reduction or elimination of a duty provided for under a free trade agreement listed in § 206.33(b), an article is being imported into the United States in such increased quantities, in absolute terms or relative to domestic production, and under such conditions that imports of the article constitute a substantial cause of serious injury, or threat thereof, to the domestic industry producing an article that is like or directly competitive with the imported article. If provisional relief is requested in a petition concerning an article from Australia, Jordan, Korea, Morocco, or Singapore, the petition shall state whether provisional relief is sought because critical circumstances exist or because the imported article is a perishable agricultural product. In addition, a petition filed under this subpart shall include the following information, to the extent that such information is publicly available from governmental or other sources, or best estimates and the basis therefor if such information is not available:

* * * * *

§ 206.35 Time for determinations, reporting.

(a) *In general.* The Commission will make its determination with respect to injury within 120 days (180 days if critical circumstances are alleged) after the date on which the investigation is initiated. The Commission will make its report to the President no later than 30 days after the date on which its determination is made.

(b) *Perishable agricultural product.* In the case of a request in a petition for provisional relief with respect to a perishable agricultural product that has been the subject of monitoring by the Commission, the Commission will report its determination and any finding to the President not later than 21 days after the date on which the request for provisional relief is received.

(c) *Critical circumstances.* If petitioner alleges the existence of critical circumstances in the petition, the Commission will report its determination regarding such allegation and any finding on or before the 60th day after such filing date.

[77 FR 3927, Jan. 26, 2012]

§ 206.36 Public report.

Upon making a report to the President of the results of an investigation to which this subpart D relates, the Commission will make such report public (with the exception of information which the Commission determines to be confidential) and cause a summary thereof to be published in the FEDERAL REGISTER.

§ 206.37 Limited disclosure of certain confidential business information under administrative protective order.

Except in the case of an investigation under the United States-Jordan Free Trade Area Implementation Act or the NAFTA, the Secretary shall make available to authorized applicants, in accordance with the provisions of § 206.17, confidential business information obtained in an investigation under this subpart.

[77 FR 3927, Jan. 26, 2012]

EFFECTIVE DATE NOTE: At 88 FR 14891, Mar. 10, 2023, § 206.37 was revised, effective Apr. 10, 2023. For the convenience of the user, the revised text is set forth as follows:

§ 206.37 Limited disclosure of certain confidential business information under administrative protective order.

Except in the case of an investigation under the United States-Jordan Free Trade Area Implementation Act, the Secretary shall make available to authorized applicants, in accordance with the provisions of § 206.17, confidential business information obtained in an investigation under this subpart.

Subpart E—Investigations for Relief From Market Disruption

§ 206.41 Applicability of subpart.

This subpart E applies specifically to investigations under section 406(a) or 421(b) or (o) of the Trade Act. For other applicable rules, see subpart A of this part and part 201 of this chapter.

[59 FR 5091, Feb. 3, 1994, as amended at 67 FR 8190, Feb. 22, 2002]

§ 206.42 Who may file a petition.

(a) A petition under section 406(a) of the Trade Act may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, that is representative of a domestic industry producing an article with respect to which there are imports of a like or directly competitive article which is the product of a Communist country, which imports, allegedly, are increasing rapidly, either absolutely or relative to domestic production, so as to be a significant cause of material injury, or the threat thereof, to such domestic industry.

(b) A petition under section 421(b) or (o) of the Trade Act may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry.

[67 FR 8191, Feb. 22, 2002]

§ 206.43 Contents of a petition under section 406(a) of the Trade Act.

A petition for relief under section 406(a) of the Trade Act shall include specific information in support of the claim that imports of an article that are the product of a Communist country which are like or directly competitive with an article produced by a domestic industry, are increasing rapidly, either absolutely or relative to domestic production, so as to be a significant cause of material injury, or the threat thereof, to such domestic industry. In addition, such petition shall, to the extent practicable, include the following information:

(a) *Product description.* The name and description of the imported article concerned, specifying the United States tariff provision under which such article is classified and the current tariff treatment thereof, and the name and description of the like or directly competitive domestic article concerned;

(b) *Representativeness.* (1) The names and addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition and the locations of their establishments in which the domestic article is produced; (2) the percentage of domestic production of the like or directly competitive domestic article that such represented firms and/or workers account for and the basis for asserting that petitioner is representative of an industry; and (3) the names and locations of all other producers of the domestic article known to the petitioner;

(c) *Import data.* Import data for at least each of the most recent 5 full years which form the basis of the claim that imports from a Communist country of an article like or directly competitive with the article produced by the domestic industry concerned are increasing rapidly, either absolutely or relative to domestic production;

(d) *Domestic production data.* Data on total U.S. production of the domestic article for each full year for which data are provided pursuant to paragraph (c) of this section;

(e) *Data showing injury.* Quantitative data indicating the nature and extent of injury to the domestic industry concerned:

(1) With respect to material injury, data indicating:

(i) An idling of production facilities in the industry, including data indicating plant closings or the underutilization of production capacity;

(ii) The inability of a number of firms to carry out domestic production operations at a reasonable level of profit; and

(iii) Unemployment or underemployment within the industry; and/or

(2) With respect to the threat of material injury, data relating to:

(i) A decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, or employment (or increasing underemployment);

(ii) The extent to which firms in the industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development; and

(iii) The extent to which the U.S. market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets;

(f) *Cause of injury.* An enumeration and description of the causes believed to be resulting in the material injury, or threat thereof, described in paragraph (e) of this section; information relating to the effect of imports of the subject merchandise on prices in the United States for like or directly competitive articles; evidence of disruptive pricing practices, or other efforts to unfairly manage trade patterns; and a statement regarding the extent to which increased imports, either actual or relative to domestic production, of the imported article are believed to be such a cause, supported by pertinent data;

(g) *Relief sought and purpose thereof.* A statement describing the import relief sought.

[59 FR 5091, Feb. 3, 1994, as amended at 67 FR 8191, Feb. 22, 2002]

§ 206.44 Contents of a petition under section 421(b) or (o) of the Trade Act.

(a) *Petitions under section 421(b).* (1) A petition for relief under section 421(b) of the Trade Act shall provide specific information in support of the claim that products of the People's Republic of China are being imported into the United States in such increased quantities or under such conditions as to cause or threaten to cause market disruption to the domestic producers of like or directly competitive products. In addition, such petition shall include the information described in paragraphs (b) through (j) of this section. The petition shall provide the information required by this paragraph and paragraphs (b) through (j) of this section to the extent that such information is reasonably available to the petitioner with due diligence.

(2) If the petition fails to provide any item of information specified in paragraphs (b) through (j) of this section, the petition shall include a certification that such information was not reasonably available to the petitioner.

(b) *Product description.* Each petition shall include the name and description of the imported product concerned, specifying the United States tariff provision under which such product is classified and the current tariff treatment thereof, and the name and description of the like or directly competitive domestic product concerned.

(c) *Representativeness.* Each petition shall include:

(1) The names and street addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition, the locations of the establishments in which each such firm produces the domestic product, and the telephone number and contact person(s) for each such firm;

(2) The percentage of domestic production of the like or directly competitive domestic product that such represented firms and/or workers account for and the basis for asserting that petitioner is representative of an industry; and

(3) The names and street addresses of all other producers of the domestic product known to the petitioner, and the telephone number and contact person(s) for each such producer.

(d) *Import data.* Each petition shall include import data for at least each of the most recent 5 full years which form the basis of the claim that imports from the People's Republic of China of a product like or directly competitive with the product produced by the domestic industry concerned are increasing rapidly, either absolutely or relatively.

(e) *Domestic production data.* Each petition shall include data on total U.S. production of the domestic product for each full year for which data are provided pursuant to paragraph (d) of this section.

(f) *Data showing injury and/or threat of injury.* Each petition shall include the following quantitative data indicating the nature and extent of injury to the domestic industry concerned:

(1) With respect to material injury, information, including data on production, capacity, capacity utilization, shipments, net sales, profits, employment, productivity, inventories, and expenditures on capital and research and development, indicating:

(i) An idling of production facilities in the industry, including data indicating plant closings or the underutilization of production capacity;

(ii) The inability of a number of firms to carry out domestic production operations at a reasonable level of profit; and

(iii) Unemployment or underemployment within the industry; and/or

(2) With respect to the threat of material injury, data relating to:

(i) Declines in sales or market share, increases in inventory (whether maintained by domestic producers, importers, wholesalers, retailers, or producers or exporters in the People's Republic of China), and/or a downward trend in production, profits, wages, or employment (or increasing underemployment);

(ii) The extent to which firms in the industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development;

(iii) The extent to which the U.S. market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(iv) Data regarding productive capacity in the People's Republic of China, any unused productive capacity, and any potential for product shifting in the People's Republic of China.

(g) *Cause of injury.* Each petition shall enumerate and describe the causes believed to be resulting in the material injury, or threat thereof, described in paragraph (f) of this section. The petition shall provide information relating to the effect of imports of the subject merchandise on prices in the United States for like or directly competitive articles. The petition shall also include a statement regarding the extent to which increased imports, either actual or relative, of the imported product are believed to be such a cause, supported by pertinent data.

(h) *Critical circumstances.* If the petition alleges that critical circumstances exist within the meaning of section 421(i)(1) of the Trade Act, the petition shall provide detailed information supporting that claim as well as detailed information demonstrating that delay in taking action under section 421 of the Act would cause damage to the relevant domestic industry that would be difficult to repair.

(i) *Relief sought and purpose thereof.* The petition shall include a statement describing the import relief sought under section 421(i)(4) and/or section 421(a) of the Trade Act and the purpose thereof.

(j) *Additional information.* The petition shall include:

(1) The names of all U.S. importers and all producers in China of the subject merchandise known to petitioner, and the street address, telephone and

fax number, and primary contact person(s) for each such importer and producer in China;

(2) A detailed description of each product for which the petitioner requests the Commission to seek pricing information in its questionnaires, and an explanation of why the petitioner believes the Commission should collect pricing information for each such product;

(3) For each domestic producer represented by petitioner, the company names of its 10 largest purchasers, and the street address, telephone number, and primary contact person(s) for each such purchaser;

(4) For each allegation of lost sales and/or lost revenues, supporting information with regard to each such alleged loss, including the name of the company represented by petitioner that lost the sale or revenue, the name of the company that captured the sale or whose competition resulted in lost revenue (including company street address, company contact person, and telephone and fax numbers for each contact person), the date and total value of the lost sale or lost revenue, and the total quantity of product involved (by weight or number of units).

(k) *Petitions under section 421(o).* A petition under section 421(o) of the Trade Act shall include evidence of representativeness, as described in paragraph (b) of this section, as well as specific information in support of the claim that action under section 421 of the Act continues to be necessary to prevent or remedy market disruption. The information provided in support of that claim should take into account factors such as those specified in paragraphs (c) through (g) of this section. To comply with this paragraph, the petition should contain all relevant information that is reasonably available to the petitioner with due diligence.

[67 FR 8191, Feb. 22, 2002, as amended at 68 FR 65167, Nov. 19, 2003]

§ 206.44a Special rules for conducting investigations under section 421(b) of the Trade Act.

(a) *Service of the petition.* (1)(i) The Secretary shall promptly notify a petitioner when, before the establishment of a service list under § 206.17(a)(4) of this part, he or she approves an application under § 206.17(a)(2) of this part pursuant to § 206.47. When practicable, this notification shall be made by facsimile transmission. The petitioner shall then serve a copy of the petition, including all confidential business information, on the approved lead authorized applicants in accord with § 206.17(f) within 2 calendar days of the time notification is made by the Secretary.

(ii) Upon establishment and issuance of the service list, the petitioner shall serve the lead authorized applicants enumerated on the list established by the Secretary pursuant to § 206.17(a)(4) that have not been served pursuant to paragraph (a)(1)(i) of this section within 2 calendar days of the establishment and issuance of the Secretary's list.

(2) As the Secretary adds new authorized applicants to the service list described in paragraph (a)(1) of this section, the Secretary shall notify the petitioner and issue an amended list, and the petitioner shall serve new lead authorized applicants with a copy of the petition in the same manner as under paragraph (a)(1)(i) of this section.

(3) The petitioner shall serve a copy of the non-confidential version of the petition on those persons enumerated on the list established by the Secretary pursuant to § 201.11(d) of this chapter within 2 calendar days of the establishment and issuance of the Secretary's list, and on any additional persons within 2 calendar days of receiving notification from the Secretary of an amended list.

(4) The petitioner shall attest service of the petition by filing a certificate of service with the Commission.

(b) *Comment on information.* The parties shall have an opportunity to file comments on any information disclosed to them after they have filed their posthearing brief. Comments shall concern only such information, and shall not exceed 15 pages of textual material, double-spaced and on single-sided stationery measuring 8½ × 11 inches. A comment may address the accuracy, reliability, or probative value of such information by reference to information elsewhere in the record, in which case the comment shall identify where in the record such information is

found. New factual information and arguments based on that information shall be disregarded. The date on which such comments must be filed will be specified by the Commission when it specifies the time that information will be disclosed. The record shall close on the date such comments are due, except with respect to changes in bracketing of confidential business information permitted by § 206.8(c) of this part.

[68 FR 65168, Nov. 19, 2003]

§ 206.45 Time for reporting.

(a) In an investigation under section 406(a) of the Trade Act, the Commission will make its report to the President at the earliest practical time, but not later than 3 months after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be.

(b) In an investigation under section 421(b) of the Trade Act, the Commission will transmit to the President and the United States Trade Representative its determination at the earliest practicable time, but in no case later than 60 days (or 90 days in the case of a petition requesting provisional relief under section 421(i) of the Act) after the date on which the petition is filed, the request or resolution is received, or the motion is adopted. The Commission will transmit its report to the President and the Trade Representative no later than 20 days after the transmittal of the determination.

(c) In an investigation under section 421(b) of the Trade Act in which the petition requests provisional relief under section 421(i) of the Act, the Commission will transmit to the President and the Trade Representative its determination and report with respect to section 421(i) of the Act no later than 45 days after the petition is filed.

(d) In an investigation under section 421(o) of the Trade Act, the Commission shall transmit to the President a report on its investigation and determination not later than 60 days before the action under section 421(m) of the Trade Act is to terminate.

(e) *Date of filing.* Any petition under this subpart E that is filed after 12:00 noon shall be deemed to be filed on the next business day.

[67 FR 8192, Feb. 22, 2002, as amended at 70 FR 8511, Feb. 22, 2005]

§ 206.46 Public report.

Upon making a report to the President of the results of an investigation to which this subpart E relates, the Commission will make such report public (with the exception of information which the Commission determines to be confidential) and cause a summary thereof to be published in the FEDERAL REGISTER.

[59 FR 5091, Feb. 3, 1994. Redesignated at 67 FR 8191, Feb. 22, 2002]

§ 206.47 Limited disclosure of certain confidential business information under administrative protective order.

In an investigation under section 421(b) or (o) of the Trade Act, the Secretary shall make confidential business information available to authorized applicants, subject to the provisions of § 206.17.

[67 FR 8192, Feb. 22, 2002]

Subpart F—Monitoring; Advice As to Effect of Extension, Reduction, Modification, or Termination of Relief Action

SOURCE: 60 FR 10, Jan. 3, 1995, unless otherwise noted.

§ 206.51 Applicability of subpart.

This subpart F applies specifically to investigations under section 204 of the Trade Act. For other applicable rules, see subpart A of this part and part 201 of this chapter.

§ 206.52 Monitoring.

(a) *In general.* As long as any import relief imposed by the President pursuant to section 203 of the Trade Act remains in effect, the Commission will monitor developments with respect to the domestic industry, including the progress and specific efforts made by workers and firms in the industry to make a positive adjustment to import competition.

(b) *Reports.* Whenever the initial period of import relief, or any extension thereof, exceeds three (3) years, the Commission will submit a report on the results of such monitoring to the President and the Congress. Such report will be submitted not later than the date which is the mid-point of the initial period of import relief, or any extension thereof. In the course of preparing each such report, the Commission will hold a hearing at which interested persons will be given a reasonable opportunity to be present, to produce evidence, and to be heard.

(c) Limited disclosure of certain confidential business information under administrative protective order. Upon receipt of a timely application filed by an authorized applicant, the Secretary shall make available to an authorized applicant under administrative protective order all confidential business information contained in Commission memoranda and reports and in written submissions filed with the Commission at any time during an investigation under this section with respect to an article that was the subject of an affirmative Commission determination under section 202 of the Trade Act (except privileged information, classified information, and specific information of a type which there is a clear and compelling need to withhold from disclosure). Such disclosure shall be made in the manner provided for and in accordance with the procedures set forth in § 206.17. The provisions in paragraphs (d) and (e) of § 206.17 relating to Commission responses to a breach of an administrative protective order and breach procedure shall apply with respect to orders issued under this paragraph.

[60 FR 10, Jan. 3, 1995, as amended at 66 FR 32218, June 14, 2001]

§ 206.53 Investigations to advise the President as to the probable economic effect of reduction, modification, or termination of action.

Upon the request of the President, the Commission will conduct an investigation for the purpose of gathering information in order that it might advise the President of its judgment as to the probable economic effect on the industry concerned of any reduction, modification, or termination of the action taken under section 203 of the Trade Act which is under consideration.

§ 206.54 Investigations with respect to extension of action.

(a) *Institution of investigations.* Upon the request of the President, or upon petition on behalf of the industry concerned, the Commission will investigate to determine whether an action taken under section 203 of the Trade Act continues to be necessary to prevent or remedy serious injury and whether there is evidence that the industry is making a positive adjustment to import competition.

(b) *Who may file a petition.* A petition under this § 206.54 may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of the industry producing the domestic article concerned in the investigation of the Commission which resulted in the imposition by the President of the import relief action.

(c) *Time for filing.* Any petition filed on behalf of an industry for a determination under this § 206.54 must be filed with the Commission not earlier than the date which is 9 months, and not later than the date which is 6 months, before the date any action taken under section 203 of the Trade Act is to terminate.

(d) *Contents of petition.* A petition under this § 206.54 shall include the following information, to the extent that such information is publicly available from governmental or other sources, or best estimates and the basis therefor if such information is not available:

(1) *Identification of relief action.* An identification of the action under section 203, or portion of such action, for which a determination under this § 206.54 is sought;

(2) *Representativeness.* (i) The names and addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition and the locations of their establishments in which the domestic article is produced;

(ii) The percentage of domestic production of the like or directly competitive domestic article that such represented firms and/or workers account for and the basis for claiming that such firms and/or workers are representative of an industry; and

(iii) The names and locations of all other producers of the domestic article known to the petitioner;

(3) *Import data*. Import data on the foreign article concerned for each full year since action was taken under section 203 of the Trade Act, starting with the year in which action was taken;

(4) *Domestic production data*. Data on total U.S. production of the domestic article concerned for each year for which data are provided pursuant to paragraph (d)(3) of this section;

(5) *Efforts to adjust*. Specific information in support of the claim that action under section 203 of the Trade Act continues to be necessary to prevent or remedy serious injury and that there is evidence that the industry is making a positive adjustment to import competition.

(e) *Limited disclosure of certain confidential business information under administrative protective order*. Upon receipt of a timely application filed by an authorized applicant, the Secretary shall make available to an authorized applicant under administrative protective order all confidential business information contained in Commission memoranda and reports and in written submissions filed with the Commission at any time during an investigation under this section with respect to an article that was the subject of an affirmative Commission determination under section 202 of the Trade Act (except privileged information, classified information, and specific information of a type which there is a clear and compelling need to withhold from disclosure). Such disclosure shall be made in the manner provided for and in accordance with the procedures set forth in § 206.17. The provisions in paragraphs (d) and (e) of § 206.17 relating to Commission responses to a breach of an administrative protective order and breach procedure shall apply with respect to orders issued under this paragraph.

(f) *Time for reporting*. The Commission will make its report to the President at the earliest practical time, but not later than 60 days before the action under section 203 of the Trade Act is to terminate, unless the President specifies a different date.

(g) *Public report*. Upon making a report to the President of the results of an investigation to which this § 206.54 relates, the Commission will make such report public (with the exception of information which the Commission determines to be confidential) and cause a summary thereof to be published in the FEDERAL REGISTER.

§ 206.55 Investigations to evaluate the effectiveness of relief.

(a) *Investigation*. After any action taken under section 203 has terminated, the Commission will conduct an investigation for the purpose of evaluating the effectiveness of the relief action in facilitating positive adjustment by the domestic industry to import competition, consistent with the reasons set out by the President in the report submitted to the Congress under section 203(b) of the Trade Act.

(b) *Hearing*. In the course of such investigation, the Commission will hold a hearing at which interested persons will be given an opportunity to be present, to produce evidence, and to be heard.

(c) *Time for reporting*. The Commission will submit its report to the President and to the Congress by no later than the 180th day after the day on which the action terminated.

Subpart G—Investigations For Action in Response to Trade Diversion; Reviews of Action Taken

SOURCE: 67 FR 8192, Feb. 22, 2002, unless otherwise noted.

§ 206.61 Applicability of subpart.

The provisions of this subpart G apply to investigations under section 422(b) and/or reviews under section 422(j) of the Trade Act. For other applicable rules, see subpart A of this part and part 201 of this chapter.

§ 206.62 Who may file a petition.

A petition for an investigation under section 422(b) of the Trade Act may be filed by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry.

§ 206.63 Contents of petition.

A petition under section 422(b) of the Trade Act shall include specific information in support of the claim that an action described in section 422(c) of the Trade Act has caused, or threatens to cause, a significant diversion of trade into the domestic market of the United States. To comply with that requirement and the requirements in paragraphs (a) through (f) of this section, the petition shall include all relevant information that is reasonably available to the petitioner with due diligence. The petition shall include the following information:

(a) *Product description.* The name and description of the imported product concerned, specifying the United States tariff provision under which such article is classified and the current tariff treatment thereof, and the name and description of the domestic product concerned;

(b) *Representativeness.* (1) The names and addresses of the firms represented in the petition and/or the firms employing or previously employing the workers represented in the petition and the locations of their establishments in which the domestic product is produced;

(2) The percentage of domestic production of the domestic product that such represented firms and/or workers account for and the basis for asserting that petitioner is representative of an industry; and

(3) The names and locations of all other producers of the domestic product known to the petitioner;

(c) *Description of the action.* A description of the action or actions, as defined in section 422(c) of the Trade Act, that allegedly has caused or threatens to cause a significant diversion of trade into the domestic market of the United States;

(d) *Trade diversion data.* (1) The actual or imminent increase in United States market share held by such imports from the People's Republic of China;

(2) The actual or imminent increase in volume of such imports into the United States;

(3) The nature and extent of the action taken or proposed by the WTO member concerned;

(4) The extent of exports from the People's Republic of China to that WTO member and to the United States;

(5) The actual or imminent changes in exports to that WTO member due to the action taken or proposed;

(6) The actual or imminent diversion of exports from the People's Republic of China to countries other than the United States;

(7) Cyclical or seasonal trends in import volumes into the United States of the products at issue; and

(8) Conditions of demand and supply in the United States market for the products at issue;

(e) *Import data.* Any import data available to the petitioner that will aid the Commission in examining, pursuant to section 422(d)(2) of the Trade Act, the changes in imports into the United States from the People's Republic of China since the time that the WTO member commenced the investigation that led to a request for consultations described in section 422(a) of the Act; and

(f) *Relief sought and purpose thereof.* A statement describing the import relief sought under section 422(h) of the Trade Act and the purpose thereof.

§ 206.64 Institution of investigation or review; publication of notice; and availability for public inspection.

(a) Paragraphs (a) and (b) in § 206.3 govern the institution of an investigation under section 422(b) of the Act and the publication of a FEDERAL REGISTER notice concerning the investigation. Following receipt of notification that the WTO member or members involved have notified the Committee on Safeguards of the WTO of a modification in the action taken by them against the People's Republic of China pursuant to consultation referred to in section 422(a) of the Act, the Commission will

promptly conduct a review under section 422(j) of the Act regarding the continued need for action taken under section 422(h) of the Act. The Commission also will publish notice of the review in the FEDERAL REGISTER.

(b) The Commission will make available for public inspection the notification document that prompted a review under paragraph (a) of this section, excluding any confidential business information in the document. Paragraph (c) in §206.3 governs the availability for public inspection of a petition, request, resolution, or motion that prompted the Commission to institute an investigation under section 422(b) of the Act.

§206.65 Public hearing.

Public hearings in investigations under section 422(b) of the Act are provided for in §206.5(b).

§206.66 Limited disclosure of certain confidential business information under administrative protective order.

In an investigation under section 422(b) of the Trade Act, the Secretary shall make confidential business information available to authorized applicants, subject to the provisions of §206.17.

§206.67 Time for determination and report.

(a) In an investigation under section 422(b) of the Trade Act, the Commission will transmit its determination under that section of the Act to the President and the Trade Representative at the earliest practical time, but not later than 45 days after the date on which the petition is filed, the request or resolution is received, or the motion is adopted, as the case may be. The Commission shall issue and transmit its report on the determination not later than 10 days after the determination is issued.

(b) In a review under section 422(j) of the Trade Act, the Commission will report its determination to the President not later than 60 days after the notification described in that section of the Act.

§206.68 Public report.

Upon making a report to the President of the results of an investigation under section 422(b) or a review under section 422(j) of the Trade Act, the Commission will make such report public (with the exception of information which the Commission determines to be confidential) and cause a summary thereof to be published in the FEDERAL REGISTER.

PART 207—INVESTIGATIONS OF WHETHER INJURY TO DOMESTIC INDUSTRIES RESULTS FROM IMPORTS SOLD AT LESS THAN FAIR VALUE OR FROM SUBSIDIZED EXPORTS TO THE UNITED STATES

Sec.

AUTHORITY: 19 U.S.C. 1336, 1671–1677n, 2482, 3513.

EFFECTIVE DATE NOTE: At 88 FR 14891, Mar. 10, 2023, the authority citation for part 207 was revised, effective Apr. 10, 2023. For the convenience of the user, the revised text is set forth as follows:

AUTHORITY: 19 U.S.C. 1335, 1671–1677n, 2482, 3513, 4582.

SOURCE: 44 FR 76468, Dec. 26, 1979, unless otherwise noted.

§ 207.1 Applicability of part.

Part 207 applies to proceedings of the Commission under section 516A and title VII of the Tariff Act of 1930 (19 U.S.C. 1303, 1516A and 1671–1677n) (the Act), other than investigations under section 783 (19 U.S.C. 1677n), which will be conducted pursuant to procedures specified by the Office of the United States Trade Representative.

[61 FR 37829, July 22, 1996]

Subpart A—General Provisions

SOURCE: 56 FR 11923, Mar. 21, 1991, unless otherwise noted.

§ 207.2 Definitions applicable to part 207.

For the purposes of this part, the following terms have the meanings hereby assigned to them:

(a) The term *the Act* means: The Tariff Act of 1930, as amended.

(b) The term *administering authority* means: The Secretary of Commerce, or any other officer of the United States to whom the responsibility for carrying

out the duties of the administering authority under section 303 or title VII of the Act is transferred by law.

(c) The term *Director* means: The incumbent Commission Director or Acting Director, Office of Operations, or, in the absence of either, a person designated by the Director.

(d) The term *ex parte meeting* means: Any communication between

(1) Any interested party or other person providing factual information in connection with an investigation, and

(2) Any Commissioner, or member of a Commissioner's staff, in which less than all parties participate, and which is not a hearing or conference for which an opportunity to participate is given to the parties.

(e) The term *injury* means: Material injury or threat of material injury to an industry in the United States, or material retardation of the establishment of an industry in the United States, by reason of imports into the United States of subject merchandise which is found by the administering authority to be subsidized, or sold, or likely to be sold, at less than its fair value.

(f) The term *record* means:

(1) All information presented to or obtained by the Commission during the course of an investigation, including completed questionnaires, any information obtained from the administering authority, written communications from any person filed with the Secretary, staff reports, all governmental memoranda pertaining to the case, and the record of ex parte meetings required to be kept pursuant to section 777(a)(3) of the Act; and

(2) A copy of all Commission orders and determinations, all transcripts or records of conferences or hearings, and all notices published in the FEDERAL REGISTER concerning the investigation.

(g) The term *coalition or trade association* as used in an investigation referred to in section 771(9)(G) of the Act means a coalition or trade association which is representative of domestic processors, domestic processors and producers, or domestic processors and growers.

[44 FR 76468, Dec. 26, 1979, as amended at 60 FR 21, Jan. 3, 1995]

§ 207.3 Service, filing, and certification of documents.

(a) *Certification.* Any person submitting factual information on behalf of the petitioner or any other interested party for inclusion in the record, and any person submitting a response to a Commission questionnaire, must certify that such information is accurate and complete to the best of the submitter's knowledge.

(b) *Service.* Any party submitting a document for inclusion in the record of the investigation shall, in addition to complying with § 201.8 of this chapter, serve a copy of each such document on all other parties to the investigation in the manner prescribed in § 201.16 of this chapter. If a document is filed before the Secretary's issuance of the service list provided for in § 201.11 of this chapter or the administrative protective order list provided for in § 207.7, the document need not be accompanied by a certificate of service, but the document shall be served on all appropriate parties within two (2) days of the issuance of the service list or the administrative protective order list and a certificate of service shall then be filed. Notwithstanding § 201.16 of this chapter, petitions, briefs, requests to close a portion of the hearing, comments on requests to close a portion of the hearing, and testimony filed by parties pursuant to §§ 207.10, 207.15, 207.23, 207.24, 207.25, 207.65, 207.66, and 207.67, shall be served by hand or, if served by mail, by overnight mail or its equivalent. Failure to comply with the requirements of this rule may result in removal from status as a party to the investigation. The Commission shall make available to all parties to the investigation a copy of each document, except transcripts of conferences and hearings, business proprietary information, privileged information, and information required to be served under this section, placed in the record of the investigation by the Commission.

(c) *Filing.* Documents to be filed with the Commission must comply with applicable rules, including § 201.8 of this chapter. If the Commission establishes a deadline for the filing of a document, and the submitter includes business

proprietary information in the document, the submitter is to file and, if the submitter is a party, serve the business proprietary version of the document on the deadline and may file and serve the nonbusiness proprietary version of the document no later than one business day after the deadline for filing the document. The business proprietary version shall enclose all business proprietary information in brackets and have the following warning marked on every page: ''Bracketing of BPI not final for one business day after date of filing.'' The bracketing becomes final one business day after the date of filing of the document, *i.e.*, at the same time as the nonbusiness proprietary version of the document is due to be filed. Until the bracketing becomes final, recipients of the document may not divulge any part of the contents of the document to anyone not subject to the administrative protective order issued in the investigation. If the submitter discovers it has failed to bracket correctly, the submitter may file a corrected version or portion of the business proprietary document at the same time as the nonbusiness proprietary version is filed. No changes, including typographical changes, to the document other than bracketing and deletion of business proprietary information are permitted after the deadline unless an extension of time is granted to file an amended document pursuant to § 201.14(b)(2) of this chapter. Failure to comply with this paragraph may result in the striking from the record of all or a portion of a submitter's document.

[44 FR 76468, Dec. 26, 1979, as amended at 61 FR 37829, July 22, 1996; 63 FR 30607, June 5, 1998; 70 FR 8511, Feb. 22, 2005]

§ 207.4 The record.

(a) *Maintenance of the record.* The Secretary shall maintain the record of each investigation conducted by the Commission pursuant to title VII of the Act. The record shall be maintained contemporaneously with each actual filing in the record. It shall be divided into public and nonpublic sections. The Secretary shall also maintain a contemporaneous index of all materials filed in the record. All material properly filed with the Secretary shall be placed in the record. The Commission need not consider in its determinations or include in the record any material that is not filed with the Secretary. All material which is placed in the record shall be maintained in the public record, with the exception of material which is privileged, or which is business proprietary information submitted in accordance with § 201.6 of this chapter. Privileged and business proprietary material shall be maintained in the nonpublic record.

(b) *Audits.* The Commission may in its discretion verify information received in the course of an investigation. To the extent a verification results in new or different information, the Commission shall place such information on the record.

(c) *Materials provided by the administering authority.* Materials received by the Commission from the administering authority shall be placed on the Commission's record and shall be designated by the Commission as public or nonpublic in conformity with the applicable designation of the administering authority. Any requests to the Commission either to permit access to such materials or to release such materials shall be referred to the administering authority for its advice.

[44 FR 76468, Dec. 26, 1979, as amended at 61 FR 37829, July 22, 1996]

§ 207.5 Ex parte meetings.

There shall be included in the record of each investigation a record of ex parte meetings as required by section 777(a)(3) of the Act. The record of each ex parte meeting shall include the identity of the persons present at the meeting, the date, time, and place of the meeting, and a summary of the matters discussed or submitted.

§ 207.6 [Reserved]

§ 207.7 Limited disclosure of certain business proprietary information under administrative protective order.

(a)(1) *Disclosure.* Upon receipt of a timely application filed by an authorized applicant, as defined in paragraph (a)(3) of this section, which describes in general terms the information requested, and sets forth the reasons for

the request (*e.g.*, all business proprietary information properly disclosed pursuant to this section for the purpose of representing an interested party in investigations pending before the Commission), the Secretary shall make available all business proprietary information contained in Commission memoranda and reports and in written submissions filed with the Commission at any time during the investigation (except nondisclosable confidential business information) to the authorized applicant under an administrative protective order described in paragraph (b) of this section. The term ''business proprietary information'' has the same meaning as the term ''confidential business information'' as defined in § 201.6 of this chapter.

(2) *Application.* An application under paragraph (a)(1) of this section must be made by an authorized applicant on a form adopted by the Secretary or a photocopy thereof. A signed application shall be filed electronically. An application on behalf of a petitioner, a respondent, or another party must be made no later than the time that entries of appearance are due pursuant to § 201.11 of this chapter. In the event that two or more authorized applicants represent one interested party who is a party to the investigation, the authorized applicants must select one of their number to be lead authorized applicant. The lead authorized applicant's application must be filed no later than the time that entries of appearance are due. Provided that the application is accepted, the lead authorized applicant shall be served with business proprietary information pursuant to paragraph (f) of this section. The other authorized applicants representing the same party may file their applications after the deadline for entries of appearance but at least five days before the deadline for filing posthearing briefs in the investigation, or the deadline for filing briefs in the preliminary phase of an investigation, or the deadline for filing submissions in a remanded investigation, and shall not be served with business proprietary information.

(3) *Authorized applicant.* (i) Only an authorized applicant may file an application under this subsection. An authorized applicant is:

(A) An attorney for an interested party which is a party to the investigation;

(B) A consultant or expert under the direction and control of a person under paragraph (a)(3)(i)(A) of this section;

(C) A consultant or expert who appears regularly before the Commission and who represents an interested party which is a party to the investigation; or

(D) A representative of an interested party which is a party to the investigation, if such interested party is not represented by counsel.

(ii) In addition, an authorized applicant must not be involved in competitive decisionmaking for an interested party which is a party to the investigation. Involvement in ''competitive decisionmaking'' includes past, present, or likely future activities, associations, and relationships with an interested party which is a party to the investigation that involve the prospective authorized applicant's advice or participation in any of such party's decisions made in light of similar or corresponding information about a competitor (pricing, product design, etc.).

(4) *Forms and determinations.* (i) The Secretary may adopt, from time to time, forms for submitting requests for disclosure pursuant to an administrative protective order incorporating the terms of this rule. The Secretary shall determine whether the requirements for release of information under this rule have been satisfied. This determination shall be made concerning specific business proprietary information as expeditiously as possible but in no event later than fourteen (14) days from the filing of the information, or seven (7) days in the preliminary phase of an investigation, except if the submitter of the information objects to its release or the information is unusually voluminous or complex, in which case the determination shall be made within thirty (30) days from the filing of the information, or ten (10) days in the preliminary phase of an investigation. The Secretary shall establish a list of parties whose applications have been granted. The Secretary's determination shall be final for purposes of review by the U.S. Court of International Trade under section 777(c)(2) of the Act.

(ii) Should the Secretary determine pursuant to this section that materials sought to be protected from public disclosure by a person do not constitute business proprietary information or were not required to be served under paragraph (f) of this section, then the Secretary shall, upon request, issue an order on behalf of the Commission requiring the return of all copies of such materials served in accordance with paragraph (f) of this section.

(iii) The Secretary shall release business proprietary information only to an authorized applicant whose application has been accepted and who presents the application along with adequate personal identification; or a person described in paragraph (b)(1)(iv) of this section who presents a copy of the statement referred to in that paragraph along with adequate personal identification.

(iv) An authorized applicant granted access to business proprietary information in the preliminary phase of an investigation may, subject to paragraph (c) of this section, retain such business proprietary information during any final phase of that investigation, provided that the authorized applicant has not lost his authorized applicant status (*e.g.*, by terminating his representation of an interested party who is a party). When retaining business proprietary information pursuant to this paragraph, the authorized applicant need not file a new application in the final phase of the investigation.

(b) *Administrative protective order.* The administrative protective order under which information is made available to the authorized applicant shall require the applicant to submit to the Secretary a personal sworn statement that, in addition to such other conditions as the Secretary may require, the applicant shall:

(1) Not divulge any of the business proprietary information obtained under the administrative protective order and not otherwise available to the applicant, to any person other than

(i) Personnel of the Commission concerned with the investigation,

(ii) The person or agency from whom the business proprietary information was obtained,

(iii) A person whose application for access to business proprietary information under the administrative protective order has been granted by the Secretary, and

(iv) Other persons, such as paralegals and clerical staff, who are employed or supervised by the authorized applicant; who have a need thereof in connection with the investigation; who are not involved in competitive decision making for an interested party which is a party to the investigation; and who have signed a statement in a form approved by the Secretary that they agree to be bound by the administrative protective order (the authorized applicant shall be responsible for retention and accuracy of such forms and shall be deemed responsible for such persons' compliance with the administrative protective order);

(2) Use such business proprietary information solely for the purposes of representing an interested party in the Commission investigation then in progress or during judicial or other review of such Commission investigation;

(3) Not consult with any person not described in paragraph (b)(1) of this section concerning such business proprietary information without first having received the written consent of the Secretary and the party or the attorney of the party from whom such business proprietary information was obtained;

(4) Whenever materials (*e.g.*, documents, computer disks, etc.) containing such business proprietary information are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container;

(5) Serve all materials containing business proprietary information as directed by the Secretary and pursuant to paragraph (f) of this section;

(6) Transmit all materials containing business proprietary information with a cover sheet identifying the materials as containing business proprietary information;

(7) Comply with the provisions of this section;

(8) Make true and accurate representations in the authorized applicant's application and promptly notify the Secretary of any changes that occur after the submission of the application

and that affect the representations made in the application (*e.g.*, change in personnel assigned to the investigation);

(9) Report promptly and confirm in writing to the Secretary any breach of the administrative protective order; and

(10) Acknowledge that breach of the administrative protective order may subject the authorized applicant to such sanctions or other actions as the Commission deems appropriate.

(c) *Final disposition of material released under administrative protective order.* At such date as the Secretary may determine appropriate for particular data, each authorized applicant shall return or destroy all copies of materials released to authorized applicants pursuant to this section and all other materials containing business proprietary information, such as charts or notes based on any such information received under administrative protective order, and file with the Secretary a certificate attesting to his personal, good faith belief that all copies of such material have been returned or destroyed and no copies of such material have been made available to any person to whom disclosure was not specifically authorized.

(d) *Commission responses to a breach of administrative protective order.* A breach of an administrative protective order may subject an offender to:

(1) Disbarment from practice in any capacity before the Commission along with such person's partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;

(2) Referral to the United States Attorney;

(3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association;

(4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of or striking from the record any information or briefs submitted by, or on behalf of, the offender or the party represented by the offender, denial of further access to business proprietary information in the current or any future investigations before the Commission, and issuance of a public or private letter of reprimand; and

(5) Such other actions, including but not limited to, a warning letter, as the Commission determines to be appropriate.

(e) *Breach investigation procedure.* (1) The Commission shall determine whether any person has violated an administrative protective order, and may impose sanctions or other actions in accordance with paragraph (d) of this section. At any time within sixty (60) days of the later of the date on which the alleged violation occurred or, as determined by the Commission, could have been discovered through the exercise of reasonable and ordinary care, or the completion of an investigation conducted under subpart B or C of this part, the Commission may commence an investigation of any breach of an administrative protective order alleged to have occurred at any time during the pendency of the investigation, including all appeals, remands, and subsequent appeals. Whenever the Commission has reason to believe that a person may have breached an administrative protective order issued pursuant to this section, the Secretary shall issue a letter informing such person that the Commission has reason to believe a breach has occurred and that the person has a reasonable opportunity to present his views on whether a breach has occurred. If subsequently the Commission determines that a breach has occurred and that further investigation is warranted, the Secretary shall issue a letter informing such person of that determination and that the person has a reasonable opportunity to present his views on whether mitigating circumstances exist and on the appropriate sanction to be imposed, but no longer on whether a breach has occurred. Once such person has been afforded a reasonable opportunity to present his views, the Commission shall determine what sanction if any to impose.

(2) Where the sanction imposed is a private letter of reprimand, the Secretary shall expunge the sanction from the recipient's record two (2) years from the date of issuance of the sanction, provided that

(i) The recipient has not received another unexpunged sanction pursuant to this section at any time prior to the end of the two year period, and

(ii) The recipient is not the subject of an investigation for possible breach of administrative protective order under this section at the end of the two year period. Upon the completion of such a pending breach investigation without the issuance of a sanction, the original sanction shall be expunged. The Secretary shall notify a sanction recipient in the event that the sanction is expunged.

(f) *Service*. (1) Any party filing written submissions which include business proprietary information to the Commission during an investigation shall at the same time serve complete copies of such submissions upon all authorized applicants specified on the list established by the Secretary pursuant to paragraph (a)(4) of this section, and, except as provided in § 207.3, a nonbusiness proprietary version on all other parties. All such submissions must be accompanied by a certificate attesting that complete copies of the submission have been properly served. In the event that a submission is filed before the Secretary's list is established, the document need not be accompanied by a certificate of service, but the submission shall be served within two (2) days of the establishment of the list and a certificate of service shall then be filed.

(2) If a party's request under paragraph (g) of this section is granted, the Secretary shall accept the nondisclosable confidential business information into the record. The party shall serve the submission containing such information in accordance with the requirements of § 207.3(b) and paragraph (f)(1) of this section, with the information redacted from the copies served.

(3) The Secretary shall not accept for filing into the record of an investigation submissions filed without a proper certificate of service. Failure to comply with paragraph (f) of this section may result in denial of party status and such sanctions as the Commission deems appropriate. Business proprietary information in submissions must be dealt with as required by § 207.3(c).

(g) *Exemption from disclosure*—(1) *In general*. Any person may request exemption from the disclosure of business proprietary information under administrative protective order, whether the person desires to include such information in a petition filed under § 207.10, or any other submission to the Commission during the course of an investigation. Such a request shall only be granted if the Secretary finds that such information is nondisclosable confidential business information. As defined in § 201.6(a)(2) of this chapter, nondisclosable confidential business information is privileged information, classified information, or specific information (*e.g.*, trade secrets) of a type for which there is a clear and compelling need to withhold from disclosure. The request will be granted or denied not later than thirty (30) days (ten (10) days in a preliminary phase investigation) after the date on which the request is filed.

(2) *Request for exemption*. A request for exemption from disclosure must be filed with the Secretary in writing with the reasons therefor. At the same time as the request is filed, one copy of the business proprietary information in question must be lodged with the Secretary solely for the purpose of obtaining a determination as to the request. The business proprietary information for which exemption from disclosure is sought shall remain the property of the requester, and shall not become or be incorporated into any agency record until such time as the request is granted. A request should, when possible, be filed two business days prior to the deadline, if any, for filing the document in which the information for which exemption from disclosure is sought is proposed to be included. If the request is denied, the copy of the information lodged with the Secretary shall promptly be returned to the requester. Such a request shall only be granted if the Secretary finds that such information is privileged information, classified information, or specific information of a type for which there is a clear and compelling need to withhold from disclosure. The Secretary shall promptly notify the requester as to whether the request has been approved or denied.

(3) *Procedure if request is approved.* If the request is approved, the person shall file three versions of the submission containing the nondisclosable confidential business information in question. One version shall contain all business proprietary information, bracketed in accordance with § 201.6 of this chapter and § 207.3. The other two versions shall conform to and be filed in accordance with the requirements of § 201.6 of this chapter and § 207.3, except that the specific information as to which exemption from disclosure was granted shall be redacted from the submission.

(4) *Procedure if request is denied.* If the request is denied, the copy of the information lodged with the Secretary shall promptly be returned to the requester. The requester may file the submission in question without that information, in accordance with the requirements of § 207.3.

[44 FR 76468, Dec. 26, 1979, as amended at 59 FR 66723, Dec. 28, 1994; 61 FR 37829, July 22, 1996; 68 FR 32978, June 3, 2003; 70 FR 8512, Feb. 22, 2005; 76 FR 61942, Oct. 6, 2011]

§ 207.8 Questionnaires to have the force of subpoenas; subpoena enforcement.

Any questionnaire issued by the Commission in connection with any investigation under title VII of the Act may be issued as a subpoena and subscribed by a Commissioner, after which it shall have the force and effect of a subpoena authorized by the Commission. Whenever any party or any other person fails to respond adequately to such a subpoena or whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, the Commission may:

(a) Use the facts otherwise available in making its determination;

(b) Seek judicial enforcement of the subpoena pursuant to 19 U.S.C. 1333;

(c) Make inferences adverse to such person's position, if such person is an interested party that has failed to cooperate by not acting to the best of its ability to comply with a request for information; and

(d) Take such other actions as necessary to obtain needed information.

[61 FR 37831, July 22, 1996]

Subpart B—Preliminary Determinations

SOURCE: 56 FR 11927, Mar. 21, 1991, unless otherwise noted.

§ 207.10 Filing of petition with the Commission.

(a) *Filing of the petition.* Any interested party who files a petition with the administering authority pursuant to section 702(b) or section 732(b) of the Act in a case in which a Commission determination under title VII of the Act is required, shall file copies of the petition and all exhibits, appendices, and attachments thereto, pursuant to § 201.8 of this chapter, with the Secretary on the same day the petition is filed with the administering authority. A paper original and eight (8) true paper copies of a petition shall be filed. One copy of all exhibits, appendices, and attachments to the petition shall be filed in electronic form on CD–ROM, DVD, or other portable electronic format approved by the Secretary. Petitioners also must file one unbound copy of the petition (the unbound copy of the petition may be stapled or held together by means of a clip). If the petition complies with the provisions of § 207.11, it shall be deemed to be properly filed on the date on which the requisite number of copies of the petition is received by the Secretary, provided that, if the petition is filed with the Secretary after 12:00 noon, eastern time, the petition shall be deemed filed on the next business day. Notwithstanding § 207.11 of this chapter, a petitioner need not file an entry of appearance in the investigation instituted upon the filing of its petition, which shall be deemed an entry of appearance.

(b) *Service of the petition.* (1)(i) The Secretary shall promptly notify a petitioner when, before the establishment of a service list under § 207.7(a)(4), he or she approves an application under § 207.7(a). When practicable, this notification shall be made by facsimile

transmission. A copy of the petition including all business proprietary information shall then be served by petitioner on those approved applicants in accord with § 207.3(b) within two (2) calendar days of the time notification is made by the Secretary.

(ii) The petitioner shall serve persons enumerated on the list established by the Secretary pursuant to § 207.7(a)(4) that have not been served pursuant to paragraph (b)(1)(i) of this section within two (2) calendar days of the establishment of the Secretary's list.

(2) A copy of the petition omitting business proprietary information shall be served by petitioner on those persons enumerated on the list established by the Secretary pursuant to § 201.11(d) of this chapter within two (2) calendar days of the establishment of the Secretary's list.

(3) Service of the petition shall be attested by filing a certificate of service with the Commission.

(c) *Amendments and withdrawals; critical circumstances.* (1) Any amendment or withdrawal of a petition shall be filed on the same day with both the Secretary and the administering authority, without regard to whether the requester seeks action only by one agency.

(2) When not made in the petition, any allegations of critical circumstances under section 703 or section 733 of the Act shall be made in an amendment to the petition and shall be filed as early as possible. Critical circumstances allegations, whether made in the petition or in an amendment thereto, shall contain information reasonably available to petitioner concerning the factors enumerated in sections 705(b)(4)(A) and 735(b)(4)(A) of the Act.

[61 FR 37831, July 22, 1996, as amended at 70 FR 8512, Feb. 22, 2005; 76 FR 61942, Oct. 6, 2011; 79 FR 35924, June 25, 2014]

§ 207.11 Contents of petition.

(a) The petition shall be signed by the petitioner or its duly authorized officer, attorney, or agent, and shall set forth the name, address, and telephone number of the petitioner and any such officer, attorney, or agent, and the names of all representatives of petitioner who will appear in the investigation.

(b)(1) The petition shall allege the elements necessary for the imposition of a duty under section 701(a) or section 731(a) of the Act and contain information reasonably available to the petitioner supporting the allegations.

(2) The petition shall also include the following specific information, to the extent reasonably available to the petitioner:

(i) Identification of the domestic like product(s) proposed by petitioner;

(ii) A listing of all U.S. producers of the proposed domestic like product(s), including a street address, phone number, and contact person(s) with email address(es) for each producer;

(iii) A listing of all U.S. importers of the subject merchandise, including street addresses, email addresses, and phone numbers for each importer.

(iv) Identification of each product on which the petitioner requests the Commission to seek pricing information in its questionnaires; and

(v) A listing of the main purchasers from which each petitioning firm experienced lost sales or lost revenue by reason of the subject merchandise during a period covering the three most recently completed calendar years and that portion of the current calendar year for which information is reasonably available. For each named purchaser, petitioners must provide the email address of the specific contact person, 5-digit zip code, and the information identified in the template spreadsheet specified in the Commission's Handbook on Filing Procedures. Petitioners must certify that all lost sales or lost revenue allegations identified in the petition will also be submitted electronically in the manner specified in the Commission's Handbook on Filing Procedures.

(3) The petition shall contain a certification that each item of information specified in paragraph (b)(2) of this section that the petition does not include was not reasonably available to the petitioner.

(4) Petitioners are also advised to refer to the administering authority's

regulations concerning the contents of petitions.

[61 FR 37831, July 22, 1996, as amended at 79 FR 35924, June 25, 2014; 80 FR 52618, Sept. 1, 2015]

§ 207.12 Notice of preliminary phase of investigation.

Upon receipt by the Commission of a petition under § 207.10 or receipt of notice that the administering authority has commenced an investigation under section 702(a) or section 732(a) of the Act, the Director shall, as soon as practicable after consultation with the administering authority, institute an investigation and commence the preliminary phase of the investigation under section 703(a) or section 733(a) of the Act and shall publish a notice to that effect in the FEDERAL REGISTER.

[61 FR 37832, July 22, 1996]

§ 207.13 Cooperation with administering authority; preliminary phase of investigation.

Subsequent to institution of an investigation pursuant to section 207.12, the Director shall conduct such investigation as the Director deems appropriate. Information adduced in the investigation shall be placed on the record. The Director shall cooperate with the administering authority in its determination of the sufficiency of a petition and in its decision whether to permit any proposed amendment to a petition. Notwithstanding §§ 201.11(c) and 201.14(b) of this chapter, late filings in the preliminary phase of an investigation shall be referred to the Director, who shall determine whether to accept such filing for good cause shown by the person making the filing.

[61 FR 37832, July 22, 1996]

§ 207.14 Negative petition determination.

Upon receipt by the Commission of notice from the administering authority under section 702(d) or section 732(d) of the Act that the administering authority has made a negative petition determination under section 702(c)(3) or section 732(c)(3) of the Act, the investigation begun pursuant to § 207.12 shall terminate. All persons who have received requests for information from the Director shall be notified of the termination.

[61 FR 37832, July 22, 1996]

§ 207.15 Written briefs and conference.

Each party may submit to the Commission on or before a date specified in the notice of investigation issued pursuant to 207.12 a written brief containing information and arguments pertinent to the subject matter of the investigation. Briefs shall be signed, shall include a table of contents, and shall contain no more than fifty (50) double-spaced and single-sided pages of textual material, and shall be filed electronically, and nine (9) true paper copies shall be submitted on the same business day (on paper measuring 8.5 × 11 inches, double-spaced and single-sided). Any person not a party may submit a brief written statement of information pertinent to the investigation within the time specified and the same manner specified for the filing of briefs. In addition, the presiding official may permit persons to file within a specified time answers to questions or requests made by the Commission's staff. If he deems it appropriate, the Director shall hold a conference. The conference, if any, shall be held in accordance with the procedures in § 201.13 of this chapter, except that in connection with its presentation a party may provide written witness testimony at the conference; if written testimony is provided, nine (9) true paper copies shall be submitted. The Director may request the appearance of witnesses, take testimony, and administer oaths.

[79 FR 35924, June 25, 2014]

§ 207.16 [Reserved]

§ 207.17 Staff report.

Prior to the Commission's preliminary determination, the Director shall submit to the Commission a staff report. A public version of the staff report shall be made available to the public after the Commission's preliminary determination and a business proprietary version shall also be made available to persons authorized to receive business proprietary information under § 207.7.

§ 207.18 Notice of preliminary determination.

Whenever the Commission makes a preliminary determination, the Secretary shall serve copies of the determination and a public version of the staff report on the petitioner, other parties to the investigation, and the administering authority. The Secretary shall publish a notice of such determination in the FEDERAL REGISTER. If the Commission's determination is negative, or that imports are negligible, the investigation shall be terminated. If the Commission's determination is affirmative, the notice shall announce commencement of the final phase of the investigation.

[61 FR 37832, July 22, 1996]

Subpart C—Final Determinations, Short Life Cycle Products

SOURCE: 56 FR 11928, Mar. 21, 1991, unless otherwise noted.

§ 207.20 Investigative activity following preliminary determination.

(a) If the Commission's preliminary determination is affirmative, the Director shall continue investigative activities pending notice by the administering authority of its preliminary determination under section 703(b) or section 733(b) of the Act.

(b) The Director shall circulate draft questionnaires for the final phase of an investigation to parties to the investigation for comment. Any party desiring to comment on draft questionnaires shall submit such comments in writing to the Commission within a time specified by the Director. All requests for collecting new information shall be presented at this time. The Commission will disregard subsequent requests for collection of new information absent a showing that there is a compelling need for the information and that the information could not have been requested in the comments on the draft questionnaires.

[61 FR 37832, July 22, 1996, as amended at 79 FR 35925, June 25, 2014]

§ 207.21 Final phase notice of scheduling.

(a) Notice from the administering authority of an affirmative preliminary determination under section 703(b) or section 733(b) of the Act and notice from the administering authority of an affirmative final determination under section 705(a) or section 735(a) of the Act shall be deemed to occur on the date on which the transmittal letter of such determination is received by the Secretary from the administering authority or the date on which notice of such determination is published in the FEDERAL REGISTER, whichever shall first occur.

(b) Upon receipt of notice from the administering authority of an affirmative preliminary determination under section 703(b) or section 733(b) of the Act or, if the administering authority's preliminary determination is negative, notice of an affirmative final determination under section 705(a) or section 735(a) of the Act, the Commission shall publish in the FEDERAL REGISTER a Final Phase Notice of Scheduling.

(c) If the administering authority's preliminary determination is negative, the Director shall continue such investigative activities as the Director deems appropriate pending a final determination by the administering authority under section 705(a) or section 735(a) of the Act.

(d) Upon receipt by the Commission of notice from the administering authority of its final negative determination under section 705(a) or section 735(a) of the Act, the corresponding Commission investigation shall be terminated.

[61 FR 37832, July 22, 1996]

§ 207.22 Prehearing and final staff reports.

(a) *Prehearing staff report.* The Director shall prepare and place in the record, prior to the hearing, a prehearing staff report containing information concerning the subject matter of the investigation. A version of the staff report containing business proprietary information shall be placed in the nonpublic record and made available to persons authorized to receive business proprietary information under

§ 207.7, and a nonbusiness proprietary version of the staff report shall be placed in the public record.

(b) *Final staff report.* After the hearing, the Director shall revise the prehearing staff report and submit to the Commission, prior to the Commission's final determination, a final version of the staff report. The final staff report is intended to supplement and correct the information contained in the prehearing staff report. A public version of the final staff report shall be made available to the public and a business proprietary version shall also be made available to persons authorized to receive business proprietary information under section 207.7.

[56 FR 11927, Mar. 21, 1991, as amended at 60 FR 22, Jan. 3, 1995. Redesignated at 61 FR 37832, July 22, 1996]

§ 207.23 Prehearing brief.

Each party who is an interested party shall submit to the Commission, no later than five (5) business days prior to the date of the hearing specified in the notice of scheduling, a prehearing brief. Prehearing briefs shall be signed and shall include a table of contents and shall be filed electronically, and nine (9) true paper copies shall be submitted on the same business day. The prehearing brief should present a party's case concisely and shall, to the extent possible, refer to the record and include information and arguments which the party believes relevant to the subject matter of the Commission's determination under section 705(b) or section 735(b) of the Act. Any person not an interested party may submit a brief written statement of information pertinent to the investigation within the time specified and the same manner specified for filing of prehearing briefs.

[79 FR 35925, June 25, 2014]

§ 207.24 Hearing.

(a) *In general.* The Commission shall hold a hearing concerning an investigation before making a final determination under section 705(b) or section 735(b) of the Act.

(b) *Procedures.* Any hearing shall be conducted after notice published in the FEDERAL REGISTER. The hearing shall not be subject to the provisions of 5 U.S.C. subchapter II, chapter 5, or to 5 U.S.C. 702. Each party shall limit its presentation at the hearing to a summary of the information and arguments contained in its prehearing brief, an analysis of the information and arguments contained in the prehearing briefs described in § 207.23, and information not available at the time its prehearing brief was filed. Unless a portion of the hearing is closed, presentations at the hearing shall not include business proprietary information. Notwithstanding § 201.13(f) of this chapter, in connection with its presentation, a party may provide written witness testimony at the hearing; if written testimony is provided, eight (8) true paper copies shall be submitted. In the case of testimony to be presented at a closed session held in response to a request under § 207.24(d), confidential and non-confidential versions shall be filed in accordance with § 207.3. Any person not a party may make a brief oral statement of information pertinent to the investigation.

(c) *Hearing transcripts*—(1) *In general.* A verbatim transcript shall be made of all hearings or conferences held in connection with Commission investigations conducted under this part.

(2) *Revision of transcripts.* Within ten (10) days of the completion of a hearing, but in any event at least one (1) day prior to the date for disclosure of information set pursuant to § 207.30(a), any person who testified at the hearing may submit proposed revisions to the transcript of his or her testimony to the Secretary. No substantive revisions shall be permitted. If in the judgment of the Secretary a proposed revision does not alter the substance of the testimony in question, the Secretary shall incorporate the revision into a revised transcript.

(d) *Closed sessions.* Upon a request filed by a party to the investigation no later than seven (7) business days prior to the date of the hearing that identifies the subjects to be discussed, specifies the amount of time requested, and justifies the need for a closed session with respect to each subject to be discussed, the Commission may close a portion of a hearing to persons not authorized under § 207.7 to have access to

business proprietary information in order to allow such party to address business proprietary information during the course of its presentation. If any party wishes to comment on the request to close a portion of the hearing, such comments must be filed within two (2) business days after the filing of the request. In addition, during each hearing held in an investigation conducted under section 705(b) or section 735(b) of the Act, following the public presentation of the petitioner(s) and that of each panel of respondents, the Commission will, if it deems it appropriate, close the hearing to persons not authorized under § 207.7 to have access to business proprietary information in order to allow Commissioners to question parties and/ or their representatives concerning matters involving business proprietary information.

[61 FR 37832, July 22, 1996, as amended at 70 FR 8512, Feb. 22, 2005; 76 FR 61943, Oct. 6, 2011]

§ 207.25 Posthearing briefs.

Any party may file a posthearing brief concerning the information adduced at or after the hearing with the Secretary within a time specified in the notice of scheduling or by the presiding official at the hearing. A posthearing brief shall be filed electronically, and nine (9) true paper copies shall be submitted on the same business day. No such posthearing brief shall exceed fifteen (15) pages of textual material, double-spaced and single-sided, when printed out on paper measuring 8.5 × 11 inches. In addition, the presiding official may permit persons to file answers to questions or requests made by the Commission at the hearing within a specified time. The Secretary shall not accept for filing posthearing briefs or answers which do not comply with this section.

[79 FR 35925, June 25, 2014]

§ 207.26 Statements by nonparties.

Any person other than a party may submit a brief written statement of information pertinent to the investigation within the time specified for the filing of posthearing briefs.

[56 FR 11928, Mar. 21, 1991. Redesignated at 61 FR 37832, July 22, 1996]

§ 207.27 Short life cycle products.

(a) An eligible domestic entity may file a petition to establish a product category for short life cycle merchandise which has been the subject of two or more affirmative dumping determinations. The Commission shall within thirty (30) days of the filing of the petition determine its sufficiency. If the petition is found to be sufficient, the Commission shall institute a proceeding to establish a product category and publish a notice of institution in the FEDERAL REGISTER. Upon request of an interested person filed within fifteen (15) days after publication of the notice of institution, the Commission shall conduct a hearing which shall be transcribed. The Commission's determination concerning the scope of the product category into which to classify the short life cycle merchandise identified by the petition shall be issued no later than ninety (90) days after the filing of the petition.

(b) The Commission may on its own initiative and at any time modify the scope of a product category established in a proceeding pursuant to paragraph (a) of this section. Ninety (90) days prior to such modification, the Commission shall publish a notice of proposed modification in the FEDERAL REGISTER. Upon request of an interested party filed within fifteen (15) days after publication of the notice of proposed modification, the Commission shall conduct a hearing which shall be transcribed. Written submissions concerning the proposed modification shall be accepted if filed no later than sixty (60) days after publication of the notice of proposed modification.

[56 FR 11928, Mar. 21, 1991. Redesignated at 61 FR 37832, July 22, 1996]

§ 207.28 Anticircumvention.

Prior to providing advice to the administering authority pursuant to section 781(e)(3) of the Act, the Commission shall publish in the FEDERAL REGISTER a notice that such advice is contemplated. Any person may file one written submission concerning the matter described in the notice no later than fourteen (14) days after publication of the notice. Such a statement shall be filed electronically, and nine

(9) true paper copies shall be submitted on the same business day. The statement shall contain no more than fifty (50) double-spaced and single-sided pages of textual material, when printed out on paper measuring 8.5 × 11 inches. The Commission shall by notice provide for additional statements as it deems necessary.

[79 FR 35925, June 25, 2014]

§ 207.29 Publication of notice of determination.

Whenever the Commission makes a final determination, the Secretary shall serve copies of the determination and the nonbusiness proprietary version of the final staff report on the petitioner, other parties to the investigation, and the administering authority. The Secretary shall publish notice of such determination in the FEDERAL REGISTER.

[61 FR 37833, July 22, 1996]

§ 207.30 Comment on information.

(a) In any final phase of an investigation under section 705 or section 735 of the Act, the Commission shall specify a date on which it will disclose to all parties to the investigation all information it has obtained on which the parties have not previously had an opportunity to comment. Any such information that is business proprietary information will be released to persons authorized to obtain such information pursuant to § 207.7. The date on which disclosure is made will occur after the filing of posthearing briefs pursuant to § 207.25.

(b) The parties shall have an opportunity to file comments on any information disclosed to them after they have filed their posthearing brief pursuant to § 207.25. A comment shall be filed electronically, and nine (9) true paper copies shall be submitted on the same business day. Comments shall only concern such information, and shall not exceed 15 pages of textual material, double-spaced and single-sided, when printed out on paper measuring 8.5 × 11 inches. A comment may address the accuracy, reliability, or probative value of such information by reference to information elsewhere in the record, in which case the comment shall identify where in the record such information is found. Comments containing new factual information shall be disregarded. The date on which such comments must be filed will be specified by the Commission when it specifies the time that information will be disclosed pursuant to paragraph (a) of this section. The record shall close on the date such comments are due, except with respect to investigations subject to the provisions of section 771(7)(G)(iii) of the Act, and with respect to changes in bracketing of business proprietary information in the comments permitted by § 207.3(c).

[61 FR 37833, July 22, 1996, as amended at 76 FR 61943, Oct. 6, 2011; 79 FR 35925, June 25, 2014]

Subpart D—Terminated, Suspended, and Continued Investigations, Investigations to Review Negotiated Agreements, and Investigations To Review Outstanding Determinations

SOURCE: 56 FR 11929, Mar. 21, 1991, unless otherwise noted.

§ 207.40 Termination and suspension of investigation.

(a) An investigation under title VII may be terminated by the Commission by giving notice in the FEDERAL REGISTER to all parties to the investigation, upon withdrawal of the petition by the petitioner, or upon issuance of a final negative determination or termination of its investigation by the administering authority under section 303, 705 or 735 of the Act. The Commission may not terminate an investigation upon withdrawal of the petition by the petitioner, however, before a determination is made by the administering authority under section 702(c), 703(b), 732(c) or 733(b) of the Act.

(b) Upon receipt of notice of suspension of an investigation by the administering authority under section 704 (b) or (c) or 734(b), (c), or (1), of the Act, the Secretary shall issue a notice of suspension of the Commission investigation. Such suspension shall not prevent the Director from conducting such other investigative activities as

he deems appropriate with respect to the subject matter of the suspended investigation.

(c) *Resumption of suspended investigation*—(1) *Purpose.* If the administering authority determines pursuant to section 704(i) or 734(i) of the Act to resume a suspended investigation and so notifies the Commission of its determination, and in the event that the suspended investigation was not terminated, the Commission shall resume the investigation.

(2) *Procedures.* The procedures set forth in subpart C shall apply to all investigations instituted under this section.

[56 FR 11927, Mar. 21, 1991, as amended at 60 FR 22, Jan. 3, 1995]

§ 207.41 Commission review of agreements to eliminate the injurious effect of subsidized imports or imports sold at less than fair value.

If the administering authority determines to suspend an investigation upon acceptance of an agreement to eliminate the injurious effect of subsidized imports or imports sold at less than fair value, the Commission shall, upon petition, initiate an investigation to determine whether the injurious effect of imports of the merchandise which was the subject of the suspended investigation is eliminated completely by the agreement. Petitions may be filed by a party to the investigation which is an interested party described in paragraph (C), (D), (E), (F), or (G) of section 771(9) of the Act. Investigations under this section shall be completed within seventy five (75) days of their initiation.

§ 207.42 Investigation continued upon request.

Upon receipt of advice from the administering authority that it has received a request for the continuation of a suspended investigation pursuant to section 704(g) or 734(g) of the Act, the Commission shall continue the investigation. The procedures set forth in subparts B and C of this part, including applicable time limitations, shall apply to all continued investigations within this rule.

§ 207.43 [Reserved]

§ 207.44 Consolidation of investigations.

The Commission may, when appropriate, consolidate continued investigations under section 704(g) or section 734(g) of the Act with investigations to review agreements for the elimination of injury under section 704(h) or section 734(h) of the Act.

§ 207.45 Investigation to review outstanding determination.

(a) *Request for review.* Any person may file with the Commission a request for the institution of a review investigation under section 751(b) of the Act. The person making the request shall also promptly serve copies of the request on the parties to the original investigation upon which the review is to be based. All requests shall set forth a description of changed circumstances sufficient to warrant the institution of a review investigation by the Commission.

(b) *Notice of receipt of a request.* Upon the receipt of a properly filed and sufficient request for a review investigation, the Secretary shall publish a notice of having received such a request in the FEDERAL REGISTER inviting public comment on the question of whether the Commission should institute a review investigation. Persons shall have at least thirty (30) days from the date of publication in the FEDERAL REGISTER within which to submit comments to the Commission.

(c) *Institution of an investigation.* Within forty-five (45) days after the close of the period for public comments following publication of the receipt of a request, the Commission shall determine whether the request shows changed circumstances sufficient to warrant a review and, if so, shall institute a review investigation. The Commission may also institute a review investigation on its own initiative. The review investigation shall be instituted by notice published in the FEDERAL REGISTER and shall be completed within one hundred eighty (180) days of the date of such publication. If the Commission determines that a request does not show changed circumstances sufficient to warrant a review, the request

shall be dismissed and a notice of the dismissal published in the FEDERAL REGISTER stating the reasons therefor.

(d) *Conduct of review investigation.* The procedures set forth in subpart C of part 207 shall apply to all investigations instituted under this section.

[56 FR 11929, Mar. 21, 1991, as amended at 63 FR 30607, June 5, 1998; 79 FR 35925, June 25, 2014]

§ 207.46 Investigations concerning certain countervailing duty orders.

(a) *Definitions.* For purposes of this section:

(1) *Requesting party* means an interested party described in section 771(9)(C), (D), (E), (F), or (G) of the Act.

(2) *Order* means a countervailing duty order issued under section 303 of the Act as to which the requirement of an affirmative determination of material injury under section 303(a)(2) of the Act was not applicable at the time such order was issued.

(3) *WTO Agreement* means the Agreement Establishing the World Trade Organization entered into on April 15, 1994.

(b) *Request for review.* A requesting party may file with the Commission a request for an investigation under section 753 of the Act within the time period established by section 753(a)(3) of the Act. The request should contain the following information:

(1) A description and identification of the relevant domestic like product, the industry in the United States producing that product that is likely to be materially injured by reason of imports of the subject merchandise if the Order is revoked, and each individual member of that industry.

(2) Information reasonably available to the requesting party concerning the names and addresses of all known enterprises believed to be manufacturing, producing, exporting, or importing the subject merchandise;

(3) Information reasonably available to the requesting party documenting that the industry described in paragraph (b)(1) of this section is likely to be materially injured by reason of subject imports if the Order is revoked, including:

(i) Information concerning the capacity, production, sales, market share, inventories, employment, wages, productivity, profits, ability to raise capital, and development and production efforts of the industry described in paragraph (b)(1) of this section.

(ii) Information concerning current and projected production capacity in the exporting country of the subject merchandise, inventories of the subject merchandise, and the existence of barriers to the importation of such merchandise into countries other than the United States.

(4) Information concerning any scope and anticircumvention rulings issued by the administering authority with respect to the Order.

(c) *Initiation of Investigation.* (1) Upon the receipt of a timely filed request for a section 753 investigation satisfying the requirements of paragraph (b) of this section, the Secretary shall publish a notice of initiation of such investigation in the FEDERAL REGISTER.

(2) Subject to paragraph (c)(3) of this section, a section 753 investigation shall be completed within one year of the date of publication of the notice of initiation of such investigation in the FEDERAL REGISTER.

(3) The Commission may take more than one year to complete section 753 investigations for which requests for investigations are received within one year after the date on which the WTO Agreement enters into force with respect to the United States. All such investigations must be completed within four years of that date, however. In determining whether to extend the completion date for a section 753 investigation, the Commission shall consult with the administering authority. Grounds for extending completion include, but are not limited to, the desire to conduct investigations involving the same or similar domestic industries and domestic like products on a simultaneous basis, and the desire to efficiently manage the Commission's caseload.

(d) *Conduct of Investigations.* The procedures set forth in subparts A and C of this part shall apply to all investigations initiated under this section.

(e) *When No Request for Review Is Filed.* When there has been no properly filed and sufficient request for a section 753 investigation of an Order, the

Commission shall notify the administering authority that a negative determination has been made under section 753(a) of the Act with respect to that Order.

(f) *Pending and Suspended Section 303 Investigations*. If, on the data on which a country becomes a signatory to the Agreement on Subsidies and Countervailing Measures referred to in section 101(d)(12) of the Uruguay Round Agreements Act, there is a section 303 countervailing duty investigation in progress or suspended with respect to that country's merchandise for which the requirement of a material injury determination under section 303(a)(2) of the Act was not applicable at the time the investigation was initiated, the Commission shall commence an investigation pursuant to the provisions of section 753(c) of the Act with respect to pending investigations and suspended investigations to which section 704(i)(1)(B) of the Act applies.

(g) *Request for simultaneous section 751(c) review*. (1) A requesting party who requests a section 753 review may at the same time request from the Commission and the administering authority a review under section 751(c) of the Act of a countervailing or antidumping duty order involving the same or comparable subject merchandise.

(2) Should the administering authority, after consulting with the Commission, determine to initiate a section 751(c) review, the Commission shall conduct a consolidated review under sections 751(c) and 753 of the Act of the orders involving the same or comparable subject merchandise. Any such consolidated review shall be conducted under the applicable procedures set forth in subparts A and F of this part.

(3) Should the administering authority, after consulting with the Commission, determine not to initiate a section 751(c) review, the Commission will consider the request for a section 753 review pursuant to the procedures established in this section.

[60 FR 23, Jan. 3, 1995, as amended at 63 FR 30607, June 5, 1998]

Subpart E—Judicial Review

SOURCE: 56 FR 11930, Mar. 21, 1991, unless otherwise noted.

§ 207.50 Judicial review.

(a) *In general*. Persons entitled to judicial review under section 516A of the Act may seek review in the U.S. Court of International Trade.

(b) *Transmittal of record*. In the event a Commission determination is appealed to the U.S. Court of International Trade under section 516A, a copy of the record in the investigation before the Commission, as such record is defined in § 207.2(f), or a certified list of all items therein, shall be transmitted to the court by the Secretary in accordance with the rules of the court.

(c) *Service of process*. The Commission's General Counsel shall be the Commission's agent for service of process in cases arising under section 516A of the Act.

§ 207.51 Judicial review of denial of application for disclosure of certain business proprietary information under administrative protective order.

(a) *In general*. Persons entitled to judicial review under section 777(c)(2) of the Commission determination not to disclose business proprietary information may apply to the U.S. Court of International Trade for an order directing the Commission to make the information involved available.

(b) *Transmittal of record*. In the event a court order is sought under section 777(c)(2) requiring the Commission to disclose business proprietary information, the Secretary shall within 20 days after service of a summons and complaint upon the Commission transmit to the court under seal the business proprietary information involved along with pertinent parts of the record.

(c) *Pertinent parts of the record*. The pertinent parts of the record shall consist of:

(1) The application for Commission disclosure together with any documents filed in support thereof or in opposition thereto.

(2) Any Government memoranda relating to the Commission's determination, and

(3) The Commission's action on the application.

(d) *Service of process*. The Commission's General Counsel shall be the

Commission's agent for service of process in cases under section 777(c)(2) of the Act.

Subpart F—Five-Year Reviews

SOURCE: 63 FR 30608, June 5, 1998, unless otherwise noted.

§ 207.60 Definitions.

For purposes of this subpart:

(a) The term *five-year review* means a five-year review conducted pursuant to section 751(c) of the Act. The provisions of part 201 of this chapter and subpart A of this part pertaining to ''investigations'' are generally applicable to five-year reviews, unless superseded by a provision in this subpart of more specific application.

(b) The term *expedited review* means a five-year review conducted by the Commission pursuant to section 751(c)(3)(B) of the Act.

(c) The term *full review* means a five-year review that has not been expedited by the Commission or terminated pursuant to section 751(c)(3) of the Act.

(d) The term *notice of institution* shall refer to the notice of institution of five-year review that the Commission shall publish in the FEDERAL REGISTER requesting that interested parties provide information to the Commission upon initiation of a five-year review.

§ 207.61 Responses to notice of institution.

(a) *When information must be filed.* Responses to the notice of institution shall be submitted to the Commission no later than 30 days after its publication in the FEDERAL REGISTER.

(b) *Information to be filed with the Secretary.* The notice of institution shall direct each interested party to make a filing pursuant to §§ 201.6, 201.8 and 207.3 of this chapter containing the following:

(1) A statement expressing its willingness to participate in the review by providing information requested by the Commission;

(2) A statement regarding the likely effects of revocation of the order(s) or termination of the suspended investigation(s) under review;

(3) Such information or industry data as the Commission may specify in the notice of institution.

(c) *When requested information cannot be supplied.* Any interested party that cannot furnish the information requested by the notice of institution in the requested form and manner shall, promptly after issuance of the notice, notify the Commission, provide a full explanation of why it cannot furnish the requested information, and indicate alternative forms in which it can provide equivalent information. The Commission may modify its requests to the extent necessary to avoid posing an unreasonable burden on that party.

(d) *Submissions by persons other than interested parties.* Any person who is not an interested party may submit to the Commission, in a filing satisfying the requirements of § 201.8 of this chapter, information relevant to the Commission's review no later than 50 days after publication of the notice of institution in the FEDERAL REGISTER.

(e) A document filed under this section shall be filed electronically, and nine (9) true paper copies shall be submitted on the same business day.

[44 FR 76468, Dec. 26, 1979, as amended at 74 FR 2849, Jan. 16, 2009; 76 FR 61944, Oct. 6, 2011; 79 FR 35925, June 25, 2014]

§ 207.62 Rulings on adequacy and nature of Commission review.

(a) *Basis for rulings on adequacy.* The Commission will assess the adequacy of aggregate interested party responses to the notice of institution with respect to each order or suspension agreement under review and, where the underlying affirmative Commission determination found multiple domestic like products, on the basis of each domestic like product.

(b) *Comments to the Commission.* (1) Comments to the Commission concerning whether the Commission should conduct an expedited review may be submitted by:

(i) Any interested party that is a party to the five-year review and that has responded to the notice of institution; and

(ii) Any party, other than an interested party, that is a party to the five-year review.

(2) Comments shall be submitted within the time specified in the notice of institution. In a grouped review, only one set of comments shall be filed per party. Comments shall be filed electronically, and nine (9) true paper copies shall be submitted on the same business day. Comments shall not exceed fifteen (15) pages of textual material, double spaced and single sided, when printed out on paper measuring 8.5 × 11 inches. Comments containing new factual information shall be disregarded.

(c) *Notice of scheduling of full review.* If the Commission concludes that interested parties' responses to the notice of institution are adequate, or otherwise determines that a full review should proceed, investigative activities pertaining to that review will continue. The Commission will publish in the FEDERAL REGISTER a notice of scheduling pertaining to subsequent procedures in the review.

(d) *Procedures for expedited reviews.* (1) If the Commission concludes that interested parties' responses to the notice of institution are inadequate, it may decide to conduct an expedited review. In that event, the Commission shall direct the Secretary to issue a notice stating that the Commission has decided to conduct an expedited review and inviting those parties to the review described in paragraph (d)(2) of this section to file written comments with the Secretary on what determination the Commission should reach in the review. The date on which such comments must be filed will be specified in the notice to be issued by the Secretary. Comments containing new factual information shall be disregarded.

(2) The following parties may file the comments described in paragraph (d)(1) of this section:

(i) Any interested party that is a party to the five-year review and that has filed an adequate response to the notice of institution; and

(ii) Any party, other than an interested party, that is a party to the five-year review.

(3) Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review within the time specified for the filing of written comments.

(4) The Director shall prepare and place in the record, prior to the date on which the comments described in paragraph (d)(1) of this section must be filed, a staff report containing information concerning the subject matter of the review. A version of the staff report containing business proprietary information shall be placed in the nonpublic record and made available to persons authorized to receive business proprietary information under § 207.7, and a nonbusiness proprietary version of the staff report shall be placed in the public record.

(e) *Use of facts available.* The Commission's determination in an expedited review will be based on the facts available, in accordance with section 776 of the Act.

[63 FR 30608, June 5, 1998, as amended at 68 FR 32978, June 3, 2003; 76 FR 61944, Oct. 6, 2011; 79 FR 35925, June 25, 2014]

§ 207.63 Circulation of draft questionnaires.

(a) The Director shall circulate draft questionnaires to the parties for comment in each full review.

(b) Any party desiring to comment on the draft questionnaires shall submit such comments in writing to the Commission within a time specified by the Director. All requests for collecting new information should be presented at this time. The Commission will disregard subsequent requests for collection of new information absent a showing that there is a compelling need for the information and that the information could not have been requested in the comments on the draft questionnaires.

§ 207.64 Staff reports.

(a) *Prehearing staff report.* The Director shall prepare and place in the record, prior to the hearing, a prehearing staff report containing information concerning the subject matter of the five-year review. A version of the staff report containing business proprietary information shall be placed in the nonpublic record and made available to persons authorized to receive business proprietary information under § 207.7, and a nonbusiness proprietary

version of the staff report shall be placed in the public record.

(b) *Final staff report.* After the hearing, the Director shall revise the prehearing staff report and submit to the Commission, prior to the Commission's determination, a final version of the staff report. The final staff report is intended to supplement and correct the information contained in the prehearing staff report. The Director shall place the final staff report in the record. A public version of the final staff report shall be made available to the public and a business proprietary version shall also be made available to persons authorized to receive business proprietary information under § 207.7.

[63 FR 30608, June 5, 1998, as amended at 68 FR 32978, June 3, 2003]

§ 207.65 Prehearing briefs.

Each party to a five-year review may submit a prehearing brief to the Commission on the date specified in the scheduling notice. A prehearing brief shall be signed and shall include a table of contents. A prehearing brief shall be filed electronically, and nine (9) true paper copies shall be submitted (on paper measuring 8.5 × 11 inches and single-sided) on the same business day. The prehearing brief should present a party's case concisely and shall, to the extent possible, refer to the record and include information and arguments which the party believes relevant to the subject matter of the Commission's determination.

[79 FR 35925, June 25, 2014]

§ 207.66 Hearing.

(a) *In general.* The Commission shall hold a hearing in each full review. The date of the hearing shall be specified in the scheduling notice.

(b) *Procedures.* Hearing procedures in five-year reviews will conform to those for final phase antidumping and countervailing duty investigations set forth in § 207.24.

§ 207.67 Posthearing briefs and statements.

(a) *Briefs from parties.* Any party to a five-year review may file with the Secretary a posthearing brief concerning the information adduced at or after the hearing within a time specified in the scheduling notice or by the presiding official at the hearing. A posthearing brief shall be filed electronically, and nine (9) true paper copies shall be submitted on the same business day. No such posthearing brief shall exceed fifteen (15) pages of textual material, double spaced and single sided, when printed out on paper measuring 8.5 × 11 inches and single-sided. In addition, the presiding official may permit persons to file answers to questions or requests made by the Commission at the hearing within a specified time. The Secretary shall not accept for filing posthearing briefs or answers which do not comply with this section.

(b) *Statements from nonparties.* Any person other than a party may submit a brief written statement of information pertinent to the review within the time specified for the filing of posthearing briefs.

[63 FR 30608, June 5, 1998, as amended at 76 FR 61944, Oct. 6, 2011; 79 FR 35926, June 25, 2014]

§ 207.68 Final comments on information.

(a) The Commission shall specify a date after the filing of posthearing briefs on which it will disclose to all parties to the five-year review all information it has obtained on which the parties have not previously had an opportunity to comment. Any such information that is business proprietary information will be released to persons authorized to obtain such information pursuant to § 207.7.

(b) The parties shall have an opportunity to file comments on any information disclosed to them after they have filed their posthearing brief pursuant to § 207.67. Comments shall be filed electronically, and nine (9) true paper copies shall be submitted on the same business day. Comments shall only concern such information, and shall not exceed 15 pages of textual material, double spaced and single-sided, when printed out on paper measuring 8.5 × 11 inches and single-sided. A comment may address the accuracy, reliability, or probative value of such information by reference to information elsewhere in the record, in which case the comment shall identify where in

the record such information is found. Comments containing new factual information shall be disregarded. The date on which such comments must be filed will be specified by the Commission when it specifies the time that information will be disclosed pursuant to paragraph (a) of this section. The record shall close on the date such comments are due, except with respect to changes in bracketing of business proprietary information in the comments permitted by § 207.3(c).

[63 FR 30608, June 5, 1998, as amended at 76 FR 61944, Oct. 6, 2011; 79 FR 35926, June 25, 2014]

§ 207.69 Publication of determinations.

Whenever the Commission makes a determination concluding a five-year review, the Secretary shall serve copies of the determination and, when applicable, the nonbusiness proprietary version of the final staff report on all parties to the review, and on the administering authority. The Secretary shall publish notice of such determination in the FEDERAL REGISTER.

Subpart G—Implementing Regulations for the North American Free Trade Agreement

EFFECTIVE DATE NOTE: At 88 FR 14891, Mar. 10, 2023, Subpart G was revised and the authority citation for subpart G was removed, effective Apr. 10, 2023. For the convenience of the user, the revised text is set forth as follows:

Subpart G—Implementing Regulations for the United States-Mexico-Canada Agreement

AUTHORITY: Sec. 777(d) of the Tariff Act of 1930 (19 U.S.C. 1677f (d); secs. 402(g), 405 of the North American Free Trade Agreement Implementation Act (107 Stat. 2057, Pub. L. 103–182, Dec. 8, 1993).

SOURCE: 59 FR 5097, Feb. 3, 1994, unless otherwise noted.

§ 207.90 Scope.

This subpart sets forth the procedures and regulations for implementation of Article 1904 of the North American Free Trade Agreement under the Tariff Act of 1930, as amended by title IV of the North American Free Trade Agreement Implementation Act (19 U.S.C. 1516a and 1677f). These regulations are authorized by section 402(g) of the North American Free Trade Agreement Implementation Act and 19 U.S.C. 1335.

EFFECTIVE DATE NOTE: At 88 FR 14891, Mar. 10, 2023, § 207.90 was revised, effective Apr. 10, 2023. For the convenience of the user, the revised text is set forth as follows:

§ 207.90 Scope.

This subpart sets forth the procedures and regulations for implementation of Section D of Chapter 10 of the Agreement between the United States of America, the United Mexican States, and Canada, as provided by Section 422(a) of the United States-Mexico-Canada Implementation Act (19 U.S.C. 1677(f)). These regulations are authorized by section 412(g), as amended by section 504(c)(3)(G), of the United States-Mexico-Canada Implementation Act and 19 U.S.C. 4582.

§ 207.91 Definitions.

As used in this subpart—

Administrative Law Judge means the United States Government employee appointed under section 310(f) of title 5 of the United States Code to conduct proceedings under this part in accordance with section 554 of title 5 of the United States Code;

Agreement means the North American Free Trade Agreement entered into among Canada, the United States of America and the United Mexican States (''Mexico''); or, with respect to binational panel proceedings between Canada and the United States underway as of the date of enactment of the Agreement, or any binational panel proceedings that may proceed between the United States and Canada following any withdrawal from the Agreement by the United States or Canada, the United States-Canada Free Trade Agreement entered into between the Government of Canada and the Government of the United States of America, effective as of January 1, 1989;

Article 1904 Rules means the Rules of Procedure for Article 1904 Binational Panel Reviews adopted by the United States of America, Canada and Mexico pursuant to the Agreement, or where applicable under the Agreement, the Rules of Procedure for Article 1904 Binational Panel Reviews adopted by the

United States of America and Canada pursuant to the United States-Canada Free Trade Agreement, as amended;

Canadian Secretary means the Secretary of the Canadian section of the Secretariat and includes any person authorized to act on the Secretary's behalf;

Charged party means a person who is charged by the Commission with committing a prohibited act under 19 U.S.C. 1677f(f)(3);

Clerical person means a person such as a paralegal, secretary, or law clerk who is employed or retained by and under the direction and control of an authorized applicant;

Commission means the United States International Trade Commission;

Commission Secretary means the Secretary to the Commission;

Complaint means the complaint referred to in the Article 1904 Rules;

Counsel means persons described in the definition of *counsel of record* in Rule 3 of the Article 1904 Rules or the ECC Rules, and counsel for an interested person who plans to file a timely complaint or notice of appearance in the panel review.

Date of Service means the day a document is deposited in the mail or delivered in person;

Days means calendar days, but if a deadline falls on a weekend or United States federal holiday, it shall be extended to the next working day;

Extraordinary challenge committee means the committee established pursuant to Annex 1904.13 of the Agreement to review decisions of a panel or conduct of a panelist;

ECC Rules means the Rules of Procedure for Article 1904 Extraordinary Challenge Committees adopted by the United States of America, Canada and Mexico, or where applicable, the Rules of Procedure for Article 1904 Extraordinary Challenge Committees adopted by the United States of America and Canada pursuant to the United States-Canada Free Trade Agreement, as amended;

Final determination, means ''final determination'' under Article 1911 of the Agreement;

Free Trade Area Country means the ''free trade area country'' as defined in 19 U.S.C. 1516a(f)(10);

Investigative attorney means an attorney designated by the Office of Unfair Import Investigations to engage in inquiries and proceedings under 19 CFR 207.100 *et seq*.

Mexican Secretary means the Secretary of the Mexican section of the Secretariat and includes any persons authorized to act on the Secretary's behalf;

NAFTA Act means the North American Free Trade Agreement Implementation Act, Pub. L. 103–182 (December 8, 1993);

Notice of Appearance means the notice of appearance provided for by Article 1904 Rules or by the ECC Rules;

Panel review means review of a final determination pursuant to chapter 19 of the Agreement, including review by an extraordinary challenge committee;

Party means, for the purposes of 19 CFR 207.100 through 207.120, either the investigative attorney(ies) or the charged party(ies);

Person means, for the purposes of 19 CFR 207.100 through 207.120, an individual, partnership, corporation, association, organization, or other entity;

Privileged information means all information covered by the provisions of the second sentence of 19 U.S.C. 1677f(f)(1)(A);

Professional means an accountant, economist, engineer, or other non-legal specialist who is employed by, or under the direction and control, of a counsel;

Prohibited act means the violation of a protective order, the inducement of a violation of a protective order, or the knowing receipt of information the receipt of which constitutes a violation of a protective order;

Proprietary information means confidential business information as defined in 19 CFR 201.6(a);

Protective Order means an administrative protective order issued by the Commission;

Relevant FTA Secretary means the Secretary referred to in Article 1908 of the Agreement;

Secretariat means the Secretariat established pursuant to Article 2002 of the Agreement and includes the Secretariat sections located in Canada, the United States, and Mexico;

Service address means the facsimile number, if any, and address of the

counsel of record for a person or, where a person is not represented by counsel, the facsimile number, if any, and address set out by a person in a Request for Panel Review, Complaint or Notice of Appearance as the address at which the person may be served or, where a Change of Service Address has been filed by a person, the facsimile number, if any, and address set out as the service address in that form;

Service list means the list maintained by the Commission Secretary under 19 CFR 201.11(d) of persons in the administrative proceeding leading to the final determination under panel review;

United States Secretary means the Secretary of the United States section of the Secretariat and includes any person authorized to act on the Secretary's behalf;

Except as otherwise provided in this subpart, the definitions set forth in the Article 1904 Rules and the ECC Rules are applicable to this subpart and to any protective orders issued pursuant to this subpart.

EFFECTIVE DATE NOTE: At 88 FR 14891, Mar. 10, 2023, § 207.91 was revised and republished, effective Apr. 10, 2023. For the convenience of the user, revised text is set forth as follows:

§ 207.91 Definitions.

Except as otherwise provided in this subpart, the definitions set forth in the Binational Panel Rules and the ECC Rules (as defined in this section) are applicable to this subpart and to any protective orders issued pursuant to this subpart. As used in this subpart—

Administrative Law Judge means the United States Government employee appointed under 5 U.S.C. 310(f) to conduct proceedings under this part in accordance with 5 U.S.C. 554.

Agreement means Article 10.12 of the Agreement between the United States of America, the United Mexican States (''Mexico''), and Canada entered into among these states, effective July 1, 2020 (''USMCA''); or, with respect to binational panel proceedings between either of Canada and the United States or Mexico and the United States underway as of the date of enactment of the Agreement, it means the Article 1904 of the North American Free Trade Agreement entered into between the governments of the United States of America, Mexico, and Canada, effective January 1, 1994 (''NAFTA'').

Binational Panel Rules means the Rules of Procedure for Article 10.12 published by the United States Trade Representative in 88 FR 10171, February 16, 2023, or, where applicable, Article 1904 of the NAFTA.

Canadian Secretary means the Secretary of the Canadian section of the Secretariat and includes any person authorized to act on the Secretary's behalf.

Charged party means a person who is charged by the Commission with committing a prohibited act under 19 U.S.C. 1677f(f)(3).

Clerical person means a person such as a paralegal, secretary, or law clerk who is employed or retained by and under the direction and control of an authorized applicant.

Commission means the United States International Trade Commission.

Commission Secretary means the Secretary to the Commission.

Complaint means the complaint referred to in the Binational Panel Rules.

Counsel means a person entitled to appear as counsel before a Federal court in the United States, consistent with the Binational Panel and ECC Rules, and counsel for an interested person who plans to file a timely complaint or notice of appearance in the panel review.

Date of service means the day a document is deposited in the mail, electronically sent, or delivered in person, as applicable.

Days means calendar days, but if a deadline falls on a weekend or United States Federal holiday, it will be extended to the next working day.

ECC Rules means the Rules of Procedure for Annex 10–B.3 published by the United States Trade Representative in 88 FR 10171, February 16, 2023, or, where applicable, Annex 1904.13 of the NAFTA.

Extraordinary challenge committee (''ECC'') means the committee established to review decisions of a panel or conduct of a panelist, pursuant to Annex 10–B.3 to Chapter 10 of the USMCA or to Annex 1904.13 of the NAFTA.

Final determination means ''final determination'' under Article 10.8 of the USMCA or Article 1911 of the NAFTA.

Free Trade Area country means the ''free trade area country'' as defined in 19 U.S.C. 1516a(f)(9).

Investigative attorney means an attorney designated by the Office of Unfair Import Investigations to engage in inquiries and proceedings under §§ 207.100 through 207.120.

Mexican Secretary means the Secretary of the Mexican section of the Secretariat and includes any persons authorized to act on the Secretary's behalf.

Notice of appearance means the notice of appearance provided for by the Binational Panel Rules or ECC Rules, as applicable.

Panel review means review of a final determination, including review by an extraordinary challenge committee, pursuant to Section D of Chapter 10 of the USMCA or Chapter 19 of the NAFTA.

Party means, for the purposes of §§ 207.100 through 207.120, either the investigative attorney(ies) or the charged party(ies).

Person means, for the purposes of §§ 207.100 through 207.120, an individual, partnership, corporation, association, organization, or other entity.

Privileged information means all information covered by the provisions of the second sentence of 19 U.S.C. 1677f(f)(1)(A).

Professional means an accountant, economist, engineer, or other non-legal specialist who is employed by, or under the direction and control, of a counsel.

Prohibited act means the violation of a protective order, the inducement of a violation of a protective order, or the knowing receipt of information the receipt of which constitutes a violation of a protective order.

Proprietary information means confidential business information as defined in 19 CFR 201.6(a).

Protective order means an administrative protective order issued by the Commission.

Responsible Secretary means the Secretary of the Section of the Secretariat located in the country in which the final determination under review was made.

Secretariat means the Secretariat established pursuant to Article 30.6 of the USMCA and Article 2002 of the NAFTA, and includes the Secretariat sections located in Canada, the United States, and Mexico.

Service address means the address filed with the Secretariat as the service address for that person, including any electronic mail address submitted with that address.

Service list means the list maintained by the Commission Secretary under 19 CFR 201.11(d) of persons in the administrative proceeding leading to the final determination under panel review.

United States Secretary means the Secretary of the United States section of the Secretariat and includes any person authorized to act on the Secretary's behalf.

USMCA Act means the United States-Mexico-Canada Implementation Act, Public Law 116–113 (January 29, 2020).

§ 207.92 Procedures for commencing review of final determinations.

(a) *Notice of Intent to Commence Judicial Review*. A Notice of Intent to Commence Judicial Review shall contain such information, and be in such form, manner, and style, including service requirements, as prescribed by the Department of Commerce in its regulations at 19 CFR part 356.

(b) *Request for Panel Review*. A Request for Panel Review shall contain such information, and be in such form, manner, and style, including service requirements, as prescribed by the Department of Commerce in its regulations at 19 CFR part 356.

EFFECTIVE DATE NOTE: At 88 FR 14892, Mar. 10, 2023, § 207.92 was revised, effective Apr. 10, 2023. For the convenience of the user, the revised text is set forth as follows:

§ 207.92 Procedures for commencing review of final determinations.

(a) *Notice of Intent to Commence Judicial Review*. A Notice of Intent to Commence Judicial Review shall contain such information, and be in such form, manner, and style, including service requirements, as prescribed by the Binational Panel Rules.

(b) *Request for Panel Review*. A Request for Panel Review shall contain such information, and be in such form, manner, and style, including service requirements, as prescribed by the Binational Panel Rules.

§ 207.93 Protection of proprietary information during panel and committee proceedings.

(a) *Requests for protective orders*. A request for access to proprietary information pursuant to 19 U.S.C. 1677f(f)(1) shall be made to the Secretary of the Commission.

(b) *Persons authorized to receive proprietary information under protective order*. The following persons may be authorized by the Commission to receive access to proprietary information if they comply with these regulations and such other conditions imposed upon them by the Commission:

(1) The members of a binational panel or an extraordinary challenge committee, any assistant to a member, court reporters and translators;

(2) Counsel and professionals, provided that the counsel or professional does not participate in competitive decision-making, as defined in *US Steel Corp.* v. *United States*, 730 F.2d 1465 (Fed. Cir. 1984), for the person represented or for any person that would gain a competitive advantage through knowledge of the proprietary information sought;

(3) Clerical persons who are employed or retained by and under the direction and control of a person described in paragraph (b) (1), (2), (5) or (6) of this section who has been issued a protective order, if such clerical persons:

(i) Are not involved in the competitive decision-making, or the support functions for the competitive decision-

making, of a participant to the proceeding or of any person that would gain a competitive advantage through knowledge of the proprietary information sought, and

(ii) Have agreed to be bound by the terms set forth in the application for protective order of the person who retains or employs him or her;

(4) The Secretaries of the United States, Canadian and Mexican sections of the Secretariat and members of their staffs;

(5) Any officer or employee of the United States Government who the United States Trade Representative informs the Commission Secretary needs access to proprietary information to make recommendations regarding the convening of extraordinary challenge committees; and

(6) Any officer or employee of the Government of Canada or the Government of Mexico who the Canadian Minister of Trade or the Mexican Secretary of Economia, as the case may be, informs the Commission Secretary needs access to proprietary information to make recommendations regarding the convening of extraordinary challenge committees; and

(7) Counsel representing, and other staff providing support to, the investigating authority, the Commission.

(c) *Procedures for obtaining access to proprietary information under protective order*—(1) *Persons who must file an application for release under protective order*. To be permitted access to proprietary information in the administrative record of a determination under panel review, all persons described in paragraphs (b)(1), (2), (4), (5), (6), or (c)(5)(i) of this section shall file an application for a protective order.

(2) *Contents of applications for release under protective order*. (i) The Commission Secretary shall adopt from time to time forms for submitting requests for release pursuant to protective order that incorporate the terms of this rule. The Commission Secretary shall supply the United States Secretary with copies of the forms for persons described in paragraphs (b) (1), (4), (5) and (6) of this section. Other applicants may obtain the forms at the Commission Secretary's office at 500 E Street SW., Washington, DC 20436.

(ii) Such forms shall require the applicant to submit a personal sworn statement that, in addition to such other conditions as the Commission Secretary may require, the applicant will:

(A) Not disclose any proprietary information obtained under protective order and not otherwise available to any person other than:

(*1*) Personnel of the Commission involved in the particular panel review in which the proprietary information is part of the administrative record,

(*2*) The person from whom the information was obtained,

(*3*) A person who is authorized to have access to the same proprietary information pursuant to a Commission protective order, and

(*4*) A clerical person retained or employed by and under the direction and control of a person described in paragraph (b)(1), (2), (5), or (6) of this section who has been issued a protective order, if such clerical person has signed and dated an agreement, provided to the Commission Secretary upon request, to be bound by the terms set forth in the application for a protective order of the person who retains or employs him or her (the authorized applicant shall be responsible for retention and accuracy of such forms and shall be deemed responsible for such persons' compliance with the administrative protective order);

(B) Not use any of the proprietary information released under protective order and not otherwise available for purposes other than the particular proceedings under Article 1904 of the Agreement;

(C) Upon completion of panel review, or at such other date as may be determined by the Commission Secretary, return to the Commission, or certify to the Commission Secretary the destruction of, all documents released under the protective order and all other material (such as briefs, notes, or charts), containing the proprietary information released under the protective order, except that those described in paragraph (b)(1) of this section may return such documents and other materials to the United States Secretary. The United States Secretary may retain a single

file copy of each document for the official file.

(D) Update information in the application for protective order as required by the protective order; and

(E) Acknowledge that the person becomes subject to the provisions of 19 U.S.C. 1677f(f) and to this subpart, as well as corresponding provisions of Canadian and Mexican law on disclosure undertakings concerning proprietary information.

(3) *Timing of applications.* An application for any person described in paragraph (b)(1) or (b)(2) of this section may be filed after a notice of request for panel review has been filed with the Secretariat. A person described in paragraph (b)(4) of this section shall file an application immediately upon assuming official responsibilities in the United States, Canadian or Mexican Secretariat. An application for any person described in paragraph (b)(5) or (b)(6) of this section may be filed at any time after the United States Trade Representative, the Canadian Minister of Trade, or the Mexican Secretary of Economia, as the case may be, has notified the Commission Secretary that such person requires access.

(4) *Filing and service of applications*—(i) *Applications of persons described in paragraph (b)(1) of this section.* A person described in paragraph (b)(1) of this section shall submit the completed original of the form to the United States Secretary, NAFTA Secretariat, room 2061, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. The United States Secretary, in turn, shall file the original plus three (3) copies of the application with the Commission Secretary.

(ii) *Applications of persons described in paragraph (b)(2) of this section*—(A) *Filing.* A person described in paragraph (b)(2) of this section, concurrent with the filing of a complaint or notice of appearance in the panel review on behalf of the participant represented by such person, shall file the completed original of the form (NAFTA APO Form C) and three (3) copies with the Commission Secretary, and four (4) copies with the United States Secretary.

(B) *Service.* If an applicant files before the deadline for filing notices of appearance for the panel review, the applicant shall concurrently serve each person on the service list with a copy of the application. If the applicant files after the deadline for filing notices of appearance for the panel review, the applicant shall serve each participant in the panel review in accordance with the applicable Article 1904 Rules and ECC Rules. Service on a person may be effected by delivering a copy to the person's service address; by sending a copy to the person's service address by facsimile transmission, expedited courier service, expedited mail service; or by personal service.

(iii) *Applications of persons described in paragraph (b)(4) of this section.* A person described in paragraph (b)(4) of this section shall file the original and three (3) copies of the protective order application with the Commission Secretary.

(iv) *Applications of persons described in paragraph (b)(5) of this section.* A person described in paragraph (b)(5) of this section shall file the original and three (3) copies with the Commission Secretary and four (4) copies with the United States Secretary.

(v) *Applications of persons described in paragraph (b)(6) of this section.* A person described in paragraph (b)(6) of this section shall submit the completed original of the protective order application to the relevant FTA Secretary. The relevant FTA Secretary in turn, shall file the original and three (3) copies with the Commission Secretary.

(5) *Persons who retain access to proprietary information under a protective order issued during the administrative proceedings.* (i) If counsel or a professional has been granted access in an administrative proceeding to proprietary information under a protective order that contains a provision governing continued access to that information during panel review, and that counsel or professional retains the proprietary information more than fifteen (15) days after a First Request for Panel Review is filed with the Secretariat, that counsel or professional, and such clerical persons with access on or after that date, become immediately subject to the terms and conditions of NAFTA

APO Form C maintained by the Commission Secretary on that date including provisions regarding sanctions for violations thereof.

(ii) Any person described in paragraph (c)(5)(i) of this section, concurrent with the filing of a complaint or notice of appearance in the panel review on behalf of the participant represented by such person, shall:

(A) File the completed original of the form (NAFTA APO Form C) and three (3) copies with the Commission Secretary; and

(B) File four (4) copies of the completed NAFTA APO Form C with the United States Secretary.

(iii) Any person described in paragraph (c)(5)(i) of this section must submit a new application for a protective order at the commencement of a panel review.

(d) *Issuance of protective orders*—(1) *Applicants described in paragraphs (b)(1), (4), (5) and (6) of this section.* Upon approval of an application of persons described in paragraphs (b)(1), (4), (5), or (6) of this section, the Commission Secretary shall issue a protective order permitting release of proprietary information. Any member of a binational panel proceeding initiated under the United States-Canada Free Trade Agreement to whom the Commission Secretary issues a protective order must countersign it and return one copy of the countersigned order to the United States Secretary. Any other applicant under paragraph (b)(1) of this section must file a copy of the order with the United States Secretary.

(2) *Applicants described in paragraph (b)(2) of this section.* (i) The Commission shall not rule on an application filed by a person described in paragraph (b)(2) until ten (10) days after the request is filed unless there is a compelling need to rule more expeditiously. Any person may file an objection to the application within seven (7) days of the application's filing date, stating the specific reasons why the Commission should not grant the application. One (1) copy of the objection shall be served on the applicant and on all persons who were served with the application. Any reply to an objection will be considered if it is filed and served before the Commission Secretary renders a decision. Service of objections and replies shall be made in accordance with paragraph (c)(4)(ii)(B) of this section.

(ii) *Denial of application.* The Commission's Secretary may deny an application by serving a letter notifying the applicant of the decision and the reasons therefor within fourteen (14) days of the receipt of the application. The letter shall advise the applicant of the right to appeal to the Commission. Any appeal must be made within five (5) days of the service of the Commission Secretary's letter.

(iii) *Appeal from denial of an application.* An appeal from a denial of a request must be addressed to the Chairman, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. Such appeal must be served in accordance with paragraph (c)(4)(ii)(B) of this section. The Commission shall make a final decision granting or denying the appeal within thirty (30) days from the day on which the application was filed with the Commission Secretary.

(iv) *Approval of the application.* If the Commission Secretary does not deny an application pursuant to paragraph (d)(2)(ii) of this section, the Commission shall, by the fifteenth day following the receipt of the application, issue a protective order permitting the release of proprietary information to the applicant.

(v) *Filing of protective orders.* If a protective order is issued to a person described in paragraph (b)(2) of this section, the person shall immediately file one (1) copy of the protective order with the United States Secretary.

(e) *Retention of protective orders; service list.* The Commission Secretary shall retain, in a public file, copies of applications granted, including any updates thereto, and protective orders issued under this section, including protective orders filed in accordance with paragraph (b)(6)(ii) of this section. The Secretary shall establish a list of persons authorized to receive proprietary information in a review, including parties whose applications have been granted.

(f) *Filing of amendments to granted applications.* Any person who has been issued a protective order under this section shall:

(1) If a person described in paragraph (b)(1) of this section, submit any amendments to the application for a protective order to the United States Secretary, who shall file the original and three (3) copies with the Commission Secretary;

(2) If a person described in paragraph (b)(2) of this section, file the original and three (3) copies of any amendments to the application with the Commission Secretary and four (4) copies with the United States Secretary; or

(3) If any other person, file the original and three (3) copies of any amendments to the application with the Commission Secretary.

(g) *Modification or revocation of protective orders.* (1) Any person may file with the Commission Secretary a request that a protective order issued under this section be modified or revoked because of changed conditions of fact or law, or on grounds of the public interest. The request shall state the changes desired and include any supporting materials and arguments. The person filing the request shall serve a copy of the request upon the person to whom the protective order was issued.

(2) Any person may file a response to the request within twenty (20) days after it is filed, unless the Commission issues a notice indicating otherwise. After consideration of the request and any responses thereto, the Commission shall take such action as it deems appropriate.

(3) If a request filed under this paragraph alleges that a person is violating the terms of a protective order, the Commission may treat the request as a report of violation under § 207.101 of this subpart.

(4) The Commission may also modify or revoke a protective order on its own initiative.

(5) If the Commission revokes, amends or modifies a person's protective order, it shall provide to the person, the United States Secretary and all participants a copy of the Notice of Revocation, amendment or modification.

[59 FR 5097, Feb. 3, 1994, as amended at 70 FR 8512, Feb. 22, 2005]

EFFECTIVE DATE NOTE: At 88 FR 14892, Mar. 10, 2023, § 207.93 was amended by revising paragraphs (b) introductory text, (b)(6), (c)(2)(i), (c)(2)(ii)(B), (c)(3), (c)(4)(ii)(A) and (B), (c)(4)(v), (c)(5)(i) and (ii), and (d)(1), effective Apr. 10, 2023. For the convenience of the user, the revised text is set forth as follows:

§ 207.93 Protection of proprietary information during panel and committee proceedings.

* * * * *

(b) *Persons authorized to receive proprietary information under protective order.* The following persons may be authorized by the Commission to receive access to proprietary information if they comply with the regulations in this section and such other conditions imposed upon them by the Commission:

* * * * *

(6) Any officer or employee of the Government of Canada or the Government of Mexico who the Canadian Minister of Trade or the Mexican Secretary of Economia (*Secretaría de Economía*), as the case may be, informs the Commission Secretary needs access to proprietary information to make recommendations regarding the convening of extraordinary challenge committees; and

* * * * *

(c) * * *

(2) * * *

(i) The Commission Secretary shall adopt from time to time forms for submitting requests for release pursuant to protective order that incorporate the terms of this section. The Commission Secretary shall supply the United States Secretary with copies of the forms for persons described in paragraphs (b)(1), (4), (5), and (6) of this section. Other applicants may obtain the forms at the Commission Secretary's office at 500 E Street SW, Washington, DC 20436, or from the website of the Commission Secretary.

(ii) * * *

(B) Not use any of the proprietary information released under protective order and not otherwise available for purposes other than the particular proceedings under Section D of Chapter 10 of the USMCA, or Article 1904 of the NAFTA, as applicable;

* * * * *

(3) *Timing of applications.* An application for any person described in paragraph (b)(1) or (2) of this section may be filed after a notice of request for panel review has been filed with the Secretariat. A person described in paragraph (b)(4) of this section shall file an

application immediately upon assuming official responsibilities in the United States, Canadian, or Mexican Secretariat. An application for any person described in paragraph (b)(5) or (6) of this section may be filed at any time after the United States Trade Representative, the Canadian Minister of Trade, or the Mexican Secretaría de Economía, as the case may be, has notified the Commission Secretary that such person requires access.

* * * * *

(4) * * *

(ii) * * *

(A) *Filing.* A person described in paragraph (b)(2) of this section, concurrent with the filing of a complaint or notice of appearance in the panel review on behalf of the participant represented by such person, shall file the completed original of the form (USMCA APO Form C) and three (3) copies with the Commission Secretary, and four (4) copies with the United States Secretary.

(B) *Service.* If an applicant files before the deadline for filing notices of appearance for the panel review, the applicant shall concurrently serve each person on the service list with a copy of the application. If the applicant files after the deadline for filing notices of appearance for the panel review, the applicant shall serve each participant in the panel review in accordance with the applicable Binational Panel Rules and ECC Rules. Service on a person may be effected by delivering a copy to the person's service address; by sending a copy to the person's service address by facsimile transmission, expedited courier service, expedited mail service; or by personal service.

* * * * *

(v) *Applications of persons described in paragraph (b)(6) of this section.* A person described in paragraph (b)(6) of this section shall submit the completed original of the protective order application to the Responsible Secretary. The Responsible Secretary in turn, shall file the original and three (3) copies with the Commission Secretary.

(5) * * *

(i) If counsel or a professional has been granted access in an administrative proceeding to proprietary information under a protective order that contains a provision governing continued access to that information during panel review, and that counsel or professional retains the proprietary information more than fifteen (15) days after a First Request for Panel Review is filed with the Secretariat, that counsel or professional, and such clerical persons with access on or after that date, become immediately subject to the terms and conditions of USMCA APO Form C maintained by the Commission Secretary on that date including provisions regarding sanctions for violations thereof.

(ii) Any person described in paragraph (c)(5)(i) of this section, concurrent with the filing of a complaint or notice of appearance in the panel review on behalf of the participant represented by such person, shall:

(A) File the completed original of the form (USMCA APO Form C) and three (3) copies with the Commission Secretary; and

(B) File four (4) copies of the completed USMCA APO Form C with the United States Secretary.

* * * * *

(d) * * *

(1) *Applicants described in paragraphs (b)(1), (4), (5), and (6) of this section.* Upon approval of an application of persons described in paragraph (b)(1), (4), (5), or (6) of this section, the Commission Secretary shall issue a protective order permitting release of proprietary information. Any member of a binational panel proceeding initiated under the NAFTA to whom the Commission Secretary issues a protective order must countersign it and return one copy of the countersigned order to the United States Secretary. Any other applicant under paragraph (b)(1) of this section must file a copy of the order with the United States Secretary.

* * * * *

§ 207.94 Protection of privileged information during panel and committee proceedings.

When and if a panel or extraordinary challenge committee decides that the Commission is required, pursuant to the United States law, to grant access pursuant to protective order to information for which the Commission has claimed a privilege, any individual to whom a panel or extraordinary challenge committee has directed the Commission release information and who is otherwise within the category of individuals eligible to receive proprietary information pursuant to 19 CFR 207.93(b), may file an application for a protective order with the Commission. Upon receipt of such application, the Commission Secretary shall certify to the Commission that a panel or extraordinary challenge committee has required the Commission to release such information to specified persons, pursuant to 19 U.S.C. 1677f(f)(1). Twenty-four hours following such certification, the Commission Secretary shall issue a protective order releasing such

information to any authorized applicant subject to terms and conditions equivalent to those described in 19 CFR 207.93(c)(2).

EFFECTIVE DATE NOTE: At 88 FR 14893, Mar. 10, 2023, § 207.94 was revised, effective Apr. 10, 2023. For the convenience of the user, the revised text is set forth as follows:

§ 207.94 Protection of privileged information during panel and committee proceedings.

If a panel or ECC decides that the Commission is required, pursuant to the United States law, to grant access pursuant to a protective order to information for which the Commission has claimed a privilege, any individual to whom the panel or ECC has directed the Commission release information and who is otherwise within the category of individuals eligible to receive proprietary information pursuant to § 207.93(b), may file an application for a protective order with the Commission. Upon receipt of such application, the Commission Secretary shall certify to the Commission that a panel or ECC has required the Commission to release such information to specified persons, pursuant to 19 U.S.C. 1677f(f)(1). Twenty-four hours following such certification, the Commission Secretary shall issue a protective order releasing such information to any authorized applicant subject to terms and conditions equivalent to those described in § 207.93(c)(2).

PROCEDURES FOR IMPOSING SANCTIONS FOR VIOLATION OF THE PROVISIONS OF A PROTECTIVE ORDER ISSUED DURING PANEL AND COMMITTEE PROCEEDINGS

§ 207.100 Sanctions.

(a) A person, other than a person exempted from this regulation by the provisions of 19 U.S.C. 1677f(f)(4), who is determined under this subpart to have committed a prohibited act, may be subject to one or more of the following sanctions:

(1) A civil penalty not to exceed $100,000 for each violation, each day of a continuing violation constituting a separate violation;

(2) Debarment from practice in any capacity before the Commission, which disbarment may, in appropriate circumstances, include such person's partners, associates, employers and employees, for a designated time period following publication of a determination that the protective order has been breached;

(3) Denial of further access to proprietary or privileged information covered by the breached protective order or to proprietary information in future Commission proceedings;

(4) An official reprimand by the Commission;

(5) In the case of an attorney, accountant, or other professional, referral of the facts underlying the prohibited act to the ethics panel or other disciplinary body of the appropriate professional association or licensing authority;

(6) When appropriate, referral of the facts underlying the violation to the United States Trade Representative or his or her designees, or to another government agency; and

(7) Any other administrative sanctions as the Commission determines to be appropriate.

(b) Each partner, associate, employer, and employee described in paragraph (a)(2) of this section is entitled to all the administrative rights set forth in this subpart.

(c) For the purposes of this subpart, the knowing receipt of information the receipt of which constitutes a violation of a protective order includes, but is not limited to, the reading or unauthorized dissemination of the information covered by a protective order by a person who knows or should reasonably believe that he or she is not authorized to read or disseminate such information.

§ 207.101 Reporting of prohibited act and commencement of investigation.

(a) Any person who has information indicating that a prohibited act has been committed shall immediately report all pertinent facts relating thereto to the Commission Secretary.

(b) Upon receipt, the Commission Secretary shall record the information, assign an investigation number, and forward all information he or she received to the Office of Unfair Import Investigations.

(c) As expeditiously as possible, the Office of Unfair Import Investigations shall conduct an inquiry to determine whether there is reasonable cause to believe that a person or persons have committed a prohibited act. At any

time, the Office of Unfair Import Investigations may request that the Commission assign an administrative law judge to oversee the inquiry.

(d) At the conclusion of the inquiry, the Office of Unfair Import Investigations shall assess whether the available information is sufficient to provide reasonable cause to believe that a person or persons have committed a prohibited act.

§ 207.102 Initiation of proceedings.

(a) Upon completion of the inquiry,

(1) If the Office of Unfair Import Investigations concludes that there is not reasonable cause to believe that a person or persons have committed a prohibited act, the Office of Unfair Import Investigations shall:

(i) Submit a report to the Commission; and

(ii) Unless the Commission directs otherwise, the file shall be closed and returned to the Commission Secretary.

(2) If the Office of Unfair Import Investigations concludes that there is reasonable cause to believe that a person or persons have committed a prohibited act, the Office of Unfair Import Investigations shall:

(i) Make a recommendation to the Commission regarding whether and to what extent it is appropriate to notify the person whose proprietary information may have been compromised; and

(ii) Submit a report and recommendation to the Commission regarding whether to initiate sanctions proceedings or to take other appropriate action.

(b) The Commission may make any appropriate determination regarding the initiation of sanctions proceedings, including rejecting, approving, or approving and amending any recommendation made by the Office of Unfair Import Investigations.

(c) If the Commission determines that it is appropriate to issue a charging letter, the Commission shall appoint an administrative law judge to oversee the proceeding and the Commission Secretary shall initiate a proceeding under this subpart by issuing a charging letter as set forth in 19 CFR 207.103.

(d) If the Commission determines that it is appropriate to initiate proceedings, but that the party to be charged is beyond the jurisdiction of the Commission and within the jurisdiction of another Free Trade Area country, or that for other reasons an authorized agency of another Free Trade Area country would be the more appropriate forum for initiation of a proceeding, the Commission shall take the necessary steps for issuance of a letter requesting the authorized agency of another Free Trade Area country to initiate proceedings under applicable law on the basis of an alleged prohibited act.

(e) The Commission may make any determination regarding notification about the alleged prohibited act and the relevant underlying facts to the persons who submitted the proprietary information that allegedly has been disclosed. A determination by the Commission on this subject does not foreclose the administrative law judge from redetermining at any time during the hearing whether notification to the compromised party is appropriate.

(f) If the Commission determines that it is not appropriate to issue a charging letter or to refer the facts to the authorized agency of another Free Trade Area country, the file shall be closed and returned to the Commission Secretary, unless the Commission directs otherwise.

(g) All aspects of the inquiry shall remain confidential, except as deemed reasonably necessary to the Office of Unfair Import Investigations to gather relevant information and to protect the interests of the person who submitted the proprietary information, or except as otherwise ordered by the Commission. Except as the Commission may otherwise order, the Commission Secretary shall maintain all closed investigatory files in confidence to the extent permitted by law, and shall destroy any documentary evidence containing allegations of a prohibited act for which no proceeding is initiated one year after the file is closed.

§ 207.103 Charging letter.

(a) *Contents of charging letter.* Each charged party shall be served by the Commission with a copy of a charging letter and any accompanying motion

for interim measures, as provided for in 19 CFR 207.106. The charging letter shall include:

(1) Allegations concerning a prohibited act;

(2) A citation to § 207.100 of this subpart, for a listing of sanctions that may be imposed for a prohibited act;

(3) A statement that a proceeding has been initiated and that an APA hearing will be held before an administrative law judge;

(4) A statement that the charged party or his or her attorney may request the issuance of an appropriate administrative protective order to obtain access to the information upon which the charge is based;

(5) A statement that the charged party has a right to retain an attorney at the charged party's own expense for purposes of representation; and

(6) A statement that the charged party has the right to request in the response described in § 207.104 of this subpart that the proceedings remain confidential to the extent practicable.

(b) *Service of charging letter.* (1) The charging letter shall be served in a double envelope. The inner envelope shall indicate that it is to be opened only by the addressee. Service of a charging letter shall be made by one of the following methods:

(i) Mailing a copy by registered or certified mail addressed to the charged party at the party's last known permanent address; or

(ii) Personal service; or

(iii) Any other method acceptable under Rule 4 of the Federal Rules of Civil Procedure.

(2) Service shall be evidenced by a certificate of service signed by the person making such service.

(c) *Confidentiality of charging letter.* Prior to entry of an order by the administrative law judge under § 207.105 of this subpart, the charging letter will be confidential and disclosed only to necessary Commission staff and the charged parties.

(d) *Amendment of charging letter.* (1) At any time after proceedings have been initiated, the investigative attorney may move for leave to amend or withdraw the charging letter.

(2) If the administrative law judge determines that the charging letter should be amended to include additional parties, the judge shall issue a recommended determination to that effect. The Commission shall review the recommended determination, and issue a determination granting or denying the motion to amend the charging letter to include additional parties.

(3) Upon motion, the administrative law judge may grant leave to amend the charging letter for good cause shown upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties already charged.

(4) Any amended charging letter shall be served upon all charged parties in the form and manner set forth in paragraphs (a) and (b) of this section.

§ 207.104 Response to charging letter.

(a) *Time for filing.* A charged party shall have twenty (20) days from the date of service of the charging letter within which to file a written response to the allegations made in the charging letter unless otherwise ordered by the administrative law judge.

(b) *Form and content.* Each response shall be under oath and signed by the charged party or its duly authorized officer, attorney, or agent, with the name, address, and telephone number of the same. Each charged party shall respond to each allegation in the charging letter, and may set forth a concise statement of the facts constituting each ground of defense. There shall be a specific admission or denial of each fact alleged in the charging letter, or if the charged party is without knowledge of any such fact, a statement to that effect.

(c) *Request for confidentiality.* The response shall contain a statement as to whether the charged party seeks an order to maintain the confidentiality of all or part of the proceedings to the extent practicable, pursuant to § 207.105 of this subpart.

§ 207.105 Confidentiality.

(a) *Protection of proprietary and privileged information.* As the administrative law judge deems reasonably necessary for the preparation of the defense of a charged party, the attorney for the charged party may be granted access in

these proceedings to proprietary information or to the privileged information, the disclosure of which is the subject of the proceedings. Any such access shall be under protective order consistent with the provisions of this subpart.

(b) *Confidentiality of proceedings.* Upon the request of any charged party pursuant to § 207.106 of this subpart, the administrative law judge will issue an appropriate confidentiality order. This order will provide for the confidentiality, to the extent practicable and permitted by law, of information relating to allegations concerning the commitment of a prohibited act, consistent with public policy considerations and the needs of the parties in conducting the sanctions proceedings. The order will provide that all proceedings under this provision shall be kept confidential within the terms of the order, except to the extent that a discussion of such proceedings is incorporated into a published final decision of the Commission. Any confidential information not disclosed in such decision will remain protected.

§ 207.106 Interim measures.

(a) At any time after proceedings are initiated, the administrative law judge, upon motion, or on his or her own initiative, may issue a recommended determination to revoke the allegedly-violated protective order, to disclose information about the proceedings that would otherwise be kept confidential, or to take other appropriate interim measures.

(b) Before issuing a determination recommending interim sanctions, the administrative law judge shall afford a party against whom such measures are proposed the opportunity to oppose them. The administrative law judge shall ordinarily decide any motion under this section no more than twenty (20) days after it is filed.

(c) The Commission shall review any recommended determination regarding the imposition of interim measures within twenty (20) days from its issuance or such other time as it may order. The Commission may impose any appropriate interim sanctions.

(d) The administrative law judge may recommend to the Commission that interim measures be modified or revoked. The Commission shall rule on such recommendation within ten (10) days after its issuance or such other time as it may order.

(e) The Commission Secretary shall immediately notify the Secretariat of any interim measures that revoke or modify an outstanding protective order in an ongoing panel review. The Commission Secretary shall also immediately notify the Secretariat of any revocation or modification of an interim measure.

§ 207.107 Motions.

(a) *Presentation and disposition.* (1) After issuance of the charging letter and while part of the proceeding is pending before the administrative law judge, all motions relating to that part of the proceeding shall be addressed to the administrative law judge.

(2) While part of a proceeding is pending before the Commission, all motions relating to that part of the proceeding shall be addressed to the Chairman of the Commission. All written motions shall be filed with the Commission Secretary and served upon all parties.

(b) *Content.* All written motions shall state the particular order, ruling, or action desired and the grounds therefor.

(c) *Responses.* Any response to a motion shall be filed within ten (10) days after service of the motions, or within such longer or shorter time as may be designated by the administrative law judge or the Commission. The moving party shall have no right to reply, except as permitted by the administrative law judge or the Commission.

(d) *Service.* All motions, responses, replies, briefs, petitions, and other documents filed in sanctions proceedings under this subpart shall be served by the party filing the document upon each other party. Service shall be made upon the attorney for the party unless the administrative law judge or the Commission orders otherwise.

§ 207.108 Preliminary conference.

As soon as practicable after the response to the charging letter is filed, the administrative law judge shall direct counsel or other representatives for the parties to meet with him or her

at a preliminary conference, unless the administrative law judge determines that such a conference is not necessary. At the conference, the administrative law judge shall consider the issuance of such orders as the administrative law judge deems necessary for the conduct of the proceedings. Such orders may include, as appropriate under these regulations, the establishment of a discovery schedule or the issuance of an order, if requested, to provide for maintaining the confidentiality of the proceedings pursuant to § 207.105(b) of this subpart.

§ 207.109 Discovery.

(a) *Discovery methods.* All parties may obtain discovery under such terms and limitations as the administrative law judge may order. Discovery may be by one or more of the following methods:

(1) Depositions upon oral examination or written questions;

(2) Written interrogatories;

(3) Production of documents or things for inspection and other purposes; and

(4) Requests for admissions.

(b) *Sanctions.* If a party or an officer or agent of a party fails to comply with a discovery order, the administrative law judge may take such action as he deems reasonable and appropriate, including the issuance of evidentiary sanctions or deeming the respondent to be in default.

(c) *Depositions of nonparty officers or employees of the United States or another Free Trade Area country government*—(1) *Depositions of Commission officers or employees.* A party desiring to take the deposition of an officer or employee of the Commission (other than a member of the Office of Unfair Import Investigations or of the Office of the Administrative Law Judges), or to obtain nonprivileged documents or other physical exhibits in the custody, control, and possession of such officer or employee, shall file a written motion requesting the administrative law judge to recommend that the Commission direct that officer or employee to testify or produce the requested materials.

(2) *Depositions of officers or employees of other United States agencies, or of the government of another Free Trade Area country.* A party desiring to take the deposition of an officer or employee of another agency, or of the government of another Free Trade Area country, or to obtain nonprivileged documents or other physical exhibits in the custody, control, and possession of such officer or employee, shall file a written motion requesting the administrative law judge to recommend that the Commission seek the testimony or production of requested material from the officer or employee.

§ 207.110 Subpoenas.

(a) *Application for issuance of a subpoena.* Except as provided in § 207.109(c) of this subpart, an application for issuance of a subpoena requiring a person to appear and depose or testify at the taking of a deposition or at a hearing shall be made to the administrative law judge. The application shall be made in writing, and shall specify the material to be produced as precisely as possible, showing the relevancy of the material and the reasonableness of the scope of the subpoena. The application shall be ruled upon by the administrative law judge.

(b) *Enforcement of a subpoena.* A motion for enforcement of a subpoena shall be made to the administrative law judge. Upon consideration of the motion and any response thereto, the administrative law judge shall recommend to the Commission in favor of or against enforcement. The administrative law judge's recommendation shall provide the basis therefor, and shall address each of the criteria necessary for enforcement of an administrative subpoena. After consideration of the administrative law judge's recommendation, the Commission shall determine whether initiation of enforcement proceedings is appropriate.

(c) *Application for subpoena grounded upon the Freedom of Information Act.* No application for a subpoena for production of documents grounded upon the Freedom of Information Act (5 U.S.C. 552) shall be entertained by the administrative law judge or the Commission.

§ 207.111 Prehearing conference.

The administrative law judge may direct the attorney or other representatives for the parties to meet with him

or her to consider any or all of the following:

(a) Simplification and clarification of the issues;

(b) Scope of the hearing;

(c) Stipulations and admissions of either fact or the content and authenticity of documents;

(d) Disclosure of the names of witnesses and the exchange of documents or other physical evidence that will be introduced in the course of the hearing; and

(e) Such other matters as may aid in the orderly and expeditious disposition of the proceedings.

§ 207.112 Hearings.

(a) *Purpose of and scheduling of hearings.* An opportunity for a hearing before an administrative law judge shall be provided for each action initiated under § 207.102 of this subpart. The purpose of such hearing shall be to receive evidence and hear argument in order to determine whether a charged party has committed a prohibited act and if so, what sanctions are appropriate. Hearings shall proceed with all reasonable expedition, and, insofar as practicable, shall be held at one place, continuing until completed, unless otherwise ordered by the administrative law judge.

(b) *Joinder or consolidation.* The administrative law judge may order such joinder or consolidation of proceedings initiated under § 207.102 of this subpart at the administrative law judge's discretion.

(c) *Compliance with Administrative Procedure Act.* The administrative law judge shall conduct a hearing that complies with the requirements of section 554 of title 5 of the United States Code.

§ 207.113 The record.

(a) *Definition of the record.* The record shall consist of—

(1) The charging letter and response, motions and responses, and other documents and exhibits properly filed with the Commission Secretary;

(2) All orders, notices, and the recommended or initial determinations of the administrative law judge;

(3) Orders, notices, and any final determination of the Commission;

(4) Hearing transcripts, and evidence admitted at the hearing; and

(5) Any other items certified into the record by the administrative law judge.

(b) *Certification of the record.* The record shall be certified to the Commission by the administrative law judge upon his or her filing of the initial determination.

§ 207.114 Initial determination.

(a) *Time for filing of initial determination.* (1) Except as may otherwise be ordered by the Commission, within ninety (90) days of the date of issuance of the charging letter, the administrative law judge shall certify the record to the Commission and shall file with the Commission an initial determination as to whether each charged party has committed a prohibited act, and as to appropriate sanctions.

(2) The administrative law judge may request the Commission to extend the time period for issuance of the initial determination for good cause shown.

(b) *Contents of the initial determination.* The initial determination shall include the following:

(1) An opinion making all necessary findings of fact and conclusions of law and the reasons therefor, and

(2) A statement that the initial determination shall become the determination of the Commission unless a party files a petition for review of the determination pursuant to § 207.115 or the Commission pursuant to § 207.116 of this subpart, orders on its own motion a review of the initial determination or certain issues therein.

(c) *Burden of proof.* A finding that a charged party committed a prohibited act shall be supported by clear and convincing evidence.

(d) *Effect of initial determination.* The initial determination shall become the determination of the Commission forty-five (45) days after the date of service of the initial determination, unless the Commission within such time orders review of the initial determination or certain issues therein pursuant to § 207.115 or § 207.116 of this subpart or by order shall have changed the effective date of the initial determination. In the event an initial determination becomes the determination of the

Commission, the parties shall be notified thereof by the Commission Secretary.

§ 207.115 Petition for review.

(a) *The petition and responses.* (1) Any party may request a review by the Commission of the initial determination by filing with the Commission Secretary a petition for review, except that a party who has defaulted may not petition for review of any issue regarding which the party is in default.

(2) Any person who wishes to obtain judicial review pursuant to 19 U.S.C. 1677f(f)(5) must first seek review by the Commission in accordance with the procedures set forth in this regulation governing petitions for review.

(3) Any petition for review must be filed within fourteen (14) days after service of the initial determination on the charged party. The petition shall:

(i) Identify the party seeking review;

(ii) Specify the issues upon which review is sought, including a statement as to whether review is sought of the initial determination regarding the commitment of a prohibited act, or of the initial determination regarding sanctions;

(iii) Set forth a concise statement of the relevant law or material facts necessary for consideration of the stated issues; and

(iv) Present a concise argument setting forth the reasons why review is necessary or appropriate.

(4) Any issue not raised in the petition for review filed under this section will be deemed to have been abandoned and may be disregarded by the Commission.

(5) Any party may file a response to the petition within seven (7) days after service of the petition, except that a party who has defaulted may not file a response to any issue regarding which the party is in default.

(b) *Grant or denial of review.* (1) The Commission shall decide whether to grant a petition for review, in whole or in part, within forty-five (45) days of the service of the initial determination on the parties, or by such other time as the Commission may order.

(2) The Commission shall base its decision whether to grant a petition for review upon the petition and response thereto, without oral argument or further written submissions, unless the Commission shall order otherwise.

(3) The Commission shall grant a petition for review of an initial determination or certain issues therein when at least one of the participating Commissioners votes for ordering review. In its notice, the Commission shall establish the scope of the review and the issues that will be considered and make provisions for the filing of briefs and oral argument if deemed appropriate by the Commission. The notice that the Commission has granted the petition shall be served by the Commission Secretary on all parties.

§ 207.116 Commission review on its own motion.

Within forty-five (45) days of the date of service of the initial determination, the Commission on its own initiative shall order review of an initial determination or certain issues therein upon request of any Commissioner.

§ 207.117 Review by Commission.

On review, the parties may not present argument on any issue that is not set forth in the notice of review; and the Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the initial determination of the administrative law judge. The Commission may make any findings or conclusions that in its judgment are proper based on the record in the proceeding.

§ 207.118 Role of the General Counsel in advising the Commission.

The Assistant General Counsel for Section 337 Investigations shall serve as Acting General Counsel for the purpose of advising the Commission on proceedings brought under this subpart if the prohibited act described in the charging letter involves a protective order issued in connection with a panel review that was pending when the letter was issued, and the General Counsel participated in the panel review. No other Commission attorney shall advise the Commission on proceedings under this subpart concerning a protective order issued during a panel review in which the attorney participated.

§ 207.119 Reconsideration.

(a) *Motion for reconsideration.* Within fourteen (14) days after service of a Commission determination, any party may file with the Commission a motion for reconsideration, setting forth the relief desired and the grounds in support thereof. Any motion filed under this section must be confined to new questions raised by the determination or action ordered to be taken thereunder and upon which the moving party had no opportunity to submit arguments.

(b) *Disposition of motion for reconsideration.* The Commission shall grant or deny the motion for reconsideration. No response to a motion for reconsideration will be received unless requested by the Commission, but a motion for reconsideration will not be granted in the absence of such a request. If the motion to reconsider is granted, the Commission may affirm, set aside, or modify its determination, including any action ordered by it to be taken thereunder. When appropriate, the Commission may order the administrative law judge to take additional evidence.

§ 207.120 Public notice of sanctions.

If the final Commission decision is that there has been a prohibited act, and that public sanctions are to be imposed, notice of the decision will be published in the FEDERAL REGISTER and forwarded to the Secretariat. Such publication will occur no sooner than fourteen (14) days after issuance of a final decision or after any motion for reconsideration has been denied. The Commission Secretary shall also serve notice of the Commission decision upon such departments and agencies of the United States, Canadian and Mexican governments as the Commission deems appropriate.

PART 208—INVESTIGATIONS OF UNITED STATES–MEXICO CROSS–BORDER LONG–HAUL TRUCKING SERVICES

Sec.

AUTHORITY: 19 U.S.C. 4574(e).

SOURCE: 85 FR 41357, July 10, 2020, unless otherwise noted.

§ 208.1 Applicability of part.

Part 208 applies to proceedings of the Commission under sections 321–324 of the United States-Mexico-Canada Agreement (USMCA) Implementation Act, 19 U.S.C. 4571–4574 (19 U.S.C. 4501 note).

Subpart A— Definitions

§ 208.2 Definitions applicable to this part.

For the purposes of this part, the following terms have the meanings hereby assigned to them:

(a) *Act* means the USMCA Implementation Act.

(b) *Border commercial zone* means:

(1) The area of United States territory of the municipalities along the United States-Mexico international border and the commercial zones of such municipalities as described in subpart B of 49 CFR part 372.; and

(2) Any additional border crossing and associated commercial zones listed in the Federal Motor Carrier Safety Administration OP–2 application instructions or successor documents.

(c) *Cargo originating in Mexico* means any cargo that enters the United States by commercial motor vehicle from Mexico, including cargo that may have originated in a country other than Mexico.

(d) *Change in circumstance* may include a substantial increase in services supplied by the grantee of a grant of authority.

(e) *Commercial motor vehicle* means a commercial motor vehicle, as such term is defined in 49 U.S.C. 31132 (1), that meets the requirements of 49 U.S.C. 31132(1)(A).

(f) *Cross-border long-haul trucking services means:*

(1) The transportation by commercial motor vehicle of cargo originating in Mexico to a point in the United States outside of a border commercial zone; or

(2) The transportation by commercial motor vehicle of cargo originating in the United States from a point in the United States outside of a border commercial zone to a point in a border commercial zone or a point in Mexico.

(g) *Driver* means a person that drives a commercial motor vehicle in cross-border long-haul trucking services.

(h) *Grant of authority* means registration granted pursuant to 49 U.S.C. 13902, or a successor provision, to persons of Mexico to conduct cross-border long-haul trucking services in the United States.

(i) *Interested party* means:

(1) Persons of the United States engaged in the provision of cross-border long-haul trucking services;

(2) A trade or business association, a majority of whose members are part of the relevant United States long-haul trucking services industry;

(3) A certified or recognized union, or representative group of suppliers, operators, or drivers who are part of the United States long-haul trucking services industry;

(4) The Government of Mexico; or

(5) Persons of Mexico.

(j) *Material harm* means a significant loss in the share of the United States market or relevant sub-market for cross-border long-haul trucking services held by persons of the United States.

(k) *Operator* or *supplier* means an entity that has been granted registration under 49 U.S.C. 13902, to provide cross-border long-haul trucking services.

(l) *Persons of Mexico* includes:

(1) Entities domiciled in Mexico organized, or otherwise constituted under Mexican law, including subsidiaries of United States companies domiciled in Mexico, or entities owned or controlled by a Mexican national, which conduct cross-border long-haul trucking services, or employ drivers who are non-United States nationals; and

(2) Drivers who are Mexican nationals.

(m) *Persons of the United States* includes entities domiciled in the United States, organized or otherwise constituted under United States law, and not owned or controlled by persons of Mexico, which provide cross-border long-haul trucking services and long-haul commercial motor vehicle drivers who are United States nationals.

(n) *Threat of material harm* means material harm that is likely to occur.

(o) *Trade Representative* means the United States Trade Representative.

(p) *United States long-haul trucking services industry* means:

(1) United States suppliers, operators, or drivers as a whole providing cross-border long-haul trucking services; or

(2) United States suppliers, operators, or drivers providing cross-border long-haul trucking services in a specific sub-market of the whole United States market.

(q) *USMCA* means United States-Mexico-Canada Agreement.

Subpart B—Investigations Relating to Material Harm or Threat of Material Harm

§ 208.3 Applicability of subpart.

The provisions of this subpart B apply to investigations under section 322(a) of the Act relating to material harm or threat of material harm. For other applicable rules, see subpart A and subpart D of this part.

§ 208.4 Who may file a petition, request, or resolution.

An investigation under this subpart may be commenced on the basis of a petition properly filed by an interested party described in § 208.2(i) of this part which is representative of a United States long-haul trucking services industry; at the request of the President or the Trade Representative; or upon the resolution of the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate.

§ 208.5 Contents of petition.

(a) *Nature of the claim.* Each petition filed under this subpart shall state whether the petition:

(1) Claims that a request by a person of Mexico to receive a grant of authority that is pending as of the date of the filing of the petition threatens to cause material harm to a United States long-haul trucking services industry; or

(2) Claims that a person of Mexico who has received a grant of authority on or after the date of entry into force of the USMCA and retains such grant of authority is causing or threatens to cause material harm to a United States long-haul trucking services industry; or

(3) Claims that, with respect to a person of Mexico who received a grant of authority before the date of entry into force of the USMCA and retains such grant of authority, there has been a change in circumstances such that such person of Mexico is causing or threatens to cause material harm to a United States long-haul trucking services industry.

(b) *Identity of the petitioner and basis for the claim that it is representative of a United States long-haul trucking services industry.* (1) Each petition shall state the basis for the petitioner's status as an interested party pursuant to the definition described in § 208.2(i).

(2) If the petition is filed on behalf of providers of such services in a specific sub-market, the petition shall include a description of the claimed sub-market. Specifically:

(i) If the petition claims the sub-market is a specific geographic area in the United States for such services, it shall define such market and provide a justification for such delineation;

(ii) If the petition claims a sub-market on criteria other than geographic terms, it shall define the applicable criteria and provide justification for such delineation.

(3) Each petition shall include the names, physical addresses, email addresses, and telephone numbers of the firms represented in the petition and/or the entities employing or previously employing the suppliers, operators, and/or drivers represented in the petition and the locations of their establishments;

(4) Each petition shall also indicate, or estimate (and provide the basis therefor), the percentage of the United States long-haul trucking services industry as a whole, or of the claimed sub-market of the United States market, accounted for by the petitioning suppliers, operators, and/or drivers and the basis for claiming that such suppliers, operators, and/or drivers are representative of an industry; and

(5) Each petition shall include the names, physical addresses, email addresses, and telephone numbers of all other domestic entities, including firms, trade or business associations, and/or certified or recognized unions, or representative group of suppliers, operators, or drivers known to the petitioner who are part of the United States long-haul trucking services industry or the specific sub-market in the United States market to which the petition pertains.

(c) Identification of Grant or Grants of authority. Each petition shall identify the grant or grants of authority, or those that are pending, upon which the petition is based. In addition, each petition shall indicate whether it is based on:

(1) A request for a grant of authority by a person of Mexico that is pending as of the date of filing of the petition (pursuant to section 332(a)(1) of the Act); or

(2) A grant of authority that was granted to, and retained by, a person of Mexico after the date of entry into force of the USMCA (pursuant to section 332(a)(2) of the Act); or

(3) A grant of authority that was received before the date of entry into force of the USMCA and that the holder retains (pursuant to section 332(a)(3) of the Act); and

(d) *Identification of a Change in Circumstances.* Each petition that identifies a grant of authority pursuant to § 208.5(c)(iii) shall also identify the claimed change in circumstances, and provide supporting information with respect to this claimed change in circumstances, including:

(1) Where relevant, information relating to any increase in services supplied by a grantee of such grant of authority; or information relating to any other claimed change in circumstances; and

(2) An explanation of how the change in circumstances is believed to cause or threaten to cause material harm to the long-haul trucking services industry as a whole or in a claimed specific sub-market thereof, supported by pertinent data and available information.

(e) *Additional required information and data.* Each petition shall include the following information, to the extent that such information is available from governmental or other sources, or best estimates and the basis therefor if such information is not available:

(1) Quantitative data and other information for the United States long-haul trucking industry as a whole, or for the claimed specific sub-market, for the most recent three (3) full calendar years, and part-year for the current calendar year if available, showing:

(i) Volume and tonnage of merchandise transported by the industry as a whole or within the claimed specific sub-market;

(ii) Employment, wages, hours of service, and working conditions relating to the industry as a whole or claimed specific sub-market;

(iii) With respect to cargo originating in Mexico, the principal ports of entry along the United States-Mexico border of such shipments, and the principal destination(s) within the United States for such shipments;

(iv) With respect to cargo originating in the United States, the principal place(s) where such cargo is loaded, and principal destination(s) in Mexico or the border commercial zone, as defined in § 208.2(b);

(v) With respect to claims of material harm or the threat of material harm to the industry as a whole or within the claimed specific sub-market, data regarding whether there has been or is a threat of a significant loss in the share of the United States market as a whole, or in the claimed specific sub-market, to persons of Mexico, as defined in § 208.2(l); and

(vi) Any other relevant information, including freight rates and any evidence of cross-border long-haul trucking services lost to persons of Mexico in the market as a whole or claimed specific sub-market.

(f) *Cause of injury.* Each petition shall include an enumeration and description of the causes believed to be resulting in the material harm, or threat thereof, and a statement regarding the extent to which one or more grants of authority are believed to be such a cause of material harm or the threat thereof to the United States industry as a whole or in a sub-market thereof, supported by pertinent data and information;

(g) *Relief sought and purpose thereof.* A statement describing the relief sought.

[85 FR 41357, July 10, 2020, as amended at 86 FR 18185, Apr. 8, 2021]

§ 208.6 Time for determinations, reporting.

(a) *Determinations.* (1) The Commission will make its determination with respect to the petition, request, or resolution no later than 120 days after the date on which an investigation is initiated under section 322(a) of the Act, except that:

(2) If the Commission determines, before the 100th day after an investigation is initiated under section 322(a) of

the Act, that the investigation is extraordinarily complicated, the Commission will make its determination within 150 days after the date on which an investigation is initiated.

(b) *Reporting.* The Commission will submit its report to the President not later than the date that is 60 days after the date on which the determination is made under section 322(a) of the Act.

§ 208.7 Report to the President.

In its report to the President, the Commission will include the following:

(a) The determination made and an explanation of the basis for the determination;

(b) If the determination is affirmative or if the Commission is equally divided in its determination, the recommendation of members of the Commission who agreed to the affirmative determination for the action that is necessary to address the material harm or threat of material harm found, and an explanation of the basis for the recommendation.

(c) Any dissenting or separate views by members of the Commission regarding the determination.

§ 208.8 Public report.

Upon submitting a report to the President of the results of an investigation to which this part relates, the Commission will promptly make such report public (with the exception of information that the Commission determines to be confidential business information) and publish a summary of the report in the FEDERAL REGISTER.

Subpart C—Investigations Relating to Extension of Relief

§ 208.9 Applicability of subpart.

The provisions of this subpart C apply to investigations under section 324(d)(2) of the Act relating to an extension for relief. For other applicable rules, see subpart A and subpart D of this part.

§ 208.10 Who may file a petition or request.

An investigation under this subpart may be commenced upon the request of the President or upon receipt of a petition, properly filed, by an interested party described in § 208.2(i) of this part, which is representative of a United States long-haul trucking services industry, as defined by the Commission in its determination under section 322 of the Act.

§ 208.11 Time for filing.

A request or petition may be filed with the Commission not earlier than the date that is 270 days, and not later than 240 days, before the date on which any action taken under section 324 of the Act of is to terminate.

§ 208.12 Contents of petition.

The petition shall include information in support of the claim that action under section 324 of the Act continues to be necessary to remedy or prevent material harm to the industry, as defined by the Commission in its determination under section 322 of the Act, including information relating to changes since the action was taken with respect to:

(a) The volume and tonnage of merchandise transported by the industry;

(b) Employment, wages, hours of service, and working conditions relating to the industry;

(c) With respect to cargo originating in Mexico, the principal ports of entry along the United States-Mexico border of such shipments, and the principal destinations within the United States for such shipments;

(d) With respect to cargo originating in United States, the principal place(s) where such cargo is loaded, and principal destination(s) in Mexico or inside a border commercial zone as defined in § 208.2(b);

(e) The share of the United States market as a whole, or the share of the specific sub-market, held by persons of Mexico; and

(f) Any other relevant information in support of the claim that action continues to be necessary.

§ 208.13 Report to the President.

The Commission will submit a report on its investigation and determination to the President no later than 60 days before relief provided under section 324(a) of the Act is to terminate, or such other date as determined by the President.

Subpart D—General Notice and Filing Provisions

§ 208.14 Applicability of subpart.

The provisions of this subpart D apply to investigations under sections 322(a) and 324(d)(2) of the Act.

§ 208.15 Identification and filing of petitions; filing of requests and resolutions.

(a) Each petition filed by an entity representative of a United States long-haul trucking services industry must state clearly on the first page thereof whether the petition is filed under section 322 or section 324(d)(2) of the Act as applicable. Unless otherwise directed or authorized by the Secretary, a public and confidential version of a petition must be filed electronically on the Commission's Electronic Document Information System (''EDIS''). One copy of each of the public and confidential versions of any exhibits, appendices, and attachments to the document may be filed on EDIS or in other electronic format approved by the Secretary.

(b) Each request or resolution may be submitted in paper form or filed on EDIS.

§ 208.16 Initiation and notice of investigation.

(a) *In general.* Except as provided in paragraph (b) of this section, after acceptance of a properly filed petition under this part 208, the Commission will promptly initiate an appropriate investigation and will publish notice thereof in the FEDERAL REGISTER.

(b) *Exception.* Except for good cause determined by the Commission to exist, no new investigation will be made under section 322 of the Act with respect to the same subject matter as a previous investigation under section 322 of the Act unless one (1) year has elapsed since the Commission made its report to the President of the results of such previous investigation.

§ 208.17 Publication of notice; and availability for public inspection.

(a) *Contents of notice.* The notice will indicate whether the initiation is based on a petition, request, or resolution, as appropriate; and will identify the grant or grants of authority, or the request for a grant or grants of authority, that are the subject of the investigation; the nature and timing of the determination to be made; the time and place of any public hearing, dates of deadlines for filing briefs, statements, and other documents; any limits on page lengths for briefs, statements, or other documents to be filed; and the name, address, and telephone number of the Commission office that may be contacted for more information.

(b) *Availability for public inspection.* The Commission will promptly make the public version of each petition available for public inspection through EDIS.

§ 208.18 Notification of other agencies.

For each investigation subject to the provisions of this part 208, the Commission will transmit copies of the petition, request, or resolution to the Trade Representative and the Secretary of Transportation, along with a copy of the notice of investigation.

§ 208.19 Public hearing.

(a) *Public hearing.* The Commission will provide notice of, and hold, a public hearing in connection with each investigation initiated under section 322(a) or section 324(d)(2) of the Act and under this part after reasonable notice thereof has been published in the FEDERAL REGISTER.

(b) *Opportunity to appear.* The Commission will afford all interested parties, as defined in section 321(8) of the Act and § 208.2(i) of this part, an opportunity to be present, to present evidence, to respond to presentations of other parties, and otherwise to be heard.

§ 208.20 Service, filing, and certification of documents.

(a) *Certification.* Any person submitting factual information on behalf of any interested party for the consideration of the Commission in the course of an investigation to which this part pertains, and any person submitting a response to a Commission questionnaire issued in connection with an investigation to which this part pertains, must certify that such information is

accurate and complete to the best of the submitter's knowledge.

(b) *Service*. Any party submitting a document for the consideration of the Commission in the course of an investigation to which this part pertains shall, in addition to complying with § 201.8 of this chapter, serve a copy of the public version of such document on all other parties to the investigation in the manner prescribed in § 201.16 of this chapter, and, when appropriate, serve a copy of the confidential version of such document in the manner provided for in § 208.22(f). The Secretary shall promptly notify a petitioner when, before the establishment of a service list under § 208.22(a)(4), an application under § 208.22(a) is approved. A copy of the petition including all confidential business information shall then be served by petitioner on those approved applicants in accordance with this section within two (2) calendar days of the time notification is made by the Secretary. If a document is filed before the Secretary's issuance of the service list provided for in § 201.11 of this chapter or the administrative protective order list provided for in § 208.22, the document need not be accompanied by a certificate of service, but the document shall be served on all appropriate parties within two (2) days of the issuance of the service list or the administrative protective order list and a certificate of service shall then be filed. Notwithstanding § 201.16 of this chapter, petitions, briefs, and testimony filed by parties shall be served by hand, by overnight mail, or by electronic means. Failure to comply with the requirements of this rule may result in removal from status as a party to the investigation. The Commission will make available through EDIS each public document placed in the docket file.

(c) *Filing generally*. Documents to be filed with the Commission must comply with applicable rules, including Part 201 of this chapter, as may be further explained in the Commission's Handbook on Filing Procedures. Failure to comply with these requirements may result in the rejection of the document as improperly filed.

(d) *Filing of confidential business information*. If the Commission establishes a deadline for the filing of a document, and the submitter includes confidential business information in the document, the submitter is to file and, if the submitter is a party, serve the confidential version of the document on or before the deadline and may file and serve the nonconfidential version of the document no later than one business day after filing the document. The confidential version shall enclose all confidential business information in brackets and have the following warning marked on every page: ''Bracketing of CBI not final for one business day after date of filing.'' The bracketing becomes final one business day after the date of filing of the document, *i.e.*, at the same time as the nonconfidential version of the document is due to be filed. Until the bracketing becomes final, recipients of the document may not divulge any part of the contents of the document to anyone not subject to the administrative protective order issued in the investigation. If the submitter discovers that it has failed to bracket correctly, the submitter may file a corrected version or portion of the confidential document at the same time that it files the nonconfidential version. No changes to the document, other than bracketing and deletion of confidential business information, are permitted after the deadline. Failure to comply with this paragraph may result in the striking of all or a portion of a submitter's document.

§ 208.21 Confidential business information; furnishing of nonconfidential summaries thereof.

(a) *Nonrelease of information*. Except as provided for in § 208.22, in the case of an investigation under this part, the Commission will not release information that the Commission considers to be confidential business information within the meaning of § 201.6 of this chapter, including such information obtained under section 322(e)(2) of the Act, unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the Commission, or such party subsequently consents to the release of the information. When appropriate, the Commission will include confidential

business information in reports transmitted to the President, the Trade Representative, and the Secretary of Transportation; such reports will be marked as containing confidential business information, and a nonconfidential version of such report will be made available to the public.

(b) *Nonconfidential summaries.* Except as the Commission may otherwise provide, a party submitting confidential business information shall also submit to the Commission, at the time that it submits such information, a nonconfidential summary of the information. If a party indicates that the confidential business information cannot be summarized, it shall state in writing the reasons why a summary cannot be provided. If the Commission finds that a request for confidentiality is not warranted, and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summarized form, the Commission may disregard the submission.

§ 208.22 Limited disclosure of certain confidential business information under administrative protective order.

(a)(1) *Disclosure.* Upon receipt of a timely application filed by an authorized applicant, as defined in paragraph (a)(3) of this section, which describes in general terms the information requested, and sets forth the reasons for the request (*e.g.*, all confidential business information properly disclosed pursuant to this section for the purpose of representing an interested party in investigations pending before the Commission), the Secretary shall make available all confidential business information contained in Commission memoranda and reports and in written submissions filed with the Commission at any time during the investigation (except privileged information, classified information, and specific information of a type that there is a clear and compelling need to withhold from disclosure, *e.g.*, trade secrets) to the authorized applicant under an administrative protective order described in paragraph (b) of this section. The term ''confidential business information'' is defined in § 201.6 of this chapter, and it includes information obtained under section 322(e)(2) of the Act.

(2) *Application.* An application under paragraph (a)(1) of this section must be made by an authorized applicant on a form adopted by the Secretary or a photocopy thereof. A signed application shall be filed electronically. An application on behalf of an authorized applicant must be made no later than the time that entries of appearance are due pursuant to § 201.11 of this chapter. In the event that two or more authorized applicants represent one interested party who is a party to the investigation, the authorized applicants must select one of their number to be lead authorized applicant. The lead authorized applicant's application must be filed no later than the time that entries of appearance are due. Provided that the application is accepted, the lead authorized applicant shall be served with confidential business information pursuant to paragraph (f) of this section. The other authorized applicants representing the same party may file their applications after the deadline for entries of appearance, but at least five days before the deadline for filing post-hearing briefs in the investigation, and they shall not be served with confidential business information.

(3) *Authorized applicant.* (i) Only an authorized applicant may file an application under this subsection. An authorized applicant is:

(A) An attorney for an interested party that is a party to the investigation;

(B) A consultant or expert under the direction and control of a person under paragraph (a)(3)(i)(A) of this section;

(C) A consultant or expert who appears regularly before the Commission and who represents an interested party that is a party to the investigation; or

(D) An authorized representative of an interested party that is a party to the investigation, if such interested party is not represented by counsel.

(ii) In addition, an authorized applicant must not be involved in competitive decision-making for an interested party that is a party to the investigation. Involvement in ''competitive decision-making'' includes past, present,

or likely future activities, associations, and relationships with an interested party that is a party to the investigation, which involves the prospective authorized applicant's advice or participation in any of such party's decisions made in light of similar or corresponding information about a competitor (*e.g.*, pricing, product design, etc.).

(4) *Forms and determinations.* (i) The Secretary may adopt, from time to time, forms for submitting requests for disclosure pursuant to an administrative protective order incorporating the terms of this rule. The Secretary shall determine whether the requirements for release of information under this rule have been satisfied. This determination shall be made concerning specific confidential business information as expeditiously as possible, but in no event later than fourteen (14) days from the filing of the information, except if the submitter of the information objects to its release or the information is unusually voluminous or complex, in which case the determination shall be made within thirty (30) days from the filing of the information. The Secretary shall establish a list of parties whose applications have been granted. The Secretary's determination shall be final.

(ii) Should the Secretary determine pursuant to this section that materials sought by a person to be protected from public disclosure do not constitute confidential business information or were not required to be served under paragraph (f) of this section, then the Secretary shall, upon request, issue an order on behalf of the Commission requiring the return of all copies of such materials served in accordance with paragraph (f) of this section.

(iii) The Secretary shall release confidential business information only to an authorized applicant whose application has been accepted and who presents the application along with adequate personal identification; or a person described in paragraph (b)(1)(iv) of this section who presents a copy of the statement referred to in that paragraph, along with adequate personal identification.

(b) *Administrative protective order.* The administrative protective order under which information is made available to the authorized applicant shall require the applicant to submit to the Secretary a personal sworn statement that, in addition to such other conditions as the Secretary may require, the applicant shall:

(1) Not divulge any of the confidential business information obtained under the administrative protective order and not otherwise available to the applicant, to any person other than

(i) Personnel of the Commission concerned with the investigation,

(ii) The person or agency from whom the confidential business information was obtained,

(iii) A person whose application for access to confidential business information under the administrative protective order has been granted by the Secretary, and

(iv) Other persons, such as paralegals and clerical staff, who are employed or supervised by an authorized applicant; who have a need thereof in connection with the investigation; who are not involved in competitive decision-making on behalf of an interested party that is a party to the investigation; and who have signed a statement in a form approved by the Secretary that they agree to be bound by the administrative protective order (the authorized applicant shall be responsible for retention and accuracy of such forms and shall be deemed responsible for such persons' compliance with the administrative protective order);

(2) Use such confidential business information solely for the purposes of representing an interested party in the Commission investigation then in progress;

(3) Not consult with any person not described in paragraph (b)(1) of this section concerning such confidential business information without first having received the written consent of the Secretary and the party or the attorney of the party from whom such confidential business information was obtained;

(4) Whenever materials (*e.g.*, documents, computer disks, etc.) containing such confidential business information are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container;

(5) Serve all materials containing confidential business information as directed by the Secretary and pursuant to paragraph (f) of this section;

(6) Transmit all materials containing confidential business information with a cover sheet identifying the materials as containing confidential business information;

(7) Comply with the provisions of this section;

(8) Make true and accurate representations in the authorized applicant's application and promptly notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (*e.g.*, change in personnel assigned to the investigation);

(9) Report promptly and confirm in writing to the Secretary any breach of the administrative protective order; and

(10) Acknowledge that breach of the administrative protective order may subject the authorized applicant to such sanctions or other actions as the Commission deems appropriate.

(c) *Final disposition of material released under administrative protective order.* At such date as the Secretary may determine appropriate for particular data, each authorized applicant shall destroy all physical and electronic copies of materials released to authorized applicants pursuant to this section and all other materials containing confidential business information, such as charts or notes based on any such information received under administrative protective order, and file with the Secretary a certificate attesting to the applicant's personal, good faith belief that all copies of such material have been returned or destroyed and no copies of such material have been made available to any person to whom disclosure was not specifically authorized.

(d) *Commission responses to a breach of administrative protective order.* A breach of an administrative protective order may subject an offender to:

(1) Disbarment from practice in any capacity before the Commission along with such person's partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;

(2) Referral to the United States Attorney;

(3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association;

(4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of or striking from the record any information or briefs submitted by, or on behalf of, the offender or the party represented by the offender, denial of further access to confidential business information in the current or any future investigations before the Commission, and issuance of a public or private letter of reprimand; and

(5) Such other actions, including but not limited to, a warning letter, as the Commission determines to be appropriate.

(e) *Breach investigation procedure.* (1) The Commission shall determine whether any person has violated an administrative protective order, and may impose sanctions or other actions in accordance with paragraph (d) of this section. At any time within sixty (60) days of the later of;

(i) The date on which the alleged violation occurred or, as determined by the Commission, could have been discovered through the exercise of reasonable and ordinary care; or

(ii) Upon the completion of an investigation conducted under this subpart, the Commission may commence an investigation of any breach of an administrative protective order alleged to have occurred at any time during the pendency of the investigation. Whenever the Commission has reason to believe that a person may have breached an administrative protective order issued pursuant to this section, the Secretary shall issue a letter informing such person that the Commission has reason to believe that a breach has occurred and that the person has a reasonable opportunity to present views on whether a breach has occurred. If the Commission subsequently determines that a breach has occurred and that further investigation is warranted, then the Secretary shall issue a

letter informing such person of that determination and that the person has a reasonable opportunity to present views on whether mitigating circumstances exist and on the appropriate sanction to be imposed, but no longer on whether a breach has occurred. Once such person has been afforded a reasonable opportunity to present views, the Commission shall determine what sanction, if any, to impose.

(2) Where the sanction imposed is a private letter of reprimand, the Secretary shall expunge the sanction from the recipient's record two (2) years from the date of issuance of the sanction, provided that

(i) The recipient has not received another unexpunged sanction pursuant to this section at any time prior to the end of the two-year period, and

(ii) The recipient is not the subject of an investigation for possible breach of administrative protective order under this section at the end of the two-year period. Upon the completion of such a pending breach investigation without the issuance of a sanction, the original sanction shall be expunged. The Secretary shall notify a sanction recipient in the event that the sanction is expunged.

(f) *Service.* (1) Any party filing written submissions that include confidential business information to the Commission during an investigation shall at the same time serve complete copies of such submissions upon all authorized applicants specified on the list established by the Secretary pursuant to paragraph (a)(4) of this section, and, except as provided in § 208.20(c), a nonconfidential version on all other parties. All such submissions must be accompanied by a certificate attesting that complete copies of the submission have been properly served. In the event that a submission is filed before the Secretary's list is established, the document need not be accompanied by a certificate of service, but the submission shall be served within two (2) days of the establishment of the list and a certificate of service shall then be filed.

(2) A party may seek an exemption from the service requirement of paragraph (f)(1) of this section for particular confidential business information by filing a request for exemption from disclosure in accordance with paragraph (g) of this section. The Secretary shall promptly respond to the request. If a request is granted, the Secretary shall accept the information. The party shall file three versions of the submission containing the information in accordance with paragraph (g) of this section, and serve the submission in accordance with the requirements of § 208.20(b) and paragraph (f)(1) of this section, with the specific information as to which exemption from disclosure under administrative protective order has been granted redacted from the copies served. If a request is denied, the copy of the information lodged with the Secretary shall promptly be returned to the requester.

(3) The Secretary shall not accept for filing into the record of an investigation submissions filed without a proper certificate of service. Failure to comply with paragraph (f) of this section may result in denial of party status and such sanctions as the Commission deems appropriate. Confidential business information in submissions must be clearly marked as such when submitted by enclosing such information within brackets, and it must be segregated from other material being submitted.

(g) *Exemption from disclosure.* (1) *In general.* Any person may request exemption from the disclosure of confidential business information under administrative protective order, whether the person desires to include such information in a petition filed under this part, or any other submission to the Commission during the course of an investigation under this part. Such a request shall be granted only if the Secretary finds that such information is non-disclosable confidential business information. As defined in § 201.6(a)(2) of this chapter, non-disclosable confidential business information is privileged information, classified information, or specific information (*e.g.*, trade secrets) of a type for which there is a clear and compelling need to withhold from disclosure.

(2) *Request for exemption.* A request for exemption from disclosure must be filed with the Secretary in writing

with the reasons therefor. At the same time as the request is filed, one copy of the confidential business information in question must be lodged with the Secretary solely for the purpose of obtaining a determination as to the request. The confidential business information for which exemption from disclosure is sought shall remain the property of the requester, and it shall not become or be incorporated into any agency record until such time as the request is granted. A request should, when possible, be filed two business days prior to the deadline, if any, for filing the document in which the information for which exemption from disclosure is sought is proposed to be included. The Secretary shall promptly notify the requester as to whether the request has been approved or denied.

(3) *Procedure if request is approved.* If the request is approved, the person shall file three versions of the submission containing the non-disclosable confidential business information in question. One version shall contain all confidential business information, bracketed in accordance with § 201.6 of this chapter and § 208.20(c), with the specific information as to which exemption from disclosure was granted enclosed in triple brackets. This version shall have the following warning marked on every page: ''CBI exempted from disclosure under APO enclosed in triple brackets.'' The other two versions shall conform to and be filed in accordance with the requirements of § 201.6 of this chapter and § 208.20(c), except that the specific information as to which exemption from disclosure was granted shall be redacted from those versions of the submission.

(4) *Procedure if request is denied.* If the request is denied, the copy of the information lodged with the Secretary shall promptly be returned to the requester.

SUBCHAPTER C—INVESTIGATIONS OF UNFAIR PRACTICES IN IMPORT TRADE

PART 210—ADJUDICATION AND ENFORCEMENT

Subpart A—Rules of General Applicability

Subpart B—Commencement of Preinstitution Proceedings and Investigations

Subpart C—Pleadings

Subpart D—Motions

Subpart E—Discovery and Compulsory Process

Subpart F—Prehearing Conferences and Hearings

Subpart G—Determinations and Actions Taken

Subpart H—Temporary Relief

Subpart I—Enforcement Procedures and Advisory Opinions

AUTHORITY: 19 U.S.C. 1333, 1335, and 1337.

SOURCE: 59 FR 39039, Aug. 1, 1994, unless otherwise noted.

Subpart A—Rules of General Applicability

§ 210.1 Applicability of part.

The rules in this part apply to investigations under section 337 of the Tariff Act of 1930 and related proceedings. These rules are authorized by sections 333, 335, or 337 of the Tariff Act of 1930 (19 U.S.C. §§1333, 1335, and 1337) and sections 2 and 1342(d)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100–418, 102 Stat. 1107 (1988).

§ 210.2 General policy.

It is the policy of the Commission that, to the extent practicable and consistent with requirements of law, all investigations and related proceedings under this part shall be conducted expeditiously. The parties, their attorneys or other representatives, and the presiding administrative law judge shall make every effort at each stage of the investigation or related proceeding to avoid delay.

§ 210.3 Definitions.

As used in this part—

Administrative law judge means the person appointed under section 3105 of title 5 of the United States Code who presides over the taking of evidence in an investigation under this part. If the Commission so orders or a section of this part so provides, an administrative law judge also may preside over stages of a related proceeding under this part.

Ancillary proceeding has the same meaning as *related proceeding*.

Commission investigative attorney means a Commission attorney designated to engage in investigatory activities in an investigation or a related proceeding under this part.

Complainant means a person who has filed a complaint with the Commission under this part, alleging a violation of section 337 of the Tariff Act of 1930.

Intervenor means a person who has been granted leave by the Commission to intervene as a party to an investigation or a related proceeding under this part.

Investigation means a formal Commission inquiry instituted to determine whether there is a violation of section 337 of the Tariff Act of 1930. An investigation is instituted upon publication of a notice in the FEDERAL REGISTER. The investigation entails postinstitution adjudication of the complaint. An investigation can also involve the processing of one or more of the following: A motion to amend the complaint and notice of investigation; a motion for temporary relief; a motion to designate ''more complicated'' the temporary relief stage of the investigation; an interlocutory appeal of an administrative law judge's decision on a particular matter; a motion for sanctions for abuse of process, abuse of discovery, or failure to make or cooperate in discovery, which if granted, would have an impact on the adjudication of the merits of the complaint; a petition for reconsideration of

a final Commission determination; a motion for termination of the investigation in whole or part; and procedures undertaken in response to a judgment or judicial order issued in an appeal of a Commission determination or remedial order issued under section 337 of the Tariff Act of 1930.

Party means each complainant, respondent, intervenor, or the Office of Unfair Import Investigations.

Proposed intervenor means any person who has filed a motion to intervene in an investigation or a related proceeding under this part.

Proposed respondent means any person named in a complaint filed under this part as allegedly violating section 337 of the Tariff Act of 1930.

Related proceeding means preinstitution proceedings, sanction proceedings (for the possible issuance of sanctions that would not have a bearing on the adjudication of the merits of a complaint or a motion under this part), bond forfeiture proceedings, proceedings to enforce, modify, or revoke a remedial or consent order, or advisory opinion proceedings.

Respondent means any person named in a notice of investigation issued under this part as allegedly violating section 337 of the Tariff Act of 1930.

U.S. Customs Service means U.S. Customs and Border Protection.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67626, Dec. 30, 1994; 73 FR 38320, July 7, 2008; 76 FR 24363, May 2, 2011; 78 FR 23840, Apr. 19, 2013]

§ 210.4 Written submissions; representations; sanctions.

(a) *Caption; names of parties.* The front page of every written submission filed by a party or a proposed party to an investigation or a related proceeding under this part shall contain a caption setting forth the name of the Commission, the title of the investigation or related proceeding, the docket number or investigation number, if any, assigned to the investigation or related proceeding, and in the case of a complaint, the names of the complainant and all proposed respondents.

(b) *Signature.* Every pleading, written motion, and other paper of a party or proposed party who is represented by an attorney in an investigation or a related proceeding under this part shall be signed by at least one attorney of record in the attorney's individual name. A party or proposed party who is not represented by an attorney shall sign, or his duly authorized officer or agent shall sign, the pleading, written motion, or other paper. Each paper shall state the signer's address and telephone number, if any. Pleadings, written motions, and other papers need not be under oath or accompanied by an affidavit, except as provided in § 210.12(a)(1), § 210.13(b), § 210.18, § 210.52(d), § 210.59(b), or another section of this part or by order of the administrative law judge or the Commission. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after omission of the signature is called to the attention of the submitter.

(c) *Representations.* By presenting to the presiding administrative law judge or the Commission (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party or proposed party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances—

(1) It is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of the investigation or related proceeding;

(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(d) *Sanctions.* If, after notice and a reasonable opportunity to respond (see

paragraphs (d)(1) (i) and (ii) of this section and § 210.25), the presiding administrative law judge or the Commission determines that paragraph (c) of this section has been violated, the administrative law judge or the Commission may, subject to the conditions stated below and in § 210.25, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated paragraph (c) or are responsible for the violation. A representation need not be frivolous in its entirety in order for the administrative law judge or the Commission to determine that paragraph (c) has been violated. If any portion of a representation is found to be false, frivolous, misleading, or otherwise in violation of paragraph (c), a sanction may be imposed. In determining whether paragraph (c) has been violated, the administrative law judge or the Commission will consider whether the representation or disputed portion thereof was objectively reasonable under the circumstances.

(1) *How initiated*—(i) *By motion.* A motion for sanctions under this section shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate paragraph (c). It shall be served as provided in paragraph (g) of this section, but shall not be filed with or presented to the presiding administrative law judge or the Commission unless, within seven days after service of the motion (or such other period as the administrative law judge or the Commission may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. See also § 210.25 (a) through (c). If warranted, the administrative law judge or the Commission may award to the party or proposed party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(ii) *On the administrative law judge's or the Commission's initiative.* The administrative law judge or the Commission may enter an order sua sponte describing the specific conduct that appears to violate paragraph (c) of this section and directing an attorney, law firm, party, or proposed party to show cause why it has not violated paragraph (c) with respect thereto.

(2) *Nature of sanctions; limitations.* A sanction imposed for violation of paragraph (c) of this section shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in paragraphs (d)(2) (i) through (iv) of this section, the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation.

(i) Monetary sanctions shall not be imposed under this section against the United States, the Commission, or a Commission investigative attorney.

(ii) Monetary sanctions may not be awarded against a represented party or proposed party for a violation of paragraph (c)(2) of this section.

(iii) Monetary sanctions may not be imposed on the administrative law judge's or the Commission's initiative unless—

(A) The Commission or the administrative law judge issues an order to show cause before the investigation or related proceeding is terminated, in whole or in relevant part, as to the party or proposed party which is, or whose attorneys are, to be sanctioned; and

(B) Such termination is the result of—

(*1*) A motion to withdraw the complaint, motion, or petition that was the basis for the investigation or related proceeding;

(*2*) A settlement agreement;

(*3*) A consent order agreement; or

(*4*) An arbitration agreement.

(iv) Monetary sanctions imposed to compensate the Commission for expenses incurred by a Commission investigative attorney or the Commission's Office of Unfair Import Investigations will include reimbursement for some or

all costs reasonably incurred as a direct result of the violation, but will not include attorney's fees.

(3) *Order*. When imposing sanctions, the administrative law judge or the Commission shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed. See also § 210.25(d)–(f).

(e) *Inapplicability to discovery*. Paragraphs (c) and (d) of this section do not apply to discovery requests, responses, objections, and motions that are subject to provisions of §§ 210.27 through 210.34.

(f) *Filing of documents*. (1) Written submissions that are addressed to the Commission during an investigation or a related proceeding shall comply with the Commission's Handbook on Filing Procedures, which is issued by and available from the Secretary and posted on the Commission's Electronic Document Information System Web site at *https://edis.usitc.gov*. Failure to comply with the requirements of this chapter and the Handbook on Filing Procedures in the filing of a document may result in the rejection of the document as improperly filed.

(2) A complaint, petition, or request, and supplements and amendments thereto, filed under § 210.8, § 210.75, § 210.76, or § 210.79 shall be filed in paper form. An original and eight (8) true paper copies shall filed. All exhibits, appendices, and attachments to the document shall be filed in electronic form on one CD–ROM, DVD, or other portable electronic media approved by the Secretary. Sections 210.8 and 210.12 set out additional requirements for a complaint filed under § 210.8. Additional requirements for a petition or request filed under § 210.75, § 210.76, or § 210.79 are set forth in those sections. Submitted media will be retained by the Commission, except that media may be returned to the submitter if a document is not accepted for filing.

(3) Responses to a complaint, briefs, comments and responses thereto, compliance reports, motions and responses or replies thereto, petitions and replies thereto, prehearing statements, and proposed findings of fact and conclusions of law and responses thereto provided for under §§ 210.4(d), 210.13, 210.8, 210.14, 210.15, 210.16, 210.17, 210.18, 210.19, 210.20, 210.21, 210.23, 210.24, 210.25, 210.26, 210.33, 210.34, 210.35, 210.36, 210.38, 210.40, 210.43, 210.45, 210.46, 210.47, 210.50, 210.52, 210.53, 210.57, 210.59, 210.66, 210.70, or 210.71; and submissions filed with the Secretary pursuant to an order of the presiding administrative law judge shall be filed electronically, and true paper copies of such submissions shall be filed by 12 noon, eastern time, on the next business day.

(4) Except for the documents listed in paragraphs (f)(2) and (f)(3) of this section, all other documents shall be filed electronically, and no paper copies will be required.

(5) If paper copies are required under this section, the required number of paper copies shall be governed by paragraph (f)(6) of this section. A paper copy provided for in this section must be a true copy of the electronic version of the document, *i.e.*, a copy that is identical in all possible respects.

(6) Unless the Commission or this part specifically states otherwise:

(i) Two (2) true paper copies of each submission shall be filed if the investigation or related proceeding is before an administrative law judge; and

(ii) Eight (8) true paper copies of each submission shall be filed if the investigation or related proceeding is before the Commission.

(7)(i) If a complaint, a supplement or amendment to a complaint, a motion for temporary relief, or the documentation supporting a motion for temporary relief contains confidential business information as defined in § 201.6(a) of this chapter, the complainant shall file nonconfidential copies of the complaint, the supplement or amendment to the complaint, the motion for temporary relief, or the documentation supporting the motion for temporary relief concurrently with the requisite confidential copies, as provided in § 210.8(a). A nonconfidential copy of all exhibits, appendices, and attachments to the document shall be filed in electronic form on one CD–ROM, DVD, or other portable electronic media approved by the Secretary, separate from the media used for the confidential version.

(ii)(A) Persons who file the following submissions that contain confidential

business information covered by an administrative protective order, or that are the subject of a request for confidential treatment, must file nonconfidential copies and serve them on the other parties to the investigation or related proceeding within 10 calendar days after filing the confidential version with the Commission:

(*1*) A response to a complaint and all supplements and exhibits thereto;

(*2*) All submissions relating to a motion to amend the complaint or notice of investigation; and

(*3*) All submissions addressed to the Commission.

(B) Other sections of this part may require, or the Commission or the administrative law judge may order, the filing and service of nonconfidential copies of other kinds of confidential submissions. If the submitter's ability to prepare a nonconfidential copy is dependent upon receipt of the nonconfidential version of an initial determination, or a Commission order or opinion, or a ruling by the administrative law judge or the Commission as to whether some or all of the information at issue is entitled to confidential treatment, the nonconfidential copies of the submission must be filed within 10 calendar days after service of the Commission or administrative law judge document in question. The time periods for filing specified in this paragraph apply unless the Commission, the administrative law judge, or another section of this part specifically provides otherwise.

(8) The Secretary may provide for exceptions and modifications to the filing requirements set out in this chapter. A person seeking an exception should consult the Handbook on Filing Procedures.

(9) *Where to file; date of filing.* Documents shall be filed at the Office of the Secretary of the Commission in Washington, DC. Such documents, if properly filed within the hours of operation specified in § 201.3(c), will be deemed to be filed on the date on which they are actually received in the Commission.

(10) *Conformity with rules.* Each document filed with the Commission for the purpose of initiating any investigation shall be considered properly filed if it conforms with the pertinent rules prescribed in this chapter. Substantial compliance with the pertinent rules may be accepted by the Commission provided good and sufficient reason is stated in the document for inability to comply fully with the pertinent rules.

(11) During any period in which the Commission is closed, deadlines for filing documents electronically and by other means are extended so that documents are due on the first business day after the end of the closure.

(g) *Cover Sheet.* When making a paper filing, parties must complete the cover sheet online at *http://edis.usitc.gov* and print out the cover sheet for submission to the Office of the Secretary with the paper filing. The party submitting the cover sheet is responsible for the accuracy of all information contained in the cover sheet, including, but not limited to, the security status and the investigation number, and must comply with applicable limitations on disclosure of confidential information under § 210.5.

(h) *Specifications.* (1) Each document filed under this chapter shall be double-spaced, clear and legible, except that a document of two pages or less in length need not be double-spaced. All submissions shall be in letter-sized format (8.5 × 11 inches), except copies of documents prepared for another agency or a court (e.g., patent file wrappers or pleadings papers), and single sided. Typed matter shall not exceed 6.5 × 9.5 inches using 11-point or larger type and shall be double-spaced between each line of text using the standard of 6 lines of type per inch. Text and footnotes shall be in the same size type. Quotations more than two lines long in the text or footnotes may be indented and single-spaced. Headings and footnotes may be single-spaced.

(2) The administrative law judge may impose any specifications he deems appropriate for submissions that are addressed to the administrative law judge.

(i) *Service.* Unless the Commission, the administrative law judge, or another section of this part specifically provides otherwise, every written submission filed by a party or proposed

party shall be served on all other parties in the manner specified in § 201.16(b) of this chapter.

[59 FR 39039, Aug. 1, 1994; 59 FR 64286, Dec. 14, 1994, as amended at 59 FR 67626, Dec. 30, 1994; 60 FR 32443, June 22, 1995; 68 FR 32978, June 3, 2003; 73 FR 38320, July 7, 2008; 76 FR 61944, Oct. 6, 2011; 78 FR 23840, Apr. 19, 2013]

§ 210.5 Confidential business information.

(a) *Definition and submission.* Confidential business information shall be defined and identified in accordance with § 201.6 (a) and (c) of this chapter. Unless the Commission, the administrative law judge, or another section of this part states otherwise, confidential business information shall be submitted in accordance with § 201.6(b) of this chapter. In the case of a complaint, any supplement to the complaint, and a motion for temporary relief filed under this part, the number of nonconfidential copies shall be prescribed by § 210.8(a) of this part.

(b) *Restrictions on disclosure.* Information submitted to the Commission or exchanged among the parties in connection with an investigation or a related proceeding under this part, which is properly designated confidential under paragraph (a) of this section and § 201.6(a) of this chapter, may not be disclosed to anyone other than the following persons without the consent of the submitter:

(1) Persons who are granted access to confidential information under § 210.39(a) or a protective order issued pursuant to § 210.34(a);

(2) An officer or employee of the Commission who is directly concerned with—

(i) Carrying out or maintaining the records of the investigation or related proceeding for which the information was submitted;

(ii) The administration of a bond posted pursuant to subsection (e), (f), or (j) of section 337 of the Tariff Act of 1930;

(iii) The administration or enforcement of an exclusion order issued pursuant to subsection (d), (e), or (g), a cease and desist order issued pursuant to subsection (f), or a consent order issued pursuant to subsection (c) of section 337 of the Tariff Act of 1930; or

(iv) Proceedings for the modification or rescission of a temporary or permanent order issued under subsection (d), (e), (f), (g), or (i) of section 337 of the Tariff Act of 1930, or a consent order issued under section 337 of the Tariff Act of 1930;

(3) An officer or employee of the United States Government who is directly involved in a review conducted pursuant to section 337(j) of the Tariff Act of 1930; or

(4) An officer or employee of the United States Customs Service who is directly involved in administering an exclusion from entry under section 337 (d), (e), or (g) of the Tariff Act of 1930 resulting from the investigation or related proceeding in connection with which the information was submitted.

(c) *Transmission of certain records to district court.* Notwithstanding paragraph (b) of this section, confidential business information may be transmitted to a district court and be admissible in a civil action, subject to such protective order as the district court determines necessary, pursuant to 28 U.S.C. 1659.

(d) *Confidentiality determinations in preinstitution proceedings.* After a complaint is filed under section 337 of the Tariff Act of 1930 and before an investigation is instituted by the Commission, confidential business information designated confidential by the supplier shall be submitted in accordance with § 201.6(b) of this chapter. The Secretary shall decide, in accordance with § 201.6(d) of this chapter, whether the information is entitled to confidential treatment. Appeals from the ruling of the Secretary shall be made to the Commission as set forth in § 201.6(e) and (f) of this chapter.

(e) *Confidentiality determinations in investigations and other related proceedings.* (1) If an investigation is instituted or if a related proceeding is assigned to an administrative law judge, the administrative law judge shall set the ground rules for the designation, submission, and handling of information designated confidential by the submitter. When requested to do so, the administrative law judge shall decide whether information in a document addressed to the administrative law judge, or to be exchanged among

the parties while the administrative law judge is presiding, is entitled to confidential treatment. The administrative law judge shall also decide, with respect to all orders, initial determinations, or other documents issued by the administrative law judge, whether information designated confidential by the supplier is entitled to confidential treatment. The supplier of the information or the person seeking the information may, with leave of the administrative law judge, request an appeal to the Commission of the administrative law judge's unfavorable ruling on this issue, under § 210.24(b)(2).

(2) The Commission may continue protective orders issued by the administrative law judge, amend or revoke those orders, or issue new ones. All submissions addressed to the Commission that contain information covered by an existing protective order will be given confidential treatment. (See also § 210.72.) New information that is submitted to the Commission, designated confidential by the supplier, and not covered by an existing protective order must be submitted to the Secretary with a request for confidential treatment in accordance with § 201.6(b) and (c) of this chapter. The Secretary shall decide, in accordance with § 201.6(d) of this chapter, whether the information is entitled to confidential treatment. Appeals from the ruling of the Secretary shall be made to the Commission as provided in § 201.6(e) and (f) of this chapter. The Commission shall decide, with respect to all orders, notices, opinions, and other documents issued by or on behalf of the Commission, whether information designated confidential by the supplier is entitled to confidential treatment.

(f) When the Commission or the administrative law judge issues a confidential version of an order, initial determination, opinion, or other document, the Commission, or the presiding administrative law judge if the administrative law judge has issued the confidential version, shall issue any public version of the document within 30 days, unless good cause exists to extend the deadline. An administrative law judge or the Commission may extend this time by order. Upon request by the Commission, or the administrative law judge if the administrative law judge has issued the confidential version, parties must provide support in the record for their claim of confidentiality, pursuant § 201.6 of this chapter and § 210.4 of this subpart for any proposed redactions that parties may submit to the Commission or the administrative law judge for the preparation of any public version.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67626, Dec. 30, 1994; 60 FR 32444, June 22, 1995; 78 FR 23840, Apr. 19, 2013]

§ 210.6 Computation of time, additional hearings, postponements, continuances, and extensions of time.

(a) Unless the Commission, the administrative law judge, or this or another section of this part specifically provides otherwise, the computation of time and the granting of additional hearings, postponements, continuances, and extensions of time shall be in accordance with §§ 201.14 and 201.16(d) and (e) of this chapter.

(b) Whenever a party has the right or is required to perform some act or to take some action within a prescribed period after service of a document upon it, and the document was served by mail, the deadline shall be computed by adding to the end of the prescribed period the additional time allotted under § 201.16(d), unless the Commission, the administrative law judge, or another section of this part specifically provides otherwise.

(c) Whenever a party has the right or is required to perform some act or to take some action within a prescribed period after service of a Commission document upon it, and the document was served by express delivery, the deadline shall be computed by adding to the end of the prescribed period the additional time allotted under § 201.16(e), unless the Commission, the administrative law judge, or another section of this part specifically provides otherwise.

[78 FR 23840, Apr. 19, 2013]

§ 210.7 Service of process and other documents; publication of notices.

(a) *Manner of service.* (1) The service of process and all documents issued by or on behalf of the Commission or the

administrative law judge—and the service of all documents issued by parties under §§ 210.27 through 210.34 of this part—shall be in accordance with § 201.16 of this chapter, unless the Commission, the administrative law judge, or this or another section of this part specifically provides otherwise.

(2) The service of all initial determinations as defined in § 210.42, all cease and desist orders as set forth in § 210.50(a)(1), and all documents containing confidential business information as defined in § 201.6(a), issued by or on behalf of the Commission or the administrative law judge on a private party, shall be effected by serving a copy of the document by express delivery, as defined in § 201.16(e), on the person to be served, on a member of the partnership to be served, on the president, secretary, other executive officer, or member of the board of directors of the corporation, association, or other organization to be served, or, if an attorney represents any of the above in connection with an investigation under this subtitle, by serving a copy by express delivery on such attorney.

(3) Whenever the Commission effects service of documents issued by or on behalf of the Commission or the administrative law judge upon the private parties by overnight delivery, service upon the Office of Unfair Import Investigations shall also be deemed to have occurred by overnight delivery.

(b) *Designation of a single attorney or representative for service of process.* The service list prepared by the Secretary for each investigation will contain the name and address of no more than one attorney or other representative for each party to the investigation. In the event that two or more attorneys or other persons represent one party to the investigation, the party must select one of their number to be the lead attorney or representative for service of process. The lead attorney or representative for service of process shall state, at the time of the filing of its entry of appearance with the Secretary, that it has been so designated by the party it represents. (Only those persons authorized to receive confidential business information under a protective order issued pursuant to § 210.34(a) are eligible to be included on the service list for documents containing confidential business information.)

(c) *Publication of notices.* (1) Notice of action by the Commission or an administrative law judge will be published in the FEDERAL REGISTER only as specifically provided in § 201.10, paragraph (c)(2) of this section, by another section in this chapter, or by order of an administrative law judge or the Commission.

(2) When an administrative law judge or the Commission determines to amend or supplement a notice published in accordance with paragraph (c)(1) of this section, notice of the amendment will be published in the FEDERAL REGISTER.

[60 FR 53119, Oct. 12, 1995, as amended at 72 FR 13960, Mar. 23, 2007; 73 FR 38320, July 7, 2008; 78 FR 23840, Apr. 19, 2013]

Subpart B—Commencement of Preinstitution Proceedings and Investigations

§ 210.8 Commencement of preinstitution proceedings.

A preinstitution proceeding is commenced by filing with the Secretary a signed original complaint and the requisite number of true copies.

(a)(1) A complaint filed under this section shall be filed in paper form with the Secretary as follows.

(i) An original and eight (8) true paper copies of the nonconfidential version of the complaint shall be filed. All exhibits, appendices, and attachments to this version of the complaint shall be filed in electronic form on CD–ROM, DVD, or other portable electronic media approved by the Secretary.

(ii) An original and eight (8) true paper copies of the confidential version of the complaint shall be filed. All exhibits, appendices, and attachments to this version of the complaint shall be filed in electronic form on CD–ROM, DVD, or other portable electronic media approved by the Secretary.

(iii) For each proposed respondent, one true copy of the nonconfidential version of the complaint and one true copy of the confidential version of the complaint, if any, along with one true copy of the nonconfidential exhibits

and one true copy of the confidential exhibits shall be filed, and

(iv) For the government of the foreign country in which each proposed respondent is located as indicated in the complaint, one true copy of the nonconfidential version of the complaint shall be filed.

NOTE TO PARAGRAPH (a)(1): The same requirements apply for the filing of a supplement or amendment to the complaint.

(2) If the complainant is seeking temporary relief, the complainant must also file:

(i) An original and eight (8) true paper copies of the nonconfidential version of the motion for temporary relief. All exhibits, appendices, and attachments to this version of the motion shall be filed in electronic form on CD–ROM, DVD, or other portable electronic media approved by the Secretary.

(ii) An original and eight (8) true paper copies of the confidential version of the motion for temporary relief. All exhibits, appendices, and attachments to this version of the motion shall be filed in electronic form on CD–ROM, DVD, or other portable electronic media approved by the Secretary; and

(iii) For each proposed respondent, one true copy of the nonconfidential version of the motion and one true copy of the confidential version of the motion along with one true copy of the nonconfidential exhibits and one true copy of the confidential exhibits filed with the motion.

NOTE TO PARAGRAPH (a)(2): The same requirements apply for the filing of a supplement or amendment to the complaint or a supplement to the motion for temporary relief.

(b) *Provide specific information regarding the public interest.* Complainant must file, concurrently with the complaint, a separate statement of public interest, not to exceed five pages, inclusive of attachments, addressing how issuance of the requested relief, i.e., a general exclusion order, a limited exclusion order, and/or a cease and desist order, in this investigation could affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. If the complainant files a confidential version of its submission on public interest, it shall file a public version of the submission no later than one business day after the deadline for filing the submission. In particular, the submission should:

(1) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(2) Identify any public health, safety, or welfare concerns relating to the requested remedial orders;

(3) Identify like or directly competitive articles that complainant, its licensees, or third parties make which could replace the subject articles if they were to be excluded;

(4) Indicate whether the complainant, its licensees, and/or third parties have the capacity to replace the volume of articles subject to the requested remedial orders in a commercially reasonable time in the United States; and

(5) State how the requested remedial orders would impact consumers.

(c) *Publication of notice of filing.* (1) When a complaint is filed, the Secretary to the Commission will publish a notice in the FEDERAL REGISTER inviting comments from the public and proposed respondents on any public interest issues arising from the complaint and potential exclusion and/or cease and desist orders. In response to the notice, members of the public and proposed respondents may provide specific information regarding the public interest in a written submission not to exceed five pages, inclusive of attachments, to the Secretary to the Commission within eight (8) calendar days of publication of notice of the filing of a complaint. Comments that substantively address allegations made in the complaint will not be considered. Members of the public and proposed respondents may address how issuance of the requested exclusion order and/or a cease and desist order in this investigation could affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. If a member of the public or

proposed respondent files a confidential version of its submission, it shall file a public version of the submission no later than one business day after the deadline for filing the submission. Submissions should:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make which could replace the subject articles if they were to be excluded;

(iv) Indicate whether the complainant, its licensees, and/or third parties have the capacity to replace the volume of articles subject to the requested remedial orders in a commercially reasonable time in the United States; and

(v) State how the requested remedial orders would impact consumers.

(2) Complainant may file a reply to any submissions received under paragraph (c)(1) of this section not to exceed five pages, inclusive of attachments, to the Secretary to the Commission within three (3) calendar days following the filing of the submissions. If the complainant files a confidential version of its submission, it shall file a public version of the submission no later than one business day after the deadline for filing the submission.

(d) *Upon the initiative of the Commission.* The Commission may upon its initiative commence a preinstitution proceeding based upon any alleged violation of section 337 of the Tariff Act of 1930.

[59 FR 39039, Aug. 1, 1994, as amended at 60 FR 32444, June 22, 1995; 68 FR 32978, June 3, 2003; 73 FR 38320, July 7, 2008; 76 FR 61945, Oct. 6, 2011; 76 FR 64808, Oct. 19, 2011; 78 FR 23841, Apr. 19, 2013]

§ 210.9 Action of Commission upon receipt of complaint.

Upon receipt of a complaint alleging violation of section 337 of the Tariff Act of 1930, the Commission shall take the following actions:

(a) *Examination of complaint.* The Commission shall examine the complaint for sufficiency and compliance with the applicable sections of this chapter.

(b) *Informal investigatory activity.* The Commission shall identify sources of relevant information, assure itself of the availability thereof, and, if deemed necessary, prepare subpoenas therefore, and give attention to other preliminary matters.

§ 210.10 Institution of investigation.

(a)(1) The Commission shall determine whether the complaint is properly filed and whether an investigation should be instituted on the basis of the complaint. That determination shall be made within 30 days after the complaint is filed, unless—

(i) Exceptional circumstances preclude adherence to a 30-day deadline;

(ii) Additional time is allotted under other sections of this part in connection with the preinstitution processing of a motion by the complainant for temporary relief;

(iii) The complainant requests that the Commission postpone the determination on whether to institute an investigation; or

(iv) The complainant withdraws the complaint.

(2) If exceptional circumstances preclude Commission adherence to the 30-day deadline for determining whether to institute an investigation on the basis of the complaint, the determination will be made as soon after that deadline as possible.

(3) If additional time is allotted in connection with the preinstitution processing of a motion by the complainant for temporary relief, the Commission will determine whether to institute an investigation and provisionally accept the motion within 35 days after the filing of the complaint or by a subsequent deadline computed in accordance with § 210.53(a), § 210.54, § 210.55(b), § 210.57, or § 210.58 as applicable.

(4) If the complainant desires to have the Commission postpone making a determination on whether to institute an investigation in response to the complaint, the complainant must file a written request with the Secretary. If the request is granted, the determination will be rescheduled for whatever date is appropriate in light of the facts.

(5)(i) The complainant may withdraw the complaint as a matter of right at any time before the Commission votes on whether to institute an investigation. To effect such withdrawal, the complainant must file a written notice with the Commission.

(ii) If a motion for temporary relief was filed in addition to the complaint, the motion must be withdrawn along with the complaint, and the complainant must serve copies of the notice of withdrawal on all proposed respondents and on the embassies that were served with copies of the complaint and motion pursuant to § 210.54.

(6) The Commission may determine to institute multiple investigations based on a single complaint where necessary to allow efficient adjudication.

(b)(1) An investigation shall be instituted by the publication of a notice in the FEDERAL REGISTER. The notice will define the scope of the investigation in such plain language as to make explicit what accused products or category of accused products provided in accordance with § 210.12(a)(12) will be the subject of the investigation, and may be amended as provided in § 210.14(b) and (c).

(2) The Commission may order the administrative law judge to take evidence and to issue a recommended determination on the public interest based generally on the submissions of the parties and the public under § 210.8(b) and (c). If the Commission orders the administrative law judge to take evidence with respect to the public interest, the administrative law judge will limit public interest discovery appropriately, with particular consideration for third parties, and will ensure that such discovery will not delay the investigation or be used improperly. Public interest issues will not be within the scope of discovery unless the administrative law judge is specifically ordered by the Commission to take evidence on these issues.

(3) The Commission may order the administrative law judge to issue an initial determination within 100 days of institution of an investigation as provided in § 210.42(a)(3) ruling on a potentially dispositive issue as set forth in the notice of investigation. The presiding administrative law judge is authorized, in accordance with § 210.36, to hold expedited hearings on any such designated issue and also has discretion to stay discovery of any remaining issues during the pendency of the 100-day proceeding.

(c) If the Commission determines not to institute an investigation on the basis of the complaint, the complaint shall be dismissed, and the complainant and all proposed respondents will receive written notice of the Commission's action and the reason(s) therefor.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38321, July 7, 2008; 76 FR 64809, Oct. 19, 2011; 76 FR 71248, Nov. 17, 2011; 83 FR 21160, May 8, 2018]

§ 210.11 Service of complaint and notice of investigation.

(a)(1) Unless the Commission institutes temporary relief proceedings, upon institution of an investigation, the Commission shall serve:

(i) Copies of the nonconfidential version of the complaint, the nonconfidential exhibits, and the notice of investigation upon each respondent; and

(ii) Copies of the nonconfidential version of the complaint and the notice of investigation upon the embassy in Washington, DC of the country in which each proposed respondent is located as indicated in the Complaint.

(2) If the Commission institutes temporary relief proceedings, upon institution of an investigation, the Commission shall serve:

(i) Copies of the nonconfidential version of the motion for temporary relief, the nonconfidential version of the complaint, and the notice of investigation upon each respondent; and

(ii) A copy of the notice of investigation upon the embassy in Washington, DC of the country in which each proposed respondent is located as indicated in the Complaint.

(3) All respondents named after an investigation has been instituted and the governments of the foreign countries in which they are located as indicated in the complaint shall be served as soon as possible after the respondents are named.

(4) The Commission shall serve copies of the notice of investigation upon the U.S. Department of Health and Human

Services, the U.S. Department of Justice, the Federal Trade Commission, the U.S. Customs Service, and such other agencies and departments as the Commission considers appropriate.

(b) With leave from the presiding administrative law judge, a complainant may attempt to effect personal service of the complaint and notice of investigation upon a respondent, if the Secretary's efforts to serve the respondent have been unsuccessful. If the complainant succeeds in serving the respondent by personal service, the complainant must notify the administrative law judge and file proof of such service with the Secretary.

[73 FR 38321, July 7, 2008, as amended at 83 FR 21160, May 8, 2018]

Subpart C—Pleadings

§ 210.12 The complaint.

(a) *Contents of the complaint.* In addition to conforming with the requirements of §§ 210.4 and 210.5 of this part, the complaint shall—

(1) Be under oath and signed by the complainant or his duly authorized officer, attorney, or agent, with the name, address, and telephone number of the complainant and any such officer, attorney, or agent given on the first page of the complaint, and include a statement attesting to the representations in § 210.4(c)(1) through (3);

(2) Include a statement of the facts constituting the alleged unfair methods of competition and unfair acts;

(3) Describe specific instances of alleged unlawful importations or sales, and shall provide the Tariff Schedules of the United States item number(s) for importations occurring prior to January 1, 1989, and the Harmonized Tariff Schedule of the United States item number(s) for importations occurring on or after January 1, 1989;

(4) State the name, address, and nature of the business (when such nature is known) of each person alleged to be violating section 337 of the Tariff Act of 1930;

(5) Include a statement as to whether the alleged unfair methods of competition and unfair acts, or the subject matter thereof, are or have been the subject of any court or agency litigation, and, if so, include a brief summary of such litigation;

(6)(i) If the complaint alleges a violation of section 337 based on infringement of a U.S. patent, or a federally registered copyright, trademark, mask work, or vessel hull design, under section 337(a)(1) (B), (C), (D), or (E) of the Tariff Act of 1930, include a statement as to whether an alleged domestic industry exists or is in the process of being established as defined in section 337(a)(2), and include a detailed description of the relevant domestic industry as defined in section 337(a)(3) that allegedly exists or is in the process of being established (*i.e.*, for the former, facts showing significant/substantial investment and employment, and for the latter, facts showing complainant is actively engaged in the steps leading to the exploitation of its intellectual property rights, and that there is a significant likelihood that an industry will be established in the future), and including the relevant operations of any licensees. Relevant information includes but is not limited to:

(A) Significant investment in plant and equipment;

(B) Significant employment of labor or capital; or

(C) Substantial investment in the exploitation of the subject patent, copyright, trademark, mask work, or vessel hull design, including engineering, research and development, or licensing; or

(ii) If the complaint alleges a violation of section 337 of the Tariff Act of 1930 based on unfair methods of competition and unfair acts in the importation or sale of articles in the United States that have the threat or effect of destroying or substantially injuring an industry in the United States or preventing the establishment of such an industry under section 337(a)(1)(A)(i) or (ii), include a detailed statement as to whether an alleged domestic industry exists or is in the process of being established (*i.e.*, for the latter, facts showing that there is a significant likelihood that an industry will be established in the future), and include a detailed description of the domestic industry affected, including the relevant operations of any licensees; or

(iii) If the complaint alleges a violation of section 337 of the Tariff Act of 1930 based on unfair methods of competition or unfair acts that have the threat or effect of restraining or monopolizing trade and commerce in the United States under section 337(a)(1)(A)(iii), include a description ofthe trade and commerce affected.

(7) Include a description of the complainant's business and its interests in the relevant domestic industry or the relevant trade and commerce. For every intellectual property based complaint (regardless of the type of intellectual property right involved), include a showing that at least one complainant is the owner or exclusive licensee of the subject intellectual property; and

(8) If the alleged violation involves an unfair method of competition or an unfair act other than those listed in paragraph (a)(6)(i) of this section, state a specific theory and provide corroborating data to support the allegation(s) in the complaint concerning the existence of a threat or effect to destroy or substantially injure a domestic industry, to prevent the establishment of a domestic industry, or to restrain or monopolize trade and commerce in the United States. The information that should ordinarily be provided includes the volume and trend of production, sales, and inventories of the involved domestic article; a description of the facilities and number and type of workers employed in the production of the involved domestic article; profit-and-loss information covering overall operations and operations concerning the involved domestic article; pricing information with respect to the involved domestic article; when available, volume and sales of imports; and other pertinent data.

(9) Include, when a complaint is based upon the infringement of a valid and enforceable U.S. patent—

(i) The identification of each U.S. patent and a certified copy thereof (a legible copy of each such patent will suffice for each required copy of the complaint);

(ii) The identification of the ownership of each involved U.S. patent and a certified copy of each assignment of each such patent (a legible copy thereof will suffice for each required copy of the complaint);

(iii) The identification of each licensee under each involved U.S. patent;

(iv) A copy of each license agreement (if any) for each involved U.S. patent that complainant relies upon to establish its standing to bring the complaint or to support its contention that a domestic industry as defined in section 337(a)(3) exists or is in the process of being established as a result of the domestic activities of one or more licensees;

(v) When known, a list of each foreign patent, each foreign patent application (not already issued as a patent) and each foreign patent application that has been denied, abandoned or withdrawn corresponding to each involved U.S. patent, with an indication of the prosecution status of each such patent application;

(vi) A nontechnical description of the invention of each involved U.S. patent;

(vii) A reference to the specific claims in each involved U.S. patent that allegedly cover the article imported or sold by each person named as violating section 337 of the Tariff Act of 1930, or the process under which such article was produced;

(viii) A showing that each person named as violating section 337 of the Tariff Act of 1930 is importing or selling the article covered by, or produced under the involved process covered by, the above specific claims of each involved U.S. patent. The complainant shall make such showing by appropriate allegations, and when practicable, by a chart that applies each asserted independent claim of each involved U.S. patent to a representative involved article of each person named as violating section 337 of the Tariff Act or to the process under which such article was produced;

(ix) A showing that an industry in the United States, relating to the articles protected by the patent exists or is in the process of being established. The complainant shall make such showing by appropriate allegations, and when practicable, by a chart that applies an exemplary claim of each involved U.S. patent to a representative involved domestic article or to the process under which such article was produced; and

(x) Drawings, photographs, or other visual representations of both the involved domestic article or process and the involved article of each person named as violating section 337 of the Tariff Act of 1930, or of the process utilized in producing the imported article, and, when a chart is furnished under paragraphs (a)(9)(viii) and (a)(9)(ix) of this section, the parts of such drawings, photographs, or other visual representations should be labeled so that they can be read in conjunction with such chart; and

(xi) The expiration date of each patent asserted.

(10) Include, when a complaint is based upon the infringement of a federally registered copyright, trademark, mask work, or vessel hull design—

(i) The identification of each licensee under each involved copyright, trademark, mask work, and vessel hull design;

(ii) A copy of each license agreement (if any) that complainant relies upon to establish its standing to bring the complaint or to support its contention that a domestic industry as defined in section 337(a)(3) exists or is in the process of being established as a result of the domestic activities of one or more licensees.

(11) Contain a request for relief, including a statement as to whether a limited exclusion order, general exclusion order, and/or cease and desist orders are being requested, and if temporary relief is requested under section 337(e) and/or (f) of the Tariff Act of 1930, a motion for such relief shall accompany the complaint as provided in § 210.52(a) or may follow the complaint as provided in § 210.53(a).

(12) Contain a clear statement in plain English of the category of products accused. For example, the caption of the investigation might refer to ''certain electronic devices,'' but the complaint would provide a further statement to identify the type of products involved in plain English such as mobile devices, tablets, or computers.

(b) *Submissions of articles as exhibits.* At the time the complaint is filed, if practicable, the complainant shall submit both the domestic article and all imported articles that are the subject of the complaint.

(c) *Additional material to accompany each patent-based complaint.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by, or produced under a process covered by, the claims of a valid U.S. patent the following:

(1) One certified copy of the U.S. Patent and Trademark Office prosecution history for each involved U.S. patent, plus three additional copies thereof; and

(2) Four copies of each patent and applicable pages of each technical reference mentioned in the prosecution history of each involved U.S. patent.

(d) *Additional material to accompany each registered trademark-based complaint.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by a federally registered trademark, one certified copy of the Federal registration and three additional copies, and one certified copy of the prosecution history for each federally registered trademark.

(e) *Additional material to accompany each complaint based on a non-Federally registered trademark.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by a non-Federally registered trademark the following:

(1) A detailed and specific description of the alleged trademark;

(2) Information concerning prior attempts to register the alleged trademark; and

(3) Information on the status of current attempts to register the alleged trademark.

(f) *Additional material to accompany each copyright-based complaint.* There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by a copyright one certified copy of the Federal registration and three additional copies;

(g) *Additional material to accompany each registered mask work-based complaint*. There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of a semiconductor chip in a manner that constitutes infringement of a Federally registered mask work, one certified copy of the Federal registration and three additional copies;

(h) *Additional material to accompany each vessel hull design-based complaint*. There shall accompany the submission of the original of each complaint based upon the alleged unauthorized importation or sale of an article covered by a vessel hull design, one certified copy of the Federal registration (including all deposited drawings, photographs, or other pictorial representations of the design), and three additional copies;

(i) *Initial disclosures*. Complainant shall serve on each respondent represented by counsel who has agreed to be bound by the terms of the protective order one copy of each document submitted with the complaint pursuant to § 210.12(c) through (h) within five days of service of a notice of appearance and agreement to be bound by the terms of the protective order; and

(j) *Duty to supplement complaint*. Complainant shall supplement the complaint prior to institution of an investigation if complainant obtains information upon the basis of which he knows or reasonably should know that a material legal or factual assertion in the complaint is false or misleading.

[59 FR 39039, Aug. 1, 1994; 59 FR 64286, Dec. 14, 1994, as amended at 73 FR 38321, July 7, 2008; 78 FR 23841, Apr. 19, 2013; 83 FR 21160, May 8, 2018]

§ 210.13 The response.

(a) *Time for response*. Except as provided in § 210.59(a) and unless otherwise ordered in the notice of investigation or by the administrative law judge, respondents shall have 20 days from the date of service of the complaint and notice of investigation, by the Commission under § 210.11(a) or by a party under § 210.11(b), within which to file a written response to the complaint and the notice of investigation. When the investigation involves a motion for temporary relief and has not been declared ''more complicated,'' the response to the complaint and notice of investigation must be filed along with the response to the motion for temporary relief—i.e., within 10 days after service of the complaint, notice of investigation, and the motion for temporary relief by the Commission under § 210.11(a) or by a party under § 210.11(b). (See § 210.59.)

(b) *Content of the response*. In addition to conforming to the requirements of §§ 210.4 and 210.5 of this part, each response shall be under oath and signed by respondent or his duly authorized officer, attorney, or agent with the name, address, and telephone number of the respondent and any such officer, attorney, or agent given on the first page of the response. Each respondent shall respond to each allegation in the complaint and in the notice of investigation, and shall set forth a concise statement of the facts constituting each ground of defense. There shall be a specific admission, denial, or explanation of each fact alleged in the complaint and notice, or if the respondent is without knowledge of any such fact, a statement to that effect. Allegations of a complaint and notice not thus answered may be deemed to have been admitted. Each response shall include, when available, statistical data on the quantity and value of imports of the involved article. Respondents who are importers must also provide the Harmonized Tariff Schedule item number(s) for importations of the accused imports occurring on or after January 1, 1989, and the Tariff Schedules of the United States item number(s) for importations occurring before January 1, 1989. Each response shall also include a statement concerning the respondent's capacity to produce the subject article and the relative significance of the United States market to its operations. Respondents who are not manufacturing their accused imports shall state the name and address of the supplier(s) of those imports. Affirmative defenses shall be pleaded with as much specificity as possible in the response. When the alleged unfair methods of competition and unfair acts are based upon the claims of a valid U.S. patent, the respondent is encouraged to make

the following showing when appropriate:

(1) If it is asserted in defense that the article imported or sold by respondents is not covered by, or produced under a process covered by, the claims of each involved U.S. patent, a showing of such noncoverage for each involved claim in each U.S. patent in question shall be made, which showing may be made by appropriate allegations and, when practicable, by a chart that applies the involved claims of each U.S. patent in question to a representative involved imported article of the respondent or to the process under which such article was produced;

(2) Drawings, photographs, or other visual representations of the involved imported article of respondent or the process utilized in producing such article, and, when a chart is furnished under paragraph (b)(1) of this section, the parts of such drawings, photographs, or other visual representations, should be labeled so that they can be read in conjunction with such chart; and

(3) If the claims of any involved U.S. patent are asserted to be invalid or unenforceable, the basis for such assertion, including, when prior art is relied on, a showing of how the prior art renders each claim invalid or unenforceable and a copy of such prior art. For good cause, the presiding administrative law judge may waive any of the substantive requirements imposed under this paragraph or may impose additional requirements.

(c) *Submission of article as exhibit.* At the time the response is filed, if practicable, the respondent shall submit the accused article imported or sold by that respondent, unless the article has already been submitted by the complainant.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38322, July 7, 2008; 78 FR 23841, Apr. 19, 2013]

§ 210.14 Amendments to pleadings and notice; supplemental submissions; counterclaims; consolidation of investigations.

(a) *Preinstitution amendments.* The complaint may be amended at any time prior to the institution of the investigation. If, prior to institution, the complainant seeks to amend a complaint to add a respondent or to assert an additional unfair act not in the original complaint, including asserting a new patent or patent claim, then the complaint shall be treated as if it had been filed on the date the amendment is filed for purposes of §§ 210.8(b) and (c), 210.9, and 210.10(a).

(b) *Postinstitution amendments generally.* (1) After an investigation has been instituted, the complaint or notice of investigation may be amended only by leave of the Commission for good cause shown and upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties to the investigation. A motion for amendment must be made to the presiding administrative law judge. A motion to amend the complaint and notice of investigation to name an additional respondent after institution shall be served on the proposed respondent. If the proposed amendment of the complaint would require amending the notice of investigation, the presiding administrative law judge may grant the motion only by filing with the Commission an initial determination. All other dispositions of such motions shall be by order.

(2) If disposition of the issues in an investigation on the merits will be facilitated, or for other good cause shown, the presiding administrative law judge may allow appropriate amendments to pleadings other than complaints upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties to the investigation.

(c) *Postinstitution amendments to conform to evidence.* When issues not raised by the pleadings or notice of investigation, but reasonably within the scope of the pleadings and notice, are considered during the taking of evidence by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings and notice. Such amendments of the pleadings and notice as may be necessary to make them conform to the evidence and to raise such issues shall be allowed at any time, and shall be effective with respect to all parties who have expressly or impliedly consented.

(d) *Supplemental submissions.* The administrative law judge may, upon reasonable notice and on such terms as are just, permit service of a supplemental submission setting forth transactions, occurrences, or events that have taken place since the date of the submission sought to be supplemented and that are relevant to any of the issues involved.

(e) *Counterclaims.* At any time after institution of the investigation, but not later than ten business days before the commencement of the evidentiary hearing, a respondent may file a counterclaim at the Commission in accordance with section 337(c) of the Tariff Act of 1930. Counterclaims shall be filed in a separate document. A respondent who files such a counterclaim shall immediately file a notice of removal with a United States district court in which venue for any of the counterclaims raised by the respondent would exist under 28 U.S.C. 1391.

(f) *Respondent submissions on the public interest.* When the Commission has ordered the administrative law judge to take evidence with respect to the public interest under § 210.50(b)(1), respondents must submit a statement concerning the public interest, including any response to the issues raised by the complainant pursuant to § 210.8(b) and (c)(2), at the same time that their response to the complaint is due. This submission must be no longer than five pages, inclusive of attachments.

(g) *Consolidation of investigations.* The Commission may consolidate two or more investigations. If the investigations are currently before the same presiding administrative law judge, he or she may consolidate the investigations. The investigation number in the caption of the consolidated investigation will include the investigation numbers of the investigations being consolidated. The investigation number in which the matter will be proceeding (the lead investigation) will be the first investigation number named in the consolidated caption.

(h) *Severance of investigation.* The administrative law judge may determine to sever an investigation into two or more investigations at any time prior to or upon thirty days from institution, based upon either a motion by any party or upon the administrative law judge's own judgment that severance is necessary to allow efficient adjudication. The administrative law judge's decision will be in the form of an order. The newly severed investigation(s) shall remain with the same presiding administrative law judge unless reassigned at the discretion of the chief administrative law judge. The severed investigation(s) will be designated with new investigation numbers.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67627, Dec. 30, 1994; 76 FR 64809, Oct. 19, 2011; 78 FR 23841, Apr. 19, 2013; 83 FR 21160, May 8, 2018]

Subpart D—Motions

§ 210.15 Motions.

(a) *Presentation and disposition.* (1) During the period between the institution of an investigation and the assignment of the investigation to a presiding administrative law judge, all motions shall be addressed to the chief administrative law judge. During the time that an investigation or related proceeding is before an administrative law judge, all motions therein shall be addressed to the administrative law judge.

(2) When an investigation or related proceeding is before the Commission, all motions shall be addressed to the Chairman of the Commission. All such motions shall be filed with the Secretary and shall be served upon each party. Motions may not be filed with the Commission during preinstitution proceedings except for motions for temporary relief pursuant to § 210.53.

(b) *Content.* All written motions shall state the particular order, ruling, or action desired and the grounds therefor.

(c) *Responses to motions.* Within 10 days after service of any written motions, or within such longer or shorter time as may be designated by the administrative law judge or the Commission, a nonmoving party, or in the instance of a motion to amend the complaint or notice of investigation to name an additional respondent after institution, the proposed respondent, shall respond or he may be deemed to have consented to the granting of the relief asked for in the motion. The

moving party shall have no right to reply, except as permitted by the administrative law judge or the Commission.

(d) *Motions for extensions.* As a matter of discretion, the administrative law judge or the Commission may waive the requirements of this section as to motions for extension of time, and may rule upon such motions ex parte.

[59 FR 39039, Aug. 1, 1994, as amended at 78 FR 23842, Apr. 19, 2013; 83 FR 21160, May 8, 2018]

§ 210.16 Default.

(a) *Definition of default.* (1) A party shall be found in default if it fails to respond to the complaint and notice of investigation in the manner prescribed in § 210.13 or § 210.59(c), or otherwise fails to answer the complaint and notice, and fails to show cause why it should not be found in default.

(2) A party may be found in default as a sanction for abuse of process, under § 210.4(c), or failure to make or cooperate in discovery, under § 210.33(b).

(b) *Procedure for determining default.* (1)(i) If a respondent has failed to respond or appear in the manner described in paragraph (a)(1) of this section, a party may file a motion for, or the administrative law judge may issue upon his own initiative, an order directing respondent to show cause why it should not be found in default.

(ii) If the respondent fails to make the necessary showing pursuant to paragraph (b)(1)(i) of this section, the administrative law judge shall issue an initial determination finding the respondent in default. An administrative law judge's decision denying a motion for a finding of default under paragraph (a)(1) of this section shall be in the form of an order.

(2) Any party may file a motion for issuance of, or the administrative law judge may issue on his own initiative, an initial determination finding a party in default for abuse of process under § 210.4(c) or failure to make or cooperate in discovery. A motion for a finding of default as a sanction for abuse of process or failure to make or cooperate in discovery shall be granted by initial determination or denied by order.

(3) If a proposed respondent has not filed a response to the complaint and notice of investigation pursuant to § 210.13 or § 210.59(c) of this chapter, the proposed respondent may file a notice of intent to default under this section. The filing of a notice of intent to default does not require the administrative law judge to issue the show-cause order of paragraph (b)(1) of this section. The administrative law judge shall issue an initial determination finding the proposed respondent in default upon the filing of a notice of intent to default. Such default will be treated in the same manner as any default under this section.

(4) A party found in default shall be deemed to have waived its right to appear, to be served with documents, and to contest the allegations at issue in the investigation.

(c) *Relief against a respondent in default*—(1) *Types of relief available.* After a respondent has been found in default by the Commission, the complainant may file with the Commission a declaration that it is seeking immediate entry of relief against the respondent in default. The facts alleged in the complaint will be presumed to be true with respect to the defaulting respondent. The Commission may issue an exclusion order, a cease and desist order, or both, affecting the defaulting respondent only after considering the effect of such order(s) upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers, and concluding that the order(s) should still be issued in light of the aforementioned public interest factors.

(2) *General exclusion orders.* In any motion requesting the entry of default or the termination of the investigation with respect to the last remaining respondent in the investigation, the complainant shall declare whether it is seeking a general exclusion order. The Commission may issue a general exclusion order pursuant to section 337(g)(2) of the Tariff Act of 1930, regardless of the source or importer of the articles concerned, provided that a violation of section 337 of the Tariff Act of 1930 is established by substantial, reliable,

and probative evidence and that the other requirements of 19 U.S.C. 1337(d)(2) are satisfied, and only after considering the aforementioned public interest factors and the requirements of § 210.50(c).

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67627, Dec. 30, 1994; 78 FR 23482, Apr. 19, 2013]

§ 210.17 Other failure to act and default.

Failures to act other than the defaults listed in § 210.16 may provide a basis for the presiding administrative law judge or the Commission to draw adverse inferences and to issue findings of fact, conclusions of law, determinations (including a determination on violation of section 337 of the Tariff Act of 1930), and orders that are adverse to the party who fails to act. Such failures include, but are not limited to:

(a) Failure to respond to a motion that materially alters the scope of the investigation or a related proceeding;

(b) Failure to respond to a motion for temporary relief pursuant to § 210.59;

(c) Failure to respond to a motion for summary determination under § 210.18;

(d) Failure to appear at a hearing before the administrative law judge after filing a written response to the complaint or motion for temporary relief, or failure to appear at a hearing before the Commission;

(e) Failure to file a brief or other written submission requested by the administrative law judge or the Commission during an investigation or a related proceeding;

(f) Failure to respond to a petition for review of an initial determination, a petition for reconsideration of an initial determination, or an application for interlocutory review of an administrative law judge's order; and

(g) Failure to participate in temporary relief bond forfeiture proceedings under § 210.70.

(h) *Default by notice.* If a respondent has filed a response to the complaint or notice of investigation under § 210.13 of this chapter, the respondent may still file a notice of intent to default with the presiding administrative law judge at any time before the filing of the final initial determination. The administrative law judge shall issue an initial determination finding the respondent in default upon the filing of a notice of intent to default. Such default will be treated in the same manner as any other failure to act under this section. The filing of a notice of intent to default does not require the administrative law judge to issue an order to show cause as to why the respondent should not be found in default.

The presiding administrative law judge or the Commission may take action under this rule sua sponte or in response to the motion of a party.

[59 FR 39039, Aug. 1, 1994, as amended at 78 FR 23842, Apr. 19, 2013]

§ 210.18 Summary determinations.

(a) *Motions for summary determinations.* Any party may move with any necessary supporting affidavits for a summary determination in its favor upon all or any part of the issues to be determined in the investigation. Counsel or other representatives in support of the complaint may so move at any time after 20 days following the date of service of the complaint and notice instituting the investigation. Any other party or a respondent may so move at any time after the date of publication of the notice of investigation in the FEDERAL REGISTER. Any such motion by any party in connection with the issue of permanent relief, however, must be filed at least 60 days before the date fixed for any hearing provided for in § 210.36(a)(1). Notwithstanding any other rule, the deadline for filing summary determinations shall be computed by counting backward at least 60 days including the first calendar day prior to the date the hearing is scheduled to commence. If the end of the 60 day period falls on a weekend or holiday, the period extends until the end of the next business day. Under exceptional circumstances and upon motion, the presiding administrative law judge may determine that good cause exists to permit a summary determination motion to be filed out of time.

(b) *Opposing affidavits; oral argument; time and basis for determination.* Any nonmoving party may file opposing affidavits within 10 days after service of the motion for summary determination. The administrative law judge

may, in his discretion or at the request of any party, set the matter for oral argument and call for the submission of briefs or memoranda. The determination sought by the moving party shall be rendered if pleadings and any depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a summary determination as a matter of law.

(c) *Affidavits.* Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The administrative law judge may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary determination is made and supported as provided in this section, a party opposing the motion may not rest upon the mere allegations or denials of the opposing party's pleading, but the opposing party's response, by affidavits, answers to interrogatories, or as otherwise provided in this section, must set forth specific facts showing that there is a genuine issue of fact for the evidentiary hearing under §210.36(a)(1) or (2). If the opposing party does not so respond, a summary determination, if appropriate, shall be rendered against the opposing party.

(d) *Refusal of application for summary determination; continuances and other orders.* Should it appear from the affidavits of a party opposing the motion that the party cannot, for reasons stated, present by affidavit facts essential to justify the party's opposition, the administrative law judge may refuse the application for summary determination, or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is appropriate, and a ruling to that effect shall be made a matter of record.

(e) *Order establishing facts.* If on motion under this section a summary determination is not rendered upon the whole case or for all the relief asked and a hearing is necessary, the administrative law judge, by examining the pleadings and the evidence and by interrogating counsel if necessary, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. The administrative law judge shall thereupon make an order specifying the facts that appear without substantial controversy and directing such further proceedings in the investigation as are warranted. The facts so specified shall be deemed established.

(f) *Order of summary determination.* An order of summary determination shall constitute an initial determination of the administrative law judge.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38322, July 7, 2008]

§ 210.19 Intervention.

Any person desiring to intervene in an investigation or a related proceeding under this part shall make a written motion after institution of the investigation or related proceeding. The motion shall have attached to it a certificate showing that the motion has been served upon each party to the investigation or related proceeding in the manner described in §201.16(b) of this chapter. Any party may file a response to the motion in accordance with §210.15(c) of this part, provided that the response is accompanied by a certificate confirming that the response was served on the proposed intervenor and all other parties. The Commission, or the administrative law judge by initial determination, may grant the motion to the extent and upon such terms as may be proper under the circumstances.

[59 FR 39039, Aug. 1, 1994, as amended at 83 FR 21160, May 8, 2018]

§ 210.20 Declassification of confidential information.

(a) Any party may move to declassify documents (or portions thereof) that have been designated confidential by

the submitter but that do not satisfy the confidentiality criteria set forth in § 201.6(a) of this chapter. All such motions, whether brought at any time during the investigation or after conclusion of the investigation shall be addressed to and ruled upon by the presiding administrative law judge, or if the investigation is not before a presiding administrative law judge, by the chief administrative law judge or such administrative law judge as he may designate.

(b) Following issuance of a public version of the initial determination on whether there is a violation of section 337 of the Tariff Act of 1930 or an initial determination that would otherwise terminate the investigation (if adopted by the Commission), the granting of a motion, in whole or part, to declassify information designated confidential shall constitute an initial determination, except as to that information for which no submissions in opposition to declassification have been filed.

§ 210.21 Termination of investigations.

(a) *Motions for termination.* (1) Any party may move at any time prior to the issuance of an initial determination on violation of section 337 of the Tariff Act of 1930 to terminate an investigation in whole or in part as to any or all respondents, on the basis of withdrawal of the complaint or certain allegations contained therein, or for good cause other than the grounds listed in paragraph (a)(2) of this section. A motion for termination of an investigation based on withdrawal of the complaint, or for good cause, shall contain a statement that there are no agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation, or if there are any agreements concerning the subject matter of the investigation, all such agreements shall be identified, and if written, a copy shall be filed with the Commission along with the motion. If the agreement contains confidential business information within the meaning of § 201.6(a) of this chapter, at least one copy of the agreement with such information deleted shall accompany the motion, in addition to a copy of the confidential version. On motion for good cause shown, the administrative law judge may limit service of the agreements to the settling parties and the Commission investigative attorney. The presiding administrative law judge may grant the motion in an initial determination upon such terms and conditions as he deems proper.

(2) Any party may move at any time to terminate an investigation in whole or in part as to any or all respondents on the basis of a settlement, a licensing or other agreement, including an agreement to present the matter for arbitration, or a consent order, as provided in paragraphs (b), (c) and (d) of this section.

(b) *Termination by settlement.* (1) An investigation before the Commission may be terminated as to one or more respondents pursuant to section 337(c) of the Tariff Act of 1930 on the basis of a licensing or other settlement agreement. The motion for termination by settlement shall contain copies of the licensing or other settlement agreements, any supplemental agreements, any documents referenced in the motion or attached agreements, and a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation. If the licensing or other settlement agreement contains confidential business information within the meaning of § 201.6(a) of this chapter, a copy of the agreement with such information deleted shall accompany the motion. On motion for good cause shown, the administrative law judge may limit the service of the agreements to the settling parties and the Commission investigative attorney.

(2) The motion and agreement(s) shall be certified by the administrative law judge to the Commission with an initial determination if the motion for termination is granted. If the licensing or other agreement or the initial determination contains confidential business information, copies of the agreement and initial determination with confidential business information deleted shall be certified to the Commission simultaneously with the confidential versions of such documents. If the Commission's final disposition of the

initial determination results in termination of the investigation in its entirety, a notice will be published in the FEDERAL REGISTER. Termination by settlement need not constitute a determination as to violation of section 337 of the Tariff Act of 1930.

(c) *Termination by entry of consent order.* An investigation before the Commission may be terminated pursuant to section 337(c) of the Tariff Act of 1930 on the basis of a consent order. Termination by consent order need not constitute a determination as to violation of section 337. A motion for termination by consent order shall contain copies of any licensing or other settlement agreement, any supplemental agreements, and a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation. If the licensing or other settlement agreement contains confidential business information within the meaning of § 201.6(a) of this chapter, a copy of the agreement with such information deleted shall accompany the motion. On motion for good cause shown, the administrative law judge may limit service of the agreements to the settling parties and the Commission investigative attorney. If there are no additional agreements, the moving parties shall certify that there are no additional agreements.

(1) *Opportunity to submit proposed consent order*—(i) *Prior to institution of an investigation.* Where time, the nature of the proceeding, and the public interest permit, any person being investigated pursuant to section 603 of the Trade Act of 1974 (19 U.S.C. § 2482) shall be afforded the opportunity to submit to the Commission a proposal for disposition of the matter under investigation in the form of a consent order stipulation that incorporates a proposed consent order executed by or on behalf of such person and that complies with the requirements of paragraph (c)(3) of this section.

(ii) *Subsequent to institution of an investigation.* In investigations under section 337 of the Tariff Act of 1930, a proposal to terminate by consent order shall be submitted as a motion to the administrative law judge with a stipulation that incorporates a proposed consent order. If the stipulation contains confidential business information within the meaning of § 201.6(a) of this chapter, a copy of the stipulation with such information deleted shall accompany the motion. The stipulation shall comply with the requirements of paragraph (c)(3) of this section. At any time prior to commencement of the hearing, the motion may be filed by one or more respondents, and may be filed jointly with other parties to the investigation. Upon request and for good cause shown, the administrative law judge may consider such a motion during or after a hearing. The filing of the motion shall not stay proceedings before the administrative law judge unless the administrative law judge so orders. The administrative law judge shall promptly file with the Commission an initial determination regarding the motion for termination if the motion is granted. If the initial determination contains confidential business information, a copy of the initial determination with such information deleted shall be filed with the Commission simultaneously with the filing of the confidential version of the initial determination. Pending disposition by the Commission of a consent order stipulation, a party may not, absent good cause shown, withdraw from the stipulation once it has been submitted pursuant to this section.

(2) *Commission disposition of consent order.* The Commission, after considering the effect of the settlement by consent order upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers, shall dispose of the initial determination according to the procedures of §§ 210.42 through 210.45. If the Commission's final disposition of the initial determination results in termination of the investigation in its entirety, a notice will be published in the FEDERAL REGISTER. Termination by consent order need not constitute a determination as to violation of section 337. Should the Commission reverse the initial determination, the parties are in no way bound by their proposal in later actions before the Commission.

(3) *Contents of consent order stipulation*. (i) Every consent order stipulation shall contain, in addition to the proposed consent order, the following:

(A) An admission of all jurisdictional facts;

(B) A statement identifying the asserted patent claims, copyright, trademark, mask work, boat hull design, or unfair trade practice, and whether the stipulation calls for cessation of importation, distribution, sale, or other transfers (other than exportation) of subject articles in the United States and/or specific terms relating to the disposition of existing U.S. inventories of subject articles.

(C) An express waiver of all rights to seek judicial review or otherwise challenge or contest the validity of the consent order;

(D) A statement that the signatories to the consent order stipulation will cooperate with and will not seek to impede by litigation or other means the Commission's efforts to gather information under subpart I of this part;

(E) A statement that the enforcement, modification, and revocation of the consent order will be carried out pursuant to subpart I of this part, incorporating by reference the Commission's Rules of Practice and Procedure;

(F) A statement that the signing thereof is for settlement purposes only and does not constitute admission by any respondent that an unfair act has been committed, if applicable; and

(G) A statement that the consent order shall have the same force and effect and may be enforced, modified, or revoked in the same manner as is provided in section 337 of the Tariff Act of 1930 and this part for other Commission actions, and the Commission may require periodic compliance reports pursuant to subpart I of this part to be submitted by the person entering into the consent order stipulation.

(ii) In the case of an intellectual property-based investigation, the consent order stipulation shall also contain—

(A) A statement that if any asserted patent claim, copyright, trademark, mask work, boat hull design, or unfair trade practice claim has expired or is held invalid or unenforceable by a court or agency of competent jurisdiction or if any article has been found or adjudicated not to infringe the asserted right in a final decision, no longer subject to appeal, this Consent Order shall become null and void as to such expired, invalid, or unenforceable claim or as to any adjudicated article;

(B) A statement that each signatory to the stipulation who was a respondent in the investigation will not seek to challenge the validity of the intellectual property right(s), in any administrative or judicial proceeding to enforce the consent order

(4) *Contents of consent order*. The Commission will not issue consent orders with terms beyond those provided for in this section, and will not issue consent orders that are inconsistent with this section. The consent order shall contain:

(i) A statement of the identity of complainant, the respondent, and the subject articles, and a statement of any allegation in the complaint that the respondents sell for importation, import, or sell after importation the subject articles in violation of section 337 by reason of asserted patent claims, copyright, trademark, mask work, boat hull design, or unfair trade practice;

(ii) A statement that the respondents have executed a consent order stipulation (but the consent order shall not contain the terms of the stipulation);

(iii) A statement that the respondent shall not sell for importation, import, or sell after importation the subject articles, directly or indirectly, and shall not aid, abet, encourage, participate in, or induce the sale for importation, the importation, or the sale after importation except under consent, license from the complainant, or to the extent permitted by the settlement agreement between complainant and respondent;

(iv) A statement, if applicable, regarding the disposition of existing U.S. inventories of the subject articles.

(v) A statement, if applicable, whether the respondent would be ordered to cease and desist from importing and distributing articles covered by the asserted patent claims, copyright, trademark, mask work, boat hull design, or unfair trade practice;

(vi) A statement that respondent shall be precluded from seeking judicial review or otherwise challenging or

contesting the validity of the Consent Order;

(vii) A statement that respondent shall cooperate with and shall not seek to impede by litigation or other means the Commission's efforts to gather information under subpart I of the Commission's Rules of Practice and Procedure, 19 CFR part 210;

(viii) A statement that Respondent and its officers, directors, employees, agents, and any entity or individual acting on its behalf and with its authority shall not seek to challenge the validity or enforceability of any asserted patent claims, copyright, trademark, mask work, boat hull design, or unfair trade practice claim in any administrative or judicial proceeding to enforce the Consent Order;

(ix) A statement that when the patent, copyright, trademark, mask work, boat hull design, or unfair trade practice expires the Consent Order shall become null and void as to such;

(x) A statement that if any asserted patent claim, copyright, trademark, mask work, boat hull design, or unfair trade practice claim is held invalid or unenforceable by a court or agency of competent jurisdiction or if any article has been found or adjudicated not to infringe the asserted right in a final decision, no longer subject to appeal, this Consent Order shall become null and void as to such invalid or unenforceable claim or adjudicated article;

(xi) An admission of all jurisdictional facts; and

(xii) A statement that the investigation is hereby terminated with respect to the respondent; provided, however, that enforcement, modification, or revocation of the Consent Order shall be carried out pursuant to Subpart I of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

(5) *Effect, interpretation, and reporting.* The consent order shall have the same force and effect and may be enforced, modified, or revoked in the same manner as is provided in section 337 of the Tariff Act of 1930 and this part for other Commission actions. The Commission will not enforce consent order terms beyond those provided for in this section. The Commission may require periodic compliance reports pursuant to subpart I of this part to be submitted by the person entering into the consent order stipulation.

(d) *Termination based upon arbitration agreement.* Upon filing of a motion for termination with the administrative law judge or the Commission, a section 337 investigation may be terminated as to one or more respondents pursuant to section 337(c) of the Tariff Act of 1930 on the basis of an agreement between complainant and one or more of the respondents to present the matter for arbitration. The motion and a copy of the arbitration agreement shall be certified by the administrative law judge to the Commission with an initial determination if the motion for termination is granted. If the agreement or the initial determination contains confidential business information, copies of the agreement and initial determination with confidential business information deleted shall be certified to the Commission with the confidential versions of such documents. A notice will be published in the FEDERAL REGISTER if the Commission's final disposition of the initial determination results in termination of the investigation in its entirety. Termination based on an arbitration agreement does not constitute a determination as to violation of section 337 of the Tariff Act of 1930.

(e) *Effect of termination.* Termination issued by the administrative law judge shall constitute an initial determination.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67627, Dec. 30, 1994; 60 FR 53120, Oct. 12, 1995; 73 FR 38322, July 7, 2008; 78 FR 23482, Apr. 19, 2013; 83 FR 21160, May 8, 2018]

§ 210.22 [Reserved]

§ 210.23 Suspension of investigation.

Any party may move to suspend an investigation under this part, because of the pendency of proceedings before the Secretary of Commerce or the administering authority pursuant to section 337(b)(3) of the Tariff Act of 1930. The administrative law judge or the Commission also may raise the issue sua sponte. An administrative law judge's decision granting a motion for

suspension shall be in the form of an initial determination.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67627, Dec. 30, 1994]

§ 210.24 Interlocutory appeals.

Rulings by the administrative law judge on motions may not be appealed to the Commission prior to the administrative law judge's issuance of an initial determination, except in the following circumstances:

(a) *Appeals without leave of the administrative law judge.* The Commission may in its discretion entertain interlocutory appeals, except as provided in § 210.64, when a ruling of the administrative law judge:

(1) Requires the disclosure of Commission records or requires the appearance of Government officials pursuant to § 210.32(c)(2); or

(2) Denies an application for intervention under § 210.19. Appeals from such rulings may be sought by filing an application for review, not to exceed 15 pages, with the Commission within five days after service of the administrative law judge's ruling. An answer to the application for review may be filed within five days after service of the application. The application for review should specify the person or party taking the appeal, designate the ruling or part thereof from which appeal is being taken, and specify the reasons and present arguments as to why review is being sought. The Commission may, upon its own motion, enter an order staying the return date of an order issued by the administrative law judge pursuant to § 210.32(c)(2) or may enter an order placing the matter on the Commission's docket for review. Any order placing the matter on the Commission's docket for review will set forth the scope of the review and the issues that will be considered and will make provision for the filing of briefs if deemed appropriate by the Commission.

(b) *Appeals with leave of the administrative law judge.* (1) Except as otherwise provided in paragraph (a) of this section, § 210.64, and paragraph (b)(2) of this section, applications for review of a ruling by an administrative law judge may be allowed only upon request made to the administrative law judge and upon determination by the administrative law judge in writing, with justification in support thereof, that the ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion, and that either an immediate appeal from the ruling may materially advance the ultimate completion of the investigation or subsequent review will be an inadequate remedy.

(2) Applications for review of a ruling by an administrative law judge under § 210.5(e)(1) as to whether information designated confidential by the supplier is entitled to confidential treatment under § 210.5(b) may be allowed only upon request made to the administrative law judge and upon determination by the administrative law judge in writing, with justification in support thereof.

(3) A written application for review under paragraph (b)(1) or (b)(2) of this section shall not exceed 15 pages and may be filed within five days after service of the administrative law judge's determination. An answer to the application for review may be filed within five days after service of the application for review. Thereupon, the Commission may, in its discretion, permit an appeal. Unless otherwise ordered by the Commission, Commission review, if permitted, shall be confined to the application for review and answer thereto, without oral argument or further briefs.

(c) *Investigation not stayed.* Application for review under this section shall not stay the investigation before the administrative law judge unless the administrative law judge or the Commission shall so order.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67627, Dec. 30, 1994]

§ 210.25 Sanctions.

(a)(1) Any party may file a motion for sanctions for abuse of process under 210.4(d)(1), abuse of discovery under § 210.27(g)(3), failure to make or cooperate in discovery under § 210.33(b) or (c), or violation of a protective order under § 210.34(c). A motion alleging abuse of process should be filed promptly after the requirements of § 210.4(d)(1)(i) have been satisfied. A motion alleging abuse

of discovery, failure to make or cooperate in discovery, or violation of a protective order should be filed promptly after the allegedly sanctionable conduct is discovered.

(2) The administrative law judge (when the investigation or related proceeding is before the administrative law judge) or the Commission (when the investigation or related proceeding is before it) also may raise the sanctions issue sua sponte. (See also §§ 210.4(d)(1)(ii), 210.27(g)(3), 210.33(c), and 210.34(c).)

(b) A motion for sanctions shall be addressed to the presiding administrative law judge, if the allegedly sanctionable conduct occurred and is discovered while the administrative law judge is presiding in an investigation or in a related proceeding. During an investigation, the administrative law judge's ruling on the motion shall be in the form of an order, if it is issued before or concurrently with the initial determination concerning violation of section 337 of the Tariff Act of 1930 or termination of the investigation. In a related proceeding, the administrative law judge's ruling shall be in the form of an order, regardless of the point in time at which the order is issued.

(c) A motion for sanctions shall be addressed to the Commission, if the allegedly sanctionable conduct occurred while the Commission is presiding or is filed after the subject investigation or related proceeding is terminated. The Commission may assign the motion to an administrative law judge for issuance of a recommended determination. The deadlines and procedures that will be followed in processing the recommended determination will be set forth in the Commission order assigning the motion to an administrative law judge.

(d) If an administrative law judge's order concerning sanctions is issued before the initial determination concerning violation of section 337 of the Tariff Act of 1930 or termination of the investigation, it may be appealed under § 210.24(b)(1) with leave from the administrative law judge, if the requirements of that section are satisfied. If the order is issued concurrently with the initial determination, the order may be appealed by filing a petition meeting the requirements of § 210.43(b). The periods for filing such petitions and responding to the petitions will be specified in the Commission notice issued pursuant to § 210.42(i), if the initial determination has granted a motion for termination of the investigation, or in the Commission notice issued pursuant to § 210.46(a), if the initial determination concerns violation of section 337. The Commission will determine whether to adopt the order after disposition of the initial determination concerning violation of section 337 or termination of the investigation.

(e) If the administrative law judge's ruling on the motion for sanctions is in the form of a recommended determination pursuant to paragraph (c) of this section, the deadlines and procedures for parties to contest the recommended determination will be set forth in the Commission order assigning the motion to an administrative law judge.

(f) If a motion for sanctions is filed with the administrative law judge during an investigation, he may defer his adjudication of the motion until after he has issued a final initial determination concerning violation of section 337 of the Tariff Act of 1930 or termination of investigation. If the administrative law judge defers his adjudication in such a manner, his ruling on the motion for sanctions must be in the form of a recommended determination and shall be issued no later than 30 days after issuance of the Commission's final determination on violation of section 337 or termination of the investigation. To aid the Commission in determining whether to adopt a recommended determination, any party may file written comments with the Commission 14 days after service of the recommended determination. Replies to such comments may be filed within seven days after service of the comments. The Commission will determine whether to adopt the recommended determination after reviewing the parties' arguments and taking any other steps the Commission deems appropriate.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38323, July 7, 2008; 83 FR 21161, May 8, 2018]

§ 210.26 Other motions.

Motions pertaining to discovery shall be filed in accordance with § 210.15 and the pertinent provisions of subpart E of this part (§§ 210.27 through 210.34). Motions pertaining to evidentiary hearings and prehearing conferences shall be filed in accordance with § 210.15 and the pertinent provisions of subpart F of this part (§§ 210.35 through 210.40). Motions for temporary relief shall be filed as provided in subpart H of this part (see §§ 210.52 through 210.57).

Subpart E—Discovery and Compulsory Process

§ 210.27 General provisions governing discovery.

(a) *Discovery methods*. The parties to an investigation may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property for inspection or other purposes; and requests for admissions.

(b) *Scope of discovery*. Regarding the scope of discovery for the temporary relief phase of an investigation, see § 210.61. For the permanent relief phase of an investigation, unless otherwise ordered by the administrative law judge, a party may obtain discovery regarding any matter, not privileged, that is relevant to the following:

(1) The claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things;

(2) The identity and location of persons having knowledge of any discoverable matter;

(3) The appropriate remedy for a violation of section 337 of the Tariff Act of 1930 (see § 210.42(a)(1)(ii)(A)); or

(4) The appropriate bond for the respondents, under section 337(j)(3) of the Tariff Act of 1930, during Presidential review of the remedial order (if any) issued by the Commission (see § 210.42(a)(1)(ii)(B)).

It is not grounds for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations of paragraph (d) of this section.

(c) *Specific limitations on electronically stored information*. A person need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. The party seeking the discovery may file a motion to compel discovery pursuant to § 210.33(a). In response to the motion to compel discovery, or in a motion for a protective order filed pursuant to § 210.34, the person from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the administrative law judge may order discovery from such sources if the requesting party shows good cause, considering the limitations found in paragraph (d) of this section. The administrative law judge may specify conditions for the discovery.

(d) *General limitations on discovery*. In response to a motion made pursuant to §§ 210.33(a) or 210.34 or *sua sponte*, the administrative law judge must limit by order the frequency or extent of discovery otherwise allowed in this subpart if the administrative law judge determines that:

(1) The discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(2) The party seeking discovery has had ample opportunity to obtain the information by discovery in the investigation;

(3) The responding person has waived the legal position that justified the discovery or has stipulated to the particular facts pertaining to a disputed issue to which the discovery is directed; or

(4) The burden or expense of the proposed discovery outweighs its likely

benefit, considering the needs of the investigation, the importance of the discovery in resolving the issues to be decided by the Commission, and matters of public concern.

(e) *Claiming privilege or work product protection.* (1) When, in response to a discovery request made under this subpart, a person withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as attorney work product, the person must:

(i) Expressly make the claim when responding to a relevant question or request; and

(ii) Within 10 days of making the claim produce to the requester a privilege log that describes the nature of the information not produced or disclosed, in a manner that will enable the requester to assess the claim without revealing the information at issue. The privilege log must separately identify each withheld document, communication, or item, and to the extent possible must specify the following for each entry:

(A) The date the information was created or communicated;

(B) The author(s) or speaker(s);

(C) All recipients;

(D) The employer and position for each author, speaker, or recipient, including whether that person is an attorney or patent agent;

(E) The general subject matter of the information; and

(F) The type of privilege or protection claimed.

(2) If a document produced in discovery is subject to a claim of privilege or of protection as attorney work product, the person making the claim may notify any person that received the document of the claim and the basis for it.

(i) The notice shall identify the information in the document subject to the claim, preferably using a privilege log as defined under paragraph (e)(1) of this section. After being notified, a person that received the document must do the following:

(A) Within 7 days of service of the notice return, sequester, or destroy the specified document and any copies it has;

(B) Not use or disclose the document until the claim is resolved; and

(C) Within 7 days of service of the notice take reasonable steps to retrieve the document if the person disclosed it to others before being notified.

(ii) Within 7 days of service of the notice, the claimant and the parties shall meet and confer in good faith to resolve the claim of privilege or protection. Within 5 days after the conference, a party may file a motion to compel the production of the document and may, in the motion to compel, use a description of the document from the notice produced under this paragraph. In connection with the motion to compel, the party may submit the document *in camera* for consideration by the administrative law judge. The person that produced the document must preserve the document until the claim of privilege or protection is resolved.

(3) Parties may enter into a written agreement to waive compliance with paragraph (e)(1) of this section for documents, communications, and items created or communicated within a time period specified in the agreement. The administrative law judge may decline to entertain any motion based on information claimed to be subject to the agreement. If information claimed to be subject to the agreement is produced in discovery then the administrative law judge may determine that the produced information is not entitled to privilege or protection.

(4) For good cause, the administrative law judge may order a different period of time for compliance with any requirement of this section. Parties may enter into a written agreement to set a different period of time for compliance with any requirement of this section without approval by the administrative law judge unless the administrative law judge has ordered a different period of time for compliance, in which case the parties' agreement must be approved by the administrative law judge.

(5)(i) The provisions of § 210.27(e)(1) through (4) protect drafts of expert reports, regardless of the form in which the draft is recorded.

(ii) The provisions of § 210.27(e)(1) through (4) protect communications

between the party's attorney and expert witnesses concerning trial preparation, regardless of the form of the communications, except to the extent that the communications:

(A) Relate to compensation for the expert's study or testimony;

(B) Identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(iii) Identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(f) *Supplementation of responses.* (1) A party who has responded to a request for discovery with a response is under a duty to supplement or correct the response to include information thereafter acquired if ordered by the administrative law judge or the Commission or in the following circumstances: A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(2) A duty to supplement responses also may be imposed by agreement of the parties, or at any time prior to a hearing through new requests for supplementation of prior responses.

(g) *Signing of discovery requests, responses, and objections.* (1) The front page of every request for discovery or response or objection thereto shall contain a caption setting forth the name of the Commission, the title of the investigation or related proceeding, and the docket number or investigation number, if any, assigned to the investigation or related proceeding.

(2) Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and shall state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry, the request, objection, or response is:

(i) Consistent with § 210.5(a) (if applicable) and other relevant provisions of this chapter, and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(ii) Not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(iii) Not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, and the importance of the issues at stake in the litigation.

If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

(3) If without substantial justification a request, response, or objection is certified in violation of paragraph (g)(2) of this section, the administrative law judge or the Commission, upon motion or sua sponte under § 210.25 of this part, may impose an appropriate sanction upon the person who made the certification, the party on whose behalf the request, response, or objection was made, or both.

(4) An appropriate sanction may include an order to pay to the other parties the amount of reasonable expenses incurred because of the violation, including a reasonable attorney's fee, to the extent authorized by Rule 26(g) of the Federal Rules of Civil Procedure. Monetary sanctions shall not be imposed under this section against the United States, the Commission, or a Commission investigative attorney.

(5) Monetary sanctions may be imposed under this section to reimburse the Commission for expenses incurred by a Commission investigative attorney or the Commission's Office of Unfair Import Investigations. Monetary sanctions will not be imposed under

this section to reimburse the Commission for attorney's fees.

[59 FR 39039, Aug. 1, 1994, as amended at 78 FR 29623, May 21, 2013; 83 FR 21161, May 8, 2018]

§ 210.28 Depositions.

(a) *When depositions may be taken.* Following publication in the FEDERAL REGISTER of a Commission notice instituting the investigation, any party may take the testimony of any person, including a party, by deposition upon oral examination or written questions. The presiding administrative law judge will determine the permissible dates or deadlines for taking such depositions. Without stipulation of the parties, the complainants as a group may take a maximum of five fact depositions per respondent or no more than 20 fact depositions whichever is greater, the respondents as a group may take a maximum of 20 fact depositions total, and if the Commission investigative attorney is a party, he or she may take a maximum of 10 fact depositions and is permitted to participate in all depositions taken by any parties in the investigation. Each notice for a corporation to designate deponents only counts as one deposition and includes all corporate representatives so designated to respond, and related respondents are treated as one respondent for purposes of determining the number of depositions. The presiding administrative law judge may increase the number of depositions on written motion for good cause shown.

(b) *Persons before whom depositions may be taken.* Depositions may be taken before a person having power to administer oaths by the laws of the United States or of the place where the examination is held.

(c) *Notice of examination.* A party desiring to take the deposition of a person shall give notice in writing to every other party to the investigation. The administrative law judge shall determine the appropriate period for providing such notice. A party upon whom a notice of deposition is served may make objections to a notice of deposition and state the reasons therefor within ten days of service of the notice of deposition. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. A notice may provide for the taking of testimony by telephone, but the administrative law judge may, on motion of any party, require that the deposition be taken in the presence of the deponent. The parties may stipulate in writing, or the administrative law judge may upon motion order, that the testimony at a deposition be recorded by other than stenographic means. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(d) *Taking of deposition.* Each deponent shall be duly sworn, and any adverse party shall have the right to cross-examine. Objections to questions or documents shall be in short form, stating the grounds of objections relied upon. Evidence objected to shall be taken subject to the objections, except that privileged communications and subject matter need not be disclosed. The questions propounded and the answers thereto, together with all objections made, shall be reduced to writing, after which the deposition shall be subscribed by the deponent (unless the parties by stipulation waive signing or the deponent is ill or cannot be found or refuses to sign) and certified by the person before whom the deposition was taken. If the deposition is not subscribed by the deponent, the person administering the oath shall state on the record such fact and the reason therefor. When a deposition is recorded by stenographic means, the stenographer shall certify on the transcript that the witness was sworn in the stenographer's presence and that the transcript is a true record of the testimony of the witness. When a deposition is recorded by other than stenographic means and is thereafter transcribed, the person transcribing it shall certify that the person heard the witness sworn on the recording and that the transcript is a correct writing of the recording. Thereafter, upon payment of

reasonable charges therefor, that person shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent. See paragraph (i) of this section concerning the effect of errors and irregularities in depositions.

(e) *Depositions of nonparty officers or employees of the Commission or of other Government agencies.* A party desiring to take the deposition of an officer or employee of the Commission other than the Commission investigative attorney, or of an officer or employee of another Government agency, or to obtain documents or other physical exhibits in the custody, control, and possession of such officer or employee, shall proceed by written motion to the administrative law judge for leave to apply for a subpoena under § 210.32(c). Such a motion shall be granted only upon a showing that the information expected to be obtained thereby is within the scope of discovery permitted by § 210.27(b) or § 210.61 and cannot be obtained without undue hardship by alternative means.

(f) *Service of deposition transcripts on the Commission staff.* The party taking the deposition shall promptly serve one copy of the deposition transcript on the Commission investigative attorney.

(g) *Admissibility of depositions.* The fact that a deposition is taken and served upon the Commission investigative attorney as provided in this section does not constitute a determination that it is admissible in evidence or that it may be used in the investigation. Only such part of a deposition as is received in evidence at a hearing shall constitute a part of the record in such investigation upon which a determination may be based. Objections may be made at the hearing to receiving in evidence any deposition or part thereof for any reason that would require exclusion of the evidence if the witness were then present and testifying.

(h) *Use of depositions.* A deposition may be used as evidence against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of a deponent as a witness;

(2) The deposition of a party may be used by an adverse party for any purpose;

(3) The deposition of a witness, whether or not a party, may be used by any party for any purposes if the administrative law judge finds—

(i) That the witness is dead; or

(ii) That the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(iii) That the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(iv) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) Upon application and notice, that such exceptional circumstances exist as to make it desirable in the interest of justice and with due regard to the importance of presenting the oral testimony of witnesses at a hearing, to allow the deposition to be used; or

(vi) Upon agreement of the parties and within the administrative law judge's discretion, the use of designated deposition testimony in lieu of live witness testimony absent the circumstances otherwise enumerated in this paragraph is permitted.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part that ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

(i) *Effect of errors and irregularities in depositions*—(1) *As to notice.* All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving notice.

(2) *As to disqualification of person before whom the deposition is to be taken.* Objection to taking a deposition because of disqualification of the person before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known

or could be discovered with reasonable diligence.

(3) *As to taking of depositions.* (i) Objections to the competency of a witness or the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(ii) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(iii) Objections to the form of written questions submitted under this section are waived unless served in writing upon the party propounding them. The presiding administrative law judge shall set the deadline for service of such objections.

(4) *As to completion and return of deposition.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, served, or otherwise dealt with by the person before whom it is taken are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38323, July 7, 2008; 78 FR 23483, Apr. 19, 2013; 83 FR 21161, May 8, 2018]

§ 210.29 Interrogatories.

(a) *Scope; use at hearing.* Any party may serve upon any other party written interrogatories to be answered by the party served. Interrogatories may relate to any matters that can be inquired into under § 210.27(b) or § 210.61, and the answers may be used to the extent permitted by the rules of evidence. Absent stipulation of the parties, any party may serve upon any other party written interrogatories not exceeding 175 in number including all discrete subparts. Related respondents are treated as one entity. The presiding administrative law judge may increase the number of interrogatories on written motion for good cause shown.

(b) *Procedure.* (1) Interrogatories may be served upon any party after the date of publication in the FEDERAL REGISTER of the notice of investigation.

(2) Parties answering interrogatories shall repeat the interrogatories being answered immediately preceding the answers. Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections are to be signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers and objections, if any, within ten days of service of the interrogatories or within the time specified by the administrative law judge. The party submitting the interrogatories may move for an order under § 210.33(a) with respect to any objection to or other failure to answer an interrogatory.

(3) An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the administrative law judge may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or a later time.

(c) *Option to produce records.* When the answer to an interrogatory may be derived or ascertained from the records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records

and to make copies, compilations, abstracts, or summaries. The specifications provided shall include sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the documents from which the answer may be ascertained.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38323, July 7, 2008; 78 FR 23484, Apr. 19, 2013]

§ 210.30 Requests for production of documents and things and entry upon land.

(a) *Scope.* Any party may serve on any other party a request:

(1) To produce and permit the party making the request, or someone acting on his behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, and other data compilations from which information can be obtained), or to inspect and copy, test, or sample any tangible things that are in the possession, custody, or control of the party upon whom the request is served; or

(2) To permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspecting and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of § 210.27(b).

(b) *Procedure.* (1) The request may be served upon any party after the date of publication in the FEDERAL REGISTER of the notice of investigation. The request shall set forth the items to be inspected, either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(2) The party upon whom the request is served shall serve a written response within 10 days or the time specified by the administrative law judge. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of any item or category, the part shall be specified. The party submitting the request may move for an order under § 210.33(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested. A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond to the categories in the request.

(c) *Persons not parties.* This section does not preclude issuance of an order against a person not a party to permit entry upon land.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38323, July 7, 2008]

§ 210.31 Requests for admission.

(a) *Form, content, and service of request for admission.* Any party may serve on any other party a written request for admission of the truth of any matters relevant to the investigation and set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been otherwise furnished or are known to be, and in the request are stated as being, in the possession of the other party. Each matter as to which an admission is requested shall be separately set forth. The request may be served upon a party whose complaint is the basis for the investigation after the date of publication in the FEDERAL REGISTER of the notice of investigation. The administrative law judge will determine the period within which a party may serve a request upon other parties.

(b) *Answers and objections to requests for admissions.* A party answering a request for admission shall repeat the request for admission immediately preceding his answer. The matter may be deemed admitted unless, within 10 days or the period specified by the administrative law judge, the party to whom the request is directed serves upon the party requesting the admission a sworn written answer or objection addressed to the matter. If objection is made, the

reason therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter as to which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known to or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter as to which an admission has been requested presents a genuine issue for a hearing may not object to the request on that ground alone; he may deny the matter or set forth reasons why he cannot admit or deny it.

(c) *Sufficiency of answers.* The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the objecting party sustains his burden of showing that the objection is justified, the administrative law judge shall order that an answer be served. If the administrative law judge determines that an answer does not comply with the requirements of this section, he may order either that the matter is admitted or that an amended answer be served. The administrative law judge may, in lieu of these orders, determine that final disposition of the request be made at a prehearing conference or at a designated time prior to a hearing under this part.

(d) *Effect of admissions; withdrawal or amendment of admission.* Any matter admitted under this section may be conclusively established unless the administrative law judge on motion permits withdrawal or amendment of the admission. The administrative law judge may permit withdrawal or amendment when the presentation of the issues of the investigation will be subserved thereby and the party who obtained the admission fails to satisfy the administrative law judge that withdrawal or amendment will prejudice him in maintaining his position on the issue of the investigation. Any admission made by a party under this section is for the purpose of the pending investigation and any related proceeding as defined in § 210.3 of this chapter.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38323, July 7, 2008]

§ 210.32 Subpoenas.

(a) *Application for issuance of a subpoena*—(1) *Subpoena ad testificandum.* An application for issuance of a subpoena requiring a person to appear and depose or testify at the taking of a deposition or at a hearing shall be made to the administrative law judge.

(2) *Subpoena duces tecum.* An application for issuance of a subpoena requiring a person to appear and depose or testify and to produce specified documents, papers, books, or other physical exhibits at the taking of a deposition, at a prehearing conference, at a hearing, or under any other circumstances, shall be made in writing to the administrative law judge and shall specify the material to be produced as precisely as possible, showing the general relevancy of the material and the reasonableness of the scope of the subpoena.

(3) The administrative law judge shall rule on all applications filed under paragraph (a)(1) or (a)(2) of this section and may issue subpoenas when warranted.

(b) *Use of subpoena for discovery.* Subpoenas may be used by any party for purposes of discovery or for obtaining documents, papers, books or other physical exhibits for use in evidence, or for both purposes. When used for discovery purposes, a subpoena may require a person to produce and permit the inspection and copying of nonprivileged documents, papers, books, or other physical exhibits that constitute or contain evidence relevant to the subject matter involved and that are in the possession, custody, or control of such person.

(c) *Application for subpoenas for nonparty Commission records or personnel or for records and personnel of other Government agencies*—(1) *Procedure.* An application for issuance of a subpoena requiring the production of nonparty

documents, papers, books, physical exhibits, or other material in the records of the Commission, or requiring the production of records or personnel of other Government agencies shall specify as precisely as possible the material to be produced, the nature of the information to be disclosed, or the expected testimony of the official or employee, and shall contain a statement showing the general relevancy of the material, information, or testimony and the reasonableness of the scope of the application, together with a showing that such material, information, or testimony or their substantial equivalent could not be obtained without undue hardship or by alternative means.

(2) *Ruling.* Such applications shall be ruled upon by the administrative law judge, and he may issue such subpoenas when warranted. To the extent that the motion is granted, the administrative law judge shall provide such terms and conditions for the production of the material, the disclosure of the information, or the appearance of the official or employee as may appear necessary and appropriate for the protection of the public interest.

(3) *Application for subpoena grounded upon the Freedom of Information Act.* No application for a subpoena for production of documents grounded upon the Freedom of Information Act (5 U.S.C. § 552) shall be entertained by the administrative law judge.

(d) *Objections and motions to quash.* (1) Any objection to a subpoena shall be served in writing on the party or attorney designated in the subpoena within the later of 10 days after receipt of the subpoena or within such time as the administrative law judge may allow. If an objection is made, the party that requested the subpoena may move for a request for judicial enforcement upon reasonable notice to other parties or as otherwise provided by the administrative law judge who issued the subpoena.

(2) Any motion to quash a subpoena shall be filed within the later of 10 days after receipt of the subpoena or within such time as the administrative law judge may allow.

(e) *Ex parte rulings on applications for subpoenas.* Applications for the issuance of the subpoenas pursuant to the provisions of this section may be made ex parte, and, if so made, such applications and rulings thereon shall remain ex parte unless otherwise ordered by the administrative law judge.

(f) *Witness fees*—(1) *Deponents and witnesses.* Any person compelled to appear in person to depose or testify in response to a subpoena shall be paid the same fees and mileage as are paid to witnesses with respect to proceedings in the courts of the United States; provided, that salaried employees of the United States summoned to depose or testify as to matters related to their public employment, irrespective of the party at whose instance they are summoned, shall be paid in accordance with the applicable Federal regulations.

(2) *Responsibility.* The fees and mileage referred to in paragraph (f)(1) of this section shall be paid by the party at whose instance deponents or witnesses appear. Fees due under this paragraph shall be tendered no later than the date for compliance with the subpoena issued under this section. Failure to timely tender fees under this paragraph shall not invalidate any subpoena issued under this section.

(g) *Obtaining judicial enforcement.* In order to obtain judicial enforcement of a subpoena issued under paragraphs (a)(3) or (c)(2) of this section, the administrative law judge shall certify to the Commission, on motion or sua sponte, a request for such enforcement. The request shall be accompanied by copies of relevant papers and a written report from the administrative law judge concerning the purpose, relevance, and reasonableness of the subpoena. If the request, relevant papers, or written report contain confidential business information, the administrative law judge shall certify nonconfidential copies along with the confidential versions. The Commission will subsequently issue a notice stating whether it has granted the request and authorized its Office of the General Counsel to seek such enforcement.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38233, July 7, 2008; 83 FR 21161, May 8, 2018]

§ 210.33 Failure to make or cooperate in discovery; sanctions.

(a) *Motion for order compelling discovery*. A party may apply to the administrative law judge for an order compelling discovery upon reasonable notice to other parties and all persons affected thereby.

(b) *Non-monetary sanctions for failure to comply with an order compelling discovery*. If a party or an officer or agent of a party fails to comply with an order including, but not limited to, an order for the taking of a deposition or the production of documents, an order to answer interrogatories, an order issued pursuant to a request for admissions, or an order to comply with a subpoena, the administrative law judge, for the purpose of permitting resolution of relevant issues and disposition of the investigation without unnecessary delay despite the failure to comply, may take such action in regard thereto as is just, including, but not limited to the following:

(1) Infer that the admission, testimony, documents, or other evidence would have been adverse to the party;

(2) Rule that for the purposes of the investigation the matter or matters concerning the order or subpoena issued be taken as established adversely to the party;

(3) Rule that the party may not introduce into evidence or otherwise rely upon testimony by the party, officer, or agent, or documents, or other material in support of his position in the investigation;

(4) Rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;

(5) Rule that a motion or other submission by the party concerning the order or subpoena issued be stricken or rule by initial determination that a determination in the investigation be rendered against the party, or both; or

(6) Order any other non-monetary sanction available under Rule 37(b) of the Federal Rules of Civil Procedure. Any such action may be taken by written or oral order issued in the course of the investigation or by inclusion in the initial determination of the administrative law judge. It shall be the duty of the parties to seek, and that of the administrative law judge to grant, such of the foregoing means of relief or other appropriate relief as may be sufficient to compensate for the lack of withheld testimony, documents, or other evidence. If, in the administrative law judge's opinion such relief would not be sufficient, the administrative law judge shall certify to the Commission a request that court enforcement of the subpoena or other discovery order be sought.

(c) *Monetary sanctions for failure to make or cooperate in discovery*. (1) If a party or an officer, director, or managing agent of the party or person designated to testify on behalf of a party fails to obey an order to provide or permit discovery, the administrative law judge or the Commission may make such orders in regard to the failure as are just. In lieu of or in addition to taking action listed in paragraph (b) of this section and to the extent provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure, the administrative law judge or the Commission, upon motion or sua sponte under § 210.25, may require the party failing to obey the order or the attorney advising that party or both to pay reasonable expenses, including attorney's fees, caused by the failure, unless the administrative law judge or the Commission finds that the failure was substantially justified or that other circumstances make an award of expenses unjust. Monetary sanctions shall not be imposed under this section against the United States, the Commission, or a Commission investigative attorney.

(2) Monetary sanctions may be imposed under this section to reimburse the Commission for expenses incurred by a Commission investigative attorney or the Commission's Office of Unfair Import Investigations. Monetary sanctions will not be imposed under this section to reimburse the Commission for attorney's fees.

§ 210.34 Protective orders; reporting requirement; sanctions and other actions.

(a) *Issuance of protective order*. Upon motion by a party or by the person from whom discovery is sought or by

the administrative law judge on his own initiative, and for good cause shown, the administrative law judge may make any order that may appear necessary and appropriate for the protection of the public interest or that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the administrative law judge;

(6) That a deposition, after being sealed, be opened only by order of the Commission or the administrative law judge;

(7) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; and

(8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Commission or the administrative law judge. If the motion for a protective order is denied, in whole or in part, the Commission or the administrative law judge may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The Commission also may, upon motion or sua sponte, issue protective orders or may continue or amend a protective order issued by the administrative law judge.

(b) *Unauthorized disclosure, loss, or theft of information.* If confidential business information submitted in accordance with the terms of a protective order is disclosed to any person other than in a manner authorized by the protective order, lost, or stolen, the party responsible for the disclosure, or subject to the loss or theft, must immediately bring all pertinent facts relating to such incident to the attention of the submitter of the information and the administrative law judge or the Commission, and, without prejudice to other rights and remedies of the submitter of the information, make every effort to prevent further mishandling of such information by the party or the recipient of such information.

(c) *Violation of protective order.* (1) The issue of whether sanctions should be imposed may be raised on a motion by a party, the administrative law judge's own motion, or the Commission's own initiative in accordance with § 210.25(a)(2). Parties, including the party that identifies an alleged breach or makes a motion for sanctions, and the Commission shall treat the identity of the alleged breacher as confidential business information unless the Commission issues a public sanction. The identity of the alleged breacher means the name of any individual against whom allegations are made. The Commission and the administrative law judge may permit the parties to file written submissions or present oral argument on the issues of the alleged violation of the protective order and sanctions.

(2) If the breach occurs while the investigation is before an administrative law judge, any determination on sanctions of the type enumerated in paragraphs (c)(3)(i) through (iv) of this section shall be in the form of a recommended determination. The Commission may then consider both the recommended determination and any related orders in making a determination on sanctions. When the motion is addressed to the administrative law judge for sanctions of the type enumerated in paragraph (c)(3)(v) of this section, he shall grant or deny a motion by issuing an order.

(3) Any individual who has agreed to be bound by the terms of a protective order issued pursuant to paragraph (a) of this section, and who is determined to have violated the terms of the protective order, may be subject to one or more of the following:

(i) An official reprimand by the Commission;

(ii) Disqualification from or limitation of further participation in a pending investigation;

(iii) Temporary or permanent disqualification from practicing in any capacity before the Commission pursuant to § 201.15(a) of this chapter;

(iv) Referral of the facts underlying the violation to the appropriate licensing authority in the jurisdiction in which the individual is licensed to practice;

(v) Sanctions of the sort enumerated in § 210.33(b), or such other action as may be appropriate.

(d) *Reporting requirement.* Each person who is subject to a protective order issued pursuant to paragraph (a) of this section shall report in writing to the Commission immediately upon learning that confidential business information disclosed to him or her pursuant to the protective order is the subject of:

(1) A subpoena;

(2) A court or an administrative order (other than an order of a court reviewing a Commission decision);

(3) A discovery request;

(4) An agreement; or

(5) Any other written request, if the request or order seeks disclosure, by him or any other person, of the subject confidential business information to a person who is not, or may not be, permitted access to that information pursuant to either a Commission protective order or § 210.5(b).

NOTE TO PARAGRAPH (d): This reporting requirement applies only to requests and orders for disclosure made for use of confidential business information in non-Commission proceedings.

(e) *Sanctions and other actions.* After providing notice and an opportunity to comment, the Commission may impose a sanction upon any person who willfully fails to comply with paragraph (d) of this section, or it may take other action.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38323, July 7, 2008; 78 FR 23484, Apr. 19, 2013; 83 FR 21161, May 8, 2018]

Subpart F—Prehearing Conferences and Hearings

§ 210.35 Prehearing conferences.

(a) *When appropriate.* The administrative law judge in any investigation may direct counsel or other representatives for all parties to meet with him for one or more conferences to consider any or all of the following:

(1) Simplification and clarification of the issues;

(2) Negotiation, compromise, or settlement of the case, in whole or in part;

(3) Scope of the hearing;

(4) Necessity or desirability of amendments to pleadings subject, however, to the provisions of § 210.14 (b) and (c);

(5) Stipulations and admissions of either fact or the content and authenticity of documents;

(6) Expedition in the discovery and presentation of evidence including, but not limited to, restriction of the number of expert, economic, or technical witnesses; and

(7) Such other matters as may aid in the orderly and expeditious disposition of the investigation including disclosure of the names of witnesses and the exchange of documents or other physical exhibits that will be introduced in evidence in the course of the hearing.

(b) *Subpoenas.* Prehearing conferences may be convened for the purpose of accepting returns on subpoenas duces tecum issued pursuant to § 210.32(a)(3).

(c) *Reporting.* In the discretion of the administrative law judge, prehearing conferences may or may not be stenographically reported and may or may not be public.

(d) *Order.* The administrative law judge may enter in the record an order that recites the results of the conference. Such order shall include the administrative law judge's rulings upon matters considered at the conference, together with appropriate direction to the parties. The administrative law judge's order shall control the subsequent course of the hearing, unless the administrative law judge modifies the order.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38324, July 7, 2008]

§ 210.36 General provisions for hearings.

(a) *Purpose of hearings.* (1) An opportunity for a hearing shall be provided in each investigation under this part, in accordance with the Administrative Procedure Act. At the hearing, the presiding administrative law judge will take evidence and hear argument for the purpose of determining whether there is a violation of section 337 of the Tariff Act of 1930, and for the purpose of making findings and recommendations, as described in § 210.42(a)(1)(ii), concerning the appropriate remedy and the amount of the bond to be posted by respondents during Presidential review of the Commission's action, under section 337(j) of the Tariff Act.

(2) An opportunity for a hearing in accordance with the Administrative Procedure Act shall also be provided in connection with every motion for temporary relief filed under this part.

(b) *Public hearings.* All hearings in investigations under this part shall be public unless otherwise ordered by the administrative law judge.

(c) *Expedition.* Hearings shall proceed with all reasonable expedition, and, insofar as practicable, shall be held at one place, continuing until completed unless otherwise ordered by the administrative law judge.

(d) *Rights of the parties.* Every hearing under this section shall be conducted in accordance with the Administrative Procedure Act (i.e., 5 U.S.C. §§ 554 through 556). Hence, every party shall have the right of adequate notice, cross-examination, presentation of evidence, objection, motion, argument, and all other rights essential to a fair hearing.

(e) *Presiding official.* An administrative law judge shall preside over each hearing unless the Commission shall otherwise order.

§ 210.37 Evidence.

(a) *Burden of proof.* The proponent of any factual proposition shall be required to sustain the burden of proof with respect thereto.

(b) *Admissibility.* Relevant, material, and reliable evidence shall be admitted. Irrelevant, immaterial, unreliable, or unduly repetitious evidence shall be excluded. Immaterial or irrelevant parts of an admissible document shall be segregated and excluded as far as practicable.

(c) *Information obtained in investigations.* Any documents, papers, books, physical exhibits, or other materials or information obtained by the Commission under any of its powers may be disclosed by the Commission investigative attorney when necessary in connection with investigations and may be offered in evidence by the Commission investigative attorney.

(d) *Official notice.* When any decision of the administrative law judge rests, in whole or in part, upon the taking of official notice of a material fact not appearing in evidence of record, opportunity to disprove such noticed fact shall be granted any party making timely motion therefor.

(e) *Objections.* Objections to evidence shall be made in timely fashion and shall briefly state the grounds relied upon. Rulings on all objections shall appear on the record.

(f) *Exceptions.* Formal exception to an adverse ruling is not required.

(g) *Excluded evidence.* When an objection to a question propounded to a witness is sustained, the examining party may make a specific offer of what he expects to prove by the answer of the witness, or the administrative law judge may in his discretion receive and report the evidence in full. Rejected exhibits, adequately marked for identification, shall be retained with the record so as to be available for consideration by any reviewing authority.

§ 210.38 Record.

(a) *Definition of the record.* The record shall consist of all pleadings, the notice of investigation, motions and responses, all briefs and written statements, and other documents and things properly filed with the Secretary, in addition to all orders, notices, and initial determinations of the administrative law judge, orders and notices of the Commission, hearing and conference transcripts, evidence admitted into the record (including physical exhibits), and any other items certified into the record by the administrative law judge or the Commission.

(b) *Reporting and transcription.* Hearings shall be reported and transcribed

by the official reporter of the Commission under the supervision of the administrative law judge, and the transcript shall be a part of the record.

(c) *Corrections.* Changes in the official transcript may be made only when they involve errors affecting substance. A motion to correct a transcript shall be addressed to the administrative law judge, who may order that the transcript be changed to reflect such corrections as are warranted, after consideration of any objections that may be made. Such corrections shall be made by the official reporter by furnishing substitute typed pages, under the usual certificate of the reporter, for insertion in the transcript. The original uncorrected pages shall be retained in the files of the Commission.

(d) *Certification of record.* The record, including all physical exhibits entered into evidence or such photographic reproductions thereof as the administrative law judge approves, shall be certified to the Commission by the administrative law judge upon his filing of an initial determination or at such earlier time as the Commission may order.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38324, July 7, 2008]

§ 210.39 In camera treatment of confidential information.

(a) *Definition.* Except as hereinafter provided and consistent with §§ 210.5 and 210.34, confidential documents and testimony made subject to protective orders or orders granting in camera treatment are not made part of the public record and are kept confidential in an in camera record. Only the persons identified in a protective order, persons identified in § 210.5(b), and court personnel concerned with judicial review shall have access to confidential information in the in camera record. The right of the administrative law judge and the Commission to disclose confidential data under a protective order (pursuant to § 210.34) to the extent necessary for the proper disposition of each proceeding is specifically reserved.

(b) *Transmission of certain Commission records to district court.* (1) In a civil action involving parties that are also parties to a proceeding before the Commission under section 337 of the Tariff Act of 1930, at the request of a party to a civil action that is also a respondent in the proceeding before the Commission, the district court may stay, until the determination of the Commission becomes final, proceedings in the civil action with respect to any claim that involves the same issues involved in the proceeding before the Commission under certain conditions. If such a stay is ordered by the district court, after the determination of the Commission becomes final and the stay is dissolved, the Commission shall certify to the district court such portions of the record of its proceeding as the district court may request. Notwithstanding paragraph (a) of this section, the in camera record may be transmitted to a district court and be admissible in a civil action, subject to such protective order as the district court determines necessary, pursuant to 28 U.S.C. 1659.

(2) To facilitate timely compliance with any court order requiring the Commission to transmit all or part of the record of its section 337 proceedings to the court, as described in paragraph (b)(1) of this section, a party that requests the court to issue an order staying the civil action or an order dissolving the stay and directing the Commission to transmit all or part of the record to the court must file written notice of the issuance or dissolution of a stay with the Commission Secretary within 10 days of the issuance or dissolution of a stay by the district court.

(c) *In camera treatment of documents and testimony.* The administrative law judge shall have authority to order documents or oral testimony offered in evidence, whether admitted or rejected, to be placed in camera.

(d) *Part of confidential record.* In camera documents and testimony shall constitute a part of the confidential record of the Commission.

(e) *References to in camera information.* In submitting proposed findings, briefs, or other papers, counsel for all parties shall make an attempt in good faith to refrain from disclosing the specific details of in camera documents and testimony. This shall not preclude references in such proposed findings,

briefs, or other papers to such documents or testimony including generalized statements based on their contents. To the extent that counsel consider it necessary to include specific details of in camera data in their presentations, such data shall be incorporated in separate proposed findings, briefs, or other papers marked ''Business Confidential,'' which shall be placed in camera and become a part of the confidential record.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67627, Dec. 30, 1994; 73 FR 38324, July 7, 2008]

§ 210.40 Proposed findings and conclusions and briefs.

At the time a motion for summary determination under § 210.18(a) or a motion for termination under § 210.21(a) is made, or when it is found that a party is in default under § 210.16, or at the close of the reception of evidence in any hearing held pursuant to this part (except as provided in § 210.63), or within a reasonable time thereafter fixed by the administrative law judge, any party may file proposed findings of fact and conclusions of law, together with reasons therefor. When appropriate, briefs in support of the proposed findings of fact and conclusions of law may be filed with the administrative law judge for his consideration. Such proposals and briefs shall be in writing, shall be served upon all parties in accordance with § 210.4(g), and shall contain adequate references to the record and the authorities on which the submitter is relying.

Subpart G—Determinations and Actions Taken

§ 210.41 Termination of investigation.

Except as provided in § 210.21 (b)(2), (c), and (d), an order of termination issued by the Commission shall constitute a determination of the Commission under § 210.45(c). The Commission shall publish in the FEDERAL REGISTER notice of each Commission order that terminates an investigation in its entirety.

[60 FR 53120, Oct. 12, 1995]

§ 210.42 Initial determinations.

(a)(1)(i) *On issues concerning violation of section 337.* Unless otherwise ordered by the Commission, the administrative law judge shall certify the record to the Commission and shall file an initial determination on whether there is a violation of section 337 of the Tariff Act of 1930 in an original investigation no later than 4 months before the target date set pursuant to § 210.51(a)(1).

(ii) *Recommended determination on issues concerning permanent relief, bonding, and the public interest.* Unless the Commission orders otherwise, within 14 days after issuance of the initial determination on violation of section 337 of the Tariff Act of 1930, the administrative law judge shall issue a recommended determination containing findings of fact and recommendations concerning—

(A) The appropriate remedy in the event that the Commission finds a violation of section 337, and

(B) The amount of the bond to be posted by the respondents during Presidential review of Commission action under section 337(j) of the Tariff Act.

(C) The public interest under sections 337(d)(1) and (f)(1) in investigations where the Commission has ordered the administrative law judge under § 210.50(b)(1) to take evidence with respect to the public interest.

(2) *On certain motions to declassify information.* The decision of the administrative law judge granting a motion to declassify information, in whole or in part, shall be in the form of an initial determination as provided in § 210.20(b).

(3) *On potentially dispositive issues.* The administrative law judge shall issue an initial determination ruling on a potentially dispositive issue in accordance with a Commission order pursuant to § 210.10(b)(3). The administrative law judge shall certify the record to the Commission and shall file an initial determination ruling on the potentially dispositive issue designated pursuant to § 210.10(b)(3) within 100 days of institution, or as extended for good cause shown.

(b) *On issues concerning temporary relief or forfeiture of temporary relief bonds.* Certification of the record and the disposition of an initial determination

concerning a motion for temporary relief are governed by §§ 210.65 and 210.66. The disposition of an initial determination concerning possible forfeiture or return of a complainant's temporary relief bond, in whole or in part, is governed by § 210.70.

(c) *On other matters.* (1) The administrative law judge shall grant the following types of motions by issuing an initial determination or shall deny them by issuing an order: a motion to amend the complaint or notice of investigation pursuant to § 210.14(b); a motion for a finding of default pursuant to §§ 210.16 and 210.17; a motion for summary determination pursuant to § 210.18; a motion for intervention pursuant to § 210.19; a motion for termination pursuant to § 210.21; a motion to suspend an investigation pursuant to § 210.23; or a motion to set a target date for an original investigation exceeding 16 months pursuant to § 210.51(a)(1); or a motion to set a target date for a formal enforcement proceeding exceeding 12 months pursuant to § 210.51(a)(2).

(2) The administrative law judge shall grant or deny the following types of motions by issuing an initial determination: a motion for forfeiture or return of respondents' bonds pursuant to § 210.50(d) or a motion for forfeiture or return of a complainant's temporary relief bond pursuant to § 210.70.

(d) *Contents.* The initial determination shall include: an opinion stating findings (with specific page references to principal supporting items of evidence in the record) and conclusions and the reasons or bases therefor necessary for the disposition of all material issues of fact, law, or discretion presented in the record; and a statement that, pursuant to § 210.42(h), the initial determination shall become the determination of the Commission unless a party files a petition for review of the initial determination pursuant to § 210.43(a) or the Commission, pursuant to § 210.44, orders on its own motion a review of the initial determination or certain issues therein.

(e) *Notice to and advice from other departments and agencies.* Notice of such initial determinations as the Commission may order shall be provided to the U.S. Department of Health and Human Services, the U.S. Department of Justice, the Federal Trade Commission, U.S. Customs and Border Protection, and such other departments and agencies as the Commission deems appropriate by posting of such notice on the Commission's website. The Commission shall consider comments, limited to issues raised by the record, the initial determination, and the petitions for review, received from such agencies when deciding whether to initiate review or the scope of review. The Commission shall allow such agencies 10 days after the posting of such notice of an initial determination on the Commission's website to submit their comments.

(f) *Initial determination made by the administrative law judge.* An initial determination under this section shall be made and filed by the administrative law judge who presided over the investigation, except when that person is unavailable to the Commission and except as provided in § 210.20(a).

(g) *Reopening of proceedings by the administrative law judge.* At any time prior to the filing of the initial determination, the administrative law judge may reopen the proceedings for the reception of additional evidence.

(h) *Effect.* (1) An initial determination filed pursuant to § 210.42(a)(2) shall become the determination of the Commission 45 days after the date of service of the initial determination, unless the Commission has ordered review of the initial determination or certain issues therein, or by order has changed the effective date of the initial determination.

(2) An initial determination under § 210.42(a)(1)(i) shall become the determination of the Commission 60 days after the date of service of the initial determination, unless the Commission within 60 days after the date of such service shall have ordered review of the initial determination or certain issues therein or by order has changed the effective date of the initial determination. The findings and recommendations made by the administrative law judge in the recommended determination issued pursuant to § 210.42(a)(1)(ii) will be considered by the Commission in reaching determinations on remedy and bonding by the respondents pursuant to § 210.50(a).

(3) An initial determination filed pursuant to § 210.42(c) shall become the determination of the Commission 30 days after the date of service of the initial determination, except as provided for in paragraph (h)(5) and paragraph (h)(6) of this section, § 210.50(d)(3), and § 210.70(c), unless the Commission, within 30 days after the date of such service shall have ordered review of the initial determination or certain issues therein or by order has changed the effective date of the initial determination.

(4) The disposition of an initial determination granting or denying a motion for temporary relief is governed by § 210.66.

(5) The disposition of an initial determination concerning possible forfeiture of a complainant's temporary relief bond is governed by § 210.70(c).

(6) The disposition of an initial determination filed pursuant to § 210.42(c) which grants a motion for summary determination that would terminate the investigation in its entirety if it were to become the Commission's final determination, shall become the final determination of the Commission 45 days after the date of service of the initial determination, unless the Commission has ordered review of the initial determination or certain issues therein, or by order has changed the effective date of the initial determination.

(7) An initial determination filed pursuant to § 210.42(a)(3) shall become the determination of the Commission 30 days after the date of service of the initial determination, unless the Commission has ordered review of the initial determination or certain issues therein, or by order has changed the effective date of the initial determination.

(i) *Notice of determination.* A notice stating that the Commission's decision on whether to review an initial determination will be issued by the Secretary and served on the parties. Notice of the Commission's decision will be published in the FEDERAL REGISTER if the decision results in termination of the investigation in its entirety, if the Commission deems publication of the notice to be appropriate under § 201.10 of subpart B of this part, or if publication of the notice is required under § 210.49(b) of this subpart or § 210.66(f) of subpart H of this part.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67628, Dec. 30, 1994; 60 FR 53120, Oct. 12, 1995; 73 FR 38324, July 7, 2008; 76 FR 64809, Oct. 19, 2011; 78 FR 23484, Apr. 19, 2013; 83 FR 21162, May 8, 2018]

§ 210.43 Petitions for review of initial determinations on matters other than temporary relief.

(a) *Filing of the petition.* (1) Except as provided in paragraph (a)(2) of this section, any party to an investigation may request Commission review of an initial determination issued under § 210.42(a)(1) or (c), § 210.50(d)(3), § 210.70(c), or § 210.75(b)(3) by filing a petition with the Secretary. A petition for review of an initial determination issued under § 210.42(a)(1) must be filed within 12 days after service of the initial determination. A petition for review of an initial determination issued under § 210.42(a)(3) must be filed within five (5) business days after service of the initial determination. A petition for review of an initial determination issued under § 210.42(c) that terminates the investigation in its entirety on summary determination, or an initial determination issued under § 210.50(d)(3), § 210.70(c), or § 210.75(b)(3), must be filed within 10 days after service of the initial determination. Petitions for review of all other initial determinations under § 210.42(c) must be filed within five (5) business days after service of the initial determination. A petition for review of an initial determination issued under § 210.50(d)(3) or § 210.70(c) must be filed within 10 days after service of the initial determination.

(2) A party may not petition for review of any issue as to which the party has been found to be in default. Similarly, a party or proposed respondent who did not file a response to the motion addressed in the initial determination may be deemed to have consented to the relief requested and may not petition for review of the issues raised in the motion.

(b) *Content of the petition.* (1) A petition for review filed under this section shall identify the party seeking review and shall specify the issues upon which review of the initial determination is

sought, and shall, with respect to each such issue, specify one or more of the following grounds upon which review is sought:

(i) That a finding or conclusion of material fact is clearly erroneous;

(ii) That a legal conclusion is erroneous, without governing precedent, rule or law, or constitutes an abuse of discretion; or

(iii) That the determination is one affecting Commission policy.

(2) The petition for review must set forth a concise statement of the facts material to the consideration of the stated issues, and must present a concise argument providing the reasons that review by the Commission is necessary or appropriate to resolve an important issue of fact, law, or policy. If a petition filed under this paragraph exceeds 50 pages in length, it must be accompanied by a summary of the petition not to exceed ten pages. Petitions for review may not exceed 100 pages in length, exclusive of the summary and any exhibits. Petitions for review may not incorporate statements, issues, or arguments by reference. Any issue not raised in a petition for review will be deemed to have been abandoned by the petitioning party and may be disregarded by the Commission in reviewing the initial determination (unless the Commission chooses to review the issue on its own initiative under § 210.44), and any argument not relied on in a petition for review will be deemed to have been abandoned and may be disregarded by the Commission.

(3) Any petition designated by the petitioner as a ''contingent'' petition for review shall be deemed to be a petition under paragraph (a)(1) of this section and shall be processed accordingly. In order to preserve an issue for review by the Commission or the U.S. Court of Appeals for the Federal Circuit that was decided adversely to a party, the issue must be raised in a petition for review, whether or not the Commission's determination on the ultimate issue, such as a violation of section 337, was decided adversely to the party.

(4) A party's failure to file a petition for review of an initial determination shall constitute abandonment of all issues decided adversely to that party in the initial determination.

(5) *Service of petition.* All petitions for review of an initial determination shall be served on the other parties by messenger, overnight delivery, or equivalent means.

(c) *Responses to the petition.* Any party may file a response within eight (8) days after service of a petition of a final initial determination under § 210.42(a)(1), and within five (5) business days after service of all other types of petitions, except that a party who has been found to be in default may not file a response to any issue as to which the party has defaulted. If a response to a petition for review filed under this paragraph exceeds 50 pages in length, it must be accompanied by a summary of the response not to exceed ten pages. Responses to petitions for review may not exceed 100 pages in length, exclusive of the summary and any exhibits. Responses to petitions for review may not incorporate statements, issues, or arguments by reference. Any argument not relied on in a response will be deemed to have been abandoned and may be disregarded by the Commission.

(d) *Grant or denial of review.* (1) The Commission shall decide whether to grant, in whole or in part, a petition for review of an initial determination filed pursuant to § 210.42(a)(2) or § 210.42(c), which grants a motion for summary determination that would terminate the investigation in its entirety if it becomes the final determination of the Commission, § 210.50(d)(3), or § 210.70(c) within 45 days after the service of the initial determination on the parties, or by such other time as the Commission may order. The Commission shall decide whether to grant, in whole or in part, a petition for review of an initial determination filed pursuant to § 210.42(a)(3) within 30 days after the service of the initial determination on the parties, or by such other time as the Commission may order. The Commission shall decide whether to grant, in whole or in part, a petition for review of an initial determination filed pursuant to § 210.42(c), except as noted above, within 30 days after the service of the initial determination on the parties, or by such other time as the Commission may order.

(2) The Commission shall decide whether to grant a petition for review, based upon the petition and response thereto, without oral argument or further written submissions unless the Commission shall order otherwise. A petition will be granted and review will be ordered if it appears that an error or abuse of the type described in paragraph (b)(1) of this section is present or if the petition raises a policy matter connected with the initial determination, which the Commission thinks it necessary or appropriate to address.

(3) The Commission shall grant a petition for review and order review of an initial determination or certain issues therein when at least one of the participating Commissioners votes for ordering review. In its notice, the Commission shall establish the scope of the review and the issues that will be considered and make provisions for filing of briefs and oral argument if deemed appropriate by the Commission.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67628, Dec. 30, 1994; 60 FR 53120, Oct. 12, 1995; 73 FR 38325, July 7, 2008; 78 FR 23484, Apr. 19, 2013; 83 FR 21162, May 8, 2018]

§ 210.44 Commission review on its own motion of initial determinations on matters other than temporary relief.

Within the time provided in § 210.43(d)(1), the Commission on its own initiative may order review of an initial determination, or certain issues in the initial determination, when at least one of the participating Commissioners votes for ordering review. A self-initiated Commission review of an initial determination will be ordered if it appears that an error or abuse of the kind described in § 210.43(b)(1) is present or the initial determination raises a policy matter which the Commission thinks is necessary or appropriate to address.

§ 210.45 Review of initial determinations on matters other than temporary relief.

(a) *Briefs and oral argument.* In the event the Commission orders review of an initial determination pertaining to issues other than temporary relief, the parties may be requested to file briefs on the issues under review at a time and of a size and nature specified in the notice of review. The parties, within the time provided for filing the review briefs, may submit a written request for a hearing to present oral argument before the Commission, which the Commission in its discretion may grant or deny. The Commission shall grant the request when at least one of the participating Commissioners votes in favor of granting the request.

(b) *Scope of review.* Only the issues set forth in the notice of review, and all subsidiary issues therein, will be considered by the Commission.

(c) *Determination on review.* On review, the Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the initial determination of the administrative law judge. In addition, the Commission may take no position on specific issues or portions of the initial determination of the administrative law judge. The Commission also may make any findings or conclusions that in its judgment are proper based on the record in the proceeding. If the Commission's determination on review terminates the investigation in its entirety, a notice will be published in the FEDERAL REGISTER.

[59 FR 39039, Aug. 1, 1994, as amended at 60 FR 53120, Oct. 12, 1995; 73 FR 38235, July 7, 2008]

§ 210.46 Petitions for and sua sponte review of initial determinations on violation of section 337 or temporary relief.

(a) *Violation of section 337.* An initial determination issued under § 210.42(a)(1)(i) on whether respondents have violated section 337 of the Tariff Act of 1930 will be processed as provided in § 210.42(e), (h)(2), and (i) and §§ 210.43 through 210.45. The Commission will issue a notice setting deadlines for written submissions from the parties, other Federal agencies, and interested members of the public on the issues of remedy, the public interest, and bonding by the respondents. In those submissions, the parties may assert their arguments concerning the recommended determination issued by the administrative law judge pursuant to § 210.42(a)(ii) on the issues of remedy and bonding by respondents.

(b) *Temporary relief.* Commission action on an initial determination concerning temporary relief is governed by § 210.66.

§ 210.47 Petitions for reconsideration.

Within 14 days after service of a Commission determination, any party may file with the Commission a petition for reconsideration of such determination or any action ordered to be taken thereunder, setting forth the relief desired and the grounds in support thereof. Any petition filed under this section must be confined to new questions raised by the determination or action ordered to be taken thereunder and upon which the petitioner had no opportunity to submit arguments. Any party desiring to oppose such a petition shall file an answer thereto within five days after service of the petition upon such party. Any party desiring to oppose such a petition shall file an answer thereto within five days after service of the petition upon such party. The Commission on its own initiative may order reconsideration of a Commission determination or any action ordered to be taken thereunder. The filing of a petition for reconsideration shall not stay the effective date of the determination or action ordered to be taken thereunder or toll the running of any statutory time period affecting such determination or action ordered to be taken thereunder unless specifically so ordered by the Commission.

[59 FR 39039, Aug. 1, 1994, as amended at 83 FR 21162, May 8, 2018]

§ 210.48 Disposition of petitions for reconsideration.

The Commission may affirm, set aside, or modify its determination, including any action ordered by it to be taken thereunder. When appropriate, the Commission may order the administrative law judge to take additional evidence.

§ 210.49 Implementation of Commission action.

(a) *Service of Commission determination upon the parties.* A Commission determination pursuant to § 210.45(c) or a termination on the basis of a licensing or other agreement, a consent order or an arbitration agreement pursuant to § 210.21(b), (c) or (d), respectively, shall be served upon each party to the investigation.

(b) *Publication and transmittal to the President.* A Commission determination that there is a violation of section 337 of the Tariff Act of 1930 or that there is reason to believe that there is a violation, together with the action taken relative to such determination under § 210.50(a) or § 210.50(d) of this part, or the modification or rescission in whole or in part of an action taken under § 210.50(a), shall promptly be published in the FEDERAL REGISTER. It shall also be promptly transmitted to the President or an officer assigned the functions of the President under 19 U.S.C. 1337(j)(1)(B), 1337(j)(2), and 1337(j)(4), together with the record upon which the determination and the action are based.

(c) *Enforceability of Commission action.* Unless otherwise specified, any Commission action other than an exclusion order or an order directing seizure and forfeiture of articles imported in violation of an outstanding exclusion order shall be enforceable upon receipt by the affected party of notice of such action. Exclusion orders and seizure and forfeiture orders shall be enforceable upon receipt of notice thereof by the Secretary of the Treasury.

(d) *Finality of affirmative Commission action.* If the President does not disapprove the Commission's action within a 60-day period beginning the day after a copy of the Commission's action is delivered to the President, or if the President notifies the Commission before the close of the 60-day period that he approves the Commission's action, such action shall become final the day after the close of the 60-day period or the day the President notifies the Commission of his approval, as the case may be.

(e) *Duration.* Final Commission action shall remain in effect as provided in subpart I of this part.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67628, Dec. 30, 1994; 73 FR 38325, July 7, 2008]

§ 210.50 Commission action, the public interest, and bonding by respondents.

(a) During the course of each investigation under this part, the Commission shall—

(1) Consider what action (general or limited exclusion of articles from entry or a cease and desist order, or exclusion of articles from entry under bond or a temporary cease and desist order), if any, it should take, and, when appropriate, take such action;

(2) Consult with and seek advice and information from the U.S. Department of Health and Human Services, the U.S. Department of Justice, the Federal Trade Commission, the U.S. Customs Service, and such other departments and agencies as it considers appropriate, concerning the subject matter of the complaint and the effect its actions (general or limited exclusion of articles from entry or a cease and desist order, or exclusion of articles from entry under bond or a temporary cease and desist order) under section 337 of the Tariff Act of 1930 shall have upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers;

(3) Determine the amount of the bond to be posted by a respondent pursuant to section 337(j)(3) of the Tariff Act of 1930 following the issuance of temporary or permanent relief under section 337(d), (e), (f), or (g) of the Tariff Act of 1930, taking into account the requirement of section 337(e) and (j)(3) that the amount of the bond be sufficient to protect the complainant from any injury.

(4) Receive submissions from the parties, interested persons, and other Government agencies and departments with respect to the subject matter of paragraphs (a)(1) through (3) of this section.

(i) After a recommended determination on remedy is issued by the presiding administrative law judge, the parties may submit to the Commission, within 30 days from service of the recommended determination, information relating to the public interest, including any updates to the information supplied under §§ 210.8(b) and (c) and 210.14(f). Submissions by the parties in response to the recommended determination are limited to 5 pages, inclusive of attachments. This provision does not apply to the public. Dates for submissions from the public are announced in the FEDERAL REGISTER.

(ii) When the matter under consideration pursuant to paragraph (a)(1) of this section is whether to grant some form of permanent relief, the submissions described in paragraph (a)(4) of this section shall be filed by the deadlines specified in the Commission notice issued pursuant to § 210.46(a).

(iii) When the matter under consideration is whether to grant some form of temporary relief, such submissions shall be filed by the deadlines specified in § 210.67(b), unless the Commission orders otherwise.

(iv) Any submission from a party shall be served upon the other parties in accordance with § 210.4(g). The parties' submissions, as well as any filed by interested persons or other agencies shall be available for public inspection in the Office of the Secretary. If a party, interested person, or agency files a confidential version of its submission, it shall file a public version of the submission no later than one business day after the deadline for filing the submission.

(v) The Commission will consider motions for oral argument or, when necessary, a hearing with respect to the subject matter of this section, except that no hearing or oral argument will be permitted in connection with a motion for temporary relief.

(b)(1) With respect to an administrative law judge's authorization to take evidence or other information and to hear arguments from the parties and other interested persons on the issues of appropriate Commission action, the public interest, and bonding by the respondents for purposes of an initial determination on temporary relief, see §§ 210.61, 210.62, and 210.66(a). For purposes of the recommended determination required by § 210.42(a)(1)(ii), an administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons on the issues of appropriate Commission action and bonding by the respondents upon order of

the Commission. Unless the Commission orders otherwise, and except as provided for in paragraph (b)(2) of this section, an administrative law judge shall not take evidence on the issue of the public interest for purposes of the recommended determination under § 210.42(a)(1)(ii).

(2) Regarding terminations by settlement agreement, consent order, or arbitration agreement under § 210.21 (b), (c) or (d), the parties may file statements regarding the impact of the proposed termination on the public interest, and the administrative law judge may hear argument, although no discovery may be compelled with respect to issues relating solely to the public interest. Thereafter, the administrative law judge shall consider and make appropriate findings in the initial determination regarding the effect of the proposed settlement on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers.

(c) No general exclusion from entry of articles shall be ordered under paragraph (a)(1) of this section unless the Commission determines that—

(1) Such exclusion is necessary to prevent circumvention of an exclusion order limited to products of named persons; or

(2) There is a pattern of violation of section 337 of the Tariff Act of 1930 and it is difficult to identify the source of infringing products.

(d) *Forfeiture or return of respondents' bonds.* (1)(i) If one or more respondents posts a bond pursuant to 19 U.S.C. 1337(e)(1) or 1337(j)(3), proceedings to determine whether a respondent's bond should be forfeited to a complainant in whole or part may be initiated upon the filing of a motion, addressed to the administrative law judge who last presided over the investigation, by a complainant within 90 days after the expiration of the period of Presidential review under 19 U.S.C. 1337(j), or if an appeal is taken from the determination of the Commission, within 30 days after the resolution of the appeal. If that administrative law judge is no longer employed by the Commission, the motion shall be addressed to the chief administrative law judge.

(ii) A respondent may file a motion addressed to the administrative law judge who last presided over the investigation for the return of its bond within 90 days after the expiration of the Presidential review period under 19 U.S.C. 1337(j), or if an appeal is taken from the determination of the Commission, within 30 days after the resolution of the appeal. If that administrative law judge is no longer employed by the Commission, the motion shall be addressed to the chief administrative law judge.

(2) Any nonmoving party may file a response to a motion filed under paragraph (d)(1) of this section within 15 days after filing of the motion, unless otherwise ordered by the administrative law judge.

(3) A motion for forfeiture or return of a respondent's bond in whole or part will be adjudicated by the administrative law judge in an initial determination with a 45-day effective date, which shall be subject to review under the provisions of §§ 210.42 through 210.45. In determining whether to grant the motion, the administrative law judge and the Commission will be guided by practice under Rule 65 of the Federal Rules of Civil Procedure (taking into account that the roles of the parties are reversed in this instance).

(4) If the Commission determines that a respondent's bond should be forfeited to a complainant, and if the bond is being held by the Secretary of the Treasury, the Commission Secretary shall promptly notify the Secretary of the Treasury of the Commission's determination.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67628, Dec. 30, 1994; 73 FR 38326, July 7, 2008; 76 FR 64809, Oct. 19, 2011; 78 FR 23485, Apr. 19, 2013; 83 FR 21162, May 8, 2018]

§ 210.51 Period for concluding investigation.

(a) *Permanent relief.* Within 45 days after institution of an original investigation on whether there is a violation of section 337, or an investigation which is a formal enforcement proceeding, the administrative law judge shall issue an order setting a target

date for completion of the investigation. After the target date has been set, it can be modified by the administrative law judge for good cause shown before the investigation is certified to the Commission or by the Commission after the investigation is certified to the Commission.

(1) *Original investigations.* If the target date does not exceed 16 months from the date of institution of an original investigation, the order of the administrative law judge shall be final and not subject to interlocutory review. If the target date exceeds 16 months, the order of the administrative law judge shall constitute an initial determination. Any extension of the target date beyond 16 months, before the investigation is certified to the Commission, shall be by initial determination.

(2) *Formal enforcement proceedings.* If the target date does not exceed 12 months from the date of institution of the formal enforcement proceeding, the order of the administrative law judge shall be final and not subject to interlocutory review. If the target date exceeds 12 months, the order of the administrative law judge shall constitute an initial determination. Any extension of the target date beyond 12 months, before the formal enforcement proceeding is certified to the Commission, shall be by initial determination.

(b) *Temporary relief.* The temporary relief phase of an investigation shall be concluded and a final order issued no later than 90 days after publication of the notice of investigation in the FEDERAL REGISTER, unless the temporary relief phase of the investigation has been designated ''more complicated'' by the Commission or the presiding administrative law judge pursuant to § 210.22(c) and § 210.60. If that designation has been made, the temporary relief phase of the investigation shall be concluded and a final order issued no later than 150 days after publication of the notice of investigation in the FEDERAL REGISTER.

(c) *Computation of time.* In computing the deadlines imposed in paragraph (b) of this section, there shall be excluded any period during which the investigation is suspended pursuant to § 210.23.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67629, Dec. 30, 1994; 61 FR 43432, Aug. 23, 1996; 73 FR 38326, July 7, 2008; 78 FR 23485, Apr. 19, 2013]

Subpart H—Temporary Relief

§ 210.52 Motions for temporary relief.

Requests for temporary relief under section 337 (e) or (f) of the Tariff Act of 1930 shall be made through a motion filed in accordance with the following provisions:

(a) A complaint requesting temporary relief shall be accompanied by a motion setting forth the complainant's request for such relief. In determining whether to grant temporary relief, the Commission will apply the standards the U.S. Court of Appeals for the Federal Circuit uses in determining whether to affirm lower court decisions granting preliminary injunctions. The motion for temporary relief accordingly must contain a detailed statement of specific facts bearing on the factors the Federal Circuit has stated that a U.S. District Court must consider in granting a preliminary injunction.

(b) The motion must also contain a detailed statement of facts bearing on:

(1) Whether the complainant should be required to post a bond as a prerequisite to the issuance of temporary relief; and

(2) The appropriate amount of the bond, if the Commission determines that a bond will be required.

(c) In determining whether to require a bond as a prerequisite to the issuance of temporary relief, the Commission will be guided by practice under Rule 65 of the Federal Rules of Civil Procedure.

(d) The following documents and information also shall be filed along with the motion for temporary relief:

(1) A memorandum of points and authorities in support of the motion;

(2) Affidavits executed by persons with knowledge of the facts asserted in the motion; and

(3) All documents, information, and other evidence in complainant's possession that complainant intends to submit in support of the motion.

(e) If the complaint, the motion for temporary relief, or the documentation supporting the motion for temporary relief contains confidential business information as defined in § 201.6(a) of this chapter, the complainant must follow the procedure outlined in §§ 210.4(a), 210.5(a), 201.6 (a) and (c), 210.8(a), and 210.55 of this part.

[59 FR 39039, Aug. 1, 1994, as amended at 59 FR 67629, Dec. 30, 1994; 60 FR 32444, June 22, 1995]

§ 210.53 Motion filed after complaint.

(a) A motion for temporary relief may be filed after the complaint, but must be filed prior to the Commission determination under § 210.10 on whether to institute an investigation. A motion filed after the complaint shall contain the information, documents, and evidence described in § 210.52 and must also make a showing that extraordinary circumstances exist that warrant temporary relief and that the moving party was not aware, and with due diligence could not have been aware, of those circumstances at the time the complaint was filed. When a motion for temporary relief is filed after the complaint but before the Commission has determined whether to institute an investigation based on the complaint, the 35-day period allotted under § 210.58 for review of the complaint and informal investigatory activity will begin to run anew from the date on which the motion was filed.

(b) A motion for temporary relief may not be filed after an investigation has been instituted.

§ 210.54 Service of motion by the complainant.

Notwithstanding the provisions of § 210.11 regarding service of the complaint by the Commission upon institution of an investigation, on the day the complainant files a complaint and motion for temporary relief, if any, with the Commission (see § 210.8(a)(1) and (a)(2) of subpart B of this part), the complainant must serve non-confidential copies of both documents (as well as non-confidential copies of all materials or documents attached thereto) on all proposed respondents and on the embassy in Washington, DC of the country in which each proposed respondent is located as indicated in the Complaint. If a complainant files any supplemental information with the Commission prior to institution, nonconfidential copies of that supplemental information must be served on all proposed respondents and on the embassy in Washington, DC of the country in which each proposed respondent is located as indicated in the complaint. The complaint, motion, and supplemental information, if any, shall be served by messenger, overnight delivery, or equivalent means. A signed certificate of service must accompany the complaint and motion for temporary relief. If the certificate does not accompany the complaint and the motion, the Secretary shall not accept the complaint or the motion and shall promptly notify the submitter. Actual proof of service on each respondent and embassy (e.g., certified mail return receipts, messenger, or overnight delivery receipts, or other proof of delivery)—or proof of a serious but unsuccessful effort to make such service—must be filed within 10 days after the filing of the complaint and motion. If the requirements of this section are not satisfied, the Commission may extend its 35-day deadline under § 210.58 for determining whether to provisionally accept the motion for temporary relief and institute an investigation on the basis of the complaint.

[73 FR 38326, July 7, 2008, as amended at 78 FR 23485, Apr. 19, 2013]

§ 210.55 Content of service copies.

(a) Any purported confidential business information that is deleted from the nonconfidential service copies of the complaint and motion for temporary relief must satisfy the requirements of § 201.6(a) of this chapter (which defines confidential information for purposes of Commission proceedings). For attachments to the complaint or motion that are confidential in their entirety, the complainant must provide a nonconfidential summary of what each attachment contains. Despite the redaction of confidential material from the complaint and motion for temporary relief, the nonconfidential service copies must contain enough factual information

about each element of the violation alleged in the complaint and the motion to enable each proposed respondent to comprehend the allegations against it.

(b) If the Commission determines that the complaint, motion for temporary relief, or any exhibits or attachments thereto contain excessive designations of confidentiality that are not warranted under § 201.6(a) of this chapter, the Commission may require the complainant to file and serve new non-confidential versions of the aforesaid submissions in accordance with § 210.54 and may determine that the 35-day period under § 210.58 for deciding whether to institute an investigation and to provisionally accept the motion for temporary relief for further processing shall begin to run anew from the date the new non-confidential versions are filed with the Commission and served on the proposed respondents in accordance with § 210.54.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38326, July 7, 2008]

§ 210.56 Notice accompanying service copies.

(a) Each service copy of the complaint and motion for temporary relief shall be accompanied by a notice containing the following text:

Notice is hereby given that the attached complaint and motion for temporary relief will be filed with the U.S. International Trade Commission in Washington, DC on _____, 20__. The filing of the complaint and motion will not institute an investigation on that date, however, nor will it begin the period for filing responses to the complaint and motion pursuant to 19 CFR 210.13 and 210.59.

Upon receipt of the complaint, the Commission will examine the complaint for sufficiency and compliance with 19 CFR 210.4, 210.5, 210.8, and 210.12. The Commission's Office of Unfair Import Investigations will conduct informal investigatory activity pursuant to 19 CFR 210.9 to identify sources of relevant information and to assure itself of the availability thereof. The motion for temporary relief will be examined for sufficiency and compliance with 19 CFR 201.8, 210.4, 210.5, 210.52, 210.53(a) (if applicable), 210.54, 210.55, and 210.56, and will be subject to the same type of preliminary investigative activity as the complaint.

The Commission generally will determine whether to institute an investigation on the basis of the complaint and whether to provisionally accept the motion for temporary relief within 35 days after the complaint and motion are filed or, if the motion is filed after the complaint, within 35 days after the motion is filed—unless the 35-day deadline is extended pursuant to 19 CFR 210.53, 210.54, 210.55(b), 210.57, or 210.58. If the Commission determines to institute an investigation and provisionally accept the motion, the motion will be assigned to a Commission administrative law judge for issuance of an initial determination in accordance with 19 CFR 210.66. See 19 CFR 210.10 and 210.58.

If the Commission determines to conduct an investigation of the complaint and motion for temporary relief, the investigation will be formally instituted on the date the Commission publishes a notice of investigation in the FEDERAL REGISTER pursuant to 19 CFR 210.10(b). If an investigation is instituted, copies of the complaint, the notice of investigation, and the Commission's Rules of Practice and Procedure (19 CFR Part 210) will be served on each respondent by the Commission pursuant to 19 CFR 210.11(a). Responses to the complaint, the notice of investigation, and the motion for temporary relief must be filed within 10 days after Commission service thereof, and must comply with 19 CFR 201.8, 210.4, 210.5, 210.13, and 210.59. See also 19 CFR 201.14 and 210.6 regarding computation of the 10-day response period.

If, after reviewing the complaint and motion for temporary relief, the Commission determines not to institute an investigation, the complaint and motion will be dismissed and the Commission will provide written notice of that decision and the reasons therefor to the complainant and all proposed respondents pursuant to 19 CFR 210.10.

For information concerning the filing and processing of the complaint and its treatment, and to ask general questions concerning section 337 practice and procedure, contact the Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Room 401, Washington, DC 20436, telephone 202–205–2560. Such inquiries will be referred to the Commission investigative attorney assigned to the complaint. (See also the Commissions's Rules of Practice and Procedure set forth in 19 CFR Part 210.)

To learn the date that the Commission will vote on whether to institute an investigation and the publication date of the notice of investigation (if the Commission decides to institute an investigation), contact the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., room 112, Washington, DC 20436, telephone 202–205–2000.

This notice is being provided pursuant to 19 CFR 210.56.

(b) In the event that the complaint and motion for temporary relief are filed after the date specified in the above notice, the complainant must serve a supplementary notice to all

proposed respondents and embassies stating the correct filing date. The supplementary notice shall be served by messenger, overnight delivery, or equivalent means. The complainant shall file a certificate of service and a copy of the supplementary notice with the Commission.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38326, July 7, 2008; 78 FR 23485, Apr. 19, 2013]

§ 210.57 Amendment of the motion.

A motion for temporary relief may be amended at any time prior to the institution of an investigation. All material filed to amend the motion (or the complaint) must be served on all proposed respondents and on the embassies in Washington, DC, of the foreign governments that they represent, in accordance with § 210.54. If the amendment expands the scope of the motion or changes the complainant's assertions on the issue of whether a bond is to be required as a prerequisite to the issuance of temporary relief or the appropriate amount of the bond, the 35-day period under § 210.58 for determining whether to institute an investigation and provisionally accept the motion for temporary relief shall begin to run anew from the date the amendment is filed with the Commission. A motion for temporary relief may not be amended to expand the scope of the temporary relief inquiry after an investigation is instituted.

§ 210.58 Provisional acceptance of the motion.

The Commission shall determine whether to accept a motion for temporary relief at the same time it determines whether to institute an investigation on the basis of the complaint. That determination shall be made within 35 days after the complaint and motion for temporary relief are filed, unless the 35-day period is restarted pursuant to § 210.53(a), § 210.54, § 210.55, or § 210.57, or exceptional circumstances exist which preclude adherence to the prescribed deadline. (See § 210.10(a)(1).) Before the Commission determines whether to provisionally accept a motion for temporary relief, the motion will be examined for sufficiency and compliance with §§ 210.52, 210.53(a) (if applicable), 210.54 through 210.56, as well as §§ 210.4 and 210.5. The motion will be subject to the same type of preliminary investigatory activity as the complaint. (See § 210.9(b).) Acceptance of a motion pursuant to this paragraph constitutes provisional acceptance for referral of the motion to the chief administrative law judge, who will assign the motion to a presiding administrative law judge for issuance of an initial determination under § 210.66(a). Commission rejection of an insufficient or improperly filed complaint will preclude acceptance of a motion for temporary relief. Commission rejection of a motion for temporary relief will not preclude institution of an investigation of the complaint.

[59 FR 39039, Aug. 1, 1994, as amended at 78 FR 23846, Apr. 19, 2013]

§ 210.59 Responses to the motion and the complaint.

(a) Any party may file a response to a motion for temporary relief. Unless otherwise ordered by the administrative law judge, a response to a motion for temporary relief in an ordinary investigation must be filed not later than 10 days after service of the motion by the Commission. In a ''more complicated'' investigation, the response shall be due within 20 days after such service, unless otherwise ordered by the presiding administrative law judge.

(b) The response must comply with the requirements of §§ 210.4 and 210.5 of this part, and shall contain the following information:

(1) A statement that sets forth with particularity any objection to the motion for temporary relief;

(2) A statement of specific facts concerning the factors the U.S. Court of Appeals for the Federal Circuit would consider in determining whether to affirm lower court decisions granting or denying preliminary injunctions;

(3) A memorandum of points and authorities in support of the respondent's response to the motion;

(4) Affidavits, where possible, executed by persons with knowledge of the facts specified in the response. Each response to the motion must address, to the extent possible, the complainant's assertions regarding whether a bond

should be required and the appropriate amount of the bond. Responses to the motion for temporary relief also may contain counter-proposals concerning the amount of the bond or the manner in which the bond amount should be calculated.

(c) Each response to the motion for temporary relief must also be accompanied by a response to the complaint and notice of investigation. Responses to the complaint and notice of investigation must comply with §§ 210.4 and 210.5 of this part, and any protective order issued by the administrative law judge under § 210.34 of this part.

[59 FR 39039, Aug. 1, 1994, as amended at 78 FR 23846, Apr. 19, 2013

§ 210.60 Designating the temporary relief phase of an investigation more complicated for the purpose of adjudicating a motion for temporary relief.

(a) At the time the Commission determines to institute an investigation and provisionally accepts a motion for temporary relief pursuant to § 210.58, or at any time thereafter, the Commission may designate the temporary relief phase of an investigation ''more complicated'' pursuant to § 210.60(b) for the purpose of obtaining up to 60 additional days to adjudicate the motion for temporary relief. In the alternative, after the motion for temporary relief is referred to the administrative law judge for an initial determination under § 210.66(a), the administrative law judge may issue an order, sua sponte or on motion, designating the temporary relief phase of the investigation ''more complicated'' for the purpose of obtaining additional time to adjudicate the motion for temporary relief. Such order shall constitute a final determination of the Commission, and notice of the order shall be published in the FEDERAL REGISTER. As required by section 337(e)(2) of the Tariff Act of 1930, the notice shall state the reasons that the temporary relief phase of the investigation was designated ''more complicated.'' The ''more complicated'' designation may be conferred by the Commission or the presiding administrative law judge pursuant to this paragraph on the basis of the complexity of the issues raised in the motion for temporary relief or the responses thereto, or for other good cause shown.

(b) A temporary relief phase is designated more complicated owing to the subject matter, difficulty in obtaining information, the large number of parties involved, or other significant factors.

[59 FR 39039, Aug. 1, 1994, as amended at 78 FR 23846, Apr. 19, 2013

§ 210.61 Discovery and compulsory process.

The presiding administrative law judge shall set all discovery deadlines. The administrative law judge's authority to compel discovery includes discovery relating to the following issues:

(a) Any matter relevant to the motion for temporary relief and the responses thereto, including the issues of bonding by the complainant; and

(b) The issues the Commission considers pursuant to sections 337 (e)(1), (f)(1), and (j)(3) of the Tariff Act of 1930, viz.,

(1) The appropriate form of relief (notwithstanding the form requested in the motion for temporary relief),

(2) Whether the public interest precludes that form of relief, and

(3) The amount of the bond to be posted by the respondents to secure importations or sales of the subject imported merchandise while the temporary relief order is in effect. The administrative law judge may, but is not required to, make findings on the issues specified in sections 337 (e)(1), (f)(1), or (j)(3) of the Tariff Act of 1930. Evidence and information obtained through discovery on those issues will be used by the parties and considered by the Commission in the context of the parties' written submissions on remedy, the public interest, and bonding by respondents, which are filed with the Commission pursuant to § 210.67(b).

§ 210.62 Evidentiary hearing.

An opportunity for a hearing in accordance with the Administrative Procedure Act and § 210.36 of this part will be provided in connection with every

motion for temporary relief. If a hearing is conducted, the presiding administrative law judge may, but is not required to, take evidence concerning the issues of remedy, the public interest, and bonding by respondents under section 337 (e)(1), (f)(1), and (j)(3) of the Tariff Act of 1930.

§ 210.63 Proposed findings and conclusions and briefs.

The administrative law judge shall determine whether and, if so, to what extent the parties shall be permitted to file proposed findings of fact, proposed conclusions of law, or briefs under § 210.40 concerning the issues involved in adjudication of the motion for temporary relief.

§ 210.64 Interlocutory appeals.

There will be no interlocutory appeals to the Commission under § 210.24 on any matter connected with a motion for temporary relief that is decided by an administrative law judge prior to the issuance of the initial determination on the motion for temporary relief.

§ 210.65 Certification of the record.

When the administrative law judge issues an initial determination concerning temporary relief pursuant to § 210.66(a), he shall also certify to the Commission the record upon which the initial determination is based.

§ 210.66 Initial determination concerning temporary relief; Commission action thereon.

(a) On or before the 70th day after publication of the notice of investigation in an ordinary investigation, or on or before the 120th day after such publication in a ''more complicated'' investigation, the administrative law judge will issue an initial determination concerning the issues listed in §§ 210.52 and 210.59. If the 70th day or the 120th day is a Saturday, Sunday, or Federal holiday, the initial determination must be received in the Office of the Secretary no later than 12:00 noon on the first business day after the 70-day or 120-day deadline. The initial determination may, but is not required to, address the issues of remedy, the public interest, and bonding by the respondents pursuant under sections 337 (e)(1), (f)(1), and (j)(3) of the Tariff Act of 1930.

(b) If the initial determination on temporary relief is issued on the 70-day or 120-day deadline imposed in paragraph (a) of this section, the initial determination will become the Commission's determination 20 calendar days after issuance thereof in an ordinary case, and 30 calendar days after issuance in a ''more complicated'' investigation, unless the Commission modifies, reverses, or sets aside the initial determination in whole or part within that period. If the initial determination on temporary relief is issued before the 70-day or 120-day deadline imposed in paragraph (a) of this section, the Commission will add the extra time to the 20-day or 30-day deadline to which it would otherwise have been held. In computing the deadlines imposed by this paragraph, intermediary Saturdays, Sundays, and Federal holidays shall be included. If the last day of the period is a Saturday, Sunday, or Federal holiday as defined in § 201.14(a) of this chapter, the effective date of the initial determination shall be extended to the next business day.

(c) The Commission will not modify, reverse, or set aside an initial determination concerning temporary relief unless the Commission finds that a finding of material fact is clearly erroneous, that the initial determination contains an error of law, or that there is a policy matter warranting discussion by the Commission. All parties may file written comments concerning any clear error of material fact, error of law, or policy matter warranting such action by the Commission. Such comments must be limited to 35 pages in an ordinary investigation and 45 pages in a ''more complicated'' investigation. The comments must be filed no later than seven calendar days after issuance of the initial determination in an ordinary case and 10 calendar days after issuance of the initial determination in a ''more complicated'' investigation. In computing the aforesaid 7-day and 10-day deadlines, intermediary

Saturdays, Sundays, and Federal holidays shall be included. If the initial determination is issued on a Friday, however, the filing deadline for comments shall be measured from the first business day after issuance. If the last day of the filing period is a Saturday, Sunday, or Federal holiday as defined in § 201.14(a) of this chapter, the filing deadline shall be extended to the next business day. The parties shall serve their comments on other parties by messenger, overnight delivery, or equivalent means.

(d) Notice of the initial determination shall be served on the other agencies listed in § 210.50(a)(2). Those agencies will be given 10 calendar days from the date of service of the notice to file comments on the initial determination.

(e)(1) Each party may file a response to each set of comments filed by another party. All such reply comments must be filed within 10 calendar days after issuance of the initial determination in an ordinary case and within 14 calendar days after issuance of an initial determination in a ''more complicated'' investigation. The deadlines for filing reply comments shall be computed in the manner described in paragraph (c) of this section, except that in no case shall a party have fewer than two calendar days to file reply comments.

(2) Each set of reply comments will be limited to 20 pages in an ordinary investigation and 30 pages in a ''more complicated'' case.

(f) If the Commission determines to modify, reverse, or set aside the initial determination, the Commission will issue a notice and, if appropriate, a Commission opinion. If the Commission does not modify, reverse, or set aside the administrative law judge's initial determination within the time provided under paragraph (b) of this section, the initial determination will automatically become the determination of the Commission. Notice of the Commission's determination concerning the initial determination will be issued on the statutory deadline for determining whether to grant temporary relief, or as soon as possible thereafter, and will be served on the parties. Notice of the determination will be published in the FEDERAL REGISTER if the Commission's disposition of the initial determination has resulted in a determination that there is reason to believe that section 337 has been violated and a temporary remedial order is to be issued. If the Commission determines (either by reversing or modifying the administrative law judge's initial determination, or by adopting the initial determination) that the complainant must post a bond as a prerequisite to the issuance of temporary relief, the Commission may issue a supplemental notice setting forth conditions for the bond if any (in addition to those outlined in the initial determination) and the deadline for filing the bond with the Commission.

[59 FR 39039, Aug. 1, 1994, as amended at 60 FR 53121, Oct. 12, 1995; 73 FR 38326, July 7, 2008]

§ 210.67 Remedy, the public interest, and bonding.

The procedure for arriving at the Commission's determination of the issues of the appropriate form of temporary relief, whether the public interest factors enumerated in the statute preclude such relief, and the amount of the bond under which respondents' merchandise will be permitted to enter the United States during the pendency of any temporary relief order issued by the Commission, is as follows:

(a) While the motion for temporary relief is before the administrative law judge, he may compel discovery on matters relating to remedy, the public interest and bonding (as provided in § 210.61). The administrative law judge also is authorized to make findings pertaining to the public interest, as provided in § 210.66(a). Such findings may be superseded, however, by Commission findings on that issue as provided in paragraph (c) of this section.

(b) On the 65th day after institution in an ordinary case or on the 110th day after institution in a ''more complicated'' investigation, all parties shall file written submissions with the Commission addressing those issues. The submissions shall refer to information and evidence already on the record, but additional information and evidence germane to the issues of appropriate relief, the statutory public

interest factors, and bonding by respondents may be provided along with the parties' submissions. Pursuant to § 210.50(a)(4), interested persons may also file written comments, on the aforesaid dates, concerning the issues of remedy, the public interest, and bonding by the respondents.

(c) On or before the 90-day or 150-day statutory deadline for determining whether to order temporary relief under section 337 (e)(1) and/or (f)(1) of the Tariff Act of 1930, the Commission will determine what relief is appropriate in light of any violation that appears to exist, whether the public interest factors enumerated in the statute preclude the issuance of such relief, and the amount of the bond under which the respondents' merchandise will be permitted to enter the United States during the pendency of any temporary relief order issued by the Commission. In the event that Commission's findings on the public interest pursuant to this paragraph are inconsistent with findings made by the administrative law judge in the initial determination pursuant to § 210.66(a), the Commission's findings are controlling.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38326, July 7, 2008]

§ 210.68 Complainant's temporary relief bond.

(a) In every investigation under this part involving a motion for temporary relief, the question of whether the complainant shall be required to post a bond as a prerequisite to the issuance of such relief shall be addressed by the parties, the presiding administrative law judge, and the Commission in the manner described in §§ 210.52, 210.59, 210.61, 210.62, and 210.66. If the Commission determines that a bond should be required, the bond may consist of one or more of the following:

(1) The surety bond of a surety or guarantee corporation that is licensed to do business with the United States in accordance with 31 U.S.C. 9304–9306 and 31 CFR parts 223 and 224;

(2) The surety bond of an individual, a trust, an estate, or a partnership, or a corporation, whose solvency and financial responsibility will be investigated and verified by the Commission; or

(3) A certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other Government obligation within the meaning of 31 U.S.C. 9301 and 31 CFR part 225, which is owned by the complainant and tendered in lieu of a surety bond, pursuant to 31 U.S.C. 9303(c) and 31 CFR part 225.

The same restrictions and requirements applicable to individual and corporate sureties on Customs bonds, which are set forth in 19 CFR part 113, shall apply with respect to sureties on bonds filed with the Commission by complainants as a prerequisite to a temporary relief under section 337 of the Tariff Act of 1930. If the surety is an individual, the individual must file an affidavit of the type shown in appendix A to § 210.68. Unless otherwise ordered by the Commission, while the bond of the individual surety is in effect, an updated affidavit must be filed every four months (computed from the date on which the bond was approved by the Secretary or the Commission).

(b) The bond and accompanying documentation must be submitted to the Commission within the time specified in the Commission notice, order, determination, or opinion requiring the posting of a bond, or within such other time as the Commission may order. If the bond is not submitted within the specified period (and an extension of time has not been granted), temporary relief will not be issued.

(c) The corporate or individual surety on a bond or the person posting a certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other Government obligation in lieu of a surety bond must provide the following information on the face of the bond or in the instrument authorizing the Government to collect or sell the bond, certified check, bank draft, post office money order, cash, United States bond, Treasury note, or other Government obligation in response to a Commission order requiring forfeiture of the bond pursuant to § 210.70:

(1) The investigation caption and docket number;

(2) The names, addresses, and seals (if appropriate) of the principal, the surety, the obligee, as well as the ''attorney in fact'' and the registered process agent (if applicable) (see Customs Service regulations in 19 CFR part 113 and Treasury Department regulations in 31 CFR parts 223, 224, and 225);

(3) The terms and conditions of the bond obligation, including the reason the bond is being posted, the amount of the bond, the effective date and duration of the bond (as prescribed by the Commission order, notice, determination, or opinion requiring the complainant to post a bond); and

(4) A section at the bottom of the bond or other instrument for the date and authorized signature of the Secretary to reflect Commission approval of the bond.

(d) Complainants who wish to post a certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other Government obligation in lieu of a surety bond must notify the Commission in writing immediately upon receipt of the Commission document requiring the posting of a bond, and must contact the Secretary to make arrangements for Commission receipt, handling, management, and deposit of the certified check, bank draft, post office money order, cash, United States bond, Treasury note, or other Government obligation tendered in lieu of a surety bond, in accordance with 31 U.S.C. § 9303, 31 CFR parts 202, 206, and 225 and other governing Treasury regulations and circular(s). If required by the governing Treasury regulations and circular, a certified check, a bank draft, a post office money order, cash, a United States bond, a Treasury note, or other government obligation tendered in lieu of a surety bond may have to be collateralized. See, e.g., 31 CFR 202.6 and the appropriate Treasury Circular.

APPENDIX A TO § 210.68—AFFIDAVIT BY INDIVIDUAL SURETY

United States International Trade Commission
Affidavit by Individual Surety 19 CFR 210.68

State of _____

County _____

SS: _____

I, the undersigned, being duly sworn, depose and say that I am a citizen of the United States, and of full age and legally competent; that I am not a partner in any business of the principal on the bond or bonds on which I appear as surety; and that the information herein below furnished is true and complete to the best of my knowledge. This affidavit is made to induce the United States International Trade Commission to accept me as surety on the bond(s) filed or to be filed with the United States International Trade Commission pursuant to 19 CFR 210.68. I agree to notify the Commission of any transfer or change in any of the assets herein enumerated.

1. Name (First, Middle, Last) _____

2. Home Address _____

3. Type & Duration of Occupation _____

4. Name of Employer (If Self-Employed) _____

5. Business Address _____

6. Telephone No.

Home _____

Business _____

7. The following is a true representation of my assets, liabilities, and net worth and does not include any financial interest I have in the assets of the principal on the bond(s) on which I appear as surety.

a. Fair value of solely owned real estate *.	
b. All mortgages or other encumbrances on the real estate included in Line a	.....
c. Real estate equity (subtract Line b from Line a)	.....
d. Fair value of all solely owned property other than real estate	.....
e. Total of the amounts on Lines c and d	.....
f. All other liabilities owing or incurred not included in Line b	.....
g. Net worth (subtract Line f from Line e)	.....

*Do not include property exempt from execution and sale for any reason. Surety's interest in community property may be included if not so exempt.

8. LOCATION AND DESCRIPTION OF REAL ESTATE OF WHICH I AM SOLE OWNER, THE VALUE OF WHICH IS IN LINE a, ITEM 7 ABOVE[1]

Amount of assessed value of above real estate for taxation purposes:

9. DESCRIPTION OF PROPERTY INCLUDED IN LINE d, ITEM 7 ABOVE (List the value of each category of property separately)[2]

10. ALL OTHER BONDS ON WHICH I AM SURETY (State character and amount of each bond; if none, so state)[3]

11. SIGNATURE

12. BOND AND COMMISSION INVESTIGATION TO WHICH THIS AFFIDAVIT RELATES

SUBSCRIBED AND SWORN TO BEFORE ME AS FOLLOWS:

DATE OATH ADMINISTERED

MONTH DAY YEAR

CITY

STATE (Or Other Jurisdiction)

NAME & TITLE OF OFFICIAL ADMINISTERING OATH

SIGNATURE

MY COMMISSION EXPIRES

INSTRUCTIONS

1. Here describe the property by giving the number of the lot and square or block, and addition or subdivision, if in a city, and, if in the country, after showing state, county, and township, locate the property by metes and bounds, or by part of section, township, and range, so that it may be identified.

2. Here describe the property by name so that it can be identified—for example ''Fifteen shares of the stock of the ''National Metropolitan Bank, New York City,'' or ''Am. T. & T. s. f.5's 60.''

3. Here state what other bonds the affiant has already signed as surety, giving the name and address of the principal, the date, and the amount and character of the bond.

[59 FR 39039, Aug. 1, 1994; 59 FR 64286, Dec. 14, 1994]

§ 210.69 Approval of complainant's temporary relief bond.

(a) In accordance with 31 U.S.C. § 9304(b), all bonds posted by complainants must be approved by the Commission before the temporary relief sought by the complainant will be issued. See also 31 U.S.C. § 9303(a) and 31 CFR 225.1 and 225.20. The Commission's bond approval officer for purposes of those provisions shall be the Secretary.

(b) The bond approval process may entail investigation by the Secretary or the Commission's Office of Investigations to determine the veracity of all factual information set forth in the bond and the accompanying documentation (e.g., powers of attorney), as well as any additional verification required by 31 CFR parts 223, 224, or 225. The Secretary may reject a bond on one or more of the following grounds:

(1) Failure to comply with the instructions in the Commission determination, order, or notice directing the complainant to post a bond;

(2) Failure of the surety or the bond to provide information or supporting documentation required by the Commission, the Secretary, § 210.68 of this part, 31 CFR parts 223 or 224, or other governing statutes, regulations, or Treasury circulars, or because of a limitation prescribed in a governing statute, regulation, or circular;

(3) Failure of an individual surety to execute and file with the bond, an affidavit of the type shown in appendix A to § 210.68, which sets forth information about the surety's assets, liabilities, net worth, real estate and other property of which the initial surety is the sole owner, other bonds on which the individual surety is a surety (and which must be updated at 4-month intervals while the bond is in effect, measured from the date on which the bond is approved by the Secretary on behalf of the Commission or by the Commission);

(4) Any question about the solvency or financial responsibility of the surety, or any question of fraud, misrepresentation, or perjury which comes to light as a result of the verification inquiry during the bond approval process; and

(5) Any other reason deemed appropriate by the Secretary.

(c) If the complainant believes that the Secretary's rejection of the bond was erroneous as a matter of law, the complainant may appeal the Secretary's rejection of the bond by filing a petition with the Commission in the form of a letter to the Chairman, within 10 days after service of the rejection letter.

(d) After the bond is approved and temporary relief is issued, if any question concerning the continued solvency of the individual or the legality or enforceability of the bond or undertaking develops, the Commission may take the following action(s), sua sponte or on motion;

(1) Revoke the Commission approval of the bond and require complainant to post a new bond; or

(2) Revoke or vacate the temporary remedial order for public interest reasons or changed conditions of law or fact (criteria that are the basis for modification or rescission of final Commission action pursuant to § 210.76(a)(1) and (b)); or

(3) Notify the Treasury Department if the problem involves a corporate surety licensed to do business with the United States under 31 U.S.C. §§ 9303–9306 and 31 CFR parts 223 and 224; or

(4) Refer the matter to the U.S. Department of Justice if there is a suggestion of fraud, perjury, or related conduct.

§ 210.70 Forfeiture or return of complainant's temporary relief bond.

(a)(1) If the Commission determines that one or more of the respondents whose merchandise was covered by the temporary relief order has not violated section 337 of the Tariff Act of 1930 to the extent alleged in the motion for temporary relief and provided for in the temporary relief order, proceedings to determine whether the complainant's bond should be forfeited to one or more respondents in whole or part may be initiated upon the filing of a motion by a respondent within 30 days after filing of the aforesaid Commission determination on violation.

(2) A complainant may file a motion for the return of its bond.

(b) Any nonmoving party may file a response to a motion filed under paragraph (a) of this section within 15 days after filing of the motion, unless otherwise ordered by the administrative law judge.

(c) A motion for forfeiture or return of a complainant's temporary relief bond in whole or part will be adjudicated by the administrative law judge in an initial determination with a 45-day effective date, which shall be subject to review under the provisions of §§ 210.42 through 210.45. In determining whether to grant the motion, the administrative law judge and the Commission will be guided by practice under Rule 65 of the Federal Rules of Civil Procedure.

[59 FR 67629, Dec. 30, 1994]

Subpart I—Enforcement Procedures and Advisory Opinions

§ 210.71 Information gathering.

(a) *Power to require information.* (1) Whenever the Commission issues an exclusion order, the Commission may require any person to report facts available to that person that will help the Commission assist the U.S. Customs Service in determining whether and to what extent there is compliance with the order. Similarly, whenever the Commission issues a cease and desist order or a consent order, it may require any person to report facts available to that person that will aid the Commission in determining whether and to what extent there is compliance with the order or whether and to what extent the conditions that led to the order are changed.

(2) The Commission may also include provisions that exercise any other information-gathering power available to the Commission by law, regardless of whether the order at issue is an exclusion order, a cease and desist order, or a consent order. The Commission may at any time request the cooperation of any person or agency in supplying it with information that will aid the Commission or the U.S. Customs Service in making the determinations described in paragraph (a)(1) of this section.

(b) *Form and detail of reports.* Reports under paragraph (a) of this section are to be in writing, under oath, and in such detail and in such form as the Commission prescribes.

(c) *Power to enforce informational requirements.* Terms and conditions of exclusion orders, cease and desist orders, and consent orders for reporting and information gathering shall be enforceable by the Commission by a civil action under 19 U.S.C. 1333, or, at the Commission's discretion, in the same manner as any other provision of the exclusion order, cease and desist order, or consent order is enforced.

(d) *Term of reporting requirement.* An exclusion order, cease and desist order, or consent order may provide for the frequency of reporting or information gathering and the date on which these activities are to terminate. If no date for termination is provided, reporting

and information gathering shall terminate when the exclusion order, cease and desist order, or consent order or any amendment to it expires by its own terms or is terminated.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38327, July 7, 2008]

§ 210.72 Confidentiality of information.

Confidential information (as defined in § 201.6(a) of this chapter) that is provided to the Commission pursuant to exclusion order, cease and desist order, or consent order will be received by the Commission in confidence. Requests for confidential treatment shall comply with § 201.6 of this chapter. The restrictions on disclosure and the procedures for handling such information (which are set out in §§ 210.5 and 210.39) shall apply and, in a proceeding under § 210.75 or § 210.76, the Commission or the presiding administrative law judge may, upon motion or sua sponte, issue or continue appropriate protective orders.

§ 210.73 Review of reports.

(a) *Review to insure compliance.* The Commission, through the Office of Unfair Import Investigations, will review reports submitted pursuant to any exclusion order, cease and desist order, or consent order and conduct such further investigation as it deems necessary to insure compliance with its orders.

(b) *Extension of time.* The Director of the Office of Unfair Import Investigations may, for good cause shown, extend the time in which reports required by exclusion orders, cease and desist orders, and consent orders may be filed. An extension of time within which a report may be filed, or the filing of a report that does not evidence full compliance with the order, does not in any circumstances suspend or relieve a respondent from its obligation under the law with respect to compliance with such order.

§ 210.74 Modification of reporting requirements.

(a) *Exclusion and cease and desist orders.* The Commission may modify reporting requirements of exclusion and cease and desist orders as necessary:

(1) To help the Commission assist the U.S. Customs Service in ascertaining that there has been compliance with an outstanding exclusion order;

(2) To help the Commission ascertain that there has been compliance with a cease and desist order;

(3) To take account of changed circumstances; or

(4) To minimize the burden of reporting or informational access.

An order to modify reporting requirements shall identify the reports involved and state the reason or reasons for modification. No reporting requirement will be suspended during the pendency of such a modification unless the Commission so orders. The Commission may, if the public interest warrants, announce that a modification of reporting is under consideration and ask for comment, but it may also modify any reporting requirement at any time without notice, consistent with the standards of this section.

(b) *Consent orders.* Consistent with the standards set forth in paragraph (a) of this section, the Commission may modify reporting requirements of consent orders. The Commission shall serve notice of any proposed change, together with the reporting requirements to be modified and the reasons therefor, on each party subject to the consent order. Such parties shall be given the opportunity to submit briefs to the Commission, and the Commission may hold a hearing on the matter. Notice of any proposed change in the reporting requirements will be published in the FEDERAL REGISTER if the Commission determines to solicit public comment on the proposed change.

[59 FR 39039, Aug. 1, 1994, as amended at 60 FR 53121, Oct. 12, 1995]

§ 210.75 Proceedings to enforce exclusion orders, cease and desist orders, consent orders, and other Commission orders.

(a) *Formal enforcement proceedings.* (1) The Commission may institute an enforcement proceeding at the Commission level upon the filing by the complainant in the original investigation or his successor in interest, by the Office of Unfair Import Investigations, or by the Commission of a complaint setting forth alleged violations of any exclusion order, cease and desist order, or

consent order. If a proceeding is instituted, the complaint shall be served upon the alleged violator and a notice of institution published in the FEDERAL REGISTER. Within 15 days after the date of service of such a complaint, the named respondent shall file a response to it. Responses shall fully advise the Commission as to the nature of any defense and shall admit or deny each allegation of the complaint specifically and in detail unless the respondent is without knowledge, in which case its answer shall so state and the statement shall operate as a denial. Allegations of fact not denied or controverted may be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered. These proceedings are authorized under section 337(b) as investigations on whether there is a violation of section 337 in the same manner as original investigations, and are conducted in accordance with the laws for original investigations as set forth in section 1337 of title 19 and sections 554, 555, 556, 557, and 702 of title 5 of the United States Code and the rules of this part.

(i) The determination of whether to institute shall be made within 30 days after the complaint is filed, unless—

(A) Exceptional circumstances preclude adherence to a 30-day deadline;

(B) The filing party requests that the Commission postpone the determination on whether to institute an investigation; or

(C) The filing party withdraws the complaint.

(ii) If exceptional circumstances preclude Commission adherence to the 30-day deadline for determining whether to institute an investigation on the basis of the complaint, the determination will be made as soon after that deadline as possible.

(iii) If the filing party desires to have the Commission postpone making a determination on whether to institute an investigation in response to the complaint, the filing party must file a written request with the Secretary. If the request is granted, the determination will be rescheduled for whatever date is appropriate in light of the facts.

(iv) The filing party may withdraw the complaint as a matter of right at any time before the Commission votes on whether to institute an enforcement proceeding. To effect such withdrawal, the filing party must file a written notice with the Commission.

(2) Upon the failure of a respondent to file and serve a response within the time and in the manner prescribed herein the Commission, in its discretion, may find the facts alleged in the complaint to be true and take such action as may be appropriate without notice or hearing, or, in its discretion, proceed without notice to take evidence on the allegations set forth in the complaint, provided that the Commission (or administrative law judge, if one is appointed) may permit late filings of an answer for good cause shown.

(3) The Commission, in the course of a formal enforcement proceeding under this section, may hold a public hearing and afford the parties to the enforcement proceeding the opportunity to appear and be heard. The Commission may delegate the hearing to the chief administrative law judge for designation of a presiding administrative law judge, who shall certify an initial determination to the Commission. A presiding administrative law judge shall certify the record and issue the enforcement initial determination to the Commission no later than three months before the target date for completion of a formal enforcement proceeding. Parties may file petitions for review, and responses thereto, in accordance with § 210.43 of this part. The enforcement initial determination shall become the determination of the Commission 45 days after the date of service of the enforcement initial determination, unless the Commission, within 45 days after the date of such service, shall have ordered review of the enforcement initial determination on certain issues therein, or by order shall have changed the effective date of the enforcement initial determination.

(4) Upon conclusion of a formal enforcement proceeding under this section, the Commission may:

(i) Modify a cease and desist order, consent order, and/or exclusion order in any manner necessary to prevent the unfair practices that were originally the basis for issuing such order;

(ii) Bring civil actions in a United States district court pursuant to paragraph (c) of this section (and section 337(f)(2) of the Tariff Act of 1930) to recover for the United States the civil penalty accruing to the United States under that section for the breach of a cease and desist order or a consent order, and to obtain a mandatory injunction incorporating the relief the Commission deems appropriate for enforcement of the cease and desist order or consent order; or

(iii) Revoke the cease and desist order or consent order and direct that the articles concerned be excluded from entry into the United States.

(iv) Issue a new cease and desist order as necessary to prevent the unfair practices that were the basis for originally issuing the cease and desist order, consent order, and/or exclusion order subject to the enforcement proceeding.

(5) Prior to effecting any issuance, modification, revocation, or exclusion under this section, the Commission shall consider the effect of such action upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers.

(6) In lieu of or in addition to taking the action provided for in paragraph (b)(1) of this section, the Commission may issue, pursuant to section 337(i) of the Tariff Act of 1930, an order providing that any article imported in violation of the provisions of section 337 of the Tariff Act of 1930 and an outstanding final exclusion order issued pursuant to section 337(d) of the Tariff Act of 1930 be seized and forfeited to the United States, if the following conditions are satisfied:

(i) The owner, importer, or consignee of the article (or the agent of such person) previously attempted to import the article into the United States;

(ii) The article previously was denied entry into the United States by reason of a final exclusion order; and

(iii) Upon such previous denial of entry, the Secretary of the Treasury provided the owner, importer, or consignee of the article (or the agent of such person) with written notice of the aforesaid exclusion order and the fact that seizure and forfeiture would result from any further attempt to import the article into the United States.

(b) *Court enforcement.* To obtain judicial enforcement of an exclusion order, a cease and desist order, a consent order, or a sanctions order, the Commission may initiate a civil action in the U.S. district court. In a civil action under section 337(f)(2) of the Tariff Act of 1930, the Commission may seek to recover for the United States the civil penalty accruing to the United States under that section for the breach of a cease and desist order or a consent order, and may ask the court to issue a mandatory injunction incorporating the relief the Commission deems appropriate for enforcement of the cease and desist order or consent order. The Commission may initiate a proceeding to obtain judicial enforcement without any other type of proceeding otherwise available under section 337 or this subpart or without prior notice to any person, except as required by the court in which the civil action is initiated.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38327, July 7, 2008; 78 FR 23486, Apr. 19, 2013; 83 FR 21163, May 8, 2018]

§ 210.76 Modification or rescission of exclusion orders, cease and desist orders, consent orders, and seizure and forfeiture orders.

(a) *Petitions for modification or rescission of exclusion orders, cease and desist orders, and consent orders.* (1) Whenever any person believes that changed conditions of fact or law, or the public interest, require that an exclusion order, cease and desist order, or consent order be modified or set aside, in whole or in part, such person may request, pursuant to section 337(k)(1) of the Tariff Act of 1930, that the Commission make a determination that the conditions which led to the issuance of an exclusion order, cease and desist order, or consent order no longer exist. The Commission may also on its own initiative consider such action. The request shall state the changes desired and the changed circumstances or public interest warranting such action, shall include materials and argument in support thereof, and shall be served on all parties to the investigation in which the exclusion order, cease and desist

order, or consent order was issued. Any person may file an opposition to the petition within 10 days of service of the petition. If the Commission makes such a determination, it shall notify the Secretary of the Treasury and U.S. Custom and Border Protection.

(2) If the petitioner previously has been found by the Commission to be in violation of section 337 of the Tariff Act of 1930 and if its petition requests a Commission determination that the petitioner is no longer in violation of that section or requests modification or rescission of an order issued pursuant to section 337 (d), (e), (f), (g), or (i) of the Tariff Act of 1930, the burden of proof in any proceeding initiated in response to the petition pursuant to paragraph (b) of this section shall be on the petitioner. In accordance with section 337(k)(2) of the Tariff Act, relief may be granted by the Commission with respect to such petition on the basis of new evidence or evidence that could not have been presented at the prior proceeding or on grounds that would permit relief from a judgment or order under the Federal Rules of Civil Procedure.

(3) If the petition requests modification or rescission of an order issued pursuant to section 337(d), (e), (f), (g), or (i) of the Tariff Act of 1930 on the basis of a licensing or other settlement agreement, the petition shall contain copies of the licensing or other settlement agreements, any supplemental agreements, any documents referenced in the petition or attached agreements, and a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation. If the licensing or other settlement agreement contains confidential business information within the meaning of § 201.6(a) of this chapter, a copy of the agreement with such information deleted shall accompany the motion. On motion for good cause shown, the administrative law judge or the Commission may limit the service of the agreements to the settling parties and the Commission investigative attorney.

(b) *Commission action upon receipt of petition.* The Commission may thereafter institute a proceeding to modify or rescind the exclusion order, cease and desist order, or consent order by issuing a notice. The Commission may hold a public hearing and afford interested persons the opportunity to appear and be heard. After consideration of the petition, any responses thereto, and any information placed on the record at a public hearing or otherwise, the Commission shall take such action as it deems appropriate. The Commission may delegate any hearing under this section to the chief administrative law judge for designation of a presiding administrative law judge, who shall certify a recommended determination to the Commission.

(1) The determination of whether to institute shall be made within 30 days after the petition is filed, unless—

(i) Exceptional circumstances preclude adherence to a 30-day deadline;

(ii) The petitioner requests that the Commission postpone the determination on whether to institute a modification or rescission proceeding; or

(iii) The petitioner withdraws the petition.

(2) If exceptional circumstances preclude Commission adherence to the 30-day deadline for determining whether to institute a modification or rescission proceeding on the basis of the petition, the determination will be made as soon after that deadline as possible.

(3) If the petitioner desires to have the Commission postpone making a determination on whether to institute a modification or rescission proceeding in response to the petition, the petitioner must file a written request with the Secretary. If the request is granted, the determination will be rescheduled for a date that is appropriate in light of the facts.

(4) The petitioner may withdraw the complaint as a matter of right at any time before the Commission votes on whether to institute a modification or rescission proceeding. To effect such withdrawal, the petitioner must file a written notice with the Commission.

(5) The Commission shall institute a modification or rescission proceeding by publication of a notice in the FEDERAL REGISTER. The notice will define the scope of the modification or rescission proceeding and may be amended by leave of the Commission.

(c) *Comments.* Parties may submit comments on the recommended determination within 10 days from the service of the recommended determination. Parties may submit responses thereto within 5 business days from service of any comments.

[59 FR 39039, Aug. 1, 1994, as amended at 61 FR 43433, Aug. 23, 1996; 78 FR 23486, Apr. 19, 2013; 83 FR 21163, May 8, 2018]

§ 210.77 [Reserved]

§ 210.78 Notice of enforcement action to Government agencies.

(a) *Consultation.* The Commission may consult with or seek information from any Government agency when taking any action under this subpart.

(b) *Notification of Treasury.* The Commission shall notify the Secretary of the Treasury of any action under this subpart that results in a permanent or temporary exclusion of articles from entry, or the revocation of an order to such effect, or the issuance of an order compelling seizure and forfeiture of imported articles.

§ 210.79 Advisory opinions.

(a) *Advisory opinions.* Upon request of any person, the Commission may, upon such investigation as it deems necessary, issue an advisory opinion as to whether any person's proposed course of action or conduct would violate a Commission exclusion order, cease and desist order, or consent order. Any responses to a request for an advisory opinion shall be filed within 10 days of service of the request. The Commission will consider whether the issuance of such an advisory opinion would facilitate the enforcement of section 337 of the Tariff Act of 1930, would be in the public interest, and would benefit consumers and competitive conditions in the United States, and whether the person has a compelling business need for the advice and has framed his request as fully and accurately as possible. Advisory opinion proceedings are not subject to sections 554, 555, 556, 557, and 702 of title 5 of the United States Code.

(1) The determination of whether to issue and advisory opinion shall be made within 30 days after the petition is filed, unless—

(i) Exceptional circumstances preclude adherence to a 30-day deadline;

(ii) The requester asks the Commission to postpone the determination on whether to institute an advisory proceeding; or

(iii) The petitioner withdraws the request.

(2) If exceptional circumstances preclude Commission adherence to the 30-day deadline for determining whether to institute an advisory proceeding on the basis of the request, the determination will be made as soon after that deadline as possible.

(3) If the requester desires that the Commission postpone making a determination on whether to institute an advisory proceeding in response to its request, the requester must file a written request with the Secretary. If the request is granted, the determination will be rescheduled for whatever date is appropriate in light of the facts.

(4) The requester may withdraw the request as a matter of right at any time before the Commission votes on whether to institute an advisory proceeding. To effect such withdrawal, the requester must file a written notice with the Commission.

(5) The Commission shall institute an advisory proceeding by publication of a notice in the FEDERAL REGISTER. The notice will define the scope of the advisory opinion and may be amended by leave of the Commission.

(b) *Revocation.* The Commission may at any time reconsider any advice given under this section and, where the public interest requires, revoke its prior advice. In such event the person will be given notice of the Commission's intent to revoke as well as an opportunity to submit its views to the Commission. The Commission will not proceed against a person for violation of an exclusion order, cease and desist order, or consent order with respect to any action that was taken in good faith reliance upon the Commission's advice under this section, if all relevant facts were accurately presented to the Commission and such action was

promptly discontinued upon notification of revocation of the Commission's advice.

[59 FR 39039, Aug. 1, 1994, as amended at 73 FR 38327, July 7, 2008; 83 FR 21164, May 8, 2018]

APPENDIX A TO PART 210—ADJUDICATION AND ENFORCEMENT

Initial determination concerning:	Petitions for review due:	Response to petitions due:	Commission deadline for determining whether to review the initial determination:
1. Violation §210.42(a)(1)	12 days from service of the initial determination.	8 days from service of any petition.	60 days from service of the initial determination (on private parties).
2. Summary initial determination that would terminate the investigation if it became the Commission's final determination §210.42(c).	10 days from service of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination (on private parties).
3. Other matters §210.42(c) ...	5 business days from service of the initial determination.	5 business days from service of any petition.	30 days from service of the initial determination (on private parties).
4. Forfeiture or return of respondents' bond §210.50(d)(3).	10 days from service of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination (on private parties).
5. Forfeiture or return of complainant's temporary relief bond §210.70(c).	10 days from service of the initial determination.	5 business days from service of any petition.	45 days from service of the initial determination (on private parties).
6. Formal enforcement proceedings §210.75(b).	10 days from service of the enforcement initial determination.	5 business days from service of any petition.	45 days from service of the enforcement initial determination (on private parties).

[78 FR 23486, Apr. 19, 2013]

APPENDIX B TO PART 210—ADJUDICATION AND ENFORCEMENT

Recommended determination concerning:	Comments due:	Response to comments due:
Modification or Rescission §210.76(a)(1)	10 days from service of the recommended determination.	5 business days from service of any comments.

[78 FR 23487, Apr. 19, 2013]

PART 212—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT

Subpart A—General Provisions

Subpart B—Information Required From Applicants

Subpart C—Procedures for Considering Applications

AUTHORITY: Sec. 203(a)(1), Pub. L. 96–481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)).

SOURCE: 47 FR 9391, Mar. 5, 1982, unless otherwise noted.

Subpart A—General Provisions

§ 212.01 Purpose.

(a) The Equal Access to Justice Act, 5 U.S.C. 504 (called ''the Act'' in this part), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called ''adversary adjudications'') before an agency. Under the Act an eligible party may receive an award when it prevails over an agency, unless the agency's position in the proceeding was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the Commission proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Commission will use to make them.

§ 212.02 When the Act applies.

The Act applies to any adversary adjudication pending before the Commission at any time between October 1, 1981 and September 30, 1984. This includes proceedings begun before October 1, 1981 if final Commission action has not been taken before that date, and proceedings pending on September 30, 1984, regardless of when they were initiated or when final Commission action occurs.

§ 212.03 Proceedings covered.

(a) The Act applies to adversary adjudications conducted by the Commission. These are adjudications under 5 U.S.C. 554 in which the position of the Commission is presented by an attorney or other representative who enters an appearance and participates in the proceeding. The Commission proceedings covered are those conducted under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337. No award shall be made, however, for fees and expenses related to those portions of the proceedings conducted for the consideration of relief, the public interest, and bonding pursuant to subsections 337 (d), (e), and (f) of the Tariff Act of 1930 and 19 CFR 210.14.

(b) An award may be made against the Commission only in connection with a proceeding brought by the Commission upon its own complaint.

(c) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 212.04 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award. The term *party* is defined in 5 U.S.C. 551(3) and 19 CFR 210.04. The applicant must show that it meets all conditions of eligibility set out in this subpart and in subpart B.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $1 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $5 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1144j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than $5 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the adversary adjudication was initiated.

(d) An applicant who owns an unincorporated business will be considered to be an ''individual'' rather than a ''sole owner of an unincorporated business'' if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the presiding officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the presiding officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

§ 212.05 Standards for awards.

(a) The determination whether an applicant is a prevailing party shall be made on a case-by-case basis.

(b) A prevailing applicant may receive an award for fees and expenses incurred in connection with an adversary adjudication, or in a significant and discrete substantive portion of the adversary adjudication, unless the position of the Commission investigative attorney was substantially justified. The burden of proof that an award should not be made to an eligible prevailing applicant is on the Commission investigative attorney. An award may be avoided by showing that the position of the Commission was reasonable in law and fact.

(c) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the adversary adjudication or if special circumstances make the award sought unjust. The burden of proof that an award should be reduced or denied for either of these reasons is on the Commission investigative attorney.

§ 212.06 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

(b) No award for the fee of an attorney or agent under these rules may exceed $75.00 per hour. No award to compensate an expert witness may exceed the highest rate at which the Commission pays expert witnesses. However, an award may include the reasonable expenses of the attorney, agent, or expert witness as a separate item if the attorney, agent or expert witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the presiding officer shall consider the following:

(1) If the attorney, agent or expert witness is in private practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the service;

(2) The prevailing rate for similar services in the community in which the attorney, agent or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the adversary adjudication; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded to the extent that the charge for the service does not exceed the prevailing rate for similar services and the study or other matter was necessary for preparation of the applicant's case.

§ 212.07 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the Commission may adopt regulations providing that attorney fees may be awarded at a rate higher than $75 per hour in the proceedings covered by this part. The Commission will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act.

(b) Any person may file with the Commission a petition for rulemaking to increase the maximum rate for attorney fees. The petition should identify the rate the petitioner believes the Commission should establish. It should also explain fully the reasons why the higher rate is warranted. The Commission will respond to the petition within 60 days after it is filed by initiating a rulemaking proceeding, denying the petition, or taking other appropriate action.

Subpart B—Information Required From Applicants

§ 212.10 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the adversary adjudication for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the Commission investigative attorney that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $1 million (if an individual) or $5 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes the Commission to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

§ 212.11 Net worth exhibit.

(a) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 212.04(f) of this part) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The presiding officer may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the presiding officer in a sealed envelope labeled ''Confidential Financial Information,'' accompanied

by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain in detail why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1)–(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on the Commission investigative attorney or counsel representing another agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the presiding officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the Commission's established procedures under the Freedom of Information Act, 19 CFR 201.17–201.21.

§ 212.12 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The presiding officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 212.13 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the adversary adjudication or in a significant and discrete substantive portion of the adversary adjudication, but in no case later than 30 days after the Commission's final disposition of the adversary adjudication.

(b) If review or reconsideration is sought or taken of a determination as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

Subpart C—Procedures for Considering Applications

§ 212.20 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the adversary adjudication in the same manner as other pleadings in the adversary adjudication, except as provided in § 212.11(b) for confidential financial information.

§ 212.21 Answer to application.

(a) Within 30 days after service of an application, the Commission investigative attorney shall file an answer to the application.

(b) If the applicant and the Commission investigative attorney believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the presiding officer upon request by the applicant and the Commission investigative attorney.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the position of the Commission. If the answer is based on any alleged facts not already in the record of the adversary adjudication, the Commission investigative attorney shall include with the answer supporting affidavits or a request for further proceedings under § 212.25.

§ 212.22 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts

not already in the record of the adversary adjudication, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 212.25.

§ 212.23 Comments by other parties.

Any party to the adversary adjudication other than the applicant and the Commission investigative attorney may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the presiding officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 212.24 Settlement.

The applicant and the Commission may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying adversary adjudication, or after the underlying adversary adjudication has been concluded. If a prevailing party and the Commission investigative attorney agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 212.25 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or the Commission investigative attorney, or on his or her own initiative, the presiding officer may in his or her discretion order further proceedings, such as an informal conference, oral argument, additional written submissions or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible.

(b) A request that the presiding officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

§ 212.26 Determination.

The presiding officer shall issue a recommended determination on the application within 90 days after completion of proceedings on the application. The determination shall include written findings and conclusions on the applicant's eligibility and status as prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The determination shall also include, if at issue, findings on whether the position of the Commission investigative attorney was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust.

§ 212.27 Agency review.

Except as otherwise authorized by the presiding officer, the parties shall be allowed ten (10) days from the date of service of the recommended determination to file exceptions to the recommended determination and alternative findings of fact and conclusions of law with the Commission. Upon receipt of the recommended determination, the Commission shall review the same and issue a final determination on the application or remand the application to the presiding officer for further proceedings.

§ 212.28 Judicial review.

Judicial review of final Commission determinations on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 212.29 Payment of award.

An applicant seeking payment of an award shall submit to the Office of Finance of the Commission a copy of the Commission's final determination granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. The address for submission to the Commission is: United States International Trade Commission, Office of Finance, 500 E Street SW., Washington, DC 20436. The Commission will pay the amount to the

applicant within 60 days, unless judicial review of the award or of the underlying determination of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

[68 FR 32979, June 3, 2003]

SUBCHAPTER D—SPECIAL PROVISIONS

PART 213—TRADE REMEDY ASSISTANCE

Sec.

AUTHORITY: 19 U.S.C. 1335, 1339.

SOURCE: 54 FR 33883, Aug. 17, 1989, unless otherwise noted.

§ 213.1 Purpose and applicability of part.

(a) Section 339 of the Tariff Act of 1930, as amended, establishes in the Commission an office known as the Trade Remedy Assistance Office and directs the Commission to provide general information to the public, upon request, and, to the extent feasible, assistance and advice to interested parties concerning the remedies and benefits available under the trade laws identified in §213.2(b) and the procedures to be followed and appropriate filing dates in investigations under the trade laws. In coordination with other agencies administering the trade laws, the Trade Remedy Assistance Office also shall provide technical assistance, as defined in §213.2(d), to eligible small businesses seeking to obtain the remedies and benefits available under the trade laws.

(b) The rules in this part govern the establishment of the Trade Remedy Assistance Office, its function, small business eligibility for technical assistance and procedures for obtaining such assistance. Members of the public seeking general information from the Trade Remedy Assistance Office are not subject to the application procedures set forth in this part.

§ 213.2 Definitions.

(a) *Office*. The Trade Remedy Assistance Office (hereinafter *Office*) provides general information to the public, upon request, and, to the extent feasible, assistance and advice to interested parties concerning the remedies and benefits available under the trade laws identified in §213.2(b) and the procedures to be followed and appropriate filing dates in investigations under those trade laws. In coordination with other agencies responsible for administering the trade laws listed in §213.2(b), the Office also provides technical assistance, as defined in §213.2(d) to eligible small businesses that seek to obtain remedies and benefits under the trade laws. The Office's address is Trade Remedy Assistance Office, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

(b) *Trade laws*. The trade laws (with respect to which general information and technical assistance are available) are defined as:

(1) Chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 *et seq.*, relating to injury caused by import competition);

(2) Chapters 2 and 3 of such title II (relating to adjustment assistance for workers and firms);

(3) Chapter 1 of title III of the Trade Act of 1974 (19 U.S.C. 2411 *et seq.*, relating to relief from foreign import restrictions and export subsidies);

(4) Title VII of the Tariff Act of 1930 (19 U.S.C. 1671 *et seq.*, relating to the imposition of countervailing duties and antidumping duties);

(5) Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862, relating to the safeguarding of national security);

(6) Section 337 of the Tariff Act of 1930 (19 U.S.C. 1337, relating to unfair practices in import trade); and

(7) Section 406 of the Trade Act of 1974 (19 U.S.C. 2436, relating to market disruption).

(c) *Administering agencies*. Administering agency refers to the agency or agencies responsible for administering a particular trade law. The trade laws relating to injury caused by import competition, unfair practices in import trade and market disruption are administered by the Commission. The trade laws relating to countervailing and antidumping duties are jointly administered by the Commission and the

Department of Commerce. The trade laws relating to adjustment assistance for firms and safeguarding national security are administered by the Department of Commerce. The trade law relating to adjustment assistance for workers is administered by the Department of Labor. The trade law relating to relief from foreign import restrictions and export subsidies is administered by the United States Trade Representative.

(d) *Technical assistance*. Technical assistance is informal advice and assistance, including informal legal advice, provided under 19 U.S.C. 1339(b) and intended to enable eligible small businesses to determine the appropriateness of pursuing particular trade remedies, to prepare petitions and complaints and to seek to obtain the remedies and benefits available under the trade laws identified in §213.2(b). Technical assistance is available to eligible small businesses at any time until the completion of administrative review or of an appeal to the administering agency regarding proceedings under the trade laws listed in §213.2(b). Technical assistance does not include legal representation of an eligible small business or advocacy on its behalf and receipt of technical assistance does not ensure that the recipient will prevail in any trade remedy proceeding. The Office provides such technical assistance independently of other Commission staff but may consult with other staff as appropriate.

(e) *Applicant*. An applicant is an individual, partnership, corporation, joint venture, trade or other association, cooperative, group of workers, or certified or recognized union, or other entity that applies for technical assistance under this part.

(f) *Eligible small business*. An eligible small business is an applicant that the Office has determined to be entitled to technical assistance under 19 U.S.C. 1339(b) in accordance with the SBA size standards and the procedures set forth in this part.

(g) *SBA size standards*. The Office has adopted for its use SBA size standards, which are the small business size standards of the Small Business Administration set forth in 13 CFR part 121.

[54 FR 33883, Aug. 17, 1989, as amended at 80 FR 39380, July 9, 2015

§ 213.3 Determination of small business eligibility.

(a) *Application for technical assistance from small businesses*. An applicant for technical assistance under 19 U.S.C. 1339(b) must certify that it qualifies as a small business under the appropriate size standard(s) and that it is an independently owned and operated company. An application for technical assistance is available from the Office and on the Commission's Web site. The application must be signed under oath by an officer or principal of the applicant. The completed application should be submitted to the Office at the address set forth in §213.2(a).

(b) *Application for technical assistance from joint applicants, trade associations and unions*. If several businesses jointly or simultaneously from the same industry apply for technical assistance, each business must meet the appropriate SBA size standard(s) and so certify. If a trade association applies for technical assistance, an officer of the trade association must certify that eighty (80) percent of the trade association's members are companies that meet the appropriate size standard(s) and provide a listing of members of the association. If a union applies for technical assistance, an officer of the union must certify that the union has less than ten thousand (10,000) members within the industry for which trade relief is being sought. Applications for trade associations or for unions to request technical assistance are available from the Office. Applications must be signed under oath by an officer of the association or union and completed applications should be submitted to the Office as set forth in §213.2(a).

(c) *Determination of eligibility and notification of determination*. The Office shall determine whether the applicant is eligible for technical assistance and notify the applicant of the determination within ten (10) days of receipt of a properly completed application. Pursuant to 19 U.S.C. 1339(c)(1), the Office's

determination of eligibility is not reviewable by any other agency or by any court.

(d) *Notification to administering agencies.* When an applicant seeks technical assistance on matters involving the trade laws, and the Office determines that the applicant is eligible for technical assistance, the Office shall:

(1) Promptly notify the appropriate administering agency or agencies of the Office's determination that the applicant is eligible to receive technical assistance; and

(2) Consult with the administering agency or agencies as to the provision of technical assistance to that applicant.

[54 FR 33883, Aug. 17, 1989, as amended at 80 FR 39380, July 9, 2015

§ 213.4 Disclosure of receipt of technical assistance.

An eligible small business that has received technical assistance from the Office must state that it has received technical assistance from the Trade Remedy Assistance Office in any resulting petition, complaint or application which is filed with the Commission or any other agency which administers the trade law under which remedies or benefits are sought.

§ 213.5 Access to Commission resources.

Commission resources, in addition to the Office's resources, are available to an eligible small business to the same extent as those resources are available to members of the general public. No special rights of access to Commission resources shall be accorded to an eligible small business.

§ 213.6 Information concerning assistance.

Any person may contact the Office with questions regarding eligibility for technical assistance. Summaries of the trade laws and the SBA size standards can be obtained by writing to the Trade Remedy Assistance Office, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Information is also provided on the Commission's Web site at *http://www.usitc.gov*.

[80 FR 39380, July 9, 2015]

PARTS 214–219 [RESERVED]

PART 220—PROCESS FOR CONSIDERATION OF PETITIONS FOR DUTY SUSPENSIONS AND REDUCTIONS

Sec.

AUTHORITY: 19 U.S.C. 1335; Public Law 114–159, 130 Stat. 396 (19 U.S.C. 1332 note).

SOURCE: 81 FR 67149, Sept. 30, 2016, unless otherwise noted.

§ 220.1 Applicability of part.

This part applies to proceedings of the Commission under the American Manufacturing Competitiveness Act of 2016, Public Law 114–159, 130 Stat. 396 (19 U.S.C. 1332 note).

§ 220.2 Definitions applicable to this part.

For the purposes of this part, the following terms have the meanings hereby assigned to them:

(a) *Act* means the American Manufacturing Competitiveness Act of 2016.

(b) *HTS* means Harmonized Tariff Schedule of the United States.

(c) *Committees* means the House Committee on Ways and Means and Senate Committee on Finance.

(d) *Commission disclosure form* means the information submitted to the Commission by a petitioner as part of a petition for a duty suspension or reduction that contains the following:

(1) The contact information for any known importers of the article to which the proposed duty suspension or reduction would apply.

(2) A certification by the petitioner that the proposed duty suspension or reduction is available to any person importing the article to which the proposed duty suspension or reduction would apply.

(3) A certification that the petitioner is a likely beneficiary of the proposed duty suspension or reduction.

(e) *Duty suspension or reduction* refers to an amendment to the HTS for a period not to exceed 3 years that—

(1) Extends an existing temporary duty suspension or reduction on an article under chapter 99 of the HTS; or

(2) Provides for a new temporary duty suspension or reduction on an article under that chapter.

(f) *Likely beneficiary* means an individual or entity likely to utilize, or benefit directly from the utilization of, an article that is the subject of a petition for a duty suspension or reduction.

(g) *Domestic producer* means a person that demonstrates production, or imminent production, in the United States of an article that is identical to, or like or directly competitive with, an article to which a petition for a duty suspension or reduction would apply.

(h) *Domestic production* means the production of an article that is identical to, or like or directly competitive with, an article to which a petition for a duty suspension or reduction would apply, for which a domestic producer has demonstrated production, or imminent production, in the United States.

(1) ''Identical'' article means a domestic article that has the same inherent or intrinsic characteristics and is classified in the same HTS rate line as the article that is the subject of a petition for duty suspension or reduction;

(2) ''Like'' article means a domestic article that is substantially identical in inherent or intrinsic characteristics (*i.e.*, materials from which made, appearance, quality, texture, etc.) as the article that is the subject of a petition for duty suspension or reduction; and

(3) ''Directly competitive'' article means a domestic article which, although not substantially identical in its inherent or intrinsic characteristics, is substantially equivalent for commercial purposes, that is, adapted to the same uses and essentially interchangeable therefor as the article that is the subject of a petition for duty suspension or reduction.

(i) *Imminent production* normally means production planned to begin within 3 years of the date on which the petition is filed.

§ 220.3 Who may file a petition, format for filing.

(a) *Who may file.* A petition under this part may be filed by members of the public who can demonstrate that they are likely beneficiaries of duty suspensions or reductions. A member of the public for these purposes would generally be a firm, importer of record, a manufacturer that uses the imported article, or a government entity at the U.S. Federal, state, or local level.

(b) *Format for filing.* Each such petition shall be submitted via the secure Commission web portal designated by the Commission and in the format designated by the Commission. The Commission will not accept petitions submitted in paper or in any other form or format. Petitions, including any attachments thereto, shall otherwise comply with the Commission's Handbook on MTB Filing Procedures as posted on the Commission's Web site.

§ 220.4 Time for filing.

Petitions for duty suspensions and reductions and Commission disclosure forms must be filed not later than 60 days after the Commission publishes in the FEDERAL REGISTER and on its Web site a notice requesting members of the public to submit this information. The Commission will publish notice requesting such petitions and disclosure forms not later than October 15, 2016, and October 15, 2019.

§ 220.5 Contents of petition.

The petition shall include the following information:

(a) The name, telephone number, and postal and email address of the petitioner, and if appropriate, its representative in the matter;

(b) A statement as to whether the petitioner is requesting an extension of an existing duty suspension or reduction or a new duty suspension or reduction; and if a duty reduction, the amount of the reduction;

(c) A certification that the petitioner is a likely beneficiary of the proposed duty suspension or reduction;

(d) An article description that meets the requirements of § 220.6 for the proposed duty suspension or reduction and identifies the permanent classification of the article in chapters 1–97 of the HTS and the Chemical Abstracts Service registry number (if applicable);

(e) To the extent available—

(1) A classification ruling of U.S. Customs and Border Protection (CBP) that indicates CBP's classification of the article; and

(2) A copy of other CBP documentation indicating where the article is classified in the HTS.

(f) A brief and general description of the article and its uses, and the names of the principal countries from which it is imported.

(g) A brief description of the industry in the United States that uses the article.

(h) For each HTS number included in the article description:

(1) An estimate of the total and dutiable value (in United States dollars) of imports of the article covered by the petition for the calendar year preceding the year in which the petition is filed, for the calendar year in which the petition is filed, and for each of the 5 calendar years after the calendar year in which the petition is filed, including an estimate of the value of such imports by the person who submits the petition and by any other importers, if available.

(2) An estimate of the share of total imports represented by the petitioner's imports of the article that is the subject of the petition.

(i) The name of each person that imports the article, if available.

(j) The names of any domestic producers of the article, if available.

(k) A Commission disclosure form as defined in § 220.2(d).

(l) The names of any likely beneficiaries, and their contact information.

(m) A certification that the petitioner has not separately filed, and has not withdrawn, a petition for duty suspension or reduction during the current filing cycle:

(1) For an article that is identical to that in the current petition;

(2) For an article whose article description includes the article covered by the current petition; or

(3) For an article that is included in the scope of the current petition.

(n) A certification from the petitioner that the information supplied is complete and correct to the best of the petitioner's knowledge and belief, and an acknowledgement from the petitioner that the information submitted is subject to audit and verification by the Commission.

(o) Such other information as the Commission may require.

[81 FR 67149, Sept. 30, 2016, as amended at 84 FR 44692, Aug. 27, 2019]

§ 220.6 Article description.

(a) *In general.* The article description in the petition shall be provided in a format appropriate to be included in the amendment to chapter 99 of the HTS and shall include language that:

(1) Describes a specific class or kind of imported merchandise and provides any other information needed to distinguish the covered products from other goods;

(2) Is suitable for incorporation in the HTS in the column entitled ''Article Description'' for each tariff heading in HTS chapter 99 that affords a temporary duty suspension or reduction;

(3) Describes covered products in their condition as imported, based primarily upon the goods' discernible physical characteristics at the time of importation;

(4) Is sufficiently clear as to be administrable by CBP; and

(5) Is otherwise required by this part or accomplishes the purposes of the Act.

(b) *Article descriptions that are not recommended*. The Commission will generally consider proposed article descriptions containing the following kinds of information or criteria as preventing the relevant petition from being recommended for inclusion in a miscellaneous tariff bill, unless input received from the U.S. Department of Commerce (Commerce) or CBP provides a basis for the Commission's analysis under the Act:

(1) ''Actual use'' or ''chief use'' criteria;

(2) Trade-marked or similarly protected terms or names, brand names, proprietary names, part numbers, or other company-specific names;

(3) Language—

(i) Describing goods that are illegal to import, where the petitioner is not a government entity;

(ii) Describing goods that are covered by tariff-rate quota provisions; or

(iii) Seeking to alter the tariff treatment provided in subchapter III or IV of chapter 99 of the HTS; or

(4) An HTS subheading number(s) that would alter or attempt to alter the classification of the product in chapters 1 through 97 of the HTS.

§ 220.7 Properly filed petition; identical and overlapping petitions from same petitioner.

(a) *In general*. A petition will not be considered to be properly filed unless the petition and the Commission disclosure form are filed in accordance with and contain the information required by §§ 220.3 through 220.5

(b) *Identical and overlapping petitions*. (1) A petition will not be considered to be properly filed if the petitioner has previously filed, and has not withdrawn, a petition for duty suspension or reduction during the current filing cycle:

(i) For an article that is identical to that in the current petition;

(ii) For an article whose article description includes the article covered by the current petition; or

(iii) For an article that is included in the scope of the current petition.

(2) Should the Commission find that a petitioner has filed one or more identical or overlapping petitions and that such earlier filed petitions have not been withdrawn, the Commission will generally consider the earliest filed pending petition to be the petition of the petitioner.

§ 220.8 Consolidation of petitions.

Should the Commission receive petitions for duty suspensions or reductions from multiple petitioners for identical or overlapping articles classified in the same HTS subheading or subheadings, the Commission may consolidate the petitions and publish a single recommendation so that a single proposed HTS chapter 99 provision for the articles is presented in the Commission's preliminary and final reports.

§ 220.9 Withdrawal of petitions, amendments to petitions.

(a) *Withdrawal of petitions*. A petitioner may withdraw a petition for duty suspension or reduction filed under this part no later than 30 days after the Commission submits its preliminary report, as described in § 220.12. It shall do so by notifying the Commission through the Commission's designated secure web portal of its withdrawal and the notification shall include the name of the petitioner, the Commission identification number for the petition, and the HTS number for the article concerned.

(b) *Submission of new petition*. A petitioner who withdraws a petition for duty suspension or reduction that was timely filed under § 220.4 may submit a new petition, but only during the 60-day period described in § 220.4.

(c) *Amendments to petitions*. A petitioner may not amend or otherwise change a petition once it is submitted. If a petitioner wishes to amend or otherwise change a petition, such as to correct an error, the petitioner must withdraw the petition and file a new petition containing the changes in accordance with paragraphs (a) and (b) of this section.

[81 FR 67149, Sept. 30, 2016, as amended at 84 FR 44693, Aug. 27, 2019]

§ 220.10 Commission publication and public availability of petitions.

Not later than 30 days after expiration of the 60-day period for filing petitions for duty suspensions and reductions, the Commission will publish on its website the petitions for duty suspensions and reductions submitted under § 220.3 that were timely filed and contain the information required under § 220.5. When circumstances allow, the Commission may post such petitions on its website earlier than 30 days after expiration of the 60-day period for filing petitions.

[84 FR 44693, Aug. 27, 2019]

§ 220.11 Public comment period.

(a) *Time for filing.* Not later than 30 days after expiration of the 60-day period for filing petitions, the Commission will also publish in the FEDERAL REGISTER and on its website a notice requesting members of the public to submit comments on the petitions for duty suspensions and reductions. To be considered, such comments must be filed through the Commission's secure web portal during the 45-day period following publication of the Commission's notice requesting comments from members of the public. For purposes of this section, all petitions posted by the Commission on its website, whether or not posted early, shall be deemed to be officially published by the Commission on its website on the date of publication of the notice seeking written comments from members of the public on the petitions.

(b) *In general.* The comment shall include the following information:

(1) The name, telephone number, and postal and email address of the commenter, and if appropriate, its representative in the matter;

(2) A statement as to whether the commenter is a U.S. producer, importer, government entity, trade association or group, or other;

(3) A statement as to whether the comment supports the petition; objects to the petition; or takes no position with respect to the petitions/provides other comment;

(4) If the commenter is an importer, a list of the leading source countries of the product;

(5) A certification from the commenter that the information supplied is complete and correct to the best of the commenter's knowledge and belief, and an acknowledgement from the commenter that the information submitted is subject to audit and verification by the Commission; and

(6) Comment formats may be constrained in size, length, attachments, file type, etc., by system limitations in the Commission's secure web portal. See the Commission's Handbook on MTB Filing Procedures as posted on the Commission's website for further information.

(c) *Comments from domestic producers.* Comments from a firm claiming to be a domestic producer, as defined in § 220.2(g), shall also include:

(1) A description of the product alleged to be identical, like, or directly competitive with the product that is the subject of the petition;

(2) The Chemical Abstracts Service registry number for the product (if applicable);

(3) A statement as to whether an identical, like, or directly competitive product was produced in the current calendar year and, if not, the year in which the product was last produced or in which production is expected to begin within the United States;

(4) A statement as to whether such product is generally available for sale, and if not, an explanation of its lack of availability for sale; and/or

(5) The physical address(es) for the location(s) of the production facility(ies) producing the product within the United States; and

(6) Evidence demonstrating the existence of domestic production (*e.g.*, catalogs, press releases, marketing materials, specification sheets, copies of orders for the product).

(d) *Additional comment period.* The Commission may provide additional opportunity for public comment and, if so, will announce that comment period in the FEDERAL REGISTER.

[84 FR 44693, Aug. 27, 2019]

§ 220.12 Commission preliminary report.

(a) Not later than 150 days after the Commission publishes the petitions

and Commission disclosure forms submitted, the Commission will submit a preliminary report on the petitions filed to the Committees. The report will include the following information for each petition filed—

(1) The HTS heading or subheading in which each article that is the subject of a petition is classified, as identified by documentation supplied to the Commission and any supporting information obtained by the Commission.

(2) A determination of whether or not domestic production of the article that is the subject of the petition exists, taking into account the report of the Secretary of Commerce under section 3(c)(1) of the Act, and, if such production exists, whether or not a domestic producer of the article objects to the duty suspension or reduction.

(3) Any technical changes to the description of the article that is the subject of the petition for the duty suspension or reduction that are necessary for purposes of administration when the article is presented for importation, taking into account the report of the Secretary of Commerce under section 3(c)(2) of the Act.

(4) An estimate of the amount of loss in revenue to the United States that would no longer be collected if the duty suspension or reduction takes effect.

(5) A determination of whether or not the duty suspension or reduction is available to any person that imports the article that is the subject of the duty suspension or reduction.

(6) The likely beneficiaries of each duty suspension or reduction, including whether the petitioner is a likely beneficiary.

(b) The preliminary report will also include the following information:

(1) A list of petitions for duty suspensions and reductions that meet the requirements of the Act without modifications.

(2) A list of petitions for duty suspensions and reductions for which the Commission recommends technical corrections in order to meet the requirements of the Act, with the correction specified.

(3) A list of petitions for duty suspensions and reductions for which the Commission recommends modifications to the amount of the duty suspension or reduction that is the subject of the petition to comply with the requirements of the Act, with the modification specified.

(4) A list of petitions for duty suspensions and reductions for which the Commission recommends modifications to the scope of the articles that are the subject of the petitions in order to address objections by domestic producers to such petitions, with the modifications specified.

(5) A list of the following:

(i) Petitions for duty suspensions and reductions that the Commission has determined do not contain the information required under section 3(b)(2) of the Act.

(ii) Petitions for duty suspensions and reductions with respect to which the Commission has determined the petitioner is not a likely beneficiary.

(6) A list of petitions for duty suspensions and reductions that the Commission does not recommend for inclusion in a miscellaneous tariff bill, other than petitions specified in section 3(b)(3)(C)(ii)(V) of the Act.

(c) The Commission will forward to the Committees any additional information submitted to the Commission by the Secretary of Commerce after the Commission transmits its preliminary report.

[81 FR 67149, Sept. 30, 2016. Redesignated and amended at 84 FR 44693, Aug. 27, 2019]

§ 220.13 Commission final report.

(a) The Commission will submit its final report on each petition for a duty suspension or reduction specified in the preliminary report to the Committees not later than 60 days after the Commission submits its preliminary report. The final report will contain the following information—

(1) The information required to be included in a preliminary report under section 3(b)(3)(C)(i)–(ii) of the Act and updated as appropriate after considering any information submitted by the Committees under section 3(b)(3)(D) of the Act.

(2) A determination of the Commission whether—

(i) The duty suspension or reduction can likely be administered by U.S. Customs and Border Protection;

(ii) The estimated loss in revenue to the United States from the duty suspension or reduction does not exceed $500,000 in a calendar year during which the duty suspension or reduction would be in effect; and

(iii) The duty suspension or reduction is available to any person importing the articles that is the subject of the duty suspension or reduction.

(b) [Reserved]

[81 FR 67149, Sept. 30, 2016. Redesignated at 84 FR 44693, Aug. 27, 2019]

§ 220.14 Confidential business information.

(a) *In general.* The Commission will not release information which the Commission considers to be confidential business information within the meaning of § 201.6(a) of this chapter unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the Commission, or such party subsequently consents to the release of the information.

(b) *Exceptions.* (1) In calculating the estimated revenue loss required under the Act, the Commission may base its estimates in whole or in part on the estimated values of imports submitted by petitioners in their petitions.

(2) The Commission may disclose some or all of the confidential business information provided to the Commission in petitions and public comments to the U.S. Department of Commerce for use in preparing its report to the Commission and the Committees, and to the U.S. Department of Agriculture and CBP for use in providing information for Commerce's report.

[81 FR 67149, Sept. 30, 2016. Redesignated at 84 FR 44693, Aug. 27, 2019]

§ 220.15 Application of other Commission rules.

Commission rules applicable to the initiation and conduct of investigations, including rules set out in subpart B of part 201 of this chapter (except § 201.9 (methods employed in obtaining information), § 201.14(a) (computation of time), and § 201.15 (attorneys or agents)), shall not apply to Commission proceedings under this part.

[81 FR 67149, Sept. 30, 2016. Redesignated at 84 FR 44693, Aug. 27, 2019]

PARTS 221–299 [RESERVED]

CHAPTER III—INTERNATIONAL TRADE ADMINISTRATION, DEPARTMENT OF COMMERCE

PARTS 300–350 [RESERVED]

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

Subpart A—Scope and Definitions

Subpart B—Antidumping and Countervailing Duty Procedures

Subpart C—Information and Argument

Subpart D—Calculation of Export Price, Constructed Export Price, Fair Value, and Normal Value

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.;* and 19 U.S.C. 3538.

SOURCE: 62 FR 27379, May 19, 1997, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 351 appear at 78 FR 62418, Oct. 22, 2013.

Subpart A—Scope and Definitions

§ 351.101 Scope.

(a) *In general.* This part contains procedures and rules applicable to antidumping and countervailing duty proceedings under title VII of the Act (19 U.S.C. 1671 *et seq.*), and also determinations regarding cheese subject to an in-quota rate of duty under section 702 of the Trade Agreements Act of 1979 (19 U.S.C. 1202 note). This part reflects statutory amendments made by titles I, II, and IV of the Uruguay Round Agreements Act, Pub. L. 103–465, which, in turn, implement into United States law the provisions of the following agreements annexed to the Agreement Establishing the World Trade Organization: Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994; Agreement on Subsidies and Countervailing Measures; and Agreement on Agriculture.

(b) *Countervailing duty investigations involving imports not entitled to a material injury determination.* Under section 701(c) of the Act, certain provisions of the Act do not apply to countervailing

duty proceedings involving imports from a country that is not a Subsidies Agreement country and is not entitled to a material injury determination by the Commission. Accordingly, certain provisions of this part referring to the Commission may not apply to such proceedings.

(c) *Application to governmental importations.* To the extent authorized by section 771(20) of the Act, merchandise imported by, or for the use of, a department or agency of the United States Government is subject to the imposition of countervailing duties or antidumping duties under this part.

§ 351.102 Definitions.

(a) *Introduction.* The Act contains many technical terms applicable to antidumping and countervailing duty proceedings. In the case of terms that are not defined in this section or other sections of this part, readers should refer to the relevant provisions of the Act. This section:

(1) Defines terms that appear in the Act but are not defined in the Act;

(2) Defines terms that appear in this Part but do not appear in the Act; and

(3) Elaborates on the meaning of certain terms that are defined in the Act.

(b) *Definitions.* (1) *Act.* ''Act'' means the Tariff Act of 1930, as amended.

(2) *Administrative review.* ''Administrative review'' means a review under section 751(a)(1) of the Act.

(3) *Affiliated persons; affiliated parties.* ''Affiliated persons'' and ''affiliated parties'' have the same meaning as in section 771(33) of the Act. In determining whether control over another person exists, within the meaning of section 771(33) of the Act, the Secretary will consider the following factors, among others: Corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The Secretary will not find that control exists on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. The Secretary will consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control.

(4) *Aggregate basis.* ''Aggregate basis'' means the calculation of a country-wide subsidy rate based principally on information provided by the foreign government.

(5) *Anniversary month.* ''Anniversary month'' means the calendar month in which the anniversary of the date of publication of an order or suspension of investigation occurs.

(6) *APO.* ''APO'' means an administrative protective order described in section 777(c)(1) of the Act.

(7) *Applicant.* ''Applicant'' means a representative of an interested party that has applied for access to business proprietary information under an administrative protective order.

(8) *Article 4/Article 7 review.* ''Article 4/Article 7 review'' means a review under section 751(g)(2) of the Act.

(9) *Article 8 violation review.* ''Article 8 violation review'' means a review under section 751(g)(1) of the Act.

(10) *Authorized applicant.* ''Authorized applicant'' means an applicant that the Secretary has authorized to receive business proprietary information under an APO under section 777(c)(1) of the Act.

(11) *Changed circumstances review.* ''Changed circumstances review'' means a review under section 751(b) of the Act.

(12) *Consumed in the production process.* Inputs ''consumed in the production process'' are inputs physically incorporated, energy, fuels and oil used in the production process and catalysts which are consumed in the course of their use to obtain the product.

(13) *Cumulative indirect tax.* ''Cumulative indirect tax'' means a multi-staged tax levied where there is no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production are used in a succeeding stage of production.

(14) *Customs Service.* ''Customs Service'' means United States Customs and Border Protection of the United States Department of Homeland Security.

(15) *Department.* ''Department'' means the United States Department of Commerce.

(16) *Direct tax*. ''Direct tax'' means a tax on wages, profits, interests, rents, royalties, and all other forms of income, a tax on the ownership of real property, or a social welfare charge.

(17) *Domestic interested party*. ''Domestic interested party'' means an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 771(9) of the Act.

(18) *Expedited antidumping review*. ''Expedited antidumping review'' means a review under section 736(c) of the Act.

(19) *Expedited sunset review*. ''Expedited sunset review'' means an expedited sunset review conducted by the Department where respondent interested parties provide inadequate responses to a notice of initiation under section 751(c)(3)(B) of the Act and § 351.218(e)(1)(ii).

(20) *Export insurance*. ''Export insurance'' includes, but is not limited to, insurance against increases in the cost of exported products, nonpayment by the customer, inflation, or exchange rate risks.

(21) *Factual information*. ''Factual information'' means:

(i) Evidence, including statements of fact, documents, and data submitted either in response to initial and supplemental questionnaires, or, to rebut, clarify, or correct such evidence submitted by any other interested party;

(ii) Evidence, including statements of fact, documents, and data submitted either in support of allegations, or, to rebut, clarify, or correct such evidence submitted by any other interested party;

(iii) Publicly available information submitted to value factors under § 351.408(c) or to measure the adequacy of remuneration under § 351.511(a)(2), or, to rebut, clarify, or correct such publicly available information submitted by any other interested party;

(iv) Evidence, including statements of fact, documents and data placed on the record by the Department, or, evidence submitted by any interested party to rebut, clarify or correct such evidence placed on the record by the Department; and

(v) Evidence, including statements of fact, documents, and data, other than factual information described in paragraphs (b)(21)(i)–(iv) of this section, in addition to evidence submitted by any other interested party to rebut, clarify, or correct such evidence.

(22) *Fair value*. ''Fair value'' is a term used during an antidumping investigation, and is an estimate of normal value.

(23) *Firm*. For purposes of subpart E (Identification and Measurement of Countervailable Subsidies), ''firm'' is used to refer to the recipient of an alleged countervailable subsidy, including any individual, company, partnership, corporation, joint venture, association, organization, or other entity.

(24) *Full sunset review*. ''Full sunset review'' means a full sunset review conducted by the Department under section 751(c)(5) of the Act where both domestic interested parties and respondent interested parties provide adequate response to a notice of initiation under section 751(c)(3)(B) of the Act and §§ 351.218(e)(1)(i) and 351.218(e)(1)(ii).

(25) *Government-provided*. ''Government-provided'' is a shorthand expression for an act or practice that is alleged to be a countervailable subsidy. The use of the term ''government-provided'' is not intended to preclude the possibility that a government may provide a countervailable subsidy indirectly in a manner described in section 771(5)(B)(iii) of the Act (indirect financial contribution).

(26) *Import charge*. ''Import charge'' means a tariff, duty, or other fiscal charge that is levied on imports, other than an indirect tax.

(27) *Importer*. ''Importer'' means the person by whom, or for whose account, subject merchandise is imported.

(28) *Indirect tax*. ''Indirect tax'' means a sales, excise, turnover, value added, franchise, stamp, transfer, inventory, or equipment tax, a border tax, or any other tax other than a direct tax or an import charge.

(29) *Interested party*. For the purpose of submitting an application for APO access (Form ITA–367), ''Interested Party'' means:

(i) A foreign manufacturer, producer, or exporter of subject merchandise,

(ii) The United States importer of subject merchandise,

(iii) A trade or business association a majority of the members of which are producers, exporters, or importers of subject merchandise,

(iv) The government of a country in which subject merchandise is produced or manufactured or from which such merchandise is exported,

(v) A manufacturer, producer, or wholesaler in the United States of a domestic like product,

(vi) A certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a domestic like product,

(vii) A trade or business association a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States,

(viii) An association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E) of section 771(9) of the Act with respect to a domestic like product, and

(ix) A coalition or trade association as described in section 771(9)(G) of the Act.

(30) *Investigation.* Under the Act and this part, there is a distinction between an antidumping or countervailing duty investigation and a proceeding. An ''investigation'' is that segment of a proceeding that begins on the date of publication of notice of initiation of investigation and ends on the date of publication of the earliest of:

(i) Notice of termination of investigation,

(ii) Notice of rescission of investigation,

(iii) Notice of a negative determination that has the effect of terminating the proceeding, or

(iv) An order.

(31) *Loan.* ''Loan'' means a loan or other form of debt financing, such as a bond.

(32) *Long-term loan.* ''Long-term loan'' means a loan, the terms of repayment for which are greater than one year.

(33) *New shipper review.* ''New shipper review'' means a review under section 751(a)(2) of the Act.

(34) *Order.* An ''order'' is an order issued by the Secretary under section 303, section 706, or section 736 of the Act or a finding under the Antidumping Act, 1921.

(35) *Ordinary course of trade.* ''Ordinary course of trade'' has the same meaning as in section 771(15) of the Act. The Secretary may consider sales or transactions to be outside the ordinary course of trade if the Secretary determines, based on an evaluation of all of the circumstances particular to the sales in question, that such sales or transactions have characteristics that are extraordinary for the market in question. Examples of sales that the Secretary might consider as being outside the ordinary course of trade are sales or transactions involving off-quality merchandise or merchandise produced according to unusual product specifications, merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm's length price.

(36) *Party to the proceeding.* ''Party to the proceeding'' means any interested party that actively participates, through written submissions of factual information or written argument, in a segment of a proceeding. Participation in a prior segment of a proceeding will not confer on any interested party ''party to the proceeding'' status in a subsequent segment.

(37) *Person.* ''Person'' includes any interested party as well as any other individual, enterprise, or entity, as appropriate.

(38) *Price adjustment.* ''Price adjustment'' means a change in the price charged for subject merchandise or the foreign like product, such as a discount, rebate, or other adjustment, including, under certain circumstances, a change that is made after the time of sale (*see* § 351.401(c)), that is reflected in the purchaser's net outlay.

(39) *Prior-stage indirect tax.* ''Prior-stage indirect tax'' means an indirect tax levied on goods or services used directly or indirectly in making a product.

(40) *Proceeding.* A ''proceeding'' begins on the date of the filing of a petition under section 702(b) or section 732(b) of the Act or the publication of a notice of initiation in a self-initiated investigation under section 702(a) or

section 732(a) of the Act, and ends on the date of publication of the earliest notice of:

(i) Dismissal of petition,

(ii) Rescission of initiation,

(iii) Termination of investigation,

(iv) A negative determination that has the effect of terminating the proceeding,

(v) Revocation of an order, or

(vi) Termination of a suspended investigation.

(41) *Rates*. ''Rates'' means the individual weighted-average dumping margins, the individual countervailable subsidy rates, the country-wide subsidy rate, or the all-others rate, as applicable.

(42) *Respondent interested party*. ''Respondent interested party'' means an interested party described in subparagraph (A) or (B) of section 771(9) of the Act.

(43) *Sale*. A ''sale'' includes a contract to sell and a lease that is equivalent to a sale.

(44) *Secretary*. ''Secretary'' means the Secretary of Commerce or a designee. The Secretary has delegated to the Assistant Secretary for Enforcement and Compliance the authority to make determinations under title VII of the Act and this part.

(45) *Section 753 review*. ''Section 753 review'' means a review under section 753 of the Act.

(46) *Section 762 review*. ''Section 762 review'' means a review under section 762 of the Act.

(47) *Segment of proceeding*—(i) *In general*. An antidumping or countervailing duty proceeding consists of one or more segments. ''Segment of a proceeding'' or ''segment of the proceeding'' refers to a portion of the proceeding that is reviewable under section 516A of the Act.

(ii) *Examples*. An antidumping or countervailing duty investigation or a review of an order or suspended investigation, or a scope inquiry under § 351.225, each would constitute a segment of a proceeding.

(48) *Short-term loan*. ''Short-term loan'' means a loan, the terms of repayment for which are one year or less.

(49) *Sunset review*. ''Sunset review'' means a review under section 751(c) of the Act.

(50) *Suspension of liquidation*. ''Suspension of liquidation'' refers to a suspension of liquidation ordered by the Secretary under the authority of title VII of the Act, the provisions of this Part, or section 516a(g)(5)(C) of the Act, or by a court of the United States in a lawsuit involving action taken, or not taken, by the Secretary under title VII of the Act or the provisions of this part.

(51) *Third country*. For purposes of subpart D, ''third country'' means a country other than the exporting country and the United States. Under section 773(a) of the Act and subpart D, in certain circumstances the Secretary may determine normal value on the basis of sales to a third country.

(52) *URAA*. ''URAA'' means the Uruguay Round Agreements Act.

[73 FR 3640, Jan. 22, 2008, as amended at 78 FR 21254, Apr. 10, 2013; 81 FR 15645, Mar. 24, 2016]

§ 351.103 Central Records Unit and Administrative Protective Order and Dockets Unit.

(a) Enforcement and Compliance's Central Records Unit maintains a Public File Room in Room 7046, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The office hours of the Public File Room are between 8:30 a.m. and 5 p.m. Eastern Time on business days. Among other things, the Central Records Unit is responsible for maintaining an official and public record for each antidumping and countervailing duty proceeding (see § 351.104).

(b) Enforcement and Compliance's Administrative Protective Order and Dockets Unit (APO/Dockets Unit) is located in Room 18022, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The office hours of the APO/Dockets Unit are between 8:30 a.m. and 5 p.m. Eastern Time on business days. Among other things, the APO/Dockets Unit is responsible for receiving submissions from interested parties, issuing administrative protective orders (APOs), maintaining the APO service list and the public service list as provided for in paragraph (d) of this section, releasing business proprietary

information under APO, and conducting APO violation investigations. The APO/Dockets Unit also is the contact point for questions and concerns regarding claims for business proprietary treatment of information and proper public versions of submissions under § 351.105 and § 351.304.

(c) *Filing of documents with the Department.* No document will be considered as having been received by the Secretary unless it is electronically filed in accordance with § 351.303(b)(2)(i) or, where applicable, in accordance with § 351.303(b)(2)(ii), it is manually submitted to the Enforcement and Compliance's APO/Dockets Unit in Room 18022 and is stamped with the date, and, where necessary, the time, of receipt. A manually filed document must be submitted with a cover sheet, in accordance with § 351.303(b)(3).

(d) The APO/Dockets Unit will maintain and make available a public service list for each segment of a proceeding. The service list for an application for a scope ruling is described in § 351.225(n). The service list for a request for a circumvention inquiry is described in § 351.226(n).

(1) With the exception of a petitioner filing a petition in an investigation pursuant to § 351.202, an interested party filing a scope ruling application pursuant to § 351.225(c), an interested party filing a request for a circumvention inquiry pursuant to § 351.226(c), and those relevant parties identified by the Customs Service in a covered merchandise referral pursuant to § 351.227, all persons wishing to participate in a segment of a proceeding must file an entry of appearance. The entry of appearance must identify the name of the interested party, how that party qualifies as an interested party under § 351.102(b)(29) and section 771(9) of the Act, and the name of the firm, if any, representing the interested party in that particular segment of the proceeding. All persons who file an entry of appearance and qualify as an interested party will be included in the public service list for the segment of the proceeding in which the entry of appearance is submitted. The entry of appearance may be filed as a cover letter to an application for APO access. If the representative of the interested party is not requesting access to business proprietary information under APO, the entry of appearance must be filed separately from any other document filed with the Department. If the interested party is a coalition or association as defined in subparagraph (A), (E), (F) or (G) of section 771(9) of the Act, the entry of appearance must identify all of the members of the coalition or association.

(2) Each interested party that asks to be included on the public service list for a segment of a proceeding must designate a person to receive service of documents filed in that segment.

[76 FR 39274, July 6, 2011, as amended at 80 FR 36473, June 25, 2015; 86 FR 52371, Sept. 20, 2021]

§ 351.104 Record of proceedings.

(a) *Official record*—(1) *In general.* The Secretary will maintain an official record of each antidumping and countervailing duty proceeding. The Secretary will include in the official record all factual information, written argument, or other material developed by, presented to, or obtained by the Secretary during the course of a proceeding that pertains to the proceeding. The official record will include government memoranda pertaining to the proceeding, memoranda of ex parte meetings, determinations, notices published in the FEDERAL REGISTER, and transcripts of hearings. The official record will contain material that is public, business proprietary, privileged, and classified. For purposes of section 516A(b)(2) of the Act, the record is the official record of each segment of the proceeding.

(2) *Material rejected.* (i) The Secretary, in making any determination under this part, will not use factual information, written argument, or other material that the Secretary rejects.

(ii) The official record will include a copy of a rejected document, solely for purposes of establishing and documenting the basis for rejecting the document, if the document was rejected because:

(A) The document, although otherwise timely, contains untimely filed new factual information (see § 351.301(b));

(B) The submitter made a nonconforming request for business proprietary treatment of factual information (see § 351.304);

(C) The Secretary denied a request for business proprietary treatment of factual information (see § 351.304);

(D) The submitter is unwilling to permit the disclosure of business proprietary information under APO (see § 351.304).

(iii) In no case will the official record include any document that the Secretary rejects as untimely filed, or any unsolicited questionnaire response unless the response is a voluntary response accepted under § 351.204(d) (see § 351.302(d)).

(b) *Public record.* The Secretary will maintain a public record of each proceeding. The record will consist of all material contained in the official record (see paragraph (a) of this section) that the Secretary decides is public information under § 351.105(b), government memoranda or portions of memoranda that the Secretary decides may be disclosed to the general public, and public versions of all determinations, notices, and transcripts. The public record will be available to the public for inspection and copying in the Central Records Unit (see § 351.103). The Secretary will charge an appropriate fee for providing copies of documents.

(c) *Protection of records.* Unless ordered by the Secretary or required by law, no record or portion of a record will be removed from the Department.

[62 FR 27379, May 19, 1997, as amended at 76 FR 39274, July 6, 2011]

§ 351.105 Public, business proprietary, privileged, and classified information.

(a) *Introduction.* There are four categories of information in an antidumping or countervailing duty proceeding: public, business proprietary, privileged, and classified. In general, public information is information that may be made available to the public, whereas business proprietary information may be disclosed (if at all) only to authorized applicants under an APO. Privileged and classified information may not be disclosed at all, even under an APO. This section describes the four categories of information.

(b) *Public information.* The Secretary normally will consider the following to be public information:

(1) Factual information of a type that has been published or otherwise made available to the public by the person submitting it;

(2) Factual information that is not designated as business proprietary by the person submitting it;

(3) Factual information that, although designated as business proprietary by the person submitting it, is in a form that cannot be associated with or otherwise used to identify activities of a particular person or that the Secretary determines is not properly designated as business proprietary;

(4) Publicly available laws, regulations, decrees, orders, and other official documents of a country, including English translations; and

(5) Written argument relating to the proceeding that is not designated as business proprietary.

(c) *Business proprietary information.* The Secretary normally will consider the following factual information to be business proprietary information, if so designated by the submitter:

(1) Business or trade secrets concerning the nature of a product or production process;

(2) Production costs (but not the identity of the production components unless a particular component is a trade secret);

(3) Distribution costs (but not channels of distribution);

(4) Terms of sale (but not terms of sale offered to the public);

(5) Prices of individual sales, likely sales, or other offers (but not components of prices, such as transportation, if based on published schedules, dates of sale, product descriptions (other than business or trade secrets described in paragraph (c)(1) of this section), or order numbers);

(6) Names of particular customers, distributors, or suppliers (but not destination of sale or designation of type of customer, distributor, or supplier, unless the destination or designation would reveal the name);

(7) In an antidumping proceeding, the exact amount of the dumping margin on individual sales;

(8) In a countervailing duty proceeding, the exact amount of the benefit applied for or received by a person from each of the programs under investigation or review (but not descriptions of the operations of the programs, or the amount if included in official public statements or documents or publications, or the *ad valorem* countervailable subsidy rate calculated for each person under a program);

(9) The names of particular persons from whom business proprietary information was obtained;

(10) The position of a domestic producer or workers regarding a petition; and

(11) Any other specific business information the release of which to the public would cause substantial harm to the competitive position of the submitter.

(d) *Privileged information.* The Secretary will consider information privileged if, based on principles of law concerning privileged information, the Secretary decides that the information should not be released to the public or to parties to the proceeding. Privileged information is exempt from disclosure to the public or to representatives of interested parties.

(e) *Classified information.* Classified information is information that is classified under Executive Order No. 12356 of April 2, 1982 (47 FR 14874 and 15557, 3 CFR 1982 Comp. p. 166) or successor executive order, if applicable. Classified information is exempt from disclosure to the public or to representatives of interested parties.

§ 351.106 *De minimis* net countervailable subsidies and weighted-average dumping margins disregarded.

(a) *Introduction.* Prior to the enactment of the URAA, the Department had a well-established and judicially sanctioned practice of disregarding net countervailable subsidies or weighted-average dumping margins that were *de minimis.* The URAA codified in the Act the particular *de minimis* standards to be used in antidumping and countervailing duty investigations. This section discussed the application of the *de minimis* standards in antidumping or countervailing duty proceedings.

(b) *Investigations*—(1) *In general.* In making a preliminary or final antidumping or countervailing duty determination in an investigation (*see* sections 703(b), 733(b), 705(a), and 735(a) of the Act), the Secretary will apply the *de minimis* standard set forth in section 703(b)(4) or section 733(b)(3) of the Act (whichever is applicable).

(2) *Transition rule.* (i) If:

(A) The Secretary resumes an investigation that has been suspended (*see* section 704(i)(1)(B) or section 734(i)(1)(B) of the Act); and

(B) The investigation was initiated before January 1, 1995, then

(ii) The Secretary will apply the *de minimis* standard in effect at the time that the investigation was initiated.

(c) *Reviews and other determinations*—(1) *In general.* In making any determination other than a preliminary or final antidumping or countervailing duty determination in an investigation (*see* paragraph (b) of this section), the Secretary will treat as *de minimis* any weighted-average dumping margin or countervailable subsidy rate that is less than 0.5 percent *ad valorem,* or the equivalent specific rate.

(2) *Assessment of antidumping duties.* The Secretary will instruct the Customs Service to liquidate without regard to antidumping duties all entries of subject merchandise during the relevant period of review made by any person for which the Secretary calculates an assessment rate under § 351.212(b)(1) that is less than 0.5 percent *ad valorem,* or the equivalent specific rate.

§ 351.107 Cash deposit rates for nonproducing exporters; rates in antidumping proceedings involving a nonmarket economy country.

(a) *Introduction.* This section deals with the establishment of cash deposit rates in situations where the exporter is not the producer of subject merchandise, the selection of the appropriate cash deposit rate in situations where entry documents do not indicate the producer of subject merchandise, and the calculation of dumping margins in

antidumping proceedings involving imports from a nonmarket economy country.

(b) *Cash deposit rates for nonproducing exporters*—(1) *Use of combination rates*—(i) *In general.* In the case of subject merchandise that is exported to the United States by a company that is not the producer of the merchandise, the Secretary may establish a ''combination'' cash deposit rate for each combination of the exporter and its supplying producer(s).

(ii) *Example.* A nonproducing exporter (Exporter A) exports to the United States subject merchandise produced by Producers X, Y, and Z. In such a situation, the Secretary may establish cash deposit rates for Exporter A/Producer X, Exporter A/Producer Y, and Exporter A/Producer Z.

(2) *New supplier.* In the case of subject merchandise that is exported to the United States by a company that is not the producer of the merchandise, if the Secretary has not established previously a combination cash deposit rate under paragraph (b)(1)(i) of this section for the exporter and producer in question or a noncombination rate for the exporter in question, the Secretary will apply the cash deposit rate established for the producer. If the Secretary has not previously established a cash deposit rate for the producer, the Secretary will apply the ''all-others rate'' described in section 705(c)(5) or section 735(c)(5) of the Act, as the case may be.

(c) *Producer not identified*—(1) *In general.* In situations where entry documents do not identify the producer of subject merchandise, if the Secretary has not established previously a noncombination rate for the exporter, the Secretary may instruct the Customs Service to apply as the cash deposit rate the higher of:

(i) The highest of any combination cash deposit rate established for the exporter under paragraph (b)(1)(i) of this section;

(ii) The highest cash deposit rate established for any producer other than a producer for which the Secretary established a combination rate involving the exporter in question under paragraph (b)(1)(i) of this section; or

(iii) The ''all-others rate'' described in section 705(c)(5) or section 735(c)(5) of the Act, as the case may be.

(2) [Reserved]

(d) *Rates in antidumping proceedings involving nonmarket economy countries.* In an antidumping proceeding involving imports from a nonmarket economy country, ''rates'' may consist of a single dumping margin applicable to all exporters and producers.

Subpart B—Antidumping and Countervailing Duty Procedures

§ 351.201 Self-initiation.

(a) *Introduction.* Antidumping and countervailing duty investigations may be initiated as the result of a petition filed by a domestic interested party or at the Secretary's own initiative. This section contains rules regarding the actions the Secretary will take when the Secretary self-initiates an investigation.

(b) *In general.* When the Secretary self-initiates an investigation under section 702(a) or section 732(a) of the Act, the Secretary will publish in the FEDERAL REGISTER notice of ''Initiation of Antidumping (Countervailing Duty) Investigation.'' In addition, the Secretary will notify the Commission at the time of initiation of the investigation, and will make available to employees of the Commission directly involved in the proceeding the information upon which the Secretary based the initiation and which the Commission may consider relevant to its injury determination.

(c) *Persistent dumping monitoring.* To the extent practicable, the Secretary will expedite any antidumping investigation initiated as the result of a monitoring program established under section 732(a)(2) of the Act.

§ 351.202 Petition requirements.

(a) *Introduction.* The Secretary normally initiates antidumping and countervailing duty investigations based on petitions filed by a domestic interested party. This section contains rules concerning the contents of a petition, filing requirements, notification of foreign governments, pre-initiation communications with the Secretary, and

assistance to small businesses in preparing petitions. Petitioners are also advised to refer to the Commission's regulations concerning the contents of petitions, currently 19 CFR 207.11.

(b) *Contents of petition.* A petition requesting the imposition of antidumping or countervailing duties must contain the following, to the extent reasonably available to the petitioner:

(1) The name, address, and telephone number of the petitioner and any person the petitioner represents;

(2) The identity of the industry on behalf of which the petitioner is filing, including the names, addresses, and telephone numbers of all other known persons in the industry;

(3) Information relating to the degree of industry support for the petition, including:

(i) The total volume and value of U.S. production of the domestic like product; and

(ii) The volume and value of the domestic like product produced by the petitioner and each domestic producer identified;

(4) A statement indicating whether the petitioner has filed for relief from imports of the subject merchandise under section 337 of the Act (19 U.S.C. 1337, 1671a), sections 201 or 301 of the Trade Act of 1974 (19 U.S.C. 2251 or 2411), or section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862);

(5) A detailed description of the subject merchandise that defines the requested scope of the investigation, including the technical characteristics and uses of the merchandise and its current U.S. tariff classification number;

(6) The name of the country in which the subject merchandise is manufactured or produced and, if the merchandise is imported from a country other than the country of manufacture or production, the name of any intermediate country from which the merchandise is imported;

(7)(i) In the case of an antidumping proceeding:

(A) The names and addresses of each person the petitioner believes sells the subject merchandise at less than fair value and the proportion of total exports to the United States that each person accounted for during the most recent 12-month period (if numerous, provide information at least for persons that, based on publicly available information, individually accounted for two percent or more of the exports);

(B) All factual information (particularly documentary evidence) relevant to the calculation of the export price and the constructed export price of the subject merchandise and the normal value of the foreign like product (if unable to furnish information on foreign sales or costs, provide information on production costs in the United States, adjusted to reflect production costs in the country of production of the subject merchandise);

(C) If the merchandise is from a country that the Secretary has found to be a nonmarket economy country, factual information relevant to the calculation of normal value, using a method described in § 351.408; or

(ii) In the case of a countervailing duty proceeding:

(A) The names and addresses of each person the petitioner believes benefits from a countervailable subsidy and exports the subject merchandise to the United States and the proportion of total exports to the United States that each person accounted for during the most recent 12-month period (if numerous, provide information at least for persons that, based on publicly available information, individually accounted for two percent or more of the exports);

(B) The alleged countervailable subsidy and factual information (particularly documentary evidence) relevant to the alleged countervailable subsidy, including any law, regulation, or decree under which it is provided, the manner in which it is paid, and the value of the subsidy to exporters or producers of the subject merchandise;

(C) If the petitioner alleges an upstream subsidy under section 771A of the Act, factual information regarding:

(*1*) Countervailable subsidies, other than an export subsidy, that an authority of the affected country provides to the upstream supplier;

(*2*) The competitive benefit the countervailable subsidies bestow on the subject merchandise; and

(*3*) The significant effect the countervailable subsidies have on the

cost of producing the subject merchandise;

(8) The volume and value of the subject merchandise imported during the most recent two-year period and any other recent period that the petitioner believes to be more representative or, if the subject merchandise was not imported during the two-year period, information as to the likelihood of its sale for importation;

(9) The name, address, and telephone number of each person the petitioner believes imports or, if there were no importations, is likely to import the subject merchandise;

(10) Factual information regarding material injury, threat of material injury, or material retardation, and causation;

(11) If the petitioner alleges ''critical circumstances'' under section 703(e)(1) or section 733(e)(1) of the Act and § 351.206, factual information regarding:

(i) Whether imports of the subject merchandise are likely to undermine seriously the remedial effect of any order issued under section 706(a) or section 736(a) of the Act;

(ii) Massive imports of the subject merchandise in a relatively short period; and

(iii) (A) In an antidumping proceeding, either:

(*1*) A history of dumping; or

(*2*) The importer's knowledge that the exporter was selling the subject merchandise at less than its fair value, and that there would be material injury by reason of such sales; or

(B) In a countervailing duty proceeding, whether the countervailable subsidy is inconsistent with the Subsidies Agreement; and

(12) Any other factual information on which the petitioner relies.

(c) *Simultaneous filing and certification.* The petitioner must file a copy of the petition with the Commission and the Secretary on the same day and so certify in submitting the petition to the Secretary. Factual information in the petition must be certified, as provided in § 351.303(g). Other filing requirements are set forth in § 351.303.

(d) *Business proprietary status of information.* The Secretary will treat as business proprietary any factual information for which the petitioner requests business proprietary treatment and which meets the requirements of § 351.304.

(e) *Amendment of petition.* The Secretary may allow timely amendment of the petition. The petitioner must file an amendment with the Commission and the Secretary on the same day and so certify in submitting the amendment to the Secretary. If the amendment consists of new allegations, the timeliness of the new allegations will be governed by § 351.301.

(f) *Notification of representative of the exporting country.* Upon receipt of a petition, the Secretary will deliver a public version of the petition (*see* § 351.304(c)) to a representative in Washington, DC, of the government of any exporting country named in the petition.

(g) *Petition based upon derogation of an international undertaking on official export credits.* In the case of a petition described in section 702(b)(3) of the Act, the petitioner must file a copy of the petition with the Secretary of the Treasury, as well as with the Secretary and the Commission, and must so certify in submitting the petition to the Secretary.

(h) *Assistance to small businesses; additional information.* (1) The Secretary will provide technical assistance to eligible small businesses, as defined in section 339 of the Act, to enable them to prepare and file petitions. The Secretary may deny assistance if the Secretary concludes that the petition, if filed, could not satisfy the requirements of section 702(c)(1)(A) or section 732(c)(1)(A) of the Act (whichever is applicable) (*see* § 351.203).

(2) For additional information concerning petitions, contact the Director for Policy and Analysis, Enforcement and Compliance, International Trade Administration, Room 3093, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230; (202) 482–1768.

(i) *Pre-initiation communications*—(1) *In general.* During the period before the Secretary's decision whether to initiate an investigation, the Secretary will not consider the filing of a notice of appearance to constitute a communication for purposes of section

702(b)(4)(B) or section 732(b)(3)(B) of the Act.

(2) *Consultations with foreign governments in countervailing duty proceedings.* In a countervailing duty proceeding, the Secretary will invite the government of any exporting country named in the petition for consultations with respect to the petition.

(The information collection requirements in paragraph (a) of this section have been approved by the Office of Management and Budget under control number 0625–0105.)

§ 351.203 Determination of sufficiency of petition.

(a) *Introduction.* When a petition is filed under § 351.202, the Secretary must determine that the petition satisfies the relevant statutory requirements before initiating an antidumping or countervailing duty investigation. This section sets forth rules regarding a determination as to the sufficiency of a petition (including the determination that a petition is supported by the domestic industry), the deadline for making the determination, and the actions to be taken once the Secretary has made the determination.

(b) *Determination of sufficiency*—(1) *In general.* Normally, not later than 20 days after a petition is filed, the Secretary, on the basis of sources readily available to the Secretary, will examine the accuracy and adequacy of the evidence provided in the petition and determine whether to initiate an investigation under section 702(c)(1)(A) or section 732(c)(1)(A) of the Act (whichever is applicable).

(2) *Extension where polling required.* If the Secretary is required to poll or otherwise determine support for the petition under section 702(c)(4)(D) or section 732(c)(4)(D) of the Act, the Secretary may, in exceptional circumstances, extend the 20-day period by the amount of time necessary to collect and analyze the required information. In no case will the period between the filing of a petition and the determination whether to initiate an investigation exceed 40 days.

(c) *Notice of initiation and distribution of petition*—(1) *Notice of initiation.* If the initiation determination of the Secretary under section 702(c)(1)(A) or section 732(c)(1)(A) of the Act is affirmative, the Secretary will initiate an investigation and publish in the FEDERAL REGISTER notice of ''Initiation of Antidumping (Countervailing Duty) Investigation.'' The Secretary will notify the Commission at the time of initiation of the investigation and will make available to employees of the Commission directly involved in the proceeding the information upon which the Secretary based the initiation and which the Commission may consider relevant to its injury determinations.

(2) *Distribution of petition.* As soon as practicable after initiation of an investigation, the Secretary will provide a public version of the petition to all known exporters (including producers who sell for export to the United States) of the subject merchandise. If the Secretary determines that there is a particularly large number of exporters involved, instead of providing the public version to all known exporters, the Secretary may provide the public version to a trade association of the exporters or, alternatively, may consider the requirement of the preceding sentence to have been satisfied by the delivery of a public version of the petition to the government of the exporting country under § 351.202(f).

(d) *Insufficiency of petition.* If an initiation determination of the Secretary under section 702(c)(1)(A) or section 732(c)(1)(A) of the Act is negative, the Secretary will dismiss the petition, terminate the proceeding, notify the petitioner in writing of the reasons for the determination, and publish in the FEDERAL REGISTER notice of ''Dismissal of Antidumping (Countervailing Duty) Petition.''

(e) *Determination of industry support.* In determining industry support for a petition under section 702(c)(4) or section 732(c)(4) of the Act, the following rules will apply:

(1) *Measuring production.* The Secretary normally will measure production over a twelve-month period specified by the Secretary, and may measure production based on either value or volume. Where a party to the proceeding establishes that production data for the relevant period, as specified by the Secretary, is unavailable, production levels may be established by reference to alternative data that

the Secretary determines to be indicative of production levels.

(2) *Positions treated as business proprietary information.* Upon request, the Secretary may treat the position of a domestic producer or workers regarding the petition and any production information supplied by the producer or workers as business proprietary information under § 351.105(c)(10).

(3) *Positions expressed by workers.* The Secretary will consider the positions of workers and management regarding the petition to be of equal weight. The Secretary will assign a single weight to the positions of both workers and management according to the production of the domestic like product of the firm in which the workers and management are employed. If the management of a firm expresses a position in direct opposition to the position of the workers in that firm, the Secretary will treat the production of that firm as representing neither support for, nor opposition to, the petition.

(4) *Certain positions disregarded.* (i) The Secretary will disregard the position of a domestic producer that opposes the petition if such producer is related to a foreign producer or to a foreign exporter under section 771(4)(B)(ii) of the Act, unless such domestic producer demonstrates to the Secretary's satisfaction that its interests as a domestic producer would be adversely affected by the imposition of an antidumping order or a countervailing duty order, as the case may be; and

(ii) The Secretary may disregard the position of a domestic producer that is an importer of the subject merchandise, or that is related to such an importer, under section 771(4)(B)(ii) of the Act.

(5) *Polling the industry.* In conducting a poll of the industry under section 702(c)(4)(D)(i) or section 732(c)(4)(D)(i) of the Act, the Secretary will include unions, groups of workers, and trade or business associations described in paragraphs (9)(D) and (9)(E) of section 771 of the Act.

(f) *Time limits where petition involves same merchandise as that covered by an order that has been revoked.* Under section 702(c)(1)(C) or section 732(c)(1)(C) of the Act, and in expediting an investigation involving subject merchandise for which a prior order was revoked or a suspended investigation was terminated, the Secretary will consider ''section 751(d)'' as including a predecessor provision.

(g) *Time limits for filing interested party comments on industry support.* For purposes of sections 702(c)(4)(E) and 732(c)(4)(E) of the Act, the Secretary will consider comments or information on the issue of industry support submitted no later than 5 business days before the date referenced in paragraph (b)(1) of this section by any interested party under section 771(9) of the Act. The Secretary will consider rebuttal comments or information to rebut, clarify, or correct such information on industry support submitted by any interested party no later than two calendar days from the time limit for filing comments.

[62 FR 27379, May 19, 1997, as amended at 86 FR 52371, Sept. 20, 2021]

§ 351.204 Time periods and persons examined; voluntary respondents; exclusions.

(a) *Introduction.* Because the Act does not specify the precise period of time that the Secretary should examine in an antidumping or countervailing duty investigation, this section sets forth rules regarding the period of investigation (''POI''). In addition, this section includes rules regarding the selection of persons to be examined, the treatment of voluntary respondents that are not selected for individual examination, and the exclusion of persons that the Secretary ultimately finds are not dumping or are not receiving countervailable subsidies.

(b) *Period of investigation*—(1) *Antidumping investigation.* In an antidumping investigation, the Secretary normally will examine merchandise sold during the four most recently completed fiscal quarters (or, in an investigation involving merchandise imported from a nonmarket economy country, the two most recently completed fiscal quarters) as of the month preceding the month in which the petition was filed or in which the Secretary self-initiated an investigation. However, the Secretary may examine merchandise sold during any additional

or alternate period that the Secretary concludes is appropriate.

(2) *Countervailing duty investigation.* In a countervailing duty investigation, the Secretary normally will rely on information pertaining to the most recently completed fiscal year for the government and exporters or producers in question. If the exporters or producers have different fiscal years, the Secretary normally will rely on information pertaining to the most recently completed calendar year. If the investigation is conducted on an aggregate basis under section 777A(e)(2)(B) of the Act, the Secretary normally will rely on information pertaining to the most recently completed fiscal year for the government in question. However, the Secretary may rely on information for any additional or alternate period that the Secretary concludes is appropriate.

(c) *Exporters and producers examined*—(1) *In general.* In an investigation, the Secretary will attempt to determine an individual weighted-average dumping margin or individual countervailable subsidy rate for each known exporter or producer of the subject merchandise. However, the Secretary may decline to examine a particular exporter or producer if that exporter or producer and the petitioner agree.

(2) *Limited investigation.* Notwithstanding paragraph (c)(1) of this section, the Secretary may limit the investigation by using a method described in subsection (a), (c), or (e) of section 777A of the Act.

(d) *Voluntary respondents*—(1) *In general.* If the Secretary limits the number of exporters or producers to be individually examined under section 777A(c)(2) or section 777A(e)(2)(A) of the Act, the Secretary will examine voluntary respondents (exporters or producers, other than those initially selected for individual examination) in accordance with section 782(a) of the Act.

(2) *Acceptance of voluntary respondents.* The Secretary will determine, as soon as practicable, whether to examine a voluntary respondent individually. A voluntary respondent accepted for individual examination under subparagraph (d)(1) of this section will be subject to the same requirements as an exporter or producer initially selected by the Secretary for individual examination under section 777A(c)(2) or section 777A(e)(2)(A) of the Act, including the requirements of section 782(a) of the Act and, where applicable, the use of the facts available under section 776 of the Act and § 351.308.

(3) *Exclusion of voluntary respondents' rates from all-others rate.* In calculating an all-others rate under section 705(c)(5) or section 735(c)(5) of the Act, the Secretary will exclude weighted-average dumping margins or countervailable subsidy rates calculated for voluntary respondents.

(4) *Requests for voluntary respondent treatment.* An interested party seeking treatment as a voluntary respondent must so indicate by including as a title on the first page of the first submission, ''Request for Voluntary Respondent Treatment.''

(e) *Exclusions*—(1) *In general.* The Secretary will exclude from an affirmative final determination under section 705(a) or section 735(a) of the Act or an order under section 706(a) or section 736(a) of the Act, any exporter or producer for which the Secretary determines an individual weighted-average dumping margin or individual net countervailable subsidy rate of zero or *de minimis.*

(2) *Preliminary determinations.* In an affirmative preliminary determination under section 703(b) or section 733(b) of the Act, an exporter or producer for which the Secretary preliminarily determines an individual weighted-average dumping margin or individual net countervailable subsidy of zero or *de minimis* will not be excluded from the preliminary determination or the investigation. However, the exporter or producer will not be subject to provisional measures under section 703(d) or section 733(d) of the Act.

(3) *Exclusion of nonproducing exporter*—(i) *In general.* In the case of an exporter that is not the producer of subject merchandise, the Secretary normally will limit an exclusion of the exporter to subject merchandise of those producers that supplied the exporter during the period of investigation.

(ii) *Example.* During the period of investigation, Exporter A exports to the

United States subject merchandise produced by Producer X. Based on an examination of Exporter A, the Secretary determines that the dumping margins with respect to these exports are *de minimis,* and the Secretary excludes Exporter A. Normally, the exclusion of Exporter A would be limited to subject merchandise produced by Producer X. If Exporter A began to export subject merchandise produced by Producer Y, this merchandise would be subject to the antidumping duty order, if any.

(4) *Countervailing duty investigations conducted on an aggregate basis and requests for exclusion from countervailing duty order.* Where the Secretary conducts a countervailing duty investigation on an aggregate basis under section 777A(e)(2)(B) of the Act, the Secretary will consider and investigate requests for exclusion to the extent practicable. An exporter or producer that desires exclusion from an order must submit:

(i) A certification by the exporter or producer that it received zero or *de minimis* net countervailable subsidies during the period of investigation;

(ii) If the exporter or producer received a countervailable subsidy, calculations demonstrating that the amount of net countervailable subsidies received was *de minimis* during the period of investigation;

(iii) If the exporter is not the producer of the subject merchandise, certifications from the suppliers and producers of the subject merchandise that those persons received zero or *de minimis* net countervailable subsidies during the period of the investigation; and

(iv) A certification from the government of the affected country that the government did not provide the exporter (or the exporter's supplier) or producer with more than *de minimis* net countervailable subsidies during the period of investigation.

[62 FR 27379, May 19, 1997, as amended at 73 FR 3643, Jan. 22, 2008]

§ 351.205 Preliminary determination.

(a) *Introduction.* A preliminary determination in an antidumping or countervailing duty investigation constitutes the first point at which the Secretary may provide a remedy (sometimes referred to as ''provisional measures'') if the Secretary preliminarily finds that dumping or countervailable subsidization has occurred. Whether the Secretary's preliminary determination is affirmative or negative, the investigation continues. This section contains rules regarding deadlines for preliminary determinations, postponement of preliminary determinations, notices of preliminary determinations, and the effects of affirmative preliminary determinations.

(b) *Deadline for preliminary determination.* The deadline for a preliminary determination under section 703(b) or section 733(b) of the Act will be:

(1) Normally not later than 140 days in an antidumping investigation (65 days in a countervailing duty investigation) after the date on which the Secretary initiated the investigation (*see* section 703(b)(1) or section 733(b)(1)(A) of the Act);

(2) Not later than 190 days in an antidumping investigation (130 days in a countervailing duty investigation) after the date on which the Secretary initiated the investigation if the Secretary postpones the preliminary determination at petitioner's request or because the Secretary determines that the investigation is extraordinarily complicated (*see* section 703(c)(1) or section 733(c)(1) of the Act);

(3) In a countervailing duty investigation, not later than 250 days after the date on which the proceeding began if the Secretary postpones the preliminary determination due to an upstream subsidy allegation (up to 310 days if the Secretary also postponed the preliminary determination at the request of the petitioner or because the Secretary determined that the investigation is extraordinarily complicated) (*see* section 703(c)(1) and section 703(g)(1) of the Act);

(4) Within 90 days after initiation in an antidumping investigation, and on an expedited basis in a countervailing duty investigation, where verification has been waived (*see* section 703(b)(3) or section 733(b)(2) of the Act);

(5) In a countervailing duty investigation, on an expedited basis and within 65 days after the date on which the Secretary initiated the investigation if the sole subsidy alleged in the

petition was the derogation of an international undertaking on official export credits (*see* section 702(b)(3) and section 703(b)(2) of the Act);

(6) In a countervailing duty investigation, not later than 60 days after the date on which the Secretary initiated the investigation if the only subsidy under investigation is a subsidy with respect to which the Secretary received notice from the United States Trade Representative of a violation of Article 8 of the Subsidies Agreement (*see* section 703(b)(5) of the Act); and

(7) In an antidumping investigation, within the deadlines set forth in section 733(b)(1)(B) of the Act if the investigation involves short life cycle merchandise (*see* section 733(b)(1)(B) and section 739 of the Act).

(c) *Contents of preliminary determination and publication of notice.* A preliminary determination will include a preliminary finding on critical circumstances, if appropriate, under section 703(e)(1) or section 733(e)(1) of the Act (whichever is applicable). The Secretary will publish in the FEDERAL REGISTER notice of ''Affirmative (Negative) Preliminary Antidumping (Countervailing Duty) Determination,'' including the rates, if any, and an invitation for argument consistent with § 351.309.

(d) *Effect of affirmative preliminary determination.* If the preliminary determination is affirmative, the Secretary will take the actions described in section 703(d) or section 733(d) of the Act (whichever is applicable). With respect to section 703(d)(1)(B) and 733(d)(1)(B) of the Act, the Secretary will normally order the posting of cash deposits to ensure payment if antidumping or countervailing duties ultimately are imposed. In making information available to the Commission under section 703(d)(3) or section 733(d)(3) of the Act, the Secretary will make available to the Commission and to employees of the Commission directly involved in the proceeding the information upon which the Secretary based the preliminary determination and which the Commission may consider relevant to its injury determination.

(e) *Postponement at the request of the petitioner.* A petitioner must submit a request for postponement of the preliminary determination (*see* section 703(c)(1)(A) or section 733(c)(1)(A) of the Act) 25 days or more before the scheduled date of the preliminary determination, and must state the reasons for the request. The Secretary will grant the request, unless the Secretary finds compelling reasons to deny the request.

(f) *Notice of postponement.* (1) If the Secretary decides to postpone the preliminary determination at the request of the petitioner or because the investigation is extraordinarily complicated, the Secretary will notify all parties to the proceeding not later than 20 days before the scheduled date of the preliminary determination, and will publish in the FEDERAL REGISTER notice of ''Postponement of Preliminary Antidumping (Countervailing Duty) Determination,'' stating the reasons for the postponement (*see* section 703(c)(2) or section 733(c)(2) of the Act).

(2) If the Secretary decides to postpone the preliminary determination due to an allegation of upstream subsidies, the Secretary will notify all parties to the proceeding not later than the scheduled date of the preliminary determination and will publish in the FEDERAL REGISTER notice of ''Postponement of Preliminary Countervailing Duty Determination,'' stating the reasons for the postponement.

[62 FR 27379, May 19, 1997, as amended at 76 FR 61045, Oct. 3, 2011]

§ 351.206 Critical circumstances.

(a) *Introduction.* Generally, antidumping or countervailing duties are imposed on entries of merchandise made on or after the date on which the Secretary first imposes provisional measures (most often the date on which notice of an affirmative preliminary determination is published in the FEDERAL REGISTER). However, if the Secretary finds that ''critical circumstances'' exist, duties may be imposed retroactively on merchandise entered up to 90 days before the imposition of provisional measures. This section contains procedural and substantive rules regarding allegations and findings of critical circumstances.

(b) *In general.* If a petitioner submits to the Secretary a written allegation of

critical circumstances, with reasonably available factual information supporting the allegation, 21 days or more before the scheduled date of the Secretary's final determination, or on the Secretary's own initiative in a self-initiated investigation, the Secretary will make a finding whether critical circumstances exist, as defined in section 705(a)(2) or section 735(a)(3) of the Act (whichever is applicable).

(c) *Preliminary finding.* (1) If the petitioner submits an allegation of critical circumstances 30 days or more before the scheduled date of the Secretary's final determination, the Secretary, based on the available information, will make a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances exist, as defined in section 703(e)(1) or section 733(e)(1) of the Act (whichever is applicable).

(2) The Secretary will issue the preliminary finding:

(i) Not later than the preliminary determination, if the allegation is submitted 20 days or more before the scheduled date of the preliminary determination; or

(ii) Within 30 days after the petitioner submits the allegation, if the allegation is submitted later than 20 days before the scheduled date of the preliminary determination; or

(iii) If, pursuant to paragraph (i) of this section, the period examined for purposes of determining whether critical circumstances exists is earlier than normal, the Secretary will issue the preliminary finding as early as possible after initiation of the investigation, but normally not less than 45 days after the petition was filed. The Secretary will notify the Commission and publish in the FEDERAL REGISTER notice of the preliminary finding.

(d) *Suspension of liquidation.* If the Secretary makes an affirmative preliminary finding of critical circumstances, the provisions of section 703(e)(2) or section 733(e)(2) of the Act (whichever is applicable) regarding the retroactive suspension of liquidation will apply.

(e) *Final finding.* For any allegation of critical circumstances submitted 21 days or more before the scheduled date of the Secretary's final determination, the Secretary will make a final finding on critical circumstances, and will take appropriate action under section 705(c)(4) or section 735(c)(4) of the Act (whichever is applicable).

(f) *Findings in self-initiated investigations.* In a self-initiated investigation, the Secretary will make preliminary and final findings on critical circumstances without regard to the time limits in paragraphs (c) and (e) of this section.

(g) *Information regarding critical circumstances.* The Secretary may request the Commissioner of Customs to compile information on an expedited basis regarding entries of the subject merchandise if, at any time after the initiation of an investigation, the Secretary makes the findings described in section 702(e) or section 732(e) of the Act (whichever is applicable) regarding the possible existence of critical circumstances.

(h) *Massive imports.* (1) In determining whether imports of the subject merchandise have been massive under section 705(a)(2)(B) or section 735(a)(3)(B) of the Act, the Secretary normally will examine:

(i) The volume and value of the imports;

(ii) Seasonal trends; and

(iii) The share of domestic consumption accounted for by the imports.

(2) In general, unless the imports during the ''relatively short period'' (*see* paragraph (i) of this section) have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive.

(i) *Relatively short period.* Under section 705(a)(2)(B) or section 735(a)(3)(B) of the Act, the Secretary normally will consider a ''relatively short period'' as the period beginning on the date the proceeding begins and ending at least three months later. However, if the Secretary finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a period of not less than three months from that earlier time.

[62 FR 27379, May 19, 1997, as amended at 64 FR 48707, Sept. 8, 1999]

§ 351.207 Termination of investigation.

(a) *Introduction.* ''Termination'' is a term of art that refers to the end of an antidumping or countervailing duty proceeding in which an order has not yet been issued. The Act establishes a variety of mechanisms by which an investigation may be terminated, most of which are dealt with in this section. For rules regarding the termination of a suspended investigation following a review under section 751 of the Act, *see* § 351.222.

(b) *Withdrawal of petition; self-initiated investigations*—(1) *In general.* The Secretary may terminate an investigation under section 704(a)(1)(A) or section 734(a)(1)(A) (withdrawal of petition) or under section 704(k) or section 734(k) (self-initiated investigation) of the Act, provided that the Secretary concludes that termination is in the public interest. If the Secretary terminates an investigation, the Secretary will publish in the FEDERAL REGISTER notice of ''Termination of Antidumping (Countervailing Duty) Investigation,'' together with, when appropriate, a copy of any correspondence with the petitioner forming the basis of the withdrawal and the termination. (For the treatment in a subsequent investigation of records compiled in an investigation in which the petition was withdrawn, *see* section 704(a)(1)(B) or section 734(a)(1)(B) of the Act.)

(2) *Withdrawal of petition based on acceptance of quantitative restriction agreements.* In addition to the requirements of paragraph (b)(1) of this section, if a termination is based on the acceptance of an understanding or other kind of agreement to limit the volume of imports into the United States of the subject merchandise, the Secretary will apply the provisions of section 704(a)(2) or section 734(a)(2) of the Act (whichever is applicable) regarding public interest and consultations with consuming industries and producers and workers.

(c) *Lack of interest.* The Secretary may terminate an investigation based upon lack of interest (*see* section 782(h)(1) of the Act). Where the Secretary terminates an investigation under this paragraph, the Secretary will publish the notice described in paragraph (b)(1) of this section.

(d) *Negative determination.* An investigation terminates automatically upon publication in the FEDERAL REGISTER of the Secretary's negative final determination or the Commission's negative preliminary or final determination.

(e) *End of suspension of liquidation.* When an investigation terminates, if the Secretary previously ordered suspension of liquidation, the Secretary will order the suspension ended on the date of publication of the notice of termination referred to in paragraph (b) of this section or on the date of publication of a negative determination referred to in paragraph (d) of this section, and will instruct the Customs Service to release any cash deposit or bond.

§ 351.208 Suspension of investigation.

(a) *Introduction.* In addition to the imposition of duties, the Act also permits the Secretary to suspend an antidumping or countervailing duty investigation by accepting a suspension agreement (referred to in the WTO Agreements as an ''undertaking''). Briefly, in a suspension agreement, the exporters and producers or the foreign government agree to modify their behavior so as to eliminate dumping or subsidization or the injury caused thereby. If the Secretary accepts a suspension agreement, the Secretary will ''suspend'' the investigation and thereafter will monitor compliance with the agreement. This section contains rules for entering into suspension agreements and procedures for suspending an investigation.

(b) *In general.* The Secretary may suspend an investigation under section 704 or section 734 of the Act and this section.

(c) *Definition of ''substantially all.''* Under section 704 and section 734 of the Act, exporters that account for ''substantially all'' of the merchandise means exporters and producers that have accounted for not less than 85 percent by value or volume of the subject merchandise during the period for which the Secretary is measuring dumping or countervailable subsidization in the investigation or such other period that the Secretary considers representative.

(d) *Monitoring.* In monitoring a suspension agreement under section 704(c), section 734(c), or section 734(l) of the Act (agreements to eliminate injurious effects or to restrict the volume of imports), the Secretary will not be obliged to ascertain on a continuing basis the prices in the United States of the subject merchandise or of domestic like products.

(e) *Exports not to increase during interim period.* The Secretary will not accept a suspension agreement under section 704(b)(2) or section 734(b)(1) of the Act (the cessation of exports) unless the agreement ensures that the quantity of the subject merchandise exported during the interim period set forth in the agreement does not exceed the quantity of the merchandise exported during a period of comparable duration that the Secretary considers representative.

(f) *Procedure for suspension of investigation*—(1) *Submission of proposed suspension agreement*—(i) *In general.* As appropriate, the exporters and producers or, in an antidumping investigation involving a nonmarket economy country or a countervailing duty investigation, the government, must submit to the Secretary a proposed suspension agreement within:

(A) In an antidumping investigation, 15 days after the date of issuance of the preliminary determination, or

(B) In a countervailing duty investigation, 7 days after the date of issuance of the preliminary determination.

(ii) *Postponement of final determination.* Where a proposed suspension agreement is submitted in an antidumping investigation, an exporter or producer or, in an investigation involving a nonmarket economy country, the government, may request postponement of the final determination under section 735(a)(2) of the Act (*see* § 351.210(e)). Where the final determination in a countervailing duty investigation is postponed under section 703(g)(2) or section 705(a)(1) of the Act (*see* § 351.210(b)(3) and § 351.210(i)), the time limits in paragraphs (f)(1)(i), (f)(2)(i), (f)(3), and (g)(1) of this section applicable to countervailing duty investigations will be extended to coincide with the time limits in such paragraphs applicable to antidumping investigations.

(iii) *Special rule for regional industry determination.* If the Commission makes a regional industry determination in its final affirmative determination under section 705(b) or section 735(b) of the Act but not in its preliminary affirmative determination under section 703(a) or section 733(a) of the Act, the exporters and producers or, in an antidumping investigation involving a nonmarket economy country or a countervailing duty investigation, the government, must submit to the Secretary any proposed suspension agreement within 15 days of the publication in the FEDERAL REGISTER of the antidumping or countervailing duty order.

(2) *Notification and consultation.* In fulfilling the requirements of section 704 or section 734 of the Act (whichever is applicable), the Secretary will take the following actions:

(i) *In general.* The Secretary will notify all parties to the proceeding of the proposed suspension of an investigation and provide to the petitioner a copy of the suspension agreement preliminarily accepted by the Secretary (the agreement must contain the procedures for monitoring compliance and a statement of the compatibility of the agreement with the requirements of section 704 or section 734 of the Act) within:

(A) In an antidumping investigation, 30 days after the date of issuance of the preliminary determination, or

(B) In a countervailing duty investigation, 15 days after the date of issuance of the preliminary determination; or

(ii) *Special rule for regional industry determination.* If the Commission makes a regional industry determination in its final affirmative determination under section 705(b) or section 735(b) of the Act but not in its preliminary affirmative determination under section 703(a) or section 733(a) of the Act, the Secretary, within 15 days of the submission of a proposed suspension agreement under paragraph (f)(1)(iii) of this section, will notify all parties to the proceeding of the proposed suspension agreement and provide to the petitioner a copy of the agreement preliminarily accepted by the Secretary (such

agreement must contain the procedures for monitoring compliance and a statement of the compatibility of the agreement with the requirements of section 704 or section 734 of the Act); and

(iii) *Consultation.* The Secretary will consult with the petitioner concerning the proposed suspension of the investigation.

(3) *Opportunity for comment.* The Secretary will provide all interested parties, an industrial user of the subject merchandise or a representative consumer organization, as described in section 777(h) of the Act, and United States government agencies an opportunity to submit written argument and factual information concerning the proposed suspension of the investigation within:

(i) In an antidumping investigation, 50 days after the date of issuance of the preliminary determination,

(ii) In a countervailing duty investigation, 35 days after the date of issuance of the preliminary determination, or

(iii) In a regional industry case described in paragraph (f)(1)(iii) of this section, 35 days after the date of issuance of an order.

(g) *Acceptance of suspension agreement.* (1) The Secretary may accept an agreement to suspend an investigation within:

(i) In an antidumping investigation, 60 days after the date of issuance of the preliminary determination,

(ii) In a countervailing duty investigation, 45 days after the date of issuance of the preliminary determination, or

(iii) In a regional industry case described in paragraph (f)(1)(iii) of this section, 45 days after the date of issuance of an order.

(2) If the Secretary accepts an agreement to suspend an investigation, the Secretary will take the actions described in section 704(f), section 704(m)(3), section 734(f), or section 734(l)(3) of the Act (whichever is applicable), and will publish in the FEDERAL REGISTER notice of ''Suspension of Antidumping (Countervailing Duty) Investigation,'' including the text of the agreement. If the Secretary has not already published notice of an affirmative preliminary determination, the Secretary will include that notice. In accepting an agreement, the Secretary may rely on factual or legal conclusions the Secretary reached in or after the affirmative preliminary determination.

(h) *Continuation of investigation.* (1) A request to the Secretary under section 704(g) or section 734(g) of the Act for the continuation of the investigation must be made in writing. In addition, the request must be simultaneously filed with the Commission, and the requester must so certify in submitting the request to the Secretary.

(2) If the Secretary and the Commission make affirmative final determinations in an investigation that has been continued, the suspension agreement will remain in effect in accordance with the factual and legal conclusions in the Secretary's final determination. If either the Secretary or the Commission makes a negative final determination, the agreement will have no force or effect.

(i) *Merchandise imported in excess of allowed quantity.* (1) The Secretary may instruct the Customs Service not to accept entries, or withdrawals from warehouse, for consumption of subject merchandise in excess of any quantity allowed by a suspension agreement under section 704 or section 734 of the Act, including any quantity allowed during the interim period (*see* paragraph (e) of this section).

(2) Imports in excess of the quantity allowed by a suspension agreement, including any quantity allowed during the interim period (*see* paragraph (e) of this section), may be exported or destroyed under Customs Service supervision, except that if the agreement is under section 704(c)(3) or section 734(l) of the Act (restrictions on the volume of imports), the excess merchandise, with the approval of the Secretary, may be held for future opening under the agreement by placing it in a foreign trade zone or by entering it for warehouse.

§ 351.209 Violation of suspension agreement.

(a) *Introduction.* A suspension agreement remains in effect until the underlying investigation is terminated (*see*

§§ 351.207 and 351.222). However, if the Secretary finds that a suspension agreement has been violated or no longer meets the requirements of the Act, the Secretary may either cancel or revise the agreement. This section contains rules regarding cancellation and revision of suspension agreements.

(b) *Immediate determination.* If the Secretary determines that a signatory has violated a suspension agreement, the Secretary, without providing interested parties an opportunity to comment, will:

(1) Order the suspension of liquidation in accordance with section 704(i)(1)(A) or section 734(i)(1)(A) of the Act (whichever is applicable) of all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of:

(i) 90 days before the date of publication of the notice of cancellation of the agreement; or

(ii) The date of first entry, or withdrawal from warehouse, for consumption of the merchandise the sale or export of which was in violation of the agreement;

(2) If the investigation was not completed under section 704(g) or section 734(g) of the Act, resume the investigation as if the Secretary had made an affirmative preliminary determination on the date of publication of the notice of cancellation and impose provisional measures by instructing the Customs Service to require for each entry of the subject merchandise suspended under paragraph (b)(1) of this section a cash deposit or bond at the rates determined in the affirmative preliminary determination;

(3) If the investigation was completed under section 704(g) or section 734(g) of the Act, issue an antidumping order or countervailing duty order (whichever is applicable) and, for all entries subject to suspension of liquidation under paragraph (b)(1) of this section, instruct the Customs Service to require for each entry of the merchandise suspended under this paragraph a cash deposit at the rates determined in the affirmative final determination;

(4) Notify all persons who are or were parties to the proceeding, the Commission, and, if the Secretary determines that the violation was intentional, the Commissioner of Customs; and

(5) Publish in the FEDERAL REGISTER notice of ''Antidumping (Countervailing Duty) Order (Resumption of Antidumping (Countervailing Duty) Investigation); Cancellation of Suspension Agreement.''

(c) *Determination after notice and comment.* (1) If the Secretary has reason to believe that a signatory has violated a suspension agreement, or that an agreement no longer meets the requirements of section 704(d)(1) or section 734(d) of the Act, but the Secretary does not have sufficient information to determine that a signatory has violated the agreement (*see* paragraph (b) of this section), the Secretary will publish in the FEDERAL REGISTER notice of ''Invitation for Comment on Antidumping (Countervailing Duty) Suspension Agreement.''

(2) After publication of the notice inviting comment and after consideration of comments received the Secretary will:

(i) Determine whether any signatory has violated the suspension agreement; or

(ii) Determine whether the suspension agreement no longer meets the requirements of section 704(d)(1) or section 734(d) of the Act.

(3) If the Secretary determines that a signatory has violated the suspension agreement, the Secretary will take appropriate action as described in paragraphs (b)(1) through (b)(5) of this section.

(4) If the Secretary determines that a suspension agreement no longer meets the requirements of section 704(d)(1) or section 734(d) of the Act, the Secretary will:

(i) Take appropriate action as described in paragraphs (b)(1) through (b)(5) of this section; except that, under paragraph (b)(1)(ii) of this section, the Secretary will order the suspension of liquidation of all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the later of:

(A) 90 days before the date of publication of the notice of suspension of liquidation; or

(B) The date of first entry, or withdrawal from warehouse, for consumption of the merchandise the sale or export of which does not meet the requirements of section 704(d)(1) of the Act;

(ii) Continue the suspension of investigation by accepting a revised suspension agreement under section 704(b) or section 734(b) of the Act (whether or not the Secretary accepted the original agreement under such section) that, at the time the Secretary accepts the revised agreement, meets the applicable requirements of section 704(d)(1) or section 734(d) of the Act, and publish in the FEDERAL REGISTER notice of ''Revision of Agreement Suspending Antidumping (Countervailing Duty) Investigation''; or

(iii) Continue the suspension of investigation by accepting a revised suspension agreement under section 704(c), section 734(c), or section 734(l) of the Act (whether or not the Secretary accepted the original agreement under such section) that, at the time the Secretary accepts the revised agreement, meets the applicable requirements of section 704(d)(1) or section 734(d) of the Act, and publish in the FEDERAL REGISTER notice of ''Revision of Agreement Suspending Antidumping (Countervailing Duty) Investigation.'' If the Secretary continues to suspend an investigation based on a revised agreement accepted under section 704(c), section 734(c), or section 734(l) of the Act, the Secretary will order suspension of liquidation to begin. The suspension will not end until the Commission completes any requested review of the revised agreement under section 704(h) or section 734(h) of the Act. If the Commission receives no request for review within 20 days after the date of publication of the notice of the revision, the Secretary will order the suspension of liquidation ended on the 21st day after the date of publication, and will instruct the Customs Service to release any cash deposit or bond. If the Commission undertakes a review under section 704(h) or section 734(h) of the Act, the provisions of sections 704(h)(2) and (3) and sections 734(h)(2) and (3) of the Act will apply.

(5) If the Secretary decides neither to consider the suspension agreement violated nor to revise the agreement, the Secretary will publish in the FEDERAL REGISTER notice of the Secretary's decision under paragraph (c)(2) of this section, including a statement of the factual and legal conclusions on which the decision is based.

(d) *Additional signatories.* If the Secretary decides that a suspension agreement no longer will completely eliminate the injurious effect of exports to the United States of subject merchandise under section 704(c)(1) or section 734(c)(1) of the Act, or that the signatory exporters no longer account for substantially all of the subject merchandise, the Secretary may revise the agreement to include additional signatory exporters.

(e) *Definition of ''violation.''* Under this section, ''violation'' means noncompliance with the terms of a suspension agreement caused by an act or omission of a signatory, except, at the discretion of the Secretary, an act or omission which is inadvertent or inconsequential.

§ 351.210 Final determination.

(a) *Introduction.* A ''final determination'' in an antidumping or countervailing duty investigation constitutes a final decision by the Secretary as to whether dumping or countervailable subsidization is occurring. If the Secretary's final determination is affirmative, in most instances the Commission will issue a final injury determination (except in certain countervailing duty investigations). Also, if the Secretary's preliminary determination was negative but the final determination is affirmative, the Secretary will impose provisional measures. If the Secretary's final determination is negative, the proceeding, including the injury investigation conducted by the Commission, terminates. This section contains rules regarding deadlines for, and postponement of, final determinations, contents of final determinations, and the effects of final determinations.

(b) *Deadline for final determination.* The deadline for a final determination under section 705(a)(1) or section 735(a)(1) of the Act will be:

(1) Normally, not later than 75 days after the date of the Secretary's preliminary determination (*see* section 705(a)(1) or section 735(a)(1) of the Act);

(2) In an antidumping investigation, not later than 135 days after the date of publication of the preliminary determination if the Secretary postpones the final determination at the request of:

(i) The petitioner, if the preliminary determination was negative (*see* section 735(a)(2)(B) of the Act); or

(ii) Exporters or producers who account for a significant proportion of exports of the subject merchandise, if the preliminary determination was affirmative (*see* section 735(a)(2)(A) of the Act);

(3) In a countervailing duty investigation, not later than 165 days after the preliminary determination, if, after the preliminary determination, the Secretary decides to investigate an upstream subsidy allegation and concludes that additional time is needed to investigate the allegation (*see* section 703(g)(2) of the Act); or

(4) In a countervailing duty investigation, the same date as the date of the final antidumping determination, if:

(i) In a situation where the Secretary simultaneously initiated antidumping and countervailing duty investigations on the subject merchandise (from the same or other countries), the petitioner requests that the final countervailing duty determination be postponed to the date of the final antidumping determination; and

(ii) If the final countervailing duty determination is not due on a later date because of postponement due to an allegation of upstream subsidies under section 703(g) of the Act (*see* section 705(a)(1) of the Act).

(c) *Contents of final determination and publication of notice.* The final determination will include, if appropriate, a final finding on critical circumstances under section 705(a)(2) or section 735(a)(3) of the Act (whichever is applicable). The Secretary will publish in the FEDERAL REGISTER notice of ''Affirmative (Negative) Final Antidumping (Countervailing Duty) Determination,'' including the rates, if any.

(d) *Effect of affirmative final determination.* If the final determination is affirmative, the Secretary will take the actions described in section 705(c)(1) or section 735(c)(1) of the Act (whichever is applicable). In addition, in the case of a countervailing duty investigation involving subject merchandise from a country that is not a Subsidies Agreement country, the Secretary will instruct the Customs Service to require a cash deposit, as provided in section 706(a)(3) of the Act, for each entry of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the order under section 706(a) of the Act.

(e) *Request for postponement of final antidumping determination*—(1) *In general.* A request to postpone a final antidumping determination under section 735(a)(2) of the Act (*see* paragraph (b)(2) of this section) must be submitted in writing within the scheduled date of the final determination. The Secretary may grant the request, unless the Secretary finds compelling reasons to deny the request.

(2) *Requests by exporters.* In the case of a request submitted under paragraph (e)(1) of this section by exporters who account for a significant proportion of exports of subject merchandise (*see* section 735(a)(2)(A) of the Act), the Secretary will not grant the request unless those exporters also submit a request described in the last sentence of section 733(d) of the Act (extension of provisional measures from a 4-month period to not more than 6 months).

(f) *Deferral of decision concerning upstream subsidization to review.* Notwithstanding paragraph (b)(3) of this section, if the petitioner so requests in writing and the preliminary countervailing duty determination was affirmative, the Secretary, instead of postponing the final determination, may defer a decision concerning upstream subsidization until the conclusion of the first administrative review of a countervailing duty order, if any (*see* section 703(g)(2)(B)(i) of the Act).

(g) *Notification of postponement.* If the Secretary postpones a final determination under paragraph (b)(2), (b)(3), or (b)(4) of this section, the Secretary will

notify promptly all parties to the proceeding of the postponement, and will publish in the FEDERAL REGISTER notice of ''Postponement of Final Antidumping (Countervailing Duty) Determination,'' stating the reasons for the postponement.

(h) *Termination of suspension of liquidation in a countervailing duty investigation.* If the Secretary postpones a final countervailing duty determination, the Secretary will end any suspension of liquidation ordered in the preliminary determination not later than 120 days after the date of publication of the preliminary determination, and will not resume it unless and until the Secretary publishes a countervailing duty order.

(i) *Postponement of final countervailing duty determination for simultaneous investigations.* A request by the petitioner to postpone a final countervailing duty determination to the date of the final antidumping determination must be submitted in writing within five days of the date of publication of the preliminary countervailing duty determination (*see* section 705(a)(1) and paragraph (b)(4) of this section).

(j) *Commission access to information.* If the final determination is affirmative, the Secretary will make available to the Commission and to employees of the Commission directly involved in the proceeding the information upon which the Secretary based the final determination and that the Commission may consider relevant to its injury determination (*see* section 705(c)(1)(A) or section 735(c)(1)(A) of the Act).

(k) *Effect of negative final determination.* An investigation terminates upon publication in the FEDERAL REGISTER of the Secretary's or the Commission's negative final determination, and the Secretary will take the relevant actions described in section 705(c)(2) or section 735(c)(2) of the Act (whichever is applicable).

§ 351.211 Antidumping order and countervailing duty order.

(a) *Introduction.* The Secretary issues an order when both the Secretary and the Commission (except in certain countervailing duty investigations) have made final affirmative determinations. The issuance of an order ends the investigative phase of a proceeding. Generally, upon the issuance of an order, importers no longer may post bonds as security for antidumping or countervailing duties, but instead must make a cash deposit of estimated duties. An order remains in effect until it is revoked. This section contains rules regarding the issuance of orders in general, as well as special rules for orders where the Commission has found a regional industry to exist.

(b) *In general.* Not later than seven days after receipt of notice of an affirmative final injury determination by the Commission under section 705(b) or section 735(b) of the Act, or, in a countervailing duty proceeding involving subject merchandise from a country not entitled to an injury test (*see* § 351.101(b)), simultaneously with publication of an affirmative final countervailing duty determination by the Secretary, the Secretary will publish in the FEDERAL REGISTER an ''Antidumping Order'' or ''Countervailing Duty Order'' that:

(1) Instructs the Customs Service to assess antidumping duties or countervailing duties (whichever is applicable) on the subject merchandise, in accordance with the Secretary's instructions at the completion of each review requested under § 351.213(b) (administrative review), § 351.214(b) (new shipper review), or § 351.215(b) (expedited antidumping review), or if a review is not requested, in accordance with the Secretary's assessment instructions under § 351.212(c);

(2) Instructs the Customs Service to require a cash deposit of estimated antidumping or countervailing duties at the rates included in the Secretary's final determination; and

(3) Orders the suspension of liquidation ended for all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of the Commission's final determination, and instructs the Customs Service to release the cash deposit or bond on those entries, if in its final determination, the Commission found a threat of material injury or material retardation of the establishment of an industry, unless

the Commission in its final determination also found that, absent the suspension of liquidation ordered under section 703(d)(2) or section 733(d)(2) of the Act, it would have found material injury (*see* section 706(b) or section 736(b) of the Act).

§ 351.212 Assessment of antidumping and countervailing duties; provisional measures deposit cap; interest on certain overpayments and underpayments.

(a) *Introduction.* Unlike the systems of some other countries, the United States uses a ''retrospective'' assessment system under which final liability for antidumping and countervailing duties is determined after merchandise is imported. Generally, the amount of duties to be assessed is determined in a review of the order covering a discrete period of time. If a review is not requested, duties are assessed at the rate established in the completed review covering the most recent prior period or, if no review has been completed, the cash deposit rate applicable at the time merchandise was entered. This section contains rules regarding the assessment of duties, the provisional measures deposit cap, and interest on over- or undercollections of estimated duties.

(b) *Assessment of antidumping and countervailing duties as the result of a review*—(1) *Antidumping duties.* If the Secretary has conducted a review of an antidumping order under § 351.213 (administrative review), § 351.214 (new shipper review), or § 351.215 (expedited antidumping review), the Secretary normally will calculate an assessment rate for each importer of subject merchandise covered by the review. The Secretary normally will calculate the assessment rate by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise for normal customs duty purposes. The Secretary then will instruct the Customs Service to assess antidumping duties by applying the assessment rate to the entered value of the merchandise.

(2) *Countervailing duties.* If the Secretary has conducted a review of a countervailing duty order under § 351.213 (administrative review) or § 351.214 (new shipper review), the Secretary normally will instruct the Customs Service to assess countervailing duties by applying the rates included in the final results of the review to the entered value of the merchandise.

(c) *Automatic assessment of antidumping and countervailing duties if no review is requested.* (1) If the Secretary does not receive a timely request for an administrative review of an order (*see* paragraph (b)(1), (b)(2), or (b)(3) of § 351.213), the Secretary, without additional notice, will instruct the Customs Service to:

(i) Assess antidumping duties or countervailing duties, as the case may be, on the subject merchandise described in § 351.213(e) at rates equal to the cash deposit of, or bond for, estimated antidumping duties or countervailing duties required on that merchandise at the time of entry, or withdrawal from warehouse, for consumption; and

(ii) To continue to collect the cash deposits previously ordered.

(2) If the Secretary receives a timely request for an administrative review of an order (*see* paragraph (b)(1), (b)(2), or (b)(3) of § 351.213), the Secretary will instruct the Customs Service to assess antidumping duties or countervailing duties, and to continue to collect cash deposits, on the merchandise not covered by the request in accordance with paragraph (c)(1) of this section.

(3) The automatic assessment provisions of paragraphs (c)(1) and (c)(2) of this section will not apply to subject merchandise that is the subject of a new shipper review (*see* § 351.214) or an expedited antidumping review (*see* § 351.215).

(d) *Provisional measures deposit cap.* This paragraph applies to subject merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of the Commission's notice of an affirmative final injury determination or, in a countervailing duty proceeding that involves merchandise from a country that is not entitled to an injury test, the date of the Secretary's notice of an affirmative final countervailing duty determination. If the amount of duties that would be assessed by applying the rates included in the Secretary's affirmative

preliminary or affirmative final antidumping or countervailing duty determination (''provisional duties'') is different from the amount of duties that would be assessed by applying the assessment rate under paragraphs (b)(1) and (b)(2) of this section (''final duties''), the Secretary will instruct the Customs Service to disregard the difference to the extent that the provisional duties are less than the final duties, and to assess antidumping or countervailing duties at the assessment rate if the provisional duties exceed the final duties.

(e) *Interest on certain overpayments and underpayments.* Under section 778 of the Act, the Secretary will instruct the Customs Service to calculate interest for each entry on or after the publication of the order from the date that a cash deposit is required to be deposited for the entry through the date of liquidation of the entry.

(f) *Special rule for regional industry cases*—(1) *In general.* If the Commission, in its final injury determination, found a regional industry under section 771(4)(C) of the Act, the Secretary may direct that duties not be assessed on subject merchandise of a particular exporter or producer if the Secretary determines that:

(i) The exporter or producer did not export subject merchandise for sale in the region concerned during or after the Department's period of investigation;

(ii) The exporter or producer has certified that it will not export subject merchandise for sale in the region concerned in the future so long as the antidumping or countervailing duty order is in effect; and

(iii) No subject merchandise of the exporter or producer was entered into the United States outside of the region and then sold into the region during or after the Department's period of investigation.

(2) *Procedures for obtaining an exception from the assessment of duties*—(i) *Request for exception.* An exporter or producer seeking an exception from the assessment of duties under paragraph (f)(1) of this section must request, subject to the provisions of § 351.213 or § 351.214, an administrative review or a new shipper review to determine whether subject merchandise of the exporter or producer in question should be excepted from the assessment of duties under paragraph (f)(1) of this section. The exporter or producer making the request may request that the review be limited to a determination as to whether the requirements of paragraph (f)(1) of this section are satisfied. The request for a review must be accompanied by:

(A) A certification by the exporter or producer that it did not export subject merchandise for sale in the region concerned during or after the Department's period of investigation, and that it will not do so in the future so long as the antidumping or countervailing duty order is in effect; and

(B) A certification from each of the exporter's or producer's U.S. importers of the subject merchandise that no subject merchandise of that exporter or producer was entered into the United States outside such region and then sold into the region during or after the Department's period of investigation.

(ii) *Limited review.* If the Secretary initiates an administrative review or a new shipper review based on a request for review that includes a request for an exception from the assessment of duties under paragraph (f)(2)(i) of this section, the Secretary, if requested, may limit the review to a determination as to whether an exception from the assessment of duties should be granted under paragraph (f)(1) of this section.

(3) *Exception granted.* If, in the final results of the administrative review or the new shipper review, the Secretary determines that the requirements of paragraph (f)(1) of this section are satisfied, the Secretary will instruct the Customs Service to liquidate, without regard to antidumping or countervailing duties (whichever is appropriate), entries of subject merchandise of the exporter or producer concerned.

(4) *Exception not granted.* If, in the final results of the administrative review or the new shipper review, the Secretary determines that the requirements of paragraph (f)(1) are not satisfied, the Secretary:

(i) Will issue assessment instructions to the Customs Service in accordance with paragraph (b) of this section; or

(ii) If the review was limited to a determination as to whether an exception from the assessment of duties should be granted, the Secretary will instruct the Customs Service to assess duties in accordance with paragraph (f)(1) or (f)(2) of this section, whichever is appropriate (automatic assessment if no review is requested).

§ 351.213 Administrative review of orders and suspension agreements under section 751(a)(1) of the Act.

(a) *Introduction.* As noted in § 351.212(a), the United States has a ''retrospective'' assessment system under which final liability for antidumping and countervailing duties is determined after merchandise is imported. Although duty liability may be determined in the context of other types of reviews, the most frequently used procedure for determining final duty liability is the administrative review procedure under section 751(a)(1) of the Act. This section contains rules regarding requests for administrative reviews and the conduct of such reviews.

(b) *Request for administrative review.* (1) Each year during the anniversary month of the publication of an antidumping or countervailing duty order, a domestic interested party or an interested party described in section 771(9)(B) of the Act (foreign government) may request in writing that the Secretary conduct an administrative review under section 751(a)(1) of the Act of specified individual exporters or producers covered by an order (except for a countervailing duty order in which the investigation or prior administrative review was conducted on an aggregate basis), if the requesting person states why the person desires the Secretary to review those particular exporters or producers.

(2) During the same month, an exporter or producer covered by an order (except for a countervailing duty order in which the investigation or prior administrative review was conducted on an aggregate basis) may request in writing that the Secretary conduct an administrative review of only that person.

(3) During the same month, an importer of the merchandise may request in writing that the Secretary conduct an administrative review of only an exporter or producer (except for a countervailing duty order in which the investigation or prior administrative review was conducted on an aggregate basis) of the subject merchandise imported by that importer.

(4) Each year during the anniversary month of the publication of a suspension of investigation, an interested party may request in writing that the Secretary conduct an administrative review of all producers or exporters covered by an agreement on which the suspension of investigation was based.

(c) *Deferral of administrative review*—(1) *In general.* The Secretary may defer the initiation of an administrative review, in whole or in part, for one year if:

(i) The request for administrative review is accompanied by a request that the Secretary defer the review, in whole or in part; and

(ii) None of the following persons objects to the deferral: the exporter or producer for which deferral is requested, an importer of subject merchandise of that exporter or producer, a domestic interested party and, in a countervailing duty proceeding, the foreign government.

(2) *Timeliness of objection to deferral.* An objection to a deferral of the initiation of administrative review under paragraph (c)(1)(ii) of this section must be submitted within 15 days after the end of the anniversary month in which the administrative review is requested.

(3) *Procedures and deadlines.* If the Secretary defers the initiation of an administrative review, the Secretary will publish notice of the deferral in the FEDERAL REGISTER. The Secretary will initiate the administrative review in the month immediately following the next anniversary month, and the deadline for issuing preliminary results of review (*see* paragraph (h)(1) of this section) and submitting factual information (*see* § 351.302(b)(2)) will run from the last day of the next anniversary month.

(d) *Rescission of administrative review*—(1) *Withdrawal of request for review.* The Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a

review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review. The Secretary may extend this time limit if the Secretary decides that it is reasonable to do so.

(2) *Self-initiated review*. The Secretary may rescind an administrative review that was self-initiated by the Secretary.

(3) *No shipments*. The Secretary may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise, as the case may be.

(4) *Notice of rescission*. If the Secretary rescinds an administrative review (in whole or in part), the Secretary will publish in the FEDERAL REGISTER notice of ''Rescission of Antidumping (Countervailing Duty) Administrative Review'' or, if appropriate, ''Partial Rescission of Antidumping (Countervailing Duty) Administrative Review.''

(e) *Period of review*—(1) *Antidumping proceedings*. (i) Except as provided in paragraph (e)(1)(ii) of this section, an administrative review under this section normally will cover, as appropriate, entries, exports, or sales of the subject merchandise during the 12 months immediately preceding the most recent anniversary month.

(ii) For requests received during the first anniversary month after publication of an order or suspension of investigation, an administrative review under this section will cover, as appropriate, entries, exports, or sales during the period from the date of suspension of liquidation under this part or suspension of investigation to the end of the month immediately preceding the first anniversary month.

(2) *Countervailing duty proceedings*. (i) Except as provided in paragraph (e)(2)(ii) of this section, an administrative review under this section normally will cover entries or exports of the subject merchandise during the most recently completed calendar year. If the review is conducted on an aggregate basis, the Secretary normally will cover entries or exports of the subject merchandise during the most recently completed fiscal year for the government in question.

(ii) For requests received during the first anniversary month after publication of an order or suspension of investigation, an administrative review under this section will cover entries or exports, as appropriate, during the period from the date of suspension of liquidation under this part or suspension of investigation to the end of the most recently completed calendar or fiscal year as described in paragraph (e)(2)(i) of this section.

(f) *Voluntary respondents*. In an administrative review, the Secretary will examine voluntary respondents in accordance with section 782(a) of the Act and § 351.204(d).

(g) *Procedures*. The Secretary will conduct an administrative review under this section in accordance with § 351.221.

(h) *Time limits*—(1) *In general*. The Secretary will issue preliminary results of review (*see* § 351.221(b)(4)) within 245 days after the last day of the anniversary month of the order or suspension agreement for which the administrative review was requested, and final results of review (*see* § 351.221(b)(5)) within 120 days after the date on which notice of the preliminary results was published in the FEDERAL REGISTER.

(2) *Exception*. If the Secretary determines that it is not practicable to complete the review within the time specified in paragraph (h)(1) of this section, the Secretary may extend the 245-day period to 365 days and may extend the 120-day period to 180 days. If the Secretary does not extend the time for issuing preliminary results, the Secretary may extend the time for issuing final results from 120 days to 300 days.

(i) *Possible cancellation or revision of suspension agreement*. If during an administrative review the Secretary determines or has reason to believe that a signatory has violated a suspension agreement or that the agreement no longer meets the requirements of section 704 or section 734 of the Act (whichever is applicable), the Secretary will take appropriate action under section 704(i) or section 734(i) of the Act and § 351.209. The Secretary

may suspend the time limit in paragraph (h) of this section while taking action under § 351.209.

(j) *Absorption of antidumping duties.* (1) During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping order under § 351.211, or a determination under § 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

(2) For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1996 or 1998.

(3) In determining under paragraph (j)(1) of this section whether antidumping duties have been absorbed, the Secretary will examine the antidumping duties calculated in the administrative review in which the absorption inquiry is requested.

(4) The Secretary will notify the Commission of the Secretary's determination if:

(i) In the case of an administrative review other than one to which paragraph (j)(2) of this section applies, the administrative review covers all or part of a time period falling between the third and fourth anniversary month of an order; or

(ii) In the case of an administrative review to which paragraph (j)(2) of this section applies, the Secretary initiated the administrative review in 1998.

(k) *Administrative reviews of countervailing duty orders conducted on an aggregate basis*—(1) *Request for zero rate.* Where the Secretary conducts an administrative review of a countervailing duty on an aggregate basis under section 777A(e)(2)(B) of the Act, the Secretary will consider and review requests for individual assessment and cash deposit rates of zero to the extent practicable. An exporter or producer that desires a zero rate must submit:

(i) A certification by the exporter or producer that it received zero or *de minimis* net countervailable subsidies during the period of review;

(ii) If the exporter or producer received a countervailable subsidy, calculations demonstrating that the amount of net countervailable subsidies received was *de minimis* during the period of review;

(iii) If the exporter is not the producer of the subject merchandise, certifications from the suppliers and producers of the subject merchandise that those persons received zero or *de minimis* net countervailable subsidies during the period of the review; and

(iv) A certification from the government of the affected country that the government did not provide the exporter (or the exporter's supplier) or producer with more than *de minimis* net countervailable subsidies during the period of review.

(2) *Application of country-wide subsidy rate.* With the exception of assessment and cash deposit rates of zero determined under paragraph (k)(1) of this section, if, in the final results of an administrative review under this section of a countervailing duty order, the Secretary calculates a single country-wide subsidy rate under section 777A(e)(2)(B) of the Act, that rate will supersede, for cash deposit purposes, all rates previously determined in the countervailing duty proceeding in question.

(l) *Exception from assessment in regional industry cases.* For procedures relating to a request for the exception from the assessment of antidumping or countervailing duties in a regional industry case, see § 351.212(f).

§ 351.214 New shipper reviews under section 751(a)(2)(B) of the Act.

(a) *Introduction.* Section 751(a)(2)(B) of the Act provides a procedure by which so-called ''new shippers'' can obtain their own individual dumping margin or countervailable subsidy rate on an expedited basis. In general, a new shipper is an exporter or producer that did not export, and is not affiliated with an exporter or producer that did export, to the United States during the

period of investigation. Furthermore, section 751(a)(2)(B)(iv) requires that the Secretary make a determination of whether the sales under review are bona fide. This section contains rules regarding requests for new shipper reviews and procedures for conducting such reviews, as well as requirements for determining whether sales are bona fide under section 751(a)(2)(B)(iv) of the Act. In addition, this section contains rules regarding requests for expedited reviews by non-investigated exporters in certain countervailing duty proceedings and procedures for conducting such reviews.

(b) *Request for new shipper review*—(1) *Requirement of sale or export.* Subject to the requirements of section 751(a)(2)(B) of the Act and this section, an exporter or producer may request a new shipper review if it has exported, or sold for export, subject merchandise to the United States and can demonstrate the existence of a bona fide sale.

(2) *Contents of request.* A request for a new shipper review must contain the following:

(i) If the person requesting the review is both the exporter and producer of the merchandise, a certification that the person requesting the review did not export subject merchandise to the United States (or, in the case of a regional industry, did not export the subject merchandise for sale in the region concerned) during the period of investigation;

(ii) If the person requesting the review is the exporter, but not the producer, of the subject merchandise:

(A) The certification described in paragraph (b)(2)(i) of this section; and

(B) A certification from the person that produced or supplied the subject merchandise to the person requesting the review that that producer or supplier did not export the subject merchandise to the United States (or, in the case of a regional industry, did not export the subject merchandise for sale in the region concerned) during the period of investigation;

(iii)(A) A certification that, since the investigation was initiated, such exporter or producer has never been affiliated with any exporter or producer who exported the subject merchandise to the United States (or in the case of a regional industry, who exported the subject merchandise for sale in the region concerned) during the period of investigation, including those not individually examined during the investigation; and

(B) In an antidumping proceeding involving imports from a nonmarket economy country, a certification that the export activities of such exporter or producer are not controlled by the central government;

(iv) Certain information regarding the unaffiliated customer:

(A) A certification from the exporter or producer that it will provide, to the fullest extent possible, necessary information related to the unaffiliated customer in the United States during the new shipper review; and

(B) A certification by the unaffiliated customer of its willingness to participate in the new shipper review and provide information relevant to the new shipper review, if such information is requested by the Secretary, or an explanation by the producer/exporter of why such certification from the unaffiliated customer cannot be provided.

(v) Documentation establishing:

(A) The date on which subject merchandise of the exporter or producer making the request was first entered, or withdrawn from warehouse, for consumption, or, if the exporter or producer cannot establish the date of first entry, the date on which the exporter or producer first shipped the subject merchandise for export to the United States;

(B) The volume of that shipment and any subsequent shipments, including whether such shipments were made in commercial quantities;

(C) The date of the first sale, and any subsequent sales, to an unaffiliated customer in the United States;

(D) The circumstances surrounding such sale(s), including but not limited to:

(*1*) The price of such sales;

(*2*) Any expenses arising from such sales;

(*3*) Whether the subject merchandise involved in such sales was resold in the United States at a profit;

(*4*) Whether such sales were made on an arms-length basis; and

(E) Additional documentation regarding the business activities of the producer or exporter, including but not limited to:

(*1*) The producer or exporter's offers to sell merchandise in the United States;

(*2*) An identification of the complete circumstance surrounding the producer or exporter's sales to the United States, as well as any home market or third country sales;

(*3*) In the case of a non-producing exporter, an explanation of the exporter's relationship with its producer/supplier; and

(*4*) An identification of the producer's or exporter's relationship to the first unaffiliated U.S. purchaser;

(vi) In the case of a review of a countervailing duty order, a certification that the exporter or producer has informed the government of the exporting country that the government will be required to provide a full response to the Department's questionnaire.

(c) *Deadline for requesting review.* An exporter or producer may request a new shipper review within one year of the date referred to in paragraph (b)(2)(v)(A) of this section.

(d) *Initiation of new shipper review*—(1) *In general.* If the requirements for a request for new shipper review under paragraph (b) of this section are satisfied, the Secretary will initiate a new shipper review under this section in the calendar month immediately following the anniversary month or the semiannual anniversary month if the request for the review is made during the 6–month period ending with the end of the anniversary month or the semiannual anniversary month (whichever is applicable).

(2) *Semiannual anniversary month.* The semiannual anniversary month is the calendar month that is 6 months after the anniversary month.

(3) *Example.* An order is published in January. The anniversary month would be January, and the semiannual anniversary month would be July. If the Secretary received a request for a new shipper review at any time during the period February–July, the Secretary would initiate a new shipper review in August. If the Secretary received a request for a new shipper review at any time during the period August–January, the Secretary would initiate a new shipper review in February.

(4) *Exception.* If the Secretary determines that the requirements for a request for new shipper review under paragraph (b) of this section have not been satisfied, the Secretary will reject the request and provide a written explanation of the reasons for the rejection.

(e) *Suspension of liquidation.* When the Secretary initiates a new shipper review under this section, the Secretary will direct the Customs Service to suspend or continue to suspend liquidation of any unliquidated entries of the subject merchandise from the relevant exporter or producer at the applicable cash deposit rate.

(f) *Rescission of new shipper review*—(1) *Withdrawal of request for review.* The Secretary may rescind a new shipper review under this section, in whole or in part, if a producer or exporter that requested a review withdraws its request not later than 60 days after the date of publication of notice of initiation of the requested review.

(2) *Absence of entry and sale to an unaffiliated customer.* The Secretary may rescind a new shipper review, in whole or in part, if the Secretary concludes that:

(i) As of the end of the normal period of review referred to in paragraph (g) of this section, there has not been an entry and sale to an unaffiliated customer in the United States of subject merchandise; and

(ii) An expansion of the normal period of review to include an entry and sale to an unaffiliated customer in the United States of subject merchandise would be likely to prevent the completion of the review within the time limits set forth in paragraph (i) of this section;

(3) *Absence of bona fide sale to an unaffiliated customer.* The Secretary may rescind a new shipper review, in whole or in part, if the Secretary concludes that:

(i) Information that the Secretary considers necessary to conduct a bona fide sale analysis is not on the record; or

(ii) The producer or exporter seeking a new shipper review has failed to demonstrate to the satisfaction of the Secretary the existence of a bona fide sale to an unaffiliated customer.

(4) *Notice of rescission.* If the Secretary rescinds a new shipper review (in whole or in part), the Secretary will publish in the FEDERAL REGISTER notice of ''Rescission of Antidumping (Countervailing Duty) New Shipper Review'' or, if appropriate, ''Partial Rescission of Antidumping (Countervailing Duty) New Shipper Review.''

(g) *Period of review*—(1) *Antidumping proceeding*—(i) *In general.* Except as provided in paragraph (g)(1)(ii) of this section, in an antidumping proceeding, a new shipper review under this section normally will cover, as appropriate, entries, exports, or sales during the following time periods:

(A) If the new shipper review was initiated in the month immediately following the anniversary month, the twelve-month period immediately preceding the anniversary month; or

(B) If the new shipper review was initiated in the month immediately following the semiannual anniversary month, the period of review will be the six-month period immediately preceding the semiannual anniversary month.

(ii) *Exceptions.* (A) If the Secretary initiates a new shipper review under this section in the month immediately following the first anniversary month, the review normally will cover, as appropriate, entries, exports, or sales during the period from the date of suspension of liquidation under this part to the end of the month immediately preceding the first anniversary month.

(B) If the Secretary initiates a new shipper review under this section in the month immediately following the first semiannual anniversary month, the review normally will cover, as appropriate, entries, exports, or sales during the period from the date of suspension of liquidation under this part to the end of the month immediately preceding the first semiannual anniversary month.

(2) *Countervailing duty proceeding.* In a countervailing duty proceeding, the period of review for a new shipper review under this section will be the same period as that specified in § 351.213(e)(2) for an administrative review.

(h) *Procedures.* The Secretary will conduct a new shipper review under this section in accordance with § 351.221.

(i) *Time limits*—(1) *In general.* Unless the time limit is waived under paragraph (j)(3) of this section, the Secretary will issue preliminary results of review (see § 351.221(b)(4)) within 180 days after the date on which the new shipper review was initiated, and final results of review (see § 351.221(b)(5)) within 90 days after the date on which the preliminary results were issued.

(2) *Exception.* If the Secretary concludes that a new shipper review is extraordinarily complicated, the Secretary may extend the 180-day period to 300 days, and may extend the 90-day period to 150 days.

(j) *Multiple reviews.* Notwithstanding any other provision of this subpart, if a review (or a request for a review) under § 351.213 (administrative review), § 351.214 (new shipper review), § 351.215 (expedited antidumping review), or § 351.216 (changed circumstances review) covers merchandise of an exporter or producer subject to a review (or to a request for a review) under this section, the Secretary may, after consulting with the exporter or producer:

(1) Rescind, in whole or in part, a review in progress under this subpart;

(2) Decline to initiate, in whole or in part, a review under this subpart; or

(3) Where the requesting producer or exporter agrees in writing to waive the time limits of paragraph (i) of this section, conduct concurrent reviews, in which case all other provisions of this section will continue to apply with respect to the exporter or producer.

(k) *Determinations based on bona fide sales.* In determining whether the U.S. sales of an exporter or producer made during the period covered by the review are bona fide, the Secretary shall consider the factors identified at section 751(a)(2)(B)(iv) of the Act. In accordance with section 751(a)(2)(B)(iv)(VII) of the Act, the Secretary shall consider the following factors:

(1) Whether the producer, exporter, or customer was established for purposes of the sale(s) in question after

the imposition of the relevant antidumping or countervailing duty order;

(2) Whether the producer, exporter, or customer has lines of business unrelated to the subject merchandise;

(3) The quantity of sales; and

(4) Any other factor that the Secretary determines to be relevant with respect to the future selling behavior of the producer or exporter, including any other indicia that the sale was not commercially viable.

(l) *Expedited reviews in countervailing duty proceedings for noninvestigated exporters*—(1) *Request for review.* If, in a countervailing duty investigation, the Secretary limited the number of exporters or producers to be individually examined under section 777A(e)(2)(A) of the Act, an exporter that the Secretary did not select for individual examination or that the Secretary did not accept as a voluntary respondent (see § 351.204(d)) may request a review under this paragraph (l). An exporter must submit a request for review within 30 days of the date of publication in the FEDERAL REGISTER of the countervailing duty order. A request must be accompanied by a certification that:

(i) The requester exported the subject merchandise to the United States during the period of investigation;

(ii) The requester is not affiliated with an exporter or producer that the Secretary individually examined in the investigation; and

(iii) The requester has informed the government of the exporting country that the government will be required to provide a full response to the Department's questionnaire.

(2) *Initiation of review*—(i) *In general.* The Secretary will initiate a review in the month following the month in which a request for review is due under paragraph (l)(1) of this section.

(ii) *Example.* The Secretary publishes a countervailing duty order on January 15. An exporter would have to submit a request for a review by February 14. The Secretary would initiate a review in March.

(3) *Conduct of review.* The Secretary will conduct a review under this paragraph (l) in accordance with the provisions of this section applicable to new shipper reviews, subject to the following exceptions:

(i) The period of review will be the period of investigation used by the Secretary in the investigation that resulted in the publication of the countervailing duty order (*see* § 351.204(b)(2));

(ii) The final results of a review under this paragraph (l) will not be the basis for the assessment of countervailing duties; and

(iii) The Secretary may exclude from the countervailing duty order in question any exporter for which the Secretary determines an individual net countervailable subsidy rate of zero or de minimis (see § 351.204(e)(1)), provided that the Secretary has verified the information on which the exclusion is based.

(m) *Exception from assessment in regional industry cases.* For procedures relating to a request for the exception from the assessment of antidumping or countervailing duties in a regional industry case, see § 351.212(f).

[86 FR 52371, Sept. 20, 2021]

§ 351.215 Expedited antidumping review and security in lieu of estimated duty under section 736(c) of the Act.

(a) *Introduction.* Exporters and producers individually examined in an investigation normally cannot obtain a review of entries until an administrative review is requested. In addition, when an antidumping order is published, importers normally must begin to make a cash deposit of estimated antidumping duties upon the entry of subject merchandise. Section 736(c), however, establishes a special procedure under which exporters or producers may request an expedited review, and bonds, rather than cash deposits, may continue to be posted for a limited period of time if several criteria are satisfied. This section contains rules regarding requests for expedited antidumping reviews and the procedures applicable to such reviews.

(b) *In general.* If the Secretary determines that the criteria of section 736(c)(1) of the Act are satisfied, the Secretary:

(1) May permit, for not more than 90 days after the date of publication of an antidumping order, the posting of a bond or other security instead of the

deposit of estimated antidumping duties required under section 736(a)(3) of the Act; and

(2) Will initiate an expedited antidumping review. Before making such a determination, the Secretary will make business proprietary information available, and will provide interested parties with an opportunity to file written comments, in accordance with section 736(c)(4) of the Act.

(c) *Procedures.* The Secretary will conduct an expedited antidumping review under this section in accordance with § 351.221.

§ 351.216 Changed circumstances review under section 751(b) of the Act.

(a) *Introduction.* Section 751(b) of the Act provides for what is known as a ''changed circumstances'' review. This section contains rules regarding requests for changed circumstances reviews and procedures for conducting such reviews.

(b) *Requests for changed circumstances review.* At any time, an interested party may request a changed circumstances review, under section 751(b) of the Act, of an order or a suspended investigation. Within 45 days after the date on which a request is filed, the Secretary will determine whether to initiate a changed circumstances review.

(c) *Limitation on changed circumstances review.* Unless the Secretary finds that good cause exists, the Secretary will not review a final determination in an investigation (*see* section 705(a) or section 735(a) of the Act) or a suspended investigation (*see* section 704 or section 734 of the Act) less than 24 months after the date of publication of notice of the final determination or the suspension of the investigation.

(d) *Procedures.* If the Secretary decides that changed circumstances sufficient to warrant a review exist, the Secretary will conduct a changed circumstances review in accordance with § 351.221.

(e) *Time limits.* The Secretary will issue final results of review (*see* § 351.221(b)(5)) within 270 days after the date on which the changed circumstances review is initiated, or within 45 days if all parties to the proceeding agree to the outcome of the review.

§ 351.217 Reviews to implement results of subsidies enforcement proceeding under section 751(g) of the Act.

(a) *Introduction.* Section 751(g) provides a mechanism for incorporating into an ongoing countervailing duty proceeding the results of certain subsidy-related disputes under the WTO Subsidies Agreement. Where the United States, in the WTO, has successfully challenged the ''nonactionable'' (*e.g.*, noncountervailable) status of a foreign subsidy, or where the United States has successfully challenged a prohibited or actionable subsidy, the Secretary may conduct a review to determine the effect, if any, of the successful outcome on an existing countervailing duty order or suspended investigation. This section contains rules regarding the initiation and conduct of reviews under section 751(g).

(b) *Violations of Article 8 of the Subsidies Agreement.* If:

(1) The Secretary receives notice from the Trade Representative of a violation of Article 8 of the Subsidies Agreement;

(2) The Secretary has reason to believe that merchandise subject to an existing countervailing duty order or suspended investigation is benefiting from the subsidy or subsidy program found to have been in violation of Article 8; and

(3) No administrative review is in progress, the Secretary will initiate an Article 8 violation review of the order or suspended investigation to determine whether the subject merchandise benefits from the subsidy or subsidy program found to have been in violation of Article 8 of the Subsidies Agreement.

(c) *Withdrawal of subsidy or imposition of countermeasures.* If the Trade Representative notifies the Secretary that, under Article 4 or Article 7 of the Subsidies Agreement:

(1)(i)(A) The United States has imposed countermeasures; and

(B) Such countermeasures are based on the effects in the United States of

imports of merchandise that is the subject of a countervailing duty order; or

(ii) A WTO member country has withdrawn a countervailable subsidy provided with respect to merchandise subject to a countervailing duty order, then

(2) The Secretary will initiate an Article 4/Article 7 review of the order to determine if the amount of estimated duty to be deposited should be adjusted or the order should be revoked.

(d) *Procedures.* The Secretary will conduct an Article 8 violation review or an Article 4/Article 7 review under this section in accordance with § 351.221.

(e) *Expedited reviews.* The Secretary will conduct reviews under this section on an expedited basis.

§ 351.218 Sunset reviews under section 751(c) of the Act.

(a) *Introduction.* The URAA added a new procedure, commonly referred to as ''sunset reviews,'' in section 751(c) of the Act. In general, no later than once every five years, the Secretary must determine whether dumping or countervailable subsidies would be likely to continue or resume if an order were revoked or a suspended investigation were terminated. The Commission must conduct a similar review to determine whether injury would be likely to continue or resume in the absence of an order or suspended investigation. If the determinations under section 751(c) of both the Secretary and the Commission are affirmative, the order (or suspended investigation) remains in place. If either determination is negative, the order will be revoked (or the suspended investigation will be terminated). This section contains rules regarding the procedures for sunset reviews.

(b) *In general.* The Secretary will conduct a sunset review, under section 751(c) of the Act, of each antidumping and countervailing duty order and suspended investigation, and, under section 752(b) or section 752(c) (whichever is applicable), will determine whether revocation of an antidumping or countervailing duty order or termination of a suspended investigation would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy.

(c) *Notice of initiation of review; early initiation*—(1) *Initial sunset review.* No later than 30 days before the fifth anniversary date of an order or suspension of an investigation (*see* section 751(c)(1) of the Act), the Secretary will publish a notice of initiation of a sunset review (*see* section 751(c)(2) of the Act).

(2) *Subsequent sunset reviews.* In the case of an order or suspended investigation that is continued following a sunset review initiated under paragraph (c)(1) of this section, no later than 30 days before the fifth anniversary of the date of the last determination by the Commission to continue the order or suspended investigation, the Secretary will publish a notice of initiation of a sunset review (*see* section 751(c)(2) of the Act).

(3) *Early initiation.* The Secretary may publish a notice of initiation at an earlier date than the dates described in paragraph (c) (1) and (2) of this section if a domestic interested party demonstrates to the Secretary's satisfaction that an early initiation would promote administrative efficiency. However, if the Secretary determines that the domestic interested party that requested early initiation is a related party or an importer under section 771(4)(B) of the Act and § 351.203(e)(4), the Secretary may decline the request for early initiation.

(4) *Transition orders.* The Secretary will initiate sunset reviews of transition orders, as defined in section 751(c)(6)(C) of the Act, in accordance with section 751(c)(6) of the Act.

(d) *Participation in sunset review*—(1) *Domestic interested party notification of intent to participate*—(i) *Filing of notice of intent to participate.* Where a domestic interested party intends to participate in a sunset review, the interested party must, not later than 15 days after the date of publication in the FEDERAL REGISTER of the notice of initiation, file a notice of intent to participate in a sunset review with the Secretary.

(ii) *Contents of notice of intent to participate.* Every notice of intent to participate in a sunset review must include a statement expressing the domestic interested party's intent to participate in the sunset review and the following information:

(A) The name, address, and phone number of the domestic interested party (and its members, if applicable) that intends to participate in the sunset review and the statutory basis (under section 771(9) of the Act) for interested party status;

(B) A statement indicating whether the domestic producer:

(*1*) Is related to a foreign producer or to a foreign exporter under section 771(4)(B) of the Act; or

(*2*) Is an importer of the subject merchandise or is related to such an importer under section 771(4)(B) of the Act;

(C) The name, address, and phone number of legal counsel or other representative, if any;

(D) The subject merchandise and country subject to the sunset review; and

(E) The citation and date of publication in the FEDERAL REGISTER of the notice of initiation.

(iii) *Failure of domestic interested party to file notice of intent to participate in the sunset review.* (A) A domestic interested party that does not file a notice of Intent to participate in the sunset review will be considered not willing to participate in the review and the Secretary will not accept or consider any unsolicited submissions from that party during the course of the review.

(B) If no domestic interested party files a notice of intent to participate in the sunset review, the Secretary will:

(*1*) Conclude that no domestic interested party has responded to the notice of initiation under section 751(c)(3)(A) of the Act;

(*2*) Notify the International Trade Commission in writing as such normally not later than 20 days after the date of publication in the FEDERAL REGISTER of the notice of initiation; and

(*3*) Not later than 90 days after the date of publication in the FEDERAL REGISTER of the Notice of Initiation, issue a final determination revoking the order or terminating the suspended investigation (*see* §§ 351.221(c)(5)(ii) and 351.222(i)).

(2) *Waiver of response by a respondent interested party to a notice of initiation*—(i) *Filing of statement of waiver.* A respondent interested party may waive participation in a sunset review before the Department under section 751(c)(4) of the Act by filing a statement of waiver with the Department, not later than 30 days after the date of publication in the FEDERAL REGISTER of the notice of initiation. If a respondent interested party waives participation in a sunset review before the Department, the Secretary will not accept or consider any unsolicited submissions from that party during the course of the review. Waiving participation in a sunset review before the Department will not affect a party's opportunity to participate in the sunset review conducted by the International Trade Commission.

(ii) *Contents of statement of waiver.* Every statement of waiver must include a statement indicating that the respondent interested party waives participation in the sunset review before the Department; a statement that the respondent interested party is likely to dump or benefit from a countervailable subsidy (as the case may be) if the order is revoked or the investigation is terminated; in the case of a foreign government in a CVD sunset review, a statement that the government is likely to provide a countervailable subsidy if the order is revoked or the investigation is terminated; and the following information:

(A) The name, address, and phone number of the respondent interested party waiving participation in the sunset review before the Department;

(B) The name, address, and phone number of legal counsel or other representative, if any;

(C) The subject merchandise and country subject to the sunset review; and

(D) The citation and date of publication in the FEDERAL REGISTER of the notice of initiation.

(iii) [Reserved]

(iv) *Waiver of participation by a foreign government in a CVD sunset review.* Where a foreign government waives participation in a CVD sunset review under paragraph (d)(2)(i) or (d)(2)(iii) of this section, the Secretary will:

(A) Conclude that respondent interested parties have provided inadequate response to the notice of initiation under section 751(c)(3)(B) of the Act;

(B) Notify the International Trade Commission and conduct an expedited sunset review and issue final results of review in accordance with paragraph (e)(1)(ii)(C) of this section; and

(C) Base the final results of review on the facts available in accordance with 351.308(f).

(3) *Substantive response to a notice of initiation*—(i) *Time limit for substantive response to a notice of initiation.* A complete substantive response to a notice of initiation, filed under this section, must be submitted to the Department not later than 30 days after the date of publication in the FEDERAL REGISTER of the notice of initiation.

(ii) *Required information to be filed by all interested parties in substantive response to a notice of initiation.* Except as provided in paragraph (d)(3)(v)(A) of this section, each interested party that intends to participate in a sunset review must file a submission with the Department containing the following:

(A) The name, address, and phone number of the interested party (and its members, if applicable) that intends to participate in the sunset review and the statutory basis (under section 771(9) of the Act) for interested party status;

(B) The name, address, and phone number of legal counsel or other representative, if any;

(C) The subject merchandise and country subject to the sunset review;

(D) The citation and date of publication in the FEDERAL REGISTER of the notice of initiation;

(E) A statement expressing the interested party's willingness to participate in the review by providing information requested by the Department, which must include a summary of that party's historical participation in any segment of the proceeding before the Department related to the subject merchandise;

(F) A statement regarding the likely effects of revocation of the order or termination of the suspended investigation under review, which must include any factual information, argument, and reason to support such statement;

(G) Factual information, argument, and reason concerning the dumping margin or countervailing duty rate, as applicable, that is likely to prevail if the Secretary revokes the order or terminates the suspended investigation, that the Department should select for a particular interested party(s);

(H) A summary of the Department's findings regarding duty absorption, if any, including a citation to the FEDERAL REGISTER notice in which the Department's findings are set forth; and

(I) A description of any relevant scope clarification or ruling, including a circumvention determination, or changed circumstances determination issued by the Department during the proceeding with respect to the subject merchandise.

(iii) *Additional required information to be filed by respondent interested parties in substantive response to a notice of initiation.* Except as provided in paragraph (d)(3)(v)(A) of this section, the submission from each respondent interested party that intends to participate in a sunset review must also contain the following:

(A) That party's individual weighted average dumping margin or countervailing duty rate, as applicable, from the investigation and each subsequent completed administrative review, including the final margin or rate, as applicable, where such margin or rate was changed as a result of a final and conclusive court order;

(B) For each of the five calendar years (or fiscal years, if more appropriate) preceding the year of publication of the notice of initiation, that party's volume and value (normally on an FOB basis) of exports of subject merchandise to the United States;

(C) As applicable, for the calendar year (or fiscal year, if more appropriate) preceding the year of initiation of the dumping investigation, that party's volume and value (normally on an FOB basis) of exports of subject merchandise to the United States;

(D) For each of the five calendar years (or fiscal years, if more appropriate) preceding the year of publication of the notice of initiation, on a volume basis (or value basis, if more appropriate), that party's percentage of the total exports of subject merchandise (defined in section 771(25) of the Act) to the United States; and

(E) For each of the three most recent years, including the year of publication of the notice of initiation, that party's volume and value (normally on an FOB basis) of exports of subject merchandise to the United States during the two fiscal quarters as of the month preceding the month in which the notice of initiation was published.

(iv) *Optional information to be filed by interested parties in substantive response to a notice of initiation*—(A) *Showing good cause.* An interested party may submit information or evidence to show good cause for the Secretary to consider other factors under section 752(b)(2) (CVD) or section 752(c)(2) (AD) of the Act and paragraph (e)(2)(ii) of this section. Such information or evidence must be submitted in the party's substantive response to the notice of initiation under paragraph (d)(3) of this section.

(B) *Other information.* A substantive response from an interested party under paragraph (d)(3) of this section also may contain any other relevant information or argument that the party would like the Secretary to consider.

(v) *Required information to be filed by a foreign government in substantive response to the notice of initiation in a CVD sunset review*—(A) *In general.* The foreign government of a country subject to a CVD sunset review (*see* section 771(9)(B) of the Act) that intends to participate in a CVD sunset review must file a submission with the Department under paragraph (d)(3)(i) of this section containing the information required under paragraphs (d)(3)(ii) (A) through (E) of this section.

(B) *Additional required information to be filed by a foreign government in a CVD sunset review involving an order where the investigation was conducted on an aggregate basis.* The submission from the foreign government of a country subject to a CVD sunset review, involving an order where the investigation was conducted on an aggregate basis, must also contain:

(*1*) The information required under paragraphs (d)(3)(ii)(F), (d)(3)(ii)(G), and (d)(3)(ii)(I) of this section;

(*2*) The countervailing duty rate from the investigation and each subsequent completed administrative review, including the final rate where such rate was changed as a result of a final and conclusive court order; and

(*3*) For each of the five calendar years (or fiscal years, if more appropriate) preceding the year of publication of the notice of initiation, the volume and value (normally on an FOB basis) of exports of subject merchandise to the United States.

(vi) *Substantive responses from industrial users and consumers.* An industrial user of the subject merchandise or a representative consumer organization, as described in section 777(h) of the Act, that intends to participate in a sunset review must file a submission with the Department under paragraph (d)(3)(i) of this section containing the information required under paragraphs (d)(3)(ii) (A) through (D) of this section and may submit other relevant information under paragraphs (d)(3)(ii) and (d)(3)(iv) of this section.

(4) *Rebuttal to substantive response to a notice of initiation.* Any interested party that files a substantive response to a notice of initiation under paragraph (d)(3) of this section may file a rebuttal to any other party's substantive response to a notice of initiation not later than five days after the date the substantive response is filed with the Department. Except as provided in § 351.309(e), the Secretary normally will not accept or consider any additional information from a party after the time for filing rebuttals has expired, unless the Secretary requests additional information from parties after determining to proceed to a full sunset review under paragraph (e)(2) of this section.

(e) *Conduct of sunset review*—(1) *Adequacy of response to a notice of initiation*—(i) *Adequacy of response from domestic interested parties*—(A) *In general.* The Secretary will make its determination of adequacy of response on a case-by-case basis; however, the Secretary normally will conclude that domestic interested parties have provided adequate response to a notice of initiation where it receives a complete substantive response under paragraph (d)(3) of this section from at least one domestic interested party.

(B) *Disregarding response from a domestic interested party*. In making its determination concerning the adequacy of response from domestic interested parties under paragraph (e)(1)(i)(A) of this section, the Secretary may disregard a response from a domestic producer:

(*1*) Related to a foreign producer or to a foreign exporter under section 771(4)(B) of the Act; or

(*2*) That is an importer of the subject merchandise or is related to such an importer under section 771(4)(B) of the Act (*see* paragraph (d)(1)(ii)(B) of this section).

(C) *Inadequate response from domestic interested parts*. Where the Secretary determines to disregard a response from a domestic interested party(s) under paragraph (e)(1)(i)(A) or (e)(1)(i)(B) of this section and no other domestic interested party has filed a complete substantive response to the notice of initiation under paragraph (d)(3) of this section, the Secretary will:

(*1*) Conclude that no domestic interested party has responded to the notice of initiation under section 751(c)(3)(A) of the Act;

(*2*) Notify the International Trade Commission in writing as such normally not later than 40 days after the date of publication in the FEDERAL REGISTER of the Notice of Initiation; and

(*3*) Not later than 90 days after the date of publication in the FEDERAL REGISTER of the Notice of Initiation, issue a final determination revoking the order or terminating the suspended investigation (see §§ 351.221(c)(5)(ii) and 351.222(i)).

(ii) *Adequacy of response from respondent interested parties*—(A) *In general*. The Secretary will makes its determination of adequacy of response on a case-by-case basis; however, the Secretary normally will conclude that respondent interested parties have provided adequate response to a notice of initiation where it receives complete substantive responses under paragraph (d)(3) of this section from respondent interested parties accounting on average for more than 50 percent, on a volume basis (or value basis, if appropriate), of the total exports of subject merchandise to the United States over the five calendar years preceding the year of publication of the notice of initiation.

(B) *Failure of a foreign government to file a substantive response to a notice of initiation in a CVD sunset review*. If a foreign government fails to file a complete substantive response to a notice of initiation in a CVD sunset review under paragraph (d)(3)(v) of this section or waives participation in a CVD sunset review under paragraph (d)(2)(i) of this section, the Secretary will:

(*1*) Conclude that respondent interested parties have provided inadequate response to the Notice of Initiation under section 751(c)(3)(B) of the Act;

(*2*) Notify the International Trade Commission and conduct an expedited sunset review and issue final results of review in accordance with paragraph (e)(1)(ii)(C) of this section; and

(*3*) Base the final results of review on the facts available in accordance with 351.308(f).

(C) *Inadequate response from respondent interested parties*. If the Secretary determines that respondent interested parties provided inadequate response to a notice of initiation under paragraph (d)(2)(iv), (e)(1)(ii)(A), or (e)(1)(ii)(B) of this section, the Secretary:

(*1*) Will notify the International Trade Commission in writing as such normally not later than 50 days after the date of publication in the FEDERAL REGISTER of the Notice of Initiation; and

(*2*) Normally will conduct an expedited sunset review and, not later than 120 days after the date of publication in the FEDERAL REGISTER of the notice of initiation, issue final results of review based on the facts available in accordance with § 351.308(f) (see section 751(c)(3)(B) of the Act and § 351.221(c)(5)(ii)).

(2) *Full sunset review upon adequate response from domestic and respondent interested parties*—(i) *In general*. Normally, only where the Department receives adequate response to the notice of initiation from domestic interested parties under paragraph (e)(1)(i)(A) of this section and from respondent interested parties under paragraph (e)(1)(ii)(A) of this section, will the Department conduct a full sunset review. Even where the Department conducts a

full sunset review, only under the most extraordinary circumstances will the Secretary rely on a countervailing duty rate or a dumping margin other than those it calculated and published in its prior determinations, and in no case will the Secretary calculate a net countervailable subsidy or a dumping margin for a new shipper in the context of a sunset review.

(ii) [Reserved]

(iii) *Consideration of other factors under section 752(b)(2) (CVD) or section 752(c)(2) (AD) of the Act.* The Secretary will consider other factors under section 752(b)(2) (CVD) or section 752(c)(2) (AD) of the Act if the Secretary determines that good cause to consider such other factors exists. The Secretary normally will consider such other factors only where it conducts a full sunset review under paragraph (e)(2)(i) of this section.

(f) *Time limits*—(1) *Preliminary results of full sunset review.* The Department normally will issue its preliminary results in a full sunset review not later than 110 days after the date of publication in the FEDERAL REGISTER of the notice of initiation.

(2) *Verification*—(i) *In general.* The Department will verify factual information relied upon in making its final determination normally only in a full sunset review (*see* section 782(i)(2) of the Act and § 351.307(b)(1)(iii)) and only where needed. The Department will conduct verification normally only if, in its preliminary results, the Department determines that revocation of the order or termination of the suspended investigation, as applicable, is not likely to lead to continuation or recurrence of a countervailable subsidy or dumping (*see* section 752(b) and section 752(c) of the Act), as applicable, and the Department's preliminary results are not based on countervailing duty rates or dumping margins, as applicable, determined in the investigation or subsequent reviews.

(ii) *Timing of verification.* The Department normally will conduct verification, under paragraph (f)(2)(i) of this section and § 351.307, approximately 120 days after the date of publication in the FEDERAL REGISTER of the notice of initiation.

(3) *Final results of full sunset review and notification to the International Trade Commission*—(i) *Timing of final results of review and notification to the International Trade Commission.* The Department normally will issue its final results in a full sunset review and notify the International Trade Commission of its results of review not later than 240 days after the date of publication in the FEDERAL REGISTER of the notice of initiation (*see* section 751(c)(5)(A) of the Act).

(ii) *Extension of time limit.* If the Secretary determines that a full sunset review is extraordinarily complicated under section 751(c)(5)(C) of the Act, the Secretary may extend the period for issuing final results by not more than 90 days (*see* section 751(c)(5)(B) of the Act).

(4) *Notice of continuation of an order or suspended investigation; notice of revocation of an order or termination of a suspended investigation.* Except as provided in paragraph (d)(1)(iii)(B)(*3*) of this section and § 351.222(i)(1)(i), the Department normally will issue its determination to continue an order or suspended investigation, or to revoke an order or terminate a suspended investigation, as applicable, not later than seven days after the date of publication in the FEDERAL REGISTER of the International Trade Commission's determination concluding the sunset review. The Department immediately thereafter will publish notice of its determination in the FEDERAL REGISTER.

[62 FR 27379, May 19, 1997, as amended at 63 FR 13520, Mar. 20, 1998; 70 FR 62064, Oct. 28, 2005]

§ 351.219 Reviews of countervailing duty orders in connection with an investigation under section 753 of the Act.

(a) *Introduction.* Section 753 of the Act is a transition provision for countervailing duty orders that were issued under section 303 of the Act without an injury determination by the Commission. Under the Subsidies Agreement, one country may not impose countervailing duties on imports from another WTO Member without first making a determination that such imports have caused injury to a domestic industry. Section 753 provides a mechanism for

providing an injury test with respect to those ''no-injury'' orders under section 303 that apply to merchandise from WTO Members. This section contains rules regarding requests for section 753 investigations by a domestic interested party; and the procedures that the Department will follow in reviewing a countervailing duty order and providing the Commission with advice regarding the amount and nature of a countervailable subsidy.

(b) *Notification of domestic interested parties.* The Secretary will notify directly domestic interested parties as soon as possible after the opportunity arises for requesting an investigation by the Commission under section 753 of the Act.

(c) *Initiation and conduct of section 753 review.* Where the Secretary deems it necessary in order to provide to the Commission information on the amount or nature of a countervailable subsidy (*see* section 753(b)(2) of the Act), the Secretary may initiate a section 753 review of the countervailing duty order in question. The Secretary will conduct a section 753 review in accordance with § 351.221.

§ 351.220 Countervailing duty review at the direction of the President under section 762 of the Act.

At the direction of the President or a designee, the Secretary will conduct a review under section 762(a)(1) of the Act to determine if a countervailable subsidy is being provided with respect to merchandise subject to an understanding or other kind of quantitative restriction agreement accepted under section 704(a)(2) or section 704(c)(3) of the Act. The Secretary will conduct a review under this section in accordance with § 351.221. If the Secretary's final results of review under this section and the Commission's final results of review under section 762(a)(2) of the Act are both affirmative, the Secretary will issue a countervailing duty order and order suspension of liquidation in accordance with section 762(b) of the Act.

§ 351.221 Review procedures.

(a) *Introduction.* The procedures for reviews are similar to those followed in investigations. This section details the procedures applicable to reviews in general, as well as procedures that are unique to certain types of reviews.

(b) *In general.* After receipt of a timely request for a review, or on the Secretary's own initiative when appropriate, the Secretary will:

(1) Promptly publish in the FEDERAL REGISTER notice of initiation of the review;

(2) Before or after publication of notice of initiation of the review, send to appropriate interested parties or other persons (or, if appropriate, a sample of interested parties or other persons) questionnaires requesting factual information for the review;

(3) Conduct, if appropriate, a verification under § 351.307;

(4) Issue preliminary results of review, based on the available information, and publish in the FEDERAL REGISTER notice of the preliminary results of review that include:

(i) The rates determined, if the review involved the determination of rates; and

(ii) An invitation for argument consistent with § 351.309;

(5) Issue final results of review and publish in the FEDERAL REGISTER notice of the final results of review that include the rates determined, if the review involved the determination of rates;

(6) If the type of review in question involves a determination as to the amount of duties to be assessed, promptly after publication of the notice of final results instruct the Customs Service to assess antidumping duties or countervailing duties (whichever is applicable) on the subject merchandise covered by the review, except as otherwise provided in § 351.106(c) with respect to *de minimis* duties; and

(7) If the review involves a revision to the cash deposit rates for estimated antidumping duties or countervailing duties, instruct the Customs Service to collect cash deposits at the revised rates on future entries.

(c) *Special rules*—(1) *Administrative reviews and new shipper reviews.* In an administrative review under section 751(a)(1) of the Act and § 351.213 and a new shipper review under section 751(a)(2)(B) of the Act and § 351.214 the Secretary:

(i) Will publish the notice of initiation of the review no later than the last day of the month following the anniversary month or the semiannual anniversary month (as the case may be); and

(ii) Normally will send questionnaires no later than 30 days after the date of publication of the notice of initiation.

(2) *Expedited antidumping review.* In an expedited antidumping review under section 736(c) of the Act and § 351.215, the Secretary:

(i) Will include in the notice of initiation of the review an invitation for argument consistent with § 351.309, and a statement that the Secretary is permitting the posting of a bond or other security instead of a cash deposit of estimated antidumping duties;

(ii) Will instruct the Customs Service to accept, instead of the cash deposit of estimated antidumping duties under section 736(a)(3) of the Act, a bond for each entry of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of initiation of the investigation and through the date not later than 90 days after the date of publication of the order; and

(iii) Will not issue preliminary results of review.

(3) *Changed circumstances review.* In a changed circumstances review under section 751(b) of the Act and § 351.216, the Secretary:

(i) Will include in the preliminary results of review and the final results of review a description of any action the Secretary proposed based on the preliminary or final results;

(ii) May combine the notice of initiation of the review and the preliminary results of review in a single notice if the Secretary concludes that expedited action is warranted; and

(iii) May refrain from issuing questionnaires under paragraph (b)(2) of this section.

(4) *Article 8 Violation review and Article 4/Article 7 review.* In an Article 8 Violation review or an Article 4/Article 7 review under section 751(g) of the Act and § 351.217, the Secretary:

(i) Will include in the notice of initiation of the review an invitation for argument consistent with § 351.309 and will notify all parties to the proceeding at the time the Secretary initiates the review;

(ii) Will not issue preliminary results of review; and

(iii) In the final results of review will indicate the amount, if any, by which the estimated duty to be deposited should be adjusted, and, in an Article 4/Article 7 review, any action, including revocation, that the Secretary will take based on the final results.

(5) *Sunset review.* In a sunset review under section 751(c) of the Act and § 351.218:

(i) The notice of initiation of a sunset review will contain a request for the information described in § 351.218(d); and

(ii) The Secretary, without issuing preliminary results of review, may issue final results of review under paragraphs (3) or (4) of subsection 751(c) of the Act if the conditions of those paragraphs are satisfied.

(6) *Section 753 review.* In a section 753 review under section 753 of the Act and § 351.219, the Secretary:

(i) Will include in the notice of initiation of the review an invitation for argument consistent with § 351.309, and will notify all parties to the proceeding at the time the Secretary initiates the review; and

(ii) May decline to issue preliminary results of review.

(7) *Countervailing duty review at the direction of the President.* In a countervailing duty review at the direction of the President under section 762 of the Act and § 351.220, the Secretary will:

(i) Include in the notice of initiation of the review a description of the merchandise, the period under review, and a summary of the available information which, if accurate, would support the imposition of countervailing duties;

(ii) Notify the Commission of the initiation of the review and the preliminary results of review;

(iii) Include in the preliminary results of review the countervailable subsidy, if any, during the period of review and a description of official changes in the subsidy programs made by the government of the affected country that affect the estimated countervailable subsidy; and

(iv) Include in the final results of review the countervailable subsidy, if any, during the period of review and a description of official changes in the subsidy programs, made by the government of the affected country not later than the date of publication of the notice of preliminary results, that affect the estimated countervailable subsidy.

[62 FR 27379, May 19, 1997, as amended at 63 FR 13525, Mar. 20, 1998]

§ 351.222 Revocation of orders; termination of suspended investigations.

(a) *Introduction.* ''Revocation'' is a term of art that refers to the end of an antidumping or countervailing proceeding in which an order has been issued. ''Termination'' is the companion term for the end of a proceeding in which the investigation was suspended due to the acceptance of a suspension agreement. Generally, a revocation or termination may occur only after the Department or the Commission has conducted one or more reviews under section 751 of the Act. This section contains rules regarding requirements for a revocation or termination; and procedures that the Department will follow in determining whether to revoke an order or terminate a suspended investigation.

(b) *Revocation or termination based on absence of dumping.* (1) In determining whether to revoke an antidumping duty order or terminate a suspended antidumping investigation, the Secretary will consider:

(i) Whether all exporters and producers covered at the time of revocation by the order or the suspension agreement have sold the subject merchandise at not less than normal value for a period of at least three consecutive years; and

(ii) Whether the continued application of the antidumping duty order is otherwise necessary to offset dumping.

(2) If the Secretary determines, based upon the criteria in paragraphs (b)(1)(i) and (ii) of this section, that the antidumping duty order or suspension of the antidumping duty investigation is no longer warranted, the Secretary will revoke the order or terminate the investigation.

(c) *Revocation or termination based on absence of countervailable subsidy.* (1)(i) In determining whether to revoke a countervailing duty order or terminate a suspended countervailing duty investigation, the Secretary will consider:

(A) Whether the government of the affected country has eliminated all countervailable subsidies on the subject merchandise by abolishing for the subject merchandise, for a period of at least three consecutive years, all programs that the Secretary has found countervailable;

(B) Whether exporters and producers of the subject merchandise are continuing to receive any net countervailable subsidy from an abolished program referred to in paragraph (c)(1)(i)(A) of this section; and

(C) Whether the continued application of the countervailing duty order or suspension of countervailing duty investigation is otherwise necessary to offset subsidization.

(ii) If the Secretary determines, based upon the criteria in paragraphs (c)(1)(i)(A) through (C) of this section, that the countervailing duty order or suspension of the countervailing duty investigation is no longer warranted, the Secretary will revoke the order or terminate the suspended investigation.

(2)(i) In determining whether to revoke a countervailing duty order or terminate a suspended countervailing duty investigation, the Secretary will consider:

(A) Whether all exporters and producers covered at the time of revocation by the order or the suspension agreement have not applied for or received any net countervailable subsidy on the subject merchandise for a period of at least five consecutive years; and

(B) Whether the continued application of the countervailing duty order or suspension of the countervailing duty investigation is otherwise necessary to offset subsidization.

(ii) If the Secretary determines, based upon the criteria in paragraphs (c)(2)(i)(A) and (B) of this section, that the countervailing duty order or the suspension of the countervailing duty investigation is no longer warranted, the Secretary will revoke the order or terminate the suspended investigation.

(d) *Treatment of unreviewed intervening years*—(1) *In general.* The Secretary will not revoke an order or terminate a suspended investigation under paragraphs (b) or (c) of this section unless the Secretary has conducted a review under this subpart of the first and third (or fifth) years of the three-and five-year consecutive time periods referred to in those paragraphs. The Secretary need not have conducted a review of an intervening year (*see* paragraph (d)(2) of this section). However, except in the case of a revocation or termination under paragraph (c)(1) of this section (government abolition of countervailable subsidy programs), before revoking an order or terminating a suspended investigation, the Secretary must be satisfied that, during each of the three (or five) years, there were exports to the United States in commercial quantities of the subject merchandise to which a revocation or termination will apply.

(2) *Intervening year.* ''Intervening year'' means any year between the first and final year of the consecutive period on which revocation or termination is conditioned.

(e) Request for revocation or termination—(1) *Antidumping proceeding.* During the third and subsequent annual anniversary months of the publication of an antidumping order or suspension of an antidumping investigation, any exporter or producer may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (b) of this section if the person submits with the request:

(i) Certifications for all exporters and producers covered by the order or suspension agreement that they sold the subject merchandise at not less than normal value during the period of review described in § 351.213(e)(1), and that in the future they will not sell the merchandise at less than normal value; and

(ii) Certifications for all exporters and producers covered by the order or suspension agreement that, during each of the consecutive years referred to in paragraph (b) of this section, they sold the subject merchandise to the United States in commercial quantities.

(2) *Countervailing duty proceeding.* (i) During the third and subsequent annual anniversary months of the publication of a countervailing duty order or suspension of a countervailing duty investigation, the government of the affected country may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (c)(1) of this section if the government submits with the request its certification that it has satisfied, during the period of review described in § 351.213(e)(2), the requirements of paragraph (c)(1)(i) of this section regarding the abolition of countervailable subsidy programs, and that it will not reinstate for the subject merchandise those programs or substitute other countervailable subsidy programs;

(ii) During the fifth and subsequent annual anniversary months of the publication of a countervailing duty order or suspended countervailing duty investigation, the government of the affected country may request in writing that the Secretary revoke an order or terminate a suspended investigation under paragraph (c)(2) of this section if the government submits with the request:

(A) Certifications for all exporters and producers covered by the order or suspension agreement that they have not applied for or received any net countervailable subsidy on the subject merchandise for a period of at least five consecutive years (see paragraph (c)(2)(i) of this section);

(B) Those exporters' and producers' certifications that they will not apply for or receive any net countervailable subsidy on the subject merchandise from any program the Secretary has found countervailable in any proceeding involving the affected country or from other countervailable programs (see paragraph (c)(2)(ii) of this section); and

(C) A certification from each exporter or producer that, during each of the consecutive years referred to in paragraph (c)(2) of this section, that person sold the subject merchandise to the United States in commercial quantities.

(f) *Procedures.* (1) Upon receipt of a timely request for revocation or termination under paragraph (e) of this section, the Secretary will consider the request as including a request for an administrative review and will initiate and conduct a review under § 351.213.

(2) When the Secretary is considering a request for revocation or termination under paragraph (e) of this section, in addition to the requirements of § 351.221 regarding the conduct of an administrative review, the Secretary will:

(i) Publish with the notice of initiation under § 351.221(b)(1), notice of ''Request for Revocation of Order'' or ''Request for Termination of Suspended Investigation'' (whichever is applicable);

(ii) Conduct a verification under § 351.307;

(iii) Include in the preliminary results of review under § 351.221(b)(4) the Secretary's decision whether there is a reasonable basis to believe that the requirements for revocation or termination are met;

(iv) If the Secretary decides that there is a reasonable basis to believe that the requirements for revocation or termination are met, publish with the notice of preliminary results of review under § 351.221(b)(4) notice of ''Intent To Revoke Order'' or ''Intent To Terminate Suspended Investigation'' (whichever is applicable);

(v) Include in the final results of review under § 351.221(b)(5) the Secretary's final decision whether the requirements for revocation or termination are met; and

(vi) If the Secretary determines that the requirements for revocation or termination are met, publish with the notice of final results of review under § 351.221(b)(5) notice of ''Revocation of Order'' or ''Termination of Suspended Investigation'' (whichever is applicable).

(3) If the Secretary revokes an order, the Secretary will order the suspension of liquidation terminated for the merchandise covered by the revocation on the first day after the period under review, and will instruct the Customs Service to release any cash deposit or bond.

(g) *Revocation or termination based on changed circumstances.* (1) The Secretary may revoke an order, in whole or in part, or terminate a suspended investigation if the Secretary concludes that:

(i) Producers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) or suspended investigation pertains have expressed a lack of interest in the order, in whole or in part, or suspended investigation (*see* section 782(h) of the Act); or

(ii) Other changed circumstances sufficient to warrant revocation or termination exist.

(2) If at any time the Secretary concludes from the available information that changed circumstances sufficient to warrant revocation or termination may exist, the Secretary will conduct a changed circumstances review under § 351.216.

(3) In addition to the requirements of § 351.221, the Secretary will:

(i) Publish with the notice of initiation (*see* § 353.221(b)(1), notice of ''Consideration of Revocation of Order (in Part)'' or ''Consideration of Termination of Suspended Investigation'' (whichever is applicable);

(ii) If the Secretary's conclusion regarding the possible existence of changed circumstances (*see* paragraph (g)(2) of this section), is not based on a request, the Secretary, not later than the date of publication of the notice of ''Consideration of Revocation of Order (in Part)'' or ''Consideration of Termination of Suspended Investigation'' (whichever is applicable) (*see* paragraph (g)(3)(i) of this section), will serve written notice of the consideration of revocation or termination on each interested party listed on the Department's service list and on any other person that the Secretary has reason to believe is a domestic interested party;

(iii) Conduct a verification, if appropriate, under § 351.307;

(iv) Include in the preliminary results of review, under § 351.221(b)(4), the Secretary's decision whether there is a reasonable basis to believe that changed circumstances warrant revocation or termination;

(v) If the Secretary's preliminary decision is that changed circumstances warrant revocation or termination,

publish with the notice of preliminary results of review, under § 351.221(b)(4), notice of ''Intent to Revoke Order (in Part)'' or ''Intent to Terminate Suspended Investigation'' (whichever is applicable);

(vi) Include in the final results of review, under § 351.221(b)(5), the Secretary's final decision whether changed circumstances warrant revocation or termination; and

(vii) If the Secretary's determines that changed circumstances warrant revocation or termination, publish with the notice of final results of review, under § 351.221(b)(5), notice of ''Revocation of Order (in Part)'' or ''Termination of Suspended Investigation'' (whichever is applicable).

(4) If the Secretary revokes an order, in whole or in part, under paragraph (g) of this section, the Secretary will order the suspension of liquidation ended for the merchandise covered by the revocation on the effective date of the notice of revocation, and will instruct the Customs Service to release any cash deposit or bond.

(h) *Revocation or termination based on injury reconsideration.* If the Commission determines in a changed circumstances review under section 751(b)(2) of the Act that the revocation of an order or termination of a suspended investigation is not likely to lead to continuation or recurrence of material injury, the Secretary will revoke, in whole or in part, the order or terminate the suspended investigation, and will publish in the FEDERAL REGISTER notice of ''Revocation of Order (in Part)'' or ''Termination of Suspended Investigation'' (whichever is applicable).

(i) *Revocation or termination based on sunset review*—(1) *Circumstances under which the Secretary will revoke an order or terminate a suspended investigation.* In the case of a sunset review under § 351.218, the Secretary will revoke an order or terminate a suspended investigation:

(i) Under section 751(c)(3)(A) of the Act, where no domestic interested party files a Notice of Intent to Participate in the sunset review under § 351.218(d)(1), or where the Secretary determines under § 351.218(e)(1)(i)(C) that domestic interested parties have provided inadequate response to the Notice of Initiation, not later than 90 days after the date of publication in the FEDERAL REGISTER of the notice of initiation;

(ii) Under section 751(d)(2) of the Act, where the Secretary determines that revocation or termination is not likely to lead to continuation or recurrence of a countervailable subsidy or dumping (*see* section 752(b) and section 752(c) of the Act), as applicable, not later than 240 days (or 330 days where a full sunset review is fully extended) after the date of publication in the FEDERAL REGISTER of the notice of initiation; or

(iii) Under section 751(d)(2) of the Act, where the International Trade Commission makes a determination, under section 752(a) of the Act, that revocation or termination is not likely to lead to continuation or recurrence of material injury, not later than seven days after the date of publication in the FEDERAL REGISTER of the International Trade Commission's determination concluding the sunset review.

(2) *Effective date of revocation*—(i) *In general.* Except as provided in paragraph (i)(2)(ii) of this section, where the Secretary revokes an order or terminates a suspended investigation, pursuant to section 751(c)(3)(A) or section 751(d)(2) of the Act (*see* paragraph (i)(1) of this section), the revocation or termination will be effective on the fifth anniversary of the date of publication in the FEDERAL REGISTER of the order or suspended investigation, as applicable. This paragraph also applies to subsequent sunset reviews of transition orders (*see* paragraph (i)(2)(ii) of this section and section 751(c)(6)(A)(iii) of the Act).

(ii) *Transition orders.* Where the Secretary revokes a transition order (defined in section 751(c)(6)(C) of the Act) pursuant to section 751(c)(3)(A) or section 751(d)(2) of the Act (*see* paragraph (i)(1) of this section), the revocation or termination will be effective on January 1, 2000. This paragraph does not apply to subsequent sunset reviews of transition orders (*see* section 751(c)(6)(A)(iii) of the Act).

(j) *Revocation of countervailing duty order based on Commission negative determination under section 753 of the Act.*

The Secretary will revoke a countervailing duty order, and will order the refund, with interest, of any estimated countervailing duties collected during the period liquidation was suspended under section 753(a)(4) of the Act upon being notified by the Commission that:

(1) The Commission has determined that an industry in the United States is not likely to be materially injured if the countervailing duty order in question is revoked (*see* section 753(a)(1) of the Act); or

(2) A domestic interested party did not make a timely request for an investigation under section 753(a) of the Act (*see* section 753(a)(3) of the Act).

(k) *Revocation based on Article 4/Article 7 review*—(1) *In general*. The Secretary may revoke a countervailing duty order, in whole or in part, following an Article 4/Article 7 review under § 351.217(c), due to the imposition of countermeasures by the United States or the withdrawal of a countervailable subsidy by a WTO member country (*see* section 751(g)(2) of the Act).

(2) *Additional requirements*. In addition to the requirements of § 351.221, if the Secretary determines to revoke an order as the result of an Article 4/Article 7 review, the Secretary will:

(i) Conduct a verification, if appropriate, under § 351.307;

(ii) Include in the final results of review, under § 351.221(b)(5), the Secretary's final decision whether the order should be revoked;

(iii) If the Secretary's final decision is that the order should be revoked:

(A) Determine the effective date of the revocation;

(B) Publish with the notice of final results of review, under § 351.221(b)(5), a notice of ''Revocation of Order (in Part),'' that will include the effective date of the revocation; and

(C) Order any suspension of liquidation ended for merchandise covered by the revocation that was entered on or after the effective date of the revocation, and instruct the Customs Service to release any cash deposit or bond.

(l) *Revocation under section 129*. The Secretary may revoke an order under section 129 of the URAA (implementation of WTO dispute settlement).

(m) *Cross-reference*. For the treatment in a subsequent investigation of business proprietary information submitted to the Secretary in connection with a changed circumstances review under § 351.216 or a sunset review under § 351.218 that results in the revocation of an order (or termination of a suspended investigation), see section 777(b)(3) of the Act.

[62 FR 27379, May 19, 1997, as amended at 63 FR 13523, Mar. 20, 1998; 64 FR 51240, Sept. 22, 1999; 77 FR 29883, May 21, 2012]

§ 351.223 Procedures for initiation of downstream product monitoring.

(a) *Introduction*. Section 780 of the Act establishes a mechanism for monitoring imports of ''downstream products.'' In general, section 780 is aimed at situations where, following the issuance of an antidumping or countervailing duty order on a product that is used as a component in another product, exports to the United States of that other (or ''downstream'') product increase. Although the Department is responsible for determining whether trade in the downstream product should be monitored, the Commission is responsible for conducting the actual monitoring. The Commission must report the results of its monitoring to the Department, and the Department must consider the reports in determining whether to self-initiate an antidumping or countervailing duty investigation on the downstream product. This section contains rules regarding applications for the initiation of downstream product monitoring and decisions regarding such applications.

(b) *Contents of application*. An application to designate a downstream product for monitoring under section 780 of the Act must contain the following information, to the extent reasonably available to the applicant:

(1) The name and address of the person requesting the monitoring and a description of the article it produces which is the basis for filing its application;

(2) A detailed description of the downstream product in question;

(3) A detailed description of the component product that is incorporated into the downstream product, including the value of the component part in relation to the value of the downstream product, and the extent to

which the component part has been substantially transformed as a result of its incorporation into the downstream product;

(4) The name of the country of production of both the downstream and component products and the name of any intermediate country from which the merchandise is imported;

(5) The name and address of all known producers of component parts and downstream products in the relevant countries and a detailed description of any relationship between such producers;

(6) Whether the component part is already subject to monitoring to aid in the enforcement of a bilateral arrangement within the meaning of section 804 of the Trade and Tariff Act of 1984;

(7) A list of all antidumping or countervailing duty investigations that have been suspended, or antidumping or countervailing duty orders that have been issued, on merchandise that is related to the component part and that is manufactured in the same foreign country in which the component part is manufactured;

(8) A list of all antidumping or countervailing duty investigations that have been suspended, or antidumping or countervailing duty orders that have been issued, on merchandise that is manufactured or exported by the manufacturer or exporter of the component part and that is similar in description and use to the component part; and

(9) The reasons for suspecting that the imposition of antidumping or countervailing duties has resulted in a diversion of exports of the component part into increased production and exportation to the United States of the downstream product.

(c) *Determination of sufficiency of application.* Within 14 days after an application is filed under paragraph (b) of this section, the Secretary will rule on the sufficiency of the application by making the determinations described in section 780(a)(2) of the Act.

(d) *Notice of determination.* The Secretary will publish in the FEDERAL REGISTER notice of each affirmative or negative ''monitoring'' determination made under section 780(a)(2) of the Act, and if the determination under section 780(a)(2)(A) of the Act and a determination made under any clause of section 780(a)(2)(B) of the Act are affirmative, will transmit to the Commission a copy of the determination and the application. The Secretary will make available to the Commission, and to its employees directly involved in the monitoring, the information upon which the Secretary based the initiation.

§ 351.224 Disclosure of calculations and procedures for the correction of ministerial errors.

(a) *Introduction.* In the interests of transparency, the Department has long had a practice of providing parties with the details of its antidumping and countervailing duty calculations. This practice has come to be referred to as a ''disclosure.'' This section contains rules relating to requests for disclosure and procedures for correcting ministerial errors.

(b) *Disclosure.* The Secretary will disclose to a party to the proceeding calculations performed, if any, in connection with a preliminary determination under section 703(b) or section 733(b) of the Act, a final determination under section 705(a) or section 735(a) of the Act, and a final results of a review under section 736(c), section 751, or section 753 of the Act, normally within five days after the date of any public announcement or, if there is no public announcement of, within five days after the date of publication of, the preliminary determination, final determination, or final results of review (whichever is applicable). The Secretary will disclose to a party to the proceeding calculations performed, if any, in connection with a preliminary results of review under section 751 or section 753 of the Act, normally not later than ten days after the date of the public announcement of, or, if there is no public announcement, within five days after the date of publication of, the preliminary results of review.

(c) *Comments regarding ministerial errors*—(1) *In general.* A party to the proceeding to whom the Secretary has disclosed calculations performed in connection with a preliminary determination may submit comments concerning

a significant ministerial error in such calculations. A party to the proceeding to whom the Secretary has disclosed calculations performed in connection with a final determination or the final results of a review may submit comments concerning any ministerial error in such calculations. Comments concerning ministerial errors made in the preliminary results of a review should be included in a party's case brief.

(2) *Time limits for submitting comments.* A party to the proceeding must file comments concerning ministerial errors within five days after the earlier of:

(i) The date on which the Secretary released disclosure documents to that party; or

(ii) The date on which the Secretary held a disclosure meeting with that party.

(3) *Replies to comments.* Replies to comments submitted under paragraph (c)(1) of this section must be filed within five days after the date on which the comments were filed with the Secretary. The Secretary will not consider replies to comments submitted in connection with a preliminary determination.

(4) *Extensions.* A party to the proceeding may request an extension of the time limit for filing comments concerning a ministerial error in a final determination or final results of review under §351.302(c) within three days after the date of any public announcement, or, if there is no public announcement, within five days after the date of publication of the final determination or final results of review, as applicable. The Secretary will not extend the time limit for filing comments concerning a significant ministerial error in a preliminary determination.

(d) *Contents of comments and replies.* Comments filed under paragraph (c)(1) of this section must explain the alleged ministerial error by reference to applicable evidence in the official record, and must present what, in the party's view, is the appropriate correction. In addition, comments concerning a preliminary determination must demonstrate how the alleged ministerial error is significant (*see* paragraph (g) of this section) by illustrating the effect on individual weighted-average dumping margin or countervailable subsidy rate, the all-others rate, or the country-wide subsidy rate (whichever is applicable). Replies to any comments must be limited to issues raised in such comments.

(e) *Corrections.* The Secretary will analyze any comments received and, if appropriate, correct any significant ministerial error by amending the preliminary determination, or correct any ministerial error by amending the final determination or the final results of review (whichever is applicable). Where practicable, the Secretary will announce publicly the issuance of a correction notice, and normally will do so within 30 days after the date of public announcement, or, if there is no public announcement, within 30 days after the date of publication, of the preliminary determination, final determination, or final results of review (whichever is applicable). In addition, the Secretary will publish notice of such corrections in the FEDERAL REGISTER. A correction notice will not alter the anniversary month of an order or suspended investigation for purposes of requesting an administrative review (*see* §351.213) or a new shipper review (*see* §351.214) or initiating a sunset review (*see* §351.218).

(f) *Definition of ''ministerial error.''* Under this section, *ministerial error* means an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.

(g) *Definition of ''significant ministerial error.''* Under this section, *significant ministerial error* means a ministerial error (*see* paragraph (f) of this section), the correction of which, either singly or in combination with other errors:

(1) Would result in a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin or the countervailable subsidy rate (whichever is applicable) calculated in the original (erroneous) preliminary determination; or

(2) Would result in a difference between a weighted-average dumping margin or countervailable subsidy rate

(whichever is applicable) of zero (or *de minimis*) and a weighted-average dumping margin or countervailable subsidy rate of greater than *de minimis*, or vice versa.

§ 351.225 Scope rulings.

(a) *Introduction.* Questions sometimes arise as to whether a particular product is covered by the scope of an antidumping or countervailing duty order. Such questions may arise for a variety of reasons given that the description of the merchandise subject to the scope is written in general terms. The Secretary will initiate and conduct a scope inquiry and issue a scope ruling to determine whether or not a product is covered by the scope of an order at the request of an interested party or on the Secretary's initiative. A scope ruling that a product is covered by the scope of an order is a determination that the product has always been covered by the scope of that order. This section contains rules and procedures regarding scope rulings, including scope ruling applications, scope inquiries, and standards used in determining whether a product is covered by the scope of an order. Unless otherwise specified, the procedures as described in subpart C of this part (§§ 351.301 through 351.308 and §§ 351.312 through 351.313) apply to this section.

(b) *Self-initiation of a scope inquiry.* If the Secretary determines from available information that an inquiry is warranted to determine whether a product is covered by the scope of an order, the Secretary may initiate a scope inquiry and publish a notice of initiation in the FEDERAL REGISTER.

(c) *Scope ruling application*—(1) *Contents.* An interested party may submit a scope ruling application requesting that the Secretary conduct a scope inquiry to determine whether a product, which is or has been in actual production by the time of the filing of the application, is covered by the scope of an order. The Secretary will make available a scope ruling application, which the applicant must complete and serve in accordance with the requirements of paragraph (n) of this section.

(2) *Requested information.* To the extent reasonably available to the applicant, the scope ruling application must include the following requested information and relevant supporting documentation.

(i) A detailed description of the product and its uses, as necessary:

(A) The physical characteristics (including chemical, dimensional, and technical characteristics) of the product;

(B) The country(ies) where the product is produced, the country from where the product is exported, and if imported, the declared country of origin;

(C) The product's tariff classification under the Harmonized Tariff Schedule of the United States and copies of any Customs rulings relevant to the tariff classification;

(D) The uses of the product;

(E) Clear and legible photographs, schematic drawings, specifications, standards, marketing materials, and any other exemplars providing a visual depiction of the product; and

(F) A description of parts, materials, and the production process employed in the production of the product;

(ii) A concise public summary of the product's description under paragraphs (c)(2)(i)(A) through (C) of this section.

(iii) The name and address of the producer, exporter, and importer of the product.

(iv) A narrative history of the production of the product at issue, including a history of earlier versions of the product if this is not the first model of the product.

(v) The volume of annual production of the product for the most recently completed fiscal year.

(vi) If the product has been imported into the United States as of the date of the filing of the scope ruling application:

(A) An explanation as to whether an entry of the product has been declared by an importer, or determined by the Customs Service, as subject to an order, and

(B) Relevant documentation, including dated copies of the Customs Service entry summary forms (or electronic entry processing system documentation) identifying the product upon importation and other related commercial documents, including invoices and

contracts, which reflect the details surrounding the sale and purchase of that imported product.

(vii) A statement as to whether the product undergoes any additional processing in the United States after importation, or in a third country before importation, and a statement as to the relevance of this processing to the scope of the order.

(viii) The applicant's statement as to whether the product is covered by the scope of the order, including:

(A) An explanation with specific reference to paragraph (j) and (k) of this section, as appropriate;

(B) Citations to any applicable legal authority; and

(C) Whether there are companion orders as described in paragraph (m)(2) of this section.

(ix) Factual information supporting the applicant's position, including full copies of prior scope determinations and relevant excerpts of other documents identified in paragraph (k)(1) of this section.

(d) *Initiation of a scope inquiry and other actions based on a scope ruling application*—(1) *Initiation of a scope inquiry based on a scope ruling application.* Except as provided under paragraph (d)(2) of this section, within 30 days after the filing of a scope ruling application, the Secretary will determine whether to accept or reject the scope ruling application.

(i) If the Secretary determines that a scope ruling application is incomplete or otherwise unacceptable, the Secretary may reject the scope ruling application and will provide a written explanation of the reasons for the rejection. If the scope ruling application is rejected, the applicant may resubmit the full application at any time, with all identified deficiencies corrected.

(ii) If the Secretary does not reject the scope ruling application or initiate the scope inquiry within 31 days after the filing of the application, the application will be deemed accepted and the scope inquiry will be deemed initiated.

(2) *Addressing the scope issue in another segment of the proceeding.* Within 30 days after the filing of a scope ruling application, if the Secretary determines upon review of the application that the scope issue before the Secretary should be addressed in an ongoing segment of the proceeding, such as a circumvention inquiry under § 351.226 or a covered merchandise inquiry under § 351.227, rather than initiating a scope inquiry, the Secretary will notify the applicant of its intent to address the scope issue in such other segment.

(3) *Notice of scope applications.* On a monthly basis, the Secretary will publish a notice in the FEDERAL REGISTER listing scope applications filed with the Secretary.

(e) *Deadlines for scope rulings*—(1) *In general.* The Secretary shall issue a final scope ruling within 120 days after the date on which the scope inquiry was initiated under paragraph (b) or (d) of this section.

(2) *Extension.* The Secretary may extend the deadline in paragraph (e)(1) of this section by no more than 180 days if the Secretary determines that good cause exists to warrant an extension. Situations in which good cause has been demonstrated may include:

(i) If the Secretary has issued questionnaires to the applicant or other interested parties; received responses to those questionnaires; and determined that an extension is warranted to request further information or consider and address the parties' responses on the record adequately; or

(ii) The Secretary has issued a preliminary scope ruling (*see* paragraph (g) of this section).

(3) *Alignment with other segments.* If the Secretary determines it is appropriate to do so, the Secretary may align the deadlines under this paragraph with the deadlines of another segment of the proceeding.

(f) *Scope inquiry procedures.* (1) Within 30 days of the Secretary's self-initiation of a scope inquiry under paragraph (b) of this section, interested parties are permitted one opportunity to submit comments and factual information addressing the self-initiation. Within 14 days of the filing of such comments, any interested party is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information submitted by the other interested parties.

(2) Within 30 days of the initiation of a scope inquiry under paragraph (d)(2)

of this section, an interested party other than the applicant is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information contained in the scope ruling application. Within 14 days of the filing of such rebuttal, clarification, or correction, the applicant is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information submitted in the interested party's rebuttal, clarification or correction.

(3) Following initiation of a scope inquiry under paragraph (b) or (d) of this section, the Secretary may issue questionnaires and verify submissions received, where appropriate. The Secretary may limit issuance of questionnaires to a reasonable number of respondents. Questionnaire responses are due on the date specified by the Secretary. Within 14 days after a questionnaire response has been filed with the Secretary, an interested party other than the original submitter is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information contained in the questionnaire response. Within seven days of the filing of such rebuttal, clarification, or correction, the original submitter is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information submitted in the interested party's rebuttal, clarification or correction.

(4) If the Secretary issues a preliminary scope ruling under paragraph (g) of this section, which is not issued concurrently with the initiation of the scope inquiry, the Secretary will establish a schedule for the filing of scope comments and rebuttal comments. Unless otherwise specified, any interested party may submit scope comments within 14 days after the issuance of the preliminary scope ruling, and any interested party may submit rebuttal comments within 7 days thereafter. Unless otherwise specified, no new factual information will be accepted in the scope or rebuttal comments.

(5) If the Secretary issues a preliminary scope ruling concurrently with the initiation of a scope inquiry under paragraph (g) of this section, paragraphs (f)(1) through (4) of this section will not apply. In such a situation, the Secretary will establish appropriate procedures on a case-specific basis.

(6) If the Secretary determines it is appropriate to do so, the Secretary may rescind, in whole or in part, a scope inquiry under this section and will notify interested parties.

(7) If the Secretary determines it is appropriate to do so, the Secretary may alter or extend any time limits under this paragraph or establish a separate schedule for the filing of comments and/or factual information during the scope inquiry.

(g) *Preliminary scope ruling.* The Secretary may issue a preliminary scope ruling, based upon the available information at the time, as to whether there is a reasonable basis to believe or suspect that the product subject to a scope inquiry is covered by the scope of the order. In determining whether to issue a preliminary scope ruling, the Secretary may consider the complexity of the issues and arguments raised in the scope inquiry. The Secretary may issue a preliminary scope ruling concurrently with the initiation of a scope inquiry under paragraph (b) or (d) of this section.

(h) *Final scope ruling.* The Secretary will issue a final scope ruling as to whether the product that is the subject of the scope inquiry is covered by the scope of the order, including an explanation of the factual and legal conclusions on which the final scope ruling is based. The Secretary will promptly convey a copy of the final scope ruling in the manner prescribed by section 516A(a)(2)(A)(ii) of the Act to all parties to the proceeding (*see* § 351.102(b)(36)), subject to the notice requirements for Governments of an FTA country under § 356.6 and § 356.7.

(i) *Other segments of the proceeding.* (1) Notwithstanding any other provision of this section, the Secretary may, but is not required to, address scope issues in another segment of the proceeding, such as an administrative review under § 351.213, a circumvention inquiry under § 351.226, or a covered merchandise inquiry under § 351.227 without conducting or completing a scope inquiry under this section. For example, the

Secretary may rescind a scope inquiry under paragraph (f)(6) of this section and determine whether the product at issue is covered by the scope of the order in another segment of the proceeding (including another scope inquiry).

(2) During the pendency of a scope inquiry or upon issuance of a final scope ruling under paragraph (h) of this section, the Secretary may take any further action, as appropriate, with respect to another segment of the proceeding. For example, if the Secretary considers it appropriate, the Secretary may request information concerning the product that is the subject of the scope inquiry for purpose of an administrative review under § 351.213.

(j) *Country of origin determinations.* In considering whether a product is covered by the scope of the order at issue, the Secretary may need to determine the country of origin of the product. To make such a determination, the Secretary may use any reasonable method and is not bound by the determinations of any other agency, including tariff classification and country of origin marking rulings issued by the Customs Service.

(1) In determining the country of origin, the Secretary may conduct a substantial transformation analysis that considers relevant factors that arise on a case-by-case basis, including:

(i) Whether the processed downstream product is a different class or kind of merchandise than the upstream product;

(ii) The physical characteristics (including chemical, dimensional, and technical characteristics) of the product;

(iii) The intended end-use of the downstream product;

(iv) The cost of production/value added of further processing in the third country or countries;

(v) The nature and sophistication of processing in the third country or countries; and

(vi) The level of investment in the third country or countries.

(2) In conducting a country of origin determination, the Secretary also may consider where the essential component of the product is produced or where the essential characteristics of the product are imparted.

(k) *Scope rulings.* (1) In determining whether a product is covered by the scope of the order at issue, the Secretary will consider the language of the scope and may make its determination on this basis alone if the language of the scope, including the descriptions of merchandise expressly excluded from the scope, is dispositive.

(i) The following primary interpretive sources may be taken into account under paragraph (k)(1) introductory text of this section, at the discretion of the Secretary:

(A) The descriptions of the merchandise contained in the petition pertaining to the order at issue;

(B) The descriptions of the merchandise contained in the initial investigation pertaining to the order at issue;

(C) Previous or concurrent determinations of the Secretary, including prior scope rulings, memoranda, or clarifications pertaining to both the order at issue, as well as other orders with same or similar language as that of the order at issue; and

(D) Determinations of the Commission pertaining to the order at issue, including reports issued pursuant to the Commission's initial investigation.

(ii) The Secretary may also consider secondary interpretive sources under paragraph (k)(1) introductory text of this section, such as any other determinations of the Secretary or the Commission not identified above, Customs rulings or determinations, industry usage, dictionaries, and any other relevant record evidence. However, in the event of a conflict between these secondary interpretive sources and the primary interpretive sources under paragraph (k)(1)(i) of this section, the primary interpretive sources will normally govern in determining whether a product is covered by the scope of the order at issue.

(2)(i) If the Secretary determines that the sources under paragraph (k)(1) of this section are not dispositive, the Secretary will then further consider the following factors:

(A) The physical characteristics (including chemical, dimensional, and technical characteristics) of the product;

(B) The expectations of the ultimate users;

(C) The ultimate use of the product;

(D) The channels of trade in which the product is sold; and

(E) The manner in which the product is advertised and displayed.

(ii) In the event of a conflict between the factors under paragraph (k)(2)(i) of this section, paragraph (k)(2)(i)(A) will normally be allotted greater weight than the other factors.

(3) If merchandise contains or consists of two or more components and the product at issue in the scope inquiry is a component of that merchandise as a whole, the Secretary may adopt the following analysis:

(i) The Secretary will analyze the scope language under paragraph (k)(1) of this section, and, if necessary, the factors under paragraph (k)(2) of this section, to determine if the component product, standing alone, would be covered by an order;

(ii) If the Secretary determines that the component product would otherwise be covered by the scope of an order as a result of the analysis under (k)(3)(i) of this section, the Secretary will consider the scope language under paragraph (k)(1) of this section to determine whether the component product's inclusion in the merchandise as a whole results in its exclusion from the scope of the order; and

(iii) If the Secretary determines the analysis under (k)(3)(ii) of this section does not resolve whether the component product's inclusion in the merchandise as a whole results in its exclusion from the scope of the order, then the Secretary will consider, as appropriate, the following relevant factors that may arise on a product-specific basis:

(A) The practicability of separating the in-scope component for repackaging or resale, considering the relative difficulty and expense of separating the components;

(B) The measurable value of the in-scope component as compared to the measurable value of the merchandise as a whole; and

(C) The ultimate use or function of the in-scope component relative to the ultimate use or function of the merchandise as a whole.

(l) *Suspension of liquidation.* (1) When the Secretary initiates a scope inquiry under paragraph (b) or (d) of this section, the Secretary will notify the Customs Service of the initiation and direct the Customs Service to continue the suspension of liquidation of entries of products subject to the scope inquiry that were already subject to the suspension of liquidation, and to apply the cash deposit rate that would be applicable if the product were determined to be covered by the scope of the order.

(2) If the Secretary issues a preliminary scope ruling under paragraph (g) of this section that the product at issue is covered by the scope of the order, the Secretary will take the following actions:

(i) The Secretary will direct the Customs Service to continue the suspension of liquidation of previously suspended entries and apply the applicable cash deposit rate;

(ii) The Secretary will direct the Customs Service to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption on or after the date of initiation of the scope inquiry; and

(iii)(A) *In general.* Subject to paragraph (l)(2)(iii)(B) of this section, the Secretary normally will direct the Customs Service to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption prior to the date of initiation of the scope inquiry.

(B) *Exception.* If the Secretary determines it is appropriate to do so, the Secretary may, at the timely request of an interested party or at the Secretary's discretion, direct the Customs Service to begin the suspension of liquidation and apply the applicable cash deposit rate under paragraph (l)(2)(iii)(A) of this section at an alternative date. In response to a timely request from an interested party, the

Secretary will only consider an alternative date based on a specific argument supported by evidence establishing the appropriateness of that alternative date.

(3) If the Secretary issues a final scope ruling under paragraph (h) of this section that the product at issue is covered by the scope of the order, the Secretary will take the following actions:

(i) The Secretary will direct the Customs Service to continue the suspension of liquidation of previously suspended entries and apply the applicable cash deposit rate until appropriate liquidation instructions are issued;

(ii) The Secretary will direct the Customs Service to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption on or after the date of initiation of the scope inquiry until appropriate liquidation instructions are issued; and

(iii)(A) *In general.* Subject to paragraph (l)(3)(iii)(B) of this section, the Secretary normally will direct the Customs Service to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption prior to the date of initiation of the scope inquiry until appropriate liquidation instructions are issued.

(B) *Exception.* If the Secretary determines it is appropriate to do so, the Secretary may, at the timely request of an interested party or at the Secretary's discretion, direct the Customs Service to begin the suspension of liquidation and apply the applicable cash deposit rate under paragraph (l)(3)(iii)(A) of this section at an alternative date until appropriate liquidation instructions are issued. In response to a timely request from an interested party, the Secretary will only consider an alternative date based on a specific argument supported by evidence establishing the appropriateness of that alternative date.

(4) If the Secretary issues a final scope ruling under paragraph (h) of this section that the product is not covered by the scope of the order, and entries of the product at issue are not otherwise subject to suspension of liquidation as a result of another segment of the proceeding, such as a circumvention inquiry under § 351.226 or a covered merchandise inquiry under § 351.227, the Secretary will order the Customs Service to terminate the suspension of liquidation and refund any cash deposits for such entries.

(5) Nothing in this section affects the Customs Service's authority to take any additional action with respect to the suspension of liquidation or related measures.

(m) *Applicability of scope rulings; companion orders*—(1) *Applicability of scope rulings.* In conducting a scope inquiry under this section, the Secretary shall consider, based on the available record evidence, whether the scope ruling should be applied:

(i) On a producer-specific, exporter-specific, importer-specific basis, or some combination thereof; or

(ii) To all products from the same country with the same relevant physical characteristics, (including chemical, dimensional and technical characteristics) as the product at issue, on a country-wide basis, regardless of the producer, exporter or importer of those products.

(2) *Companion antidumping and countervailing duty orders.* If there are companion antidumping and countervailing duty orders covering the same merchandise from the same country of origin, the requesting interested party under paragraph (c) of this section must file the scope ruling application pertaining to both orders only on the record of the antidumping duty proceeding. Should the Secretary determine to initiate a scope inquiry under paragraph (b) or (d) of this section, the Secretary will initiate and conduct a single inquiry with respect to the product at issue for both orders only on the record of the antidumping proceeding. Once the Secretary issues a final scope ruling on the record of the antidumping duty proceeding, the Secretary will include a copy of that scope ruling on the record of the countervailing duty proceeding.

(n) *Service of scope ruling application; annual inquiry service list; entry of appearance.* (1) The requirements of § 351.303(f) apply to this section, except that an interested party that submits a scope ruling application under paragraph (c) of this section must serve a copy of the application on all persons on the annual inquiry service list for that order, as well as the companion order, if any, as described in paragraph (m)(2) of this section. If a scope ruling application is rejected and resubmitted pursuant to paragraph (d)(1) of this section, service of the resubmitted application is not required under this paragraph, unless otherwise specified.

(2) For purposes of this section, the ''annual inquiry service list'' will include the petitioner(s) and those parties that file a request for inclusion on the annual inquiry service list for a proceeding, in accordance with the Secretary's established procedures.

(3) A new ''annual inquiry service list'' will be established on a yearly basis. Parties filing a request for inclusion on that list must file a request during the anniversary month of the publication of the antidumping or countervailing duty order. Only the petitioner and the government of the foreign country at issue in an antidumping or countervailing duty order will be automatically placed on the new annual inquiry service list once the previous year's list has been replaced.

(4) Once a scope inquiry has been self-initiated or a scope ruling application is accepted by the Secretary, a segment-specific service list will be established and the requirements of § 351.303(f) will apply. Parties other than the scope ruling applicant under paragraph (c) of this section that wish to participate in the scope inquiry must file an entry of appearance in accordance with § 351.103(d)(1).

(o) *Publication of list of final scope rulings.* On a quarterly basis, the Secretary will publish in the FEDERAL REGISTER a list of final scope rulings issued within the previous three months. This list will include the case name, and a brief description of the ruling. The Secretary also may include complete public versions of its scope rulings on its website, should the Secretary determine such placement is warranted.

(p) *Suspended investigations; suspension agreements.* The Secretary may apply the procedures set forth in this section in determining whether a product at issue is covered by the scope of a suspended investigation or a suspension agreement (*see* § 351.208).

(q) *Scope clarifications.* The Secretary may issue a scope clarification in any segment of a proceeding providing an interpretation of specific language in the scope of an order or addressing whether a product is covered or excluded by the scope of an order at issue based on previous scope determinations covering the same or similar products. Such a scope clarification may take the form of an interpretive footnote to the scope when the scope is published or issued in instructions to the Customs Service.

[86 FR 52374, Sept. 20, 2021]

§ 351.226 Circumvention inquiries.

(a) *Introduction.* Section 781 of the Act addresses the circumvention of antidumping and countervailing duty orders. This provision recognizes that circumvention seriously undermines the effectiveness of the remedies provided by the antidumping and countervailing duty proceedings and frustrates the purposes for which these laws were enacted. Section 781 of the Act allows the Secretary to apply antidumping and countervailing duty orders in such a way as to prevent circumvention by including within the scope of the order four distinct categories of merchandise. The Secretary will initiate and conduct a circumvention inquiry at the request of an interested party or on the Secretary's initiative, and issue a circumvention determination as provided for under section 781 of the Act and the rules and procedures in this section. Unless otherwise specified, the procedures as described in subpart C of this part (§§ 351.301 through 351.308 and 351.312 through 351.313) apply to this section.

(b) *Self-initiation of circumvention inquiry.* If the Secretary determines from available information that an inquiry is warranted into the question of whether the elements necessary for a circumvention determination under

section 781 of the Act exist, the Secretary may initiate a circumvention inquiry and publish a notice of initiation in the FEDERAL REGISTER.

(c) *Circumvention inquiry request*—(1) *In general.* An interested party may submit a request for a circumvention inquiry that alleges that the elements necessary for a circumvention determination under section 781 of the Act exist and that is accompanied by information reasonably available to the interested party supporting these allegations. The circumvention inquiry request must be served in accordance with the requirements of paragraph (n) of this section.

(2) *Contents of request.* To the extent reasonably available to the requestor, a circumvention inquiry request must include the following requested information under paragraph (c)(1) of this section and relevant supporting documentation:

(i) A detailed description of the merchandise allegedly circumventing the antidumping or countervailing duty order, including:

(A) The physical characteristics (including chemical, dimensional or technical characteristics) of the product;

(B) The country(ies) where the product is produced, the country from where it is exported, and the declared country of origin;

(C) The product's tariff classification under the Harmonized Tariff Schedule of the United States and copies of any Customs rulings relevant to the tariff classification;

(D) The uses of the product;

(E) Clear and legible photographs, schematic drawings, specifications, standards, marketing materials, and any other exemplars providing a visual depiction of the product; and

(F) A description of parts, materials, and the production process employed in the production of the product.

(ii) A concise public summary of the product's description under paragraphs (c)(2)(i)(A) through (C) of this section.

(iii) The name and address of the producer, exporter, and importer of the product. If the full universe of parties allegedly circumventing the order(s) is unknown, then examples are sufficient.

(iv) A statement of the requestor's position as to the nature of the alleged circumvention under section 781 of the Act, such as a description of the procedures, channels of trade, and foreign countries involved (including a description of the processes occurring in each country), as appropriate.

(v) A statement of the requestor's position as to whether the circumvention inquiry, if initiated, should be conducted on a country-wide basis.

(vi) Factual information supporting this position, including import and export data relevant to the merchandise allegedly circumventing the antidumping or countervailing duty order.

(d) *Initiation of a circumvention inquiry and other actions based on a request*—(1) *Initiation of a circumvention inquiry.* Except as provided under paragraph (d)(2) of this section, within 30 days after the filing of a request for a circumvention inquiry, the Secretary will determine whether to accept or reject the request. If it is not practicable to determine whether to accept or reject a request within 30 days, the Secretary may extend that deadline by an additional 15 days.

(i) If the Secretary determines that the request is incomplete or otherwise unacceptable, the Secretary may reject the request, and will provide a written explanation of the reasons for the rejection. If the request is rejected, the requestor may resubmit the full request at any time, with all identified deficiencies corrected.

(ii) If the Secretary determines that a request for a circumvention inquiry satisfies the requirements of paragraph (c) of this section, the Secretary will accept the request and initiate a circumvention inquiry. The Secretary will publish a notice of initiation in the FEDERAL REGISTER.

(2) *Other actions based on a request for a circumvention inquiry.* Where applicable, the Secretary may take one of the following actions within the applicable timeline under paragraph (d)(1) of this section:

(i) If the Secretary determines upon review of a request for a circumvention inquiry that a scope ruling is warranted before the Secretary can conduct a circumvention analysis, the Secretary may either initiate the circumvention inquiry under paragraph (d)(1)(ii) of this section and address the

scope issue in the circumvention inquiry (*see* § 351.225(i)(1)), or defer initiation of the circumvention inquiry pending the completion of any ongoing or new segment of the proceeding addressing the scope issue. When initiation is deferred pending another segment of the proceeding, if the result of that other segment is that the product at issue is not covered by the scope of the antidumping and/or countervailing duty order(s) at issue, the Secretary may immediately initiate the circumvention inquiry upon the issuance of the final decision in that other segment; or

(ii) If the Secretary determines upon review of the request for a circumvention inquiry that the circumvention issue should be addressed in an ongoing segment of the proceeding, such as a covered merchandise inquiry under § 351.227, rather than initiating a circumvention inquiry, the Secretary will notify the requestor of its intent to address the circumvention issue in such other segment.

(e) *Deadlines for circumvention determinations*—(1) *Preliminary determination.* The Secretary will issue a preliminary determination under paragraph (g)(1) of this section no later than 150 days from the date of publication of the notice of initiation of a circumvention inquiry under paragraph (b) or (d) of this section.

(2) *Final determination.* In accordance with section 781(f) of the Act, the Secretary shall, to the maximum extent practicable, issue a final determination under paragraph (g)(2) of this section no later than 300 days from the date of publication of the notice of initiation of a circumvention inquiry under paragraph (b) or (d) of this section. If the Secretary concludes that the inquiry is extraordinarily complicated and additional time is necessary to issue a final circumvention determination, then the Secretary may extend the 300-day deadline by no more than 65 days.

(3) *Alignment with other segments.* If the Secretary determines it is appropriate to do so, the Secretary may align the deadlines under this paragraph with the deadlines of another segment of the proceeding.

(f) *Circumvention inquiry procedures.* (1) Within 30 days of the publication of the notice of the Secretary's self-initiation of a circumvention inquiry under paragraph (b) of this section, interested parties are permitted one opportunity to submit comments and factual information addressing the self-initiation. Within 14 days of the filing of such comments, any interested party is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information submitted by the other interested parties.

(2) Within 30 days of the publication of the notice of initiation of a circumvention inquiry under paragraph (d) of this section, an interested party other than the requestor is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information contained in the request. Within 14 days of the filing of such rebuttal, clarification, or correction, the requestor is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information contained in the interested party's rebuttal, clarification or correction.

(3) Following initiation of a circumvention inquiry under paragraph (b) or (d) of this section, the Secretary may issue questionnaires and verify submissions received, where appropriate. The Secretary may limit issuance of questionnaires to a reasonable number of respondents. Questionnaire responses are due on the date specified by the Secretary. Within 14 days after a questionnaire response has been filed with the Secretary, an interested party other than the original submitter is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information contained in the questionnaire response. Within 7 days of the filing of such rebuttal, clarification, or correction, the original submitter is permitted one opportunity to submit comments and factual information to rebut, clarify, or correct factual information contained in the interested party's rebuttal, clarification or correction.

(4) If the Secretary issues a preliminary circumvention determination under paragraph (g)(1) of this section,

which is not issued concurrently with the initiation of the circumvention inquiry, the Secretary will establish a schedule for the filing of comments and rebuttal comments. Unless otherwise specified, any interested party may submit comments within 14 days after the issuance of the preliminary circumvention determination, and any interested party may submit rebuttal comments within 7 days thereafter. Unless otherwise specified, no new factual information will be accepted in the comments or rebuttal comments.

(5) If the Secretary issues a preliminary circumvention determination concurrently with the initiation of the circumvention inquiry under paragraph (g)(1) of this section, paragraphs (f)(1) through (4) will not apply. In such a situation, the Secretary will establish appropriate procedures on a case-specific basis.

(6) If the Secretary determines it is appropriate to do so, the Secretary may rescind, in whole or in part, a circumvention inquiry, under this section and will notify interested parties. Situations in which the Secretary may rescind a circumvention inquiry include:

(i) The requestor timely withdraws its request for a circumvention inquiry under paragraph (c) of this section;

(ii) The Secretary issues a final determination in another segment of a proceeding, and has determined that the merchandise at issue in the circumvention inquiry is covered by the scope of the antidumping or countervailing duty order;

(iii) The Secretary has initiated a circumvention inquiry under paragraph (b) or (d) of this section to examine circumvention under two or more provisions under paragraph (h), (i), (j), or (k) of this section, and determines that it is not necessary to issue a final circumvention determination with respect to one of those paragraphs. For example, if the Secretary initiates a circumvention inquiry to examine whether merchandise is altered in minor respects under paragraph (j) of this section or later-developed merchandise under paragraph (k) of this section, the Secretary may rescind the inquiry in part to address only one of those provisions; or

(iv) The Secretary has initiated a covered merchandise inquiry under § 351.227 and determined that it can address the necessary elements for a circumvention determination under section 781 of the Act in that proceeding.

(7) If the Secretary determines it is appropriate to do so, the Secretary may alter or extend any time limits under this paragraph or establish a separate schedule for the filing of comments and/or factual information during the circumvention inquiry.

(8)(i) The Secretary will notify the Commission in writing of the proposed inclusion of products in an order prior to issuing a final determination under paragraph (g)(2) of this section based on a determination under:

(A) Section 781(a) of the Act (paragraph (h) of this section) with respect to merchandise completed or assembled in the United States (other than minor completion or assembly);

(B) Section 781(b) of the Act (paragraph (i) of this section) with respect to merchandise completed or assembled in other foreign countries; or

(C) Section 781(d) of the Act (paragraph (k) of this section) with respect to later-developed products that incorporate a significant technological advance or significant alteration of an earlier product.

(ii) If the Secretary notifies the Commission under paragraph (f)(8)(i) of this section, upon the written request of the Commission, the Secretary will consult with the Commission regarding the proposed inclusion, and any such consultation will be completed within 15 days after the date of such request. If, after consultation, the Commission believes that a significant injury issue is presented by the proposed inclusion of a product within an order, the Commission may provide written advice to the Secretary as to whether the inclusion would be inconsistent with the affirmative injury determination of the Commission on which the order is based.

(9) During the pendency of a circumvention inquiry or upon issuance of a final circumvention determination under paragraph (g)(2) of this section, the Secretary may take any further action, as appropriate, with respect to another segment of the proceeding. For

example, if the Secretary considers it appropriate, the Secretary may request information concerning the product that is the subject of the circumvention inquiry for purposes of an administrative review under § 351.213.

(g) *Circumvention determinations*—(1) *Preliminary determination.* The Secretary will issue a preliminary determination, based upon the available information at the time, as to whether there is a reasonable basis to believe or suspect that the elements necessary for a circumvention determination under section 781 of the Act exist. The preliminary determination will be published in the FEDERAL REGISTER. The Secretary may publish notice of a preliminary determination concurrently with the notice of initiation of a circumvention inquiry under paragraph (b) or (d) of this section.

(2) *Final determination.* The Secretary will issue a final determination as to whether the elements necessary for a circumvention determination under section 781 of the Act exist, in which case the merchandise at issue will be included within the scope of the order. As part of its determination, the Secretary will include an explanation of the factual and legal conclusions on which the final determination is based. The final determination will be published in the FEDERAL REGISTER. Promptly after publication, the Secretary will convey a copy of the final determination in the manner prescribed by section 516A(a)(2)(A)(ii) of the Act to all parties to the proceeding (see § 351.102(b)(36)).

(h) *Products completed or assembled in the United States.* Under section 781(a) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order imported parts or components referred to in section 781(a)(1)(B) of the Act that are used in the completion or assembly of the merchandise in the United States at any time such order is in effect. In determining the value of parts or components (including such purchases from another person) under section 781(a)(1)(D) of the Act, or of processing performed (including by another person) under section 781(a)(2)(E) of the Act, the Secretary may determine the value of the part or component on the basis of the cost of producing the part or component under section 773(e) of the Act—or, in the case of nonmarket economies, on the basis of section 773(c) of the Act.

(i) *Products completed or assembled in other foreign countries.* Under section 781(b) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order, at any time such order is in effect, imported merchandise completed or assembled in a foreign country other than the country to which the order applies. In determining the value of parts or components (including such purchases from another person) under section 781(b)(1)(D) of the Act, or of processing performed (including by another person) under section 781(b)(2)(E) of the Act, the Secretary may determine the value of the part or component on the basis of the cost of producing the part or component under section 773(e) of the Act—or, in the case of nonmarket economies, on the basis of section 773(c) of the Act.

(j) *Minor alterations of merchandise.* Under section 781(c) of the Act, the Secretary may include within the scope of an antidumping or countervailing duty order articles altered in form or appearance in minor respects. The Secretary may consider such criteria including, but not limited to, the overall physical characteristics of the merchandise, (including chemical, dimensional, and technical characteristics), the expectations of the ultimate users, the use of the merchandise, the channels of marketing and the cost of any modification relative to the total value of the imported products. The Secretary also may consider the circumstances under which the products enter the United States, including but not limited to the timing of the entries and the quantity of merchandise entered during the circumvention review period.

(k) *Later-developed merchandise.* In determining whether later-developed merchandise is within the scope of an antidumping or countervailing duty order, the Secretary will apply section 781(d) of the Act. In determining whether merchandise is ''later-developed'' the Secretary will examine whether the merchandise at issue was

commercially available at the time of the initiation of the underlying antidumping or countervailing duty investigation.

(l) *Suspension of liquidation.* (1) When the Secretary publishes a notice of initiation of a circumvention inquiry under paragraph (b) or (d) of this section, the Secretary will notify the Customs Service of the initiation and direct the Customs Service to continue the suspension of liquidation of entries of products subject to the circumvention inquiry that were already subject to the suspension of liquidation, and to apply the cash deposit rate that would be applicable if the product were determined to be covered by the scope of the order.

(2) If the Secretary issues an affirmative preliminary determination under paragraph (g)(1) of this section that the product at issue is covered by the scope of the order, the Secretary will take the following actions:

(i) The Secretary will direct the Customs Service to continue the suspension of liquidation of previously suspended entries and apply the applicable cash deposit rate;

(ii) The Secretary will direct the Customs Service to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of initiation of the inquiry; and

(iii)(A) *In general.* Subject to paragraph (l)(2)(iii)(B) of this section, if the Secretary determines that it is appropriate to do so, the Secretary may direct the Customs Service to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption prior to the date of publication of the notice of initiation of the inquiry. The Secretary may take action under this provision at the timely request of an interested party or at the Secretary's discretion. In response to a timely request from an interested party, the Secretary will only consider an alternative date based on a specific argument supported by evidence establishing the appropriateness of that alternative date.

(B) *Exception.* If the Secretary has determined to address a covered merchandise referral (*see* § 351.227) in a circumvention inquiry under § 351.226, the rules of § 351.227(l)(2)(iii) will apply.

(3) If the Secretary issues an affirmative final determination under paragraph (g)(2) of this section that the product at issue is covered by the scope of the order, the following rules will apply:

(i) The Secretary will direct the Customs Service to continue the suspension of liquidation of previously suspended entries and apply the applicable cash deposit rate until appropriate liquidation instructions are issued;

(ii) The Secretary will direct the Customs Service to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of initiation of the inquiry until appropriate liquidation instructions are issued; and

(iii)(A) *In general.* Subject to paragraph (l)(3)(iii)(B) of this section, if the Secretary determines that it is appropriate to do so, the Secretary may direct the Customs Service to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption prior to the date of publication of the notice of initiation of the inquiry until appropriate liquidation instructions are issued. The Secretary may take action under this provision at the timely request of an interested party or at the Secretary's discretion. In response to a timely request from an interested party, the Secretary will only consider an alternative date based on a specific argument supported by evidence establishing the appropriateness of that alternative date.

(B) *Exception*. If the Secretary has determined to address a covered merchandise referral (see § 351.227) in a circumvention inquiry under § 351.226, the rules of § 351.227(l)(3)(iii) will apply.

(4) If the Secretary issues a negative final determination under paragraph (g)(2) of this section, and entries of the product are not otherwise subject to suspension of liquidation as a result of another segment of the proceeding, such as a covered merchandise inquiry under § 351.227, the Secretary will order the Customs Service to terminate the suspension of liquidation and refund any cash deposits for such entries.

(5) Nothing in this section affects the Customs Service's authority to take any additional action with respect to the suspension of liquidation or related measures.

(m) *Applicability of circumvention determination; companion orders*—(1) *Applicability of circumvention determination*. In conducting a circumvention inquiry under this section, the Secretary shall consider, based on the available record evidence, the appropriate remedy to address circumvention and to prevent evasion of the order. Such remedies may include:

(i) The application of the determination on a producer-specific, exporter-specific, importer-specific basis, or some combination thereof;

(ii) The application of the determination on a country-wide basis to all products from the same country as the product at issue with the same relevant physical characteristics, (including chemical, dimensional and technical characteristics), regardless of producer, exporter, or importer of those products;

(iii) The application of the determination on a country-wide basis to all products from the same country as the product at issue with similar relevant physical characteristics, (including chemical, dimensional and technical characteristics), regardless of producer, exporter, or importer of those products; and

(iv) The implementation of a certification requirement under 19 CFR 351.228.

(2) *Companion antidumping and countervailing duty orders*. If there are companion antidumping and countervailing duty orders covering the same merchandise from the same country of origin, the requesting interested party under paragraph (c) of this section must file the request pertaining to both orders only on the record of the antidumping duty proceeding. Should the Secretary determine to initiate a circumvention inquiry under paragraph (b) or (d) of this section, the Secretary will initiate and conduct a single inquiry with respect to the product at issue for both orders only on the record of the antidumping proceeding. Once the Secretary issues a final circumvention determination on the record of the antidumping duty proceeding, the Secretary will include a copy of that determination on the record of the countervailing duty proceeding.

(n) *Service of circumvention inquiry request; annual inquiry service list; entry of appearance*. (1) The requirements of § 351.303(f) apply to this section, except that an interested party that submits a circumvention inquiry request under paragraph (c) of this section must serve a copy of that inquiry request on all persons on the annual inquiry service list for that order, as well as the companion order, if any, as described in paragraph (m)(2) of this section. The procedures and description pertaining to the ''annual inquiry service list'' are set forth in § 351.225(n)(1) through (3).

(2) Once a circumvention inquiry is self-initiated or a circumvention inquiry request is accepted by the Secretary, a segment-specific service list will be established and the requirements of § 351.303(f) will apply. Parties other than the interested party requesting a circumvention inquiry that wish to participate in the circumvention inquiry must file an entry of appearance in accordance with § 351.103(d)(1).

(o) *Suspended investigations; suspension agreements*. The Secretary may, in accordance with section 781 of the Act, apply the procedures set forth in this section in determining whether the product at issue circumvented a suspended investigation or a suspension agreement (*see* § 351.208).

[86 FR 52377, Sept. 20, 2021]

§ 351.227 Covered merchandise referrals.

(a) *Introduction.* The Trade Facilitation and Trade Enforcement Act of 2015 contains Title IV—Prevention of Evasion of Antidumping and Countervailing Duty Orders (short title ''Enforce and Protect Act of 2015'' or ''EAPA'') (Pub. L. 114–125, sections 401, 421, 130 Stat. 122, 155, 161 (2016)). The Enforce and Protect Act of 2015 added section 517 to the Act, which established a new framework by which the Customs Service can conduct civil administrative investigations of potential duty evasion of an antidumping and/or countervailing duty order (referred to herein as an ''EAPA investigation''). Section 517(b)(4)(A)(i) of the Act provides a procedure whereby if, during the course of an EAPA investigation, the Customs Service is unable to determine whether the merchandise at issue is covered merchandise within the meaning of section 517(a)(3) of the Act, it shall refer the matter to the Secretary to make such a determination (referred to herein as a ''covered merchandise referral''). Section 517(b)(4)(B) of the Act directs the Secretary to determine whether the merchandise is covered merchandise and promptly transmit the determination to the Customs Service. The Secretary will consider a covered merchandise referral and issue a covered merchandise determination in accordance with the rules and procedures in this section. Unless otherwise specified, the procedures as described in subpart C of this part (§§ 351.301 through 351.308 and 351.312 through 351.313) apply to this section.

(b) *Actions with respect to covered merchandise referral.* Within 20 days after receiving a covered merchandise referral from the Customs Service pursuant to section 517(b)(4)(A)(i) of the Act that the Secretary determines to be sufficient, the Secretary will take the following action.

(1) Initiate a covered merchandise inquiry and publish a notice of initiation in the FEDERAL REGISTER; or

(2) If the Secretary determines upon review of the covered merchandise referral that the issue can be addressed in an ongoing segment of the proceeding, such as a scope inquiry under § 351.225 or a circumvention inquiry under § 351.226, rather than initiating the covered merchandise inquiry, the Secretary will publish a notice of its intent to address the covered merchandise referral in such other segment in the FEDERAL REGISTER.

(c) *Deadlines for covered merchandise determinations*—(1) *In general.* When the Secretary initiates a covered merchandise inquiry under paragraph (b)(1) of this section, the Secretary shall issue a final covered merchandise determination within 120 days from the date of publication of the notice of initiation.

(2) *Extension.* The Secretary may extend the deadline in paragraph (c)(1) of this section by no more than 150 days if the Secretary determines that good cause exists to warrant an extension. Situations in which good cause has been demonstrated may include:

(i) If the Secretary has issued questionnaires to interested parties; received responses to those questionnaires; and determined that an extension is warranted to request further information or consider and address the parties' responses on the record adequately;

(ii) The Secretary has issued a preliminary covered merchandise determination (*see* paragraph (e)(1) of this section); or

(iii) The Secretary has determined to address a scope or circumvention issue from another segment of the proceeding involving the same or similar products in the covered merchandise inquiry, pursuant to § 351.225(d)(2) or (i) or § 351.226(f)(6)(iv).

(3) *Alignment with other segments.* If the Secretary determines it is appropriate to do so, the Secretary may align the deadlines under this paragraph with the deadlines of another segment of the proceeding.

(d) *Covered merchandise inquiry procedures.* (1) Within 30 days of the date of publication of the notice of an initiation of a covered merchandise inquiry under paragraph (b)(1) of this section, interested parties are permitted one opportunity to submit comment and factual information addressing the initiation. Within 14 days of the filing of such comments, any interested party is permitted one opportunity to submit comment and factual information to

rebut, clarify, or correct factual information submitted by the other interested parties.

(2) Following initiation of a covered merchandise inquiry under paragraph (b)(1) of this section, the Secretary may issue questionnaires and verify submissions received, where appropriate. The Secretary may limit issuance of questionnaires to a reasonable number of respondents. Questionnaire responses are due on the date specified by the Secretary. Within 14 days after a questionnaire response has been filed with the Secretary, an interested party other than the original submitter is permitted one opportunity to submit comment and factual information to rebut, clarify, or correct factual information contained in the questionnaire response. Within 7 days of the filing of such rebuttal, clarification, or correction, the original submitter is permitted one opportunity to submit comment and factual information to rebut, clarify, or correct factual information submitted in the interested party's rebuttal, clarification or correction.

(3) If the Secretary issues a preliminary covered merchandise determination under paragraph (e)(1) of this section, which is not issued concurrently with the initiation of a covered merchandise inquiry, the Secretary will establish a schedule for the filing of comments and rebuttal comments. Unless otherwise specified, any interested party may submit comments within 14 days after the issuance of the preliminary covered merchandise determination, and any interested party may submit rebuttal comments within 7 days thereafter. Unless otherwise specified, no new factual information will be accepted in the comments or rebuttal comments.

(4) If the Secretary issues a preliminary covered merchandise determination concurrently with the initiation of the covered merchandise inquiry under paragraph (e)(1) of this section, paragraphs (d)(1) through (3) will not apply. In such a situation, the Secretary will establish appropriate procedures on a case-specific basis.

(5) If the Secretary determines it appropriate to do so, the Secretary may rescind, in whole or in part, a covered merchandise inquiry under this section and will notify interested parties. Situations in which the Secretary may rescind a covered merchandise inquiry include:

(i) The Customs Service withdraws its request for a covered merchandise inquiry under paragraph (b) of this section; or

(ii) The Secretary has initiated a scope inquiry under § 351.225 or a circumvention inquiry under § 351.226 and determines that it can address the covered merchandise referral in such other segment of the proceeding.

(6) If the Secretary determines it is appropriate to do so, the Secretary may alter or extend any time limits under this paragraph or establish a separate schedule for the filing of comments and/or factual information during the covered merchandise inquiry.

(7) During the pendency of a covered merchandise inquiry or upon issuance of a final covered merchandise determination under paragraph (e)(2) of this section, the Secretary may take any further action, as appropriate, with respect to another segment of the proceeding. For example, if the Secretary considers it appropriate, the Secretary may request information concerning the product that is the subject of the covered merchandise inquiry for purpose of an administrative review under § 351.213.

(e) *Covered merchandise determinations*—(1) *Preliminary determination.* The Secretary may issue a preliminary determination, based upon the available information at the time, as to whether there is a reasonable basis to believe or suspect that the product that is the subject of the covered merchandise inquiry is covered by the scope of the order. In determining whether to issue a preliminary determination, the Secretary may consider the complexity of the issues and arguments raised in the context of the covered merchandise inquiry. The preliminary determination will be published in the FEDERAL REGISTER. The Secretary may publish notice of a preliminary determination concurrently with the notice of initiation of a covered merchandise inquiry under paragraph (b)(1) of this section.

(2) *Final determination.* The Secretary will issue a final determination as to

whether the product that is the subject of the covered merchandise inquiry is covered by the scope of the order. As part of its determination, the Secretary will include an explanation of the factual and legal conclusions on which the final determination is based. The final determination will be published in the FEDERAL REGISTER. Promptly after publication, the Secretary will:

(i) Convey a copy of the final determination in the manner prescribed by section 516A(a)(2)(A)(ii) of the Act to all parties to the proceeding (see § 351.102(b)(36)); and

(ii) Transmit a copy of the final covered merchandise determination to the Customs Service in accordance with section 517(b)(4)(B) of the Act.

(3) *Covered merchandise determinations in other segments of the proceeding.* If the Secretary addresses the covered merchandise referral in another segment of the proceeding as provided for under paragraph (b)(2) or (d)(5)(ii) of this section, the Secretary will promptly transmit a copy of the final action in that segment to the Customs Service in accordance with section 517(b)(4)(B) of the Act.

(f) *Basis for covered merchandise determination.* In determining whether a product is covered by the scope of the order under this section, the Secretary may utilize the analysis described in paragraphs (j) and (k) of § 351.225 or any provision under section 781 of the Act (paragraph (h), (i), (j), or (k) of § 351.226).

(g)–(k) [Reserved]

(l) *Suspension of liquidation.* (1) When the Secretary publishes a notice of initiation of a covered merchandise inquiry under paragraph (b)(1) of this section, the Secretary will notify the Customs Service of the initiation and direct the Customs Service to continue the suspension of liquidation of entries of products subject to the covered merchandise inquiry that were already subject to the suspension of liquidation, and to apply the cash deposit rate that would be applicable if the product were determined to be covered by the scope of the order.

(2) If the Secretary issues an affirmative preliminary covered merchandise determination under paragraph (e)(1) of this section that the product at issue is covered by the scope of the order, the Secretary will take the following actions:

(i) The Secretary will direct the Customs Service to continue the suspension of liquidation of previously suspended entries and apply the applicable cash deposit rate;

(ii) The Secretary will direct the Customs Service to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of initiation of the covered merchandise inquiry; and

(iii) The Secretary normally will direct the Customs Service to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption prior to the date of publication of the notice of initiation of the covered merchandise inquiry.

(3) If the Secretary issues an affirmative final covered merchandise determination under paragraph (e)(2) of this section that the product at issue is covered by the scope of the order, the Secretary will take the following actions:

(i) The Secretary will direct the Customs Service to continue the suspension of liquidation of previously suspended entries and apply the applicable cash deposit rate until appropriate liquidation instructions are issued;

(ii) The Secretary will direct the Customs Service to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of initiation of the covered merchandise inquiry until appropriate liquidation instructions are issued; and

(iii) The Secretary normally will direct the Customs Service to begin the suspension of liquidation and require a cash deposit of estimated duties, at the applicable rate, for each unliquidated

entry of the product not yet suspended, entered, or withdrawn from warehouse, for consumption prior to the date of publication of the notice of initiation of the covered merchandise inquiry until appropriate liquidation instructions are issued.

(4) If the Secretary issues a negative final covered merchandise determination under paragraph (e)(2) of this section that the product at issue is not covered by the scope of the order, and entries of the product at issue are not otherwise subject to suspension of liquidation as a result of another segment of a proceeding, such as a circumvention inquiry under § 351.226, the Secretary will direct the Customs Service to terminate the suspension of liquidation and refund any cash deposits for such entries.

(5) Nothing in this section affects the Customs Service's authority to take any additional action with respect to the suspension of liquidation or related measures.

(m) *Applicability of covered merchandise determination; companion orders*—(1) *Applicability of covered merchandise determination*. In conducting a covered merchandise inquiry under this section, the Secretary shall consider, based on the available record evidence, whether the covered merchandise determination should be applied:

(i) On a producer-specific, exporter-specific, importer-specific basis, or some combination thereof; or

(ii) To all products from the same country with the same relevant physical characteristics, (including chemical, dimensional and technical characteristics) as the product at issue, on a country-wide basis, regardless of the producer, exporter or importer of those products.

(2) *Companion antidumping and countervailing duty orders*. If there are companion antidumping and countervailing duty orders covering the same merchandise from the same country of origin, and should the Secretary determine to initiate a covered merchandise inquiry under paragraph (b)(1) of this section, the Secretary will initiate and conduct a single inquiry with respect to the product at issue only on the record of the antidumping duty proceeding. Once the Secretary issues a final covered merchandise determination on the record of the antidumping duty proceeding, the Secretary will include a copy of that determination on the record of the countervailing duty proceeding and notify the Customs Service in accordance with paragraph (l) of this section.

(n) *Service list*. Once the Secretary initiates a covered merchandise inquiry under paragraph (b)(1) of this section, a segment-specific service list will be established and the requirements of § 351.303(f) will apply. Parties other than those relevant parties identified by the Customs Service in the covered merchandise referral that wish to participate in the covered merchandise inquiry must file an entry of appearance in accordance with § 351.103(d)(1).

(o) *Suspended investigations; suspension agreements*. The Secretary may apply the procedures set forth in this section in determining whether the product at issue is covered merchandise with respect to a suspended investigation or a suspension agreement (*see* § 351.208).

[86 FR 52381, Sept. 20, 2021]

§ 351.228 Certification by importer or other interested party.

(a) *Certification requirements*. (1) The Secretary may determine in the context of an antidumping or countervailing duty proceeding that an importer or other interested party shall:

(i) Maintain a certification for entries of merchandise into the customs territory of the United States;

(ii) Provide a certification by electronic means at the time of entry or entry summary; or

(iii) Otherwise demonstrate compliance with a certification requirement as determined by the Secretary, in consultation with the Customs Service.

(2) Where the certification is required to be maintained by the importer or other interested party under paragraph (a)(1) of this section, the Secretary and/or the Customs Service may require the importer or other interested party to provide such a certification to the requesting agency upon request.

(b) *Consequences for no provision of a certificate; provision of a false certificate*. (1) The Secretary may instruct the

Customs Service to suspend liquidation of entries of the importer or entries associated with the other interested party and require a cash deposit of estimated duties at the applicable rate if:

(i) The importer or other interested party has not provided to the Secretary or the Customs Service, as appropriate, the certification described under paragraph (a) of this section either as required or upon request for such entries; or

(ii) The importer or other interested party provided a certification in accordance with paragraph (a) of this section for such entries, but the certification contained materially false, fictitious or fraudulent statements or representations, or contained material omissions.

(2) Under paragraph (b)(1)(i) or (ii) of this section, the Secretary may also instruct the Customs Service to assess antidumping or countervailing duties, as the case may be, at the applicable rate.

[86 FR 52383, Sept. 20, 2021]

Subpart C—Information and Argument

§ 351.301 Time limits for submission of factual information.

(a) *Introduction.* This section sets forth the time limits for submitting factual information, as defined by § 351.102(b)(21). The Department obtains most of its factual information in antidumping and countervailing duty proceedings from submissions made by interested parties during the course of the proceeding. Notwithstanding paragraph (b) of this section, the Secretary may request any person to submit factual information at any time during a proceeding or provide additional opportunities to submit factual information. Section 351.302 sets forth the procedures for requesting an extension of such time limits, and provides that, unless expressly precluded by statute, the Secretary may, for good cause, extend any time limit established in the Department's regulations. Section 351.303 contains the procedural rules regarding filing (including procedures for filing on non-business days), format, translation, service, and certification of documents. In the Secretary's written request to an interested party for a response to a questionnaire or for other factual information, the Secretary will specify the following: The time limit for the response; the information to be provided; the form and manner in which the interested party must submit the information; and that failure to submit the requested information in the requested form and manner by the date specified may result in use of the facts available under section 776 of the Act and § 351.308.

(b) *Submission of factual information.* Every submission of factual information must be accompanied by a written explanation identifying the subsection of § 351.102(b)(21) under which the information is being submitted.

(1) If an interested party states that the information is submitted under § 351.102(b)(21)(v), the party must explain why the information does not satisfy the definitions described in § 351.102(b)(21)(i)–(iv).

(2) If the factual information is being submitted to rebut, clarify, or correct factual information on the record, the submitter must provide a written explanation identifying the information which is already on the record that the factual information seeks to rebut, clarify, or correct, including the name of the interested party that submitted the information and the date on which the information was submitted.

(c) *Time limits.* The type of factual information determines the time limit for submission to the Department.

(1) *Factual information submitted in response to questionnaires.* During a proceeding, the Secretary may issue to any person questionnaires, which includes both initial and supplemental questionnaires. The Secretary will not consider or retain in the official record of the proceeding unsolicited questionnaire responses, except as provided under § 351.204(d)(2), or untimely filed questionnaire responses. The Secretary will reject any untimely filed or unsolicited questionnaire response and provide, to the extent practicable, written notice stating the reasons for rejection (see § 351.302(d)).

(i) Initial questionnaire responses are due 30 days from the date of receipt of such questionnaire. The time limit for

response to individual sections of the questionnaire, if the Secretary requests a separate response to such sections, may be less than the 30 days allotted for response to the full questionnaire. In general, the date of receipt will be considered to be seven days from the date on which the initial questionnaire was transmitted.

(ii) Supplemental questionnaire responses are due on the date specified by the Secretary.

(iii) A notification by an interested party, under section 782(c)(1) of the Act, of difficulties in submitting information in response to a questionnaire issued by the Secretary is to be submitted in writing within 14 days after the date of the questionnaire or, if the questionnaire is due in 14 days or less, within the time specified by the Secretary.

(iv) A respondent interested party may request in writing that the Secretary conduct a questionnaire presentation. The Secretary may conduct a questionnaire presentation if the Secretary notifies the government of the affected country and that government does not object.

(v) *Factual information submitted to rebut, clarify, or correct questionnaire responses.* Within 14 days after an initial questionnaire response and within 10 days after a supplemental questionnaire response has been filed with the Department, an interested party other than the original submitter is permitted one opportunity to submit factual information to rebut, clarify, or correct factual information contained in the questionnaire response. Within seven days of the filing of such rebuttal, clarification, or correction to a questionnaire response, the original submitter of the questionnaire response is permitted one opportunity to submit factual information to rebut, clarify, or correct factual information submitted in the interested party's rebuttal, clarification or correction. The Secretary will reject any untimely filed rebuttal, clarification, or correction submission and provide, to the extent practicable, written notice stating the reasons for rejection (see § 351.302). If insufficient time remains before the due date for the final determination or final results of review, the Secretary may specify shorter deadlines under this section.

(2) *Factual information submitted in support of allegations.* Factual information submitted in support of allegations must be accompanied by a summary, not to exceed five pages, of the allegation and supporting data.

(i) *Market viability and the basis for determining normal value.* Allegations regarding market viability in an antidumping investigation or administrative review, including the exceptions in § 351.404(c)(2), are due, with all supporting factual information, 10 days after the respondent interested party files the response to the relevant section of the questionnaire, unless the Secretary alters this time limit.

(ii) *Sales at prices below the cost of production.* Allegations of sales at prices below the cost of production made by the petitioner or other domestic interested party are due within:

(A) In an antidumping investigation, on a country-wide basis, 20 days after the date on which the initial questionnaire was issued to any person, unless the Secretary alters this time limit; or, on a company-specific basis, 20 days after a respondent interested party files the response to the relevant section of the questionnaire, unless the relevant questionnaire response is, in the Secretary's view, incomplete, in which case the Secretary will determine the time limit;

(B) In an administrative review, new shipper review, or changed circumstances review, on a company-specific basis, 20 days after a respondent interested party files the response to the relevant section of the questionnaire, unless the relevant questionnaire response is, in the Secretary's view, incomplete, in which case the Secretary will determine the time limit; or

(C) In an expedited antidumping review, on a company-specific basis, 10 days after the date of publication of the notice of initiation of the review.

(iii) *Purchases of major inputs from an affiliated party at prices below the affiliated party's cost of production.* An allegation of purchases of major inputs from an affiliated party at prices below the affiliated party's cost of production

made by the petitioner or other domestic interested party is due within 20 days after a respondent interested party files the response to the relevant section of the questionnaire, unless the relevant questionnaire response is, in the Secretary's view, incomplete, in which case the Secretary will determine the time limits.

(iv) *Countervailable subsidy; upstream subsidy*. A countervailable subsidy allegation made by the petitioner or other domestic interested party is due no later than:

(A) In a countervailing duty investigation, 40 days before the scheduled date of the preliminary determination, unless the Secretary extends this time limit for good cause; or

(B) In an administrative review, new shipper review, or changed circumstances review, 20 days after all responses to the initial questionnaire are filed with the Department, unless the Secretary alters this time limit.

(C) Exception for upstream subsidy allegation in an investigation. In a countervailing duty investigation, an allegation of upstream subsidies made by the petitioner or other domestic interested party is due no later than 60 days after the date of the preliminary determination.

(v) *Other allegations*. An interested party may submit factual information in support of other allegations not specified in paragraphs (c)(2)(i)–(iv) of this section. Upon receipt of factual information under this subsection, the Secretary will issue a memorandum accepting or rejecting the information and, to the extent practicable, will provide written notice stating the reasons for rejection. If the Secretary accepts the information, the Secretary will issue a schedule providing deadlines for submission of factual information to rebut, clarify or correct the factual information.

(vi) *Rebuttal, clarification, or correction of factual information submitted in support of allegations.* An interested party is permitted one opportunity to submit factual information to rebut, clarify, or correct factual information submitted in support of allegations 10 days after the date such factual information is served on an interested party.

(3) *Factual information submitted to value factors under § 351.408(c) or to measure the adequacy of remuneration under § 351.511(a)(2).*

(i) *Antidumping or countervailing duty investigations.* All submissions of factual information to value factors of production under § 351.408(c) in an antidumping investigation, or to measure the adequacy of remuneration under § 351.511(a)(2) in a countervailing duty investigation, are due no later than 30 days before the scheduled date of the preliminary determination;

(ii) *Administrative review, new shipper review, or changed circumstances review*. All submissions of factual information to value factors under § 351.408(c), or to measure the adequacy of remuneration under § 351.511(a)(2), are due no later than 30 days before the scheduled date of the preliminary results of review; and

(iii) *Expedited antidumping review*. All submissions of factual information to value factors under § 351.408(c) are due on a date specified by the Secretary.

(iv) *Rebuttal, clarification, or correction of factual information submitted to value factors under § 351.408(c) or to measure the adequacy of remuneration under § 351.511(a)(2).* An interested party is permitted one opportunity to submit publicly available information to rebut, clarify, or correct such factual information submitted pursuant to § 351.408(c) or § 351.511(a)(2) 10 days after the date such factual information is served on the interested party. An interested party may not submit additional, previously absent-from-the-record alternative surrogate value information under this subsection. Additionally, all factual information submitted under this subsection must be accompanied by a written explanation identifying what information already on the record of the ongoing proceeding the factual information is rebutting, clarifying, or correcting. Information submitted to rebut, clarify, or correct factual information submitted pursuant to § 351.408(c) will not be used to value factors under § 351.408(c).

(4) *Factual information placed on the record of the proceeding by the Department.* The Department may place factual information on the record of the proceeding at any time. An interested

party is permitted one opportunity to submit factual information to rebut, clarify, or correct factual information placed on the record of the proceeding by the Department by a date specified by the Secretary.

(5) *Factual information not directly responsive to or relating to paragraphs (c)(1)–(4) of this section).* Paragraph (c)(5) applies to factual information other than that described in § 351.102(b)(21)(i)–(iv). The Secretary will reject information filed under paragraph (c)(5) that satisfies the definition of information described in § 351.102(b)(21)(i)–(iv) and that was not filed within the deadlines specified above. All submissions of factual information under this subsection are required to clearly explain why the information contained therein does not meet the definition of factual information described in § 351.102(b)(21)(i)–(iv), and must provide a detailed narrative of exactly what information is contained in the submission and why it should be considered. The deadline for filing such information will be 30 days before the scheduled date of the preliminary determination in an investigation, or 14 days before verification, whichever is earlier, and 30 days before the scheduled date of the preliminary results in an administrative review, or 14 days before verification, whichever is earlier.

(i) Upon receipt of factual information under this subsection, the Secretary will issue a memorandum accepting or rejecting the information and, to the extent practicable, will provide written notice stating the reasons for rejection.

(ii) If the Secretary accepts the information, the Secretary will issue a schedule providing deadlines for submission of factual information to rebut, clarify or correct the factual information.

[78 FR 21254, Apr. 10, 2013]

§ 351.302 Extension of time limits; return of untimely filed or unsolicited material.

(a) *Introduction.* This section sets forth the procedures for requesting an extension of a time limit. In addition, this section explains that certain untimely filed or unsolicited material will be rejected together with an explanation of the reasons for the rejection of such material.

(b) *Extension of time limits.* Unless expressly precluded by statute, the Secretary may, for good cause, extend any time limit established by this part.

(c) *Requests for extension of specific time limit.* Before the applicable time limit established under this part expires, a party may request an extension pursuant to paragraph (b) of this section. An untimely filed extension request will not be considered unless the party demonstrates that an extraordinary circumstance exists. The request must be in writing, in a separate, stand-alone submission, filed consistent with § 351.303, and state the reasons for the request. An extension granted to a party must be approved in writing.

(1) An extension request will be considered untimely if it is received after the applicable time limit expires or as otherwise specified by the Secretary.

(2) An extraordinary circumstance is an unexpected event that:

(i) Could not have been prevented if reasonable measures had been taken, and

(ii) Precludes a party or its representative from timely filing an extension request through all reasonable means.

(d) *Rejection of untimely filed or unsolicited material.* (1) Unless the Secretary extends a time limit under paragraph (b) of this section, the Secretary will not consider or retain in the official record of the proceeding:

(i) Untimely filed factual information, written argument, or other material that the Secretary rejects, except as provided under § 351.104(a)(2); or

(ii) Unsolicited questionnaire responses, except as provided under § 351.204(d)(2).

(2) The Secretary will reject such information, argument, or other material, or unsolicited questionnaire response with, to the extent practicable, written notice stating the reasons for rejection.

[62 FR 27379, May 19, 1997, as amended at 76 FR 39275, July 6, 2011; 78 FR 57795, Sept. 20, 2013]

§ 351.303 Filing, document identification, format, translation, service, and certification of documents.

(a) *Introduction.* This section contains the procedural rules regarding filing, document identification, format, service, translation, and certification of documents and applies to all persons submitting documents to the Department for consideration in an antidumping or countervailing duty proceeding.

(b) *Filing*—(1) *In general.* Persons must address all documents to the Secretary of Commerce, Attention: Enforcement and Compliance, APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5 p.m. Eastern Time on the due date. Where applicable, a submitter must manually file a document between the hours of 8:30 a.m. and 5 p.m. Eastern Time on business days (see § 351.103(b)). For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day. A manually filed document must be accompanied by a cover sheet generated in ACCESS, in accordance with § 351.303(b)(3).

(2) *Filing of documents and databases*—(i) *Electronic filing.* A person must file all documents and databases electronically using ACCESS at *https://access.trade.gov*. A person making a filing must comply with the procedures set forth in the ACCESS Handbook on Electronic Filing Procedures, which is available on the ACCESS Web site at *https://access.trade.gov*.

(ii) *Manual filing.* (A) Notwithstanding § 351.303(b)(2)(i), a person must manually file a data file that exceeds the file size limit specified in the ACCESS Handbook on Electronic Filing Procedures and as referenced in § 351.303(c)(3), and the data file must be accompanied by a cover sheet described in § 351.303(b)(3). A person may manually file a bulky document. If a person elects to manually file a bulky document, it must be accompanied by a cover sheet described in § 351.303(b)(3). The Department both provides specifications for large data files and defines bulky document standards in the ACCESS Handbook on Electronic Filing Procedures, which is available on the ACCESS Web site at *https://access.trade.gov*.

(B) [Reserved]

(3) *Cover sheet.* When manually filing a document, parties must complete the cover sheet (as described in the ACCESS Handbook on Electronic Filing Procedures) online at *https://access.trade.gov* and print the cover sheet for submission to the APO/Dockets Unit.

(4) *Document identification.* Each document must be clearly identified as one of the following five document classifications and must conform with the requirements under paragraph (d)(2) of this section. Business proprietary document or business proprietary/APO version, as applicable, means a document or a version of a document containing information for which a person claims business proprietary treatment under § 351.304.

(i) Business Proprietary Document—May be Released Under APO. This business proprietary document contains single-bracketed business proprietary information that the submitter agrees to release under APO. It must contain the statement ''May be Released Under APO'' in accordance with the requirements under paragraph (d)(2)(v) of this section.

(ii) Business Proprietary Document—May Not be Released Under APO. This business proprietary document contains double-bracketed business proprietary information that the submitter does not agree to release under APO. This document must contain the statement ''May Not be Released Under APO'' in accordance with the requirements under paragraph (d)(2)(v) of this section. This type of document may contain single-bracketed business proprietary information in addition to double-bracketed business proprietary information.

(iii) Business Proprietary/APO Version—May be Released Under APO. In the event that a business proprietary document contains both single-

and double-bracketed business proprietary information, the submitting person must submit a version of the document with the double-bracketed business proprietary information omitted. This version must contain the single-bracketed business proprietary information that the submitter agrees to release under APO. This version must be identified as ''Business Proprietary/APO Version'' and must contain the statement ''May be Released Under APO'' in accordance with the requirements under paragraph (d)(2)(v) of this section.

(iv) *Public version.* The public version excludes all business proprietary information, whether single- or double-bracketed. Specific filing requirements for public version submissions are discussed in § 351.304(c).

(v) *Public document.* The public document contains only public information. There is no corresponding business proprietary document for a public document.

(c) Filing of business proprietary documents and public versions under the one-day lag rule; information in double brackets.

(1) *In general.* If a submission contains information for which the submitter claims business proprietary treatment, the submitter may elect to file the submission under the one-day lag rule described in paragraph (c)(2) of this section. A petition, an amendment to a petition, and any other submission filed prior to the initiation of an investigation shall not be filed under the one-day lag rule. The business proprietary document and public version of such pre-initiation submissions must be filed simultaneously on the same day.

(2) *Application of the one-day lag rule—*(i) *Filing the business proprietary document.* A person must file a business proprietary document with the Department within the applicable time limit.

(ii) Filing of final business proprietary document; bracketing corrections. By the close of business one business day after the date the business proprietary document is filed under paragraph (c)(2)(i) of this section, a person must file the complete final business proprietary document with the Department. The final business proprietary document must be identical in all respects to the business proprietary document filed on the previous day except for any bracketing corrections and the omission of the warning ''Bracketing of Business Proprietary Information Is Not Final for One Business Day After Date of Filing'' in accordance with paragraph (d)(2)(v) of this section. A person must serve other persons with the complete final business proprietary document if there are bracketing corrections. If there are no bracketing corrections, a person need not serve a copy of the final business proprietary document.

(iii) *Filing the public version.* Simultaneously with the filing of the final business proprietary document under paragraph (c)(2)(ii) of this section, a person also must file the public version of such document (see § 351.304(c)) with the Department.

(iv) *Information in double brackets.* If a person serves authorized applicants with a business proprietary/APO version of a document that excludes information in double brackets pursuant to §§ 351.303(b)(4)(iii) and 351.304(b)(2), the person simultaneously must file with the Department the complete business proprietary/APO version of the document from which information in double brackets has been excluded.

(3) *Sales files, cost of production files and other electronic databases.* When a submission includes sales files, cost of production files or other electronic databases, such electronic databases must be filed electronically in accordance with paragraph (b)(2) of this section. If a submitter must file the database manually pursuant to § 351.303(b)(2)(ii)(A), the submitter must file such information on the computer medium specified by the Department's request for such information. The submitter need not accompany the computer medium with a paper printout. All electronic database information must be releasable under APO (see § 351.305). A submitter need not include brackets in an electronic database containing business proprietary information. The submitter's selection of the security classification ''Business Proprietary Document—May Be Released

Under APO'' at the time of filing indicates the submitter's request for business proprietary treatment of the information contained in the database. Where possible, the submitter must insert headers or footers requesting business proprietary treatment of the information on the databases for printing purposes. A submitter must submit a public version of a database in pdf format. The public version of the database must be publicly summarized and ranged in accordance with § 351.304(c).

(d) *Format of submissions*—(1) *In general.* Unless the Secretary alters the requirements of this section, a document filed with the Department must conform to the specification and marking requirements under paragraph (d)(2) of this section or the Secretary may reject such document in accordance with § 351.104(a).

(2) *Specifications and markings.* If a document is filed manually, it must be on letter-size (8½ × 11 inch) paper, single-sided and double-spaced, bound with a paper clip, butterfly/binder clip, or rubber band. The filing of stapled, spiral, velo, or other type of solid binding is not permitted. In accordance with paragraph (b)(3) of this section, a cover sheet must be placed before the first page of the document. Electronically filed documents must be formatted to print on letter-size (8½ × 11 inch) paper and double-spaced. Spreadsheets, unusually sized exhibits, and databases are best utilized in their original printing format and should not be reformatted for submission. A submitter must mark the first page of each document in the upper right-hand corner with the following information in the following format:

(i) On the first line, except for a petition, indicate the Department case number;

(ii) On the second line, indicate the total number of pages in the document including cover pages, appendices, and any unnumbered pages;

(iii) On the third line, indicate the specific segment of the proceeding, (*e.g.*, investigation, administrative review, scope inquiry, suspension agreement, *etc.*) and, if applicable, indicate the complete period of review (MM/DD/YY–MM/DD/YY);

(iv) On the fourth line, except for a petition, indicate the Department office conducting the proceeding;

(v) On the fifth and subsequent lines, indicate whether any portion of the document contains business proprietary information and, if so, list the applicable page numbers and state either: ''Business Proprietary Document—May Be Released Under APO,'' ''Business Proprietary Document—May Not Be Released Under APO,'' or ''Business Proprietary/APO Version—May Be Released Under APO,'' as applicable, and consistent with § 351.303(b)(4). Indicate ''Business Proprietary Treatment Requested'' on the top of each page containing business proprietary information. In addition, include the warning ''Bracketing of Business Proprietary Information Is Not Final for One Business Day After Date of Filing'' on the top of each page containing business proprietary information in the business proprietary document filed under paragraph (c)(2)(i) of this section (one-day lag rule). Do not include this warning in the final business proprietary document filed on the next business day under paragraph (c)(2)(ii) of this section (see § 351.303(c)(2) and § 351.304(c)); and

(vi) For the public version of a business proprietary document required under § 351.304(c), complete the marking as required in paragraphs (d)(2)(i)–(v) of this section for the business proprietary document, but conspicuously mark the first page ''Public Version.''

(vii) For a public document, complete the marking as required in paragraphs (d)(2)(i)–(v) of this section for the business proprietary document or version, as applicable, but conspicuously mark the first page ''Public Document.''

(e) *Translation to English.* A document submitted in a foreign language must be accompanied by an English translation of the entire document or of only pertinent portions, where appropriate, unless the Secretary waives this requirement for an individual document. A party must obtain the Department's approval for submission of an English translation of only portions of a document prior to submission to the Department.

(f) *Service of copies on other persons*—(1)(i) *In general.* Except as provided in

§ 351.202(c) (filing of petition), § 351.208(f)(1) (submission of proposed suspension agreement), and paragraph (f)(3) of this section, a person filing a document with the Department simultaneously must serve a copy of the document on all other persons on the service list by personal service or first class mail.

(ii) *Service of public versions, public documents, or a party's own business proprietary information.* Notwithstanding paragraphs (f)(1)(i) and (f)(3) of this section, service of a business proprietary document containing only the server's own business proprietary information, on persons on the APO service list, or the public version of such a document, or a public document on persons on the public service list, may be made by facsimile transmission or other electronic transmission process, with the consent of the person to be served.

(2) *Certificate of service.* Each document filed with the Department must include a certificate of service listing each person served (including agents), the type of document served, and the date and method of service on each person. The Secretary may refuse to accept any document that is not accompanied by a certificate of service.

(3) *Service requirements for certain documents*—(i) *Briefs.* In addition to the certificate of service requirements contained in paragraph (f)(2) of this section, a person filing a case or rebuttal brief with the Department simultaneously must serve a copy of that brief on all persons on the service list and on any U.S. Government agency that has submitted a case or rebuttal brief in the segment of the proceeding. If, under § 351.103(c), a person has designated an agent to receive service that is located in the United States, service on that person must be either by personal service on the same day the brief is filed or by overnight mail or courier on the next day. If the person has designated an agent to receive service that is located outside the United States, service on that person must be by first class airmail.

(ii) *Request for review.* In addition to the certificate of service requirements under paragraph (f)(2) of this section, an interested party that files with the Department a request for an expedited antidumping review, an administrative review, a new shipper review, or a changed circumstances review must serve a copy of the request by personal service or first class mail on each exporter or producer specified in the request and on the petitioner by the end of the anniversary month or within ten days of filing the request for review, whichever is later. If the interested party that files the request is unable to locate a particular exporter or producer, or the petitioner, the Secretary may accept the request for review if the Secretary is satisfied that the party made a reasonable attempt to serve a copy of the request on such person.

(4) Notwithstanding any other paragraph in this section, until further notice, as of March 24, 2020, we are modifying the service requirements with respect to documents containing business proprietary information as follows:

(i) For BPI documents submitted with final bracketing on the due date (*i.e.,* documents not submitted under the one-day lag rule, paragraph (c)(2)(i) of this section), E&C will deem service to be effectuated upon filing of the submission in ACCESS. E&C will notify interested parties that the document has been filed through daily ACCESS BPI Release Digest emails. This paragraph (f)(4)(i) does not apply to service to pro se parties or parties represented by a non-APO-authorized representative.

(ii) For BPI documents submitted under the one-day lag rule, paragraph (c)(2)(i) of this section, E&C is temporarily waiving the service requirement for bracketing-not-final BPI submissions filed on the due date. In addition, E&C will deem service to be effectuated upon the filing in ACCESS of the complete final BPI document on the next business day under paragraph (c)(2)(ii) of this section. This paragraph (f)(4)(ii) does not apply to service to pro se parties or parties represented by a non-APO-authorized representative.

(iii) For case and rebuttal briefs served pursuant to paragraph (f)(3)(i) of this section, service of BPI case and rebuttal briefs will be deemed effectuated via ACCESS. This paragraph (f)(4)(iii)

does not apply to service to pro se parties or parties represented by a non-APO-authorized representative.

(iv) Parties must still take active steps to serve pro se parties BPI documents containing only the pro se party's BPI and serve parties represented by a non-APO-authorized representative documents containing only that party's BPI, consistent with § 351.306(c)(2). However, E&C is temporarily modifying the electronic service provision under paragraph (f)(1)(ii) of this section, so that a pro se party may give consent to another interested party to serve a document electronically on that pro se party only, provided that the document only contains the pro se party's BPI. Such a document must not contain the BPI of other parties. In addition, a party represented by a non-APO-authorized representative may give consent to another interested party to serve a document electronically on that non-APO-authorized representative only, provided that the document only contains the BPI of the party represented by that non-APO-authorized representative. Such a document must not contain the BPI of other parties. If such consent is given, then the serving party's APO-authorized representative may serve the submission on that party via electronic transmission with that recipient's consent.

(v) *Exceptions.* Notwithstanding paragraphs (f)(4)(i) through (iv) of this section, the following types of submissions and scenarios require the normal means of service as required by this paragraph (f):

(A) Requests for administrative review, new shipper review, changed circumstances review and expedited review.

(B) Requests for scope ruling or anti-circumvention inquiry.

(g) *Certifications.* Each submission containing factual information must include the following certification from the person identified in paragraph (g)(1) of this section and, in addition, if the person has legal counsel or another representative, the certification in paragraph (g)(2) of this section. The certifying party must maintain the original signed certification for a period of five years from the date of filing the submission to which the certification pertains. The original signed certification must be available for inspection by U.S. Department of Commerce officials. Copies of the certifications must be included in the submission filed at the Department.

(1) For the person(s) officially responsible for presentation of the factual information:

(i) COMPANY CERTIFICATION *

I, (PRINTED NAME AND TITLE), currently employed by (COMPANY NAME), certify that I prepared or otherwise supervised the preparation of the attached submission of (IDENTIFY THE SPECIFIC SUBMISSION BY TITLE) due on (DATE) OR filed on (DATE) pursuant to the (INSERT ONE OF THE FOLLOWING OPTIONS IN { }: {THE (ANTIDUMPING OR COUNTERVAILING) DUTY INVESTIGATION OF (PRODUCT) FROM (COUNTRY) (CASE NUMBER)} or {THE (DATES OF PERIOD OF REVIEW) (ADMINISTRATIVE OR NEW SHIPPER) REVIEW UNDER THE (ANTIDUMPING OR COUNTERVAILING) DUTY ORDER ON (PRODUCT) FROM (COUNTRY) (CASE NUMBER)} or {THE (SUNSET REVIEW OR CHANGED CIRCUMSTANCE REVIEW OR SCOPE RULING OR CIRCUMVENTION INQUIRY) OF THE (ANTIDUMPING OR COUNTERVAILING) DUTY ORDER ON (PRODUCT) FROM (COUNTRY) (CASE NUMBER)}). I certify that the public information and any business proprietary information of (CERTIFIER'S COMPANY NAME) contained in this submission is accurate and complete to the best of my knowledge. I am aware that the information contained in this submission may be subject to verification or corroboration (as appropriate) by the U.S. Department of Commerce. I am also aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the U.S. Department of Commerce may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that a copy of this signed certification will be filed with this submission to the U.S. Department of Commerce.

Signature: _____

Date: _____

*For multiple person certifications, all persons should be listed in the first sentence of the certification and all

persons should sign and date the certification. In addition, singular pronouns and possessive adjectives should be changed accordingly, *e.g.*, ''I'' should be changed to ''we'' and ''my knowledge'' should be changed to ''our knowledge.''

(ii) GOVERNMENT CERTIFICATION **

I, (PRINTED NAME AND TITLE), currently employed by the government of (COUNTRY), certify that I prepared or otherwise supervised the preparation of the attached submission of (IDENTIFY THE SPECIFIC SUBMISSION BY TITLE) due on (DATE) OR filed on (DATE) pursuant to the (INSERT ONE OF THE FOLLOWING OPTIONS IN { }: {THE (ANTIDUMPING OR COUNTERVAILING) DUTY INVESTIGATION OF (PRODUCT) FROM (COUNTRY) (CASE NUMBER)} or {THE (DATES OF PERIOD OF REVIEW) (ADMINISTRATIVE OR NEW SHIPPER) REVIEW UNDER THE (ANTIDUMPING OR COUNTERVAILING) DUTY ORDER ON (PRODUCT) FROM (COUNTRY) (CASE NUMBER)} or {THE (SUNSET REVIEW OR CHANGED CIRCUMSTANCE REVIEW OR SCOPE RULING OR CIRCUMVENTION INQUIRY) OF THE (ANTIDUMPING OR COUNTERVAILING) DUTY ORDER ON (PRODUCT) FROM (COUNTRY) (CASE NUMBER)}). I certify that the public information and any business proprietary information of the government of (COUNTRY) contained in this submission is accurate and complete to the best of my knowledge. I am aware that the information contained in this submission may be subject to verification or corroboration (as appropriate) by the U.S. Department of Commerce. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the U.S. Department of Commerce may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that a copy of this signed certification will be filed with this submission to the U.S. Department of Commerce.

Signature: _____

Date: _____

** For multiple person certifications, all persons should be listed in the first sentence of the certification and all persons should sign and date the certification. In addition, singular pronouns and possessive adjectives should be changed accordingly, *e.g.*, ''I'' should be changed to ''we'' and ''my knowledge'' should be changed to ''our knowledge.''

(2) For the legal counsel or other representative:

REPRESENTATIVE CERTIFICATION * * *

I, (PRINTED NAME), with (LAW FIRM or OTHER FIRM), (INSERT ONE OF THE FOLLOWING OPTIONS IN { }: {COUNSEL TO} or {REPRESENTATIVE OF}) (COMPANY NAME, OR GOVERNMENT OF COUNTRY, OR NAME OF ANOTHER PARTY), certify that I have read the attached submission of (IDENTIFY THE SPECIFIC SUBMISSION BY TITLE) due on (DATE) OR filed on (DATE) pursuant to the (INSERT ONE OF THE FOLLOWING OPTIONS IN { }: {THE (ANTIDUMPING OR COUNTERVAILING DUTY) INVESTIGATION OF (PRODUCT) FROM (COUNTRY) (CASE NUMBER)} or {THE (DATES OF PERIOD OF REVIEW) (ADMINISTRATIVE OR NEW SHIPPER) REVIEW UNDER THE (ANTIDUMPING OR COUNTERVAILING) DUTY ORDER ON (PRODUCT) FROM (COUNTRY) (CASE NUMBER)} or {THE (SUNSET REVIEW OR CHANGED CIRCUMSTANCE REVIEW OR SCOPE RULING OR CIRCUMVENTION INQUIRY) OF THE (ANTIDUMPING OR COUNTERVAILING) DUTY ORDER ON (PRODUCT) FROM (COUNTRY) (CASE NUMBER)}). In my capacity as (INSERT ONE OF THE FOLLOWING OPTIONS IN { }: {COUNSEL} or {ADVISER, PREPARER, OR REVIEWER}) of this submission, I certify that the information contained in this submission is accurate and complete to the best of my knowledge. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the U.S. Department of Commerce may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that a copy of this signed certification will be filed with this submission to the U.S. Department of Commerce.

Signature: _____

Date: _____

*** For multiple representative certifications, all representatives and their firms should be listed in the first sentence of the certification and all representatives should sign and date the certification. In addition, singular pronouns and possessive adjectives should be changed accordingly, *e.g.*, ''I''

should be changed to ''we'' and ''my knowledge'' should be changed to ''our knowledge.''

[62 FR 27379, May 19, 1997, as amended at 73 FR 3643, Jan. 22, 2008; 76 FR 7499, Feb. 10, 2011; 76 FR 39275, July 6, 2011; 76 FR 54699, Sept. 2, 2011; 78 FR 42691, July 17, 2013; 79 FR 69047, Nov. 20, 2014; 80 FR 36473, June 25, 2015; 85 FR 17007, Mar. 26, 2020]

EFFECTIVE DATE NOTE: At 85 FR 17007, Mar. 26, 2020, §351.303 was amended by adding paragraph (f)(4), effective Mar. 24, 2020 through May 19, 2020. At 85 FR 29615, May 18, 2020, this amendment was extended to July 17, 2020. At 85 FR 41363, July 10, 2020, this amendment was extended indefinitely.

§351.304 Establishing business proprietary treatment of information.

(a) *Claim for business proprietary treatment.* (1) Any person that submits factual information to the Secretary in connection with a proceeding may:

(i) Request that the Secretary treat any part of the submission as business proprietary information that is subject to disclosure only under an administrative protective order,

(ii) Claim that there is a clear and compelling need to withhold certain business proprietary information from disclosure under an administrative protective order, or

(iii) In an investigation, identify customer names that are exempt from disclosure under administrative protective order under section 777(c)(1)(A) of the Act.

(2) The Secretary will require that all business proprietary information presented to, or obtained or generated by, the Secretary during a segment of a proceeding be disclosed to authorized applicants, except for

(i) Customer names submitted in an investigation,

(ii) Information for which the Secretary finds that there is a clear and compelling need to withhold from disclosure, and

(iii) Privileged or classified information.

(b) *Identification of business proprietary information*—(1) *Information releasable under administrative protective order*—(i) *In general.* A person submitting information must identify the information for which it claims business proprietary treatment by enclosing the information within single brackets. The submitting person must provide with the information an explanation of why each item of bracketed information is entitled to business proprietary treatment. A person submitting a request for business proprietary treatment also must include an agreement to permit disclosure under an administrative protective order, unless the submitting party claims that there is a clear and compelling need to withhold the information from disclosure under an administrative protective order.

(ii) *Electronic databases.* In accordance with §351.303(c)(3), an electronic database need not contain brackets. The submitter must select the security classification ''Business Proprietary Document—May Be Released Under APO'' at the time of filing to request business proprietary treatment of the information contained in the database. The public version of the database must be publicly summarized and ranged in accordance with §351.304(c).

(2) *Information claimed to be exempt from disclosure under administrative protective order.* (i) If the submitting person claims that there is a clear and compelling need to withhold certain information from disclosure under an administrative protective order (see paragraph (a)(1)(ii) of this section), the submitting person must identify the information by enclosing the information within double brackets, and must include a full explanation of the reasons for the claim.

(ii) In an investigation, the submitting person may enclose business proprietary customer names within double brackets (see paragraph (a)(1)(iii) of this section).

(iii) The submitting person may exclude the information in double brackets from the business proprietary/APO version of the submission served on authorized applicants. See §351.303 for filing and service requirements.

(c) *Public version.* (1) A person filing a submission that contains information for which business proprietary treatment is claimed must file a public version of the submission. The public version must be filed on the first business day after the filing deadline for the business proprietary document (see §351.303(b)). The public version must contain a summary of the bracketed

information in sufficient detail to permit a reasonable understanding of the substance of the information. If the submitting person claims that summarization is not possible, the claim must be accompanied by a full explanation of the reasons supporting that claim. Generally, numerical data will be considered adequately summarized if grouped or presented in terms of indices or figures within 10 percent of the actual figure. If an individual portion of the numerical data is voluminous, at least one percent representative of that portion must be summarized. A submitter should not create a public summary of business proprietary information of another person.

(2) If a submitting party discovers that it has failed to bracket information correctly, the submitter may file a complete, corrected business proprietary document along with the public version (see § 351.303(b)). At the close of business on the day on which the public version of a submission is due under paragraph (c)(2) of this section, however, the bracketing of business proprietary information in the original business proprietary document or, if a corrected version is timely filed, the corrected business proprietary document will become final. Once bracketing has become final, the Secretary will not accept any further corrections to the bracketing of information in a submission, and the Secretary will treat nonbracketed information as public information.

(d) *Nonconforming submissions*—(1) *In general*. The Secretary will reject a submission that does not meet the requirements of section 777(b) of the Act and this section with a written explanation. The submitting person may take any of the following actions within two business days after receiving the Secretary's explanation:

(i) Correct the problems and resubmit the information;

(ii) If the Secretary denied a request for business proprietary treatment, agree to have the information in question treated as public information;

(iii) If the Secretary granted business proprietary treatment but denied a claim that there was a clear and compelling need to withhold information under an administrative protective order, agree to the disclosure of the information in question under an administrative protective order; or

(iv) Submit other material concerning the subject matter of the rejected information. If the submitting person does not take any of these actions, the Secretary will not consider the rejected submission.

(2) *Timing*. The Secretary normally will determine the status of information within 30 days after the day on which the information was submitted. If the business proprietary status of information is in dispute, the Secretary will treat the relevant portion of the submission as business proprietary information until the Secretary decides the matter.

[63 FR 24401, May 4, 1998, as amended at 76 FR 39277, July 6, 2011]

§ 351.305 Access to business proprietary information.

(a) *The administrative protective order*. The Secretary will place an administrative protective order on the record within two business days after the day on which a petition is filed or an investigation is self-initiated, within five business days after the day on which a request for a new shipper review is properly filed in accordance with §§ 351.214 and 351.303 or an application for a scope ruling is properly filed in accordance with §§ 351.225 and 351.303, within five business days after the day on which a request for a changed circumstances review is properly filed in accordance with §§ 351.216 and 351.303 or a changed circumstances review is self-initiated, or five business days after initiating any other segment of a proceeding. The administrative protective order will require the authorized applicant to:

(1) Establish and follow procedures to ensure that no employee of the authorized applicant's firm releases business proprietary information to any person other than the submitting party, an authorized applicant, or an appropriate Department official identified in section 777(b) of the Act;

(2) Notify the Secretary of any changes in the facts asserted by the authorized applicant in its administrative protective order application;

(3) Destroy business proprietary information by the time required under the terms of the administrative protective order;

(4) Immediately report to the Secretary any apparent violation of the administrative protective order; and

(5) Acknowledge that any unauthorized disclosure may subject the authorized applicant, the firm of which the authorized applicant is a partner, associate, or employee, and any partner, associate, or employee of the authorized applicant's firm to sanctions listed in part 354 of this chapter (19 CFR part 354).

(b) *Application for access under administrative protective order.* (1) Generally, no more than two independent representatives of a party to the proceeding may have access to business proprietary information under an administrative protective order. A party must designate a lead firm if the party has more than one independent authorized applicant firm.

(2) A representative of a party to the proceeding may apply for access to business proprietary information under the administrative protective order by submitting Form ITA–367 to the Secretary. Form ITA–367 must identify the applicant and the segment of the proceeding involved, state the basis for eligibility of the applicant for access to business proprietary information, and state the agreement of the applicant to be bound by the administrative protective order. Form ITA–367 may be prepared on the applicant's own wordprocessing system, and must be accompanied by a certification that the application is consistent with Form ITA–367 and an acknowledgment that any discrepancies will be interpreted in a manner consistent with Form ITA–367. An applicant must apply to receive all business proprietary information on the record of the segment of a proceeding in question, but may waive service of business proprietary information it does not wish to receive from other parties to the proceeding. An applicant must serve an APO application on the other parties by the most expeditious manner possible at the same time that it files the application with the Department.

(3) With respect to proprietary information submitted to the Secretary on or before the date on which the Secretary grants access to a qualified applicant, except as provided in paragraph (b)(4) of this section, within two business days the submitting party shall serve the party which has been granted access, in accordance with paragraph (c) of this section.

(4) To minimize the disruption caused by late applications, an application should be filed before the first questionnaire response has been submitted. Where justified, however, applications may be filed up to the date on which the case briefs are due, but any applicant filing after the first questionnaire response is submitted will be liable for costs associated with the additional production and service of business proprietary information already on the record. Parties have five business days to serve their business proprietary information already on the record to a party who has filed an application after the submission of the first questionnaire response and is authorized to receive such information after such information has been placed on the record.

(c) *Approval of access under administrative protective order; administrative protective order service list.* The Secretary will grant access to a qualified applicant by including the name of the applicant on an administrative protective order service list. Access normally will be granted within five days of receipt of the application unless there is a question regarding the eligibility of the applicant to receive access. In that case, the Secretary will decide whether to grant the applicant access within 30 days of receipt of the application. The Secretary will provide by the most expeditious means available the administrative protective order service list to parties to the proceeding on the day the service list is issued or amended.

(d) *Additional filing requirements for importers.* If an applicant represents a party claiming to be an interested party by virtue of being an importer, then the applicant shall submit, along with the Form ITA–367, documentary evidence demonstrating that during the applicable period of investigation or period of review the interested party

imported subject merchandise. For a scope segment of a proceeding pursuant to § 351.225 or a circumvention segment of a proceeding pursuant to § 351.226, the applicant must present documentary evidence that the interested party imported subject merchandise, or that it has taken steps towards importing the merchandise subject to the scope or circumvention inquiry. For a covered merchandise referral segment of a proceeding pursuant to § 351.227, an applicant representing an interested party that has been identified by the Customs Service as the importer in a covered merchandise referral is exempt from the requirements of providing documentary evidence to demonstrate that it is an importer for purposes of that segment of a proceeding.

[63 FR 24402, May 4, 1998, as amended at 73 FR 3643, Jan. 22, 2008; 76 FR 39277, July 6, 2011; 86 FR 52384, Sept. 20, 2021]

§ 351.306 Use of business proprietary information.

(a) *By the Secretary.* The Secretary may disclose business proprietary information submitted to the Secretary only to:

(1) An authorized applicant;

(2) An employee of the Department of Commerce or the International Trade Commission directly involved in the proceeding in which the information is submitted;

(3) An employee of the Customs Service directly involved in conducting a fraud investigation relating to an antidumping or countervailing duty proceeding;

(4) The U.S. Trade Representative as provided by 19 U.S.C. 3571(i);

(5) Any person to whom the submitting person specifically authorizes disclosure in writing; and

(6) A charged party or counsel for the charged party under 19 CFR part 354.

(b) *By an authorized applicant.* An authorized applicant may retain business proprietary information for the time authorized by the terms of the administrative protective order. An authorized applicant may use business proprietary information for purposes of the segment of a proceeding in which the information was submitted. If business proprietary information that was submitted in a segment of the proceeding is relevant to an issue in a different segment of the proceeding, an authorized applicant may place such information on the record of the subsequent segment as authorized by the APO.

(c) *Identifying parties submitting business proprietary information.* (1) If a party submits a document containing business proprietary information of another person, the submitting party must identify, contiguously with each item of business proprietary information, the person that originally submitted the item (e.g., Petitioner, Respondent A, Respondent B). Business proprietary information not identified will be treated as information of the person making the submission. If the submission contains business proprietary information of only one person, it shall so state on the first page and identify the person that originally submitted the business proprietary information on the first page.

(2) If a party to a proceeding is not represented by an authorized applicant, a party submitting a document containing the unrepresented party's business proprietary information must serve the unrepresented party with a version of the document that contains only the unrepresented party's business proprietary information. The document must not contain the business proprietary information of other parties.

(d) *Disclosure to parties not authorized to receive business proprietary information.* No person, including an authorized applicant, may disclose the business proprietary information of another person to any other person except another authorized applicant or a Department official described in paragraph (a)(2) of this section. Any person that is not an authorized applicant and that is served with business proprietary information must return it to the sender immediately, to the extent possible without reading it, and must notify the Department. An allegation of an unauthorized disclosure will subject the person that made the alleged unauthorized disclosure to an investigation and possible sanctions under 19 CFR part 354.

[63 FR 24403, May 4, 1998]

§ 351.307 Verification of information.

(a) *Introduction.* Prior to making a final determination in an investigation or issuing final results of review, the Secretary may verify relevant factual information. This section clarifies when verification will occur, the contents of a verification report, and the procedures for verification.

(b) *In general.* (1) Subject to paragraph (b)(4) of this section, the Secretary will verify factual information upon which the Secretary relies in:

(i) A final determination in a continuation of a previously suspended countervailing duty investigation (section 704(g) of the Act), countervailing duty investigation, continuation of a previously suspended antidumping investigation (section 705(a) of the Act), or antidumping investigation;

(ii) The final results of an expedited antidumping review;

(iii) A revocation under section 751(d) of the Act;

(iv) The final results of an administrative review, new shipper review, or changed circumstances review, if the Secretary decides that good cause for verification exists; and

(v) The final results of an administrative review if:

(A) A domestic interested party, not later than 100 days after the date of publication of the notice of initiation of review, submits a written request for verification; and

(B) The Secretary conducted no verification under this paragraph during either of the two immediately preceding administrative reviews.

(2) The Secretary may verify factual information upon which the Secretary relies in a proceeding or a segment of a proceeding not specifically provided for in paragraph (b)(1) of this section.

(3) If the Secretary decides that, because of the large number of exporters or producers included in an investigation or administrative review, it is impractical to verify relevant factual information for each person, the Secretary may select and verify a sample.

(4) The Secretary may conduct verification of a person if that person agrees to verification and the Secretary notifies the government of the affected country and that government does not object. If the person or the government objects to verification, the Secretary will not conduct verification and may disregard any or all information submitted by the person in favor of use of the facts available under section 776 of the Act and § 351.308.

(c) *Verification report.* The Secretary will report the methods, procedures, and results of a verification under this section prior to making a final determination in an investigation or issuing final results in a review.

(d) *Procedures for verification.* The Secretary will notify the government of the affected country that employees of the Department will visit with the persons listed below in order to verify the accuracy and completeness of submitted factual information. The notification will, where practicable, identify any member of the verification team who is not an officer of the U.S. Government. As part of the verification, employees of the Department will request access to all files, records, and personnel which the Secretary considers relevant to factual information submitted of:

(1) Producers, exporters, or importers;

(2) Persons affiliated with the persons listed in paragraph (d)(1) of this section, where applicable;

(3) Unaffiliated purchasers, or

(4) The government of the affected country as part of verification in a countervailing duty proceeding.

§ 351.308 Determinations on the basis of the facts available.

(a) *Introduction.* The Secretary may make determinations on the basis of the facts available whenever necessary information is not available on the record, an interested party or any other person withholds or fails to provide information requested in a timely manner and in the form required or significantly impedes a proceeding, or the Secretary is unable to verify submitted information. If the Secretary finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Secretary may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. This section lists some of the sources

of information upon which the Secretary may base an adverse inference and explains the actions the Secretary will take with respect to corroboration of information.

(b) *In general.* The Secretary may make a determination under the Act and this part based on the facts otherwise available in accordance with section 776(a) of the Act.

(c) *Adverse inferences.* For purposes of section 776(b) of the Act, an adverse inference may include reliance on:

(1) Secondary information, such as information derived from:

(i) The petition;

(ii) A final determination in a countervailing duty investigation or an antidumping investigation;

(iii) Any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or

(2) Any other information placed on the record.

(d) *Corroboration of secondary information.* Under section 776(c) of the Act, when the Secretary relies on secondary information, the Secretary will, to the extent practicable, corroborate that information from independent sources that are reasonably at the Secretary's disposal. Independent sources may include, but are not limited to, published price lists, official import statistics and customs data, and information obtained from interested parties during the instant investigation or review. Corroborate means that the Secretary will examine whether the secondary information to be used has probative value. The fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using the secondary information in question.

(e) *Use of certain information.* In reaching a determination under the Act and this part, the Secretary will not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the Secretary if the conditions listed under section 782(e) of the Act are met.

(f) *Use of facts available in a sunset review.* Where the Secretary determines to issue final results of sunset review on the basis of facts available, the Secretary normally will rely on:

(1) Calculated countervailing duty rates or dumping margins, as applicable, from prior Department determinations; and

(2) Information contained in parties' substantive responses to the Notice of Initiation filed under § 351.218(d)(3), consistent with section 752(b) or 752(c) of the Act, as applicable.

[62 FR 27379, May 19, 1997, as amended at 63 FR 13524, Mar. 20, 1998]

§ 351.309 Written argument.

(a) *Introduction.* Written argument may be submitted during the course of an antidumping or countervailing duty proceeding. This section sets forth the time limits for submission of case and rebuttal briefs and provides guidance on what should be contained in these documents.

(b) *Written argument*—(1) *In general.* In making the final determination in a countervailing duty investigation or antidumping investigation or the final results of an administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review, the Secretary will consider written arguments in case or rebuttal briefs filed within the time limits in this section.

(2) *Written argument on request.* Notwithstanding paragraph (b)(1) of this section, the Secretary may request written argument on any issue from any person or U.S. Government agency at any time during a proceeding.

(c) *Case brief.* (1) Any interested party or U.S. Government agency may submit a ''case brief'' within:

(i) For a final determination in a countervailing duty investigation or antidumping investigation, or for the final results of a full sunset review, 50 days after the date of publication of the preliminary determination or results of review, as applicable, unless the Secretary alters the time limit;

(ii) For the final results of an administrative review, new shipper review, changed circumstances review, or section 762 review, 30 days after the date of publication of the preliminary results of review, unless the Secretary alters the time limit; or

(iii) For the final results of an expedited sunset review, expedited antidumping review, Article 8 violation review, Article 4/Article 7 review, or section 753 review, a date specified by the Secretary.

(2) The case brief must present all arguments that continue in the submitter's view to be relevant to the Secretary's final determination or final results, including any arguments presented before the date of publication of the preliminary determination or preliminary results. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

(d) *Rebuttal brief.* (1) Any interested party or U.S. Government agency may submit a ''rebuttal brief'' within five days after the time limit for filing the case brief, unless the Secretary alters this time limit.

(2) The rebuttal brief may respond only to arguments raised in case briefs and should identify the arguments to which it is responding. As part of the rebuttal brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

(e) *Comments on adequacy of response and appropriateness of expedited sunset review*—(i) *In general.* Where the Secretary determines that respondent interested parties provided inadequate response to a Notice of Initiation (*see* § 351.218(e)(1)(ii)) and has notified the International Trade Commission as such under § 351.218(e)(1)(ii)(C), interested parties (and industrial users and consumer organizations) that submitted a complete substantive response to the Notice of Initiation under § 351.218(d)(3) may file comments on whether an expedited sunset review under section 751(c)(3)(B) of the Act and § 351.218(e)(1)(ii)(B) or 351.218(e)(1)(ii)(C) is appropriate based on the adequacy of responses to the notice of initiation. These comments may not include any new factual information or evidence (such as supplementation of a substantive response to the notice of initiation) and are limited to five pages.

(ii) *Time limit for filing comments.* Comments on adequacy of response and appropriateness of expedited sunset review must be filed not later than 70 days after the date publication in the FEDERAL REGISTER of the notice of initiation.

[62 FR 27379, May 19, 1997, as amended at 63 FR 13524, Mar. 20, 1998; 70 FR 62064, Oct. 28, 2005]

§ 351.310 Hearings.

(a) *Introduction.* This section sets forth the procedures for requesting a hearing, indicates that the Secretary may consolidate hearings, and explains when the Secretary may hold closed hearing sessions.

(b) *Pre-hearing conference.* The Secretary may conduct a telephone prehearing conference with representatives of interested parties to facilitate the conduct of the hearing.

(c) *Request for hearing.* Any interested party may request that the Secretary hold a public hearing on arguments to be raised in case or rebuttal briefs within 30 days after the date of publication of the preliminary determination or preliminary results of review, unless the Secretary alters this time limit, or in a proceeding where the Secretary will not issue a preliminary determination, not later than a date specified by the Secretary. To the extent practicable, a party requesting a hearing must identify arguments to be raised at the hearing. At the hearing, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief.

(d) *Hearings in general.* (1) If an interested party submits a request under paragraph (c) of this section, the Secretary will hold a public hearing on the date stated in the notice of the Secretary's preliminary determination or preliminary results of administrative review (or otherwise specified by the Secretary in an expedited antidumping review), unless the Secretary alters the date. Ordinarily, the hearing will be held two days after the scheduled date for submission of rebuttal briefs.

(2) The hearing is not subject to 5 U.S.C. §§ 551–559, and § 702 (Administrative Procedure Act). Witness testimony, if any, will not be under oath or

subject to cross-examination by another interested party or witness. During the hearing, the chair may question any person or witness and may request persons to present additional written argument.

(e) *Consolidated hearings.* At the Secretary's discretion, the Secretary may consolidate hearings in two or more cases.

(f) *Closed hearing sessions.* An interested party may request a closed session of the hearing no later than the date the case briefs are due in order to address limited issues during the course of the hearing. The requesting party must identify the subjects to be discussed, specify the amount of time requested, and justify the need for a closed session with respect to each subject. If the Secretary approves the request for a closed session, only authorized applicants and other persons authorized by the regulations may be present for the closed session (*see* § 351.305).

(g) *Transcript of hearing.* The Secretary will place a verbatim transcript of the hearing in the public and official records of the proceeding and will announce at the hearing how interested parties may obtain copies of the transcript.

§ 351.311 Countervailable subsidy practice discovered during investigation or review.

(a) *Introduction.* During the course of a countervailing duty investigation or review, Department officials may discover or receive notice of a practice that appears to provide a countervailable subsidy. This section explains when the Secretary will examine such a practice.

(b) *Inclusion in proceeding.* If during a countervailing duty investigation or a countervailing duty administrative review the Secretary discovers a practice that appears to provide a countervailable subsidy with respect to the subject merchandise and the practice was not alleged or examined in the proceeding, or if, pursuant to section 775 of the Act, the Secretary receives notice from the United States Trade Representative that a subsidy or subsidy program is in violation of Article 8 of the Subsidies Agreement, the Secretary will examine the practice, subsidy, or subsidy program if the Secretary concludes that sufficient time remains before the scheduled date for the final determination or final results of review.

(c) *Deferral of examination.* If the Secretary concludes that insufficient time remains before the scheduled date for the final determination or final results of review to examine the practice, subsidy, or subsidy program described in paragraph (b) of this section, the Secretary will:

(1) During an investigation, allow the petitioner to withdraw the petition without prejudice and resubmit it with an allegation with regard to the newly discovered practice, subsidy, or subsidy program; or

(2) During an investigation or review, defer consideration of the newly discovered practice, subsidy, or subsidy program until a subsequent administrative review, if any.

(d) *Notice.* The Secretary will notify the parties to the proceeding of any practice the Secretary discovers, or any subsidy or subsidy program with respect to which the Secretary receives notice from the United States Trade Representative, and whether or not it will be included in the then ongoing proceeding.

§ 351.312 Industrial users and consumer organizations.

(a) *Introduction.* The URAA provides for opportunity for comment by consumer organizations and industrial users on matters relevant to a particular determination of dumping, subsidization, or injury. This section indicates under what circumstances such persons may submit relevant information and argument.

(b) *Opportunity to submit relevant information and argument.* In an antidumping or countervailing duty proceeding under title VII of the Act and this part, an industrial user of the subject merchandise or a representative consumer organization, as described in section 777(h) of the Act, may submit relevant factual information and written argument to the Department under paragraphs (d)(3)(ii), and (d)(3)(vi), and (d)(4) of § 351.218, paragraphs (b), (c)(1), and (c)(3) of § 351.301, and paragraphs

(c), (d), and (e) of § 351.309 concerning dumping or a countervailing subsidy. All such submissions must be filed in accordance with § 351.303.

(c) *Business proprietary information.* Persons described in paragraph (b) of this section may request business proprietary treatment of information under § 351.304, but will not be granted access under § 351.305 to business proprietary information submitted by other persons.

[62 FR 27379, May 19, 1997, as amended at 63 FR 13524, Mar. 20, 1998]

§ 351.313 Attorneys or representatives.

In general. No register of attorneys or representatives who may practice before the Department is maintained. No application for admission to practice is required. Any person desiring to appear as attorney or representative before the Department may be required to show to the satisfaction of the Secretary his acceptability in that capacity. Any attorney or representative practicing before the Department, or desiring so to practice, may for good cause shown be suspended or barred from practicing before the Department, or have imposed on him such lesser sanctions (e.g., public or private reprimand) as the Secretary deems appropriate, but only after he has been accorded an opportunity to present his views in the matter. The Department will maintain a public register of attorneys and representatives suspended or barred from practice. ''Attorney'' pursuant to this subpart and ''legal counsel'' in § 351.303(g) have the same meaning. ''Representative'' pursuant to this subpart and in § 351.303(g) has the same meaning.

[78 FR 22777, Apr. 17, 2013]

Subpart D—Calculation of Export Price, Constructed Export Price, Fair Value, and Normal Value

§ 351.401 In general.

(a) *Introduction.* In general terms, an antidumping analysis involves a comparison of export price or constructed export price in the United States with normal value in the foreign market. This section establishes certain general rules that apply to the calculation of export price, constructed export price and normal value. (*See* section 772, section 773, and section 773A of the Act.)

(b) *Adjustments in general.* In making adjustments to export price, constructed export price, or normal value, the Secretary will adhere to the following principles:

(1) The interested party that is in possession of the relevant information has the burden of establishing to the satisfaction of the Secretary the amount and nature of a particular adjustment; and

(2) The Secretary will not double-count adjustments.

(c) *Use of price net of price adjustments.* In calculating export price, constructed export price, and normal value (where normal value is based on price), the Secretary normally will use a price that is net of price adjustments, as defined in § 351.102(b), that are reasonably attributable to the subject merchandise or the foreign like product (whichever is applicable). The Secretary will not accept a price adjustment that is made after the time of sale unless the interested party demonstrates, to the satisfaction of the Secretary, its entitlement to such an adjustment.

(d) *Delayed payment or pre-payment of expenses.* Where cost is the basis for determining the amount of an adjustment to export price, constructed export price, or normal value, the Secretary will not factor in any delayed payment or pre-payment of expenses by the exporter or producer.

(e) *Adjustments for movement expenses*—(1) *Original place of shipment.* In making adjustments for movement expenses to establish export price or constructed export price under section 772(c)(2)(A) of the Act, or normal value under section 773(a)(6)(B)(ii) of the Act, the Secretary normally will consider the production facility as being the ''original place of shipment. However, where the Secretary bases export price, constructed export price, or normal value on a sale by an unaffiliated reseller, the Secretary may treat the original place from which the reseller shipped the merchandise as the ''original place of shipment.''

(2) *Warehousing.* The Secretary will consider warehousing expenses that are

incurred after the subject merchandise or foreign like product leaves the original place of shipment as movement expenses.

(f) *Treatment of affiliated producers in antidumping proceedings*—(1) *In general.* In an antidumping proceeding under this part, the Secretary will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production.

(2) *Significant potential for manipulation.* In identifying a significant potential for the manipulation of price or production, the factors the Secretary may consider include:

(i) The level of common ownership;

(ii) The extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and

(iii) Whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

(g) *Allocation of expenses and price adjustments*—(1) *In general.* The Secretary may consider allocated expenses and price adjustments when transaction-specific reporting is not feasible, provided the Secretary is satisfied that the allocation method used does not cause inaccuracies or distortions.

(2) *Reporting allocated expenses and price adjustments.* Any party seeking to report an expense or a price adjustment on an allocated basis must demonstrate to the Secretary's satisfaction that the allocation is calculated on as specific a basis as is feasible, and must explain why the allocation methodology used does not cause inaccuracies or distortions.

(3) *Feasibility.* In determining the feasibility of transaction-specific reporting or whether an allocation is calculated on as specific a basis as is feasible, the Secretary will take into account the records maintained by the party in question in the ordinary course of its business, as well as such factors as the normal accounting practices in the country and industry in question and the number of sales made by the party during the period of investigation or review.

(4) *Expenses and price adjustments relating to merchandise not subject to the proceeding.* The Secretary will not reject an allocation method solely because the method includes expenses incurred, or price adjustments made, with respect to sales of merchandise that does not constitute subject merchandise or a foreign like product (whichever is applicable).

(h) [Reserved]

(i) *Date of sale.* In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

[62 FR 27379, May 19, 1997, as amended at 73 FR 16518, Mar. 28, 2008; 81 FR 15645, Mar. 24, 2016]

§ 351.402 Calculation of export price and constructed export price; reimbursement of antidumping and countervailing duties.

(a) *Introduction.* In order to establish export price, constructed export price, and normal value, the Secretary must make certain adjustments to the price to the unaffiliated purchaser (often called the ''starting price'') in both the United States and foreign markets. This regulation clarifies how the Secretary will make certain of the adjustments to the starting price in the United States that are required by section 772 of the Act.

(b) *Additional adjustments to constructed export price.* In establishing constructed export price under section 772(d) of the Act, the Secretary will make adjustments for expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser, no matter

where or when paid. The Secretary will not make an adjustment for any expense that is related solely to the sale to an affiliated importer in the United States, although the Secretary may make an adjustment to normal value for such expenses under section 773(a)(6)(C)(iii) of the Act.

(c) *Special rule for merchandise with value added after importation*—(1) *Merchandise imported by affiliated persons.* In applying section 772(e) of the Act, merchandise imported by and value added by a person affiliated with the exporter or producer includes merchandise imported and value added for the account of such an affiliated person.

(2) *Estimation of value added.* The Secretary normally will determine that the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise if the Secretary estimates the value added to be at least 65 percent of the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States. The Secretary normally will estimate the value added based on the difference between the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the price paid for the subject merchandise by the affiliated person. The Secretary normally will base this determination on averages of the prices and the value added to the subject merchandise.

(3) *Determining dumping margins.* For purposes of determining dumping margins under paragraphs (1) and (2) of section 772(e) of the Act, the Secretary may use the weighted-average dumping margins calculated on sales of identical or other subject merchandise sold to unaffiliated persons.

(d) *Special rule for determining profit.* This paragraph sets forth rules for calculating profit in establishing constructed export price under section 772(f) of the Act.

(1) *Basis for total expenses and total actual profit.* In calculating total expenses and total actual profit, the Secretary normally will use the aggregate of expenses and profit for all subject merchandise sold in the United States and all foreign like products sold in the exporting country, including sales that have been disregarded as being below the cost of production. (*See* section 773(b) of the Act (sales at less than cost of production).)

(2) *Use of financial reports.* For purposes of determining profit under section 772(d)(3) of the Act, the Secretary may rely on any appropriate financial reports, including public, audited financial statements, or equivalent financial reports, and internal financial reports prepared in the ordinary course of business.

(3) *Voluntary reporting of costs of production.* The Secretary will not require the reporting of costs of production solely for purposes of determining the amount of profit to be deducted from the constructed export price. The Secretary will base the calculation of profit on costs of production if such costs are reported voluntarily by the date established by the Secretary, and provided that it is practicable to do so and the costs of production are verifiable.

(e) *Treatment of payments between affiliated persons.* Where a person affiliated with the exporter or producer incurs any of the expenses deducted from constructed export price under section 772(d) of the Act and is reimbursed for such expenses by the exporter, producer or other affiliate, the Secretary normally will make an adjustment based on the actual cost to the affiliated person. If the Secretary is satisfied that information regarding the actual cost to the affiliated person is unavailable to the exporter or producer, the Secretary may determine the amount of the adjustment on any other reasonable basis, including the amount of the reimbursement to the affiliated person if the Secretary is satisfied that such amount reflects the amount usually paid in the market under consideration.

(f) *Reimbursement of antidumping duties and countervailing duties*—(1) *In general.* (i) In calculating the export price (or the constructed export price), the Secretary will deduct the amount of any antidumping duty or countervailing duty which the exporter or producer:

(A) Paid directly on behalf of the importer; or

(B) Reimbursed to the importer.

(ii) The Secretary will not deduct the amount of any antidumping duty or countervailing duty paid or reimbursed if the exporter or producer granted to the importer before initiation of the antidumping investigation in question a warranty of nonapplicability of antidumping duties or countervailing duties with respect to subject merchandise which was:

(A) Sold before the date of publication of the Secretary's order applicable to the merchandise in question; and

(B) Exported before the date of publication of the Secretary's final antidumping determination.

(iii) Ordinarily, under paragraph (f)(1)(i) of this section, the Secretary will deduct the amount reimbursed only once in the calculation of the export price (or constructed export price).

(2) *Reimbursement certification.* (i) The importer must certify with the Customs Service prior to liquidation (except as provided for in paragraph (f)(2)(iii) of this section) whether the importer has or has not been reimbursed or entered into any agreement or understanding for the payment or for the refunding to the importer by the manufacturer, producer, seller, or exporter for all or any part of the antidumping and countervailing duties, as appropriate. Such certifications should identify the commodity and country and contain the information necessary to link the certification to the relevant entry or entry line number(s).

(ii) The reimbursement certification may be filed either electronically or in paper in accordance with the Customs Service's requirements, as applicable.

(iii) If an importer does not provide its reimbursement certification prior to liquidation, the Customs Service may accept the reimbursement certification in accordance with its protest procedures under 19 U.S.C. 1514, unless otherwise directed.

(iv) Reimbursement certifications are required for entries of the relevant commodity that have been imported on or after the date of publication of the antidumping notice in the FEDERAL REGISTER that first suspended liquidation in that proceeding.

(3) *Presumption.* The Secretary may presume from an importer's failure to file the certificate required in paragraph (f)(2) of this section that the exporter or producer paid or reimbursed the antidumping duties or countervailing duties.

[62 FR 27379, May 19, 1997, as amended at 86 FR 52384, Sept. 20, 2021]

§ 351.403 Sales used in calculating normal value; transactions between affiliated parties.

(a) *Introduction.* This section clarifies when the Secretary may use offers for sale in determining normal value. Additionally, this section clarifies the authority of the Secretary to use sales to or through an affiliated party as a basis for normal value. (*See* section 773(a)(5) of the Act (indirect sales or offers for sale).)

(b) *Sales and offers for sale.* In calculating normal value, the Secretary normally will consider offers for sale only in the absence of sales and only if the Secretary concludes that acceptance of the offer can be reasonably expected.

(c) *Sales to an affiliated party.* If an exporter or producer sold the foreign like product to an affiliated party, the Secretary may calculate normal value based on that sale only if satisfied that the price is comparable to the price at which the exporter or producer sold the foreign like product to a person who is not affiliated with the seller.

(d) *Sales through an affiliated party.* If an exporter or producer sold the foreign like product through an affiliated party, the Secretary may calculate normal value based on the sale by such affiliated party. However, the Secretary normally will not calculate normal value based on the sale by an affiliated party if sales of the foreign like product by an exporter or producer to affiliated parties account for less than five percent of the total value (or quantity) of the exporter's or producer's sales of the foreign like product in the market in question or if sales to the affiliated party are comparable, as defined in paragraph (c) of this section.

§ 351.404 Selection of the market to be used as the basis for normal value.

(a) *Introduction.* Although in most circumstances sales of the foreign like product in the home market are the most appropriate basis for determining

normal value, section 773 of the Act also permits use of sales to a third country or constructed value as the basis for normal value. This section clarifies the rules for determining the basis for normal value.

(b) *Determination of viable market*—(1) *In general.* The Secretary will consider the exporting country or a third country as constituting a viable market if the Secretary is satisfied that sales of the foreign like product in that country are of sufficient quantity to form the basis of normal value.

(2) *Sufficient quantity.* ''Sufficient quantity'' normally means that the aggregate quantity (or, if quantity is not appropriate, value) of the foreign like product sold by an exporter or producer in a country is 5 percent or more of the aggregate quantity (or value) of its sales of the subject merchandise to the United States.

(c) *Calculation of price-based normal value in viable market*—(1) *In general.* Subject to paragraph (c)(2) of this section:

(i) If the exporting country constitutes a viable market, the Secretary will calculate normal value on the basis of price in the exporting country (*see* section 773(a)(1)(B)(i) of the Act (price used for determining normal value)); or

(ii) If the exporting country does not constitute a viable market, but a third country does constitute a viable market, the Secretary may calculate normal value on the basis of price to a third country (*see* section 773(a)(1)(B)(ii) of the Act (use of third country prices in determining normal value)).

(2) *Exception.* The Secretary may decline to calculate normal value in a particular market under paragraph (c)(1) of this section if it is established to the satisfaction of the Secretary that:

(i) In the case of the exporting country or a third country, a particular market situation exists that does not permit a proper comparison with the export price or constructed export price (*see* section 773(a)(1)(B)(ii)(III) or section 773(a)(1)(C)(iii) of the Act); or

(ii) In the case of a third country, the price is not representative (*see* section 773(a)(1)(B)(ii)(I) of the Act).

(d) *Allegations concerning market viability and the basis for determining a price-based normal value.* In an antidumping investigation or review, allegations regarding market viability or the exceptions in paragraph (c)(2) of this section, must be filed, with all supporting factual information, in accordance with § 351.301(d)(1).

(e) *Selection of third country.* For purposes of calculating normal value based on prices in a third country, where prices in more than one third country satisfy the criteria of section 773(a)(1)(B)(ii) of the Act and this section, the Secretary generally will select the third country based on the following criteria:

(1) The foreign like product exported to a particular third country is more similar to the subject merchandise exported to the United States than is the foreign like product exported to other third countries;

(2) The volume of sales to a particular third country is larger than the volume of sales to other third countries;

(3) Such other factors as the Secretary considers appropriate.

(f) *Third country sales and constructed value.* The Secretary normally will calculate normal value based on sales to a third country rather than on constructed value if adequate information is available and verifiable (*see* section 773(a)(4) of the Act (use of constructed value)).

§ 351.405 Calculation of normal value based on constructed value.

(a) *Introduction.* In certain circumstances, the Secretary may determine normal value by constructing a value based on the cost of manufacture, selling general and administrative expenses, and profit. The Secretary may use constructed value as the basis for normal value where: neither the home market nor a third country market is viable; sales below the cost of production are disregarded; sales outside the ordinary course of trade, or sales the prices of which are

otherwise unrepresentative, are disregarded; sales used to establish a fictitious market are disregarded; no contemporaneous sales of comparable merchandise are available; or in other circumstances where the Secretary determines that home market or third country prices are inappropriate. (*See* section 773(e) and section 773(f) of the Act.) This section clarifies the meaning of certain terms relating to constructed value.

(b) *Profit and selling, general, and administrative expenses.* In determining the amount to be added to constructed value for profit and for selling, general, and administrative expenses, the following rules will apply:

(1) Under section 773(e)(2)(A) of the Act, ''foreign country'' means the country in which the merchandise is produced or a third country selected by the Secretary under § 351.404(e), as appropriate.

(2) Under section 773(e)(2)(B) of the Act, ''foreign country'' means the country in which the merchandise is produced.

§ 351.406 Calculation of normal value if sales are made at less than cost of production.

(a) *Introduction.* In determining normal value, the Secretary may disregard sales of the foreign like product made at prices that are less than the cost of production of that product. However, such sales will be disregarded only if they are made within an extended period of time, in substantial quantities, and are not at prices which permit recovery of costs within a reasonable period of time. (*See* section 773(b) of the Act.) This section clarifies the meaning of the term ''extended period of time'' as used in the Act.

(b) *Extended period of time.* The ''extended period of time'' under section 773(b)(1)(A) of the Act normally will coincide with the period in which the sales under consideration for the determination of normal value were made.

§ 351.407 Calculation of constructed value and cost of production.

(a) *Introduction.* This section sets forth certain rules that are common to the calculation of constructed value and the cost of production. (*See* section 773(f) of the Act.)

(b) *Determination of value under the major input rule.* For purposes of section 773(f)(3) of the Act, the Secretary normally will determine the value of a major input purchased from an affiliated person based on the higher of:

(1) The price paid by the exporter or producer to the affiliated person for the major input;

(2) The amount usually reflected in sales of the major input in the market under consideration; or

(3) The cost to the affiliated person of producing the major input.

(c) *Allocation of costs.* In determining the appropriate method for allocating costs among products, the Secretary may take into account production quantities, relative sales values, and other quantitative and qualitative factors associated with the manufacture and sale of the subject merchandise and the foreign like product.

(d) *Startup costs.* (1) In identifying startup operations under section 773(f)(1)(C)(ii) of the Act:

(i) ''New production facilities'' includes the substantially complete retooling of an existing plant. Substantially complete retooling involves the replacement of nearly all production machinery or the equivalent rebuilding of existing machinery.

(ii) A ''new product'' is one requiring substantial additional investment, including products which, though sold under an existing nameplate, involve the complete revamping or redesign of the product. Routine model year changes will not be considered a new product.

(iii) Mere improvements to existing products or ongoing improvements to existing facilities will not be considered startup operations.

(iv) An expansion of the capacity of an existing production line will not qualify as a startup operation unless the expansion constitutes such a major undertaking that it requires the construction of a new facility and results in a depression of production levels due to technical factors associated with the initial phase of commercial production of the expanded facilities.

(2) In identifying the end of the start-up period under clauses (ii) and (iii) of section 773(f)(1)(C) of the Act:

(i) The attainment of peak production levels will not be the standard for identifying the end of the startup period, because the startup period may end well before a company achieves optimum capacity utilization.

(ii) The startup period will not be extended to cover improvements and cost reductions that may occur over the entire life cycle of a product.

(3) In determining when a producer reaches commercial production levels under section 773(f)(1)(C)(ii) of the Act:

(i) The Secretary will consider the actual production experience of the merchandise in question, measuring production on the basis of units processed.

(ii) To the extent necessary, the Secretary will examine factors in addition to those specified in section 773(f)(1)(C)(ii) of the Act, including historical data reflecting the same producer's or other producers' experiences in producing the same or similar products. A producer's projections of future volume or cost will be accorded little weight.

(4) In making an adjustment for startup operations under section 773(f)(1)(C)(iii) of the Act:

(i) The Secretary will determine the duration of the startup period on a case-by-case basis.

(ii) The difference between actual costs and the costs of production calculated for startup costs will be amortized over a reasonable period of time subsequent to the startup period over the life of the product or machinery, as appropriate.

(iii) The Secretary will consider unit production costs to be items such as depreciation of equipment and plant, labor costs, insurance, rent and lease expenses, material costs, and factory overhead. The Secretary will not consider sales expenses, such as advertising costs, or other general and administrative or non-production costs (such as general research and development costs), as startup costs.

§ 351.408 Calculation of normal value of merchandise from nonmarket economy countries.

(a) *Introduction.* In identifying dumping from a nonmarket economy country, the Secretary normally will calculate normal value by valuing the nonmarket economy producers' factors of production in a market economy country. (*See* section 773(c) of the Act.) This section clarifies when and how this special methodology for nonmarket economies will be applied.

(b) *Economic Comparability.* In determining whether a country is at a level of economic development comparable to the nonmarket economy under section 773(c)(2)(B) or section 773(c)(4)(A) of the Act, the Secretary will place primary emphasis on *per capita* GDP as the measure of economic comparability.

(c) *Valuation of Factors of Production.* For purposes of valuing the factors of production, general expenses, profit, and the cost of containers, coverings, and other expenses (referred to collectively as ''factors'') under section 773(c)(1) of the Act the following rules will apply:

(1) *Information used to value factors.* The Secretary normally will use publicly available information to value factors. However, where a factor is produced in one or more market economy countries, purchased from one or more market economy suppliers and paid for in market economy currency, the Secretary normally will use the price(s) paid to the market economy supplier(s) if substantially all of the total volume of the factor is purchased from the market economy supplier(s). For purposes of this provision, the Secretary defines the term ''substantially all'' to be 85 percent or more of the total volume purchased of the factor used in the production of subject merchandise. In those instances where less than substantially all of the total volume of the factor is produced in one or more market economy countries and purchased from one or more market economy suppliers, the Secretary normally will weight-average the actual price(s) paid for the market economy portion and the surrogate value for the nonmarket economy portion by their respective quantities.

(2) *Valuation in a single country.* Except for labor, as provided in paragraph (d)(3) of this section, the Secretary normally will value all factors in a single surrogate country.

(3) *Labor.* For labor, the Secretary will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries. The Secretary will calculate the wage rate to be applied in nonmarket economy proceedings each year. The calculation will be based on current data, and will be made available to the public.

(4) *Manufacturing overhead, general expenses, and profit.* For manufacturing overhead, general expenses, and profit, the Secretary normally will use nonproprietary information gathered from producers of identical or comparable merchandise in the surrogate country.

[62 FR 27379, May 19, 1997, as amended at 78 FR 46804, Aug. 2, 2013]

§ 351.409 Differences in quantities.

(a) *Introduction.* Because the quantity of merchandise sold may affect the price, in comparing export price or constructed export price with normal value, the Secretary will make a reasonable allowance for any difference in quantities to the extent the Secretary is satisfied that the amount of any price differential (or lack thereof) is wholly or partly due to that difference in quantities. (*See* section 773(a)(6)(C)(i) of the Act.)

(b) *Sales with quantity discounts in calculating normal value.* The Secretary normally will calculate normal value based on sales with quantity discounts only if:

(1) During the period examined, or during a more representative period, the exporter or producer granted quantity discounts of at least the same magnitude on 20 percent or more of sales of the foreign like product for the relevant country; or

(2) The exporter or producer demonstrates to the Secretary's satisfaction that the discounts reflect savings specifically attributable to the production of the different quantities.

(c) *Sales with quantity discounts in calculating weighted-average normal value.* If the exporter or producer does not satisfy the conditions of paragraph (b) of this section, the Secretary will calculate normal value based on weighted-average prices that include sales at a discount.

(d) *Price lists.* In determining whether a discount has been granted, the existence or lack of a published price list reflecting such a discount will not be controlling. Ordinarily, the Secretary will give weight to a price list only if, in the line of trade and market under consideration, the exporter or producer demonstrates that it has adhered to its price list.

(e) *Relationship to level of trade adjustment.* If adjustments are claimed for both differences in quantities and differences in level of trade, the Secretary will not make an adjustment for differences in quantities unless the Secretary is satisfied that the effect on price comparability of differences in quantities has been identified and established separately from the effect on price comparability of differences in the levels of trade.

§ 351.410 Differences in circumstances of sale

(a) *Introduction.* In calculating normal value the Secretary may make adjustments to account for certain differences in the circumstances of sales in the United States and foreign markets. (*See* section 773(a)(6)(C)(iii) of the Act.) This section clarifies certain terms used in the statute regarding circumstances of sale adjustments and describes the adjustment when commissions are paid only in one market.

(b) *In general.* With the exception of the allowance described in paragraph (e) of this section concerning commissions paid in only one market, the Secretary will make circumstances of sale adjustments under section 773(a)(6)(C)(iii) of the Act only for direct selling expenses and assumed expenses.

(c) *Direct selling expenses.* ''Direct selling expenses'' are expenses, such as commissions, credit expenses, guarantees, and warranties, that result from, and bear a direct relationship to, the particular sale in question.

(d) *Assumed expenses.* Assumed expenses are selling expenses that are assumed by the seller on behalf of the buyer, such as advertising expenses.

(e) *Commissions paid in one market.* The Secretary normally will make a reasonable allowance for other selling expenses if the Secretary makes a reasonable allowance for commissions in one of the markets under considerations, and no commission is paid in the other market under consideration. The Secretary will limit the amount of such allowance to the amount of the other selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

(f) *Reasonable allowance.* In deciding what is a reasonable allowance for any difference in circumstances of sale, the Secretary normally will consider the cost of such difference to the exporter or producer but, if appropriate, may also consider the effect of such difference on the market value of the merchandise.

§ 351.411 Differences in physical characteristics.

(a) *Introduction.* In comparing United States sales with foreign market sales, the Secretary may determine that the merchandise sold in the United States does not have the same physical characteristics as the merchandise sold in the foreign market, and that the difference has an effect on prices. In calculating normal value, the Secretary will make a reasonable allowance for such differences. (*See* section 773(a)(6)(C)(ii) of the Act.)

(b) *Reasonable allowance.* In deciding what is a reasonable allowance for differences in physical characteristics, the Secretary will consider only differences in variable costs associated with the physical differences. Where appropriate, the Secretary may also consider differences in the market value. The Secretary will not consider differences in cost of production when compared merchandise has identical physical characteristics.

§ 351.412 Levels of trade; adjustment for difference in level of trade; constructed export price offset.

(a) *Introduction.* In comparing United States sales with foreign market sales, the Secretary may determine that sales in the two markets were not made at the same level of trade, and that the difference has an effect on the comparability of the prices. The Secretary is authorized to adjust normal value to account for such a difference. (*See* section 773(a)(7) of the Act.)

(b) *Adjustment for difference in level of trade.* The Secretary will adjust normal value for a difference in level of trade if:

(1) The Secretary calculates normal value at a different level of trade from the level of trade of the export price or the constructed export price (whichever is applicable); and

(2) The Secretary determines that the difference in level of trade has an effect on price comparability.

(c) *Identifying levels of trade and differences in levels of trade*—(1) *Basis for identifying levels of trade.* The Secretary will identify the level of trade based on:

(i) In the case of export price, the starting price;

(ii) In the case of constructed export price, the starting price, as adjusted under section 772(d) of the Act; and

(iii) In the case of normal value, the starting price or constructed value.

(2) *Differences in levels of trade.* The Secretary will determine that sales are made at different levels of trade if they are made at different marketing stages (or their equivalent). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing. Some overlap in selling activities will not preclude a determination that two sales are at different stages of marketing.

(d) *Effect on price comparability*—(1) *In general.* The Secretary will determine that a difference in level of trade has an effect on price comparability only if it is established to the satisfaction of the Secretary that there is a pattern of consistent price differences between sales in the market in which normal value is determined:

(i) At the level of trade of the export price or constructed export price (whichever is appropriate); and

(ii) At the level of trade at which normal value is determined.

(2) *Relevant sales.* Where possible, the Secretary will make the determination under paragraph (d)(1) of this section on the basis of sales of the foreign like

product by the producer or exporter. Where this is not possible, the Secretary may use sales of different or broader product lines, sales by other companies, or any other reasonable basis.

(e) *Amount of adjustment.* The Secretary normally will calculate the amount of a level of trade adjustment by:

(1) Calculating the weighted-averages of the prices of sales at the two levels of trade identified in paragraph (d), after making any other adjustments to those prices appropriate under section 773(a)(6) of the Act and this subpart;

(2) Calculating the average of the percentage differences between those weighted-average prices; and

(3) Applying the percentage difference to normal value, where it is at a different level of trade from the export price or constructed export price (whichever is applicable), after making any other adjustments to normal value appropriate under section 773(a)(6) of the Act and this subpart.

(f) *Constructed export price offset*—(1) *In general.* The Secretary will grant a constructed export price offset only where:

(i) Normal value is compared to constructed export price;

(ii) Normal value is determined at a more advanced level of trade than the level of trade of the constructed export price; and

(iii) Despite the fact that a person has cooperated to the best of its ability, the data available do not provide an appropriate basis to determine under paragraph (d) of this section whether the difference in level of trade affects price comparability.

(2) *Amount of the offset.* The amount of the constructed export price offset will be the amount of indirect selling expenses included in normal value, up to the amount of indirect selling expenses deducted in determining constructed export price. In making the constructed export price offset, ''indirect selling expenses'' means selling expenses, other than direct selling expenses or assumed selling expenses (*see* § 351.410), that the seller would incur regardless of whether particular sales were made, but that reasonably may be attributed, in whole or in part, to such sales.

(3) *Where data permit determination of affect on price comparability.* Where available data permit the Secretary to determine under paragraph (d) of this section whether the difference in level of trade affects price comparability, the Secretary will not grant a constructed export price offset. In such cases, if the Secretary determines that price comparability has been affected, the Secretary will make a level of trade adjustment. If the Secretary determines that price comparability has not been affected, the Secretary will not grant either a level of trade adjustment or a constructed export price offset.

§ 351.413 Disregarding insignificant adjustments.

Ordinarily, under section 777A(a)(2) of the Act, an ''insignificant adjustment'' is any individual adjustment having an *ad valorem* effect of less than 0.33 percent, or any group of adjustments having an *ad valorem* effect of less than 1.0 percent, of the export price, constructed export price, or normal value, as the case may be. Groups of adjustments are adjustments for differences in circumstances of sale under § 351.410, adjustments for differences in the physical characteristics of the merchandise under § 351.411, and adjustments for differences in the levels of trade under § 351.412.

§ 351.414 Comparison of normal value with export price (constructed export price).

(a) *Introduction.* This section explains when and how the Secretary will average prices in making comparisons of export price or constructed export price with normal value. (*See* section 777A(d) of the Act.)

(b) *Description of methods of comparison*—(1) *Average-to-average method.* The ''average-to-average'' method involves a comparison of the weighted average of the normal values with the weighted average of the export prices (and constructed export prices) for comparable merchandise.

(2) *Transaction-to-transaction method.* The ''transaction-to-transaction'' method involves a comparison of the

normal values of individual transactions with the export prices (or constructed export prices) of individual transactions for comparable merchandise.

(3) *Average-to-transaction method.* The ''average-to-transaction'' method involves a comparison of the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise.

(c) *Choice of method.* (1) In an investigation or review, the Secretary will use the average-to-average method unless the Secretary determines another method is appropriate in a particular case.

(2) The Secretary will use the transaction-to-transaction method only in unusual situations, such as when there are very few sales of subject merchandise and the merchandise sold in each market is identical or very similar or is custom-made.

(d) *Application of the average-to-average method*—(1) *In general.* In applying the average-to-average method, the Secretary will identify those sales of the subject merchandise to the United States that are comparable, and will include such sales in an ''averaging group.'' The Secretary will calculate a weighted average of the export prices and the constructed export prices of the sales included in the averaging group, and will compare this weighted average to the weighted average of the normal values of such sales.

(2) *Identification of the averaging group.* An averaging group will consist of subject merchandise that is identical or virtually identical in all physical characteristics and that is sold to the United States at the same level of trade. In identifying sales to be included in an averaging group, the Secretary also will take into account, where appropriate, the region of the United States in which the merchandise is sold, and such other factors as the Secretary considers relevant.

(3) *Time period over which weighted average is calculated.* When applying the average-to-average method in an investigation, the Secretary normally will calculate weighted averages for the entire period of investigation. However, when normal values, export prices, or constructed export prices differ significantly over the course of the period of investigation, the Secretary may calculate weighted averages for such shorter period as the Secretary deems appropriate. When applying the average-to-average method in a review, the Secretary normally will calculate weighted averages on a monthly basis and compare the weighted-average monthly export price or constructed export price to the weighted-average normal value for the contemporaneous month.

(e) *Application of the average-to-transaction method*—In applying the average-to-transaction method in a review, when normal value is based on the weighted average of sales of the foreign like product, the Secretary will limit the averaging of such prices to sales incurred during the contemporaneous month.

(f) *Contemporaneous Month.* Normally, the Secretary will select as the contemporaneous month the first of the following months which applies:

(1) The month during which the particular U.S. sales under consideration were made;

(2) If there are no sales of the foreign like product during this month, the most recent of the three months prior to the month of the U.S. sales in which there was a sale of the foreign like product.

(3) If there are no sales of the foreign like product during any of these months, the earlier of the two months following the month of the U.S. sales in which there was a sale of the foreign like product.

[77 FR 8114, Feb. 14, 2012]

§ 351.415 Conversion of currency.

(a) *In general.* In an antidumping proceeding, the Secretary will convert foreign currencies into United States dollars using the rate of exchange on the date of sale of the subject merchandise.

(b) *Exception.* If the Secretary establishes that a currency transaction on forward markets is directly linked to an export sale under consideration, the Secretary will use the exchange rate specified with respect to such foreign currency in the forward sale agreement to convert the foreign currency.

(c) *Exchange rate fluctuations.* The Secretary will ignore fluctuations in exchange rates.

(d) *Sustained movement in foreign currency value.* In an antidumping investigation, if there is a sustained movement increasing the value of the foreign currency relative to the United States dollar, the Secretary will allow exporters 60 days to adjust their prices to reflect such sustained movement.

Subpart E—Identification and Measurement of Countervailable Subsidies

SOURCE: 63 FR 65407, Nov. 25, 1998, unless otherwise noted.

§ 351.501 Scope.

The provisions of this subpart E set forth rules regarding the identification and measurement of countervailable subsidies. Where this subpart E does not expressly deal with a particular type of alleged subsidy, the Secretary will identify and measure the subsidy, if any, in accordance with the underlying principles of the Act and this subpart E.

§ 351.502 Specificity of domestic subsidies.

(a) *Sequential analysis.* In determining whether a subsidy is *de facto* specific, the Secretary will examine the factors contained in section 771(5A)(D)(iii) of the Act sequentially in order of their appearance. If a single factor warrants a finding of specificity, the Secretary will not undertake further analysis.

(b) *Characteristics of a ''group.''* In determining whether a subsidy is being provided to a ''group'' of enterprises or industries within the meaning of section 751(5A)(D) of the Act, the Secretary is not required to determine whether there are shared characteristics among the enterprises or industries that are eligible for, or actually receive, a subsidy.

(c) *Traded goods sector.* In determining whether a subsidy is being provided to a ''group'' of enterprises or industries within the meaning of section 771(5A)(D) of the Act, the Secretary normally will consider enterprises that buy or sell goods internationally to comprise such a group.

(d) *Integral linkage.* Unless the Secretary determines that two or more programs are integrally linked, the Secretary will determine the specificity of a program under section 771(5A)(D) of the Act solely on the basis of the availability and use of the particular program in question. The Secretary may find two or more programs to be integrally linked if:

(1) The subsidy programs have the same purpose;

(2) The subsidy programs bestow the same type of benefit;

(3) The subsidy programs confer similar levels of benefits on similarly situated firms; and

(4) The subsidy programs were linked at inception.

(e) *Agricultural subsidies.* The Secretary will not regard a subsidy as being specific under section 771(5A)(D) of the Act solely because the subsidy is limited to the agricultural sector (domestic subsidy).

(f) *Subsidies to small-and medium-sized businesses.* The Secretary will not regard a subsidy as being specific under section 771(5A)(D) of the Act solely because the subsidy is limited to small firms or small-and medium-sized firms.

(g) *Disaster relief.* The Secretary will not regard disaster relief as being specific under section 771(5A)(D) of the Act if such relief constitutes general assistance available to anyone in the area affected by the disaster.

[63 FR 65407, Nov. 25, 1998, as amended at 85 FR 6043, Feb. 4, 2020]

§ 351.503 Benefit.

(a) *Specific rules.* In the case of a government program for which a specific rule for the measurement of a benefit is contained in this subpart E, the Secretary will measure the extent to which a financial contribution (or income or price support) confers a benefit as provided in that rule. For example, § 351.504(a) prescribes the specific rule for measurement of the benefit of grants.

(b) *Other subsidies*—(1) *In general.* For other government programs, the Secretary normally will consider a benefit to be conferred where a firm pays less for its inputs (*e.g.*, money, a good, or a service) than it otherwise would pay in

the absence of the government program, or receives more revenues than it otherwise would earn.

(2) *Exception*. Paragraph (b)(1) of this section is not intended to limit the ability of the Secretary to impose countervailing duties when the facts of a particular case establish that a financial contribution (or income or price support) has conferred a benefit, even if that benefit does not take the form of a reduction in input costs or an enhancement of revenues. When paragraph (b)(1) of this section is not applicable, the Secretary will determine whether a benefit is conferred by examining whether the alleged program or practice has common or similar elements to the four illustrative examples in sections 771(5)(E)(i) through (iv) of the Act.

(c) *Distinction from effect of subsidy*. In determining whether a benefit is conferred, the Secretary is not required to consider the effect of the government action on the firm's performance, including its prices or output, or how the firm's behavior otherwise is altered.

(d) *Varying financial contribution levels*—(1) *In general*. Where a government program provides varying levels of financial contributions based on different eligibility criteria, and one or more of such levels is not specific within the meaning of § 351.502, a benefit is conferred to the extent that a firm receives a greater financial contribution than the financial contributions provided at a non-specific level under the program. The preceding sentence shall apply only to the extent the Secretary determines that the varying levels of financial contributions are set forth in a statute, decree, regulation, or other official act; that the levels are clearly delineated and identifiable; and that the firm would have been eligible for the non-specific level of contributions.

(2) *Exception*. Paragraph (d)(1) of this section shall not apply where the statute specifies a commercial test for determining the benefit.

(e) *Tax consequences*. In calculating the amount of a benefit, the Secretary will not consider the tax consequences of the benefit.

§ 351.504 Grants.

(a) *Benefit*. In the case of a grant, a benefit exists in the amount of the grant.

(b) *Time of receipt of benefit*. In the case of a grant, the Secretary normally will consider a benefit as having been received on the date on which the firm received the grant.

(c) *Allocation of a grant to a particular time period*. The Secretary will allocate the benefit from a grant to a particular time period in accordance with § 351.524.

§ 351.505 Loans.

(a) *Benefit*—(1) *In general*. In the case of a loan, a benefit exists to the extent that the amount a firm pays on the government-provided loan is less than the amount the firm would pay on a comparable commercial loan(s) that the firm could actually obtain on the market. *See* section 771(5)(E)(ii) of the Act. In making the comparison called for in the preceding sentence, the Secretary normally will rely on effective interest rates.

(2) *''Comparable commercial loan'' defined*—(i) *''Comparable'' defined*. In selecting a loan that is ''comparable'' to the government-provided loan, the Secretary normally will place primary emphasis on similarities in the structure of the loans (*e.g.*, fixed interest rate v. variable interest rate), the maturity of the loans (*e.g.*, short-term v. long-term), and the currency in which the loans are denominated.

(ii) *''Commercial'' defined*. In selecting a ''commercial'' loan, the Secretary normally will use a loan taken out by the firm from a commercial lending institution or a debt instrument issued by the firm in a commercial market. Also, the Secretary will treat a loan from a government-owned bank as a commercial loan, unless there is evidence that the loan from a government-owned bank is provided on non-commercial terms or at the direction of the government. However, the Secretary will not consider a loan provided under a government program, or a loan provided by a government-owned special purpose bank, to be a commercial loan for purposes of selecting a loan to compare with a government-provided loan.

(iii) *Long-term loans.* In selecting a comparable loan, if the government-provided loan is a long-term loan, the Secretary normally will use a loan the terms of which were established during, or immediately before, the year in which the terms of the government-provided loan were established.

(iv) *Short-term loans.* In making the comparison required under paragraph (a)(1) of this section, if the government-provided loan is a short-term loan, the Secretary normally will use an annual average of the interest rates on comparable commercial loans during the year in which the government-provided loan was taken out, weighted by the principal amount of each loan. However, if the Secretary finds that interest rates fluctuated significantly during the period of investigation or review, the Secretary will use the most appropriate interest rate based on the circumstances presented.

(3) *''Could actually obtain on the market'' defined*—(i) *In general.* In selecting a comparable commercial loan that the recipient ''could actually obtain on the market,'' the Secretary normally will rely on the actual experience of the firm in question in obtaining comparable commercial loans for both short-term and long-term loans.

(ii) *Where the firm has no comparable commercial loans.* If the firm did not take out any comparable commercial loans during the period referred to in paragraph (a)(2)(iii) or (a)(2)(iv) of this section, the Secretary may use a national average interest rate for comparable commercial loans.

(iii) *Exception for uncreditworthy companies.* If the Secretary finds that a firm that received a government-provided long-term loan was uncreditworthy, as defined in paragraph (a)(4) of this section, the Secretary normally will calculate the interest rate to be used in making the comparison called for by paragraph (a)(1) of this section according to the following formula:

$$i_b = [(1 - q_n)(1 + i_f)^n / (1 - p_n)]^{1/n} - 1,$$

where:

n = the term of the loan;
i_b = the benchmark interest rate for uncreditworthy companies;
i_f = the long-term interest rate that would be paid by a creditworthy company;
p_n = the probability of default by an uncreditworthy company within n years; and
q_n = the probability of default by a creditworthy company within n years.

''Default'' means any missed or delayed payment of interest and/or principal, bankruptcy, receivership, or distressed exchange. For values of p_n, the Secretary will normally rely on the average cumulative default rates reported for the Caa to C-rated category of companies in Moody's study of historical default rates of corporate bond issuers. For values of q_n, the Secretary will normally rely on the average cumulative default rates reported for the Aaa to Baa-rated categories of companies in Moody's study of historical default rates of corporate bond issuers.

(4) *Uncreditworthiness*—(i) *In general.* The Secretary will consider a firm to be uncreditworthy if the Secretary determines that, based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources. The Secretary will determine uncreditworthiness on a case-by-case basis, and may, in appropriate circumstances, focus its creditworthiness analysis on the project being financed rather than the company as a whole. In making the creditworthiness determination, the Secretary may examine, among other factors, the following:

(A) The receipt by the firm of comparable commercial long-term loans;

(B) The present and past financial health of the firm, as reflected in various financial indicators calculated from the firm's financial statements and accounts;

(C) The firm's recent past and present ability to meet its costs and fixed financial obligations with its cash flow; and

(D) Evidence of the firm's future financial position, such as market studies, country and industry economic forecasts, and project and loan appraisals prepared prior to the agreement between the lender and the firm on the terms of the loan.

(ii) *Significance of long-term commercial loans.* In the case of firms not owned by the government, the receipt by the firm of comparable long-term

commercial loans, unaccompanied by a government-provided guarantee, will normally constitute dispositive evidence that the firm is not uncreditworthy.

(iii) *Significance of prior subsidies.* In determining whether a firm is uncreditworthy, the Secretary will ignore current and prior subsidies received by the firm.

(iv) *Discount rate.* When the creditworthiness of a firm is considered in connection with the allocation of non-recurring benefits, the Secretary will rely on information available in the year in which the government agreed to provide the subsidy conferring a non-recurring benefit.

(5) *Long-term variable rate loans*—(i) *In general.* In the case of a long-term variable rate loan, the Secretary normally will make the comparison called for by paragraph (a)(1) of this section by relying on a comparable commercial loan with a variable interest rate. The Secretary then will compare the variable interest rates on the comparable commercial loan and the government-provided loan for the year in which the terms of the government-provided loan were established. If the comparison shows that the interest rate on the government-provided loan was equal to or higher than the interest rate on the comparable commercial loan, the Secretary will not consider the government-provided loan as having conferred a benefit. If the comparison shows that the interest rate on the government-provided loan was lower, the Secretary will consider the government-provided loan as having conferred a benefit, and, if the other criteria for a countervailable subsidy are satisfied, will calculate the amount of the benefit in accordance with paragraph (c)(4) of this section.

(ii) *Exception.* If the Secretary is unable to make the comparison described in paragraph (a)(5)(i) of this section or if the comparison described in paragraph (a)(5)(i) of this section would yield an inaccurate measure of the benefit, the Secretary may modify the method described in paragraph (a)(5)(i) of this section.

(6) *Allegations*—(i) *Allegation of uncreditworthiness required.* Normally, the Secretary will not consider the uncreditworthiness of a firm absent a specific allegation by the petitioner that is supported by information establishing a reasonable basis to believe or suspect that the firm is uncreditworthy.

(ii) *Government-owned banks.* The Secretary will not investigate a loan provided by a government-owned bank absent a specific allegation that is supported by information reasonably available to petitioners indicating that:

(A) The loan meets the specificity criteria in accordance with section 771(5A) of the Act; and

(B) A benefit exists within the meaning of paragraph (a)(1) of this section.

(b) *Time of receipt of benefit.* In the case of loans described in paragraphs (c)(1), (c)(2), and (c)(4) of this section, the Secretary normally will consider a benefit as having been received in the year in which the firm otherwise would have had to make a payment on the comparable commercial loan. In the case of a loan described in paragraph (c)(3) of this section, the Secretary normally will consider the benefit as having been received in the year in which the firm receives the proceeds of the loan.

(c) *Allocation of benefit to a particular time period*—(1) *Short-term loans.* The Secretary will allocate (expense) the benefit from a short-term loan to the year(s) in which the firm is due to make interest payments on the loan. In no event may the present value (in the year of receipt of the loan) of the amounts calculated under the preceding sentence exceed the principal of the loan.

(2) *Long-term fixed-rate loans with concessionary interest rates.* Except as provided in paragraph (c)(3) of this section, the Secretary normally will calculate the subsidy amount to be assigned to a particular year by calculating the difference in interest payments for that year, i.e., the difference between the interest paid by the firm in that year on the government-provided loan and the interest the firm would have paid on the comparison loan. However, in no event may the present value (in the year of receipt of the loan) of the amounts calculated

under the preceding sentence exceed the principal of the loan.

(3) *Long-term fixed-rate loans with different repayment schedules*—(i) *Calculation of present value of benefit.* Where the government-provided loan and the loan to which it is compared under paragraph (a) of this section are both long-term, fixed-interest rate loans, but have different grace periods or maturities, or where the shapes of the repayment schedules differ, the Secretary will determine the total benefit by calculating the present value, in the year that repayment would begin on the comparable commercial loan, of the difference between the amount that the firm is to pay on the government-provided loan and the amount that the firm would have paid on the comparison loan. In no event may the total benefit calculated under the preceding sentence exceed the principal of the loan.

(ii) *Calculation of annual benefit.* With respect to the benefit calculated under paragraph (c)(3)(i) of this section, the Secretary will determine the portion of that benefit to be assigned to a particular year by using the formula set forth in § 351.524(d)(1) and the following parameters:

A_k = the amount countervailed in year k,
y = the present value of the benefit (*see* paragraph (c)(3)(i) of this section),
n = the number of years in the life of the loan,
d = the interest rate on the comparison loan selected under paragraph (a) of this section, and
k = the year of allocation, where the year that repayment would begin on the comparable commercial loan = 1.

(4) *Long-term variable interest rate loans.* In the case of a government-provided long-term variable-rate loan, the Secretary normally will determine the amount of the benefit attributable to a particular year by calculating the difference in payments for that year, *i.e.*, the difference between the amount paid by the firm in that year on the government-provided loan and the amount the firm would have paid on the comparison loan. However, in no event may the present value (in the year of receipt of the loan) of the amounts calculated under the preceding sentence exceed the principal of the loan.

(d) *Contingent liability interest-free loans*—(1) *Treatment as loans.* In the case of an interest-free loan, for which the repayment obligation is contingent upon the company taking some future action or achieving some goal in fulfillment of the loan's requirements, the Secretary normally will treat any balance on the loan outstanding during a year as an interest-free, short-term loan in accordance with paragraphs (a), (b), and (c)(1) of this section. However, if the event upon which repayment of the loan depends will occur at a point in time more than one year after the receipt of the contingent liability loan, the Secretary will use a long-term interest rate as the benchmark in accordance with paragraphs (a), (b), and (c)(2) of this section. In no event may the present value (in the year of receipt of the contingent liability loan) of the amounts calculated under this paragraph exceed the principal of the loan.

(2) *Treatment as grants.* If, at any point in time, the Secretary determines that the event upon which repayment depends is not a viable contingency, the Secretary will treat the outstanding balance of the loan as a grant received in the year in which this condition manifests itself.

§ 351.506 Loan guarantees.

(a) *Benefit*—(1) *In general.* In the case of a loan guarantee, a benefit exists to the extent that the total amount a firm pays for the loan with the government-provided guarantee is less than the total amount the firm would pay for a comparable commercial loan that the firm could actually obtain on the market absent the government-provided guarantee, including any difference in guarantee fees. *See* section 771(5)(E)(iii) of the Act. The Secretary will select a comparable commercial loan in accordance with § 351.505(a).

(2) *Government acting as owner.* In situations where a government, acting as the owner of a firm, provides a loan guarantee to that firm, the guarantee does not confer a benefit if the respondent provides evidence demonstrating that it is normal commercial practice in the country in question for shareholders to provide guarantees to their firms under similar circumstances and on comparable terms.

(b) *Time of receipt of benefit.* In the case of a loan guarantee, the Secretary normally will consider a benefit as having been received in the year in which the firm otherwise would have had to make a payment on the comparable commercial loan.

(c) *Allocation of benefit to a particular time period.* In allocating the benefit from a government-provided loan guarantee to a particular time period, the Secretary will use the methods set forth in § 351.505(c) regarding loans.

§ 351.507 Equity.

(a) *Benefit*—(1) *In general.* In the case of a government-provided equity infusion, a benefit exists to the extent that the investment decision is inconsistent with the usual investment practice of private investors, including the practice regarding the provision of risk capital, in the country in which the equity infusion is made. *See* section 771(5)(E)(i) of the Act.

(2) *Private investor prices available*—(i) *In general.* Except as provided in paragraph (a)(2)(iii) of this section, the Secretary will consider an equity infusion as being inconsistent with usual investment practice (*see* paragraph (a)(1) of this section) if the price paid by the government for newly issued shares is greater than the price paid by private investors for the same (or similar form of) newly issued shares.

(ii) *Timing of private investor prices.* In selecting a private investor price under paragraph (a)(2)(i) of this section, the Secretary will rely on sales of newly issued shares made reasonably concurrently with the newly issued shares purchased by the government.

(iii) *Significant private sector participation required.* The Secretary will not use private investor prices under paragraph (a)(2)(i) of this section if the Secretary concludes that private investor purchases of newly issued shares are not significant.

(iv) *Adjustments for ''similar'' form of equity.* Where the Secretary uses private investor prices for a form of shares that is similar to the newly issued shares purchased by the government (*see* paragraph (a)(2)(i) of this section), the Secretary, where appropriate, will adjust the prices to reflect the differences in the forms of shares.

(3) *Actual private investor prices unavailable*—(i) *In general.* If actual private investor prices are not available under paragraph (a)(2) of this section, the Secretary will determine whether the firm funded by the government-provided equity was equityworthy or unequityworthy at the time of the equity infusion (*see* paragraph (a)(4) of this section). If the Secretary determines that the firm was equityworthy, the Secretary will apply paragraph (a)(5) of this section to determine whether the equity infusion was inconsistent with the usual investment practice of private investors. A determination by the Secretary that the firm was unequityworthy will constitute a determination that the equity infusion was inconsistent with usual investment practice of private investors, and the Secretary will apply paragraph (a)(6) of this section to measure the benefit attributable to the equity infusion.

(4) *Equityworthiness*—(i) *In general.* The Secretary will consider a firm to have been equityworthy if the Secretary determines that, from the perspective of a reasonable private investor examining the firm at the time the government-provided equity infusion was made, the firm showed an ability to generate a reasonable rate of return within a reasonable period of time. The Secretary may, in appropriate circumstances, focus its equityworthiness analysis on a project rather than the company as a whole. In making the equityworthiness determination, the Secretary may examine the following factors, among others:

(A) Objective analyses of the future financial prospects of the recipient firm or the project as indicated by, *inter alia,* market studies, economic forecasts, and project or loan appraisals prepared prior to the government-provided equity infusion in question;

(B) Current and past indicators of the recipient firm's financial health calculated from the firm's statements and accounts, adjusted, if appropriate, to conform to generally accepted accounting principles;

(C) Rates of return on equity in the three years prior to the government equity infusion; and

(D) Equity investment in the firm by private investors.

(ii) *Significance of a pre-infusion objective analysis.* For purposes of making an equityworthiness determination, the Secretary will request and normally require from the respondents the information and analysis completed prior to the infusion, upon which the government based its decision to provide the equity infusion (*see,* paragraph (a)(4)(i)(A) of this section). Absent the existence or provision of an objective analysis, containing information typically examined by potential private investors considering an equity investment, the Secretary will normally determine that the equity infusion received provides a countervailable benefit within the meaning of paragraph (a)(1) of this section. The Secretary will not necessarily make such a determination if the absence of an objective analysis is consistent with the actions of reasonable private investors in the country in question.

(iii) *Significance of prior subsidies.* In determining whether a firm was equityworthy, the Secretary will ignore current and prior subsidies received by the firm.

(5) *Benefit where firm is equityworthy.* If the Secretary determines that the firm or project was equityworthy (*see* paragraph (a)(4) of this section), the Secretary will examine the terms and the nature of the equity purchased to determine whether the investment was otherwise inconsistent with the usual investment practice of private investors. If the Secretary determines that the investment was inconsistent with usual private investment practice, the Secretary will determine the amount of the benefit conferred on a case-by-case basis.

(6) *Benefit where firm is unequityworthy.* If the Secretary determines that the firm or project was unequityworthy (*see* paragraph (a)(4) of this section), a benefit to the firm exists in the amount of the equity infusion.

(7) *Allegations.* The Secretary will not investigate an equity infusion in a firm absent a specific allegation by the petitioner which is supported by information establishing a reasonable basis to believe or suspect that the firm received an equity infusion that provides a countervailable benefit within the meaning of paragraph (a)(1) of this section.

(b) *Time of receipt of benefit.* In the case of a government-provided equity infusion, the Secretary normally will consider the benefit to have been received on the date on which the firm received the equity infusion.

(c) *Allocation of benefit to a particular time period.* The benefit conferred by an equity infusion shall be allocated over the same time period as a non-recurring subsidy. *See* § 351.524(d).

§ 351.508 Debt forgiveness.

(a) *Benefit.* In the case of an assumption or forgiveness of a firm's debt obligation, a benefit exists equal to the amount of the principal and/or interest (including accrued, unpaid interest) that the government has assumed or forgiven. In situations where the entity assuming or forgiving the debt receives shares in a firm in return for eliminating or reducing the firm's debt obligation, the Secretary will determine the existence of a benefit under § 351.507 (equity infusions).

(b) *Time of receipt of benefit.* In the case of a debt or interest assumption or forgiveness, the Secretary normally will consider the benefit as having been received as of the date on which the debt or interest was assumed or forgiven.

(c) *Allocation of benefit to a particular time period*—(1) *In general.* The Secretary will treat the benefit determined under paragraph (a) of this section as a non-recurring subsidy, and will allocate the benefit to a particular year in accordance with § 351.524(d).

(2) *Exception.* Where an interest assumption is tied to a particular loan and where a firm can reasonably expect to receive the interest assumption at the time it applies for the loan, the Secretary will normally treat the interest assumption as a reduced-interest loan and allocate the benefit to a particular year in accordance with § 351.505(c) (loans).

§ 351.509 Direct taxes.

(a) *Benefit*—(1) *Exemption or remission of taxes.* In the case of a program that provides for a full or partial exemption

or remission of a direct tax (*e.g.*, an income tax), or a reduction in the base used to calculate a direct tax, a benefit exists to the extent that the tax paid by a firm as a result of the program is less than the tax the firm would have paid in the absence of the program.

(2) *Deferral of taxes.* In the case of a program that provides for a deferral of direct taxes, a benefit exists to the extent that appropriate interest charges are not collected. Normally, a deferral of direct taxes will be treated as a government-provided loan in the amount of the tax deferred, according to the methodology described in § 351.505. The Secretary will use a short-term interest rate as the benchmark for tax deferrals of one year or less. The Secretary will use a long-term interest rate as the benchmark for tax deferrals of more than one year.

(b) *Time of receipt of benefit*—(1) *Exemption or remission of taxes.* In the case of a full or partial exemption or remission of a direct tax, the Secretary normally will consider the benefit as having been received on the date on which the recipient firm would otherwise have had to pay the taxes associated with the exemption or remission. Normally, this date will be the date on which the firm filed its tax return.

(2) *Deferral of taxes.* In the case of a tax deferral of one year or less, the Secretary normally will consider the benefit as having been received on the date on which the deferred tax becomes due. In the case of a multi-year deferral, the Secretary normally will consider the benefit as having been received on the anniversary date(s) of the deferral.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit of a full or partial exemption, remission, or deferral of a direct tax to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.510 Indirect taxes and import charges (other than export programs).

(a) *Benefit*—(1) *Exemption or remission of taxes.* In the case of a program, other than an export program, that provides for the full or partial exemption or remission of an indirect tax or an import charge, a benefit exists to the extent that the taxes or import charges paid by a firm as a result of the program are less than the taxes the firm would have paid in the absence of the program.

(2) *Deferral of taxes.* In the case of a program, other than an export program, that provides for a deferral of indirect taxes or import charges, a benefit exists to the extent that appropriate interest charges are not collected. Normally, a deferral of indirect taxes or import charges will be treated as a government-provided loan in the amount of the taxes deferred, according to the methodology described in § 351.505. The Secretary will use a short-term interest rate as the benchmark for tax deferrals of one year or less. The Secretary will use a long-term interest rate as the benchmark for tax deferrals of more than one year.

(b) *Time of receipt of benefit*—(1) *Exemption or remission of taxes.* In the case of a full or partial exemption or remission of an indirect tax or import charge, the Secretary normally will consider the benefit as having been received at the time the recipient firm otherwise would be required to pay the indirect tax or import charge.

(2) *Deferral of taxes.* In the case of the deferral of an indirect tax or import charge of one year or less, the Secretary normally will consider the benefit as having been received on the date on which the deferred tax becomes due. In the case of a multi-year deferral, the Secretary normally will consider the benefit as having been received on the anniversary date(s) of the deferral.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit of a full or partial exemption, remission, or deferral described in paragraph (a) of this section to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.511 Provision of goods or services.

(a) *Benefit*—(1) *In general.* In the case where goods or services are provided, a benefit exists to the extent that such goods or services are provided for less

than adequate remuneration. *See* section 771(5)(E)(iv) of the Act.

(2) ''*Adequate Remuneration'' defined*—(i) *In general.* The Secretary will normally seek to measure the adequacy of remuneration by comparing the government price to a market-determined price for the good or service resulting from actual transactions in the country in question. Such a price could include prices stemming from actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from competitively run government auctions. In choosing such transactions or sales, the Secretary will consider product similarity; quantities sold, imported, or auctioned; and other factors affecting comparability.

(ii) *Actual market-determined price unavailable.* If there is no useable market-determined price with which to make the comparison under paragraph (a)(2)(i) of this section, the Secretary will seek to measure the adequacy of remuneration by comparing the government price to a world market price where it is reasonable to conclude that such price would be available to purchasers in the country in question. Where there is more than one commercially available world market price, the Secretary will average such prices to the extent practicable, making due allowance for factors affecting comparability.

(iii) *World market price unavailable.* If there is no world market price available to purchasers in the country in question, the Secretary will normally measure the adequacy of remuneration by assessing whether the government price is consistent with market principles.

(iv) *Use of delivered prices.* In measuring adequate remuneration under paragraph (a)(2)(i) or (a)(2)(ii) of this section, the Secretary will adjust the comparison price to reflect the price that a firm actually paid or would pay if it imported the product. This adjustment will include delivery charges and import duties.

(b) *Time of receipt of benefit.* In the case of the provision of a good or service, the Secretary normally will consider a benefit as having been received as of the date on which the firm pays or, in the absence of payment, was due to pay for the government-provided good or service.

(c) *Allocation of benefit to a particular time period.* In the case of the provision of a good or service, the Secretary will normally allocate (expense) the benefit to the year in which the benefit is considered to have been received under paragraph (b) of this section. In the case of the provision of infrastructure, the Secretary will normally treat the benefit as non-recurring and will allocate the benefit to a particular year in accordance with § 351.524(d).

(d) *Exception for general infrastructure.* A financial contribution does not exist in the case of the government provision of general infrastructure. General infrastructure is defined as infrastructure that is created for the broad societal welfare of a country, region, state or municipality.

§ 351.512 Purchase of goods. [Reserved]

§ 351.513 Worker-related subsidies.

(a) *Benefit.* In the case of a program that provides assistance to workers, a benefit exists to the extent that the assistance relieves a firm of an obligation that it normally would incur.

(b) *Time of receipt of benefit.* In the case of assistance provided to workers, the Secretary normally will consider the benefit as having been received by the firm on the date on which the payment is made that relieves the firm of the relevant obligation.

(c) *Allocation of benefit to a particular time period.* Normally, the Secretary will allocate (expense) the benefit from assistance provided to workers to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.514 Export subsidies.

(a) *In general.* The Secretary will consider a subsidy to be an export subsidy if the Secretary determines that eligibility for, approval of, or the amount of, a subsidy is contingent upon export performance. In applying this section, the Secretary will consider a subsidy to be contingent upon export performance if the provision of the subsidy is,

in law or in fact, tied to actual or anticipated exportation or export earnings, alone or as one of two or more conditions.

(b) *Exception.* In the case of export promotion activities of a government, a benefit does not exist if the Secretary determines that the activities consist of general informational activities that do not promote particular products over others.

§ 351.515 Internal transport and freight charges for export shipments.

(a) *Benefit*—(1) *In general.* In the case of internal transport and freight charges on export shipments, a benefit exists to the extent that the charges paid by a firm for transport or freight with respect to goods destined for export are less than what the firm would have paid if the goods were destined for domestic consumption. The Secretary will consider the amount of the benefit to equal the difference in amounts paid.

(2) *Exception.* For purposes of paragraph (a)(1) of this section, a benefit does not exist if the Secretary determines that:

(i) Any difference in charges is the result of an arm's-length transaction between the supplier and the user of the transport or freight service; or

(ii) The difference in charges is commercially justified.

(b) *Time of receipt of benefit.* In the case of internal transport and freight charges for export shipments, the Secretary normally will consider the benefit as having been received by the firm on the date on which the firm paid, or in the absence of payment was due to pay, the charges.

(c) *Allocation of benefit to a particular time period.* Normally, the Secretary will allocate (expense) the benefit from internal transport and freight charges for export shipments to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.516 Price preferences for inputs used in the production of goods for export.

(a) *Benefit*—(1) *In general.* In the case of a program involving the provision by governments or their agencies, either directly or indirectly through government-mandated schemes, of imported or domestic products or services for use in the production of exported goods, a benefit exists to the extent that the Secretary determines that the terms or conditions on which the products or services are provided are more favorable than the terms or conditions applicable to the provision of like or directly competitive products or services for use in the production of goods for domestic consumption unless, in the case of products, such terms or conditions are not more favorable than those commercially available on world markets to exporters.

(2) *Amount of benefit.* In the case of products provided under such schemes, the Secretary will determine the amount of the benefit by comparing the price of products used in the production of exported goods to the commercially available world market price of such products, inclusive of delivery charges.

(3) *Commercially available.* For purposes of paragraph (a)(2) of this section, *commercially available* means that the choice between domestic and imported products is unrestricted and depends only on commercial considerations.

(b) *Time of receipt of benefit.* In the case of a benefit described in paragraph (a)(1) of this section, the Secretary normally will consider the benefit to have been received as of the date on which the firm paid, or in the absence of payment was due to pay, for the product.

(c) *Allocation of benefit to a particular time period.* Normally, the Secretary will allocate (expense) benefits described in paragraph (a)(1) of this section to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.517 Exemption or remission upon export of indirect taxes.

(a) *Benefit.* In the case of the exemption or remission upon export of indirect taxes, a benefit exists to the extent that the Secretary determines that the amount remitted or exempted exceeds the amount levied with respect to the production and distribution of

like products when sold for domestic consumption.

(b) *Time of receipt of benefit.* In the case of the exemption or remission upon export of an indirect tax, the Secretary normally will consider the benefit as having been received as of the date of exportation.

(c) *Allocation of benefit to a particular time period.* Normally, the Secretary will allocate (expense) the benefit from the exemption or remission upon export of indirect taxes to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.518 Exemption, remission, or deferral upon export of prior-stage cumulative indirect taxes.

(a) *Benefit*—(1) *Exemption of prior-stage cumulative indirect taxes.* In the case of a program that provides for the exemption of prior-stage cumulative indirect taxes on inputs used in the production of an exported product, a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowance for waste, or if the exemption covers taxes other than indirect taxes that are imposed on the input. If the Secretary determines that the exemption of prior-stage cumulative indirect taxes confers a benefit, the Secretary normally will consider the amount of the benefit to be the prior-stage cumulative indirect taxes that otherwise would have been paid on the inputs not consumed in the production of the exported product, making normal allowance for waste, and the amount of charges other than import charges covered by the exemption.

(2) *Remission of prior-stage cumulative indirect taxes.* In the case of a program that provides for the remission of prior-stage cumulative indirect taxes on inputs used in the production of an exported product, a benefit exists to the extent that the amount remitted exceeds the amount of prior-stage cumulative indirect taxes paid on inputs that are consumed in the production of the exported product, making normal allowance for waste. If the Secretary determines that the remission of prior-stage cumulative indirect taxes confers a benefit, the Secretary normally will consider the amount of the benefit to be the difference between the amount remitted and the amount of the prior-stage cumulative indirect taxes on inputs that are consumed in the production of the export product, making normal allowance for waste.

(3) *Deferral of prior-stage cumulative indirect taxes.* In the case of a program that provides for a deferral of prior-stage cumulative indirect taxes on an exported product, a benefit exists to the extent that the deferral extends to inputs that are not consumed in the production of the exported product, making normal allowance for waste, and the government does not charge appropriate interest on the taxes deferred. If the Secretary determines that a benefit exists, the Secretary will normally treat the deferral as a government-provided loan in the amount of the tax deferred, according to the methodology described in § 351.505. The Secretary will use a short-term interest rate as the benchmark for tax deferrals of one year or less. The Secretary will use a long-term interest rate as the benchmark for tax deferrals of more than one year.

(4) *Exception.* Notwithstanding the provisions in paragraphs (a)(1), (a)(2), and (a)(3) of this action, the Secretary will consider the entire amount of the exemption, remission or deferral to confer a benefit, unless the Secretary determines that:

(i) The government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, and to confirm which indirect taxes are imposed on these inputs, and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export; or

(ii) If the government in question does not have a system or procedure in place, if the system or procedure is not reasonable, or if the system or procedure is instituted and considered reasonable, but is found not to be applied or not to be applied effectively, the government in question has carried out an examination of actual inputs involved to confirm which inputs are

consumed in the production of the exported product, in what amounts, and which indirect taxes are imposed on the inputs.

(b) *Time of receipt of benefit.* In the case of the exemption, remission, or deferral of priorstage cumulative indirect taxes, the Secretary normally will consider the benefit as having been received:

(1) In the case of an exemption, as of the date of exportation;

(2) In the case of a remission, as of the date of exportation;

(3) In the case of a deferral of one year or less, on the date the deferred tax became due; and

(4) In the case of a multi-year deferral, on the anniversary date(s) of the deferral.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit of the exemption, remission or deferral of prior-stage cumulative indirect taxes to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.519 Remission or drawback of import charges upon export.

(a) *Benefit*—(1) *In general.* The term ''remission or drawback'' includes full or partial exemptions and deferrals of import charges.

(i) *Remission or drawback of import charges.* In the case of the remission or drawback of import charges upon export, a benefit exists to the extent that the Secretary determines that the amount of the remission or drawback exceeds the amount of import charges on imported inputs that are consumed in the production of the exported product, making normal allowances for waste.

(ii) *Exemption of import charges.* In the case of an exemption of import charges upon export, a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowances for waste, or if the exemption covers charges other than import charges that are imposed on the input.

(iii) *Deferral of import charges.* In the case of a deferral, a benefit exists to the extent that the deferral extends to inputs that are not consumed in the production of the exported product, making normal allowance for waste, and the government does not charge appropriate interest on the import charges deferred.

(2) *Substitution drawback.* ''Substitution drawback'' involves a situation in which a firm uses a quantity of home market inputs equal to, and having the same quality and characteristics as, the imported inputs as a substitute for them. Substitution drawback does not necessarily result in the conferral of a benefit. However, a benefit exists if the Secretary determines that:

(i) The import and the corresponding export operations both did not occur within a reasonable time period, not to exceed two years; or

(ii) The amount drawn back exceeds the amount of the import charges levied initially on the imported inputs for which drawback is claimed.

(3) *Amount of the benefit*—(i) *Remission or drawback of import charges.* If the Secretary determines that the remission or drawback, including substitution drawback, of import charges confers a benefit under paragraph (a)(1) or (a)(2) of this section, the Secretary normally will consider the amount of the benefit to be the difference between the amount of import charges remitted or drawn back and the amount paid on imported inputs consumed in production for which remission or drawback was claimed.

(ii) *Exemption of import charges.* If the Secretary determines that the exemption of import charges upon export confers a benefit, the Secretary normally will consider the amount of the benefit to be the import charges that otherwise would have been paid on the inputs not consumed in the production of the exported product, making normal allowance for waste, and the amount of charges other than import charges covered by the exemption.

(iii) *Deferral of import charges.* If the Secretary determines that the deferral of import charges upon export confers a benefit, the Secretary will normally treat a deferral as a government-provided loan in the amount of the import

charges deferred on the inputs not consumed in the production of the exported product, making normal allowance for waste, according to the methodology described in § 351.505. The Secretary will use a short-term interest rate as the benchmark for deferrals of one year or less. The Secretary will use a long-term interest rate as the benchmark for deferrals of more than one year.

(4) *Exception*. Notwithstanding paragraph (a)(3) of this section, the Secretary will consider the entire amount of an exemption, deferral, remission or drawback to confer a benefit, unless the Secretary determines that:

(i) The government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export; or

(ii) If the government in question does not have a system or procedure in place, if the system or procedure is not reasonable, or if the system or procedure is instituted and considered reasonable, but is found not to be applied or not to be applied effectively, the government in question has carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts.

(b) *Time of receipt of benefit*. In the case of the exemption, deferral, remission or drawback, including substitution drawback, of import charges, the Secretary normally will consider the benefit as having been received:

(1) In the case of remission or drawback, as of the date of exportation;

(2) In the case of an exemption, as of the date of the exportation;

(3) In the case of a deferral of one year or less, on the date the import charges became due; and (4) In the case of a multi-year deferral, on the anniversary date(s) of the deferral.

(c) *Allocation of benefit to a particular time period*. The Secretary normally will allocate (expense) the benefit from the exemption, deferral, remission or drawback of import charges to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.520 Export insurance.

(a) *Benefit*—(1) *In general*. In the case of export insurance, a benefit exists if the premium rates charged are inadequate to cover the long-term operating costs and losses of the program.

(2) *Amount of the benefit*. If the Secretary determines under paragraph (a)(1) of this section that premium rates are inadequate, the Secretary normally will calculate the amount of the benefit as the difference between the amount of premiums paid by the firm and the amount received by the firm under the insurance program during the period of investigation or review.

(b) *Time of receipt of benefit*. In the case of export insurance, the Secretary normally will consider the benefit as having been received in the year in which the difference described in paragraph (a)(2) of this section occurs.

(c) *Allocation of benefit to a particular time period*. The Secretary normally will allocate (expense) the benefit from export insurance to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.521 Import substitution subsidies. [Reserved]

§ 351.522 Green light and green box subsidies.

(a) *Certain agricultural subsidies*. The Secretary will treat as non-countervailable domestic support measures that are provided to certain agricultural products (*i.e.*, products listed in Annex 1 of the WTO Agreement on Agriculture) and that the Secretary determines conform to the criteria of Annex 2 of the WTO Agreement on Agriculture. *See* section 771(5B)(F) of the Act. The Secretary will determine that a particular domestic support measure conforms fully to the provisions of Annex 2 if the Secretary finds that the measure:

(1) Is provided through a publicly-funded government program (including government revenue foregone) not involving transfers from consumers;

(2) Does not have the effect of providing a price support to producers; and (3) Meets the relevant policy-specific criteria and conditions set out in paragraphs 2 through 13 of Annex 2.

(b) *Research subsidies.* In accordance with section 771(5B)(B)(iii)(II) of the Act, the Secretary will examine the total eligible costs to be incurred over the duration of a particular project to determine whether a subsidy for research activities exceeds 75 percent of the costs of industrial research, 50 percent of the costs of precompetitive development activity, or 62.5 percent of the costs for a project that includes both industrial research and precompetitive activity. If the Secretary determines that, at some point over the life of a particular project, these relevant thresholds will be exceeded, the Secretary will treat the entire amount of the subsidy as countervailable.

(c) *Subsidies for adaptation of existing facilities to new environmental requirements.* If the Secretary determines that a subsidy is given to upgrade existing facilities to environmental standards in excess of minimum statutory or regulatory requirements, the subsidy will not qualify for non-countervailable treatment under section 771(5B)(D) of the Act and the Secretary will treat the entire amount of the subsidy as countervailable.

§ 351.523 Upstream subsidies.

(a) *Investigation of upstream subsidies*—(1) *In general.* Before investigating the existence of an upstream subsidy (*see* section 771A of the Act), the Secretary must have a reasonable basis to believe or suspect that all of the following elements exist:

(i) A countervailable subsidy, other than an export subsidy, is provided with respect to an input product;

(ii) One of the following conditions exists:

(A) The supplier of the input product and the producer of the subject merchandise are affiliated;

(B) The price for the subsidized input product is lower than the price that the producer of the subject merchandise otherwise would pay another seller in an arm's-length transaction for an unsubsidized input product; or

(C) The government sets the price of the input product so as to guarantee that the benefit provided with respect to the input product is passed through to producers of the subject merchandise; and

(iii) The *ad valorem* countervailable subsidy rate on the input product, multiplied by the proportion of the total production costs of the subject merchandise accounted for by the input product, is equal to, or greater than, one percent.

(b) *Input product.* For purposes of this section, ''input product'' means any product used in the production of the subject merchandise.

(c) *Competitive benefit*—(1) *In general.* In evaluating whether a competitive benefit exists under section 771A(b) of the Act, the Secretary will determine whether the price for the subsidized input product is lower than the benchmark input price. For purposes of this section, the Secretary will use as a benchmark input price the following, in order of preference:

(i) The actual price paid by, or offered to, the producer of the subject merchandise for an unsubsidized input product, including an imported input product;

(ii) An average price for an unsubsidized input product, including an imported input product, based upon publicly available data;

(iii) The actual price paid by, or offered to, the producer of the subject merchandise for a subsidized input product, including an imported input product, that is adjusted to account for the countervailable subsidy;

(iv) An average price for a subsidized input product, including an imported input product, based upon publicly available data, that is adjusted to account for the countervailable subsidy; or

(v) An unadjusted price for a subsidized input product or any other surrogate price deemed appropriate by the Secretary.

For purposes of this section, such prices must be reflective of a time period that reasonably corresponds to the time of the purchase of the input.

(2) *Use of delivered prices.* The Secretary will use a delivered price whenever the Secretary uses the price of an

input product under paragraph (c)(1) of this section.

(d) *Significant effect*—(1) *Presumptions.* In evaluating whether an upstream subsidy has a significant effect on the cost of manufacturing or producing the subject merchandise (*see* section 771A(a)(3) of the Act), the Secretary will multiply the *ad valorem* countervailable subsidy rate on the input product by the proportion of the total production cost of the subject merchandise that is accounted for by the input product. If the product of that multiplication exceeds five percent, the Secretary will presume the existence of a significant effect. If the product is less than one percent, the Secretary will presume the absence of a significant effect. If the product is between one and five percent, there will be no presumption.

(2) *Rebuttal of presumptions.* A party to the proceeding may present information to rebut these presumptions. In evaluating such information, the Secretary will consider the extent to which factors other than price, such as quality differences, are important determinants of demand for the subject merchandise.

§ 351.524 Allocation of benefit to a particular time period.

Unless otherwise specified in §§ 351.504–351.523, the Secretary will allocate benefits to a particular time period in accordance with this section.

(a) *Recurring benefits.* The Secretary will allocate (expense) a recurring benefit to the year in which the benefit is received.

(b) *Non-recurring benefits*—(1) *In general.* The Secretary will normally allocate a non-recurring benefit to a firm over the number of years corresponding to the average useful life (''AUL'') of renewable physical assets as defined in paragraph (d)(2) of this section.

(2) *Exception.* The Secretary will normally allocate (expense) non-recurring benefits provided under a particular subsidy program to the year in which the benefits are received if the total amount approved under the subsidy program is less than 0.5 percent of relevant sales (*e.g.*, total sales, export sales, the sales of a particular product, or the sales to a particular market) of the firm in question during the year in which the subsidy was approved.

(c) *''Recurring'' versus ''non-recurring'' benefits*—(1) *Non-binding iIlustrative lists of recurring and non-recurring benefits.* The Secretary normally will treat the following types of subsidies as providing recurring benefits: Direct tax exemptions and deductions; exemptions and excessive rebates of indirect taxes or import duties; provision of goods and services for less than adequate remuneration; price support payments; discounts on electricity, water, and other utilities; freight subsidies; export promotion assistance; early retirement payments; worker assistance; worker training; wage subsidies; and upstream subsidies. The Secretary normally will treat the following types of subsidies as providing non-recurring benefits: equity infusions, grants, plant closure assistance, debt forgiveness, coverage for operating losses, debt-to-equity conversions, provision of non-general infrastructure, and provision of plant and equipment.

(2) *The test for determining whether a benefit is recurring or non-recurring.* If a subsidy is not on the illustrative lists, or is not addressed elsewhere in these regulations, or if a party claims that a subsidy on the recurring list should be treated as non-recurring or a subsidy on the non-recurring list should be treated as recurring, the Secretary will consider the following criteria in determining whether the benefits from the subsidy should be considered recurring or non-recurring:

(i) Whether the subsidy is exceptional in the sense that the recipient cannot expect to receive additional subsidies under the same program on an ongoing basis from year to year;

(ii) Whether the subsidy required or received the government's express authorization or approval (*i.e.*, receipt of benefits is not automatic), or

(iii) Whether the subsidy was provided for, or tied to, the capital structure or capital assets of the firm.

(d) *Process for allocating non-recurring benefits over time*—(1) *In general.* For purposes of allocating a non-recurring benefit over time and determining the annual benefit amount that should be assigned to a particular year, the Secretary will use the following formula:

$$A_k = \frac{y/n + [y - (y/n)(k-1)]d}{1+d}$$

Where:

A_k = the amount of the benefit allocated to year k,
y = the face value of the subsidy,
n = the AUL (see paragraph (d)(2) of this section),
d = the discount rate (see paragraph (d)(3) of this section), and
k = the year of allocation, where the year of receipt = 1 and $1 \leq k \leq n$.

(2) *AUL*—(i) *In general.* The Secretary will presume the allocation period for non-recurring subsidies to be the AUL of renewable physical assets for the industry concerned as listed in the Internal Revenue Service's (''IRS'') 1977 Class Life Asset Depreciation Range System (Rev. Proc. 77–10, 1977–1, C.B. 548 (RR–38)), as updated by the Department of Treasury. The presumption will apply unless a party claims and establishes that the IRS tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry under investigation, subject to the requirement, in paragraph (d)(2)(ii) of this section, that the difference between the company-specific AUL or country-wide AUL for the industry under investigation and the AUL in the IRS tables is significant. If this is the case, the Secretary will use company-specific or country-wide AULs to allocate non-recurring benefits over time (*see* paragraph (d)(2)(iii) of this section).

(ii) *Definition of ''significant.''* For purposes of this paragraph (d), *significant* means that a party has demonstrated that the company-specific AUL or country-wide AUL for the industry differs from AUL in the IRS tables by one year or more.

(iii) *Calculation of a company-specific or country-wide AUL.* A calculation of a company-specific AUL will not be accepted by the Secretary unless it satisfies the following requirements: the company must base its depreciation on an estimate of the actual useful lives of assets and it must use straight-line depreciation or demonstrate that its calculation is not distorted through irregular or uneven additions to the pool of fixed assets. A company-specific AUL is calculated by dividing the aggregate of the annual average gross book values of the firm's depreciable productive fixed assets by the firm's aggregated annual charge to accumulated depreciation, for a period considered appropriate by the Secretary, subject to appropriate normalizing adjustments. A country-wide AUL for the industry under investigation will not be accepted by the Secretary unless the respondent government demonstrates that it has a system in place to calculate AULs for its industries, and that this system provides a reliable representation of AUL.

(iv) *Exception.* Under certain extraordinary circumstances, the Secretary may consider whether an allocation period other than AUL is appropriate or whether the benefit stream begins at a date other than the date the subsidy was bestowed.

(3) *Selection of a discount rate.* (i) *In general.* The Secretary will select a discount rate based upon data for the year in which the government agreed to provide the subsidy. The Secretary will use as a discount rate the following, in order of preference:

(A) The cost of long-term, fixed-rate loans of the firm in question, excluding any loans that the Secretary has determined to be countervailable subsidies;

(B) The average cost of long-term, fixed-rate loans in the country in question; or

(C) A rate that the Secretary considers to be most appropriate.

(ii) *Exception for uncreditworthy firms.* In the case of a firm considered by the Secretary to be uncreditworthy (*see* § 351.505(a)(4)), the Secretary will use as a discount rate the interest rate described in § 351.505(a)(3)(iii).

§ 351.525 Calculation of *ad valorem* subsidy rate and attribution of subsidy to a product.

(a) *Calculation of ad valorem subsidy rate.* The Secretary will calculate an *ad valorem* subsidy rate by dividing the amount of the benefit allocated to the period of investigation or review by the sales value during the same period of the product or products to which the Secretary attributes the subsidy under paragraph (b) of this section. Normally, the Secretary will determine the sales value of a product on an f.o.b. (port)

basis (if the product is exported) or on an f.o.b. (factory) basis (if the product is sold for domestic consumption). However, if the Secretary determines that countervailable subsidies are provided with respect to the movement of a product from the port or factory to the place of destination (*e.g.*, freight or insurance costs are subsidized), the Secretary may make appropriate adjustments to the sales value used in the denominator.

(b) *Attribution of subsidies*—(1) *In general.* In attributing a subsidy to one or more products, the Secretary will apply the rules set forth in paragraphs (b)(2) through (b)(7) of this section.

(2) *Export subsidies.* The Secretary will attribute an export subsidy only to products exported by a firm.

(3) *Domestic subsidies.* The Secretary will attribute a domestic subsidy to all products sold by a firm, including products that are exported.

(4) *Subsidies tied to a particular market.* If a subsidy is tied to sales to a particular market, the Secretary will attribute the subsidy only to products sold by the firm to that market.

(5) *Subsidies tied to a particular product.* (i) *In general.* If a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product.

(ii) *Exception.* If a subsidy is tied to production of an input product, then the Secretary will attribute the subsidy to both the input and downstream products produced by a corporation.

(6) *Corporations with cross-ownership.* (i) *In general.* The Secretary normally will attribute a subsidy to the products produced by the corporation that received the subsidy.

(ii) *Corporations producing the same product.* If two (or more) corporations with cross-ownership produce the subject merchandise, the Secretary will attribute the subsidies received by either or both corporations to the products produced by both corporations.

(iii) *Holding or parent companies.* If the firm that received a subsidy is a holding company, including a parent company with its own operations, the Secretary will attribute the subsidy to the consolidated sales of the holding company and its subsidiaries. However, if the Secretary finds that the holding company merely served as a conduit for the transfer of the subsidy from the government to a subsidiary of the holding company, the Secretary will attribute the subsidy to products sold by the subsidiary.

(iv) *Input suppliers.* If there is cross-ownership between an input supplier and a downstream producer, and production of the input product is primarily dedicated to production of the downstream product, the Secretary will attribute subsidies received by the input producer to the combined sales of the input and downstream products produced by both corporations (excluding the sales between the two corporations).

(v) *Transfer of subsidy between corporations with cross-ownership producing different products.* In situations where paragraphs (b)(6)(i) through (iv) of this section do not apply, if a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to a corporation with cross-ownership, the Secretary will attribute the subsidy to products sold by the recipient of the transferred subsidy.

(vi) *Cross-ownership defined.* Cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. Normally, this standard will be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations.

(7) *Multinational firms.* If the firm that received a subsidy has production facilities in two or more countries, the Secretary will attribute the subsidy to products produced by the firm within the country of the government that granted the subsidy. However, if it is demonstrated that the subsidy was tied to more than domestic production, the Secretary will attribute the subsidy to multinational production.

(c) *Trading companies.* Benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm which is producing subject merchandise that is sold through the trading company, regardless of whether the

trading company and the producing firm are affiliated.

§ 351.526 Program-wide changes.

(a) *In general.* The Secretary may take a program-wide change into account in establishing the estimated countervailing duty cash deposit rate if:

(1) The Secretary determines that subsequent to the period of investigation or review, but before a preliminary determination in an investigation (*see* § 351.205) or a preliminary result of an administrative review or a new shipper review (*see* §§ 351.213 and 351.214), a program-wide change has occurred; and

(2) The Secretary is able to measure the change in the amount of countervailable subsidies provided under the program in question.

(b) *Definition of program-wide change.* For purposes of this section, ''program-wide change'' means a change that:

(1) Is not limited to an individual firm or firms; and

(2) Is effectuated by an official act, such as the enactment of a statute, regulation, or decree, or contained in the schedule of an existing statute, regulation, or decree.

(c) *Effect limited to cash deposit rate*—(1) *In general.* The application of paragraph (a) of this section will not result in changing, in an investigation, an affirmative determination to a negative determination or a negative determination to an affirmative determination.

(2) *Example.* In a countervailing duty investigation, the Secretary determines that during the period of investigation a countervailable subsidy existed in the amount of 10 percent *ad valorem.* Subsequent to the period of investigation, but before the preliminary determination, the foreign government in question enacts a change to the program that reduces the amount of the subsidy to a *de minimis* level. In a final determination, the Secretary would issue an affirmative determination, but would establish a cash deposit rate of zero.

(d) *Terminated programs.* The Secretary will not adjust the cash deposit rate under paragraph (a) of this section if the program-wide change consists of the termination of a program and:

(1) The Secretary determines that residual benefits may continue to be bestowed under the terminated program; or

(2) The Secretary determines that a substitute program for the terminated program has been introduced and the Secretary is not able to measure the amount of countervailable subsidies provided under the substitute program.

§ 351.527 Transnational subsidies.

Except as otherwise provided in section 701(d) of the Act (subsidies provided to international consortia) and section 771A of the Act (upstream subsidies), a subsidy does not exist if the Secretary determines that the funding for the subsidy is supplied in accordance with, and as part of, a program or project funded:

(a) By a government of a country other than the country in which the recipient firm is located; or

(b) By an international lending or development institution.

§ 351.528 Exchanges of undervalued currencies.

(a) *Currency undervaluation*—(1) *In general.* The Secretary normally will consider whether a benefit is conferred from the exchange of United States dollars for the currency of a country under review or investigation under a unified exchange rate system only if that country's currency is undervalued during the relevant period. In determining whether a country's currency is undervalued, the Secretary normally will take into account the gap between the country's real effective exchange rate (REER) and the real effective exchange rate that achieves an external balance over the medium term that reflects appropriate policies (equilibrium REER).

(2) *Government action.* The Secretary normally will make an affirmative finding under paragraph (a)(1) of this section only if there has been government action on the exchange rate that contributes to an undervaluation of the currency. In assessing whether there has been such government action, the Secretary will not normally include monetary and related credit policy of an independent central bank or monetary authority. The Secretary may

also consider the government's degree of transparency regarding actions that could alter the exchange rate.

(b) *Benefit*—(1) *In general.* Where the Secretary has made an affirmative finding under paragraph (a)(1) of this section, the Secretary normally will determine the existence of a benefit after examining the difference between:

(i) The nominal, bilateral United States dollar rate consistent with the equilibrium REER; and

(ii) The actual nominal, bilateral United States dollar rate during the relevant time period, taking into account any information regarding the impact of government action on the exchange rate.

(2) *Amount of benefit.* Where there is a difference under paragraph (b)(1) of this section, the amount of the benefit from a currency exchange normally will be based on the difference between the amount of currency the firm received in exchange for United States dollars and the amount of currency that firm would have received absent the difference referred to in paragraph (b)(1) of this section.

(c) *Information sources.* In applying this section, the Secretary will request that the Secretary of the Treasury provide its evaluation and conclusion as to the determinations under paragraphs (a) and (b)(1) of this section.

[85 FR 6043, Feb. 4, 2020]

Subpart F—Subsidy Determinations Regarding Cheese Subject to an In-Quota Rate of Duty

§ 351.601 Annual list and quarterly update of subsidies.

The Secretary will make the determinations called for by section 702(a) of the Trade Agreements Act of 1979, as amended (19 U.S.C. 1202 note) based on the available information, and will publish the annual list and quarterly updates described in such section in the FEDERAL REGISTER.

§ 351.602 Determination upon request.

(a) *Request for determination.* (1) Any person, including the Secretary of Agriculture, who has reason to believe there have been changes in or additions to the latest annual list published under § 351.601 may request in writing that the Secretary determine under section 702(a)(3) of the Trade Agreements Act of 1979 whether there are any changes or additions. The person must file the request with the Central Records Unit (*see* § 351.103). The request must allege either a change in the type or amount of any subsidy included in the latest annual list or quarterly update or an additional subsidy not included in that list or update provided by a foreign government, and must contain the following, to the extent reasonably available to the requesting person:

(i) The name and address of the person;

(ii) The article of cheese subject to an in-quota rate of duty allegedly benefitting from the changed or additional subsidy;

(iii) The country of origin of the article of cheese subject to an in-quota rate of duty; and

(iv) The alleged subsidy or changed subsidy and relevant factual information (particularly documentary evidence) regarding the alleged changed or additional subsidy including the authority under which it is provided, the manner in which it is paid, and the value of the subsidy to producers or exporters of the article.

(2) The requirements of § 351.303 (c) and (d) apply to this section.

(b) *Determination.* Not later than 30 days after receiving an acceptable request, the Secretary will:

(1) In consultation with the Secretary of Agriculture, determine based on the available information whether there has been any change in the type or amount of any subsidy included in the latest annual list or quarterly update or an additional subsidy not included in that list or update is being provided by a foreign government;

(2) Notify the Secretary of Agriculture and the person making the request of the determination; and

(3) Promptly publish in the FEDERAL REGISTER notice of any changes or additions.

§ 351.603 Complaint of price-undercutting by subsidized imports.

Upon receipt of a complaint filed with the Secretary of Agriculture under section 702(b) of the Trade Agreements Act concerning price-undercutting by subsidized imports, the Secretary will promptly determine, under section 702(a)(3) of the Trade Agreements Act of 1979, whether or not the alleged subsidies are included in or should be added to the latest annual list or quarterly update.

§ 351.604 Access to information.

Subpart C of this part applies to factual information submitted in connection with this subpart.

Subpart G—Applicability Dates

§ 351.701 Applicability dates.

The regulations contained in this part 351 apply to all administrative reviews initiated on the basis of requests made on or after the first day of July, 1997, to all investigations and other segments of proceedings initiated on the basis of petitions filed or requests made after June 18, 1997 and to segments of proceedings self-initiated by the Department after June 18, 1997. Segments of proceedings to which part 351 do not apply will continue to be governed by the regulations in effect on the date the petitions were filed or requests were made for those segments, to the extent that those regulations were not invalidated by the URAA or replaced by the interim final regulations published on May 11, 1995 (60 FR 25130 (1995)). For segments of proceedings initiated on the basis of petitions filed or requests made after January 1, 1995, but before part 351 applies, part 351 will serve as a restatement of the Department's interpretation of the requirements of the Act as amended by the URAA.

§ 351.702 Applicability dates for countervailing duty regulations.

(a) Notwithstanding § 351.701, the regulations in subpart E of this part apply to:

(1) All CVD investigations initiated on the basis of petitions filed after December 28, 1998;

(2) All CVD administrative reviews initiated on the basis of requests filed on or after the first day of January 1999; and

(3) To all segments of CVD proceedings self-initiated by the Department after December 28, 1998.

(b) Segments of CVD proceedings to which subpart E of this part does not apply will continue to be guided by the Department's previous methodology (in particular, as described in the 1989 Proposed Regulations), except to the extent that the previous methodology was invalidated by the URAA, in which case the Secretary will treat subpart E of this part as a restatement of the Department's interpretation of the requirements of the Act as amended by the URAA.

[63 FR 65417, Nov. 25, 1998]

ANNEX I TO PART 351—DEADLINES FOR PARTIES IN COUNTERVAILING INVESTIGATIONS

Day [1]	Event	Regulation
0 days	Initiation	
31 days [2]	Notification of difficulty in responding to questionnaire.	351.301(c)(2)(iv) (14 days after date of receipt of initial questionnaire)
37 days	Application for an administrative protective order.	351.305(b)(3)
40 days	Request for postponement by petitioner	351.205(e) (25 days or more before preliminary determination)
45 days	Allegation of critical circumstances	351.206(c)(2)(i) (20 days before preliminary determination)
47 days	Questionnaire response	351.301(c)(2)(iii) (30 days from date of receipt of initial questionnaire)
55 days	Allegation of upstream subsidies	351.301(d)(4)(ii)(A) (10 days before preliminary determination)
65 days (Can be extended)	Preliminary determination	351.205(b)(1)
72 days	Submission of proposed suspension agreement.	351.208(f)(1)(B) (7 days after preliminary determination)

Day [1]	Event	Regulation
75 days [3]	Submission of factual information	351.301(b)(1) (7 days before date on which verification is to commence)
75 days	Submission of ministerial error comments	351.224(c)(2) (5 days after release of disclosure documents)
77 days [4]	Request to align a CVD case with a concurrent AD case.	351.210(i) (5 days after date of publication of preliminary determination)
102 days	Request for a hearing	351.310(c) (30 days after date of publication of preliminary determination)
119 days	Critical circumstances allegation	351.206(e) (21 days or more before final determination)
122 days	Requests for closed hearing sessions	351.310(f) (No later than the date the case briefs are due)
122 days	Submission of briefs	351.309(c)(1)(i) (50 days after date of publication of preliminary determination)
125 days	Allegation of upstream subsidies	351.301(d)(4)(ii)(B) (15 days before final determination)
127 days	Submission of rebuttal briefs	351.309(d) (5 days after dead-line for filing case brief)
129 days	Hearing	351.310(d)(1) (2 days after submission of rebuttal briefs)
140 days (Can be extended)	Final determination	351.210(b)(1) (75 days after preliminary determination)
150 days	Submission of ministerial error comments	351.224(c)(2) (5 days after release of disclosure documents)
155 days	Submission of replies to ministerial error comments.	351.224(c)(3) (5 days after filing of comments)
192 days	Order issued	351.211(b)

[1] Indicates the number of days from the date of initiation. Most of the deadlines shown here are approximate. The actual deadline in any particular segment of a proceeding may depend on the date of an earlier event or be established by the Secretary.
[2] Assumes that the Department sends out the questionnaire within 10 days of the initiation and allows 7 days for receipt of the questionnaire from the date on which it was transmitted.
[3] Assumes about 17 days between the preliminary determination and verification.
[4] Assumes that the preliminary determination is published 7 days after issuance (*i.e.,* signature).

Annex II to Part 351—Deadlines for Parties in Countervailing Administrative Reviews

Day [1]	Event	Regulation
0 days	Request for review	351.213(b) (Last day of the anniversary month)
30 days	Publication of initiation notice	351.221(c)(1)(i) (End of month following the anniversary month)
66 days [2]	Notification of difficulty in responding to questionnaire.	351.301(c)(2)(iv) (14 days after date of receipt of initial questionnaire)
75 days	Application for an administrative protective order.	351.305(b)(3)
90 days [3]	Questionnaire response	351.301(c)(2)(iii) (At least 30 days after date of receipt of initial questionnaire)
120 days	Withdrawal of request for review	351.213(d)(1) (90 days after date of publication of initiation)
130 days	Request for verification	351.307(b)(1)(v) (100 days after date of publication of initiation)
140 days	Submission of factual information	351.301(b)(2)
245 days (Can be extended)	Preliminary results of review	351.213(h)(1)
282 days [4]	Request for a hearing and/or closed hearing session.	351.310(c); 351.310(f) (30 days after date of publication of preliminary results)
282 days	Submission of briefs	351.309(c)(1)(ii) (30 days after date of publication of preliminary results)
287 days	Submission of rebuttal briefs	351.309(d)(1) (5 days after deadline for filing case briefs)
289 days	Hearing	351.310(d)(1) (2 days after submission of rebuttal briefs)
372 days (Can be extended)	Final results of review	351.213(h)(1) (120 days after date of publication of preliminary results)
382 days	Submission of ministerial error comments	351.224(c)(2) (5 days after release of disclosure documents)
387 days	Replies to ministerial error comments	351.224(c)(3) (5 days after filing of comments)

[1] Indicates the number of days from the end of the anniversary month. Most of the deadlines shown here are approximate. The actual deadline in any particular segment of a proceeding may depend on the date of an earlier event or be established by the Secretary.
[2] Assumes that the Department sends out the questionnaire 45 days after the last day of the anniversary month and allows 7 days for receipt of the questionnaire from the date on which it was transmitted.
[3] Assumes that the Department sends out the questionnaire on day 45 and the response is due 45 days later.
[4] Assumes that the preliminary results are published 7 days after issuance (*i.e.,* signature).

ANNEX III TO PART 351—DEADLINES FOR PARTIES IN ANTIDUMPING INVESTIGATIONS

Day [1]	Event	Regulation
0 days	Initiation	
37 days	Application for an administrative protective order.	351.305(b)(3)
50 days	Country-wide cost allegation	351.301(d)(2)(i)(A) (20 days after date on which initial questionnaire was transmitted)
51 days [2]	Notification of difficulty in responding to questionnaire.	351.301(c)(2)(iv) (Within 14 days after date of receipt of initial questionnaire)
51 days	Section A response	None
67 days	Sections B, C, D, E responses	351.301(c)(2)(iii) (At least 30 days after date of receipt of initial questionnaire)
70 days	Viability arguments	351.301(d)(1) (40 days after date on which initial questionnaire was transmitted)
87 days	Company-specific cost allegations	351.301(d)(2)(i)(B)
87 days	Major input cost allegations	351.301(d)(3)
115 days	Request for postponement by petitioner	351.205(e) (25 days or more before preliminary determination)
120 days	Allegation of critical circumstances	351.206(c)(2)(i) (20 days before preliminary determination)
140 days (Can be extended)	Preliminary determination	351.205(b)(1)
150 days	Submission of ministerial error comments	351.224(c)(2) (5 days after release of disclosure documents)
155 days	Submission of proposed suspension agreement.	351.208(f)(1)(A) (15 days after preliminary determination)
161 days [3]	Submission of factual information	351.301(b)(1) (7 days before date on which verification is to commence)
177 days [4]	Request for a hearing	351.310(c) (30 days after date of publication of preliminary determination)
187 days	Submission of publicly available information to value factors (NME's).	351.301(c)(3)(i) (40 days after date of publication of preliminary determination)
194 days	Critical circumstance allegation	351.206(e) (21 days before final determination)
197 days (Can be changed)	Request for closed hearing sessions	351.310(f) (No later than the date the case briefs are due)
197 days (Can be changed)	Submission of briefs	351.309(c)(1)(i) (50 days after date of publication of preliminary determination)
202 days	Submission of rebuttal briefs	351.309(d) (5 days after dealine for filing case briefs)
204 days	Hearing	351.310(d)(1) (2 days after submission of rebuttal briefs)
215 days	Request for postponement of the final determination.	351.210(e)
215 days (Can be extended)	Final determination	351.210(b)(1) (75 days after preliminary determination)
225 days	Submission ministerial error comments	351.224(c)(2) (5 days after release of disclosure documents)
230 days	Replies to ministerial error comments	351.224(c)(3) (5 days after filing of comments)
267 days	Order issued	351.211(b)

[1] Indicates the number of days from the date of initiation. Most of the deadlines shown here are approximate. The actual deadline in any particular segment of a proceeding may depend on the date of an earlier event or be established by the Secretary.
[2] Assumes that the Department sends out the questionnaire 5 days after the ITC vote and allows 7 days for receipt of the questionnaire from the date on which it was transmitted.
[3] Assumes about 28 days between the preliminary determination and verification.
[4] Assumes that the preliminary determination is published 7 days after issuance (*i.e.,* signature).

ANNEX IV TO PART 351—DEADLINES FOR PARTIES IN ANTIDUMPING ADMINISTRATIVE REVIEWS

Day[1]	Event	Regulation
0 days	Request for review	351.213(b) (Last day of the anniversary month)
30 days	Publication of initiation	351.221 (c)(1)(i) (End of month following the anniversary month)
37 days	Application for an administrative protective order.	351.305(b)(3)
60 days	Request to examine absorption of duties (AD)	351.213(j) (30 days after date of publication of initiation)
66 days [2]	Notification of difficulty in responding to questionnaire.	351.301(c)(2)(iv) (14 days after date of receipt of initial questionnaire)
66 days	Section A response	None
85 days	Viability arguments	351.301(d)(1) (40 days after date of transmittal of initial questionnaire)
90 days[3]	Sections B, C, D, E response	351.301(c)(2)(iii) (At least 30 days after date of receipt of initial questionnaire)

Day[1]	Event	Regulation
110 days	Company-specific cost allegations	351.301(d)(2)(i)(B) (20 days after relevant section is filed)
110 days	Major input cost allegations	351.301(d)(3) (20 days after relevant section is filed)
120 days	Withdrawal of request for review	351.213(d)(1) (90 days after date of publication of initiation)
130 days	Request for verification	351.307(b)(1)(v) (100 days after date of publication of initiation)
140 days	Submission of factual information	351.301(b)(2)
245 days (Can be extended)	Preliminary results of review	351.213(h)(1)
272 days[4]	Submission of publicly available information to value factors (NME's).	351.301(c)(3)(ii) (20 days after date of publication of preliminary results)
282 days	Request for a hearing and/or closed hearing session.	351.310(c); 351.310(f) (30 days after date of publication of preliminary results)
282 days	Submission of briefs	351.309(c)(1)(ii) (30 days after date of publication of preliminary results)
287 days	Submission of rebuttal briefs	351.309(d)(1) (5 days after deadline for filing case briefs)
289 days	Hearing; closed hearing session	351.310(d)(1) (2 days after submission of rebuttal briefs)
372 days (Can be extended)	Final results of review	351.213(h)(1) (120 days after date of publication of preliminary results)
382 days	Ministerial error comments	351.224(c)(2) (5 days after release of disclosure documents)
387 days	Replies to ministerial error comments	351.224(c)(3) (5 days after filing of comments)

[1] Indicates the number of days from the end of the anniversary month. Most of the deadlines shown here are approximate. The actual deadline in any particular segment of a proceeding may depend on the date of an earlier event or be established by the Secretary.
[2] Assumes that the Department sends out the questionnaire 45 days after the last day of the anniversary month and allows 7 days for receipt of the questionnaire from the date on which it was transmitted.
[3] Assumes that the Department sends out the questionnaire on day 45 and the response is due 45 days later.
[4] Assumes that the preliminary results are published 7 days after issuance (*i.e.,* signature).

Annex V to Part 351—Comparison of Prior and New Regulations

Prior	New	Description
PART 353—ANTIDUMPING DUTIES		
Subpart A—Scope and Definitions		
353.1	351.101	Scope of regulations
353.2	351.102	Definitions
353.3	351.104	Record of proceedings
353.4	351.105	Public, proprietary, privileged & classified
353.5	Removed	Trade and Tariff Act of 1984 amendments
353.6	351.106	*De minimis* weighted-average dumping margin
Subpart B—Antidumping Duty Procedures		
353.11	351.201	Self-initiation
353.12	351.202	Petition requirements
353.13	351.203	Determination of sufficiency of petition
353.14	351.204(e)	Exclusion from antidumping duty order
353.15	351.205	Preliminary determination
353.16	351.206	Critical circumstances
353.17	351.207	Termination of investigation
353.18	351.208	Suspension of investigation
353.19	351.209	Violation of suspension agreement
353.20	351.210	Final determination
353.21	351.211	Antidumping duty order
353.21(c)	351.204(e)	Exclusion from antidumping duty order
1353.22(a)–(d)	351.213, 351.221	Administrative reviews under 751(a) of the Act
353.22(e)	351.212(c)	Automatic assessment of duties
353.22(f)	351.216, 351.221(c)(3)	Changed circumstances reviews
353.22(g)	351.215, 351.221(c)(2)	Expedited antidumping review
353.23	351.212(d)	Provisional measures deposit cap
353.24	351.212(e)	Interest on overpayments and under-payments
353.25	351.222	Revocation of orders; termination of suspended investigations
353.26	351.402(f)	Reimbursement of duties
353.27	351.223	Downstream product monitoring
353.28	351.224	Correction of ministerial errors
353.29	351.225	Scope rulings

Prior	New	Description
	Subpart C—Information and Argument	
353.31(a)–(c)	351.301	Time Limits for submission of factual information
353.31(a)(3)	351.301(d), 351.104(a)(2)	Return of untimely material
353.31(b)(3)	351.302(c)	Request for extension of time
353.31(d)–(i)	351.303	Filing, format, translation, service and certification
353.32	351.304	Request for proprietary treatment of information
353.33	351.104, 351.304(a)(2)	Information exempt from disclosure
353.34	351.305, 351.306	Disclosure of information under protective order
353.35	Removed	*Ex parte* meeting
353.36	351.307	Verification
353.37	351.308	Determination on the basis of the facts available
353.38(a)–(e)	351.309	Written argument
353.38(f)	351.310	Hearings
	Subpart D—Calculation of Export Price, Constructed Export Price, Fair Value and Normal Value	
353.41	351.402	Calculation of export price
353.42(a)	351.102	Fair value (definition)
353.42(b)	351.104(c)	Transaction and persons examined
353.43	351.403(b)	Sales used in calculating normal value
353.44	Removed	Sales at varying prices
353.45	351.403	Transactions between affiliated parties
353.46	351.404	Selection of home market as the basis for normal value
353.47	Removed	Intermediate countries
353.48	351.404	Basis for normal value if home market sales are inadequate
353.49	351.404	Sales to a third country
353.50	351.405, 351.407	Calculation of normal value based on constructed value
353.51	351.406, 351.407	Sales at less than the cost of production
353.52	351.408	Nonmarket economy countries
353.53	Removed	Multinational corporations
353.54	351.401(b)	Claims for adjustments
353.55	351.409	Differences in quantities
353.56	351.410	Differences in circumstances of sale
353.57	351.411	Differences in physical characteristics
353.58	351.412	Levels of trade
353.59(a)	351.413	Insignificant adjustments
353.59(b)	351.414	Use of averaging
353.60	351.415	Conversion of currency
	PART 355—COUNTERVAILING DUTIES	
	Subpart A—Scope and Definitions	
355.1	351.001	Scope of regulations
355.2	351.002	Definitions
355.3	351.004	Record of proceeding
355.4	351.005	Public, proprietary, privileged & classified
355.5	351.003(a)	Subsidy library
355.6	Removed	Trade and Tariff Act of 1984 amendments
355.7	351.006	*De minimis* net subsidies
	Subpart B—Countervailing Duty Procedures	
355.11	351.101	Delf-initiation
355.12	351.102	Petition requirements
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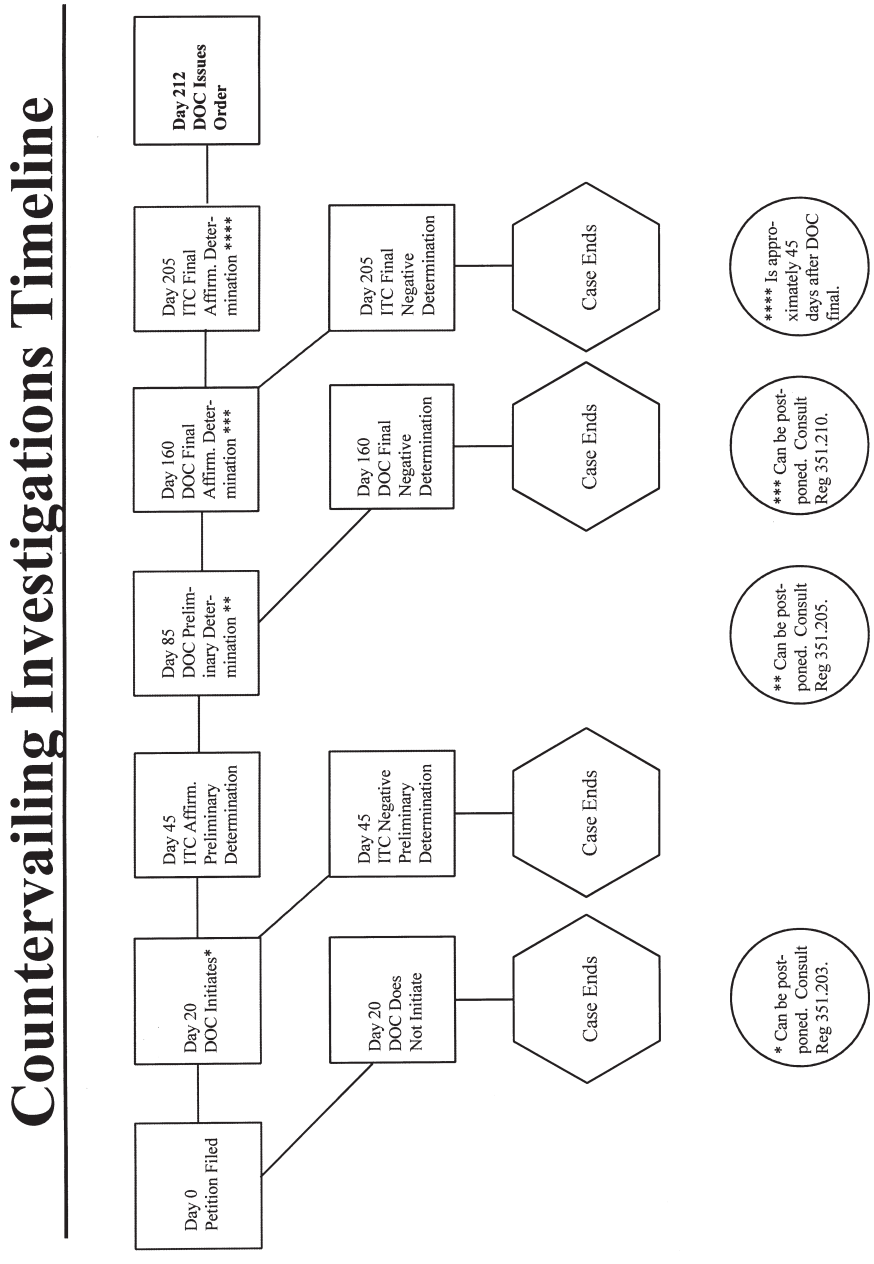
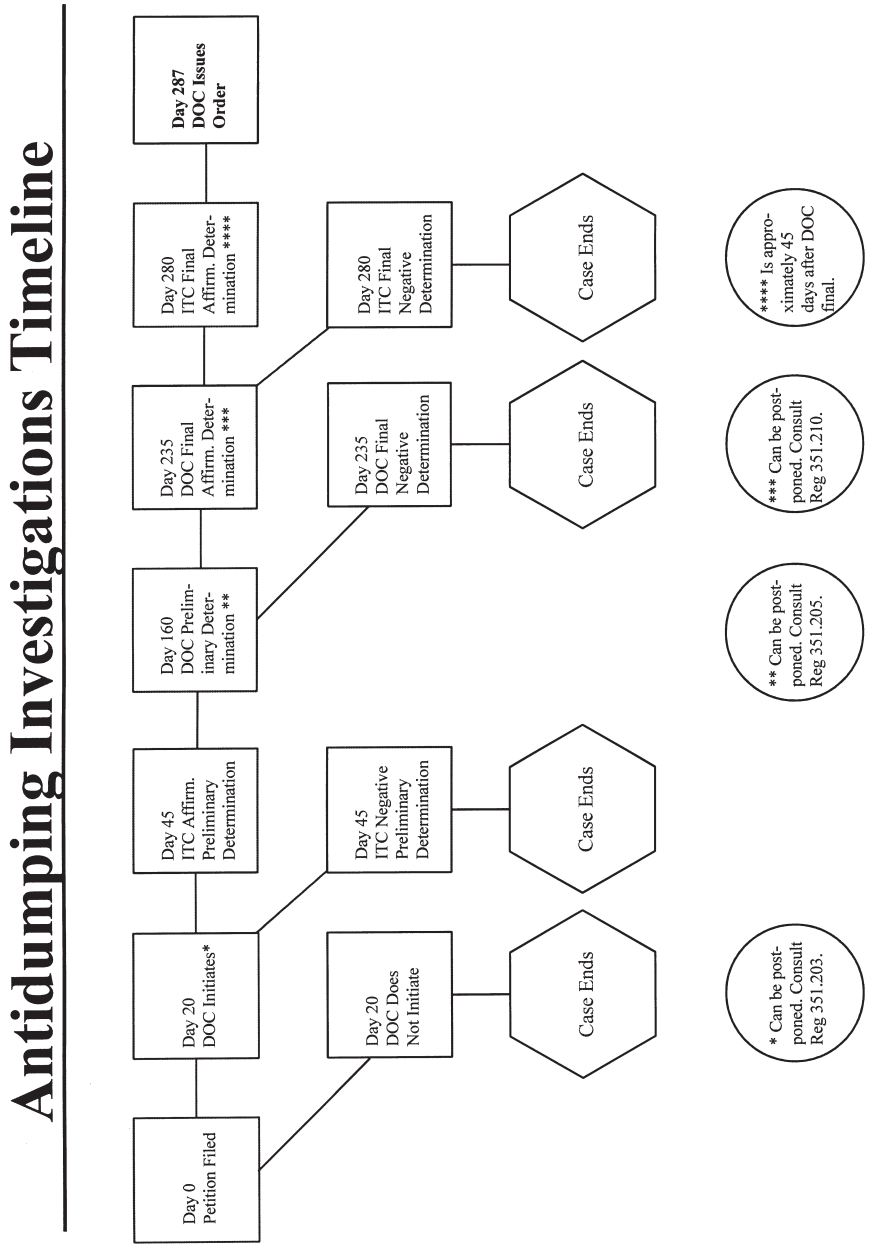
ANNEX VI TO PART 351—COUNTERVAILING INVESTIGATIONS TIMELINE



ANNEX VII TO PART 351—ANTIDUMPING INVESTIGATIONS TIMELINE



ANNEX VIII–A TO PART 351—SCHEDULE FOR 90-DAY SUNSET REVIEWS

Day [1]	Event	Regulation
0	Initiation	§ 351.218(c)
15	Filing of Notice of Intent to Participate by domestic interested parties.	§ 351.218(d)(1)(i) (not later than 15 days after the date of publication of the Notice of Initiation)
20	Notification to the ITC that no domestic interested party has responded to the Notice of Initiation.	§ 351.218(d)(1)(iii)(B)(*2*) (normally not later than 20 days after the date of publication of the Notice of Initiation)
30	Filing of substantive response to the Notice of Initiation by all interested parties and industrial users and consumers.	§§ 351.218(d)(3)(i) and 351.218(d)(3)(vi) (not later than 30 days after the date of publication of the Notice of Initiation)
35	Filing of rebuttal to substantive response to the Notice of Initiation.	§ 351.218(d)(4) (not later than 5 days after the substantive response is filed with the Department)
40	Notification to the ITC that no domestic interested party has responded to the Notice of Initiation (based on inadequate response from domestic interested parties).	§ 351.218(e)(1)(i)(C)(2) (normally not later than 40 days after the date of publication of the Notice of Initiation)
90	Final determination revoking an order or terminating a suspended investigation where no domestic interested party responds to the Notice of Initiation.	§§ 351.218(d)(1)(iii)(B)(*3*) and 351.222(i)(1)(i) (not later than 90 days after the date of publication of the Notice of Initiation)

[1] Indicates the number of days from the date of publication in the FEDERAL REGISTER of the Notice of Initiation.

[63 FR 13524, Mar. 20, 1998]

ANNEX VIII–B TO PART 351—SCHEDULE FOR EXPEDITED SUNSET REVIEWS

Day [1]	Event	Regulation
0	Initiation	§ 351.218(c)
15	Filing of Notice of Intent to Participate by domestic interested parties.	§ 351.218(d)(1)(i) (not later than 15 days after the date of publication of the Notice of Initiation)
30	Filing of Statement of Waiver by respondent interested parties.	§ 351.218(d)(2)(i) (not later than 30 days after the date of publication of the Notice of Initiation)
30	Filing of substantive response to the Notice of Initiation by all interested parties and industrial users and consumers.	§§ 351.218(d)(3)(i) and 351.218(d)(3)(vi) (not later than 30 days after the date of publication of the Notice of Initiation)
35	Filing of rebuttal to substantive response to the Notice of Initiation.	§ 351.218(d)(4) (not later than 5 days after the substantive response is filed with the Department)
50	Notification to the ITC that respondent interested parties provided inadequate response to the Notice of Initiation.	§ 351.218(e)(1)(ii)(C)(*1*) (normally not later than 50 days after the date of publication of the Notice of Initiation)
70	Comments on adequacy of response and appropriateness of expedited sunset review.	§ 351.309(e)(ii) (not later than 70 days after the date of publication of the Notice of Initiation)
120	Final results of expedited sunset review where respondent interested parties provide inadequate response to the Notice of Initiation.	§§ 351.218(e)(1)(ii)(B) and 351.218(e)(1)(ii)(C)(*2*) (not later than 120 days after the date of publication of the Notice of Initiation)

[1] Indicates the number of days from the date of publication in the FEDERAL REGISTER of the Notice of Initiation.

[63 FR 13525, Mar. 20, 1998]

ANNEX VIII–C TO PART 351—SCHEDULE FOR FULL SUNSET REVIEWS

Day [1]	Event	Regulation
0	Initiation	§ 351.218(c)
15	Filing of Notice of Intent to Participate by domestic interested parties.	§ 351.218(d)(1)(i) (not later than 15 days after the date of publication of the Notice of Initiation)
30	Filing of Statement of Waiver by respondent interested parties.	§ 351.218(d)(2)(i) (not later than 30 days after the date of publication of the Notice of Initiation)
30	Filing of substantive response to the Notice of Initiation by all interested parties and industrial users and consumers.	§§ 351.218(d)(3)(i) and 351.218(d)(3)(vi) (not later than 30 days after the date of publication of the Notice of Initiation)
35	Filing of rebuttal to substantive response to the Notice of Initiation.	§ 351.218(d)(4) (not later than 5 days after the substantive response is filed with the Department)
110	Preliminary results of full sunset review	§ 351.218(f)(1) (normally not later than 110 days after the date of publication of the Notice of Initiation)
120	Verification in a full sunset review, where needed	§ 351.218(f)(2)(ii) (approximately 120 days after the date of publication of the Notice of Initiation)
160	Filing of case brief in full sunset review	§ 351.309(c)(1)(i) (50 days after the date of publication of the preliminary results of full sunset review)
165	Filing of rebuttal brief in full sunset review	§ 351.309(d)(1) (5 days after the time limit for filing a case brief)

Day [1]	Event	Regulation
167	Hearing in full sunset review if requested	§ 351.310(d)(i) (2 days after the time limit for filing a rebuttal brief)
240	Final results of full sunset review	§ 351.218(f)(3)(i) (not later than 240 days after the date of publication of the Notice of Initiation)
330	Final results of full sunset review if fully extended	§ 351.218(f)(3)(ii) (if full sunset review is extraordinarily complicated, period for issuing final results may be extended by not more than 90 days)

[1] Indicates the number of days from the date of publication in the FEDERAL REGISTER of the Notice of Initiation.

[63 FR 13525, Mar. 20, 1998]

PART 354—PROCEDURES FOR IMPOSING SANCTIONS FOR VIOLATION OF AN ANTIDUMPING OR COUNTERVAILING DUTY ADMINISTRATIVE PROTECTIVE ORDER

Sec.
354.1 Scope.
354.2 Definitions.
354.3 Sanctions.
354.4 Suspension of rules.
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354.7 Charging letter.
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354.12 Hearing.
354.13 Proceeding without a hearing.
354.14 Initial decision.
354.15 Final decision.
354.16 Reconsideration.
354.17 Confidentiality.
354.18 Public notice of sanctions.
354.19 Sunset.

AUTHORITY: 5 U.S.C. 301, and 19 U.S.C. 1677.

SOURCE: 53 FR 47920, Nov. 28, 1988, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 354 appear at 63 FR 24403, May 4, 1998.

EDITORIAL NOTE: Nomenclature changes to part 354 appear at 78 FR 62418, Oct. 22, 2013.

§ 354.1 Scope.

This part sets forth the procedures for imposing sanctions for violation of an administrative protective order issued under 19 CFR 351.306, or successor regulations, as authorized by 19 U.S.C. 1677f(c).

[53 FR 47920, Nov. 28, 1988, as amended at 63 FR 24403, May 4, 1998]

§ 354.2 Definitions.

For purposes of this part:

Administrative protective order (APO) means an administrative protective order described in section 777(c)(1) of the Tariff Act of 1930, as amended; APO Sanctions Board means the Administrative Protective Order Sanctions Board.

Business proprietary information means information the disclosure of which the Secretary has decided is limited under 19 CFR 351.105, or successor regulations;

Charged party means a person who is charged by the Deputy Under Secretary with violating a protective order;

Chief Counsel means the Chief Counsel for Trade Enforcement and Compliance or a designee;

Date of service means the day a document is deposited in the mail or delivered in person;

Days means calendar days, except that a deadline which falls on a weekend or holiday shall be extended to the next working day;

Department means the United States Department of Commerce;

Deputy Under Secretary means the Deputy Under Secretary for International Trade or a designee;

Director means the Senior APO Specialist or an office director under a Deputy Assistant Secretary, International Trade Administration, or a designee;

Lesser included sanction means a sanction of the same type but of more limited scope than the proposed sanction; thus a one-year bar on representations before the International Trade Administration is a lesser included sanction of a proposed seven-year bar;

Parties means the Department and the charged party or affected party in an action under this part;

Presiding official means the person authorized to conduct hearings in administrative proceedings or to rule on any motion or make any determination under this part, who may be an Administrative Law Judge, a Hearing Commissioner, or such other person who is not under the supervision or control of the Assistant Secretary for Enforcement and Compliance, the Deputy Under Secretary for International Trade, the Chief Counsel for Trade Enforcement and Compliance, or a member of the APO Sanctions Board;

Proprietary information means information the disclosure of which the Secretary has decided is limited under 19 CFR part 351 including business or trade secrets; production costs; distribution costs; terms of sale; prices of individual sales, likely sales, or offers; names of customers, distributors, or suppliers; exact amounts of the gross net subsidies received and used by a person; names of particular persons from whom proprietary information was obtained; and any other business information the release of which to the public would cause substantial harm to the competitive position of the submitter;

Secretary means the Secretary of Commerce or a designee;

Segment of the proceeding means a portion of an antidumping or countervailing duty proceeding that is reviewable under section 516A of the Tariff Act of 1930, as amended.

Senior APO Specialist means the Department employee under the Director for Policy and Analysis who leads the APO Unit and is responsible for directing Enforcement and Compliance's handling of business proprietary information;

Under Secretary means the Under Secretary for International Trade or a designee.

[63 FR 24403, May 4, 1998]

§ 354.3 Sanctions.

(a) A person determined under this part to have violated an administrative protective order may be subjected to any or all of the following sanctions:

(1) Barring such person from appearing before the International Trade Administration to represent another for a designated time period from the date of publication in the FEDERAL REGISTER of a notice that a violation has been determined to exist;

(2) Denying the person access to business proprietary information for a designated time period from the date of publication in the FEDERAL REGISTER of a notice that a violation has been determined to exist;

(3) Other appropriate administrative sanctions, including striking from the record any information or argument submitted by, or on behalf of, the violating party or the party represented by the violating party; terminating any proceeding then in progress; or revoking any order then in effect;

(4) Requiring the person to return material previously provided by the Secretary and all other materials containing the business proprietary information, such as briefs, notes, or charts based on any such information received under an administrative protective order; and

(5) Issuing a private letter of reprimand.

(b)(1) The firm of which a person determined to have violated an administrative protective order is a partner, associate or employee; any partner, associate, employer, or employee of such person; and any person represented by such person may be barred from appearing before the International Trade Administration for a designated time period from the date of publication in the FEDERAL REGISTER of notice that a violation has been determined to exist or may be subjected to the sanctions set forth in paragraph (a) of this section, as appropriate.

(2) Each person against whom sanctions are proposed under paragraph (b)(1) of this section is entitled to all the administrative rights set forth in this part separately and apart from rights provided to a person subject to sanctions under paragraph (a) of this section, including the right to a charging letter, right to representation, and right to a hearing, but subject to joinder or consolidation by a presiding official under § 354.12(b).

[53 FR 47920, Nov. 28, 1988, as amended at 63 FR 24404, May 4, 1998]

§ 354.4 Suspension of rules.

Upon request by the Deputy Under Secretary, a charged or affected party, or the APO Sanctions Board, a presiding official may modify or waive any rule in the part upon determining that no party will be unduly prejudiced and the ends of justice will thereby be served and upon notice to all parties.

§ 354.5 Report of violation and investigation.

(a) An employee of the Department who has information indicating that the terms of an administrative protective order have been violated will provide the information to the Senior APO Specialist or the Chief Counsel.

(b) Upon receiving information which indicates that a person may have violated the terms of an administrative protective order from an employee of the Department or any other person, the director will conduct an investigation concerning whether there was a violation of an administrative protective order, and who was responsible for the violation, if any. No director shall investigate an alleged violation that arose out of a proceeding for which the director was responsible. For the purposes of this part, the director will be supervised by the Deputy Under Secretary for International Trade with guidance from the Chief Counsel. The director will conduct an investigation only if the information is received within 30 days after the alleged violation occurred or, as determined by the director, could have been discovered through the exercise of reasonable and ordinary care.

(c)(1) The director conducting the investigation will provide a report of the investigation to the Deputy Under Secretary for International Trade, after review by the Chief Counsel, no later than 90 days after receiving information concerning a violation if:

(i) The person alleged to have violated an administrative protective order personally notified the Secretary and reported the particulars surrounding the incident; and

(ii) The alleged violation did not result in any actual disclosure of business proprietary information. Upon the director's request, and if extraordinary circumstances exist, the Deputy Under Secretary for International Trade may grant the director up to an additional 90 days to conduct the investigation and submit the report.

(2) In all other cases, the director will provide a report of the investigation to the Deputy Under Secretary for International Trade, after review by the Chief Counsel, no later than 180 days after receiving information concerning a violation. Upon the director's request, and if extraordinary circumstances exist, the Deputy Under Secretary for International Trade may grant the director up to an additional 180 days to conduct the investigation and submit the report.

(d) The following examples of actions that constitute violations of an administrative protective order shall serve as guidelines to each person subject to an administrative protective order. These examples do not represent an exhaustive list. Evidence that one of the acts described in the guidelines has been committed, however, shall be considered by the Deputy Under Secretary as reasonable cause to believe a person has violated an administrative protective order, within the meaning of § 354.6.

(1) Disclosure of business proprietary information to any person other than the submitting party, an authorized applicant, or an appropriate Department official identified in section 777(b) of the Tariff Act of 1930, including disclosure to an employee of any other United States Government agency or a member of Congress.

(2) Failure to follow the terms and conditions outlined in the administrative protective order for safeguarding business proprietary information.

(3) Loss of business proprietary information.

(4) Failure to return or destroy all copies of the original documents and all notes, memoranda, and submissions containing business proprietary information at the close of the proceeding for which the data were obtained by burning or shredding of the documents or by erasing electronic memory, computer disk, or tape memory, as set forth in the administrative protective order.

(5) Failure to delete business proprietary information from the public

version of a brief or other correspondence filed with the Department.

(6) Disclosure of business proprietary information during a public hearing.

(7) Use of business proprietary information submitted in one segment of a proceeding in another segment of the same proceeding or in another proceeding, except as authorized by the Tariff Act of 1930 or by an administrative protective order.

(8) Use of business proprietary information submitted for a countervailing duty investigation or administrative review during an antidumping duty investigation or administrative review, or vice versa.

[53 FR 47920, Nov. 28, 1988, as amended at 63 FR 24404, May 4, 1998]

§ 354.6 Initiation of proceedings.

(a) *In general.* After an investigation and report by the director under § 354.5(c) and consultation with the Chief Counsel, the Deputy Under Secretary for International Trade will determine whether there is reasonable cause to believe that a person has violated an administrative protective order. If the Deputy Under Secretary for International Trade determines that there is reasonable cause, the Deputy Under Secretary for International Trade also will determine whether sanctions under paragraph (b) or a warning under paragraph (c) is appropriate for the violation.

(b) *Sanctions.* In determining under paragraph (a) of this section whether sanctions are appropriate, and, if so, what sanctions to impose, the Deputy Under Secretary for International Trade will consider the nature of the violation, the resulting harm, and other relevant circumstances of the case. If the Deputy Under Secretary for International Trade determines that sanctions are appropriate, the Deputy Under Secretary for International Trade will initiate a proceeding under this part by issuing a charging letter under § 354.7. The Deputy Under Secretary for International Trade will determine whether to initiate a proceeding no later than 60 days after receiving a report of the investigation.

(c) *Warning.* If the Deputy Under Secretary for International Trade determines under paragraph (a) of this section that a warning is appropriate, the Deputy Under Secretary will issue a warning letter to the person believed to have violated an administrative protective order. Sanctions are not appropriate and a warning is appropriate if:

(1) The person took due care;

(2) The Secretary has not previously charged the person with violating an administrative protective order;

(3) The violation did not result in any disclosure of the business proprietary information or the Secretary is otherwise able to determine that the violation caused no harm to the submitter of the information; and

(4) The person cooperated fully in the investigation.

[63 FR 24404, May 4, 1998]

§ 354.7 Charging letter.

(a) *Contents of Letter.* The Deputy Under Secretary will initiate proceedings by issuing a charging letter to each charged party and affected party which includes:

(1) A statement of the allegation that an administrative protective order has been violated and the basis thereof;

(2) A statement of the proposed sanctions;

(3) A statement that the charged or affected party is entitled to review the documents or other physical evidence upon which the charge is based and the method for requesting access to, or copies of, such documents;

(4) A statement that the charged or affected party is entitled to a hearing before a presiding official if requested within 30 days of the date of service of the charging letter and the procedure for requesting a hearing, including the name, address, and telephone number of the person to contact if there are further questions;

(5) A statement that the charged or affected party has a right, if a hearing is not requested, to submit documentary evidence to the Deputy Under Secretary and an explanation of the method for submitting evidence and the date by which it must be received; and

(6) A statement that the charged or affected party has a right to retain counsel at the party's own expense for purposes of representation.

(b) Settlement and amending the charging letter. The Deputy Under Secretary for International Trade and a charged or affected party may settle a charge brought under this part by mutual agreement at any time after service of the charging letter; approval of the presiding official or the administrative protective order Sanctions Board is not necessary. The charged or affected party may request a hearing but at the same time request that a presiding official not be appointed pending settlement discussions. Settlement agreements may include sanctions for purposes of § 354.18. The Deputy Under Secretary for International Trade may amend, supplement, or withdraw the charging letter as follows:

(1) If there has been no request for a hearing, or if supporting information has not been submitted under § 354.13, the withdrawal will not preclude future actions on the same alleged violation.

(2) If a hearing has been requested but no presiding official has been appointed, withdrawal of the charging letter will preclude the Deputy Under Secretary for International Trade from seeking sanctions at a later date for the same alleged violation.

(3) The Deputy Under Secretary for International Trade may amend, supplement or withdraw the charging letter at any time after the appointment of a presiding official, if the presiding official determines that the interests of justice would thereby be served. If the presiding official so determines, the presiding official will also determine whether the withdrawal will preclude the Deputy Under Secretary for International Trade from seeking sanctions at a later date for the same alleged violation.

(c) *Service of charging letter on a resident of the United States.* (1) Service of a charging letter on a United States resident will be made by:

(i) Mailing a copy by registered or certified mail addressed to the charged or affected party at the party's last known address;

(ii) Leaving a copy with the charged or affected party or with an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service for the party; or

(iii) Leaving a copy with a person of suitable age and discretion who resides at the party's last known dwelling.

(2) Service made in the manner described in paragraph (c) (ii) or (iii) of this section shall be evidenced by a certificate of service signed by the person making such service, stating the method of service and the identity of the person with whom the charging letter was left.

(d) *Service of charging letter on a nonresident.* If applicable laws or intergovernmental agreements or understandings make the methods of service set forth in paragraph (c) of this section inappropriate or ineffective, service of the charging letter on a person who is not a resident of the United States may be made by any method that is permitted by the country in which the person resides and that satisfies the due process requirements under United States law with respect to notice in administrative proceedings.

[53 FR 47920, Nov. 28, 1988, as amended at 63 FR 24405, May 4, 1998]

§ 354.8 Interim sanctions.

(a) If the Deputy Under Secretary concludes, after issuing a charging letter under § 354.7 and before a final decision is rendered, that interim sanctions are necessary to protect the interests of the Department or others, including the protection of business proprietary information, the Deputy Under Secretary may petition a presiding official to impose such sanctions.

(b) The presiding official may impose interim sanctions against a person upon determining that:

(1) There is probable cause to believe that there was a violation of an administrative protective order and the Department is likely to prevail in obtaining sanctions under this part,

(2) The Department or others are likely to suffer irreparable harm if the interim sanctions are not imposed, and

(3) The interim sanctions are a reasonable means for protecting the rights of the Department or others while preserving to the greatest extent possible the rights of the person against whom the interim sanctions are proposed.

(c) Interim sanctions which may be imposed include any sanctions that are necessary to protect the rights of the Department or others, including, but not limited to:

(1) Denying a person further access to business proprietary information.

(2) Barring a person from representing another person before the International Trade Administration.

(3) Barring a person from appearing before the International Trade Administration, and

(4) Requiring the person to return material previously provided by the Department and all other materials containing the business proprietary information, such as briefs, notes, or charts based on any such information received under an administrative protective order.

(d) The Deputy Under Secretary will notify the person against whom interim sanctions are sought of the request for interim sanctions and provide to that person the material submitted to the presiding official to support the request. The notice will include a reference to the procedures of this section.

(e) A person against whom interim sanctions are proposed has a right to oppose the request through submission of material to the presiding official. The presiding official has discretion to permit oral presentations and to allow further submissions.

(f) The presiding official will notify the parties of the decision on interim sanctions and the basis therefor within five days of the conclusion of oral presentations or the date of final written submissions.

(g) If interim sanctions have been imposed, the investigation and any proceedings under this part will be conducted on an expedited basis.

(h) An order imposing interim sanctions may be revoked at any time by the presiding official and expires automatically upon the issuance of a final order.

(i) The presiding official may reconsider imposition of interim sanctions on the basis of new and material evidence or other good cause shown. The Deputy Under Secretary or a person against whom interim sanctions have been imposed may appeal a decision on interim sanctions to the APO Sanctions Board, if such an appeal is certified by the presiding official as necessary to prevent undue harm to the Department, a person against whom interim sanctions have been imposed or others, or is otherwise in the interests of justice. Interim sanctions which have been imposed remain in effect while an appeal is pending, unless the presiding official determines otherwise.

(j) The Deputy Under Secretary may request a presiding official to impose emergency interim sanctions to preserve the status quo. Emergency interim sanctions may last no longer than 48 hours, excluding weekends and holidays. The person against whom such emergency interim sanctions are proposed need not be given prior notice or an opportunity to oppose the request for sanctions. The presiding official may impose emergency interim sanctions upon determining that the Department is, or others are, likely to suffer irreparable harm if such sanctions are not imposed and that the interests of justice would thereby be served. The presiding official will promptly notify a person against whom emergency sanctions have been imposed of the sanctions and their duration.

(k) If a hearing has not been requested, the Deputy Under Secretary will ask the Under Secretary to appoint a presiding official for making determinations under this section.

§ 354.9 Request for a hearing.

(a) Any party may request a hearing by submitted a written request to the Under Secretary within 30 days after the date of service of the charging letter. However, the Deputy Under Secretary may request a hearing only if the interests of justice would thereby be served.

(b) Upon timely receipt of a request for a hearing, and unless the party requesting a hearing requests that the Under Secretary not appoint a presiding official, the Under Secretary will appoint a presiding official to conduct the hearing and render an initial decision.

[53 FR 47920, Nov. 28, 1988, as amended at 63 FR 24405, May 4, 1998]

§ 354.10 Discovery.

(a) *Voluntary discovery.* All parties are encouraged to engage in voluntary discovery procedures regarding any matter, not privileged, which is relevant to the subject matter of the pending proceeding.

(b) *Interrogatories and requests for admissions or production of documents.* A party may serve on any other party interrogatories, requests for admissions, or requests for production of documents for inspection and copying, and a party concerned may then apply to the presiding official for such enforcement or administrative protective order as that party deems warranted concerning such discovery. The party will serve a discovery request at least 20 days before the scheduled date of a hearing, if a hearing has been requested and scheduled, unless the presiding official specifies a shorter time period. Copies of interrogatories, requests for admissions, and requests for production of documents and responses thereto will be served on all parties. Matters of fact or law of which admission is requested will be deemed admitted unless, within a period designated in the request (at least 10 days after the date of service of the request, or within such further time as the presiding official may allow), the party to whom the request is directed serves upon the requesting party a sworn statement either admitting or denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party cannot truthfully either admit or deny such matters.

(c) *Depositions.* Upon application of a party and for good cause shown, the presiding official may order the taking of the testimony of any person who is a party, or under the control or authority of a party, by deposition and the production of specified documents or materials by the person at the deposition. The application shall state the purpose of the deposition and shall set forth the facts sought to be established through the deposition.

(d) *Enforcement.* The presiding official may order a party to answer designated questions, to produce specified documents or items, or to take any other action in response to a proper discovery request. If a party does not comply with such an order, the presiding official may make any determination or enter any order in the proceedings as he or she deems reasonable and appropriate. The presiding official may strike related charges or defenses in whole or in part, or may take particular facts relating to the discovery request to which the party failed or refused to respond as being established for purposes of the proceeding in accordance with the contentions of the party seeking discovery. In issuing a discovery order, the presiding official will consider the necessity to protect business proprietary information and will not order the release of information in circumstances where it is reasonable to conclude that such release will lead to unauthorized dissemination of such information.

(e) *Role of the Under Secretary.* If a hearing has not been requested, the party seeking enforcement will ask the Under Secretary to appoint a presiding official to rule on motions under this section.

§ 354.11 Prehearing conference.

(a)(1) If an administrative hearing has been requested, the presiding official will direct the parties to attend a prehearing conference to consider:

(i) Simplification of issues;

(ii) Obtaining stipulations of fact and of documents to avoid unnecessary proof;

(iii) Settlement of the matter;

(iv) Discovery; and

(v) Such other matters as may expedite the disposition of the proceedings.

(2) Any relevant and significant stipulations or admissions will be incorporated into the initial decision.

(b) If a prehearing conference is impractical, the presiding official will direct the parties to correspond with each other or to confer by telephone or otherwise to achieve the purposes of such a conference.

§ 354.12 Hearing.

(a) *Scheduling of hearing.* The presiding official will schedule the hearing at a reasonable time, date, and place, which will be in Washington, DC, unless the presiding official determines otherwise based upon good cause shown

that another location would better serve the interests of justice. In setting the date, the presiding official will give due regard to the need for the parties adequately to prepare for the hearing and the importance of expeditiously resolving the matter.

(b) *Joinder or consolidation.* The presiding official may order joinder or consolidation if sanctions are proposed against more than one party or if violations of more than one administrative protective order are alleged if to do so would expedite processing of the cases and not adversely affect the interests of the parties.

(c) *Hearing procedures.* Hearings will be conducted in a fair and impartial manner by the presiding official, who may limit attendance at any hearing or portion thereof if necessary or advisable in order to protect business proprietary information from improper disclosure. The rules of evidence prevailing in courts of law shall not apply, and all evidentiary material the presiding official determines to be relevant and material to the proceeding and not unduly repetitious may be received into evidence and given appropriate weight. The presiding official may make such orders and determinations regarding the admissibility of evidence, conduct of examination and cross-examination, and similar matters as are necessary or appropriate to ensure orderliness in the proceedings. The presiding official will ensure that a record of the hearing be taken by reporter or by electronic recording, and will order such part of the record to be sealed as is necessary to protect business proprietary information.

(d) *Rights of parties.* At a hearing each party shall have the right to:

(1) Introduce and examine witnesses and submit physical evidence,

(2) Confront and cross-examine adverse witnesses,

(3) Present oral argument, and

(4) Receive a transcript or recording of the proceedings, upon request, subject to the presiding official's orders regarding sealing the record.

(e) *Representation.* Each charged or affected party has a right to represent himself or herself or to retain private counsel for that purpose. The Chief Counsel will represent the Department, unless the General Counsel determines otherwise. The presiding official may disallow a representative if such representation constitutes a conflict of interest or is otherwise not in the interests of justice and may debar a representative for contumacious conduct relating to the proceedings.

(f) *Ex parte communications.* The parties and their representatives may not make any *ex parte* communications to the presiding official concerning the merits of the allegations or any matters at issue, except as provided in §354.8 regarding emergency interim sanctions.

§354.13 Proceeding without a hearing.

If no party has requested a hearing, the Deputy Under Secretary, within 40 days after the date of service of a charging letter, will submit for inclusion into the record and provide each charged or affected party information supporting the allegations in the charging letter. Each charged or affected party has the right to file a written response to the information and supporting documentation within 30 days after the date of service of the information provided by the Deputy Under Secretary unless the Deputy Under Secretary alters the time period for good cause. The Deputy Under Secretary may allow the parties to submit further information and argument.

§354.14 Initial decision.

(a) *Initial decision.* The presiding official, if a hearing was requested, or the Deputy Under Secretary will submit an initial decision to the APO Sanctions Board, providing copies to the parties. The presiding official or Deputy Under Secretary will ordinarily issue the decision within 20 days of the conclusion of the hearing, if one was held, or within 15 days of the date of service of final written submissions. The initial decision will be based solely on evidence received into the record, and the pleadings of the parties.

(b) *Findings and conclusions.* The initial decision will state findings and conclusions as to whether a person has violated an administrative protective order; the basis for those findings and conclusions; and whether the sanctions

proposed in the charging letter, or lesser included sanctions, should be imposed against the charged or affected party. The presiding official or Deputy Under Secretary may impose sanctions only upon determining that the preponderance of the evidence supports a finding of violation of an administrative protective order and that the sanctions are warranted against the charged or affected party. In determining whether sanctions are appropriate and, if so, what sanctions to impose, the presiding official or the Deputy Under Secretary will consider the nature of the violation, the resulting harm, and other relevant circumstances of the case.

(c) *Finality of decision.* If the APO Sanctions Board has not issued a decision on the matter within 60 days after issuance of the initial decision, the initial decision becomes the final decision of the Department.

§ 354.15 Final decision.

(a) *APO Sanctions Board.* Upon request of a party, the initial decision will be reviewed by the members of the APO Sanctions Board. The Board consists of the Under Secretary for International Trade, who shall serve as Chairperson, the Under Secretary for Economic Affairs, and the General Counsel.

(b) *Comments on initial decision.* Within 30 days after issuance of the initial decision, a party may submit written comments to the APO Sanctions Board on the initial decision, which the Board will consider when reviewing the initial decision. The parties have no right to an oral presentation, although the Board may allow oral argument in its discretion.

(c) *Final decision by the APO Sanctions Board.* Within 60 days but not sooner than 30 days after issuance of an initial decision, the APO Sanctions Board may issue a final decision which adopts the initial decision in its entirety; differs in whole or in part from the initial decision, including the imposition of lesser included sanctions; or remands the matter to the presiding official or Deputy Under Secretary for further consideration. The only sanctions that the Board can impose are those sanctions proposed in the charging letter or lesser included sanctions.

(d) *Contents of final decision.* If the final decision of the APO Sanctions Board does not remand the matter and differs from the initial decision, it will state findings and conclusions which differ from the initial decision, if any, the basis for those findings and conclusions, and the sanctions which are to be imposed, to the extent they differ from the sanctions in the initial decision.

[53 FR 47920, Nov. 28, 1988, as amended at 63 FR 24405, May 4, 1998]

§ 354.16 Reconsideration.

Any party may file a motion for reconsideration with the APO Sanctions Board. The party must state with particularity the grounds for the motion, including any facts or points of law which the party claims the APO Sanctions Board has overlooked or misapplied. The party may file the motion within 30 days of the issuance of the final decision or the adoption of the initial decision as the final decision, except that if the motion is based on the discovery of new and material evidence which was not known, and could not reasonably have been discovered through due diligence prior to the close of the record, the party shall file the motion within 15 days of the discovery of the new and material evidence. The party shall provide a copy of the motion to all other parties. Opposing parties may file a response within 30 days of the date of service of the motion. The response shall be considered as part of the record. The parties have no right to an oral presentation on a motion for reconsideration, but the Board may permit oral argument at its discretion. If the motion to reconsider is granted, the Board will review the record and affirm, modify, or reverse the original decision or remand the matter for further consideration to a presiding official or the Deputy Under Secretary, as warranted.

§ 354.17 Confidentiality.

(a) All proceedings involving allegations of a violation of an administrative protective order shall be kept confidential until such time as the Department makes a final decision under

these regulations, no longer subject to reconsideration, imposing a sanction.

(b) The charged party or counsel for the charged party will be granted access to business proprietary information in these proceedings, as necessary, under administrative protective order, consistent with the provisions of 19 CFR 351.305(c), or their successor regulations.

[53 FR 47920, Nov. 28, 1988, as amended at 63 FR 24405, May 4, 1998]

§ 354.18 Public notice of sanctions.

If there is a final decision under § 354.15 to impose sanctions, or if a charging letter is settled under § 354.7(b), notice of the Secretary's decision or of the existence of a settlement will be published in the FEDERAL REGISTER. If a final decision is reached, such publication will be no sooner than 30 days after issuance of a final decision or after a motion to reconsider has been denied, if such a motion was filed. In addition, whenever the Deputy Under Secretary for International Trade subjects a charged or affected party to a sanction under § 354.3(a)(1), the Deputy Under Secretary for International Trade also will provide such information to the ethics panel or other disciplinary body of the appropriate bar associations or other professional associations and to any Federal agency likely to have an interest in the matter. The Deputy Under Secretary for International Trade will cooperate in any disciplinary actions by any association or agency. Whenever the Deputy Under Secretary for International Trade subjects a charged or affected party to a private letter of reprimand under § 354.3(a)(5), the Secretary will not make public the identity of the violator, nor will the Secretary make public the specifics of the violation in a manner that would reveal indirectly the identity of the violator.

[63 FR 24405, May 4, 1998]

§ 354.19 Sunset.

(a) If, after a period of three years from the date of issuance of a warning letter, a final decision or settlement in which sanctions were imposed, the charged or affected party has fully complied with the terms of the sanctions and has not been found to have violated another administrative protective order, the party may request in writing that the Deputy Under Secretary for International Trade rescind the charging letter. A request for rescission must include:

(1) A description of the actions taken during the preceding three years in compliance with the terms of the sanctions; and

(2) A letter certifying that: the charged or affected party complied with the terms of the sanctions; the charged or affected party has not received another administrative protective order sanction during the three-year period; and the charged or affected party is not the subject of another investigation for a possible violation of an administrative protective order.

(b) Subject to the Chief Counsel's confirmation that the charged or affected party has complied with the terms set forth in paragraph (a) of this section, the Deputy Under Secretary for International Trade will rescind the charging letter within 30 days after receiving the written request.

[63 FR 24405, May 4, 1998]

PART 356—PROCEDURES AND RULES FOR ARTICLE 10.12 OF THE UNITED STATES-MEXICO-CANADA AGREEMENT

Subpart A—Scope and Definitions

Sec.

Subpart B—Procedures for Commencing Review of Final Determinations

Subpart C—Proprietary and Privileged Information

Subpart D—Violation of a Protective Order or a Disclosure Undertaking

AUTHORITY: 19 U.S.C. 1516a and 1677f(f), unless otherwise noted.

SOURCE: 59 FR 229, Jan. 3, 1994, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 356 appear at 78 FR 62418, Oct. 22, 2013.

Subpart A—Scope and Definitions

§ 356.1 Scope.

This part sets forth procedures and rules for Article 10.12 of the United States-Mexico-Canada Agreement under the Tariff Act of 1930, as amended by title IV of the United States-Mexico-Canada Agreement Implementation Act of 2020 (19 U.S.C. 1516a and 1677f(f)). This part is authorized by section 412(g) of the United States-Mexico-Canada Agreement Implementation Act of 2020.

[86 FR 70048, Dec. 9, 2021]

§ 356.2 Definitions.

For purposes of this part:

(a) *Act* means the Tariff Act of 1930, as amended;

(b) *Administrative law judge* means the person appointed under 5 U.S.C. 3105 who presides over the taking of evidence as provided by subpart D of this part;

(c) *Affected party* means a person against whom sanctions have been proposed for alleged violation of a protective order or disclosure undertaking but who is not a charged party;

(d) *Agreement* means the United States-Mexico-Canada Agreement (USMCA) between Canada, the United Mexican States, and the United States, signed on November 30, 2018, as amended;

(e) *APO Sanctions Board* means the Administrative Protective Order Sanctions Board;

(f) *Article 10.12 Binational Panel Rules* means the USMCA Article 10.12 Binational Panel Rules, established in accordance with Article 10.12.14 of the USMCA, and any subsequent amendments;

(g) *Authorized agency of a free trade area country* means:

(1) In the case of Canada, any Canadian government agency that is authorized by Canadian law to request the Department to initiate proceedings to impose sanctions for an alleged violation of a disclosure undertaking; and

(2) In the case of Mexico, any Mexican government agency that is authorized by Mexican law to request the Department to initiate proceedings to impose sanctions for an alleged violation of a disclosure undertaking;

(h) *Binational panel* means a binational panel established pursuant to Annex 10–B.1 to Chapter Ten of the Agreement for the purposes of reviewing a final determination;

(i) *Charged party* means a person who is charged by the Deputy Under Secretary with violating a protective order or a disclosure undertaking;

(j) *Chief Counsel* means the Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce, or designee;

(k) *Days* means calendar days, except that a deadline which falls on a weekend or holiday shall be extended to the next working day;

(l) *Department* means the U.S. Department of Commerce;

(m) *Deputy Under Secretary* means the Deputy Under Secretary for International Trade, U.S. Department of Commerce;

(n) *Director* means the Senior APO Specialist (as defined by 19 CFR 354.2) or an office director under a Deputy Assistant Secretary, International Trade Administration, or a designee;

(o) *Disclosure undertaking* means:

(1) In the case of Canada, the Canadian mechanism for protecting proprietary or privileged information during proceedings pursuant to Article 10.12 of the Agreement, as prescribed by subsection 77.21(2) of the Special Import Measures Act, as amended;

(2) In the case of Mexico, the Mexican mechanism for protecting proprietary or privileged information during the proceedings pursuant to Article 10.12 of the Agreement, as prescribed by the Ley de Comercio Exterior and its regulations;

(p) *Extraordinary challenge committee* means the committee established pursuant to Annex 10–B.3 to Chapter Ten of the Agreement to review decisions of a panel or conduct of a panelist;

(q) *Final determination* means ''final determination'' as defined by Article 10.8 of the Agreement;

(r) *Free trade area country* or *FTA country* means ''free trade area country'' as defined by section 516A(f)(9) of the Act (19 U.S.C. 1516a(f)(9));

(s) *Investigating authority* means the competent investigating authority that issued the final determination subject to review and includes, in respect of the issuance, amendment, modification or revocation of a protective order or disclosure undertaking, any person authorized by the investigating authority;

(t) *Lesser-included sanction* means a sanction of the same type but of more limited scope than the proposed sanction for violation of a protective order or disclosure undertaking; thus, a one-year bar on representation before the Department is a lesser-included sanction of a proposed seven-year bar;

(u) *Letter of transmittal* means a document marked according to the requirements of 19 CFR 351.303(d)(2);

(v) *Official publication* means:

(1) In the case of Canada, the *Canada Gazette;*

(2) In the case of Mexico, the Diario Oficial de la Federacion; and

(3) In the case of the United States, the FEDERAL REGISTER;

(w) *Panel review* means review of a final determination pursuant to Chapter Ten of the Agreement;

(x) *Party to the proceeding* means a person that would be entitled, under section 516A of the Act (19 U.S.C. 1516a), to commence proceedings for judicial review of a final determination;

(y) *Participant* means a party to the proceeding that files a Complaint or a Notice of Appearance in a panel review, and the Department;

(z) *Parties* means, in an action under subpart D of this part, the Department and the charged party or affected party;

(aa) *Person* means, an individual, partnership, corporation, association, organization, or other entity;

(bb) *Privileged information* means:

(1) With respect to a panel review of a final determination made in Canada, information of the investigating authority that is subject to the solicitor-client privilege under the laws of Canada, or that constitutes part of the deliberative process with respect to the final determination, and with respect to which the privilege has not been waived;

(2) With respect to a panel review of a final determination made in Mexico:

(i) Information of the investigating authority that is subject to attorney-client privilege under the laws of Mexico; or

(ii) Internal communications between officials of Secretariat of Economy in charge of antidumping and countervailing duty investigations or communications between those officials and other government officials, where those communications constitute part of the deliberative process with respect to the final determination; and

(3) With respect to a panel review of a final determination made in the United States, information of the investigating authority that is subject to the attorney-client, attorney work product or government deliberative process privilege under the laws of the United States and with respect to

which the privilege has not been waived;

(cc) *Proprietary information* means:

(1) With respect to a panel review of a final determination made in Canada, information referred to in subsection 84(3) of the Special Import Measures Act, as amended, or subsection 45(3) of the Canadian International Trade Tribunal Act, as amended, with respect to which the person who designated or submitted the information has not withdrawn the person's claim as to the confidentiality of the information;

(2) With respect to a panel review of a final determination made in Mexico, informacion confidencial, as defined under article 80 of the Ley de Comercio Exterior and its regulations; and

(3) With respect to a panel review of a final determination made in the United States, business proprietary information under section 777(f) of the Act (19 U.S.C. 1677f(f)) and information the disclosure of which the Department has decided is limited under the procedures adopted pursuant to Article 10.12.14 of the Agreement, including business or trade secrets; production costs; terms of sale; prices of individual sales, likely sales, or offers; names of customers, distributors, or suppliers; exact amounts of the subsidies received and used by a person; names of particular persons from whom proprietary information was obtained; and any other business information the release of which to the public would cause substantial harm to the competitive position of the submitter;

(dd) *Protective order* means a protective order issued by the Department under 19 CFR 356.10(c) or 356.11(c);

(ee) *Scope determination* or *class or kind of merchandise determination* means a determination by the Department, reviewable under section 516A(a)(2)(B)(vi) of the Act (19 U.S.C. 1516a(a)(2)(B)(vi)), as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or an antidumping or countervailing duty order covering free trade area country merchandise.

(ff) *Secretariat* means the Secretariat established pursuant to Article 30.6 of the Agreement and includes the Secretariat sections located in Canada, Mexico, and the United States;

(gg) *Secretary* means the Secretary of the Canadian section of the Secretariat, the Secretary of the Mexican section of the Secretariat, or the Secretary of the United States section of the Secretariat and includes any person authorized to act on behalf of the Secretary;

(hh) *Service address* means the address of the counsel of record for a person, including an electronic mail address submitted with that address, or, where a person is not represented by counsel, the address set out by the person in a Request for Panel Review, Complaint or Notice of Appearance as the address at which the person may be served, including an electronic mail address submitted with that address, or where a Change of Service Address has been filed by a person, the new service address set out as the service address in that form, including an electronic mail address submitted with that address;

(ii) *Service list* means, with respect to a panel review of a final determination made in the United States, the list maintained by the investigating authority of persons who have been served in the proceeding leading to the final determination;

(jj) *Under Secretary* means the Under Secretary for International Trade, U.S. Department of Commerce, or designee;

(kk) *United States section of the Secretariat* means, for the purposes of filing, United States Secretary, USMCA Secretariat, room 2061, U.S. Department of Commerce 14th and Constitution Avenue NW, Washington, DC 20230.

[59 FR 229, Jan. 3, 1994, as amended at 86 FR 70048, Dec. 9, 2021]

Subpart B—Procedures for Commencing Review of Final Determinations

§ 356.3 Notice of intent to commence judicial review.

A party to a proceeding who intends to commence judicial review of a final determination made in the United States shall file a Notice of Intent to Commence Judicial Review, which shall contain such information, and be

in such form, manner, and style, including service requirements, as prescribed by the Article 10.12 Binational Panel Rules, within 20 days after:

(a) The date of publication in the FEDERAL REGISTER of the final determination; or

(b) The date on which the notice of the final determination was received by the Government of the FTA country if the final determination was not published in the FEDERAL REGISTER.

[59 FR 229, Jan. 3, 1994, as amended at 86 FR 70048, Dec. 9, 2021]

§ 356.4 Request for panel review.

A party to a proceeding who seeks panel review of a final determination shall file a Request for Panel Review, which shall contain such information, and be in such form, manner, and style, including service requirements, as prescribed by the Article 10.12 Binational Panel Rules, within 30 days after:

(a) The date of publication in the official publication of the final determination; or

(b) The date on which the notice of the final determination was received by the United States Government or the Government of the FTA country if the final determination was not published in the official publication.

[59 FR 229, Jan. 3, 1994, as amended at 86 FR 70049, Dec. 9, 2021]

§ 356.5 [Reserved]

§ 356.6 Receipt of notice of a class or kind of merchandise determination by the Government of a FTA country.

Where the Department has made a class or kind of merchandise determination, notice of such determination shall be deemed received by the Government of a FTA country:

(a) On the date of publication in the official publication of the determination; or

(b) If the determination was not published in the official publication, on the date on which the Department conveys a copy of the determination to the electronic mail address provided by the Embassy of the FTA country during its normal business hours.

[86 FR 70049, Dec. 9, 2021]

§ 356.7 Request to determine when the Government of a FTA country received notice of a scope determination.

(a) Pursuant to section 516A(g)(1) of the Act (19 U.S.C 1516a(g)(10)), any party to the proceeding may request in writing from the Department the date on which the Government of a FTA country received notice of a class or kind of merchandise determination made by the Department.

(b) A request shall be made by filing a request in accordance with the requirements set forth in 19 CFR 351.303(b) and 351.303(d)(2) with the Secretary of Commerce, Attention: Enforcement and Compliance, APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230. A letter of transmittal must be the first page of the request.

(c) The requesting party shall serve a copy of the Request to Determine When the Government of [insert name of applicable FTA country] Received Notice of a Class or Kind of Merchandise Determination on any interested party on the Department's service list in accordance with the service requirements listed in 19 CFR 351.303(f).

(d) The Department will respond to the request referred to in paragraph (b) of this section within five business days of receipt.

[59 FR 229, Jan. 3, 1994, as amended at 86 FR 70049, Dec. 9, 2021]

§ 356.8 Continued suspension of liquidation.

(a) *In general.* In the case of an administrative determination specified in clause (iii) or (vi) of section 516A(a)(2)(B) of the Act (19 U.S.C. 1516a(a)(2)(B)(iii) and (vi)) and involving free trade area country merchandise, the Department shall not order liquidation of entries of merchandise covered by such a determination until the forty-first day after the date of publication of the notice described in clause (iii) or receipt of the determination described in clause (vi), as appropriate. If requested, the Department will order the continued suspension of liquidation of such entries in accordance with the terms of paragraphs (b), (c), and (d) of this section.

(b) *Eligibility to request continued suspension of liquidation.* (1) A participant in a binational panel review that was a domestic party to the proceeding, as described in section 771(9)(C), (D), (E), (F), or (G) of the Act (19 U.S.C. 1677(9)(C), (D), (E), (F) and (G)), may request continued suspension of liquidation of entries of merchandise covered by the administrative determination under review by the panel and that would be affected by the panel review.

(2) A participant in a binational panel review that was a party to the proceeding, as described in section 771(9)(A) of the Act (19 U.S.C. 1677(9)(A)), may request continued suspension of liquidation of the merchandise which it manufactured, produced, exported, or imported and which is covered by the administrative determination under review by the panel.

(c) *Request for continued suspension of liquidation.* A request for continued suspension of liquidation must include:

(1) The name of the final determination subject to binational panel review and the case number assigned by the Department;

(2) The caption of the binational panel proceeding;

(3) The name of the requesting participant;

(4) The requestor's status as a party to the proceeding and as a participant in the binational panel review; and

(5) The specific entries to be suspended by name of manufacturer, producer, exporter, or U.S. importer.

(d) *Filing and service.* (1) A request for Continued Suspension of Liquidation must be filed with the Assistant Secretary for Enforcement and Compliance, Attention: APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, in accordance with the requirements set forth in 19 CFR 351.303(b) and (d)(2). A letter of transmittal must be the first page of the request and be marked: Panel Review—Request for Continued Suspension of Liquidation. The request may be made no earlier than the date on which the first request for binational panel review is filed.

(2) The requesting party shall serve a copy of the Request for Continued Suspension of Liquidation on the United States Secretary and all parties to the proceeding in accordance with the requirements of 19 CFR 351.303(f).

(e) *Termination of Continued Suspension.* Upon completion of the panel review, including any panel review of remand determinations and any review by an extraordinary challenge committee, the Department will order liquidation of entries, the suspension of which was continued pursuant to this section.

[59 FR 229, Jan. 3, 1994, as amended at 86 FR 70049, Dec. 9, 2021]

Subpart C—Proprietary and Privileged Information

§ 356.9 Persons authorized to receive proprietary information.

Persons described in paragraphs (a), (d), (e), (f) and (g) of this section shall, and persons described in paragraphs (b) and (c) of this section may, be authorized by the Department to receive access to proprietary information if they comply with this subpart and such other conditions imposed upon them by the Department:

(a) The members of, and appropriate staff of, a binational panel or extraordinary challenge committee;

(b) Counsel to participants in panel reviews and professionals retained by, or under the direction or control of such counsel, provided that the counsel or professional does not participate in competitive decision-making activity (such as advice on production, sales, operations, or investments, but not legal advice) for the participant represented or for any person who would gain competitive advantage through knowledge of the proprietary information sought;

(c) Other persons who are retained or employed by and under the direction or control of a counsel or professional, panelist, or committee member who has been issued a protective order, such as paralegals, law clerks, and secretaries, if such other persons are:

(1) Not involved in the competitive decision-making of a participant to the panel review or for any person who would gain competitive advantage through knowledge of the proprietary information sought; and

(2) Have agreed to be bound by the terms set forth on the application for protective order of the counsel or professional, panelist, or committee member;

(d) Each Secretary and every member of the staff of the Secretariat;

(e) Such officials of the United States Government (other than an officer or employee of the investigating authority that issued the final determination subject to review) as the United States Trade Representative informs the Department require access to proprietary information for the purpose of evaluating whether the United States should seek an extraordinary challenge committee review of a panel determination;

(f) Such officials of the Government of a FTA country as an authorized agency of the FTA country informs the Department require access to proprietary information for the purpose of evaluating whether the FTA country should seek an extraordinary challenge committee review of a panel determination; and

(g) Every court reporter, interpreter and translator employed in a panel or extraordinary challenge committee review.

§ 356.10 Procedures for obtaining access to proprietary information.

(a) *Persons who must file an application for disclosure under protective order.* In order to be permitted access to proprietary information in the administrative record of a final determination under review by a panel, all persons described in §§ 356.9 (a), (b), (d), (e), (f) and (g) shall file an application for a protective order. The procedures for applying for a protective order described in paragraph (b) of this section apply as well to amendments or modifications filed by persons described in § 356.9.

(b) *Procedures for applying for a protective order*—(1) *Contents of applications.* (i) The Department has adopted application forms for disclosure of proprietary information which are available from the United States section of the Secretariat or the Central Records Unit, Room B8024, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230. The application forms may be amended from time to time.

(ii) Such forms require the applicant to submit a personal sworn statement stating, in addition to such other terms as the Department may require, that the applicant shall:

(A) Not disclose any proprietary information obtained under protective order and not otherwise available to the applicant, to any person other than:

(*1*) An official of the Department involved in the particular panel review in which the proprietary information is part of the administrative record;

(*2*) The person from whom the information was obtained;

(*3*) A person who has been granted access to the proprietary information at issue under § 356.9; and

(*4*) A person employed by and under the direction or control of a counsel or professional, panelist, or committee member who has been issued a protective order, such as a paralegal, law clerk, or secretary if such person:

(*i*) Is not involved in competitive decision-making for a participant in the panel review or for any person that would gain competitive advantage through knowledge of the proprietary information sought; and

(*ii*) Has agreed to be bound by the terms set forth in the application for protective order by the counsel, professional, panelist, or committee member;

(B) Not use any of the proprietary information not otherwise available to the applicant for purposes other than proceedings pursuant to Article 10.12 of the Agreement;

(C) Upon completion of the panel review, or at such earlier date as may be determined by the Department, destroy and certify to the Department the destruction of all documents released under the protective order and all other documents containing the proprietary information (such as briefs, notes, or charts based on any such information received under the protective order); and

(D) Acknowledge that breach thereof may subject the signatory to sanctions under § 356.12.

(2) *Timing of application for disclosure under protective order*—(i) *Persons described in § 356.9(a) (panelists, etc.).* A

person described in §356.9(a) may file an application after a Notice of Request for Panel Review has been filed with the Secretariat.

(ii) *Persons described in §356.9(b) (counsel, etc.).* A person described in §356.9(b) may file an application at any time but not before that person files a Complaint or a Notice of Appearance.

(iii) *Persons described in §356.9(d) (Secretaries, etc.).* A person described in §356.9(d) shall file an application immediately upon assuming official responsibilities in the Secretariat.

(iv) *Persons described in §356.9 (e), (f) or (g) (designated Government officials or court reporters, etc.).* A person described in §356.9 (e), (f) or (g) shall file an application before seeking or obtaining access to proprietary information.

(3) *Filing of applications.* A person described in §356.9(a), (b), (d), (e), (f), or (g) shall file the completed application with the United States section of the Secretariat which, in turn, shall provide the application to the Department. A letter of transmittal and proposed protective order must be included with the application.

(4) *Service of applications*—(i) *Persons described in §§356.9(b) (counsel, etc.).* A person described in §356.9(b) who files an application before the expiration of the time period fixed under the Article 10.12 Binational Panel Rules for filing a Notice of Appearance in the panel review shall serve the application on each person listed on the service list in accordance with paragraphs (b)(4)(ii) and (iii) of this section. In any other case, such person shall serve the application on each participant, other than the investigating authority, in accordance with paragraphs (b)(4)(ii) and (iii).

(ii) *Method of service.* A document may be served by:

(A) Delivering a copy of the document to the service address of the participant;

(B) Sending a copy of the document to the service address of the participant by electronic means or by expedited delivery courier or expedited mail service;

(C) Personal service on the participant; or

(D) Filing the document using the United States section of the Secretariat's electronic filing platform.

(iii) *Proof and date of service.* A proof of service shall appear on, or be affixed to, the document. Where a document is served by expedited delivery courier or expedited mail service, the date of service set out in the affidavit of service or certificate of service shall be the day on which the document is consigned to the expedited delivery courier service or expedited mail service. If a document is served by electronic means, the date of service shall be the day on which the document is sent by the sender. If a document is filed using the United States section of the Secretariat's electronic filing platform, the date of service shall be the date of filing.

(5) *Release to employees of panelists, committee members, and counsel or professionals.* A person described in §356.9(c), including a paralegal, law clerk, or secretary, may be permitted access to proprietary information disclosed under protective order by the counsel, professional, panelist, or extraordinary challenge committee member who retains or employs such person, if such person has agreed to the terms of the protective order issued to the counsel, professional, panelist, or extraordinary challenge committee member, by signing and dating a completed application for protective order of the representative counsel, professional, panelist or extraordinary challenge committee member in the location indicated in that application.

(6) *Counsel or professional who retains access to proprietary information under a protective order issued during the administrative proceeding.* A person described in §356.9(b) who has been granted access to proprietary information under protective order during an administrative proceeding that resulted in a final determination that becomes the subject of panel review may, if permitted by the terms of the protective order previously issued by the Department, retain such information until the applicant receives a protective order under this part.

(c) *Issuance and service of protective orders*—(1) *Persons described in §356.9(a) (panelists, etc.).* (i) Upon receipt by the Department of an application from a person described in §356.9(a), the Department will issue a protective order

authorizing disclosure of proprietary information included in the administrative record of the final determination that is the subject of the panel review at issue. The Department shall transmit the protective order to the United States section of the Secretariat which, in turn, shall transmit the order to the applicant and serve the order on each participant, other than the investigating authority, in accordance with paragraphs (b)(4)(ii) and (iii) of this section.

(ii) [Removed]

(2) *Persons described in §§ 356.9 (b) or (c) (counsel, etc., or paralegals, etc.)*—(i) *Opportunity to object to disclosure.* The Department will not rule on an application filed by a person described in § 356.9(b) until at least ten days after the request is filed, unless there is compelling need to rule more expeditiously. Unless the Department has indicated otherwise, any person may file an objection to the application within seven days of filing of the application. Any such objection shall state the specific reasons in the view of such person why the application should not be granted. The objection shall be served on the applicant and on all persons who were served with the application. Service shall be made in accordance with paragraphs (b)(4)(ii) and (iii) of this section. Any reply to an objection will be considered if it is filed before the Department renders a decision.

(ii) *Timing of decisions on applications.* Normally, the Department will render a decision to approve or deny an application within 14 days. If any person files an objection, the Department will normally render the decision within 30 days.

(iii) *Approval of applications.* If appropriate, the Department will issue a protective order permitting the release of proprietary information to the applicant.

(iv) *Denial of applications.* If the Department denies an application, it shall issue a letter notifying the applicant of its decision and the reasons therefor.

(v) *Issuance of protective orders.* If the Department issues a protective order to a person described in § 356.9(b), that person shall immediately file the protective order with the United States section of the Secretariat and shall serve the order on each participant, other than the investigating authority, in accordance with paragraphs (b)(4)(ii) and (iii) of this section.

(3) *Persons described in § 356.9(d) or (g) (Secretaries, etc., or court reporters, etc.).* Upon receipt by the Department of an application from a person described in § 356.9(d) or (g), the Department will issue a protective order authorizing disclosure of proprietary information to the applicant. The Department shall transmit the protective order to the United States section of the Secretariat.

(4) *Persons described in § 356.9 (e) or (f) (designated Government officials).* (i) Upon receipt by the Department of an application from a person described in § 356.9(e) or (f), the Department will issue a protective order authorizing disclosure of proprietary information included in the record of the panel review at issue. The Department shall transmit the protective order to the United States section of the Secretariat which, in turn, shall transmit the order to the applicant and serve the order on each participant, other than the investigating authority, in accordance with paragraphs (b)(4)(ii) and (iii) of this section.

(ii) [Reserved]

(d) *Modification or revocation of protective orders*—(1) *Notification.* If any person believes that changed conditions of fact or law, or the public interest, may require that a protective order issued pursuant to paragraph (c) of this section be modified or revoked, in whole or in part, such person may notify the Department in writing. The notification shall state the changes desired and the changed circumstances warranting such action and shall include materials and argument in support thereof. Such notification shall be served by the person submitting it upon the person to whom the protective order was issued. Responses to the notification may be filed within 20 days after the notification is filed unless the Department indicates otherwise. The Department may also consider such action on its own initiative.

(2) *Issuance of modification or revocation.* If the Department modifies or revokes a protective order pursuant to this paragraph (d), the Department

shall transmit the modification or Notice of Revocation to the United States section of the Secretariat which, in turn, shall transmit the document to the person to whom the protective order was issued and serve the document on each participant, other than the investigating authority, in accordance with paragraphs (b)(4)(ii) and (iii) of this section.

[59 FR 229, Jan. 3, 1994, as amended at 86 FR 70049, Dec. 9, 2021]

§ 356.11 Procedures for obtaining access to privileged information.

(a) *Persons who may apply for access to privileged information under protective order and filing of applications*—(1) *Panelists.* (i) If a panel decides that *in camera* examination of a document containing privileged information in an administrative record is necessary in order for the panel to determine whether the document, or portions thereof, should be disclosed under a Protective Order for Privileged Information, each panelist who is to conduct the *in camera* review, pursuant to the rules of procedure adopted by the United States and the free trade area countries to implement Article 10.12 of the Agreement, shall submit an application for disclosure of the privileged information under Protective Order for Privileged Information to the United States section of the Secretariat for filing with the Department; and

(ii) If a panel orders disclosure of a document containing privileged information, any panelist who has not filed an application pursuant to paragraph (a)(1)(i) of this section shall submit an application for disclosure of the privileged information under a Protective Order for Privileged Information to the United States section of the Secretariat for filing with the Department.

(2) *Designated officials of the United States Government.* Where, in the course of a panel review, the panel has reviewed privileged information under a Protective Order for Privileged Information, and the issue to which such information pertains is relevant to the evaluation of whether the United States should request an extraordinary challenge committee, each official of the United States Government (other than an officer or employee of the investigating authority that issued the final determination subject to review) whom the United States Trade Representative informs the Department requires access for the purpose of such evaluation shall file an application for a Protective Order for Privileged Information with the United States section of the Secretariat which, in turn, shall submit the application to the Department.

(3) *Designated officials of the government of a FTA country.* Where, in the course of a panel review, the panel has reviewed privileged information under a Protective Order for Privileged Information, and the issue to which such information pertains is relevant to the evaluation of whether the Government of an involved FTA country should request an extraordinary challenge committee, each official of the Government of the involved FTA country whom an authorized agency of the involved FTA country informs the Department requires access for the purpose of such evaluation shall file an application for a Protective Order for Privileged Information with the United States section of the Secretariat which, in turn, shall submit the application to the Department.

(4) *Members of an extraordinary challenge committee.* Where an extraordinary challenge record contains privileged information and a Protective Order for Privileged Information was issued to counsel or professionals representing participants in the panel review at issue, each member of the extraordinary challenge committee shall submit an application for a Protective Order for Privileged Information to the United States section of the Secretariat for filing with the Department.

(5) *Counsel or a professional under the direction or control of counsel.* If the panel decides, in accordance with the Article 10.12 Binational Panel Rules, that disclosure of a document containing privileged information is appropriate, a counsel or a professional under the direction or control of counsel identified in such a decision as entitled to release of information under a Protective Order for Privileged Information shall submit an application for a Protective Order for Privileged Information. Any such person shall:

(i) File the application with the United States section of the Secretariat which, in turn, shall submit the application to the Department; and

(ii) As soon as the deadline fixed under the Article 10.12 Binational Panel Rules for filing a Notice of Appearance in the panel review has passed, shall serve the application on each participant, other than the investigating authority, in accordance with paragraphs (b)(4)(ii) and (iii) of this section.

(6) *Other designated persons.* If the panel decides, in accordance with the Article 10.12 Binational Panel Rules, that disclosure of a document containing privileged information is appropriate, any person identified in such a decision as entitled to release of information under a Protective Order for Privileged Information, *e.g.,* a Secretary, Secretariat staff, court reporters, interpreters and translators, or a member of the staff of a panelist or extraordinary challenge committee member, shall submit an application for release under Protective Order for Privileged Information to the United States section of the Secretariat for filing with the Department.

(b) *Contents of applications for release under protective order for privileged information.* (1) The Department has adopted application forms for disclosure of privileged information which are available from the United States section of the Secretariat and the Central Records Unit, Room B8024, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230. These forms may be amended from time to time.

(2) Such forms require the applicant for release of privileged information under Protective Order for Privileged Information to submit a personal sworn statement stating, in addition to such other conditions as the Department may require, that the applicant shall:

(i) Not disclose any privileged information obtained under protective order to any person other than:

(A) An official of the Department involved in the particular panel review in which the privileged information is part of the record;

(B) A person who has furnished a similar application and who has been issued a Protective Order for Privileged Information concerning the privileged information at issue; and

(C) A person retained or employed by counsel, a professional, a panelist or extraordinary challenge committee member who has been issued a Protective Order for Privileged Information, such as a paralegal, law clerk, or secretary, if such person has agreed to be bound by the terms set forth in the application for Protective Order for Privileged Information of the counsel, professional, panelist or extraordinary challenge committee member by signing and dating the completed application at the location indicated in such application;

(ii) Use such information solely for purposes of the proceedings under Article 10.12 of the Agreement;

(iii) Upon completion of the panel review, or at such earlier date as may be determined by the Department, destroy and certify to the Department the destruction of all documents released under the Protective Order for Privileged Information and all other documents containing the privileged information (such as briefs, notes, or charts based on any such information received under the Protective Order for Privileged Information); and

(iv) Acknowledge that breach thereof may subject the signatory to sanctions under §§ 356.12 and 356.30.

(c) *Issuance of protective orders for privileged information*—(1) *Panelists, designated government officials and members of an extraordinary challenge committee.* (i) Upon receipt of an application for protective order under this section from a panelist, designated government official or member of an extraordinary challenge committee, the Department shall issue a Protective Order for Privileged Information. The Department shall transmit the protective order to the United States section of the Secretariat which, in turn, shall transmit the order to the applicant and serve the order on each participant, other than the investigating authority, in accordance with §§ 356.10(b)(4)(ii) and (iii).

(ii) [Reserved]

(2) *Counsel or a professional under the direction or control of counsel.* Upon receipt of an application for protective order under this section from a counsel or a professional under the direction or control of counsel, the Department shall issue a Protective Order for Privileged Information. If the Department issues a protective order to such person, that person shall immediately file the protective order with the United States section of the Secretariat and shall serve the order on each participant, other than the investigating authority, in accordance with § 356.10(b)(4)(ii) and (iii).

(3) *Other designated persons described in paragraph (a)(6) of this section.* Upon receipt of an application for protective order under this section from a designated person described in paragraph (a)(6) of this section, the Department shall issue a Protective Order for Privileged Information. The Department shall transmit the protective order to the United States section of the Secretariat.

(d) *Modification or revocation of protective order for privileged information*—(1) *Notification.* If any person believes that changed conditions of fact or law, or the public interest, may require that a Protective Order for Privileged Information be modified or revoked, in whole or in part, such person may notify the Department in writing. The notification shall state the changes desired and the changed circumstances warranting such action and shall include materials and argument in support thereof. Such notification shall be served by the person submitting it upon the person to whom the Protective Order for Privileged Information was issued. Responses to the notification may be filed within 20 days after the notification is filed unless the Department indicates otherwise. The Department may also consider such action on its own initiative.

(2) *Issuance of modification or revocation.* If the Department modifies or revokes a Protective Order for Privileged Information pursuant to this paragraph (d), the Department shall transmit the modification or Notice of Revocation to the United States section of the Secretariat which, in turn, shall transmit the document to the person to whom the protective order was issued and serve the document on each participant, other than the investigating authority, in accordance with § 356.10(b)(4)(ii) and (iii).

[59 FR 229, Jan. 3, 1994, as amended at 86 FR 70050, Dec. 9, 2021]

Subpart D—Violation of a Protective Order or a Disclosure Undertaking

§ 356.12 Sanctions for violation of a protective order or disclosure undertaking.

(a) A person, other than a person exempted from this part by the provisions of section 777f(f)(4) of the Act (19 U.S.C. 1677f(f)(4)), determined under this part to have violated a protective order or a disclosure undertaking may be subjected to any or all or the following sanctions:

(1) Liable to the United States for a civil penalty not to exceed $100,000 for each violation;

(2) Barred from appearing before the Department to represent another for a designated time period from the date of publication in an official publication of a notice that a violation has been determined to exist;

(3) Denied access to proprietary information for a designated time period from the date of publication in an official publication of a notice that a violation has been determined to exist;

(4) Other appropriate administrative sanctions, including striking from the record of the panel review any information or argument submitted by, or on behalf of, the violating party or the party represented by the violating party; terminating any proceeding then in progress; or revoking any order then in effect; and

(5) Required to destroy and certify to the Department the destruction of all material previously provided by the investigating authority, and all other materials containing the proprietary information, such as briefs, notes, or charts based on any such information received under a protective order or a disclosure undertaking.

(b)(1) The firm of which a person determined to have violated a protective order or a disclosure undertaking is a partner, associate, or employee; any

partner, associate, employer, or employee of such person; and any person represented by such person may be barred from appearing before the Department for a designated time period from the date of publication in an official publication of notice that a violation has been determined to exist or may be subjected to the sanctions set forth in paragraph (a) of this section, as appropriate.

(2) Each person against whom sanctions are proposed under paragraph (b)(1) of this section is entitled to all the administrative rights set forth in this subpart separately and apart from rights provided to a person subject to sanctions under paragraph (a) of this section, including the right to a charging letter, right to representation, and right to a hearing, but subject to joinder or consolidation by the administrative law judge under § 356.23(b).

[59 FR 229, Jan. 3, 1994, as amended at 86 FR 70052, Dec. 9, 2021]

§ 356.13 Suspension of rules.

Upon request by the Deputy Under Secretary, a charged or affected party, or the APO Sanctions Board, the administrative law judge may modify or waive any rule in this subpart upon determining that no party will be unduly prejudiced and the ends of justice will thereby be served and upon notice to all parties.

§ 356.14 Report of violation and investigation.

(a) An employee of the Department or any other person who has information indicating that the terms of a protective order or a disclosure undertaking have been violated will provide the information to a Director or the Chief Counsel.

(b) Upon receiving information which indicates that a person may have violated the terms of a protective order or an undertaking, the Director will conduct an investigation concerning whether there was a violation of a protective order or a disclosure undertaking, and who was responsible for the violation, if any. For purposes of this subpart, the Director will be supervised by the Deputy Under Secretary with guidance from the Chief Counsel. The Director will conduct an investigation only if the information is received within 30 days after the alleged violation occurred or, as determined by the Director, could have been discovered through the exercise of reasonable and ordinary care.

(c) The Director will provide a report of the investigation to the Deputy Under Secretary, after review by the Chief Counsel, no later than 180 days after receiving information concerning a violation. Upon the Director's request, and if extraordinary circumstances exist, the Deputy Under Secretary may grant the Director up to an additional 180 days to conduct the investigation and submit the report.

(d) The following examples of actions that constitute violations of an administrative protective order shall serve as guidelines to each person subject to a protective order. These examples do not represent an exhaustive list. Evidence that one of the acts described in the guidelines has been committed, however, shall be considered by the Director as reasonable cause to believe a person has violated a protective order within the meaning of § 356.15.

(1) Disclosure of proprietary information to any person not granted access to that information by protective order, including an official of the Department or member of the Secretariat staff not directly involved with the panel review pursuant to which the proprietary information was released, an employee of any other United States, foreign government or international agency, or a member of the United States Congress, the Canadian Parliament, or the Mexican Congress.

(2) Failure to follow the detailed procedures outlined in the protective order for safeguarding proprietary information, including requiring all employees who obtain access to proprietary information (under the terms of a protective order granted their employer) to sign and date a copy of that protective order.

(3) Loss of proprietary information.

(4) Failure to destroy and certify to the Department the destruction of all copies of the original documents and all notes, memoranda, and submissions containing proprietary information at the close of the proceeding for which the data were obtained by burning or

shredding of the documents or by erasing electronic memory, computer disk, or tape memory, as set forth in the protective order.

(5) Failure to delete proprietary information from the public version of a brief or other correspondence filed with the Secretariat.

(6) Disclosure of proprietary information during a public hearing.

(e) Each day of a continuing violation shall constitute a separate violation.

[59 FR 229, Jan. 3, 1994, as amended at 86 FR 70052, Dec. 9, 2021]

§ 356.15 Initiation of proceedings.

(a) If the Deputy Under Secretary concludes, after an investigation and report by the Director under § 356.14(c) and consultation with the Chief Counsel, that there is reasonable cause to believe that a person has violated a protective order or a disclosure undertaking and that sanctions are appropriate for the violation, the Deputy Under Secretary will, at the Deputy Under Secretary's discretion, either initiate a proceeding under this subpart by issuing a charging letter as set forth in § 356.16 or request that the authorized agency of the involved FTA country initiate a proceeding by issuing a request to charge as set forth in § 356.17. In determining whether sanctions are appropriate and, if so, what sanctions to impose, the Deputy Under Secretary will consider the nature of the violation, the resulting harm, and other relevant circumstances of the case. The Deputy Under Secretary will decide whether to initiate a proceeding no later than 60 days after receiving a report of the investigation.

(b) If the Department receives a request to charge from an authorized agency of a FTA country, the Deputy Under Secretary will promptly initiate proceedings under this part by issuing a charging letter as set forth in § 356.16.

§ 356.16 Charging letter.

(a) *Contents of letter*. The Deputy Under Secretary will initiate proceedings by issuing a charging letter to each charged party and affected party which includes:

(1) A statement of the allegation that a protective order or a disclosure undertaking has been violated and the basis thereof;

(2) A statement of the proposed sanctions;

(3) A statement that the charged or affected party is entitled to review the documents or other physical evidence upon which the charge is based and the method for requesting access to, or copies of, such documents;

(4) A statement that the charged or affected party is entitled to a hearing before an administrative law judge if requested within 30 days of the date of service of the charging letter and the procedure for requesting a hearing, including the name, address, and telephone number of the person to contact if there are further questions;

(5) A statement that the charged or affected party has a right, if a hearing is not requested, to submit documentary evidence to the Deputy Under Secretary and an explanation of the method for submitting evidence and the date by which it must be received; and

(6) A statement that the charged or affected party has a right to retain counsel at the party's own expense for purposes of representation.

(b) *Settlement and amendment of the charging letter*. The Deputy Under Secretary may amend, supplement, or withdraw the charging letter at any time with the approval of an administrative law judge if the interests of justice would thereby be served. If a hearing has not been requested, the Deputy Under Secretary will ask the Under Secretary to appoint an administrative law judge to make this determination. If a charging letter is withdrawn after a request for a hearing, the administrative law judge will determine whether the withdrawal will bar the Deputy Under Secretary from seeking sanctions at a later date for the same alleged violation. If there has been no request for a hearing, or if supporting information has not been submitted under § 356.28, the withdrawal will not bar future actions on the same alleged violation. The Deputy Under Secretary and a charged or affected party may settle a charge brought under this subpart by mutual agreement at any time

after service of the charging letter; approval of the administrative law judge or the APO Sanctions Board is not necessary.

(c) *Service of charging letter on a resident of the United States.* (1) Service of a charging letter on a United States resident will be made by:

(i) Mailing a copy by registered or certified mail addressed to the charged or affected party at the party's last known address;

(ii) Leaving a copy with the charged or affected party or with an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service for the party; or

(iii) Leaving a copy with a person of suitable age and discretion who resides at the party's last known dwelling.

(2) Service made in the manner described in paragraph (c)(1) (ii) or (iii) of this section shall be evidenced by a certificate of service signed by the person making such service, stating the method of service and the identity of the person with whom the charging letter was left.

(d) *Service of charging letter on a nonresident.* If applicable laws or intergovernmental agreements or understandings make the methods of service set forth in paragraph (c) of this section inappropriate or ineffective, service of the charging letter on a person who is not a resident of the United States may be made by any method that is permitted by the country in which the person resides and that, in the opinion of the Deputy Under Secretary, satisfies due process requirements under United States law with respect to notice in administrative proceedings.

§ 356.17 Request to charge.

Upon deciding to initiate a proceeding pursuant to § 356.15, the Deputy Under Secretary will request the authorized agency of the involved FTA country to initiate a proceeding for imposing sanctions for violation of a protective order or a disclosure undertaking by issuing a letter of request to charge that includes a statement of the allegation that a protective order or a disclosure undertaking has been violated and the basis thereof.

§ 356.18 Interim sanctions.

(a) If the Deputy Under Secretary concludes, after issuing a charging letter under § 356.16 and before a final decision is rendered, that interim sanctions are necessary to protect the interests of the Department, an authorized agency of the involved FTA country, or others, including the protection of proprietary information, the Deputy Under Secretary may petition an administrative law judge to impose such sanctions.

(b) The administrative law judge may impose interim sanctions against a person upon determining that:

(1) There is probable cause to believe that there was a violation of a protective order or a disclosure undertaking and the Department is likely to prevail in obtaining sanctions under this subpart;

(2) The Department, authorized agency of the involved FTA country, or others are likely to suffer irreparable harm if the interim sanctions are not imposed; and

(3) The interim sanctions are a reasonable means for protecting the rights of the Department, authorized agency of the involved FTA country, or others while preserving to the greatest extent possible the rights of the person against whom the interim sanctions are proposed.

(c) Interim sanctions which may be imposed include any sanctions that are necessary to protect the rights of the Department, authorized agency of the involved FTA country, or others, including, but not limited to:

(1) Denying a person further access to proprietary information;

(2) Barring a person from representing another person before the Department;

(3) Barring a person from appearing before the Department; and

(4) Requiring the person to destroy and certify to the Department the destruction of all material previously provided by the Department or the investigating authority of the involved FTA country, and all other materials containing the proprietary information, such as briefs, notes, or charts based on any such information received under a protective order or disclosure undertaking.

(d) The Deputy Under Secretary will notify the person against whom interim sanctions are sought of the request for interim sanctions and provide to that person the material submitted to the administrative law judge to support the request. The notice will include a reference to the procedures of this section.

(e) A person against whom interim sanctions are proposed has a right to oppose the request through submission of material to the administrative law judge. The administrative law judge has discretion to permit oral presentations and to allow further submissions.

(f) The administrative law judge will notify the parties of the decision on interim sanctions and the basis therefor within five days of the conclusion of oral presentations or the date of final written submissions.

(g) If interim sanctions have been imposed, the investigation and any proceedings under this subpart will be conducted on an expedited basis.

(h) An order imposing interim sanctions may be revoked at any time by the administrative law judge and expires automatically upon the issuance of a final order.

(i) The administrative law judge may reconsider imposition of interim sanctions on the basis of new and material evidence or other good cause shown. The Deputy Under Secretary or a person against whom interim sanctions have been imposed may appeal a decision on interim sanctions to the APO Sanctions Board, if such an appeal is certified by the administrative law judge as necessary to prevent undue harm to the Department or authorized agency of the involved FTA country, a person against whom interim sanctions have been imposed or others, or is otherwise in the interests of justice. Interim sanctions which have been imposed remain in effect while an appeal is pending, unless the administrative law judge determines otherwise.

(j) The Deputy Under Secretary may request an administrative law judge to impose emergency interim sanctions to preserve the status quo. Emergency interim sanctions may last no longer than 48 hours, excluding weekends and holidays. The person against whom such emergency interim sanctions are proposed need not be given prior notice or an opportunity to oppose the request for sanctions. The administrative law judge may impose emergency interim sanctions upon determining that the Department or authorized agency of the involved FTA country is, or others are, likely to suffer irreparable harm if such sanctions are not imposed and that the interests of justice would thereby be served. The administrative law judge will promptly notify a person against whom emergency sanctions have been imposed of the sanctions and their duration.

(k) If a hearing has not been requested, the Deputy Under Secretary will request that the Under Secretary appoint an administrative law judge for making determinations under this section.

(l) The Deputy Under Secretary will notify the Secretariat concerning the imposition or revocation of interim sanctions or emergency interim sanctions.

[59 FR 229, Jan. 3, 1994, as amended at 86 FR 70052, Dec. 9, 2021]

§ 356.19 Request for a hearing.

(a) Any party may request a hearing by submitting a written request to the Under Secretary within 30 days after the date of service of the charging letter. However, the Deputy Under Secretary may request a hearing only if the interests of justice would thereby be served.

(b) Upon timely receipt of a request for a hearing, the Under Secretary will appoint an administrative law judge to conduct the hearing and render an initial decision.

§ 356.20 Discovery.

(a) *Voluntary discovery.* All parties are encouraged to engage in voluntary discovery procedures regarding any matter, not privileged, which is relevant to the subject matter of the pending sanctions proceeding.

(b) *Limitations on discovery.* The administrative law judge shall place such limits upon the kind or amount of discovery to be had or the period of time during which discovery may be carried out as shall be consistent with the time limitations set forth in this Part.

(c) *Interrogatories and requests for admissions or production of documents.* A party may serve on any other party interrogatories, requests for admissions, or requests for production of documents for inspection and copying, and the party may then apply to the administrative law judge for such enforcement or protective order as that party deems warranted concerning such discovery. The party will serve a discovery request at least 20 days before the scheduled date of a hearing, if a hearing has been requested and scheduled, unless the administrative law judge specifies a shorter time period. Copies of interrogatories, requests for admissions, and requests for production of documents and responses thereto will be served on all parties. Matters of fact or law of which admission is requested will be deemed admitted unless, within a period designated in the request (at least 10 days after the date of service of the request, or within such further time as the administrative law judge may allow), the party to whom the request is directed serves upon the requesting party a sworn statement either admitting or denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party cannot truthfully either admit or deny such matters.

(d) *Depositions.* Upon application of a party and for good cause shown, the administrative law judge may order the taking of the testimony of any person who is a party, or under the control or authority of a party, by deposition and the production of specified documents or materials by the person at the deposition. The application shall state the purpose of the deposition and shall set forth the facts sought to be established through the deposition.

(e) *Supplementation of responses.* A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the party's response to include information thereafter acquired, except as follows:

(1) A party is under a duty to seasonably supplement the party's response with respect to any question directly addressed to:

(i) The identity and location of persons having knowledge of discoverable matters; and

(ii) The identity of each person expected to be called as an expert witness at a hearing, the subject matter on which the witness is expected to testify, and the substance of the testimony.

(2) A party is under a duty to seasonably amend a prior response if the party obtains information upon the basis of which the party:

(i) Knows the response was incorrect when made; or

(ii) Knows that the response, though correct when made, is no longer true, and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the administrative law judge, agreement of the parties, or at any time prior to a hearing through new requests for supplementation of prior responses.

(f) *Enforcement.* The administrative law judge may order a party to answer designated questions, to produce specified documents or items, or to take any other action in response to a proper discovery request. If a party does not comply with such an order, the administrative law judge may make any determination or enter any order in the proceedings as the administrative law judge deems reasonable and appropriate. The administrative law judge may strike related charges or defenses in whole or in part, or may take particular facts relating to the discovery request to which the party failed or refused to respond as being established for purpose of the proceeding in accordance with the contentions of the party seeking discovery. In issuing a discovery order, the administrative law judge will consider the necessity to protect proprietary information and will not order the release of information in circumstances where it is reasonable to conclude that such release will lead to unauthorized dissemination of such information.

§ 356.21 Subpoenas.

(a) *Application for issuance of a subpoena.* An application for issuance of a subpoena requiring a person to appear

and depose or testify at the taking of a deposition or at a hearing shall be made to the administrative law judge. An application for issuance of a subpoena requiring a person to appear and depose or testify and to produce specified documents, papers, books, or other physical exhibits at the taking of a deposition, at a prehearing conference, at a hearing, or under any other circumstances, shall be made in writing to the administrative law judge and shall specify the material to be produced as precisely as possible, showing the general relevancy of the material and the reasonableness of the scope of the subpoena.

(b) *Use of subpoena for discovery.* Subpoenas may be used by any party for purposes of discovery or for obtaining documents, papers, books, or other physical exhibits for use in evidence, or for both purposes. When used for discovery purposes, a subpoena may require a person to produce and permit the inspection and copying of nonprivileged documents, papers, books, or other physical exhibits which constitute or contain evidence relevant to the subject matter involved and which are in the possession, custody, or control of such person.

(c) *Application for subpoenas for nonparty department records or personnel or for records or personnel of other Government agencies.* (1) An application for issuance of a subpoena requiring the production of nonparty documents, papers, books, physical exhibits, or other material in the records of the Department, or requiring the appearance of an official or employee of the Department, or requiring the production of records or personnel of other Government agencies shall specify as precisely as possible the material to be produced, the nature of the information to be disclosed, or the expected testimony of the official or employee, and shall contain a statement showing the general relevancy of the material, information, or testimony and the reasonableness of the scope of the application, together with a showing that such material, information, or testimony or their substantial equivalent could not be obtained without undue hardship by alternative means.

(2) Such applications shall be ruled upon by the administrative law judge. To the extent that the motion is granted, the administrative law judge shall provide such terms and conditions for the production of the material, the disclosure of the information, or the appearance of the official or employee as may appear necessary and appropriate for the protection of the public interest.

(3) No application for a subpoena for production of documents grounded upon the Freedom of Information Act (5 U.S.C. 552) shall be entertained by the administrative law judge.

(d) *Motion to limit or quash.* Any motion to limit or quash a subpoena shall be filed within 10 days after service thereof, or within such other time as the administrative law judge may allow.

(e) *Ex parte rulings on applications for subpoenas.* Applications for the issuance of subpoenas pursuant to this section may be made *ex parte*, and, if so made, such applications and rulings thereon shall remain *ex parte* unless otherwise ordered by the administrative law judge.

(f) *Role of the Under Secretary.* If a hearing has not been requested, the party seeking enforcement will ask the Under Secretary to appoint an administrative law judge to rule on applications for issuance of a subpoena under this section.

§ 356.22 Prehearing conference.

(a)(1) If an administrative hearing has been requested, the administrative law judge will direct the parties to attend a prehearing conference to consider:

(i) Simplification of issues;

(ii) Obtaining stipulations of fact and of documents to avoid unnecessary proof;

(iii) Settlement of the matter;

(iv) Discovery; and

(v) Such other matters as may expedite the disposition of the proceedings.

(2) Any relevant and significant stipulations or admissions will be incorporated into the initial decision.

(b) If a prehearing conference is impractical, the administrative law judge will direct the parties to correspond

with each other or to confer by telephone or otherwise to achieve the purposes of such a conference.

§ 356.23 Hearing.

(a) *Scheduling of hearing.* The administrative law judge will schedule the hearing at a reasonable time, date, and place, which will be in Washington, DC, unless the administrative law judge determines otherwise based upon good cause shown, that another location would better serve the interests of justice. In setting the date, the administrative law judge will give due regard to the need for the parties adequately to prepare for the hearing and the importance of expeditiously resolving the matter.

(b) *Joinder or consolidation.* The administrative law judge may order joinder or consolidation if sanctions are proposed against more than one party or if violations of more than one protective order or disclosure undertaking are alleged if to do so would expedite processing of the cases and not adversely affect the interests of the parties.

(c) *Hearing procedures.* Hearings will be conducted in a fair and impartial manner by the administrative law judge, who may limit attendance at any hearing or portion thereof if necessary or advisable in order to protect proprietary information from improper disclosure. The rules of evidence prevailing in courts of law shall not apply, and all evidentiary material the administrative law judge determines to be relevant and material to the proceeding and not unduly repetitious may be received into evidence and given appropriate weight. The administrative law judge may make such orders and determinations regarding the admissibility of evidence, conduct of examination and cross-examination, and similar matters as are necessary or appropriate to ensure orderliness in the proceedings. The administrative law judge will ensure that a record of the hearing will be taken by reporter or by electronic recording, and will order such part of the record to be sealed as is necessary to protect proprietary information.

(d) *Rights of parties.* At a hearing each party shall have the right to:

(1) Introduce and examine witnesses and submit physical evidence;

(2) Confront and cross-examine adverse witnesses;

(3) Present oral argument; and

(4) Receive a transcript or recording of the proceedings, upon request, subject to the administrative law judge's orders regarding sealing the record.

(e) *Representation.* Each charged or affected party has a right to represent himself or herself or to retain private counsel for that purpose. The Chief Counsel will represent the Department, unless the General Counsel of the Department determines otherwise. The administrative law judge may disallow a representative if such representation constitutes a conflict of interest or is otherwise not in the interests of justice and may debar a representative for contumacious conduct relating to the proceedings.

(f) *Ex parte communications.* The parties and their representatives may not make any *ex parte* communications to the administrative law judge concerning the merits of the allegations or any matters at issue, except as provided in § 356.18(j) regarding emergency interim sanctions.

§ 356.24 Proceeding without a hearing.

If no party has requested a hearing, the Deputy Under Secretary, within 40 days after the date of service of a charging letter, will submit for inclusion into the record and provide each charged or affected party information supporting the allegations in the charging letter. Each charged or affected party has the right to file a written response to the information and supporting documentation within 30 days after the date of service of the information provided by the Deputy Under Secretary unless the Deputy Under Secretary alters the time period for good cause. The Deputy Under Secretary may allow the parties to submit further information and argument.

§ 356.25 Witnesses.

Witnesses summoned before the Department shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

§ 356.26 Initial decision.

(a) *Initial decision.* The administrative law judge, if a hearing was requested, or the Deputy Under Secretary will submit an initial decision to the APO Sanctions Board, providing copies to the parties. The administrative law judge or the Deputy Under Secretary will ordinarily issue the decision within 20 days of the conclusion of the hearing, if one was held, or within 15 days of the date of service of final written submissions. The initial decision will be based solely on evidence received into the record and the pleadings of the parties.

(b) *Findings and conclusions.* The initial decision will state findings and conclusions as to whether a person has violated a protective order or a disclosure undertaking; the basis for those findings and conclusions; and whether the sanctions proposed in the charging letter, or lesser included sanctions, should be imposed against the charged or affected party. The administrative law judge or the Deputy Under Secretary may impose sanctions only upon determining that the preponderance of the evidence supports a finding of violation of a protective order or a disclosure undertaking and that the sanctions are warranted against the charged or affected party.

(c) *Finality of decision.* If the APO Sanctions Board has not issued a decision on the matter within 60 days after issuance of the initial decision, the initial decision becomes the final decision of the Department.

§ 356.27 Final decision.

(a) *APO Sanctions Board.* Upon request of a party, the initial decision will be reviewed by the members of the APO Sanctions Board. The Board consists of the Under Secretary for International Trade, who shall serve as Chairperson, the Under Secretary for Economic Affairs, and the General Counsel.

(b) *Comments on initial decision.* Within 30 days after issuance of the initial decision, a party may submit written comments to the APO Sanctions Board on the initial decision, which the Board will consider when reviewing the initial decision. The parties have no right to an oral presentation, although the Board may allow oral argument in its discretion.

(c) *Final decision by the APO Sanctions Board.* Within 60 days but not sooner than 30 days after issuance of an initial decision, the APO Sanctions Board may issue a final decision which adopts the initial decision in its entirety; differs in whole or in part from the initial decision, including the imposition of lesser included sanctions; or remands the matter to the administrative law judge or the Deputy Under Secretary for further consideration. The only sanctions that the Board can impose are those sanctions proposed in the charging letter or lesser included sanctions.

(d)

(d) *Contents of final decision.* If the final decision of the APO Sanctions Board does not remand the matter and differs from the initial decision, it will state findings and conclusions which differ from the initial decision, if any, the basis for those findings and conclusions, and the sanctions which are to be imposed, to the extent they differ from the sanctions in the initial decision.

(e) *Public notice of sanctions.* If the final decision is that there has been a violation of a protective order or a disclosure undertaking and that sanctions are to be imposed, notice of the decision will be published in the FEDERAL REGISTER and forwarded to the United States section of the Secretariat. Such publication will be no sooner than 30 days after issuance of a final decision or after a motion to reconsider has been denied, if such a motion was filed. If the final decision is made in a proceeding based upon a request to charge by an authorized agency of an FTA country, the decision will be forwarded to the Secretariat of the involved FTA country for transmittal to the authorized agency of the FTA country for publication in the official publication or other appropriate action. The Deputy Under Secretary will also provide such information to the ethics panel or other disciplinary body of the appropriate bar associations or other professional associations whenever the Deputy Under Secretary subjects a charged or affected party to a sanction under § 356.12(a)(2) and to any Federal agency

likely to have an interest in the matter and will cooperate in any disciplinary actions by any association or agency.

[59 FR 229, Jan. 3, 1994, as amended at 86 FR 70051, Dec. 9, 2021]

§ 356.28 Reconsideration.

Any party may file a motion for reconsideration with the APO Sanctions Board. The party must state with particularity the grounds for the motion, including any facts or points of law which the party claims the APO Sanctions Board has overlooked or misapplied. The party may file the motion within 30 days of the issuance of the final decision or the adoption of the initial decision as the final decision, except that if the motion is based on the discovery of new and material evidence which was not known, and could not reasonably have been discovered through due diligence prior to the close of the record, the party shall file the motion within 15 days of the discovery of the new and material evidence. The party shall provide a copy of the motion to all other parties. Opposing parties may file a response within 30 days of the date of service of the motion. The response shall be considered as part of the record. The parties have no right to an oral presentation on a motion for reconsideration, but the Board may permit oral argument at its discretion. If the motion to reconsider is granted, the Board will review the record and affirm, modify, or reverse the original decision or remand the matter for further consideration to an administrative law judge or the Deputy Under Secretary, as warranted.

§ 356.29 Confidentiality.

(a) All proceedings involving allegations of a violation of a protective order or a disclosure undertaking shall be kept confidential until such time as the Department makes a final decision under these regulations, which is no longer subject to reconsideration, imposing a sanction.

(b) The charged party or counsel for the charged party will be, to the extent possible, granted access to proprietary information in these proceedings, as necessary, under administrative protective order, consistent with the provisions of § 356.10.

§ 356.30 Sanctions for violations of a protective order for privileged information.

The provisions of this subpart shall apply to persons who are alleged to have violated a Protective Order for Privileged Information.

PART 358—SUPPLIES FOR USE IN EMERGENCY RELIEF WORK

Sec.

AUTHORITY: 19 U.S.C. 1318(a).

SOURCE: 71 FR 63234, Oct. 30, 2006, unless otherwise noted.

§ 358.101 Scope.

This part sets forth the procedures for importation of supplies for use in emergency relief work free of antidumping and countervailing duties, as authorized under section 318(a) of the Act.

§ 358.102 Definitions.

For purposes of this part:

Act means the Tariff Act of 1930, as amended.

CBP means the Bureau of Customs and Border Protection of the United States Department of Homeland Security.

Department means the United States Department of Commerce.

Order means an order issued by the Secretary under section 303, section 706, or section 736 of the Act.

Secretary means the Secretary of Commerce or a designee.

Supplies for use in emergency relief work means food, clothing, and medical, surgical, and other supplies for use in emergency relief work.

§ 358.103 Importation of supplies.

(a) Where the President, acting under section 318 of the Act, authorizes the Secretary to permit the importation of supplies for use in emergency relief work free of antidumping and countervailing duties, the Secretary shall consider requests for such importation under the following conditions:

(1) Before importation, a written request shall be submitted to the Secretary by the person in charge of sending the subject merchandise from the foreign country or by the person for whose account it will be brought into the United States. Three copies of the request should be submitted to the Secretary of Commerce, Attention: Enforcement and Compliance, Central Records Unit, Room 1870, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

(2) The request shall state the Department antidumping and/or countervailing duty order case number, the producer of the merchandise, a detailed description of the merchandise, the current HTS number, the price in the United States, the quantity, the proposed date of entry, the proposed port of entry, the mode of transport, the person for whose account the merchandise will be brought into the United States, the destination, the use to be made of the merchandise at the designated destination, and any other information the person would like the Secretary to consider.

(b) If the Secretary determines to permit duty-free importation of particular merchandise for use in emergency relief work, the Secretary will notify the person who submitted the request, instruct CBP to allow entry of the merchandise identified in the request submitted under paragraph (a) without regard to antidumping and countervailing duties, and post notification of the determination on the Department's website.

(c) Any subject merchandise entered under paragraph (b) of this section must enter the United States normally within 60 days after the date on which the Secretary notifies the person who submitted the request or the merchandise will be subject to antidumping and/or countervailing duties, as applicable.

(d) Any subject merchandise entered under paragraph (b) of this section which is used in the United States other than for a purpose contemplated for it by section 318(a) of the Act may be subject to seizure or other penalty, including under section 592 of the Act.

(e) Any subject merchandise entered under paragraph (b) of this section is subject to the Department's reporting requirements in its conduct of an antidumping and/or countervailing duty administrative or new shipper review, as applicable.

(f) Any subject merchandise entered under paragraph (b) of this section will be excluded from:

(1) The calculation of assessment and cash deposit rates in an administrative or new shipper review under section 751(a) of the Act;

(2) ''Commercial quantities'' under 19 CFR 351.222; and

(3) The quantity allowed by, or revised price requirements established pursuant to, a suspension agreement under section 704 or section 734 of the Act, as applicable.

[71 FR 63234, Oct. 30, 2006, as amended at 78 FR 77354, Dec. 23, 2013]

§ 358.104 Report.

The Secretary will review and issue a report on the first five years of the operation of Part 358. The report will consider the impact of determinations to permit importation of particular merchandise for use in emergency relief work under this Part, on U.S. parties injured by dumped and/or subsidized imports.

PART 360—STEEL IMPORT MONITORING AND ANALYSIS SYSTEM

Sec.

AUTHORITY: 13 U.S.C. 301(a) and 302.

SOURCE: 70 FR 12136, Mar. 11, 2005, unless otherwise noted.

§ 360.101 Steel import licensing.

(a) *In general.* (1) All imports of basic steel mill products are subject to the import licensing requirements. These products are listed on the Steel Import Monitoring and Analysis (SIMA) system website (*https://www.trade.gov/steel*). Registered users will be able to

obtain steel import licenses on the SIMA system website. This website contains two sections related to import licensing—the online registration system and the automatic steel import license issuance system. Information gathered from these licenses will be aggregated and posted on the import monitoring section of the SIMA system website.

(2) A single license may cover multiple products as long as certain information on the license (*e.g.*, importer, exporter, manufacturer and country of origin) remains the same. However, separate licenses for steel entered under a single entry will be required if the information differs. As a result, a single Customs entry may require more than one steel import license. The applicable license(s) must cover the total quantity of steel entered and should cover the same information provided on the Customs entry summary.

(b) *Entries for consumption*. All entries for consumption of covered steel products, other than the exception for ''informal entries'' listed in paragraph (d) of this section, will require an import license prior to the filing of Customs entry summary documents. The license number(s) must be reported on the entry summary (Customs Form 7501) at the time of filing. There is no requirement to present physical copies of the license forms at the time of entry summary. However, copies must be maintained in accordance with Customs' normal requirements. Entry summaries submitted without the required license number(s) will be considered incomplete and will be subject to liquidated damages for violation of the bond condition requiring timely completion of entry.

(c) *Foreign Trade Zone entries.* All shipments of covered steel products into a foreign trade zones (FTZ), known as FTZ admissions, will require an import license prior to the filing of FTZ admission documents. The license number(s) must be reported on the application for FTZ admission and/or status designation (Customs form 214) at the time of filing. There is no requirement to present physical copies of the license forms at the time of FTZ admission; however, copies must be maintained in accordance with Customs' normal requirements. FTZ admission documents submitted without the required license number(s) will not be considered complete and will be subject to liquidated damages for violation of the bond condition requiring timely completion of admission. A further steel license will not be required for shipments from zones into the commerce of the United States.

(d) *Informal entries.* No import license shall be required on informal entries of covered steel products, such as merchandise valued at less than $2,000. This exemption applies to informal entries only, imports of steel valued at less than $2,000 that are part of a formal entry will require a license. For additional information, refer to 19 CFR 143.21 through 143.28.

(e) *Other non-consumption entries.* Import licenses are not required on temporary importation bond (TIB) entries, transportation and exportation (T&E) entries or entries into a bonded warehouse. Covered steel products withdrawn for consumption from a bonded warehouse will require a license at the entry summary.

[70 FR 12136, Mar. 11, 2005, as amended at 85 FR 56171, Sept. 11, 2020]

§ 360.102 Online registration.

(a) *In general.* (1) Any importer, importing company, customs broker or importer's agent with a U.S. street address may register and obtain the user identification number necessary to log on to the automatic steel import license issuance system. Foreign companies may obtain a user identification number if they have a U.S. address through which they may be reached; P.O. boxes will not be accepted. A user identification number will be issued within two business days. Companies will be able to register online through the SIMA system Web site. However, should a company prefer to apply for a user identification number non-electronically, a phone/fax option will be available at Commerce during regular business hours.

(2) This user identification number will be required in order to log on to

the steel import license issuance system. A single user identification number will be issued to an importer, customs broker or importer's agent. Operating units within the company (*e.g.*, individual branches, divisions or employees) will all use the same basic company user identification code but can supply suffixes to identify the branches. The steel import license issuance system will be designed to allow multiple users of a single identification number from different locations within the company to enter information simultaneously.

(b) *Information required to obtain a user identification number*. In order to obtain a user identification number, the importer, importing company, customs broker or importer's agent will be required to provide general information. This information will include: the filer company name, employer identification number (EIN) or Customs ID number (where no EIN is available), U.S. street address, phone number, contact information and e-mail address for both the company headquarters and any branch offices that will be applying for steel licenses. It is the responsibility of the applicant to keep the information up-to-date. This information will not be released by Commerce, except as required by U.S. law.

§ 360.103 Automatic issuance of import licenses.

(a) *In general*. Steel import licenses will be issued to registered importers, customs brokers or their agents through an automatic steel import licensing system. The licenses will be issued automatically after the completion of the form.

(b) *Customs entry number*. Filers are not required to report a Customs entry number to obtain an import license but are encouraged to do so if the Customs entry number is known at the time of filing for the license.

(c) *Information required to obtain an import license*. (1) The following information is required to be reported in order to obtain an import license (if using the automatic licensing system, some of this information will be provided automatically from information submitted as part of the registration process):

(i) Filer company name and address;

(ii) Filer contact name, phone number, and email address;

(iii) Entry type (*i.e.*, Consumption, FTZ);

(iv) Importer name;

(v) Exporter name;

(vi) Manufacturer name (filer may state ''unknown'');

(vii) Country of origin;

(viii) Country of exportation;

(ix) Expected date of export;

(x) Expected date of import;

(xi) Expected port of entry;

(xii) Current Harmonized Tariff Schedule (HTS) number (from Chapters 72 or 73);

(xiii) Country where the steel used in the manufacture of the product was melted and poured (see paragraph (c)(3) of this section for further instruction);

(xiv) Quantity (in kilograms); and

(xv) Customs value (U.S. $).

(2) Certain fields will be automatically filled out by the automatic license system based on information submitted by the filer (*e.g.*, product category, unit value). Filers should review these fields to help confirm the accuracy of the submitted data.

(3)(i) The field in the license application requiring identification of the country where the steel used in the manufacture of the product was melted and poured (*see* paragraph (c)(1)(xiii) of this section) applies to the original location where the raw steel is:

(A) First produced in a steel-making furnace in a liquid state; and then

(B) Poured into its first solid shape.

(ii) The first solid state can take the form of either a semi-finished product (slab, billets or ingots) or a finished steel mill product. The location of melt and pour is customarily identified on mill test certificates that are commonplace in steel production, generated at each stage of the production process, and maintained in the ordinary course of business. The reporting requirement in paragraph (c)(1)(xiii) of this section will not apply to raw materials used in the steel manufacturing process (*i.e.*, steel scrap; iron ore; pig iron; reduced, processed, or pelletized iron ore; or raw alloys).

(4) Upon completion of the form, the importer, customs broker or the importer's agent will certify as to the accuracy and completeness of the information and submit the form electronically. After refreshing the page, the system will automatically issue a steel import license number. The refreshed form containing the submitted information and the newly issued license number will appear on the screen (the ''license form''). Filers can print the license form themselves only at that time. For security purposes, users will not be able to retrieve licenses themselves from the license system at a later date for reprinting. If needed, copies of completed license forms can be requested from Commerce during normal business hours.

(d) *Duration of the steel import license.* The steel import license can be applied for up to 60 days prior to the expected date of importation and until the date of filing of the entry summary documents, or in the case of FTZ entries, the filing of Customs form 214. The steel import license is valid for 75 days; however, import licenses that were valid on the date of importation but expired prior to the filing of entry summary documents will be accepted.

(e) *Correcting submitted license information.* Users will need to correct licenses themselves if they determine that there was an error submitted. To access a previously issued license, a user must log on with his user identification code and identify the license number and the volume (in kilograms) for the first product shown on the license. The information on the license should match the information presented on the CF–7501 entry summary document as closely as possible; this includes the value and volume of the shipment, the expected date of importation, and the customs district of entry.

(f) *Low-value licenses.* There is one exception to the requirement for obtaining a unique license for each Customs entry. If the total value of the covered steel portion of an entry is less than $5,000, applicants may apply to Commerce for a low-value license that can be used in lieu of a single-entry license for low-value entries.

[70 FR 12136, Mar. 11, 2005, as amended at 85 FR 56171, Sept. 11, 2020]

§ 360.104 Steel import monitoring.

(a) Commerce will maintain an import monitoring system on the SIMA system website that will report certain aggregate information on imports of steel mill products obtained from the steel licenses and, where available, from the U.S. Census Bureau. Aggregate data will be reported, as appropriate, on a monthly basis by country of origin, country of melt and pour, and relevant steel mill product groupings, etc. and will include import quantity (metric tons), import Customs value (U.S. $), and average unit value ($/metric ton). The website will also contain certain aggregate data at the 6-digit Harmonized Tariff Schedule level and will also present a range of historical data for comparison purposes. Provision of aggregate data on the website may be revisited should concerns arise over the possible release of proprietary data.

(b) Reported monthly import data will be refreshed each week, as appropriate, with new data on licenses issued during the previous week. This data will also be adjusted periodically for cancelled or unused steel import licenses, as appropriate. Additionally, outdated license data will be replaced, where available, with information from the U.S. Census Bureau.

[85 FR 56171, Sept. 11, 2020]

§ 360.105 [Reserved]

§ 360.106 Fees.

No fees will be charged for obtaining a user identification number, issuing a steel import license or accessing the steel import surge monitoring system.

§ 360.107 Hours of operation.

The automatic licensing system will generally be accessible 24 hours a day, 7 days a week but may be unavailable at selected times for server maintenance. If the system is unavailable for an extended period of time, parties will be able to obtain licenses from Commerce directly via fax during regular

business hours. Should the system be inaccessible for an extended period of time, Commerce would advise Customs to consider this as part of mitigation on any liquidated damage claims that may be issued.

§ 360.108 Loss of electronic licensing privileges.

Should Commerce determine that a filer consistently files inaccurate licensing information or otherwise abuses the licensing system, Commerce may revoke its electronic licensing privileges without prior notice. The filer will then only be able to obtain a license directly from Commerce. Because of the additional time need to review such forms, Commerce may require up to 10 working days to process such forms. Delays in filing caused by the removal of a filer's electronic filing privilege will not be considered a mitigating factor by the U.S. Customs Service.

PART 361—ALUMINUM IMPORT MONITORING AND ANALYSIS SYSTEM

Sec.

AUTHORITY: 13 U.S.C. 301(a) and 302.

SOURCE: 85 FR 83814, Dec. 23, 2020, unless otherwise noted.

§ 361.101 Aluminum import licensing.

(a) *In general.* (1) All imports of basic aluminum products are subject to the import licensing requirements imposed by the U.S. Department of Commerce (Commerce). These products are listed on the Aluminum Import Monitoring and Analysis (AIM) system website (*https://www.trade.gov/aluminum*). Registered users will be able to obtain aluminum import licenses on the AIM system website. This website contains two sections related to import licensing—the online registration system and the automatic aluminum import license issuance system. Aluminum import licenses must be provided to U.S. Customs and Border Protection (CBP or Customs) as discussed in this section. Information gathered from these licenses will be aggregated and posted on the import monitoring section of the AIM system website.

(2) A single license may cover multiple products as long as certain information on the license (*e.g.,* importer, exporter, manufacturer and country of origin) remains the same. However, separate licenses for aluminum entered under a single entry will be required if the information differs. As a result, a single Customs entry may require more than one aluminum import license. The applicable license(s) must cover the total quantity of aluminum entered and should cover the same information provided on the Customs entry summary.

(b) *Entries for consumption.* All entries for consumption of covered aluminum products, other than the exceptions discussed in paragraphs (c) and (d) of this section, will require an import license prior to the filing of Customs entry summary documents, or its electronic equivalent. The license number(s) must be reported on the entry summary (Customs Form 7501), or its electronic equivalent, at the time of filing. There is no requirement to present physical copies of the license forms at the time of entry summary. However, copies must be maintained in accordance with Customs' normal requirements. Entry summaries submitted without the required license number(s) will be considered incomplete and will be subject to liquidated damages for violation of the bond condition requiring timely completion of entry.

(c) *Foreign Trade Zone admissions.* All shipments of covered aluminum products into a foreign trade zone (FTZ), known as FTZ admissions, will require an import license prior to the filing of FTZ admission documents, or its electronic equivalents. The license number(s) must be reported on the application for FTZ admission and/or status designation (Customs Form 214) at the time of filing. There is no requirement

to present physical copies of the license forms at the time of FTZ admission; however, copies must be maintained in accordance with Customs' normal requirements. FTZ admission documents submitted without the required license number(s) will not be considered complete and will be subject to liquidated damages for violation of the bond condition requiring timely completion of admission. The aluminum license for FTZ admission does not expire, and a further aluminum license will not be required for shipments of entries for consumption from zones into the commerce of the United States.

(d) *Informal entries.* No import license shall be required on informal entries of covered aluminum products, such as merchandise valued at less than $2,500. This exemption applies to informal entries only; imports of aluminum valued at less than $2,500 that are part of a formal entry will require a license. For additional information, refer to 19 CFR 143.21 through 143.28.

(e) *Other non-consumption entries.* Import licenses are not required on temporary importation bond (TIB) entries, transportation and exportation (T&E) entries or entries into a bonded warehouse. Covered aluminum products withdrawn for consumption from a bonded warehouse will require a license at the entry summary in accordance with paragraph (b) of this section.

§ 361.102 Online registration.

(a) *In general.* (1) Any importer, importing company, customs broker or importer's agent with a U.S. street address may register and obtain the username necessary to log on to the automatic aluminum import license issuance system. Foreign companies may obtain a username if they have a U.S. address through which they may be reached; P.O. boxes will not be accepted. A username will be issued within two business days. Companies will be able to register online through the AIM system website. However, should a company prefer to apply for a username non-electronically, a phone/email option will be available at Commerce during regular business hours.

(2) This username will be required in order to log on to the aluminum import license issuance system. A single username will be issued to an importer, customs broker or importer's agent. Operating units within the company (*e.g.*, individual branches, divisions or employees) will all use the same basic company username but can supply suffixes to identify the branches. The aluminum import license issuance system will be designed to allow multiple users of a single identification number from different locations within the company to enter information simultaneously.

(b) *Information required to obtain a username.* In order to obtain a username, the importer, importing company, customs broker or importer's agent will be required to provide general information. This information will include: The filer company name, employer identification number (EIN) or Customs ID number (the Customs-issued importer number) (where no EIN is available), U.S. street address, phone number, contact information and email address for both the company headquarters and any branch offices that will be applying for aluminum licenses. It is the responsibility of the applicant to keep the information up to date. This information will not be released by Commerce, except as required by U.S. law.

§ 361.103 Automatic issuance of import licenses.

(a) *In general.* Aluminum import licenses will be issued to registered importers, customs brokers or their agents through an automatic aluminum import licensing system. The licenses will be issued automatically after the completion of the form.

(b) *Customs entry number.* Filers are not required to report a Customs entry number to obtain an import license but are encouraged to do so if the Customs entry number is known at the time of filing for the license.

(c) *Information required to obtain an import license.* (1) The following information is required to be reported in order to obtain an import license (if using the automatic licensing system, some of this information will be provided automatically from information submitted as part of the registration process):

(i) Filer company name and address;

(ii) Filer contact name, phone number, email address;
(iii) Entry type (*i.e.,* Consumption, FTZ);
(iv) Importer name;
(v) Exporter name;
(vi) Manufacturer name (filer may state ''unknown'');
(vii) Country of origin;
(viii) Country of exportation;
(ix) Expected date of export;
(x) Expected date of import;
(xi) Expected port of entry;
(xii) Current Harmonized Tariff Schedule (HTS) number (from Chapter 76);
(xiii) Country where the largest volume of primary aluminum used in the manufacture of the product was smelted (see paragraph (c)(3)(i) of this section);
(xiv) Country where the second largest volume of primary aluminum used in the manufacture of the product was smelted (see paragraph (c)(3)(ii) of this section);
(xv) Country where the product was most recently cast (see paragraph (c)(3)(iii) of this section);
(xvi) Quantity (in kilograms); and
(xvii) Customs value (US$).

(2) Certain fields will be automatically filled out by the automatic license system based on information submitted by the filer (*e.g.,* product category, unit value). Filers should review these fields to help confirm the accuracy of the submitted data.

(3)(i) For purposes of paragraph (c)(1)(xiii) of this section:

(A) The field in the license application requiring identification of the country where the largest volume of primary aluminum used in the manufacture of the product was smelted applies to the country where the largest volume of new aluminum metal is produced from alumina (or aluminum oxide) by the electrolytic Hall–Héroult process.

(B) Filers may state ''not applicable'' for this field if the product contains only secondary aluminum and no primary aluminum. Secondary aluminum is defined as aluminum metal that is produced from recycled aluminum scrap through a re-melting process.

(C) For license applications up to June 28, 2022, filers may state ''unknown'' for this field. Effective June 29, 2022, filers may not state ''unknown'' for this field.

(ii) For purposes of paragraph (c)(1)(xiv) of this section:

(A) The field in the license application requiring identification of the country where the second largest volume of primary aluminum used in the manufacture of the product was smelted applies to the country where the second largest volume of new aluminum metal is produced from alumina (or aluminum oxide) by the electrolytic Hall–Héroult process.

(B) Filers may state ''not applicable'' for this field if the product does not contain a second largest volume of primary aluminum or if the product contains only secondary aluminum and no primary aluminum. Secondary aluminum is defined as aluminum metal that is produced from recycled aluminum scrap through a re-melting process.

(C) For license applications up to June 28, 2022, filers may state ''unknown'' for this field. Effective June 29, 2022, filers may not state ''unknown'' for this field.

(iii) For purposes of paragraph (c)(1)(xv) of this section:

(A) The field in the license application requiring identification of the country where the product was most recently cast applies to the country where the aluminum (with or without alloying elements) was last liquified by heat and cast into a solid state. The final solid state can take the form of either a semi-finished product (slab, billets or ingots) or a finished aluminum product.

(B) Filers may not state ''not applicable'' for this field.

(C) Filers may not state ''unknown'' for this field.

(4) Upon completion of the form, the importer, customs broker or the importer's agent will certify as to the accuracy and completeness of the information and submit the form electronically. After refreshing the page, the system will automatically issue an aluminum import license number. The refreshed form containing the submitted information and the newly issued license number will appear on the screen (the ''license form''). Filers can print

the license form themselves only at that time. For security purposes, users will not be able to retrieve licenses themselves from the license system at a later date for reprinting. If needed, copies of completed license forms can be requested from Commerce during normal business hours.

(d) *Duration of the aluminum import license.* The aluminum import license can be applied for up to 60 days prior to the expected date of importation and until the date of filing of the entry summary documents, or in the case of FTZ admissions, the filing of Customs Form 214, or their electronic equivalents. With the exception of the licenses for FTZ admission (*see* §361.101(c)), the aluminum import license is valid for 75 days; however, import licenses that were valid on the date of importation but expired prior to the filing of entry summary data will be accepted.

(e) *Correcting submitted license information.* Users will need to correct licenses themselves if they determine that there was an error submitted. To access a previously issued license, a user must log on with his username and identify the license number and the volume (quantity in kilograms) for the first product shown on the license. The information on the license should match the information presented in the entry summary data as closely as possible. This includes the value and quantity of the shipment, the expected date of importation, and the Customs port of entry.

(f) *Low-value licenses.* There is one exception to the requirement for obtaining a unique license for each Customs entry. If the total value of the covered aluminum portion of an entry is less than $5,000, applicants may apply to Commerce for a low-value license that can be used in lieu of a single-entry license for low-value entries.

[85 FR 83814, Dec. 23, 2020, as amended at 86 FR 27518, May 21, 2021]

§ 361.104 Aluminum import monitoring.

(a) Commerce will maintain an import monitoring system on the public AIM system website that will report certain aggregate information on imports of aluminum products obtained from the aluminum licenses and, where available, from publicly available U.S. import statistics. Aggregate data will be reported, as appropriate, on a monthly basis by country of origin, country of smelt, country of last cast, relevant aluminum product grouping, etc., and will include import quantity (metric tons), import Customs value (U.S. $), and average unit value ($/metric ton). The website will also contain certain aggregate data at the 6-digit Harmonized Tariff Schedule level and will also present a range of historical data for comparison purposes. Provision of aggregate data on the website may be revisited should concerns arise over the possible release of proprietary data.

(b) Reported monthly import data will be refreshed each week, as appropriate, with new data on licenses issued during the previous week. This data will also be adjusted periodically for cancelled or unused aluminum import licenses, as appropriate. Additionally, outdated license data will be replaced, where available, with publicly available U.S. import statistics.

§ 361.105 [Reserved]

§ 361.106 Fees.

No fees will be charged for obtaining a username, issuing an aluminum import license or accessing the aluminum import monitoring system.

§ 361.107 Hours of operation.

The automatic licensing system will generally be accessible 24 hours a day, 7 days a week but may be unavailable at selected times for server maintenance. If the system is unavailable for an extended period of time, parties will be able to obtain licenses from Commerce directly via email (*aluminum.license@trade.gov*) during regular business hours. Should the system be inaccessible for an extended period of time, Commerce would advise CBP to consider this as part of mitigation on any liquidated damage claims that may be issued.

§ 361.108 Loss of electronic licensing privileges.

Should Commerce determine that a filer consistently files inaccurate licensing information or otherwise abuses the licensing system, Commerce may revoke its electronic licensing privileges without prior notice. The filer will then only be able to obtain a license directly from Commerce. Because of the additional time needed to review such forms, Commerce may require up to 10 working days to process such forms. Delays in filing caused by the removal of a filer's electronic filing privilege will not be considered a mitigating factor by CBP.

PART 362—PROCEDURES COVERING SUSPENSION OF LIQUIDATION, DUTIES AND ESTIMATED DUTIES IN ACCORD WITH PRESIDENTIAL PROCLAMATION 10414

Sec.

AUTHORITY: 19 U.S.C. 1318; Proc. 10414, 87 FR 35067.

SOURCE: 87 FR 56866, Sept. 16, 2022, unless otherwise noted.

§ 362.101 Scope.

This part sets forth the actions the Secretary is taking to respond to the emergency declared in Presidential Proclamation 10414.

§ 362.102 Definitions.

For purposes of this part:

Act means the Tariff Act of 1930, as amended (19 U.S.C. 1202 *et seq.*).

Applicable Entries means the entries of Southeast Asian-Completed Cells and Modules that are entered into the United States, or withdrawn from warehouse, for consumption before the Date of Termination and, for entries that enter after November 15, 2022, are used in the United States by the Utilization Expiration Date.

CBP means U.S. Customs and Border Protection of the United States Department of Homeland Security.

Certain Solar Orders means Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order; Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Countervailing Duty Order; and Certain Crystalline Silicon Photovoltaic Products from Taiwan: Antidumping Duty Order.

Date of Termination means June 6, 2024, or the date the emergency described in Presidential Proclamation 10414 has been terminated, whichever occurs first.

Secretary means the Secretary of Commerce or a designee.

Solar Circumvention Inquiries means some or all of the inquiries at issue in Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Initiation of Circumvention Inquiry on the Antidumping Duty and Countervailing Duty Orders.

Southeast Asian-Completed Cells and Modules means crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells and modules), which are completed in the Kingdom of Cambodia, Malaysia, the Kingdom of Thailand, or the Socialist Republic of Vietnam using parts and components manufactured in the People's Republic of China, and subsequently exported from Cambodia, Malaysia, Thailand or Vietnam to the United States. These are cells and modules subject to the Solar Circumvention Inquiries. Southeast Asian-Completed Cells and Modules does not mean solar cells and modules that, on June 6, 2022, the date Proclamation 10414 was signed, were already subject to Certain Solar Orders.

Utilization and *utilized* means the Southeast Asian-Completed Cells and Modules will be used or installed in the United States. Merchandise which remains in inventory or a warehouse in the United States, is resold to another party, is subsequently exported, or is destroyed after importation is not considered utilized for purposes of these provisions.

Utilization Expiration Date means the date 180 days after the Date of Termination.

§ 362.103 Actions being taken pursuant to Presidential Proclamation 10414 and Section 318(a) of the Act.

(a) *Importation of applicable entries free of duties and estimated duties.* The Secretary will permit the importation of Applicable Entries free of the collection of antidumping and countervailing duties and estimated duties under sections 701, 731, 751 and 781 of the Act until the Date of Termination. Part 358 of this chapter shall not apply to these imports.

(b) *Suspension of liquidation and collection of cash deposits.* (1) To facilitate the importation of certain Southeast Asian-Completed Cells and Modules without regard to estimated antidumping and countervailing duties, notwithstanding §351.226(l) of this chapter, the Secretary shall do the following with respect to estimated duties:

(i) The Secretary shall instruct CBP to discontinue the suspension of liquidation of entries and collection of cash deposits for any Southeast Asian-Completed Cells and Modules that were suspended pursuant to §351.226(l) of this chapter. If at the time instructions are conveyed to CBP the entries at issue are suspended and cash deposits collected only on the basis of the circumvention inquiries, then the Secretary will direct CBP to liquidate the entries without regard to antidumping and countervailing duties and to refund cash deposits collected on that basis.

(ii) In the event of an affirmative preliminary or final determination of circumvention in the Solar Circumvention Inquiries before the Date of Termination, the Secretary will not, at that time, direct CBP to suspend liquidation of Applicable Entries and collect cash deposits of estimated duties on those Applicable Entries.

(iii) In the event of an affirmative preliminary or final determination of circumvention in the Solar Circumvention Inquiries, the Secretary will direct CBP to suspend liquidation of entries of, and collect cash deposits of estimated duties on, imports of Southeast Asian-Completed Cells and Modules that are not Applicable Entries.

(2) In the event that the Secretary makes an affirmative preliminary or final determination of circumvention in the Solar Circumvention Inquiries, as applicable, and the emergency described in Presidential Proclamation 10414 is terminated before June 6, 2024, notwithstanding §351.226(l) of this chapter, upon notification of the termination of the emergency the Secretary will thereafter issue instructions to CBP informing it of the Date of Termination and directing it to begin suspension of liquidation and require a cash deposit of estimated antidumping and countervailing duties, at the applicable rate for each unliquidated entry of Southeast Asian-Completed Cells and Modules that is entered, or withdrawn from warehouse, for consumption on or after an appropriate date that is on or after the Date of Termination. For purposes of this paragraph, Applicable Entries may also include certain entries of Southeast Asian-Completed Cells and Modules that are entered on or after the Date of Termination, as appropriate.

(3) In the event that the Secretary makes an affirmative preliminary or final determination of circumvention in the Solar Circumvention Inquiries, as applicable, and the Date of Termination is June 6, 2024, notwithstanding §351.226(l) of this chapter, the Secretary will issue instructions to CBP informing it that the Date of Termination is June 6, 2024, and will direct CBP to begin suspension of liquidation and require a cash deposit of estimated antidumping and countervailing duties, at the applicable rate, for each unliquidated entry of Southeast Asian-Completed Cells and Modules that is entered, or withdrawn from warehouse, for consumption on or after the Date of Termination.

(c) *Waiver of assessment of duties.* In the event the Secretary issues an affirmative final determination of circumvention in the Solar Circumvention Inquiries and thereafter, in accordance with other segments of the proceedings, pursuant to section 751 of the Act and §351.212(b) of this chapter, issues liquidation instructions to CBP,

the Secretary will direct CBP to liquidate Applicable Entries without regard to antidumping and countervailing duties that would otherwise apply pursuant to an affirmative final determination of circumvention.

§ 362.104 Certifications.

Nothing in this section shall preclude the Secretary from requiring certifications for Southeast Asian-Completed Cells and Modules pursuant to § 351.228 of this chapter in the event of an affirmative preliminary or final determination in the Solar Circumvention Inquiries.

PARTS 363–399 [RESERVED]

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For changes to this volume of the CFR prior to this listing, consult the annual edition of the monthly List of CFR Sections Affected (LSA). The LSA is available at *www.govinfo.gov*. For changes to this volume of the CFR prior to 2001, see the ''List of CFR Sections Affected, 1949–1963, 1964–1972, 1973–1985, and 1986–2000'' published in 11 separate volumes. The ''List of CFR Sections Affected 1986–2000'' is available at *www.govinfo.gov*.

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